



# GOVERNMENT GAZETTE

## OF THE

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### CONTENTS

*Page*

#### GENERAL NOTICE

No. 28      Namibia Civil Aviation Authority - Enforcement Code Namibian Civil Aviation Regulations, 2001 ...      1

## General Notice

### NAMIBIA CIVIL AVIATION AUTHORITY

No. 28

2020

#### NAMIBIA CIVIL AVIATION AUTHORITY - ENFORCEMENT CODE NAMIBIAN CIVIL AVIATION REGULATIONS, 2001

The Namibia Civil Aviation Authority (NCAA), in terms of Regulation Part 13.01.1 of the Namibian Civil Aviation Regulations, 2001, as amended, published under Government Notice No. 293 of 8 November 2018, publishes this notice of the Enforcement Code set out in the Schedule.

**R. GÄRTNER**  
**INTERIM EXECUTIVE DIRECTOR**  
**OF CIVIL AVIATION**

Windhoek, 10 January 2020

### SCHEDULE

#### THE ENFORCEMENT CODE OF THE NCAA

#### TABLE OF CONTENTS

**CHAPTER I**      **Definitions and Interpretation**

**CHAPTER II**      **Application and status of Enforcement Code**

1. Strategic Context
2. Object/Scope/Status of the Code
3. Regulatory principles

### **CHAPTER III            Nature of the violation**

4. Identifying the violation
5. Distinguishing violations from offences (in context of Act)
6. Administrative / delegated actions: prosecutions/violations

### **CHAPTER IV            Inspections and Investigations**

7. Inspections/ Investigations by the Authority
8. Receiving requests for decision/orders/determinations, on allegations of violations, etc
9. Screening of allegations/complaints or requests for decision
10. Infringement/ Investigation notices
11. Public investigation notice
12. Conducting investigations and inspections
13. Infringement/ Investigation reports
14. Timeframe for conducting and finalising investigations
15. Appointment of inspectors/investigators
16. General Powers of inspectors/investigators
17. Requirements of inspections/investigation
18. Collection and handling of evidence
19. Types of evidence to be collected
20. Manner of collection of evidence
21. Entry and search
22. Assistance from police officers
23. Information requests
24. Summoning of witnesses
25. Analysis of evidence collected during investigations/inspections
26. Safe-keeping of evidence collected during investigations
27. Need for confidentiality
28. Closure of a case without any enforcement action
29. Determining legal enforcement action

### **CHAPTER V            Investigations: Hearings /Appearances/Attendances**

30. Summoning of Respondents /defaulters
31. Admission or denial of alleged offence/violation
32. When to refer a matter to the Prosecutor-General
33. When to conduct investigation /hearing
34. Constitution of investigation/hearing
35. Sequence of investigation/hearing
36. Appointment of a chairperson /assessor(s)
37. Outline of responsibilities of the Chairperson
38. Additional provisions on investigations/hearings
39. Additional: rules of evidence at investigations/hearings
40. Legal representation at investigations/hearings
41. Findings and decisions of the Chairperson
42. Appeal/review of the Authority's decision
43. Publication of closures and findings

## **CHAPTER VI                      Enforcement orders**

- 44. Discretion to issue enforcement orders
- 45. When to issue an enforcement order
- 46. Factors to be considered when determining appropriate enforcement orders
- 47. Possible enforcement orders
- 48. Warning & cease and desist letters/settlements
- 49. Additional provisions: fines (regulations)

## **CHAPTER VII                      Miscellaneous**

- 50. Forfeiture of equipment or products
- 51. Regulation 185 – application of assessment matrix
- 52. Determinations – proposed and final
- 53. Background checks
- 54. Conflicts of interest in civil aviation
- 55. NCAA Staff Code (extract) – application to inspectors/authorised officers

### **Annexes**

<b>Annex A:</b>	<b>Template for report: alleged violation /complaint/determination</b>
<b>Annex B:</b>	<b>Template for infringement/ investigation notice</b>
<b>Annex C:</b>	<b>Template for infringement investigation report</b>
<b>Annex D:</b>	<b>Template for removal of evidence receipt</b>
<b>Annex E:</b>	<b>Template for search warrant</b>
<b>Annex F:</b>	<b>Template for a summons/appearance notice</b>
<b>Annex G:</b>	<b>Acknowledgment of receipt</b>
<b>Annex H:</b>	<b>Template for a notice of hearing/appearance</b>
<b>Annex I:</b>	<b>Template for a witness appearance</b>
<b>Annex J:</b>	<b>Return of service</b>
<b>Annex K:</b>	<b>Guidelines on fair and reasonable administrative actions in Namibian context</b>
<b>Annex L1-3:</b>	<b>Templates for NCAA Cease and Desist Order / Warnings/Settlement Agreements</b>

## **CHAPTER I**

### **DEFINITIONS AND INTERPRETATION**

In this Enforcement Code (also referred to herein as “this Code” or “the EC”), the words and expressions as used in section 1 of the Act, and Part 1 of the Regulations, 2001 (as amended), remain for purposes of interpretation, and unless otherwise inconsistent with the context, the following expressions or words, bear the meaning assigned to them below:

**“Applicant/Plaintiff”** means the person authorised by the Executive Director, or him-/herself, which serves notice against a participant in terms of the Act, or Part 13 and this Code, or issued by the Prosecutor-General, to be charged for contravening an applicable provision of the Act, Regulations (as prescribed), or any aviation document issued by the Authority;

**“Accused/Respondent/Defaulter”** means any person, who is alleged to have contravened or violated an applicable provision of the Act, Regulations or any aviation document issued by the Authority; and who has been served notice issued by the Authority in terms of Part 13 and this Code, alleging a violation or offence as the case may be; and in the ordinary course, may also be referred to as an infringer or offender or aggrieved party;

“**Chairperson**” means a person appointed by the Authority in terms of this Code to preside over investigations relating to a violation;

“**Complainant**” means any person referred to in para 2.5 and/or para. 2.6 of the EC;

“**Complaint**” means a written complaint submitted by a complainant to a participant and then to the Authority, to be dealt with as a matter of “public interest” in the manner contemplated by S38(2)(b);

“**Day**” means calendar day, or days, excluding a Sunday, a Saturday, or public holidays;

“**Enforcement action**” means any steps or processes taken by the Authority in relation to an alleged violation;

“**Enforcement order**” means, upon enforcement action, any decision taken by the Executive Director, or under delegation, to ensure enforcement or compliance.

“**High Court**” means the High Court of Namibia;

“**Inspector**” a person referred to in section 37 of the Act; thus, inclusive of designated inspectors, authorised officers and/or authorised persons;

“**Infringement notice**” means the notice referred to in R13.01.4;

“**Investigation**” means the process of conducting any matter pursuant to S38 and S41, and the regulations, technical standards, or this Code.

“**Investigation notice**” means a notice issued for an investigation;

“**Investigator**” means a person appointed by the Executive Director to investigate any matter for the purposes of the investigation, and includes an assigned chairperson or team leader or assessor to perform respective roles required under an investigation in the manner set out in the Code;

“**Chief Legal Counsel**” means the head of the Legal & Enforcement Division in the NCAA, or the person assigned to act in this capacity, of the Authority;

“**Head of Safety**”, means the head of the Safety Division in the NCAA, or the person assigned to act in this capacity, of the Authority;

“**Head of Aviation Security**”, means the head of the Security Division in the NCAA, or the person assigned to act in this capacity, of the Authority;

“**Monitoring**”, and “monitor”, means the powers of the Authority to monitor compliance or infringement of any of the provisions of the Act, Regulations or any aviation document issued by the Authority;

“**Month**” means a calendar month, which do not equate to 30 days when so used;

“**Person**” means a legal person, and includes natural and juristic persons;

“**Postal service**” means the business of (1) receiving, collecting, dispatching, conveying and delivering postal articles; of (2) transmitting and delivering records or information; and of (3) performing all incidental services; and

“**Prosecutor-General**” means an official appointed in terms of the Namibian Constitution to prosecute and defend appeals in criminal proceedings.

## CHAPTER II

### APPLICATION AND STATUS OF ENFORCEMENT CODE

#### 1. Strategic Context

- 1.1 NCAA has a general duty under the Civil Aviation Act No. 6 of 2016 (“the Act”), to develop enforcement strategies as one of its functions, with the objective to ensure compliance with aviation safety and security standards. (S10(1)(b))<sup>1</sup>.
- 1.2 Within the mandate and domain of its objects, powers and functions (SS 9, 10, and Part 10) the NCAA has a number of roles and duties relating to identifying and responding to conduct/action, which is contrary to the interests of the Namibia civil aviation system.
- 1.3 From an enforcement perspective it is within the discretionary powers of the Executive Director (S 38) to address conduct which is either/or:
  - a) unlawful;
  - b) in violation, incl. breach, regarding the application of the regulations or technical standards or aviation directives;
  - c) regarded as being non-compliant or improper;
  - d) committed in a careless and incompetent manner in regard to the utilization or carrying out of privileges and duties, including gross negligence and wilful conduct; or
  - e) a failure to comply with a prescribed provision.
- 1.4 The NAMCARS (2018) in Parts 13 and 185 set in place enforcement procedures to achieve the aforementioned objectives and thus, it requires that an Enforcement Code be issued by the Executive Director (R13.01.1(2))<sup>2</sup>.
- 1.5 This Code seeks to curb any violation or illegal conduct of aviation safety and security regulation in Namibia. This will enable enforcement and compliance within the legal framework of Namibia. In particular, it enables the Executive Director of Civil Aviation<sup>3</sup> to ensure “adherence” to the civil aviation system as provided in S38(c).
 

(Note: Its efficacy is directly impacted by Namibian law generally by way of the following instruments: international aviation protocols and ICAO Annexes regulating the civil aviation sector (eg., international standards and (adopted) recommended practices – SARPS), the Namibian Constitution, the common law, and other statutory frameworks in addition to the Act of 2016, such as, the Criminal Procedure Act of 1977, the Labour Act of 2007, etc.)
- 1.6 Just Culture<sup>4</sup> : NCAA enforcement inspectors/authorised officers/personnel as designated and with credentials must take action most appropriate to promote aviation safety and security and compliance with the regulations. The initial priority of inspection/ investigative personnel

<sup>1</sup> S = Section of the Act (SS = sections)

<sup>2</sup> R = NAMCARS / regulation

<sup>3</sup> Sect 34 of the Act

<sup>4</sup> ICAO Annex 19 (SMS), Doc 9859 — Safety Management Manual (SMM): “... all participants are encouraged to provide, and feel comfortable providing, safety-related information....(in) an environment in which participants understand they will be treated justly and fairly on the basis of their actions rather than the outcome of those actions, in the case of positive, as well as negative safety events”. See NCAA TGM Handbook – See Volume 1 – Administrative Procedures – Part 2 Chapter 7.

is to correct any ongoing non-compliance (ie., through Corrective Action Plans – CAPs, warning letters, voluntary undertakings, remedial action, etc) as part of “surveillance”<sup>5</sup> – see para. 7 on the applicability of criteria. Inspection/investigation personnel then determine what action to take by evaluating, among other things, the seriousness and safety and security risk imposed by the noncompliance /transgression /breach. In this manner, the priority is to promote safety, security, and greater compliance by encouraging regulated persons to disclose their own violations and the circumstances surrounding those violations. Based on information provided through such disclosures (even on basis of confidentiality), the NCAA’s compliance and enforcement policy fosters the implementation of permanent corrective measures to improve overall safety. After the failure of such actions, direct enforcement (fines/prosecution) as prescribed in the Code follows in a timely, fair and reasonable manner.

- 1.7 NCAA will conduct inspections and investigations and provide enforcement decisions in cases where there are reasonable and/or legitimate grounds and/or probable cause that a legal subject (natural or juristic person) is guilty of an offence or stands in violation of the provisions of the Act and its Regulations, directives, rules and this Code.
- 1.8 NCAA’s inspections and monitoring actions aim at curbing and responding effectively to potential, likely and actual violations. Actions require redress within the broader context of a safe and secure civil aviation system in the manner of the powers and functions of the Executive Director, generally and without limitation, as per S38.

For this reason, NCAA handles the following types of oversight:

- a) compliance with regulatory conditions imposed under the Act by a holder, owner or participant of the civil aviation system (S38(2)(a) and S66);
  - b) prohibiting unfairness which is against public interest within the civil aviation system (S38(2)(b));
  - c) alleged conduct which could place the safety and security of aviation in jeopardy (SS 36 to 48);
  - d) monitoring compliance with regulatory conditions especially through the use of enforcement (SS 38(2)(c) and S10(1)(h));
  - e) on alleged abuse, and carelessness, of privileges and duties (SS42-45); and
  - f) any other issues as may be deemed to fall under the jurisdiction of NCAA as specified in the Act (S10(2)(m).
- 1.9 The Executive Director may “publish” the Code as per R13.01.1(2). Thus, the gazetting of the Code by General Notice is preferred in view of public interest. When amended as may be deemed necessary in accordance with NCAA’s overarching regulatory approach and priorities, changes will be effected through Aviation directives/Notices (R Part 3.04), and revision Codes will then be Gazetted, with changes reflected by annotation.
  - 1.10 This Code does not address criminal proceedings once lodged for action of prosecution.

<sup>5</sup> See NAMCARS (2018) Part 140 .01.2 (p. 217) – definition “surveillance”.

## **2. Object/Scope/Status of Code**

- 2.1 The Code lays out the procedures, rules, determinations and orders issued for:
- a) investigations and inspections generally as required under RR Parts 13 and 185;
  - b) the assessment of inspection/ infringement reports submitted by inspectors;
  - c) the manner of conducting of inspections/investigations/hearings (such as show cause conferences, internal enquiries, etc.);
  - d) the assessment of the application of criteria when imposing administrative fines;
  - e) the assessment of deciding fines for violations of the provisions of the Act and Regulations;
  - f) the assessment for deciding prosecution actions of the provisions of the Act and Regulations; and
  - g) status and issue of aviation document holders/participants following upon orders of violations, and findings of guilt by Court order.
- 2.2 The EC requires application for compliance purposes required by S21 of the Act (corporate governance), and Art. 18 of the Constitution (administrative justice). The EC has legal status for application of effective enforcement processes by the NCAA. The EC aims to ensure the legality of NCAA enforcement actions.
- 2.3 The EC applies to enforcement processes with regard to violations of the NAMCARS, technical standards, directives and determinations, and offences under the Act.
- 2.4 The EC does not apply to complaints from individual consumers/clients in their relations in the ordinary course with holders, owners and participants of the Namibia civil aviation system.
- 2.5 There are two exceptions to the rule that this Code does not apply to complaints from individual consumers/users where –
- (i) a complaint is filed by an individual consumer/user on a generalized basis regarding aviation safety and security; and
  - (ii) resolution of a complaint regarding aviation safety and security by individual consumers/users require deploying an investigator/inspector.
- 2.6 When considered appropriate, in particular where the Authority has received a number of complaints in relation to a similar issue, the Authority may investigate such complaints on a generalised basis. Such complaints include but are not limited to:
- a) Individual complaints;
  - b) Class action by affected individuals;
  - c) Any other complaints as may be deemed appropriate by the Authority based on the prevailing circumstances, and subject to public interest.

- 2.7 Complaints from individual consumers/users are handled in terms of ICAO Docs (such as guidelines or manuals), S38(2)(b), and treaty provisions within the mandate of the NCAA<sup>6</sup> which are published in Aviation directives issued from time to time by the Executive Director as per S38(5) and (6) and S227.
- 2.8 Where NCAA decides to investigate matters of “public interest” in terms S38(2)(b) the procedures set out in the EC may serve as guideline when conducting investigations, hearings and/or inspections.
- 2.9 Decisions under the EC do not set precedents as each case is dealt with on the merits as per the procedures of the Act, regulations and this Code.
- 2.10 Where it departs from the approach set out in the EC, the Authority must explain or provide reasons for such departure.
- 2.11 The EC will be kept under advisory review by the Chief Legal Counsel or his or her delegate. Its amendment will be required as appropriate in light of further experience, developing law and practice, and any change of the Authority’s powers and responsibilities. Amendments will follow as per para. 9.1
- 2.12 Any amendment(s) on the EC will become applicable on a date announced by way of Aviation Notice issued by the Executive Director pursuant to NAMCARS Part 3.4 and once published (para.1.9 above).
- 2.13 The Code follows best practice guidance material / documents issued by, among others, ICAO, the FAA of the USA and several common law jurisdictions of the Commonwealth<sup>7</sup>.

### **3. Regulatory principles**

- 3.1 The Authority has established a particular set of regulatory principles, providing a distinct statement of its approach to regulating the aviation sector in terms of the Act.
- 3.2 The Authority will adhere to regulatory principles based on, but are not limited to:
- a) acting promptly and concisely;
  - b) taking regulatory decisions in a transparent, accountable, proportionate and objective manner;
  - c) not showing any undue preference to any person, body or organisation;
  - d) ensuring that its interventions are evidence-based, proportionate and consistent, in both deliberation and outcome; and
  - e) give due consideration to mitigation factors, and inform persons of their right to review and appeal .
- 3.3 The recognition of additional principles on enforcement for the EC, following upon Art 12 in the Chicago Convention, are set out in the ICAO Doc 9734: Safety Oversight Manual.

<sup>6</sup> Such as the Yamoussoukro Declarations, to which Namibia is a party. See S38(b)(ii)

<sup>7</sup> See FAA (USA) Order 2150.3B; and, for example, CASA Doc 09 (Australia)



### CHAPTER III

#### NATURE OF THE VIOLATION

##### **4. Identifying the violation**

- 4.1 In considering an allegation, complaint or request for determination/decision, the Authority must determine the nature of the violation.
- 4.2 Determining the nature of a violation is fundamental as it dictates the rules and procedures to be followed, and the persons and institutions to be involved when the Authority addresses an allegation, complaint or request for determination/decision.
- 4.3 If the violation concerns a criminal offence (eg., see Parts 13 to 16 of the Act), the Authority handles the matter by following the present Code (ie., administratively or by court proceedings - see below).
- 4.4 If the violation does not concern a criminal offence, the Authority may also institute civil proceedings before a court of civil jurisdiction, (S54 (2)(c)(ii), or deal with it administratively (ie., internally) to resolve the matter. In both instances prescriptions set out in NAMCARS Parts 13 and 185 will come into consideration.

##### **5. Distinguishing violations from offences (in the context of the Act)**

- 5.1 When the Authority determines that the matter concerns a criminal offence per se (e.g., see Parts 13 to 16 of the Act), then as a general principle, the Prosecutor-General prosecutes offenses (ie., criminal matters via Court), and the case is initiated via the Police.
- 5.2 The Authority may deal with offences administratively (then as violations), in the manner as provided for in the Act and the regulations, under this Code. (R185.02.1.)
- 5.3 The Authority must further determine the category (-ies) of the violation for action under the Code. (See R Part 185.02.3.)

##### **6. Administrative/delegated actions: prosecutions and violations.**

- 6.1 If the accused denies the alleged offence or the Authority does not accept the admission by the accused of a different offence, the Authority, through NAMPOL, may forward all relevant information to the Prosecutor-General together with a request to him or her to prosecute such offence as is indicated in the request (see para.32 below). This implies lodging a statement on the allegations with NAMPOL for purposes of recording in the Criminal Register (CR).
- 6.2 The records of CR and related particulars must form part of the enforcement system under the control, respectively, of the Safety or Security units of the NCAA.
- 6.3 Should the Prosecutor-General decline to prosecute an offence the Executive Director may by way of discretion proceed to deal with such case as a violation – see para. 5.2 above.
- 6.4 The Executive Director may delegate his/her powers set out in this EC. (See S33.)

## CHAPTER IV

### INSPECTIONS AND INVESTIGATIONS

#### 7. **Inspections/investigations by the Authority**

- 7.1 The Authority will carry out inspections/investigations in the normal course based on the surveillance mandate of a civil aviation authority<sup>8</sup>.
- 7.2 The surveillance mandate under the authority of the Executive Director generally, and specifically as operational matters under delegation, under the domains, respectively, of the NCAA head of Safety and/or the head of Aviation Security, is executed in accordance with procedures set out in the TGMs, operational directives and generally accepted practices set out in the SARPs (read with ICAO SOM Doc 9734). Ultimately, effective determination of surveillance is based on corrective action plans (CAPs) and its related formalities. The assessment by the Executive Director, and/or on the recommendation/advice of either Aviation Safety or Security, as the case may be, on the non-compliance/findings indicated in CAPs and other surveillance reports, may require enforcement action in the manner prescribed in R13.01.4 and R13.01.5, read with R185, and this Code.
- 7.3 The Authority may on its own motion, conduct investigations with respect to any activity prohibited by the Act, the regulations, technical standards, an aviation directive, or this Code, or for the purposes of doing anything required or permitted to be done under the Act, the regulations or this Code.
- 7.4 The delegated authority relating to investigations and inspections is set out in R13.01.2.

#### 8. **Receiving requests for decision/orders/determinations, on allegations of violations/offences and complaints**

- 8.1 The Authority can receive requests for decision from interested parties, and complaints (complainant or applicant) on any matter falling within the civil aviation system, including on a matter of public interest regarding civil aviation safety and security.
- 8.2 An allegation or complaint, or subject matter on request for decision/determination/order, as the case may be, must be made in writing, to the Executive Director. The allegation or complaint or subject matter must first and preferably, be resolved or adequately resolved by, where relevant, the participant/respondent within 14 days after receiving such allegation or complaint or subject matter.
- 8.3 The allegation/complaint/subject matter must set out clearly in form **Annex A**, with:
- a) the name and contact details of the applicant/ complainant on the allegation(s);
  - b) the name of the respondent, or if it is unknown, as many identifying details as are available in order to assist the Authority to identify the alleged defendant/respondent/ defaulter of the alleged violation/complaint;
  - c) the relationship between the applicant/ complainant and the respondent, if any, indicated;

<sup>8</sup> See note 6 above. Also, see ICAO Safety Oversight Manual (SOM) Doc. 9734.

- d) the facts and evidence illustrating the nature, extent and duration of the alleged violation and the circumstances in which the alleged violation took place and other supporting evidence; and
  - e) any other relevant information as may be requested by the Authority.
- 8.4 The Authority reserves its right not to accept a request for decision/complaint /determination or which does not meet the requirements for the submission of allegations/ complaints to the Authority, as set out in the Regulations and /or this Code.
- 8.5 Upon receipt of the allegation/complaint, the Executive Director will cause administrative action for resolution and, when required, seek a recommendation for decision.
- 8.6 The Authority does not apply the requirements for the submission of allegations /complaints on aviation safety and security in a strictly bureaucratic, legalistic or even a court -based, way and considers the circumstances of each case on its own merits.
- 8.7 Upon receipt of the allegation/complaint, or request for decision/determination/order, the Executive Director must determine whether it will conduct enforcement-based investigations and/or inspections (RR Part 13/185).
- 9. Screening of allegations/ complaints or requests for decision**
- 9.1 Within 14 days after receiving an allegation/complaint addressed to the Executive Director, the Authority screens the allegation/ complaint it received in order to decide whether to inspect/investigate an alleged complaint/violation.
- 9.2 Not every allegation/complaint requires inspection/investigation. The majority of concerns raised by complainants/applicants can be resolved at an informal level, or through other processes such as formal mediation or show cause conferences/meetings at the instance of the NCAA.
- 9.3 Following the screening of a complaint/allegation, the Executive Director may either –
  - a) refuse to investigate an alleged violation, in which case the Authority informs the complainant/applicant in writing of its decision and reasons, closes its file and takes no further action on the matter; or
  - b) decide to conduct an inspection or investigate the allegation/complaint, in which case the Authority issues an infringement/investigation notice (see **Annex B**) to the respondent/defaulters in terms of R13.01.5, or in the manner described in this Code.
- 9.4 The Authority may refuse to investigate an allegation/complaint if:
  - a) the complaint/allegation falls outside the scope of the Act, regulations or this Code;
  - b) an alternative and satisfactory means of redress is available;
  - c) the complaint /allegation is trivial, frivolous or vexatious;
  - d) the complainant /applicant has not provided any evidence to support his or her complaint/allegations and there are no reasonable prospects that investigations will yield the necessary evidence;

- e) investigation of the complaint/allegation conflicts with particular legislative requirements (i.e., applicable statutes assign the responsibility to conduct investigations or addressing those complaints to other agencies, for example, the Anti-Corruption Commission, Competition Commission, Communications Commission, NAMFISA, etc ); or
- f) the complaint/allegation or request for decision does not have any significance for aviation safety or security, the Authority or the complainant/applicant.

9.5 At this stage, the Executive Director should be able to decide whether a complaint/allegation requires internal or external investigation, as the case may be.

## **10. Infringement/Investigation notices**

10.1 After deciding to conduct the investigations (S.41/R13.01.5) into the complaint/allegation or request for decision, the Executive Director may decide to issue the infringement/ investigation notice to the Respondent within seven (7) days from the date of concluding the screening process in the manner prescribed in para.9.

10.2 The investigation notice follows the form set out in **Annex B** of this Code.

10.3 The investigation notice must comply with the requirements set out under R13.01.5(1).

10.4 The Authority reserves its right not to issue an infringement/ investigation notice where it considers that alerting the Respondent/defaulting party might prejudice the inspections/ investigations, and in the interests of aviation safety and security.

## **11. Public investigation notice (sect 17(8))**

11.1 The Authority reserves the right to issue a public notice to inform the public about the launched investigation where such notice would be in the public interest (S38(2)(b), unless such publication would adversely affect the investigation.

11.2 Prior to issuing the public notice, the Authority invites the respondent/defaulting party to show cause within a time stipulated by the Authority why such public notice should not be made (S17(8(b))).

11.3 Where the Authority has made an investigation public, the respondent/defaulting party is entitled to publish a statement, without negating the right of the Authority to do so, relating to the investigations.

11.4 A statement relating to the investigations must not address the merits of the investigation.

## **12. Conducting investigations and inspections**

12.1 The Authority may, on the application of any interested person or on its own motion, conduct investigations with respect to any activity prohibited by the Act, the regulations, or this Code, or for the purposes of doing anything required or permitted to be done under the Act, the regulations, or this Code.

12.2 The investigators and inspectors must conduct the investigations and inspections in a professional manner<sup>9</sup> and in a manner that does not compromise the integrity of the evidence they collect during their inspections/investigations.

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<sup>9</sup> NCAA HR Staff Code

**13.     Infringement/Investigation reports**

At the close of their investigations, investigators and inspectors must compile a report following the template set out in **Annex C**, attached to this Code.

**14.     Timeframe for conducting and finalising investigations**

14.1     Inspections/investigations may be routine, non-routine, or urgent.

14.2     For routine investigations, the Authority makes sure that investigators and inspectors complete their investigations within six (6) months after the Authority has resolved to conduct investigations.

14.3     For non-routine investigations, the completion of investigations may take more than six months after the Authority has resolved to conduct investigations.

14.4     For urgent investigations or investigations relating to (safety/security) interference, the Authority must try to complete the investigations as soon as is reasonably possible, depending on the complexity of or circumstances informing the complaint/allegations under investigation.

14.5     General advisory note: The Authority's discovery of, and response to, violations should be timely. Delays in investigation or processing of enforcement investigative reports can adversely affect the effectiveness of compliance and enforcement in several ways. Delays may let an unsafe/unsecure condition continue in absence of prompt corrective action. Delays also may de-emphasize the seriousness of a given violation and lessen the deterrent value of any enforcement action taken. The deterrent quality of enforcement action and effective linking of the enforcement sanction to objective change in compliance behaviour may realize if the Authority investigates diligently and promptly and administers the appropriate sanction within a reasonable time. Unsustained allegations of violations and any unwarranted delay in processing the case may impose an unjustified hardship on all concerned. The time needed for investigation and processing will vary depending on the complexity of each case. Certain cases, because of their effect on aviation safety and security, including the need for emergency action, will sometimes demand immediate involvement of the entire investigative and legal team to effect timely action, sometimes in only a matter of hours or a few days.

**15.     Appointment of Inspectors/investigators**

15.1     Once the Executive Director has resolved to conduct investigations and inspections, he/she or his/her delegate, must appoint designated investigators and inspectors with current credentials for that purpose.

15.2     Notwithstanding the "authorised persons" as defined in the Act, persons other than Authority staff who possess acknowledged expertise may be designated by the Executive Director as inspectors to exercise the powers conferred upon inspectors by section 37 of the Act. In such an event, the Executive Director may appoint a person who has expert knowledge in a particular field for a specific purpose to investigate any violation of a provision of the Act the regulations or this Code, or any aspect thereof. The instrument of investigation of such inspector must specify the field of expertise.

15.3     An Investigator must perform his or her functions –

- a)       subject to the control and direction of the person designated by the Executive Director;

- b) with the required credentials generally, or for this purpose; and
- c) on the terms and conditions as the Executive Director and the investigator may agree.

15.4 Inspectors/investigators may be required to comply with background checks (see R 114.01.1 – and further below under Chapter VI).

## **16. General Powers of Inspectors/investigators**

16.1 Inspectors/investigators must have all powers necessary to conduct their investigations effectively, in conformity with the provisions of the Act (SS39, 47 and 48), the regulations (R13.01.2) and this Code. The ICAO guidelines/manuals of procedures, eg., Doc 8335, and those prescribed by Annexes 17 and 19, may require to be followed as well.

16.2 Inspectors/investigators will also take into account the delegations made to them under the Act by the Executive Director and set out in respective Technical Guidance Material, and Aviation Inspector Manuals/Handbooks as well.

16.3 An Inspectors/investigators has the power to demand on behalf of the Authority any information from any person which that person is required to provide to the Authority by virtue of any provision of the Act and regulations ie., R13.01.2 and R185.01.2).

16.4 An Inspector/investigator may put any question to any person, or may examine any book, document, facility, any equipment or any other object, in order to obtain any information required by the Authority for the purpose of performing any function under the Act, or the regulations, or this Code ((R13.01.2; R185.01.2).

## **17. Requirements of inspection/investigation**

In conducting inspections/investigations, investigators and inspectors must make sure that the inspections/investigations do not contravene the provisions of the Constitution, the relevant criminal procedural laws, or any other applicable law, regulation, or rule (see **Annex K**).

## **18. Collection and handling of evidence**

18.1 See in general R13.02.2 and R185.01.1.

18.2 Investigators and inspectors must handle evidence with the utmost caution.

18.3 Investigators and inspectors must ensure that their handling of the evidence does not compromise the integrity of the evidence or otherwise dilute the probative value of the evidence.

18.4 Where any evidence has been taken by the investigators or inspectors exercising their authority in terms of the Act, the regulations and this Code, whichever is applicable, a receipt must be issued for it to the person from whom such evidence has been taken. The general and acceptable procedure regarding removal of anything from the premises being searched, must be adhered to by investigators and inspectors.

18.5 The receipt for the taking of evidence is set out in **Annex D** of this Code.

18.6 In performing any of their duties, the investigators or inspectors exercising their powers in terms of the Act, the regulations, or the EC, are vested with the discretion to consult or, where necessary, be accompanied by any person with expert knowledge of any matter they are investigating/inspecting.

- 18.7 For reporting purposes the investigators or inspectors must keep an inventory list of all evidence collected. (Note the recordkeeping requirements under R13.02.1(3).

**19. Types of evidence to be collected**

- 19.1 Investigators and inspectors can collect all types of evidence necessary to prove or disprove the main issue to be determined for an investigation (or hearing). See RR Part 13.01.2 and 13.02.2.

- 19.2 Evidence collected by investigators and inspectors, for it to be admissible, must prove an accused person's or defaulter's guilt as an offence beyond reasonable doubt such as in a criminal trial, and or fault, omission or negligence, on a balance of probabilities such as in a civil trial matter. These principles of law serve as guidance for determining admissibility of evidence for the following reasons:

- a) Relevance – evidence to be collected must prove or disprove an important fact to the investigation or hearing; and
- b) Reliability – the source of evidence must be credible especially in so far as it concerns witness/applicant/respondent/defaulting party evidence.

- 19.3.1 In an inspection/investigation and/or in a hearing, the main sources of evidence are:

- a) oral evidence (recollections),
- b) documentary evidence (records),
- c) Demonstrative evidence (sound recordings, maps, drawings, graphs, simulations, models, forensic animation etc. )
- d) real (physical) evidence (an object, tape recording, computer printout, or a photograph)
- e) expert evidence (technical advice), and
- f) site inspection.

(See format of report in **Annex D**).

- 19.3.2. Where circumstantial evidence is relied upon various objective criteria are applied and required which also require recording and explanation. (See R185.02.3.)

- 19.4 Factors determining inadmissibility of evidence include but are not limited to the following:

- a) Unfair prejudicial evidence (evidence that does not add material information to a case under investigation);
- b) Misleading evidence (evidence that draws officials away from the main issues under investigation);
- c) Hearsay evidence (a testimony made outside of a court to prove the truth of a matter);
- d) Character evidence (evidence to prove that the accused person/defaulters has a certain personality trait and that the accused acted in accordance with such personality trait thereof);
- e) Expert testimony given by a lay person; and

- f) Privileges (evidence obtained from communication between an accused, respondent or defaulter, and his/her legal representative, amongst other things).

19.5 Any electronic evidence collected by the inspectors or investigators shall be deemed reliable if it is part of regularly recorded business records of the accused, respondent or defaulter. Any writing or record, whether in the form of an entry in a book or otherwise, made as a memorandum or record of an act, transaction, occurrence, or event of the accused, respondent or defaulter's operations under investigation by the Authority, shall be admissible. Such electronic evidence must:

- a) have been made and kept in the regular course of the accused, respondent or defaulter's action(s);
- b) concern matters within the scope of the action(s) under inspection/ investigation;
- c) have been made at or near the event raising the complaint/allegation; and
- d) have been known by someone in the employ of the accused, defaulter/ respondent's action(s) under investigation.

## **20. Manner of collection of evidence**

20.1 Investigators and inspectors must not collect evidence in a manner that violates constitutionally protected rights, applicable criminal laws, the general rules of evidence, or fundamental principles of administrative justice (see **Annex K**).

20.2 Investigators and inspectors by notice in writing in the prescribed form may require from any person such particulars and information as may be reasonably necessary for investigation / hearing purposes.

20.3 The request for information for purposes of investigation/hearing form is set out in **Annex B** of this Code.

## **21. Entry and search**

21.1 If, in the opinion of the Authority, it is necessary for the performance of any function under the Act, the regulations or this Code, the Authority may secure and issue a warrant instructing any participant to allow an inspector/investigator to enter and search any premises used by that person for the conducting of its business: Provided that nothing in this paragraph authorises an inspector/investigator to search any premises or part of any premises that is used as the dwelling of any person.

21.2 An application for a warrant on good cause may be made by the Executive Director for issue by a magistrate, and once issued, must be handed to an inspector/investigator to execute. The template for a search warrant is set out in **Annex E**.

21.3 An inspector/investigator executing a warrant referred to in this paragraph may enter any premises and there -

- a) make the investigation or inquiry for which he or she has been appointed by the Authority;
- b) seize anything which in his or her opinion has a bearing on the investigation;
- c) examine any article or document that is on or in those premises that has a bearing on the investigation;



- d) request information about any article or document from the owner of, or person in control of, the premises or from any person who has control of the article or document, or from any other person who may have the information;
  - e) take extracts from, or make copies of, any book or document that is on or in the premises that has a bearing on the investigation;
  - f) in the presence of a person in charge of, or employed at, the premises, use any computer/electronic system on the premises, or require the assistance of any such person to use that computer/electronic system, to –
    - (i) search any data contained in or available to that computer/electronic system;
    - (ii) reproduce any record from that data; or
    - (iii) seize any output from that computer/electronic system for examination and copying; and
  - g) attach and, if necessary, remove from the premises for examination and safekeeping anything that has a bearing on the investigation.
- 21.4 Notwithstanding the provisions of this paragraph, if a person of interest for purposes aforesaid is not present or not able to give the assistance required by the authorised officer, the inspector/investigator may proceed, subject to the express consent of the aforementioned party, to use the computer/electronic system if in the circumstances of the case any delay may prejudice the purpose for which the search is carried out.
- 21.5 A person who removes anything from premises being searched must –
- a) issue a receipt for it to the owner of, or person in control of, the premises; and
  - b) return it as soon as practicable after achieving the purpose for which it was removed (also see S47).

**(See Annex D).**

- 21.6 If the owner or person in control of an article or document refuses to allow the inspector / investigator conducting a search to inspect/remove that article or document, the inspector may request the Registrar or sheriff of the High Court, or the messenger of the magistrate's court of the area of jurisdiction where the premises are situated, to attach and remove the article or document for safe custody until a competent court determines whether or not the information is privileged. (Note: removal of articles may require compliance with manufacturer instructions or standards.)

## **22. Assistance from police officers**

- 22.1 An inspector/investigator who is investigating any offence under the Act and this Code may request a police officer to accompany him or her while he or she is conducting such investigation / inspection.
- 22.2 A police officer requested to accompany an inspector/investigator as contemplated in this paragraph must accompany such inspector/inspector and may exercise any power vested in him or her by any law in the presence of that inspector/investigator: Provided that the police officer concerned may not search a person in the presence of the inspector/investigator concerned if that person is not the same gender as the inspector/investigator concerned.

**23. Information requests**

- 23.1 In order to conduct investigations effectively, the Authority may request information that it deems relevant to an alleged violation and necessary for the purposes of the Authority's investigations. (SS 174 and 176).
- 23.2 The requested information should be accurate information and must be made available to the Authority within the period specified by the Authority when making the request for information.
- 23.3 The Authority may only agree to an extension of the deadline where the respondent/defaulters adequately demonstrates the need for such extension.
- 23.4 Meetings with respondents/defaulters, including show cause conferences, may be held as part of information gathering on condition that such events are recorded for purposes of recordkeeping.
- 23.5 Since the Authority takes seriously the failure to comply with lawful notices to produce documents or information, the Authority expects persons requested by the Authority to provide such documents and information to respond within the set timelines to the information request served upon them.

**24. Summoning of witnesses**

When in the opinion of the Authority, it is likely that any person can give evidence concerning any matter that is relevant to any matter considered at any hearing held by the Authority in terms of the Act, the regulations or this Code, the Authority may issue a notice to appear/summons in the prescribed form instructing that person to attend a hearing of the Authority on a date, time and place indicated in that summons/notice. The template for a summons/notice is set out in **Annex F** of this Code.

**25. Analysis of evidence collected during inspections/investigations**

- 25.1 Investigators and inspectors must analyse the evidence they have collected during the inspections/investigations.
- 25.2 The analyses of investigators and inspectors must assess the reasonable prospects of succeeding in an action against the respondents/defaulters on the basis of the probative force of the evidence so collected.

**26. Safe-keeping of evidence collected during investigations (R13.02.2(2))**

- 26.1 Investigators and inspectors must make sure that the evidence collected during the inspection/investigations is safely kept.
- 26.2 Investigators and inspectors should not allow third parties or unauthorized persons to tamper with the evidence they have collected for investigation purposes.
- 26.3 If the evidence indicates that an investigation/further inspection is warranted, legal advice may be obtained beforehand to determine the processes in respect of securing an administrative fine or referring the matter for prosecution.

**27. Need for confidentiality**

- 27.1 Investigators and inspectors must ensure strict confidentiality in respect of investigations/inspections .

- 27.2 Any information provided to the Authority in the course of its investigations/inspections must be treated as confidential.
- 27.3 If an investigator or inspector fails to observe such standard of confidentiality, the appropriate procedures under the NCAA Staff Code may be made applicable. In the case of non-staff members the Executive Director may take the appropriate action to deal with the matter.
- 28. Closure of a case without any enforcement action**
- 28.1 The Executive Director may close a case/action without any enforcement action if it determines that such action would be futile (see para.9.4 above).
- 28.2 The Executive Director may close a case /action without any enforcement action if the person involved did not contravene the provisions of the Act, or did not violate the Regulations, a technical standard or this Code.
- 29. Determining legal enforcement action.**
- 29.1 If enforcement personnel select legal enforcement action (for example, certificate action such as revocation, suspension, imposition of conditions (SS42, or 43, or 45), or administrative fine action, the type and amount of fine must be determined in terms of R185.02.
- 29.2 The Head of Safety/Security and Chief Legal Counsel, or their delegates, jointly determine, based on the investigative or inspection report, as the case may be, the type and amount of fine sought in a legal enforcement action, for recommendation to the Executive Director for his/her approval.
- 29.3 The reporting format set out **Annex C** must also provide the reason(s) for the action proposed. The criteria provided in R185.02.3 and the matrix – see appendix A in R185.02 must be considered and be included in the documentation. This report determines at the same time the mitigating or aggravating factors *in casu*

## CHAPTER V

### INVESTIGATIONS: HEARINGS / APPEARANCES/ATTENDANCES

**30. Summoning of Respondents/defaulters**

If the Authority is of the opinion that any person has committed an offence or violation, the Authority may issue a notice of appearance/summons in the prescribed form (**See Annex F**), which must –

- (a) state the offence/violation that the person has allegedly committed;
- (b) contain allegations of fact which if proved will establish the offence/violation concerned; and
- (c) indicate the fine or action that the Authority intends to impose/pursue for the offence/violation concerned.

**31. Admission or denial of alleged offence/violation**

- 31.1 Within thirty (30) days from the date of the service of a summons/appearance notice, the accused/defaulters must deliver a notice to the Authority in the prescribed form indicating whether he or she admits or denies the commission of the offence/violation alleged in the notice or whether he or she admits any other regulatory offence/violation.

- 31.2 The decision of the respondent/defaulters to admit or deny the alleged offence or violation is crucial as it determines whether the Authority will conduct a hearing (S17(8)(b) – i.e., “... to any hearing before any organ of the Authority”), or to refer the matter to the Office of the Prosecutor-General for prosecution.

**32. When to refer a matter to the Prosecutor-General**

- 32.1 If the accused/defaulters denies the alleged offence or the Authority does not accept the admission by the accused/defaulters of a different offence, the Authority may forward all relevant information to the Prosecutor-General together with a request to him or her to prosecute such offence as indicated in the request.
- 32.2 The Prosecutor-General may request further information from the Authority in order to determine whether an offence has been committed.
- 32.3 If the Prosecutor-General is satisfied that there is a reasonable possibility of proving the alleged offence, he or she will inform the Authority as to prosecution of the offence concerned.

**33. When to conduct an investigation or hearing**

- 33.1 Advisory note: Persons affected or aggrieved by the NCAA’s decisions have a right to be heard. In compliance with this principle, the NCAA is required to provide such persons with notice (usually in advance) that a particular decision is going to be taken, and the reasons the NCAA proposes therefor. Without notice and statement of reasons there may be little point to priding a person with an opportunity to be heard. (See SS69(5) & 135.)
- 33.2 The Authority must hold a investigation/hearing if –
- (a) the accused/defaulters admits the violation alleged in the notice to the Authority, or admits a different violation and the Authority accepts that admission; or
  - (b) the Prosecutor-General delegates the power to deal with any offence administratively, in terms of the Act, to the Authority, and to deal with the allegation as a violation, subject to such conditions or restrictions, if any, as the Prosecutor-General may deem appropriate; or,
  - (c) conduct an investigation on its own accord of the matter in the manner set out in this Code, as an alleged violation.

**34. Constitution of an investigation/hearing**

- 34.1 The Authority may hold a investigation/hearing in the manner contemplated by S41–
- (a) within three (3) months from the date of the admission by the accused/defaulters in order to determine the appropriate sanction or fine; or
  - (b) within a reasonable time from the date of the delegation by the Prosecutor-General of the power to deal with the allegation in terms of the Act; or
  - (c) on its own motion for adjudication of disputes/decision on a matter of public interest (S38(2)(b), or in pursuit of an alleged violation; or
  - (d) with a view to internal review proceedings in terms of R13.04.1

- 34.2 With a view to arm's length proceedings, the Executive Director may set up a panel consisting of a chairperson, as lead investigator, or if considered appropriate, at least two other members as assessors, with a view to deal with the investigation/hearing and determine/decide the matter by way of recommendation. (S41 (2) (b) (ii).
- 34.3 The lead investigator or panel, as the case may be, must within 30 days of the completion of the assignment, or its terms of reference, make appropriate recommendations to the Executive Director in writing.

**35. Sequence of investigation/hearing**

An investigation or a hearing, depending on the circumstances of each case, proceeds along the following steps:

- a) actual investigation//hearing in accordance with procedures;
- b) decision on whether the accused/defaulters is in violation of the Act, regulations, or this Code; and/or
- c) decision on whether the allegation(s) can be dealt with through other powers at the disposal of the Executive Director; and
- d) give consideration of the mitigating and, if any, aggravating circumstances; and
- e) recommend the issuance of an enforcement order, including administrative fine.

**36. Appointment of chairperson/assessors**

- 36.1 When constituting a hearing, the Authority must appoint a chairperson as lead investigator.
- 36.2 The Chairperson specifies the procedure to be followed during the investigation/hearing, and will consider the provisions set out in this Code.
- 36.3 Where the appointment of the Chairperson is from outside the Authority, such person must to the one or other extent -
- a) be a suitably qualified person without a criminal record;
  - b) have a working knowledge of the aviation sector;
  - c) have no prior knowledge of the case being heard;
  - d) be unbiased and impartial;
  - e) remain neutral at all times and not represent either party to the investigation/hearing;
  - f) have a good knowledge of correct procedure for hearings/ investigations;
  - g) have a working knowledge of hearings/investigations of a similar nature as the hearing/ investigation in question;
  - h) be able to justify and give reasons upon which his/her recommendation is based;
  - i) be experienced in weighing up evidence, and experienced in separating facts from opinions;

- j) be able to justify and give reasons upon which the decided sanction/fine is based;
- k) be in a position to present any findings, decisions or sanctions arrived at in the hearing to the Executive Director for validation; and
- l) be in a position to submit preliminary/interim/final reports in the English language to the NCAA.

### **37. Outline of responsibilities of the Chairperson**

- 37.1 The Chairperson controls the proceedings. He/she greets and introduces all the parties present.
- 37.2 The Chairperson informs the parties that the investigation/hearing will take place in the official language, and indicate the availability for an interpreter, if and when necessary.
- 37.3 After consultation with the legal representative of the Authority, the Chairperson may authorize an audio recording of the proceedings.
- 37.4 The Chairperson introduces the parties and their roles and explains that the proceedings are dissimilar to court proceedings in the main but that formal procedures of court may serve as guidance. The parties may address the chairperson to secure the common understanding of the procedures that will apply. The Chairperson then decides this aspect.
- 37.5 If the accused/defaulting party is not represented, the Chairperson must determine whether the accused/defaulting party understands his or her right to representation and whether he or she waives it or not. If represented the Chairperson recognises the representative.
- 37.6 The Chief Legal Counsel, or his /her representative, represents the NCAA.
- 37.7 The chairperson asks the parties to indicate if they are ready to proceed and if any of them wish to raise any legal/technical points *in limine (within the hearing)*.
- 37.8 The Chairperson may adjourn the proceedings at any stage in the manner he/she sees fit.
- 37.9 The allegations in summons form must be stated and read.
- 37.10 The Chairperson requests the accused//defaulting party to indicate his or her response, and what is disputed, and records it.
- 37.11 If the accused/defaulting party pleads admission of the facts and violation, the Chairperson can find the accused/defaulting party in violation of the Act, regulations and/or this Code.
- 37.12 If the accused /defaulting party pleads that he/she is in dispute with the allegations, the Chairperson will refer to the representative of the Authority to make opening statements and to place its case for the transgression as alleged by the accused /defaulting party.
- 37.12 In the event of either subpar. (11) or (12), the respective parties are allowed to present evidence and/ or witnesses.
- 37.13 The Chairperson allows either party, as the case may be, to put questions to the witness(es) and to test evidence.
- 37.14 The Chairperson allows either party, as the case may be, to put questions to and/or test the witness (-es) or evidence presented by the accused/defaulting party or the representative of the Authority.

- 37.15 The Chairperson allows both sides to argue and/or present statements with regard to whether the violation was committed or not committed, as the case may be
- 37.16 The Chairperson adjourns and applies his or her mind to the issue, and consults his/her assessor(s) where relevant.
- 37.17 The Chairperson reconvenes later to make the decision whether or not the accused/defaulters stands in violation of the allegation.
- 37.18 If the accused/defaulting party, is found to have transgressed the Act, the regulation, or this Code, the Chairperson allows the accused/defaulting party to present mitigating circumstances after announcing the decision, and the Authority representative, to present aggravating circumstances.
- 37.19 The Chairperson may request more detail.
- 37.20 The Chairperson adjourns to consider the factors and re-convene at a later stage to communicate to the Parties the appropriate decision for recommendation to the Executive Director.
- 37.21 If the accused/defaulters stands in violation of the allegation after consideration of mitigating and aggravating circumstances (two separate considerations), the Chairperson decides what the appropriate fine/sanction will be.
- 37.22 The Chairperson must inform the relevant party of his or her right to appeal in the event of the Executive Director having accepted his/her recommendation. (The Executive Director can reject the recommendation of the Chairperson on good reason(s) given within a reasonable time of the acceptance of the Chairperson's report.)
- 37.23 The Chairperson issues ruling(s) on procedural questions during the investigation/hearing, such as, but not limited to, adequacy of time to prepare for the investigation/hearing, representation, and postponements.
- 38. Additional provisions on proceedings of investigations/ hearings.**
- 38.1 The Authority may, by way of notice in writing in the prescribed form (notice of hearing is in **Annex F**), delivered by an authorised agent to any person, require such person to
- (a) appear before it at the date, time and place specified in such notice;
  - (b) make a statement; and/or
  - (c) submit to it all the documents or objects in the possession or custody or under the control of any such person which may be reasonably necessary.
- 38.2 At the investigation/hearing, through the Chairperson and after explaining applicable rights and relevant legislation, the Authority may -
- (a) question any person required to appear before it and show cause in connection with any matter which may be reasonably necessary; or
  - (b) retain for a reasonable period and on good cause, any document or object submitted to it.

**39. Additional rules of evidence at investigations/hearings**

39.1 The rules of evidence that apply to hearings/investigations are less formal than court procedures. However, recognised evidentiary rules /practices of Namibian law apply in relation to hearings/appearances as per rulings of the chairperson.

39.2 At the investigation/hearing, the following four types of evidence are inadmissible:

- a) Hearsay evidence;
- b) Opinion evidence;
- c) The verdict in other proceedings; and
- d) Character evidence.

(Additional Notes:

- circumstantial evidence: see para. 19.3.2 above; and
- relevant material [i.e. it has probative value] can be admitted, unless the specific type of evidence requires a stricter approach based on fairness and public policy.)

**40. Legal representation at investigations/hearings**

Persons under investigation and subject to inspection, and who/which must appear at the hearings/investigations held by the Authority, have the right to be represented by legal practitioner(s) of their choice to appear and make representations on their behalf at their own cost.

**41. Findings and decisions of the Chairperson**

41.1 The decision of the Chairperson is made in the name and with the express authority of the Executive Director.

41.2 The decision on the recommendations of the Chairperson must be in writing.

41.3 The decision on the recommendations of the Chairperson must be in communicated to both parties.

41.3 Section 41 investigations result in “recommendations”.

**42. Appeal/review of the Authority’s decision**

42.1 If an aggrieved person is not satisfied with the decision made by the Authority, such person may in terms of the Act, appeal to the High Court of Namibia (S227 & as indicated elsewhere in the Act and regulations).

42.2 Internal review of decisions/recommendations of inspectors: (See R 13.04.1)

**43. Publication of closures and findings**

43.1 When an investigation has been made public on opening S17(12(9), the Authority may also publish its closures, findings of violation, or enforcement actions.

43.2 At the close of a case with no finding of a violation, the Authority may make this finding public.



- 43.3 The Authority reserves the right to make public any of its decisions, even though the investigation notification was not public on opening. Where the hearing/appearance was conducted confidentially at the outset, the confidentiality may be waived by the Executive Director due to public interest regarding aviation safety and security on the matter.

## **CHAPTER VI**

### **ENFORCEMENT ORDERS**

#### **44. Discretion to issue enforcement orders**

With a view to the exercise of his/her powers/functions in respect of the NCAS, and subject to the provisions of the Act, Regulations and/or this Code, the Executive Director may exercise his/her discretion to issue an enforcement order he/she deems appropriate in the circumstances prior to, or before, or during, or after a investigation/hearing (SS 38, 42,43, 45, or R3.04).

#### **45. Issue of enforcement order**

- 45.1 If the Executive Director is of the opinion that any participant has contravened or failed to comply with any provision of the Act for which a specific sanction/fine has not been prescribed, or any provision for which the making of such an order is explicitly authorised, it may issue an enforcement order instructing the participant concerned to perform any action or refrain from any action stated in that order within the period specified in that order.
- 45.2 Enforcement orders (penalties) in this context are set out under section 233 of the Act. The threshold amount set in this section (ie., N\$50000) determines the action under para.45.1.

#### **46. Factors to be considered when determining appropriate enforcement orders**

Application of criteria: See R185.02

#### **47. Possible enforcement orders**

With regard to the enforcement of the Act, Regulations or this Code, a range of possible options is available to the Authority, including decisions secured via Court order. Thus, after applications of the processes in this Code, the Executive Director may, as enforcement order(s):

- a) issue warning letters;
- b) impose administrative fines (see R13 and R185);
- c) declare any equipment/product forfeited (S47);
- d) suspend or revoke the privileges and/or duties in relation to an aviation document issued under the Act, or impose conditions or amend the terms of such aviation document (SS42/43);
- e) issue directions or cease and desist orders aimed at preventing or rectifying a violation (R3.04);
- f) report any matter to the Police;
- g) refer to the Prosecutor-General any matter in which the Authority is of the view that criminal offence has been committed under the Act (SS13,14,15,16); and

h) institute civil proceedings before a court of competent jurisdiction (see S233).

Enforcement orders are appealable to the High Court see (S227).

#### **48. Warning letters and cease and desist orders/settlements (See Annexes L1-3)**

48.1 Where, upon conclusion of investigations, there are findings that a participant is contravening or has contravened any provision of the Act, Regulations or any aviation document issued by the Authority in terms of the Act, the Executive Director may issue a warning letter or cease and desist letter to the defaulter requiring the defaulter to take such steps to comply with the condition as may be specified or to take steps to remedy the consequences of the violation within a particular time frame stipulated in the warning or cease and desist letter.

48.2 A warning or cease and desist letter is an order that the Authority may issue in response to a violation (the matter has been concluded), or where a warning/cessation of action is considered a sufficient response to secure the safety and security of civil aviation.

48.3 A settlement agreement may be entered into by the NCAA and a respondent to conclude cases of violation.

#### **49. Additional provisions: Fines (Regulations)**

49.1 The Executive Director may not impose a fine which exceeds the maximum penalty stipulated in the Act (S54(2)(a), or the fines in the regulations (R 185.02.2).

49.2 Any amount or fine imposed by the Executive Director pursuant to the regulations or Code must become due and payable by the affected person within thirty (30) days (SS64/65) from the date of the decision made by the Authority or within any other period prescribed by the Authority.

49.3 A specific General Ledger account in the NCAA will be created for: Regulator - fines (an income account). It is important to keep this revenue item separate from the general "other" revenue account (S22(2)).

49.4 The affected party would have to deposit the penalty directly into the bank account of the NCAA –

**Account name:** Standard bank Namibia, "NCAA CORP REC"  
**Account number:** 042677068  
**Code:** 087373  
**Reference:** (invoice number of penalty invoice issued by Finance)

49.5 The invoice generated by NCAA will create a debtor in the books, monitored by the revenue account., i.e. the normal process as per Regulator fee collection.

49.6 A write-off of debt would have to be approved by the ED in writing before the transaction "write-off" could be processed (S62/63/65).

49.7 Administrative fines do not result in criminal records (R.13.03.4(1)). The NCAA may use the information in relation to an administrative fine in the manner prescribed by R 13.03.4(2) and (3).

## **CHAPTER VII MISCELLANEOUS**

### **50. Forfeiture of equipment or products/goods**

50.1 The considerations in this regard also apply in relation to hearings/investigations. After a hearing/appearance/investigation, the Executive Director may declare any aviation equipment or product/goods forfeited –

- (i) that has been used in the commission of an offence/violation;
- (ii) whose possession is prohibited by the Act or otherwise unlawful; or
- (iii) that does not comply with standards prescribed under the Act (on equipment approvals and standards), or that belongs to a category for which type approval has been prescribed and that has not been approved.

50.2 If a person is convicted in terms of an offence under the Act, the Authority may declare any equipment or product/goods used in the commission of an offence or whose possession is prohibited by the Act, or whose possession is otherwise unlawful, to be forfeited to the Authority, unless the court directs otherwise. (Cf. R Part 13.01.2 – the discretion of the Executive Director or designated person, is provided for under section 47 of the Act.)

50.3 The Authority may deal with any apparatus, products/goods, or equipment forfeited to it in terms of the Act as it thinks fit, including the NCAA Policy on the Disposal of Assets: Provided that the provisions in the laws relating to criminal procedure in Namibia dealing with the enforcement of rights by persons to property other than persons from whom the property has been seized, apply with the necessary changes to property contemplated in this section.

### **51. Assessment Matrix – calculation of the administrative fine amount**

(See R 185.02 3 and as per Appendix A thereof).

### **52. Determinations**

The Executive Director may issue proposed and final determinations.

#### **52.1 Proposed determinations**

52.1.1 A provisional determination may be issued in relation to fit and proper person tests and background checks (Cf. SS 67/68/134/135). Proposed determinations may be issued by the Executive Director prior to the conclusion of an investigation, inspection, or test in the manner contemplated by the provisions of the Act or NAMCARS.

52.1.2 The proposed determination is provisional (or conditional) in nature, and which the Executive Director is required to make in specified cases, and enables the affected person (or the aviation document holder) the reasonable opportunity to make submissions or to do or not to do something, or to address allegations against a person, and to prevent consequences for aviation safety and security that might arise, or that which is considered by the Authority likely to arise, before the final determination is made.

52.1.3 The Executive Director may request that either written and/or oral representations be made to the NCAA on the allegations made, unless the Authority has reasonable grounds to believe that doing so would defeat the purpose of the proposed determination.

- 52.1.4 A proposed determination is also appropriate at the discretion of the Executive Director in cases where the person is to have or is likely to have control over the exercise of the privileges under the aviation document. An affected person may file an objection to a proposed determination within ten (10) days after service of such proposed determination.
- 52.1.5 In the case of an objection against a proposed determination the Executive Director considers the objection within a reasonable time depending on the urgency of the matter and either:
- a) revokes the proposed determination if it upholds the objection; or
  - b) extends or upholds the proposed determination.

## **52.2 Final determinations**

- 52.2.1 If the Executive Director Authority is satisfied after concluding its investigations that a participant has or has not contravened an applicable provision of the Act, Regulations, or any aviation document, he or she may issue a final determination or confirm a proposed determination issued.
- 52.2.2 The Executive Director reserves his/her right to enforce a final determination by civil proceedings before a court of competent jurisdiction.

## **53. Background checks.**

In terms of SS 134 and 135, read with R. Part 114 of the regulations the Executive Director may authorise or conduct a background check on any person. This includes staff members and authorised persons. (The detail procedures on background checks are set out under R. 114.)

## **54. Conflicts of Interest (COI - in civil aviation) (ref. ICAO doc 9689 )**

A COI is defined as “a situation in which an official has private interests that may or be perceived to improperly influence or interfere with the performance of his or her official duties and responsibilities. Such improper influence or perceived interference could be attributed to situations involving financial interests, family, emotional life, or various affinities of the official. An organizational COI arises where an organization fails or is impeded to act impartially due to outside activities or relationships it has with other entities.”

It is required of all participants of the civil aviation system to acknowledge such requirements above and manage the COI accordingly.

## **55. NCAA Staff Code – applicable to inspectors/authorised officers of the Authority Extracts (as approved by NCAA Board on 22 August 2018):**

### **“Service**

1. Always act with fairness and openness; respect the opinions of others and treat all with equality and dignity without regard to gender, race, colour, creed, and ethnicity, place of origin, political beliefs, religion, marital status, disability, age, or sexual orientation.
2. Promote the mission and objectives of the NCAA in all dealings with clients and the public on behalf of the NCAA.....

**Accountability**

1. Act with honesty and integrity and in accordance with the professional standards and / or governing laws and legislation that have application to the responsibilities you perform for or on behalf of the NCAA.
2. ....
3. Adhere to the policies and procedures of the NCAA and support the decisions and directions of the Board and its delegated authority.
4. Take responsibility for your actions and decisions. Follow reporting lines to facilitate the effective resolution of problems. Ensure that you do not exceed the authority of your position.

**Conflict of interest**

Conflict of interest arises when a person participates in a NCAA decision about a matter (including any contract or arrangement of employment, leasing, sale or provision of goods and services) which may benefit or be seen to benefit that person because of his/her direct or indirect financial interests affected by or involved in that matter.

It is the duty of any person taking part in the operations of the NCAA to adhere to the Conflict of Interest policy at all times.

In the event that a potential conflict arises, the person shall formally disclose the interest to their manager, refrain from attempting to persuade or influence other persons participating in the decision, and shall not in any way participate in decisions taken on the matter.

**Confidentiality**

1. Respect and maintain the confidentiality of information gained as an employee/staff member including, but not limited to, all computer software and files, NCAA business documents and printouts, as well as client, aviation industry or employee records.
2. Respect and maintain the confidentiality of individual personal information about persons or aviation operators regulated by NCAA.....”

**ANNEX A****NAMIBIAN CIVIL AVIATION AUTHORITY**  
**Civil Aviation Act No. 6 of 2016****REPORT: ALLEGATION/ COMPLAINT/ INFRINGEMENT**  
**(NON-COMPLIANCE/ VIOLATION )****As per:** Civil Aviation Act (a.o., sections 38/ Parts 10, 13 to 16);

Civil Aviation Regulations, 2001 (as amended – a.o., Parts 13, 185))

NCAA Enforcement Code

To:

Date: .....

The EXECUTIVE DIRECTOR

NCAA Head office,

No. 4 Rudolf Hertzog Street, Windhoek

email: to .....

From: (Name of person submitting complaint/allegations of breach/violation - required:)

\_\_\_\_\_

Address: \_\_\_\_\_ Place: \_\_\_\_\_

Contact details \_\_\_\_\_

Concerning:

(Name of person/entity whose conduct is the subject of this allegation/complaint – per available information :)

Description of allegation/complaint (required):

Provide a concise statement of the conduct that is the subject of allegations(s) of breach/violation or complaint (s) \_\_\_\_\_

1. Please attach to this form any relevant documents, as well as a typed statement describing the conduct that is the subject of this allegation / complaint, including -

- (a) the names of each party involved in the conduct;
- (b) the dates on which the conduct occurred;
- (c) a statement indicating when and how you became aware of the conduct, and
- (d) any other information your consider relevant.

2. Is the conduct continuing?

Yes:

No :

3. If not, when did the conduct/actions end?

Name and title of person authorised to sign (required):

\_\_\_\_\_  
Authorised signature:

Date: \_\_\_\_\_

For office Use only: of NCAA file number:

Date filed:

\_\_\_\_\_  
Please note:

If this allegation/complaint is lodged by a person other than an individual, please provide contact details of the person of the person authorized to discuss the allegation/complaint made.

**ANNEX B****Template for infringement/ investigation notice****NAMIBIA CIVIL AVIATION AUTHORITY****Infringement / Investigation Notice (Regulation Part 13)**

**TO:** \_\_\_\_\_

Whereas it appears on allegations(s)/complaint(s) made to the Authority and the Authority has decided it is necessary to conduct an inspection/investigation. The aim of the inspection/investigation is to establish the facts of the allegations(s)/complaint(s) by gathering as much relevant facts and information as possible

The allegations/complaints (as summarised here) are: \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Kindly note that the Authority's inspectors/investigators by the name of: (Mr/Ms/Mrs) \_\_\_\_\_ may also invite you to attend an inspection/investigation (or show cause hearing) meeting in order to give you an opportunity to give your side of the story. If this is required, you will be informed of the time and date of the meeting in advance and you may bring a representative with you to this meeting.

It is currently expected that the inspection/investigation will be conducted/completed on this date: \_\_\_\_\_.

Once the inspection/investigation has been completed, you will be informed in writing of the outcome. If the Authority finds that there is a case to answer, you will be issued with appearance notice or summons and thereafter issued with a Notice of investigation/hearing inviting you to attend a formal hearing/investigation to be conducted by the Authority in terms of the Civil Aviation Act No. 6 of 2016, or the Regulations.

In the meantime, should you have any information that might be of assistance to the inspection or investigation or wish to discuss anything, please do not hesitate to contact the Authority's above-named inspector/investigator (Mr/Ms/Mrs) at email address: \_\_\_\_\_ or at telephone number x: . \_\_\_\_\_

Issued at \_\_\_\_\_ this \_\_\_\_\_ day \_\_\_\_\_ 20 \_\_\_\_\_.

\_\_\_\_\_  
**SIGNATURE**  
**DESIGNATION**





## ANNEX C

## NAMIBIA CIVIL AVIATION AUTHORITY

## TEMPLATE FOR INFRINGEMENT/INVESTIGATION REPORT

## INFRINGEMENT/ INVESTIGATION REPORT

*This is a template infringement/investigation report that an inspector/investigator may adapt to suit the particular circumstances of his or her inspection/investigation or to reflect the individual circumstances or the needs of a case.*

Introduction	Inspection/ Investigation authorised by: [Name and role]
	<b>Inspector/ Investigator:</b> [Name and role]
	<b>Date inspection/investigation began:</b>
	<b>Terms of reference:</b> [include if they were amended and how]
	<b>Background to the inspection/investigation:</b> [Brief overview of the matter]

<b>Process of inspection/investigation</b>	<b>The inspection/investigation process:</b> [Explain how the inspection/investigation was authorised]
	<b>Evidence collected:</b> [List all evidence collected]
	<b>Evidence not collected:</b> [List all evidence that could not be collected and why]
	<b>Persons interviewed and what capacity they hold:</b> [List all people interviewed]
	<b>Persons not interviewed:</b> [List any witnesses that could not be interviewed and why]
	<b>Anonymous statements:</b> [If any, explain why and provide details of any enquiries into witness]

**The inspection/ investigation (if required, refer to annexes hereto) –**

**Summary of written and physical evidence:** [name and summarise each **documentation findings** contained, set out how the evidence supported or did not support your findings and why]

**Summary of witness evidence:** [name and summarise each witness statement, quote from statement where relevant, set out how the witness statement supported or did not support your findings and why]

**Facts established:** [detail what the investigation has established]

**Facts that could not be established:** [detail any part of the investigation that was in-conclusive]

**Mitigating factors:** [detail separately if there were any mitigating factors uncovered that are relevant to the investigation]

<b>Conclusion</b> [if required]	<b>Recommendation:</b>  <b>Formal action/Informal action/No action required</b>
	<b>Further details on recommendation:</b> [such as the type of action suggested for example, formal disciplinary meeting, and if there are any other recommendations related to the matter. In disciplinary matters, the investigator should not recommend a possible sanction. This should only be considered at a disciplinary hearing]
	<b>Investigator's signature:</b>  <b>Date:</b>
<b>Supporting documents</b>	[List all documents collected as part of investigation and included in report]

**Other relevant information:** [detail any other information that is relevant to the matter separate page)

ISSUED BY THE

NAMIBIA CIVIL AVIATION AUTHORITY

**ANNEX D****TEMPLATE FOR REMOVAL OF EVIDENCE RECEIPT****NAMIBIA CIVIL AVIATION AUTHORITY****Receipt for Removal of evidence from a person or premises**

(In terms of sections 47 and 48 of Civil Aviation Act 2016 (Act No. 6 of 2016)  
Part 13 of the Regulations.)

**REMOVED BY INSPECTOR:**

---

**DATE OF REMOVAL:**

---

**PREMISES REMOVED FROM:**

---

---

**FULL NAMES AND SURNAME AND ID NUMBER OF OWNER OF EQUIPMENT OR  
PERSON IN CHARGE OF PREMISES UPON REMOVAL OF EQUIPMENT:**

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**REASON FOR REMOVAL:**

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**DETAILED DESCRIPTION OF EQUIPMENT REMOVED:**

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**SIGNATURE OF OWNER / PERSON AT PREMISES**

---

**DATE**

---

**SIGNATURE OF NCAA INSPECTOR**

**ANNEX E****Template for  
SEARCH WARRANT / DETENTION/SEIZURE ORDER****NAMIBIA CIVIL AVIATION AUTHORITY  
SEARCH WARRANT/DETENTION/SEIZURE ORDER**

(In terms of sections 47 and 48 of Civil Aviation Act 2016 (Act No. 6 of 2016), NAMCARs 2001, as amended. (cf. Part 13 of the Regulations.)

**NCAA INSPECTOR/AUTHORISED OFFICER (Name):**

Whereas it appears on allegation complaint made to the Authority that there are reasonable grounds for suspecting that there is at the premises situated at:

- a) something in respect of which an offence/violation has been committed;
- b) something in respect of which an offence/violation is suspected on reasonable grounds to have been committed;
- c) something in respect of which there are reasonable grounds for believing that it will afford evidence as to the commission of an offence/violation;
- d) something in respect of which there are reasonable grounds for believing that it was used for the purpose of or in connection with the commission of an offence/violation;
- e) something in respect of which there are reasonable grounds for believing that it is intended to be used for purpose of committing an offence/violation,

to wit: \_\_\_\_\_

THIS IS THEREFORE, to direct the investigators/ inspectors to search during daytime the said premises and to detain or seize the said:

if found, and to take it before the Civil Aviation Authority of Namibia ("NCAA ") to be dealt with according to the Civil Aviation Act No. 6 of 2016 and regulations.

Issued at \_\_\_\_\_ this \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_.

\_\_\_\_\_  
**SIGNATURE (Magistrate)**

\_\_\_\_\_  
**DESIGNATION**



# ANNEX F

## TEMPLATE FOR APPEARANCE AT INVESTIGATION

### NAMIBIA CIVIL AVIATION AUTHORITY

#### SUMMONS/NOTICE TO APPEAR

#### IN TERMS OF SECTION 41 OF THE CIVIL AVIATION ACT No. 6 of 2016 and/or NAMCARS, 2001 (as amended)

To:	
Date:	
Physical Address:	
Postal Address:	
Telephone:	
Facsimile:	

You are herewith notified in terms of Sections 41/42/43 of the Civil Aviation Act of 2016 and/or NAMCARS, 2001 (as amended),

that on or about the \_\_\_\_\_, you are alleged to have committed an offence/ violation terms of section \_\_\_\_ of the Act and/or NAMCARS, 2001 (as amended) , in that you:

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The Authority may, after a hearing to determine the appropriate sanction/fine, impose any or all of the following sanctions/ fines of the Act, or if you admit the violation alleged in this summons or admit a different violation and the Authority accepts that admission:

- a) Impose a fine of \_\_\_\_\_ (Part 185.2/App. 2))

If you deny the violation alleged or the Authority does not accept your admission of a different violation the Authority may forward a request to prosecute the matter to the Prosecutor-General.

In terms of the Civil Aviation Act of 2016, and/or NAMCARS 2001, you must deliver a notice to the Authority, within thirty (30) days from the date of acknowledging receipt of this summons, indicating whether you admit any other offence/violation – RESPONSE TO SUMMONS/NOTICE” which is attached hereto.

Issued on this \_\_\_\_ day of the, \_\_\_\_\_ at \_\_\_\_\_

EXECUTIVE DIRECTOR OF CIVIL AVIATION  
(Namibia Civil Aviation Authority)

**ANNEX G****NAMIBIA CIVIL AVIATION AUTHORITY****ACKNOWLEDGEMENT OF RECEIPT BY ACCUSED/RESPONDENT/DEFAULTING PARTY :****ACKNOWLEDGEMENT OF RECEIPT:**

Full Name:	
Date:	
Place:	
Signature:	

**FOR OFFICE USE ONLY:**

DELIVERED BY:	
Full Name:	
Date:	
Place:	
Signature:	

**ANNEX H****Template for****NAMIBIA CIVIL AVIATION AUTHORITY****A NOTICE OF HEARING/APPEARANCE/ATTENDANCE****Reference No/ Case No:****In the matter between:**

---

**Plaintiff/  
Applicant /Complainant****And**

---

**Defendant/Defaulting/  
Respondent****NOTICE OF HEARING/APPEARANCE/ATTENDANCE****To:**

---

**At address:**

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**PLEASE TAKE NOTE THAT YOU HEREBY** are required to attend a hearing/make appearance

on (date) \_\_\_\_\_ at (time) \_\_\_\_\_ at the (place) \_\_\_\_\_;

1. The allegation(s)/complaint(s) against you are:

1.1

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2. You have the right:

- 2.1 to be present at the investigation/hearing.
- 2.2 to be given time to prepare your case.
- 2.3 to be given advance warning of the alleged violation/complaint.
- 2.4 to be advised of the allegations regarding the violation/complaint.



- 2.5 to be represented or assisted at the investigation/hearing by legal representative of your choice
  - 2.6 to ask questions of any evidence produced, or of statements by the witnesses.
  - 2.7 to call witnesses to testify on your behalf
  - 2.8 To use an interpreter. [In the event that an interpreter is required please indicate so in order for the Authority to secure the services of an interpreter.]
  - 2.9 to have a right of appeal against any administrative fine which may be imposed and conveyed to you.
3. It is your responsibility to arrange for your witnesses and representation and to ensure that they attend the investigation/hearing. An interpreter will be arranged for you if you so require, provided the Authority is advised of your need for an interpreter on the date of receipt of this notice.
4. Should you fail to attend the investigation/hearing without valid reason, or you obstruct the progress of the proceedings the Chairman has the discretion to proceed in your absence, to make a finding, and impose a fine, including that of suspension/imposition of conditions/ revocation of the aviation document (if any) in issue.

**Dated at Windhoek, on the \_\_\_\_\_ of \_\_\_\_\_ 20.....**

\_\_\_\_\_  
**SIGNATURE**

\_\_\_\_\_  
**DESIGNATION**

**ANNEX I****TEMPLATE FOR A WITNESS TO APPEAR****NAMIBIA CIVIL AVIATION AUTHORITY****Reference No/ Case No:****In the matter between:**

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**Applicant / Complainant/Plaintiff****And**

---

**Respondent/Defaulter/Defendant****WITNESS TO APPEAR**

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To the Sheriff or his deputy:-

Notify: \_\_\_\_\_

At address: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

That he/she is herewith ordered to personally appear before the Authority at the Authority's premises situated at No. 4 Rudolf Hertzog Str Windhoek, on the date \_\_\_\_\_ at \_\_\_\_\_ H \_\_\_\_\_ and to stay present until he/she is excused by the Chairperson in order to testify on at the hearing regarding matters of which he/she has knowledge regarding a Complaint/Application/Allegations submitted to the Authority by the Complainant/Defaulting/Responding party against the Respondent.

And further notify the abovementioned person that he/she may under no circumstances omit to comply with this appearance notice as he/she can otherwise expose him-/herself to a regulatory offence/violation in terms of the Civil Aviation Act of 2016/NAMCARS 2001 (as amended) and be liable to a fine to be determined by the Executive Director

**Dated at Windhoek on this the \_\_\_\_\_ day of \_\_\_\_\_ 20.....****ISSUED BY:** \_\_\_\_\_**DESIGNATION** \_\_\_\_\_

**ANNEX J****NAMIBIA CIVIL AVIATION AUTHORITY****RETURN OF SERVICE****ACKNOWLEDGEMENT OF RECEIPT:**

Full Name:	
Date:	
Place:	
Signature:	

**FOR OFFICE USE ONLY:**

DELIVERED BY:	
Full Name:	
Date:	
Place:	
Signature:	

**ANNEX K****GUIDELINES ON FAIR AND REASONABLE ADMINISTRATIVE ACTION  
(as acknowledged by precedents of Namibian courts)**

Administrative law decision-making in Namibia is generally summarised below. Adherence to these rules will assist functionaries of the NCAA to comply with its obligations accountability and good governance.

**1. Natural Justice (Procedural Fairness)**

- **Hearing Rule.** Persons affected by NCAA's decisions have a right to be heard.
  - **Rule Against Bias.** Decision-makers should not have a **personal** or **pecuniary interest** in the outcome of their decisions. Neither may decision-makers prejudge (or **pre-determine**) matters in respect of which they are called upon to make a decision.
2. A decision-maker must not act for **improper purposes**. Even if the purposes for which a particular decision are lawful, the decision may only be taken for the purposes specifically authorised by the law under which the decision has been taken.
  3. A decision-maker must not take any **irrelevant considerations** into account in coming to a decision.
  4. A decision-maker must take all **relevant considerations** into account in coming to a decision.  
[**Note:** Applicable Policy Is Always A Relevant Consideration.]
  5. A decision-maker must act on the basis of **evidence**, not mere supposition or speculation.
  6. A decision-maker must not formulate requirements in **vague** or **uncertain terms**.
  7. A decision-maker must not **inflexibly apply policy** (although departures from policy will normally need to be justified).
  8. A decision-maker must not **act under influence** (although this does not preclude adherence to formal directions, compliance with lawful conditions in relation to the process by which a decision is taken or the obligation to consult in the process of considering a decision).
  9. A decision-maker must decide the matter within a **reasonable time**.
  10. A decision maker must not act in a way that is manifestly **unreasonable**. A decision must not be so unreasonable that no reasonable person would make such a decision.

**Annex L 1****NOTICE TO CEASE AND DESIST**

Date

To (address)

Dear.....

**NOTICE IN TERMS OF NCAA ENFORCEMENT CODE Para. 48**

This letter is served upon you consequent upon an action(s) by you against provisions of the NCAA Enforcement Code. In particular you have been found to have been using .....  
.....  
which serves as a serious risk to civil aviation safety and security.

Further steps will be taken if you do not cease and desist from continuing with the abovementioned activity within 24/48 hours further steps as set out in the Civil Aviation Act of 2016 and the Civil Aviation Regulations. This could include appropriate sanctions and/or punitive fines. Hopefully, this recourse is not necessary as we are required to protect the interests of civil aviation safety and security vigorously.

You will not receive another letter regarding this order. You must confirm in writing to us within 24/48 hours that you will cease with the impugned action. Failure to do so will lead to steps on enforcement as prescribed.

**EXECUTIVE DIRECTOR: CIVIL AVIATION**

Receipt acknowledged:

Name: ..... Signature.....

Place .....DATE AND TIME :

**Annex L 2**

## LETTER OF WARNING

Date

To (address)

FINAL WARNING LETTER: In re:.....

Dear.....

You receive this FINAL WARNING letter consequent upon an action(s) by you against provisions of the Civil Aviation Act of 2016 and the Civil Aviation Regulations.

In particular you have been found to have acted .....  
which serves as a serious risk to civil aviation safety and security.

Further steps will be taken if you repeat the abovementioned act(s). This could include appropriate sanctions and/or punitive fines. In view of the serious nature of the violation you are required to (subject yourself to a fit and proper person test ito of sect 68 of the Act / submit an updated corrective action plan by.....(date).

You will not receive another letter regarding this order. You must confirm in writing to us within 24/48 hours that you will comply with this warning. Failure to do so will lead to steps on enforcement as prescribed.

EXECUTIVE DIRECTOR: CIVIL AVIATION

Receipt acknowledged:

Name: ..... Signature..... P  
lace ..... DATE AND TIME :

**Annex L3****THE NAMIBIA CIVIL AVIATION AUTHORITY****WINDHOEK**

In the matter between:

**XXXXXXX**

**APPLICANT**

and

**THE EXECUTIVE DIRECTOR OF CIVIL AVIATION  
XXXXX**

**1<sup>ST</sup> DEFENDANT  
2<sup>ND</sup> DEFENDANT**

---

**SETTLEMENT AGREEMENT**

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The parties hereby agree as follows:

**WHEREAS**

- (1) The Plaintiff has instituted action in the xxxxx, Windhoek under case number **I** which claims related to a decision by the first Defendant to suspend Plaintiff's Airline Transport Pilot License.
- (2) The Plaintiff has agreed to accept the sum of **N\$xxxxx-00** in full and final settlement of the claim set out under case number **I xxxxxx**.
- (3) As part of the settlement the Plaintiff shall withdraw case number **I xxxxxx** and abandon a claim in his favour ordering the First Defendant to reinstate to Plaintiff his Airline Transport Pilot License. The parties note that the Plaintiff has complied with the terms of this provision of this agreement.
- (4) The First and Second Defendants shall pay the sum of **N\$xxxxxx** and this sum shall be payable in three (3) equal instalments on (dates) **xxx and xxx** respectively. This amount is in full and final settlement of all claims as between Plaintiff and First and Second Defendants.
- (5) The parties shall keep the agreement between them confidential. This agreement contains all the terms agreed to by the parties and replaces all previous discussions, understandings, and agreements.

Signed at **Windhoek** on this      day of **(date) xxxx** in the presence of the undersigned witnesses.

As Witnesses:

1. \_\_\_\_\_
2. \_\_\_\_\_

\_\_\_\_\_  
**XXXXXXXXXX**  
On behalf of **XXXXXXXXXX**  
(Address)  
**WINDHOEK, NAMIBIA**

Signed at **Windhoek** on this \_\_\_\_\_ day of **(date)** in the presence of the undersigned witnesses.

As Witnesses:

1. \_\_\_\_\_
2. \_\_\_\_\_

\_\_\_\_\_  
**EXECUTIVE DIRECTOR: NCAA**  
For and on behalf of First & Second Defendants'