



GOVERNMENT GAZETTE

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Government Notice

MINISTRY OF WORKS, TRANSPORT AND COMMUNICATION

No. 58 1998

EXCLUSION OF THE APPLICATION OF SECTION 2(1) OF THE AIR SERVICES ACT, 1949 TO VISITING AIRCRAFT

In terms of section 2(3) of the Air Services Act, 1949, (Act 51 of 1949), I hereby modify, to the extent set out in the Schedule, the application of section 2(1) of that Act to or in respect of visiting aircraft, registered as to nationality in another contracting State, which are engaged in the carriage of passengers, cargo or mail for remuneration or hire on other than scheduled international air services.

O V PLICHTA
MINISTER OF WORKS, TRANSPORT
AND COMMUNICATION

Windhoek, 13 March 1998

SCHEDULE

1. In this Schedule, unless the context indicates otherwise, any word or expression to which a meaning has been assigned in the Air Services Act, 1949 (Act 51 of 1949), bears that meaning, and -

“*ad hoc* international air transport service” means an international air transport service which is of a purely casual nature;

“air operator certificate (AOC)” means a certificate or licence issued by the licensing authority concerned which authorises the holder thereof to operate an international air transport service;

“contracting State” means a State which is a party to the Convention on International Civil Aviation, signed at Chicago on 7 December 1944;

“Director” means the Director: Civil Aviation in the Ministry of Works, Transport and Communication or any other staff member of that Ministry who has been authorised by the Director to perform any of the functions assigned to the Director by this Schedule;

“inbound flight” means a flight with an aircraft undertaken from another country to Namibia;

“licensing authority” in relation to an operator, means the civil aviation authority of the contracting State where the base of operations of the operator is situated and which has surveillance responsibility for the operator in accordance with the Convention on International Civil Aviation, Annex 6 - Operation of Aircraft;

“operator” means any person, organisation or enterprise providing an international air transport service;

“outbound flight” means a flight with an aircraft undertaken from Namibia to another country;

“return flight” means a flight consisting of an inbound and an outbound flight;

“terminal aerodrome” means an aerodrome in Namibia at which a visiting aircraft makes its first landing during an inbound flight or from which it makes its final take-off during an outbound flight;

“visiting aircraft” means any aircraft registered as to nationality in a contracting State other than Namibia.

Authorisation required for operation of an *ad hoc* international air transport service

2. A licence shall not be required in respect of a visiting aircraft which is used in the operation of an *ad hoc* international air transport service to, from or within Namibia, providing such service is conducted -

- (a) under the authority of an authorisation granted in accordance with the provisions of clause 3 or by virtue of the exemption provided for in clause 6; and
- (b) in accordance with the conditions stipulated in clause 5 or 6, as may be applicable.

Application for authorisation

3. (1) Any operator who wishes to use a visiting aircraft in the operation of an *ad hoc* international air transport service, shall apply to the Director for authorisation to operate such a service.

(2) An application for authorisation in terms of subclause (1), shall be in writing and shall state -

- (a) the full name and, if any, the trade name, of the applicant;
 - (b) the nationality of the applicant;
 - (c) the business, residential and postal addresses of the applicant;
 - (d) the telephone number, telefax number and telex number of the applicant;
 - (e) the number, type, nationality and registration marks of the aircraft to be used;
 - (f) full particulars of the *ad hoc* international air transport service which the applicant proposes to operate, including-
 - (i) the number of passengers to be carried;
 - (ii) the cargo or mail to be carried; and
 - (iii) the route or routes to be served; and
 - (g) the date and estimated time of arrival at, and departure from, the terminal aerodrome in Namibia;
- (3) An application submitted in terms of subclause (1) shall be accompanied by -
- (a) a copy of the valid air operator certificate or equivalent authorisation held by the applicant which authorises the applicant to operate the type of air service in respect of which the application for authorisation is being made; or
 - (b) a declaration of competency in respect of the class of aircraft concerned issued by the licensing authority of the contracting State in which the aircraft is registered, containing -
 - (i) the operator's name, nationality and address (base of operation);

- (ii) a confirmation that the air transport operations of the operator complies with the requirements set forth in ICAO convention Annex 6 - Operation of Aircraft, and that such operations are subject to a government inspection system;
 - (iii) the type of operations authorised (scheduled, non-scheduled, cargo, passengers, etc.);
 - (iv) the type and registration numbers of aircraft authorised;
 - (v) the areas of authorised operations; and
 - (vi) the period of validity of the operator's air operator certificate; and
- (c) proof to the satisfaction of the Director that the applicant holds insurance cover in respect of the obligations and liabilities of the applicant which may arise from the operation of the *ad hoc* international air transport service in Namibia; and

(4) An application in terms of subclause (1) shall be delivered or be forwarded to the Director: Civil Aviation, Private Bag 12003, Windhoek, Namibia, or Telefax (+ 264 61) 23 8884 to reach the Director at least three working days before the proposed date of commencement of the *ad hoc* international air transport service: Provided that the Director may condone a shorter period within which an application is received, if the Director is satisfied that the object of the *ad hoc* international air transport service will be defeated if the application is not determined within such shorter period.

Consideration and determination of application

4. (1) For the purpose of considering an application received in terms of clause 3, the Director may consult with the applicant, any Namibian air carrier operating an international air transport service on the same route as the route proposed to be served by the applicant, or any other interested party.

(2) Subject to subclause (3), the Director shall grant an application referred to in subclause (1) and issue to the applicant an authorisation to operate an *ad hoc* international air transport service, if the Director is satisfied that -

- (a) the proposed *ad hoc* international air transport service will be operated in a safe and reliable manner;
- (b) there is a need for the proposed *ad hoc* international air transport service; and
- (c) the proposed *ad hoc* international air transport service can not reasonably be operated by a Namibian carrier or a carrier licensed in the contracting State of origin or destination of the passengers, cargo or mail which is proposed to be carried under the authorisation for which application is being made.

(3) No authorisation shall be granted to an operator under subclause (2) for more than five return flights.

Conditions applicable to authorisation

5. An authorisation to operate an *ad hoc* international air transport service is issued under clause 4 on condition that -

- (a) no aircraft used in the operation of such service shall take on any passengers, cargo or mail at any point in Namibia for discharge at any other point in Namibia;
- (b) only those passengers discharged in Namibia from such aircraft on its inbound flight are taken on by that aircraft when it departs on its outbound flight;
- (c) at all times during the operation of such service, the holder of such authorisation holds a valid air operator certificate in respect of the aircraft used in such operation; and

Exemption

6. An authorisation to operate an *ad hoc* international air transport service shall not be required if -

- (a) the aircraft used in providing such service carries not more than nine passengers or 1000 kg of cargo or mail to or from Namibia;
 - (b) an aerodrome designated as a place of entry under section 6(1)(f) of the Customs and Excise Act, 1964 (Act 91 of 1964) or mentioned in the relevant aeronautical information documents of the Ministry of Works, Transport and Communication, is used as the terminal aerodrome by the aircraft concerned; and
 - (c) only those passengers who have been discharged from the aircraft concerned are, and not more than 1 000 kg of cargo or mail is, taken on by that aircraft on its departure from Namibia.
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