

PRESIDENT'S OFFICE

No. 1897.
27 November 1996

NO. 98 OF 1996: AVIATION LAWS AMENDMENT ACT, 1996.

It is hereby notified that the President has assented to the following Act which is hereby published for general information:-

GENERAL EXPLANATORY NOTE:

Words in [[]] brackets indicate omissions from existing enactments.

Words in << >> brackets indicate insertions in existing enactments.

ACT

To amend the Aviation Act, 1962, so as to further define or to substitute certain expressions; to make further provision in respect of the appointment of inspectors and authorized persons; to make other provision in respect of the power to make regulations; to substitute an obsolete reference; to empower the Commissioner for Civil Aviation to issue technical standards for civil aviation; and to effect certain amendments to the Convention on International Civil Aviation; to amend the Civil Aviation Offences Act, 1972, so as to further define a certain expression; to amend the Air Services Licensing Act, 1990, so as to further define certain expressions; to dispense with the power to issue operating certificates in terms of the said Act; and to restrict the power to make regulations; to amend the Airports Company Act, 1993, so as to further define a certain expression; and to substitute an obsolete reference; to amend the Air Traffic and Navigation Services Company Act, 1993, so as to further define or to delete certain expressions; and to substitute an obsolete reference; and to amend the International Air Services Act, 1993, so as to further define certain expressions; and to dispense with the power to issue operating certificates in terms of the said Act; and to provide for matters connected therewith.

(Afrikaans text signed by the President.)

(Assented to 12 November 1996)

BE IT ENACTED by the Parliament of the Republic of South Africa, as follows:-

Amendment of section 1 of Act 74 of 1962, as amended by section 3 of Act 12 of 1965, section 1 of Act 83 of 1969, section 1 of Act 63 of 1981, section 1 of Act 4 of 1982, section 33 of Act 115 of 1990, section 1 of Act 16 of 1992 and section 19 of Act 44 of 1993 Section 1 of the Aviation Act, 1962, is hereby amended-

- (a) by the insertion after the definition of "accident" of the following definition:

" <<'aerodrome' means any demarcated area on land or water or any building which is used or intended to be use, either wholly or in part, for the arrival or departure of aircraft, and includes any building, installation or equipment within such area which is used or intended to be used in connection with the arrival, departure or movement of aircraft;>>"

- (b) by the deletion of the definition of "airport";

(c) by the insertion after the definition "authorized officer" of the following definition:

" <<'authorized person' means an authorized person designated in terms of section 5(4) (a);>>"

(d) by the insertion after the definition of "South African aircraft" of the following definition:

" <<'technical standard', in relation to civil aviation, means any standard, including any rule, requirement, method, specification, characteristic or procedure, issued by the Commissioner in accordance with the provisions of section 22A(1) in respect of civil aircraft or aircraft components, persons engaged in any civil aviation activity and civil aviation related services, facilities or equipment;>>" and

(e) by the addition of the following subsection, the existing section becoming subsection (1):

"<<(2) The definition of 'aerodrome' in subsection (1) shall not derogate from the ordinary meaning of the word 'airport'>>".

Amendment of section 5 of Act 74 of 1962, as inserted by section 2 of Act 16 of 1992

2. Section 5 of the Aviation Act, 1962, is hereby amended by the substitution for paragraph (a) of subsection (4) of the following paragraph:

"(a) designate one or more-

<<(i)>> officers in the service of the department as inspectors or authorized officers; <<and

(ii) persons who are not in the service of the department as inspectors or authorized persons>>, whose <<qualifications>>, powers and duties shall, subject to the provisions of section 4(2) and (3), be as prescribed; and".

Amendment of section 19 of Act 74 of 1962, as amended by section 33 of Act 115 of 1990 and section 4 of Act 16 of 1992

3. Section 19 of the Aviation Act, 1962, is hereby amended-

(a) by the deletion in subsection (3) of the expression "in the case of an air carrier as defined in section 1 of the International Air Services Act, 1949 (Act No. 51 of 1949), or"; and

(b) by the insertion after the expression "Air Services Licensing Act, 1990" in the said subsection (3) of the expression ", or in section 1

of

the International Air Services Act, 1993 (Act No. 60 of 1993)".

Amendment of section 22 of Act 74 of 1962, as amended by section 5 of Act 12 of 1965, section 3 of Act 83 of 1969, section 25 of Act 62 of 1973, section 7 of Act 4 of 1982, section 2 of Act 1 of 1984, section 5 of Act 16 of 1992, section 25 of Act 44 of 1993, section 17 of Act 45 of 1993 and section 11 of Act 16 of 1995

4. Section 22 of the Aviation Act, 1962, is hereby amended-

(a) by the substitution for subsection (1) of the following subsection:

"<<(1) The Minister may make regulations regarding-

- (a) subject to section 3(1)(a), the carrying out of, or the giving effect to, the provisions of the Convention and the Transit Agreement;
- (b) the powers or the duties of the Commissioner, including the issue, the amendment or the withdrawal of technical standards for civil aviation, and the determination of the matters in respect of which such standards may be issued;
- (c) the qualifications, the powers or the duties of authorized officers, inspectors and authorized persons;
- (d) the designation of medical examiners for the purposes of this Act, including-
 - (i) the manner in which, and the person by whom, such designation may take place;
 - (ii) the suspension or the withdrawal of such designation;
 - (iii) the conditions, the requirements or the qualifications for such designation; and
 - (iv) the certificates issued by the said examiners and the conditions or the requirements for such issue;
- (e) the designation of a body or institution for the purposes of this Act-
 - (i) to exercise control over medical examinations or tests and over the persons performing such examinations or tests;
 - (ii) to determine standards for such examinations or tests and for the training of such persons;
 - (iii) to issue, to amend, to suspend or to withdraw medical certificates and to keep all books or documents regarding such examinations or tests; and
 - (iv) to advise the Commissioner on any matter connected with such examinations, tests or persons and on the training of the persons specified in the regulations in first aid;
- (f) the designation of a body or institution for the purposes of this Act-
 - (i) to exercise control over the training courses specified in the regulations, over the tests or the verifications of skill or proficiency specified in the regulations, and over the persons conducting such courses, tests or verifications;
 - (ii) to determine standards for such courses, tests or verifications and for the training of such persons;
 - (iii) to issue or to confirm certificates for the successful completion of such courses, tests or verifications, to suspend or to withdraw such certificates, and to keep all books or documents regarding such courses, tests or verifications; and
 - (iv) to advise the Commissioner on any matter connected with such courses, tests, verifications or persons;

(g) the designation of a body or institution for the purposes of this Act-

(i) to exercise control over the aviation recreational activities specified in the regulations;

(ii) to determine standards for the airworthiness or the operation of aircraft engaged in such activities; and

(iii) to advise the Commissioner on any matter connected with the airworthiness or the operation of aircraft engaged in such activities and on the licensing of persons involved in such activities;

(h) the designation of a body or institution for the purposes of this Act-

(i) to promote aviation safety or to reduce the risk of aircraft accidents or incidents; and

(ii) to advise the Commissioner on any matter connected with the promotion of aviation, safety or the reduction of the risk of aircraft accidents or incidents;

(i) subject to section 12, the reporting or the investigation of aircraft accidents or incidents, including-

shall

(i) the persons by whom or to whom such accidents or incidents be reported;

(ii) the procedure to be followed in reporting such accidents or incidents or in investigating such accidents or incidents;

(iii) the imposition of a prohibition, pending investigation, of access to or interference with any aircraft involved in an accident or incident and the granting of authorization to one

or

more persons, in so far as it may be necessary for the purposes of the investigation, to have access to such aircraft, to examine or to remove such aircraft, to take steps for the preservation thereof or to deal otherwise therewith; and

(iv) the investigation of any other accident or incident reported in respect of the provision of any air traffic service;

(j) the exercising of control over the conveyance in aircraft of dangerous goods specified or defined in the regulations, including-

goods;

(i) the imposition of a prohibition of the conveyance of such and

(ii) the issue of licences or certificates to persons specified in the regulations and engaged in the consigning or acceptance of such goods;

(k) the requirements to be complied with or the steps to be taken in connection with the conveyance in aircraft of any animal as defined in section 1 of the Animals Protection Act, 1962 (Act No. 71 of 1962), or any fish as defined in section 1 of the Sea Fishery Act, 1988 (Act No. 12 of 1988);

- (1) the delimitation, the designation or the restriction of airspace, including-
- (i) the designation of airspace for the purposes specified in the regulations;
 - (ii) the restriction or the prohibition of aircraft from flying within any airspace specified in the regulations;
 - (iii) the conditions under which, the airspace within which or the aerodromes at which aircraft coming from any place outside the Republic shall land and the conditions under which, the
airspace within which or the aerodromes from which aircraft shall depart to any place outside the Republic; and
 - (iv) the provision of measures to prevent aircraft from flying within any airspace in contravention of any such restriction or prohibition or from entering or leaving the Republic in contravention of any provision of this Act;
- (m) the provision of general operating rules, flight rules and air traffic rules in respect of civil aviation, including-
- (i) the terminology, including definitions, abbreviations and units of measurement, to be used;
 - (ii) the identification, the classification or the registration of aircraft;
 - (iii) the identification, the licensing or the certification of persons engaged in any civil aviation activity;
 - (iv) the prevention of nuisances arising from air navigation, aircraft factories, aerodromes or other aircraft
establishments, including the prevention of nuisance due to noise or vibration originating from the operation of machinery in aircraft on or above aerodromes, whether by the installation in aircraft or on aerodromes of means for the prevention of such noise or vibration or otherwise;
 - (v) the approval or, where appropriate, the design of let-down and missed approach procedures;
 - (vi) the safety or the security of persons and property, including the conditions under which any aircraft shall be operated, the conditions under which any act may be performed in or from an aircraft and the maximum hours of duty of flight crew, cabin crew or air traffic service personnel for the purposes of aviation safety;
 - (vii) the order in which aircraft may be requisitioned and flight crew may be called out under section 17(1), the carrying out or the co-ordination of any air search and rescue operations and the rate at which compensation is to be paid by the State in respect of any such requisitioning or calling out;
 - (viii) the signals or other communications which may or shall be conveyed by or to any aircraft, or any person therein, and the acknowledgement of, or the compliance with, such signals or communications;
 - (ix) the co-ordination of frequency allocations in bands of the

radio spectrum allocated for civil aviation use;

(x) the determination of standards for the maintenance of any air navigation infrastructure-, and

(xi) the flight calibration of any such air navigation infrastructure;

(n) the use, the licensing, the inspection or the management of aerodromes, including-

(i) the prevention of interference with aerodromes and other civil aviation related facilities;

(ii) the imposition of a prohibition or the regulation of the use of unlicensed aerodromes;

(iii) the approval for the siting of any air navigation infrastructure which is not situate on an aerodrome;

(iv) the certification of categories of operations at aerodromes;

(v) the access to aerodromes or other places where aircraft have landed or the access to civil aircraft factories for the purposes of the inspection of the work carried on therein;

(vi) the imposition of a prohibition or the regulation of the erection or the coming into existence of any obstruction exceeding the height specified in the regulations within the distance so specified from any aerodrome;

(vii) the lighting and marking of obstructions which are situate at any aerodrome or within the distance specified in the regulations from any aerodrome, or which exceed the height so specified, or which, according to criteria so specified, constitute a danger to aircraft;

(viii) the imposition of a prohibition of, or the exercising of control over, lights at or in the neighbourhood of any aerodrome;

(ix) the registers or the records to be kept at licensed aerodromes and the manner in which they shall be kept; and

(x) the technical, operational, security and safety standards in respect of a company airport as defined in section 1 of the Airports Company Act, 1993 (Act No. 44 of 1993);

(o) the provision or the organization of air traffic or navigation services, aviation meteorological, security or communication services and any other civil aviation related services, including the licensing or the certification of aircraft design,

manufacturing

or maintenance organizations and aviation training organizations and the designation of aviation meteorological organizations;

(p) the determination of standards or specifications in respect of

civil

aircraft or aircraft components, persons engaged in any civil aviation activity and civil aviation related services, facilities

or

equipment, including-

- the
- (i) for the purposes of ensuring the safe operation of aircraft, imposition of a prohibition or the regulation of the use in aircraft or aero engines of parts, instruments, accessories or other materials which do not conform to the specifications or standards of quality or manufacture specified in the regulations;
 - (ii) the requirements relating to the airworthiness, the design, - the performance, the operation or the maintenance of aircraft, aircraft components or aircraft equipment and the specifications for materials used, or the standards or the processes which shall be applied, in the construction of aircraft, aircraft components or aircraft equipment; and
 - (iii) the determination of standards for the training, the grading, the licensing or the certification of persons engaged in any such activity;
 - (q) the manner in which, or the conditions under which, any licence or certificate required by or under this Act, the Convention or the Transit Agreement shall be issued, renewed or confirmed, including-
 - (i) the courses, the examinations, the inspections, the tests or the verifications which shall be passed or measured up to; and
 - (ii) the form, the custody, the production, the cancellation, the suspension, the endorsement or the surrender of any such licence or certificate;
 - (r) the publication of aeronautical information;
 - (s) the manuals, the registers, the records or the other documents to be kept for the purposes of this Act, the Convention or the Transit Agreement and the manner in which they shall be kept;
 - (t) subject to subsection (3), the fees to be paid in respect of the matters specified in the regulations;
 - (u) the exemption from any of the provisions of this Act, the Convention or the Transit Agreement of any aircraft operated for experimental purposes, of any other aircraft or of any person in the circumstances or under the conditions specified in the regulations;
 - (v) in general, any matter which the Minister may consider necessary or expedient to prescribe in order that the objects of this Act may be achieved, and the generality of this paragraph shall not be limited by the preceding paragraphs.>>"; and
- (b) by the deletion of subsection (2).

Substitution of section 22A of Act 74 of 1962, as inserted by section 3 of Act 1 of 1984 and amended by section 6 of Act 16 of 1992

5. The following section is hereby substituted for section 22A of the Aviation Act, 1962:

"Technical standards for civil aviation

<<22A. (1) (a) The Commissioner may issue technical standards for civil aviation on such matters as may be prescribed by regulation.

(b) The manner in which any technical standard for civil aviation shall be issued, amended or withdrawn, and the procedure to be followed in respect of any such issue, amendment or withdrawal, shall be as prescribed by regulation.

(2) Any person who contravenes or fails to comply with a provision of a technical standard shall be guilty of an offence and liable on conviction to a fine or to imprisonment for a period not exceeding five years or to both such fine and such imprisonment.

(3) The Commissioner may incorporate into a technical standard any International aviation standard or any amendment thereof, without stating the text of such standard or amendment, by mere reference to the title, number and year of issue of such standard or amendment or to any other particulars by which such standard or amendment is sufficiently identified.

(4) An officer in the department designated by the Commissioner for that purpose shall keep in his office a copy of the complete text of each International aviation standard or each amendment thereof which has been incorporated into any technical standard in accordance with subsection (3), and shall at the request in writing of any interested person make such copy available free of charge to such person for inspection or for making a copy thereof, at such person's expense, at a place approved by the said officer.

(5) Whenever in any judicial proceedings the question arises whether any writing contains the text of any International aviation standard or any amendment thereof which has been incorporated into any technical standard in accordance with subsection (3), any document purporting to be a statement by a person who in that statement alleges that he is an officer in the department and that a particular writing described in or attached to the statement contains the said text shall, on its mere production at those proceedings by any person, be prima facie proof of the facts stated therein.

(6) For the purposes of this section, International aviation standard' means any International standard or recommended practice or procedure adopted by the International Civil Aviation Organization for the purposes of Article 37 of the Convention>>.". .

Substitution of word "airport" and word "airports" in Act 74 of 1962

6. The Aviation Act, 1962, is hereby amended by the substitution for the word "airport" and the word "airports", wherever they appear, of the word "aerodrome" and the word "aerodromes", respectively.

Amendment of First Schedule to Act 74 of 1962, as amended by Proclamation 33 of 1986, Proclamation 204 of 1973 and Proclamation 194 of 1980

7. The First Schedule to the Aviation Act, 1962, is hereby amended-

(a) by the substitution in Article 56 for the words "twelve members" of the words "nineteen members";

(b) by the insertion after Article 83 of the following Article:

"Article 83bis

Transfer of certain functions and duties

<<(a) Notwithstanding the provisions of Articles 12, 30, 31 and 32(a), when an aircraft registered in a contracting State is operated pursuant to an agreement for the lease, charter or interchange of the aircraft or any similar arrangement by an operator who has his principal place of business or, if he has no such place of business, his permanent residence in another contracting State, the State of registry may, by agreement with such other State, transfer to it all or part of its functions and duties as State of registry in respect

of

that aircraft under Articles 12, 30, 31 and 32(a). The State of registry shall be relieved of responsibility in respect of the functions and duties transferred.

(b) The transfer shall not have effect in respect of other contracting States before either the agreement between States in which it is embodied has been registered with the Council and made public

pursuant

to Article 83 or the existence and scope of the agreement have been directly communicated to the authorities of the other contracting State or States concerned by a State party to the agreement.

(c) The provisions of paragraphs (a) and (b) above shall also be applicable to cases covered by Article 77>>."; and

(c) by the insertion after Article 93 of the following Article:

"Article 93bis

Termination or suspension of membership

<<(a) Notwithstanding the provisions of Articles 91, 92 and 93 above:

(1) A State whose government the General Assembly of the United Nations has recommended be debarred from membership in International agencies established by or brought into relationship with the United Nations shall automatically cease to be a member of the International Civil Aviation Organization;

(2) A State which has been expelled from membership in the United Nations

shall automatically cease to be a member of the International Civil Aviation

Organization unless the General Assembly of the United Nations attaches to its act of expulsion a recommendation to the contrary.

(b) A State which ceases to be a member of the International Civil Aviation Organization as a result of the provisions of paragraph (a) above may, after approval by the General Assembly of the United Nations, be readmitted to the International Civil Aviation Organization upon application and upon approval by a majority of the Council.

(c) Members of the Organization which are suspended from the exercise of the rights and privileges of membership in the United Nations shall, upon the request of the latter, be suspended from the rights and privileges of membership in this Organization>>.". .

Amendment of section 1 of Act 10 of 1972, as amended by section 1 of Act 63 of 1978, section 1 of Act 4 of 1981 and section 27 of Act 44 of 1993

8. Section 1 of the Civil Aviation Offences Act, 1972, is hereby amended by the substitution in subsection (1) for the definition of "airport" of the

following definition:

" 'airport' means an [[airport]] <<aerodrome>> as defined in section 1 of the Aviation Act, 1962 (Act No. 74 of 1962);".

Amendment of section 1 of Act 115 of 1990, as amended by section 1 of Act 15 of 1992 and section 1 of Act 83 of 1995

9. Section 1 of the Air Services Licensing Act, 1990, is hereby amended-

(a) by the substitution for paragraph (e) of the definition of "air service" of the following paragraph:

"<<(e) the participation in any air race, navigation rally or other aviation sporting event of an aircraft which is sponsored, if the sole advertisement by such aircraft consists of the display of the name or logo of, or any other reference to, the sponsor in question;>>";

(b) by the insertion after the definition of "authorized officer" of the following definition:

" <<'authorized person' means an authorized person as defined in section 1 of the Aviation Act, 1962;>>"; and

(c) by the deletion of the definition of "operating certificate".

Amendment of section 19 of Act 115 of 1990, as amended by section 8 of Act 83 of 1995

10. Section 19 of the Air Services Licensing Act, 1990, is hereby amended by the substitution for paragraph (b) of the following paragraph:

"(b) on condition that the licensee shall not commence or [[subject to the provisions of section 22(7)]] continue with an air service unless he is in possession of a valid operating certificate <<issued under the Aviation Act, 1962 (Act No. 74 of 1962)>>";.

Repeal of sections 22 and 23 of Act 115 of 1990

11. Sections 22 and 23 of the Air Services Licensing Act, 1990, are hereby repealed.

Amendment of section 24 of Act 115 of 1990, as substituted by section 11 of Act 83 of 1995

12. Section 24 of the Air Services Licensing Act, 1990, is hereby amended-

(a) by the deletion of paragraph (a) of subsection (1); and

(b) by the substitution for paragraph (c) of the said subsection (1) of the following paragraph:

"(c) keep his, her or its licence [[and operating certificate]] in a safe place, and produce such licence [[and operating certificate]] to an authorized officer, [[or]] inspector <<or authorized person>> for inspection if so requested by such officer, [[or]] inspector <<or person>>; and".

Amendment of section 25 of Act 115 of 1990, as amended by section 12 of Act 83 of 1995

13. Section 25 of the Air Services Licensing Act, 1990, is hereby amended-

(a) by the substitution for paragraph (a) of subsection (1) of the following paragraph:

"(a) by the refusal of the council [[or the Commissioner for Civil Aviation]] to issue to him a licence [[or an operating certificate, as the case may be]]; "

(b) by the deletion of paragraph (c) of the said subsection (1);

(c) by the substitution for subsection (2) of the following subsection:

"(2) The court referred to in subsection (1) may-

(a) confirm, vary or set aside the refusal or decision of the council [[or Commissioner for Civil Aviation, as the case may be]];

(b) give such other decision as the council [[or the Commissioner for Civil Aviation, as the case may be, was]] <<would have been>> able to give; or

(c) remit the case to the council [[or the Commissioner for Civil Aviation, as the case may be]] with such instructions as that court may deem fit."; and

(d) by the substitution for subsection (4) of the following subsection:

"(4) A decision given [[in terms of]] <<under>> subsection (2) shall, for the purposes of this Act, be deemed to be a decision of the council [[or the Commissioner for Civil Aviation, as the case may be]]."

Amendment of section 26 of Act 115 of 1990, as amended by section 13 of Act 83 of 1995

14. Section 26 of the Air Services Licensing Act, 1990, is hereby amended-

(a) by the substitution for paragraph (e) of subsection (1) of the following paragraph:

"(e) falsifies, counterfeits, alters, defaces or mutilates, or adds anything to, a licence [[operating certificate]] or other document issued under this Act, or is in possession of a licence

[[operating

certificate]] or other document which has been thus falsified, counterfeited, altered, defaced or mutilated, or to which an addition has been made;";

(b) by the substitution for paragraph (f) of the said subsection (1) of the following paragraph:

"(f) uses a licence [[operating certificate]] or other document issued under this Act of which he, she or it is not the holder;"; and

(c) by the substitution for paragraph (fA) of the said subsection (1) of the following paragraph:

"(fA) permits a licence [[operating certificate]] or other document issued under this Act of which he, she or it is the holder to be used by any other person;".

Amendment of section 27 of Act 115 of 1990

15. Section 27 of the Air Services Licensing Act, 1990, is hereby amended-

(a) by the substitution for paragraph (d) of the following paragraph:

"(d) a certificate issued by the chairman of the council [[or the Commissioner for Civil Aviation]] stating that a licence [[or operating certificate, as the case may be]] has not been granted

or

issued to a specified person shall, upon the mere production thereof, be accepted as prima facie proof of the facts mentioned therein;"; and

(b) by the deletion of paragraph (g).

Amendment of section 29 of Act 115 of 1990, as amended by section 16 of Act 204 of 1993 and section 14 of Act 83 of 1995

16. Section 29 of the Air Services Licensing Act, 1990, is hereby amended by the deletion of paragraphs (e) and (i) of subsection (1).

Amendment of section 1 of Act 44 of 1993

17. Section 1 of the Airports Company Act, 1993, is hereby amended by the substitution for the definition of "airport" of the following definition:

" 'airport' means an [[airport]] <<aerodrome>> as defined in section 1 of the Aviation Act, 1962 (Act No. 74 of 1962), and includes an aerodrome transferred in terms of section 6(1)(a) of this Act;".

Amendment of section 5 of Act 44 of 1993

18. Section 5 of the Airports Company Act, 1993, is hereby amended by the substitution for paragraph (a) of subsection (2) of the following paragraph:

"(a) not have any financial interest, [[direct or indirect]] <<either directly or indirectly>>, in the provision of any air service as defined in section 1 of the Air Services Licensing Act, 1990 (Act No. 115 of 1990), <<of any International air service as defined>> in section 1 of the International Air Services Act, [[1940 (Act No. 51 of 1949)]] <<1993 (Act No. 60 of 1993)>>;".

or

Amendment of section 1 of Act 45 of 1993

19. Section 1 of the Air Traffic and Navigation Services Company Act, 1993, is hereby amended-

(a) by the insertion before the definition of "air navigation infrastructure" of the following definition:

" <<'aerodrome' means an aerodrome as defined in section 1 of the Aviation Act, 1962 (Act No. 74 of 1962);>>";

(b) by the substitution for the definition of "air navigation infrastructure" of the following definition:

" 'air navigation infrastructure' means infrastructure, including [[landing and]] air navigation aids and air traffic control systems, provided for the promotion of the safe, orderly and expeditious

movement

of air traffic, and, where applicable, any building or structure on or to which such infrastructure or part thereof is housed or attached, and includes the premises on which such infrastructure or part thereof is situated, whether such building, structure or premises are situated

within the boundaries of an [[airport]] <<aerodrome>> or not;"

(c) by the deletion of the definition of "airport";

(d) by the substitution for the definition of "air traffic service" of the following definition:

" 'air traffic service' means an [[airport]] <<aerodrome>> control service, an approach control service, an area control service, a flight information service, an air traffic advisory service, an alerting service or <<any>> other service designated by the Commissioner as defined in section 1 of the Aviation Act, 1962 [[(Act No. 74 of 1962)]];"; and

(e) by the substitution for the definition of "air traffic service charge" of the following definition:

" 'air traffic service charge' means an amount levied by the company on an operator of an aircraft or an [[airport]] <<aerodrome>> in connection with the use of any air navigation infrastructure by, or the provision of [[an]] <<any>> air traffic service to, such operator;"

Amendment of section 5 of Act 45 of 1993

20. Section 5 of the Air Traffic and Navigation Services Company Act, 1993, is hereby amended by the substitution for paragraph (a) of subsection (2) of the following paragraph:

"(a) not have any financial interest, [[direct or indirect]] <<either directly or indirectly>>, in the provision of any air service as defined in section 1 of the Air Services Licensing Act, 1990 (Act No. 115 of 1990), or <<of any International air service as defined>> in section 1 of the International Air Services Act, [[1949 (Act No. 51 of 1949)]] <<1993 (Act No. 60 of 1993)>>";

Amendment of section 1 of Act 60 of 1993, as amended by section 1 of Act 10 of 1996

21. Section 1 of the International Air Services Act, 1993, is hereby amended-

(a) by the substitution in paragraph (a) of the definition of "airport" for the words preceding subparagraph (i) of the following words:

"an [[airport]] <<aerodrome>> as defined in section 1 of the Aviation Act, 1962 (Act No. 74 of 1962), which is situated in the Republic and which-";

(b) by the insertion after the definition of "authorized officer" of the following definition:

" <<'authorized person' means an authorized person as defined in section 1 of the Aviation Act, 1962>>"; and

(c) by the deletion of the definition of "operating certificate".

Amendment of section 20 of Act 60 of 1993

22. Section 20 of the International Air Services Act, 1993, is hereby amended by the substitution for paragraph (b) of subsection (1) of the following paragraph:

"(b) the licensee shall not commence or [[subject to the provisions of section 32(2)]] continue with an International air service unless he is in possession of a valid operating certificate <<issued under the Aviation Act, 1962 (Act No. 74 of 1962)>>";

Amendment of section 22 of Act 60 of 1993, as amended by section 6 of Act 10 of 1996

23. Section 22 of the International Air Services Act, 1993, is hereby amended-

(a) by the deletion of paragraph (a) of subsection (1); and

(b) by the substitution for paragraph (c) of the said subsection (1) of the following paragraph:

"(c) keep his, her or its licence [[and operating certificate]] in a safe place, and produce such licence [[and operating certificate]] to an authorized officer, [[or]] inspector <<or authorized person>> for inspection if so requested by such officer, [[or]] inspector <<or person>>; and".

Repeal of sections 30 to 34 of Act 60 of 1993

24. Sections 30 to 34 of the International Air Services Act, 1993, are hereby repealed.

Amendment of section 37 of Act 60 of 1993

25. Section 37 of the International Air Services Act, 1993, is hereby amended-

(a) by the substitution for paragraph (a) of subsection (1) of the following paragraph:

"(a) by the refusal of the council or the Commissioner for Civil Aviation to issue to him a licence <<or>> a permit [[or an operating certificate]]*, as the case may be;"; and

(b) by the substitution for paragraph (c) of the said subsection (1) of the following paragraph:

"(c) by a decision of the Commissioner for Civil Aviation in terms of section 29(1) [[or 33(2)]],".

Amendment of section 40 of Act 60 of 1993, as amended by section 12 of Act 10 of 1996

26. Section 40 of the International Air Services Act, 1993, is hereby amended-

(a) by the substitution for paragraph (d) of subsection (1) of the following paragraph:

"(d) falsifies, counterfeits, alters, defaces or mutilates, or adds anything to, a licence, permit [[operating certificate]] or other document issued under this Act, or is in possession of a licence, permit [[operating certificate]] or other document which has been thus falsified, counterfeited, altered, defaced or mutilated, or

to

which an addition has been made;";

(b) by the substitution for paragraph (e) of the said subsection (1) of the following paragraph:

"(e) uses a licence, permit [[operating certificate]] or other document issued under this Act of which he, she or it is not the holder;"
and

(c) by the substitution for paragraph (eA) of the said subsection (1) of the following paragraph:

holder
"(eA) permits a licence, permit [[operating certificate]] or other document issued under this Act of which he, she or it is the holder
to be used by any other person;".

Amendment of section 41 of Act 60 of 1993

27. Section 41 of the International Air Services Act, 1993, is hereby amended-

(a) by the substitution for paragraph (d) of the following paragraph:

"(d) a certificate issued by the chairman of the council or the Commissioner for Civil Aviation stating that a licence or permit [[or operating certificate]], as the case may be, has not been granted or issued to a specified person shall, upon the mere production thereof, be accepted as prima facie proof of the facts mentioned therein;" and

(b) by the deletion of paragraph (g).

Amendment of section 43 of Act 60 of 1993, as amended by section 13 of Act 10 of 1996

28. Section 43 of the International Air Services Act, 1993, is hereby amended by the deletion of paragraphs (d) and (fE) of subsection (1).

Savings

29. Notwithstanding the repeal by this Act of those provisions of the Air Services Licensing Act, 1990 (Act No. 115 of 1990), or the International Air Services Act, 1993 (Act No. 60 of 1993), which relate to the issue of operating certificates, any operating certificate issued in terms of the said Act and in force immediately prior to such repeal shall be deemed to be an operating certificate issued under the Aviation Act, 1962 (Act No. 74 of 1962), and shall remain in force, subject to the conditions on which it was issued, for the period for which it was issued.

Short title and commencement

30. This Act shall be called the Aviation Laws Amendment Act, 1996, and shall come into operation on a date fixed by the President by proclamation in the Gazette.

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PRESIDENT'S OFFICE

No. 1905.
27 November 1996

NO. 107 OF 1996: INTELLECTUAL PROPERTY LAWS RATIONALISATION ACT, 1996.

It is hereby notified that the President has assented to the following Act which is hereby published for general information:-

ACT

To provide for the integration of intellectual property rights subsisting in Bophuthatswana, Transkei, Venda and Ciskei into the national system; to extend the South African intellectual property rights legislation throughout the Republic; to repeal certain other intellectual property laws; and to provide for matters connected therewith.

(Afrikaans text signed by the President.)
(Assented to 12 November 1996.)

BE IT ENACTED by the Parliament of the Republic of South Africa, as follows:-

PART 1

Introduction and definitions

Scheme of Act

1. This Act is divided into seven parts which relate to the following matters, respectively:

Part 1-Introduction and definitions

Part 2-General application

Part 3-Patents

Part 4-Registered designs

Part 5-Trade marks

Part 6-Copyright

Part 7-General

Definitions

2. In this Act, unless the context otherwise indicates-

"Bophuthatswana" means the former Republic of Bophuthatswana as constituted on 26 April 1994;

"Bophuthatswana Act" in Part 3 means the Patents Act, 1952 (Act No. 37 of 1952), in Part 4 means the Designs Act, 1967 (Act No. 57 of 1967), in Part 5 means the Trade Marks Act, 1963 (Act No. 62 of 1963), and in Part 6 means the Copyright Act, 1965 (Act No. 63 of 1965), all as effective in Bophuthatswana, and

"Bophuthatswana Acts" means all those Acts, collectively;

"Ciskei" means the former Republic of Ciskei as constituted on 26 April 1994;

"Ciskei Act" in Part 6 means the Copyright Act, 1978 (Act No. 98 of 1978), as effective in Ciskei;

"Designs Office" means the designs office as contemplated in the Designs Act, 1993 (Act No. 195 of 1993);

"Patent Office" means the patent office as contemplated in the Patents Act, 1978 (Act No. 57 of 1978);

"Registrar of Designs" means the registrar of designs appointed in terms of the Designs Act, 1993 (Act No. 195 of 1993);

"Registrar of Patents" means the registrar of patents appointed in terms of the Patents Act, 1978 (Act No. 57 of 1978);

"Registrar of Trade Marks" means the registrar of trade marks appointed in terms of the Trade Marks Act, 1993 (Act No. 194 of 1993);

"Register of Designs" in Part 4 means the register of designs kept under the Bophuthatswana Act, the Transkei Act or the Venda Act, as the case may be, and

"records" pertaining to those registers has a corresponding meaning;

"Register of Patents" in Part 3 means the register of patents kept under the Bophuthatswana Act, the Transkei Act or the Venda Act, as the case may be, and

"records" pertaining to those registers has a corresponding meaning;

"Register of Trade Marks" in Part 5 means the register of trade marks kept under the Bophuthatswana Act, the Transkei Act or the Venda Act, as the case may be, and

"records" pertaining to those registers has a corresponding meaning;

"Republic" means the Republic of South Africa as constituted on 27 April 1994;

"South African Act" in Part 3 means the Patents Act, 1978 (Act No. 57 of 1978), in Part 4 means the Designs Act, 1993 (Act No. 195 of 1993), in Part 5 means the Trade Marks Act, 1993 (Act No. 194 of 1993), and in Part 6 means the Copyright Act, 1978 (Act No. 98 of 1978), and "South African Acts" means all those Acts, collectively;

"Territorial Acts" means the Bophuthatswana Acts, Ciskei Acts, Transkei Acts and Venda Acts collectively;

"Trade Marks Office" means the trade marks office contemplated in the Trade Marks Act, 1993 (Act No. 194 of 1993);

"Transkei" means the former Republic of Transkei as constituted on 26 April 1994;

"Transkei Act" in Part 3 means the Patents Act, 1952 (Act No. 37 of 1952), in Part 4 means the Designs Act, 1967 (Act No. 57 of 1967), in Part 5 means the Trade Marks Act, 1963 (Act No. 62 of 1963), and in Part 6 means the Copyright Act, 1965 (Act No. 63 of 1965), all as effective in Transkei, and "Transkei Acts" means all those Acts, collectively;

"Venda" means the former Republic of Venda as constituted on 26 April 1994;

"Venda Act" in Part 3 means the Patents Act, 1978 (Act No. 57 of 1978), in Part 4 means the Designs Act, 1967 (Act No. 57 of 1967), in Part 5 means the Trade Marks Act, 1963 (Act No. 62 of 1963), and in Part 6 means the Copyright Act, 1978 (Act No. 98 of 1978), all as effective in Venda, and "Venda Acts" means all those Acts, collectively.

Reference to Act

3. Reference to any Act referred to in this Act shall be deemed to include all amendments to that Act and all notices, directives, rules and regulations issued under that Act.

PART 2

General application

Application of South African Acts

4. Subject to the provisions of Parts 3, 4, 5 and 6 of this Act, the South African Acts shall apply throughout the Republic.

PART 3

Patents

Application of South African Patents Act

5. (1) Subject to the provisions of this section, the South African Act shall apply to all patents registered or deemed to be registered under the Bophuthatswana Act, the Transkei Act and the Venda Act.

(2) Subject to subsection (5), the validity of a patent entered on the Register of Patent and the duration of such a patent shall be determined in accordance with the laws applying to the application for registration of that patent as at the date of that application-

(3) Subject to subsection (5), the repeal of the laws by section 16 does not affect any applications or proceedings commenced under the Bophuthatswana Act, the Transkei Act or the Venda Act and any such applications or proceedings shall be continued with and concluded in accordance with the provisions of the respective laws as if such laws had not been repealed, provided that-

- (a) the Registrar of Patents shall perform the functions and duties of the registrars appointed under those Acts; and
- (b) any notice and other communication required to be inserted or published in a patent journal or other official publications may be inserted or published in the South African Patent Journal.

(4) A patent registered under the South African Act shall not apply to the geographical areas of Bophuthatswana, Transkei or Venda for so long as and to the extent that a valid registered patent right for the same invention continues to subsist in any such geographical area, but shall extend to each such geographical area if and when such valid right no longer subsists.

(5) (a) A proprietor of a patent registered in Bophuthatswana, Transkei or Venda, respectively, may, within one year after the coming into force of this Act, notify the Registrar of Patents in writing that he or she wishes his or her patent right to extend to the whole of the national territory of the Republic, subject to paragraph (b).

(b) Once such a notification has been made such patent right shall continue to apply only to the geographical areas of Bophuthatswana, Transkei or Venda, as the case may be, for as long as and to the extent that a valid registered patent for the same invention subsists in terms of the South African Act, but, subject to paragraph (a), such patent right shall extend to the whole of the national territory if and when such right in terms of the South African Act does not exist.

(6) Any lawful use by any person of an invention commenced prior to 27 April 1994 in the geographical area of Bophuthatswana, Transkei or Venda shall not become unlawful by virtue of this Act, provided that use is not extended outside the geographical area concerned.

Patent Registers and Records

6. The Registers of Patents and records shall be transferred to and kept in the office of the Registrar of Patents.

Identification of patents

7. All patents registered and all patent applications filed in terms of the Bophuthatswana Act, Transkei Act and Venda Act shall be identified by the suffixes "(BT)", "(TR)" and "(VE)", respectively.

PART 4

Registered designs

Application of South African Designs Act

8. (1) Subject to the provisions of this section, the South African Act shall apply to designs registered or deemed to be registered under the Bophuthatswana Act, the Transkei Act or the Venda Act.

(2) Subject to subsection (5), the validity of a design registration entered on the Register of Designs and the duration of such a design registration shall be determined in accordance with the laws applying to the application for registration of that design as at the date of that application.

(3) Subject to subsection (5), the repeal of the laws by section 16 does not affect any proceedings or applications commenced under the Bophuthatswana Act, the Transkei Act or the Venda Act, and any such proceedings or applications shall be continued with and concluded as if the laws had not been repealed, provided that-

- (a) the Registrar of Designs shall perform the functions and duties of the registrars appointed under those Acts; and
- (b) any notice and other communication required to be inserted or published in a patent journal or other official publications shall be inserted or published in the South African Patent Journal.

(4) A design registered under the South African Act shall not apply to the geographical areas of Bophuthatswana, Transkei or Venda for so long as and to the extent that a valid registered design right for the same design continues to subsist in any such geographical area, but shall extend to each such geographical area if and when such valid right no longer subsists.

(5) (a) A proprietor of a design registered in Bophuthatswana, Transkei or Venda, respectively, may, within one year after the coming into force of this

Act, notify the Registrar of Designs in writing that he or she wishes his or her design right to extend to the whole of the national territory of the Republic, subject to paragraph (b).

(b) Once such a notification has been made such design right shall continue to apply only to the geographical areas of Bophuthatswana, Transkei or Venda, as the case may be, for as long as and to the extent that a valid registered design for the same right subsists in terms of the South African Act, but, subject to paragraph (a), such design right shall extend to the whole of the national territory if and when such right in terms of the South African Act does not exist.

(6) Any lawful use by any person of a design commenced prior to 27 April 1994 in the geographical area of Bophuthatswana, Transkei or Venda shall not become unlawful by virtue of this Act, provided that the use is not extended outside the geographical area concerned.

Design registers and records

9. The Registers of Designs and records shall be transferred to and kept in the office of the Registrar of Designs.

Identification of designs

10. All designs registered and all design applications filed in terms of the Bophuthatswana Act, Transkei Act and Venda Act shall be identified by the suffixes "(BT)", "(TR)" and "(VE)", respectively.

PART 5

Trade marks

Application of South African Trade Marks Act

11. (1) Subject to the provisions of this section, the South African Act shall apply to all trade marks registered or deemed to be registered under the Bophuthatswana Act, the Transkei Act and the Venda Act.

(2) Subject to subsection (5), the validity of the original entry of a trade mark on the Register of Trade Marks shall be determined in accordance with the laws applying to the application for registration of that trade mark as at the date of that application.

(3) Subject to subsection (5), the repeal of laws by section 16 does not affect any applications or proceedings commenced under the Bophuthatswana Act, the Transkei Act or the Venda Act and any such applications or proceedings shall be continued with and concluded in every respect as if those laws had not been repealed, provided that-

(a) the Registrar of Trade Marks shall carry out the functions and duties of

the registrars appointed under those Acts; and

(b) any notices and other communications required to be inserted or published in a patent journal or other official publications may be inserted or published in the South African Patent Journal.

(4) A trade mark registered under the South African Act shall not apply to the geographical area of Bophuthatswana, Transkei or Venda for so long as and to the extent that a valid registered trade mark right for the same trade mark continues to subsist in any such geographical area, but shall extend to each such geographical area if and when such valid right no longer subsists.

(5) (a) A proprietor of a trade mark registered in Bophuthatswana, Transkei or Venda, respectively, may, within one year after the coming into force of this Act, notify the Registrar of Trade Marks in writing that he or she wishes his or her trade mark to extend to the whole of the national territory of the Republic, subject to paragraph (b).

(b) Once such a notification has been made such a trade mark shall continue to apply only to the geographical areas of Bophuthatswana, Transkei or Venda, as the case may be, for as long as and to the extent that a valid registered trade mark right for the same trade mark subsists in terms of the South African Act, but, subject to paragraph (a), such trade mark right shall extend to the whole of the national territory if and when such right in terms of the South African Act does not exist.

(6) Any lawful use by any person of a trade mark commenced prior to 27 April 1994 in the geographical area of Bophuthatswana, Transkei or Venda shall not become unlawful merely by virtue of this Act having been passed, provided that the use is not extended outside the geographical area concerned.

Trade mark registers and records

12. The Registers of Trade Marks and records shall be transferred to and kept in the office of the Registrar of Trade Marks.

Identification of trade marks

13. All trade marks registered and all trade mark applications filed in terms of the Bophuthatswana Act, Transkei Act and Venda Act shall be identified by the suffixes "(BT)", "(TR)" and "(VE)", respectively.

14. Reference to "section 53 of the repealed Act" in section 70(2) of the South African Act shall be deemed also to be a reference to section 53 of the Bophuthatswana Act, Transkei Act and Venda Act.

PART 6

Copyright

Application of South African Copyright Act

15. (1) The South African Act shall apply to any work-

(a) made by-

- (i) any individual who at a material time was a citizen of or was domiciled or resident in Bophuthatswana, Transkei, Venda or Ciskei;
- (ii) any juristic person which at a material time was organised or existing under the laws of Bophuthatswana, Transkei, Venda or Ciskei-, or

(b) which-

- (i) being a literary, musical or artistic work or a sound recording, first published in Bophuthatswana, Transkei, Venda or Ciskei;
- (ii) being a broadcast, was made in Bophuthatswana, Transkei, Venda or Ciskei;

- (iii) being a programme-carrying signal, was emitted to a satellite from a place in Bophuthatswana, Transkei, Venda or Ciskei;
- (iv) being a cinematograph film, was first published or made in Bophuthatswana, Transkei, Venda or Ciskei;
- (v) being a published edition, was first published or made in Bophuthatswana, Transkei, Venda or Ciskei;
- (vi) being a computer program, was first published or made in Bophuthatswana, Transkei, Venda or Ciskei.

(2) Any reference to South Africa or the Republic in sections 3 and 4 of the South African Act shall be deemed also to be a reference to Bophuthatswana, Transkei, Venda and Ciskei.

(3) The repeal of laws by section 16 does not affect any proceedings commenced under the Bophuthatswana Act, the Transkei Act, the Venda Act or the Ciskei Act, and such proceedings shall be continued with and concluded in every respect as if the laws had not been repealed.

PART 7

General

Repeal of Acts

16. The laws mentioned in the Schedule are hereby repealed.

Extension of terms

17. Any act required to be performed within a specified time in any of the Territorial Acts in respect of any proceedings relating to a patent, registered design or trade mark or in respect of any application therefor may be performed within that period of time or within six months calculated from the date on which this Act comes into operation, whichever is the later: Provided that these provisions shall not extend the due date for the payment of a renewal fee under any Territorial Act.

Short title and commencement

18. This Act shall be called the Intellectual Property Laws Rationalisation Act, 1996, and shall come into operation on a date fixed by the President by proclamation in the Gazette.

SCHEDULE

Number and year of law	Short title
1. Bophuthatswana	
Act No. 37 of 1952	Patents Act, 1952
Act No. 62 of 1963	Trade Marks Act, 1963
Act No. 63 of 1965	Copyright Act, 1965
Act No. 57 of 1967	Designs Act, 1967

2. Transkei

Act No. 37 of 1952

Patents Act, 1952

Act No. 62 of 1963

Trade Marks Act, 1963

Act No. 63 of 1965

Copyright Act, 1965

Act No. 57 of 1967

Designs Act, 1967

3. Venda

Act No. 62 of 1963

Trade Marks Act, 1963

Act No. 57 of 1967

Designs Act, 1967

Act No. 57 of 1978

Patents Act, 1978

Act No. 98 of 1978

Copyright Act, 1978

4. Ciskei

Act No. 98 of 1978

Copyright Act, 1978