

# REPRINT

## CIVIL AVIATION ACT 2008

**As in force at: 5 February 2024**

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	For details see Endnotes
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**AN ACT TO CONSOLIDATE AND AMEND THE LAW RELATING TO CIVIL AVIATION IN SOLOMON ISLANDS, TO ESTABLISH RULES OF OPERATION AND DIVISIONS OF RESPONSIBILITY WITHIN THE SOLOMON ISLANDS CIVIL AVIATION SYSTEM, TO ENSURE THAT THE OBLIGATIONS OF SOLOMON ISLANDS UNDER INTERNATIONAL AVIATION AGREEMENTS ARE IMPLEMENTED AND TO REPEAL THE CIVIL AVIATION ACT [CAP. 47] AND THE AIRCRAFT (TOKYO, HAGUE AND MONTREAL CONVENTIONS) ACT [CAP. 46] AND RELATED MATTERS.**

## CIVIL AVIATION ACT 2008

### Table of provisions

<b>PART I</b>	<b>PRELIMINARY .....</b>	<b>1</b>
1	Short title and commencement	1
2	Interpretation	1
3	Act binds the Crown	11
4	Application	11
<b>PART II</b>	<b>THE MINISTER, THE CIVIL AVIATION AUTHORITY AND THE DIRECTOR: FUNCTIONS, POWERS, DUTIES AND DELEGATIONS .....</b>	<b>13</b>
<b>Division 1</b>	<b>Minister</b>	<b>13</b>
5	Functions and objectives of Minister	13
6	Power to remove dangerous obstructions	14
7	Restrictions in the use of land	15
8	Acquisition of land	16
<b>Division 2</b>	<b>Civil Aviation Authority of Solomon Islands</b>	<b>16</b>
9	Establishment of Authority	16
10	Objective and functions of Authority	17
11	Compliance with Government policy directions	18
12	Other powers	18
13	Contracting of functions and powers	18
14	Use of "Civil Aviation Authority"	19
<b>Division 3</b>	<b>Director</b>	<b>19</b>
15	Director of Civil Aviation	19
16	Powers of Director in relation to examinations, etc.	21
17	Director may require or carry out safety and security inspections and monitoring	21
18	Power of Director to investigate holder of aviation document	22
19	Power of Director to suspend aviation document or impose conditions	22

20	Power of Director to revoke aviation document or impose conditions	24
21	Criteria for action taken under section 19 or 20	25
22	Power of Director to amend or revoke aviation document in other cases	26
23	Powers of Director to detain aircraft, seize aeronautical products, and impose prohibitions and conditions and powers in relation to dangerous goods	27
24	General power of entry	29
<b>Division 4      Delegations of Functions and Powers</b>		<b>30</b>
25	Delegation by Minister to Authority	30
26	Delegation by Authority to employees	31
27	Delegation by Director to employees	33
28	Delegation by Authority or Director to persons outside Authority	33
<b>Division 5      Aviation Special Fund</b>		<b>35</b>
28A	Establishment and source of Fund	35
28B	Control and management of the Fund	35
28C	Purposes of the Fund	36
28D	Application of other Acts to Aviation Special Fund	37
<b>PART III      REGISTRIES AND INFORMATION SERVICES.....</b>		<b>37</b>
29	The Solomon Islands Register of Aircraft	37
30	Civil Aviation Registry	37
31	Information services	38
<b>PART IV      RULES.....</b>		<b>38</b>
32	Interpretation	38
33	Power of Minister to make ordinary rules	38
34	Rules relating to safety and security	39
35	Rules relating to airspace	40
36	Rules for noise abatement purposes	40
37	Rules relating to general matters	41
38	Power of Director to make emergency rules	43
39	Procedures relating to rules	43
40	Matters to be taken into account in making rules	43

41	Procedures for making ordinary rules	44
42	Making ordinary rules by adoption	45
43	No requirement for translation or sale of adopted rules	48
44	Amendments to adopted rules in country of origin	48
45	Procedures for making emergency rules	49
46	Incorporation by reference	50
47	Exemption power of Director	51

## **PART V                    REGULATIONS, FEES AND CHARGES..... 52**

48	Regulations	52
49	Fees and charges	53
50	Rebates	54
51	Payment of fees and charges	54
52	Suspension or revocation of aviation document where prescribed fees or charges unpaid	55
53	Recovery of fees and charges	56

## **PART VI                    THE SOLOMON ISLANDS CIVIL AVIATION SYSTEM: ENTRY, GENERAL REQUIREMENTS, RESPONSIBILITIES AND PROTECTIONS ..... 56**

54	General requirements for participants in the Solomon Islands civil aviation system	56
55	Requirement for aviation document	57
56	Application for aviation document	58
57	Grant or renewal of aviation document	59
58	Criteria for fit and proper person test	60
59	Rights of persons affected by proposed adverse decisions	61
60	Requirement to register aircraft	64
61	Responsibilities of pilot-in-command and operator	64
62	Nuisance, trespass, and responsibility for damage	66

## **PART VII                    MEDICAL CERTIFICATION ..... 68**

63	Interpretation	68
64	Power of Director to grant recognition to a foreign medical certificate	68
65	Changes in medical condition of licence holder	69
66	Medical disclosure	71
67	Extension from expiry of medical certificate	71

68	Investigation of medical condition of licence holder	71
69	Revocation, suspension, amendment, and surrender of medical certificate	72
70	Right of appeal	74
71	Savings	75

## **PART VIII      ACCIDENT AND INCIDENT INVESTIGATION ..... 75**

72	Obligation to notify all accidents and incidents	75
73	Authority to further notify certain accidents and incidents	75
74	Director to take further action	76
75	Appointment of Chief Investigator and referral of accident or incident	77
76	Functions of Chief Investigator	77
77	General powers of Chief Investigator	78
78	Powers of entry and investigation	79
79	Conduct of investigation	80
80	Appointment of investigators or assessors	81

## **PART IX      DISCLOSURE AND ADMISSIBILITY OF ACCIDENT AND INCIDENT INVESTIGATION INFORMATION ..... 82**

81	Interpretation	82
82	Circumstances of disclosure, and admissibility, of certain investigation records	83
83	Circumstances of disclosure of cockpit recordings and certain investigation records supplied to the Chief Investigator	84
84	Admissibility of cockpit recordings and certain investigation records	85
85	Disclosure of record before civil proceedings commenced	85
86	Disclosure of record in pending civil proceedings	86
87	Provisions in relation to application under section 85 or 86	86
88	Court may order record to be produced	87
89	Restriction on publication of reports of proceedings	87
90	Further provisions relating to disclosure of records	88
91	Certain actions do not constitute disclosure	88
92	Admissibility of accident or incident findings, recommendations, or report	89
93	Investigators not compellable to give opinion evidence in certain proceedings	89

**PART X                    AVIATION SECURITY ..... 89**

94	Aviation security	89
95	Responsibility of Minister	90
96	Authorised aviation security service providers	90
97	Functions and duties of Aviation Security Service	90
98	Further provisions relating to Aviation Security Service	92
99	Functions and duties of other aviation security service providers	92
100	Powers and duties of Director to require screening and search	93
101	Powers and duties of aviation security officer relating to dangerous goods	95
102	Security designated aerodromes, navigation installations and servicing facilities	96
103	Right of access	96
104	Security areas	97
105	Screening and search of passengers and baggage	98
106	Screening and search of other persons and things	99
107	Search of persons declining to allow screening or search	100
108	Screening and search of checked baggage, cargo and mail	101
109	Evidence of offences	102
110	Powers of aircraft commander	102
111	Power to search persons on aircraft	105
112	Arrest of person delivered to Police	105
113	Power of arrest and detention by aviation security officers	106
114	Powers of Police	107

**PART XI                    INTERNATIONAL AIR SERVICES ..... 107**

**Division 1                    General                    107**

115	Interpretation	107
116	Scheduled international air service not to be carried on except pursuant to licence	108
117	Application for licence	108

**Division 2                    Scheduled International Air Service Licences  
for Solomon Islands International Airlines                    109**

118	Minister to be licensing authority for Solomon Islands international airlines	109
119	Notice of application	109

120	Consideration of application for scheduled international air service licence by Solomon Islands international airlines	109
121	Scheduled international air service licence may be granted subject to conditions	110
122	Duration of scheduled international air service licence	110
123	Renewal of scheduled international air service licence	111
124	Variation of terms and conditions of scheduled international air service licence	111
125	Transfer of scheduled international air service licence	112
<b>Division 3</b>	<b>Scheduled International Air Service Licences for Foreign International Airlines</b>	<b>112</b>
126	Minister to be licensing authority for foreign international airlines	112
127	Consideration of application for scheduled international air service licence by foreign international airlines	113
128	Scheduled international air service licence may be granted subject to conditions	113
129	Duration of scheduled international air service licence	114
130	Renewal of scheduled international air service licence	114
131	Variation of terms and conditions of scheduled international air service licence	114
<b>Division 4</b>	<b>Open Aviation Market Licences</b>	<b>115</b>
132	Minister may designate countries or territories for open aviation market licences	115
133	Minister to be licensing authority	115
134	Consideration of application for open aviation market licence	116
135	Open aviation market licence may be granted subject to conditions	116
136	Duration of open aviation market licences	117
137	Renewal of open aviation market licences	117
138	Variation of terms and conditions of open aviation market licence	117
139	Transfer of open aviation market licences	118
140	Right to operate non-scheduled international flights	118
<b>Division 5</b>	<b>Requirements on Licensees</b>	<b>118</b>
141	Insurance cover against liability	118
142	Returns to be furnished	119

<b>Division 6</b>	<b>Suspension and Revocation of Licences</b>	<b>119</b>
143	Suspension of licences	119
144	Revocation of licences	119
<b>Division 7</b>	<b>Non-scheduled International Flights</b>	<b>120</b>
145	Commercial non-scheduled international flight not to be operated except as authorised by Minister	120
<b>Division 8</b>	<b>No Exemption from Regulations and Rules</b>	<b>120</b>
146	This Part is in addition to regulations and rules	120
<b>Division 9</b>	<b>Prohibition of Smoking on Air Routes</b>	<b>121</b>
147	Prohibition on smoking	121
<b>Division 10</b>	<b>International Air Carriage Competition</b>	<b>122</b>
148	Authorisation of contracts, arrangements and understanding relating to international carriage by air	122
149	Commission regime and tariffs	124
<b>PART XII</b>	<b>INTERNATIONAL CARRIAGE BY AIR .....</b>	<b>125</b>
<b>Division 1</b>	<b>General</b>	<b>125</b>
150	Interpretation	125
151	Application of Guadalajara Convention	126
152	Conventions to have force of law	127
153	Inconsistency between French and English texts	127
154	Limitation of liability	128
155	Value of special drawing right	129
156	Time for bringing proceedings	130
157	Action against Parties to High Contracting Parties	131
158	Action against Parties to Montreal Convention	131
159	Designation of Parties	132
160	Article 40A of amended Convention	133
161	Power to exclude aircraft in use for military purposes	133
<b>Division 2</b>	<b>Transitional Provisions</b>	<b>133</b>
162	Occurrences before commencement of this Part	133



163	High Contracting Parties not Party to Hague Protocol	133
164	High Contracting Parties not Party to Montreal Protocol	134
165	High Contracting Parties not Party to Protocol No 4	134
166	High Contracting Parties not Party to Protocol No 2	135
167	High Contracting Party or party not Party to Montreal Convention	135
168	Currency equivalent notices	137
169	Regulations	137

## **PART XIII SAFETY OFFENCES..... 138**

170	Endangerment caused by holder of aviation document	138
171	Operating aircraft in careless manner	138
172	Dangerous activity involving aircraft, aeronautical product, or aviation related service	139
173	Failure to comply with inspection or monitoring requirement	140
174	Court may disqualify holder of aviation document or impose conditions on holder of document in respect of certain offences	140
175	Acting without necessary aviation document	140
176	Acting without required medical certificate	141
177	Fraudulent, misleading, etc., statements to obtain medical certificate	141
178	Failure to disclose information required by Director	142
179	Additional penalty for offences involving commercial gain	142
180	Effect of disqualification	142
181	Commencement of period of disqualification	143
182	Retention and custody of document	143
183	Removal of disqualification	143
184	Particulars of disqualification orders, etc., to be sent to Director	144
184A	Presence of alcohol in person's blood	144

## **PART XIV GENERAL OFFENCES ..... 145**

185	Applying for aviation document while disqualified	145
186	Communicating false information or failing to disclose information relevant to granting or holding of aviation document	145
187	Carrying on scheduled international air service without licence	146
188	Operating unauthorised non-scheduled international flight or carrying on non-scheduled international flight contrary to licence	146

189	Obstruction of persons duly authorised by Director	147
190	Failure to produce or surrender documents	147
191	Trespass	147
192	Failure to maintain accurate records	148
193	Failure to notify emergency breach	148
194	Failure to notify accident or incident	148
195	Offences relating to disclosure of records	149
196	Offences relating to publication of reports of proceedings or publication of records	149
197	Failure to provide identifying information	149
198	Contravention of emergency rule, prohibition, or condition	149
199	Flight over foreign country without authority or for improper purpose	150

**PART XV            OFFENCES RELATED TO  
ENDANGERMENT OF AIRCRAFT AND  
AIRPORTS ..... 151**

200	Application	151
201	Offences relating to international airports	152
202	Offences against sections 201 and 203 deemed to be included in extradition treaties	153
203	Offences relating to airports not being international airports	154
204	Endangering the public at an airport	154
205	Disruptive or alarming conduct at an airport	154
206	Security area offences	155
207	Offences of impersonation or obstructions of authorised persons	156
208	Communicating false information affecting safety	156
209	Taking firearms, explosives, etc., on to aircraft	157
210	Taking firearms, explosives, etc., into a security area	157
211	Hijacking	158
212	Offences in connection with hijacking	158
213	Other offences relating to aircraft	159
214	Offences deemed to be included in extradition treaties	160
215	Application of sections 211, 212, and 213	160
216	Application of certain provisions of the Penal Code	162

**PART XVI            UNRULY PASSENGER OFFENCES..... 162**

217	Application of this Part	162
218	Liability for unruly passenger	162
219	Liability for other offences	163

220	Consent of the Director of Public Prosecutions	163
221	Strict liability for acts endangering safety	163
222	Disruptive conduct towards crew member	163
223	Interference with aircraft	164
224	Intoxicated persons on aircraft	164
225	Non-compliance with commands given by pilot-in-command	165
226	Offensive behaviour or words	165
227	Portable electronic devices not to be operated	165
228	Non-compliance with seating and seatbelt instructions	165
229	No smoking	166
230	Dangerous goods	166
231	Procedure for certain unruly passenger offences	166
<b>PART XVII      RIGHTS OF APPEAL .....</b>		<b>168</b>
232	Appeals to Minister or Authority	168
233	Appeal to High Court on question of law	169
234	Appeals on disqualifications	169
<b>PART XVIII      MISCELLANEOUS PROVISIONS .....</b>		<b>169</b>
235	Evidence and proof	169
236	Evidence of air traffic services provider	171
237	Obligation to identify pilot-in-command	171
238	Infringement notices	172
239	Repeals, revocation, amendments and savings	172
<b>SCHEDULE 1</b>		<b>174</b>
	Provisions relating to the Civil Aviation Authority of Solomon Islands	174
<b>SCHEDULE 2</b>		<b>177</b>
	Form of Notice of Making Rules By Adoption	177
<b>SCHEDULE 3</b>		<b>178</b>
	The Warsaw Convention (as amended by The Hague Protocol of 1955 and the Montreal Additional Protocols Nos 1 and 2 and Protocol No 4 of 1975)	178
<b>SCHEDULE 4</b>		<b>211</b>
	The Guadalajara Convention	211

## **SCHEDULE 5**

The Montreal Convention

**216**

216

# CIVIL AVIATION ACT 2008

As in force at: 5 February 2024

## PART I PRELIMINARY

### 1 Short title and commencement

- (1) This Act may be cited as the *Civil Aviation Act 2008*.
- (2) This Act comes into force on the first appointed day and the second appointed day appointed by the Minister, by notice in the *Gazette*, in accordance with the following paragraphs:
  - (a) Parts I to XI and Parts XIII to XVIII and Schedules 1 and 2 shall be brought into force first (hereinafter referred to as “the first appointed day”); and
  - (b) thereafter Part XII and Schedules 3, 4 and 5 shall be brought into force (hereinafter referred to as “the second appointed day”).

### 2 Interpretation

In this Act unless the context otherwise requires:

**“*accident*”** means an occurrence that is associated with the operation of an aircraft and takes place between the time any person boards the aircraft with the intention of flight and such time as the person has disembarked and the engine or any propellers or rotors come to rest, being an occurrence in which:

- (a) a person is fatally or seriously injured as a result of:
  - (i) being in the aircraft;
  - (ii) direct contact with any part of the aircraft, including any part that has become detached from the aircraft; or
  - (iii) direct exposure to jet blast,

except when the injuries are self-inflicted or inflicted by other persons, or when the injuries are to stowaways hiding outside the areas not normally available to passengers and crew; or

- (b) the aircraft sustains damage or structural failure that:
  - (i) adversely affects the structural strength, performance, or flight characteristics of the aircraft; and
  - (ii) would normally require major repair or replacement of the affected component,

except engine failure or damage that is limited to the engine, its cowlings, or accessories, or damage limited to propellers, wing tips, antennas, tyres, brakes, fairings, small dents, or puncture holes in the aircraft skin; or

- (c) the aircraft is missing or is completely inaccessible; or
- (d) an offence has been committed under Part XV or XVI in respect to hijacking, violence against passengers or crew, destroying, damaging or endangering the safety of an aircraft or destroys or substantially damages any facility or substantially disrupted flight services at an airport;

**“act of violence”** means an act which, if committed in Solomon Islands, would constitute:

- (a) an offence under section 199, 200, 215, 217, 218, 222, 223, 224, 227, 230, 231(1) and (2), 240, 241, 244, 245 or 247 of the *Penal Code*;
- (b) an offence under section 22, 42 or 44 of the *Firearms and Ammunition Act*; or
- (c) an offence under section 8(1)(d)(ii) of the *Explosives Act*;

**“adverse decision”** has the meaning given to it in section 59(1);

**“aerodrome”**:

- (a) means any defined area of land or water intended or designed to be used either wholly or partly for the landing, departure, and

surface movement of aircraft; and

- (b) includes any building, installation, and equipment on or adjacent to any such area of land or water used in connection with the aerodrome or its administration;

**“aerodrome control service”** means an air traffic control service provided for the control of aerodrome traffic;

**“aerodrome flight information service”** means a service provided for the purpose of giving advice and information useful for the safe and efficient conduct of flights in the vicinity of an aerodrome;

**“aerodrome traffic”** means:

- (a) all traffic in the manoeuvring area of an aerodrome; and
- (b) all aircraft flying in the vicinity of an aerodrome;

**“aerodrome traffic circuit”** means the pattern flown by aircraft operating in the vicinity of an aerodrome;

**“aeronautical product”** means anything that comprises or is intended to comprise any part of an aircraft or that is or is intended to be installed in or fitted or supplied to an aircraft, and includes fuel and other similar consumable item necessary for the operation of the aircraft;

**“aircraft”** means any machine that can derive support in the atmosphere from the reactions of the air, other than by the reactions of the air against the surface of the earth;

**“aircraft flying in the vicinity of an aerodrome”** means any aircraft that is in, entering, or leaving an aerodrome traffic circuit;

**“air service”** means an air transport service or an aerial work service, whether regular or casual;

**“air traffic”** means all aircraft in-flight or operating on any manoeuvring area of an aerodrome;

**“air traffic control service”** means a service provided for the purposes of:

- (a) preventing collisions within a controlled airspace:
  - (i) between aircraft; and
  - (ii) between aircraft and obstructions on any manoeuvring area; and
- (b) expediting and maintaining a safe and efficient flow of air traffic;

**“air traffic service”** includes:

- (a) any aerodrome control service;
- (b) any area control service;
- (c) any approach control service;
- (d) any flight information service;
- (e) any aerodrome flight information service;
- (f) any alerting service; and
- (g) any other air traffic service considered by the Director to be necessary or desirable for the safe and efficient operation of the civil aviation system;

**“alerting service”** means an air traffic service provided to notify appropriate organisations regarding aircraft in need of search and rescue aid, and to assist such organisations as required;

**“approach control service”** means any air traffic control service for arriving or departing controlled flights;

**“approved organisation”** means:

- (a) an aeronautical authority of a contracting State of ICAO; or
- (b) an organisation or body declared to be an approved organisation by the Minister under section 5(1)(e);

**“area control service”** means an air traffic control service provided for controlled flights in controlled airspace;



**“authorised person”**, for the purposes of Parts X and XV, means:

- (a) any aviation security officer;
- (b) any person appointed in writing by the Minister or the Director as an authorised person for the purposes of Part IX;
- (c) any police officer;
- (d) any officer of the Department of Customs and Inland Revenue or the Immigration Department; or
- (e) any employee or agent of a carrier authorised in writing by the carrier as an authorised person for the purposes of sections 105, 106 and 108;

**“Authority”** means the Civil Aviation Authority of Solomon Islands established by section 9;

**“aviation document”** means any licence, permit, certificate, or other document issued under this Act to or in respect of any person, aircraft, aerodrome, aeronautical procedure, aeronautical product, or aviation related service;

**“aviation related service”** means any equipment, facility, or service including any air traffic service (but excluding any accident or incident investigation service performed under Part VIII) operated in support of or in conjunction with the civil aviation system, and includes the provision of aeronautical products;

**“aviation security officer”** means a person employed as such in the Aviation Security Service;

**“Aviation Security Service”** means the Aviation Security Service established under section 10(2)(c);

**“baggage”**, in relation to any contract of carriage, means checked baggage or baggage, personal effects, or other articles, not being checked baggage, in the possession of the passenger, or in the possession of another person (being a person accompanying the passenger or an employee or agent of the carrier) whether the contract of carriage is for international carriage or domestic carriage;

**“cargo”**, in relation to any contract of carriage, means all kinds of movable property, including animals; but does not include baggage and mails or postal articles whether the contract of carriage is for international carriage or domestic carriage;

**“carrier”**, in relation to any contract of carriage, includes a contracting carrier and an actual carrier whether the contract of carriage is for international carriage or domestic carriage;

**“Civil Aviation Registry”** or **“Registry”** means the Registry established under section 30;

**“commander”**, in relation to an aircraft, means the pilot for the time being in lawful command of the aircraft;

**“contract”**, in relation to any contract of carriage, includes an arrangement made without consideration whether the contract of carriage is for international carriage or domestic carriage;

**“controlled airspace”** means an airspace of defined dimensions within which an air traffic control service is provided in respect of controlled flights;

**“controlled flight”** means any flight that is provided with or required by rules made under this Act to make use of an air traffic control service;

**“Convention”** means the Convention on International Civil Aviation signed in Chicago on the 7th day of September 1944 and includes:

- (a) any amendment to the Convention that has entered into force under Article 94(a) of the Convention and has been ratified by Solomon Islands;
- (b) any Annex or amendment to any Annex accepted under Article 90 of the Convention, to the extent adopted by Solomon Islands; and
- (c) the international standards and recommended practices accepted and amended by the International Civil Aviation Organisation under Article 37 of the Convention to the extent adopted by Solomon Islands;

**“dangerous goods”** means articles or substances that are capable of posing risk to health, safety, property, or the environment and:

- (a) are listed in, or classified in accordance with the ICAO’s *Technical Instructions for the Safe Transportation of Dangerous Goods by Air*, or
- (b) while not so listed or classified, nevertheless have features or properties that in the opinion of the Director might reasonably qualify such articles or substances for listing or classification as dangerous goods under the ICAO’s *Technical Instructions for the Safe Transportation of Dangerous Goods by Air*;

**“directive”** means an instruction issued under section 42(7);

**“Director”** means the Director of Civil Aviation appointed under section 15;

**“flight information service”** means an air traffic service provided for the purpose of giving advice and information intended for the safe and efficient conduct of flights;

**“Hague Convention”** means the Convention for the Suppression of Unlawful Seizure of Aircraft, done at The Hague on the 16th day of December 1970;

**“holder”**, in relation to any aviation document, includes any person lawfully entitled to exercise privileges in respect of that document;

**“ICAO”** means the International Civil Aviation Organisation established under the Convention; and includes any successor to the Organisation;

**“in-flight security officer”** means any aviation security officer designated and authorised under section 97(c) to provide security services on board aircraft on the ground and in-flight both within and outside Solomon Islands;

**“incident”** means any occurrence, other than an accident, that is associated with the operation of an aircraft and affects or could affect the safety of operation;

**“international airport”** means any airport designated as an airport of entry and departure for international air traffic where the formalities incident to customs, immigration, public health, animal and plant quarantine, and similar procedures are carried out;

**“judicial officer”** means a High Court judge or a Magistrate;

**“manoeuvring area”**:

- (a) means that part of an aerodrome to be used for the take-off and landing of aircraft and for the surface movement of aircraft associated with take-off and landing; but
- (b) does not include areas set aside for loading, unloading, or maintenance of aircraft;

**“Minister”** means the Minister responsible for civil aviation;

**“Ministry”** means the Government department responsible for the administration of this Act;

**“Montreal Convention”** means the Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation, done at Montreal on the 23rd day of September 1971;

**“Montreal Protocol”** means the Protocol for the Suppression of Unlawful Acts of Violence at Airports Serving International Civil Aviation, done at Montreal on 24 February 1988;

**“navigation installation”**:

- (a) means any building, facility, work, apparatus, equipment, or place, (whether or not part of an aerodrome) that is intended to assist in the control of air traffic or as an aid to air navigation; and
- (b) includes any land adjacent to any such building, facility, work, apparatus, equipment, or place, and used in connection therewith;

**“operate”**, in relation to an aircraft, means to fly or use the aircraft, or to cause or permit the aircraft to fly, be used, or be in any place, whether or not the person is present with the aircraft; and **“operator”**

has a corresponding meaning;

**“owner”**, in relation to any aircraft, includes any person lawfully entitled to the possession of the aircraft for 28 days or longer;

**“passenger”**, in relation to any contract of carriage, means a person carried pursuant to a contract of carriage of that person whether the contract of carriage is for international carriage or domestic carriage, and includes a person who has reported to an employee or agent of the carrier for the purpose of going on board an aircraft pursuant to a contract to carry him as a passenger;

**“Permanent Secretary”** means the Permanent Secretary of the Ministry;

**“PICASST”** means the Pacific Islands Civil Aviation Safety and Security Treaty opened for signature at Apia, Samoa on 7 August 2004 and ratified by the Government of Solomon Islands on 7 June 2006;

**“pilot-in-command”**, in relation to any aircraft, means the pilot responsible for the operation and safety of the aircraft;

**“prescribed”** means prescribed by this Act or its regulations or rules;

**“prohibited item”**, in addition to the items described in paragraphs (a) to (d) of section 209(1) and paragraphs (a) to (d) of section 210(1), includes:

- (a) any blunt, pointed or bladed item capable of being used to cause injury;
- (b) any chemical, toxic, explosive or highly combustible substance posing a risk to the health of passengers or crew or the security or safety of aircraft;
- (c) any property or object capable, or appearing capable, of discharging a projectile or causing injury; or
- (d) any items that:
  - (i) are listed in, or classified in accordance with, the ICAO's *Security Manual for Safeguarding International Civil*

*Aviation Against Acts of Unlawful Interference; or*

- (ii) while not so listed or classified, nevertheless have features or properties that in the opinion of the Director might reasonably qualify such items for listing or classification as prohibited items under the ICAO's *Security Manual for Safeguarding International Civil Aviation Against Acts of Unlawful Interference* or other document issued by ICAO after the commencement of this Act in replacement or substitution of the *Security Manual for Safeguarding International Civil Aviation Against Acts of Unlawful Interference*;

**“rules”** means ordinary rules and emergency rules made under Part IV;

**“security area”** means an area declared as such under section 104;

**“security designated aerodrome”** means an aerodrome designated as a security aerodrome under section 102;

**“security designated navigation installation”** means a navigation installation designated as a security navigation installation under section 102;

**“security designated servicing facility”** means

- (a) an aircraft hangar;
- (b) a fuel storage area;
- (c) an in-flight services preparation facility or premises used for the handling of cargo, baggage or mail;
- (d) any other premises, building, structure or place to which the public has no right of access and in which a service is rendered in conjunction with, or to facilitate the operation of, an airport or aircraft or an air transport service whether or not such premises, building, structure or place are situated within the boundaries of an airport designated as a servicing facility under section 102;

**“smoke”** means to smoke, hold, or otherwise have control over an

ignited tobacco product, weed, or plant;

**“Solomon Islands”** includes its land territory and internal waters, its archipelagic waters and territorial seas and airspace thereover as defined in the *Delimitation of Marine Waters Act* [Cap.95];

**“Solomon Islands Register of Aircraft”** or **“Register”** means the register established under section 29;

**“Solomon Islands aircraft”** means an aircraft registered as such under section 60(1)(a) or required to be registered in Solomon Islands under this Act;

**“Tokyo Convention”** means the Convention on Offences and Certain Other Acts Committed on Board Aircraft, done at Tokyo on the 14th day of September 1963.

### **3 Act binds the Crown**

- (1) Subject to subsection (2), this Act shall bind the Crown.
- (2) This Act or its regulations or rules do not apply to carriage of persons, cargo and baggage in a military aircraft or an aircraft leased for such purpose, except as otherwise provided in this Act or any other written law.
- (3) For the purpose of subsection (2), a certificate issued by the Minister responsible for foreign affairs that any aircraft is or is not a military aircraft shall be conclusive evidence of the fact certified.

### **4 Application**

- (1) Subject to sections 147 and 199 and Part XVI, this Act applies to the following:
  - (a) any person, aircraft, aerodrome, aeronautical product, air service, and aviation related service, in Solomon Islands;
  - (b) any Solomon Islands registered aircraft whether within or outside Solomon Islands;
  - (c) any holder of an aviation document while outside Solomon Islands and exercising or purporting to exercise privileges

accorded by that document; and

- (d) any foreign registered aircraft operating in Solomon Islands.
- (2) Notwithstanding subsection (1), the Minister may, acting on the recommendation of the Authority or the Director, by agreement with the appropriate foreign aeronautical authority:
- (a) transfer to the aeronautical authority in the country of a foreign operator all or part of the responsibility for a Solomon Islands registered aircraft operated by that foreign operator that the Authority or the Director has under this Act or its regulations or rules;
  - (b) vest in the Authority or the Director, as the case may require, all or part of the responsibility for foreign registered aircraft operated by a Solomon Islands operator that arises under this Act or its regulations or rules; or
  - (c) grant exemptions from this Act and its regulations and rules, relevant to any exercise of the Minister's powers under this subsection.
- (3) Any Solomon Islands registered aircraft shall, while being operated over the high seas, be operated in a manner that complies with the Rules of the Air contained in Annex 2 of the Convention.
- (4) Except where an act is required in order to comply with the laws of any foreign state, any holder of an aviation document who, while outside Solomon Islands and exercising or purporting to exercise the privileges accorded by that document, commits an act that would constitute an offence if it were committed in Solomon Islands, shall be deemed to have committed an offence under this Act and may be proceeded against in Solomon Islands as if the act had occurred within Solomon Islands.
- (5) Nothing in this section shall be interpreted as requiring a person or aircraft to contravene or be operated in contravention of a law of a foreign state that applies to or in respect of the person or aircraft.
- (6) Nothing in this Act shall be interpreted as limiting the privileges or immunities of:



- (a) any foreign military aircraft; or
  - (b) the officers and crew of any foreign military aircraft.
- (7) For the purposes of this Act, an aircraft is in service from the time when pre-flight preparation of the aircraft by ground personnel or by the aircraft's crew begins for a specific flight until (whichever is the later in time):
- (a) the flight is cancelled;
  - (b) twenty-four hours after the aircraft, having commenced the flight, lands;
  - (c) the aircraft, having commenced the flight, makes a forced landing and any competent authorities referred to in subsection (2) assume responsibility for the aircraft and for persons and property on board the aircraft; or
  - (d) the aircraft, having commenced the flight, ceases to be in-flight.

## **PART II            THE MINISTER, THE CIVIL AVIATION AUTHORITY AND THE DIRECTOR: FUNCTIONS, POWERS, DUTIES AND DELEGATIONS**

### **Division 1            Minister**

#### **5                      Functions and objectives of Minister**

- (1) The functions of the Minister are:
- (a) to promote safety and security in civil aviation;
  - (b) to administer the participation of Solomon Islands in the Convention and any other international aviation convention, agreement, or understanding to which Solomon Islands is a party;
  - (c) to administer the Government's interest in aerodromes and associated services and facilities established, maintained and operated by the Government;

- (d) to make rules under this Act;
  - (e) to declare an organisation or body to be an approved organisation; and
  - (f) to contract, in consultation with the Authority and the Director, with one or more approved organisations for the provision of advice and recommendations to the Director in relation to the granting and renewal of aviation documents.
- (2) Without limiting subsection (1), the Minister shall, in the exercise of his functions, have regard to the following objectives:
- (a) to undertake his functions in a way that contributes to the aim of achieving an integrated, safe, responsive and sustainable aviation transport system; and
  - (b) to ensure that the obligations of Solomon Islands under international civil aviation agreements are implemented.

## **6 Power to remove dangerous obstructions**

- (1) The Minister may, in writing, direct the removal of any building, structure, erection, tree or other thing whatsoever on any land or water which may constitute a danger to aircraft flying in accordance with normal aviation practice.
- (2) The Minister may, in writing, authorise any appropriate person to remove or to alter to such extent as may be specified in the directive, such building, structure, erection, tree or thing which is in contravention of a directive given under subsection (1).
- (3) A copy of a directive given under subsection (1) shall be served upon the owners or occupiers of any land, building, or structure affected by such directive.
- (4) Any person suffering loss or damage in consequence of a directive given under subsection (1) shall be paid compensation and, in default of agreement, the amount of such compensation shall be determined by a court.
- (5) Where a directive is issued in relation to a Government owned airport

the compensation shall be paid by the Government and where the directive is issued in relation to any other airport the compensation shall be paid by the owner of that airport.

- (6) Notwithstanding other subsections, no compensation shall be payable for any loss or damage suffered in consequence of a directive given under this section if the building, structure, erection, tree or thing has been erected or planted in contravention of any rule or regulation.

## **7 Restrictions in the use of land**

- (1) For the purpose of ensuring the safety of aircraft flying in accordance with normal aviation practice, the Minister may make regulations restricting the use of land in the vicinity of airports, and such regulations may prohibit or restrict:
  - (a) the erection of buildings, structures or other things in any area specified;
  - (b) the planting of, or the limitation of the height of, any trees in any area specified;
  - (c) the sowing or growing of any plant or crop in any area specified;  
or
  - (d) the bringing of vehicles into or the anchoring or mooring of any vessel in any area specified.
- (2) Any owner or occupier of land who suffers loss or damage in consequence of any regulations made under subsection (1) is entitled to compensation but only if the owner or occupier submits a claim, within 6 months after publication of such regulations:
  - (a) for Government owned airport, to the Minister; or
  - (b) in any other case, to the owner of other airport.
- (3) For the purpose of subsection (2):
  - (a) any loss or damage shall be assessed having regard only to circumstances in existence at the time of the publication of such regulations;

- (b) the maximum amount of compensation payable under this section shall not exceed the amount by which the market value of such land is reduced as a result of making such a regulation; and
- (c) if the parties do not agree to the amount of compensation, the amount shall be determined by the court.

## **8 Acquisition of land**

For the purposes of this Act, the Minister may authorise the acquisition of land by agreement or, where agreement is not possible, he may in consultation with the Minister responsible for Lands, make a declaration to that effect and that purpose shall be deemed to be a public purpose to which Division 2 of Part V of the *Land and Titles Act* shall apply.

## **Division 2 Civil Aviation Authority of Solomon Islands**

### **9 Establishment of Authority**

- (1) There shall be established under this section a body corporate (within the meaning of Part VII of the *Interpretation and General Provisions Act*) called the Civil Aviation Authority of Solomon Islands, consisting of the following members:
  - (a) the Attorney General or his or her nominee;
  - (b) the Permanent Secretary for the Ministry; and
  - (c) a member who is a director general or chief executive officer or equivalent of a civil aviation authority of a member State of ICAO being a signatory to PICASST, to be appointed by the Minister in consultation with Cabinet.
- (2) The Director or any other employee of the Authority shall not be a nominee of the Attorney General.
- (3) The provisions of Schedule 1 shall apply in relation to the Authority.
- (4) The Minister may defer the operation of the Authority until such time as the Authority is able to operate as body corporate and until such

time:

- (a) the functions, powers, responsibilities and duties of the Authority under this Act shall vest in and be performed by the Permanent Secretary; and
- (b) references to “Authority” in this Act or rules, shall be read, subject to any modification as the context requires, as references to “Permanent Secretary”.

## **10 Objective and functions of Authority**

- (1) The objective of the Authority is to undertake the safety, security, and other functions in a way that contributes to the aim of achieving an integrated, safe, responsive and sustainable aviation transport system.
- (2) Without limiting section 5, the functions of the Authority are:
  - (a) to promote civil aviation safety and security in Solomon Islands;
  - (b) to promote civil aviation safety and security beyond Solomon Islands in accordance with the international obligations of Solomon Islands;
  - (c) to establish a service to be called the Aviation Security Service;
  - (d) to appoint where required a Chief Investigator to investigate and review any accident or incident in accordance with Part VIII;
  - (e) to maintain and preserve records and documents relating to activities within the civil aviation system, and in particular to maintain the Solomon Islands Register of Aircraft and the Civil Aviation Registry;
  - (f) to ensure the collection, publication, and provision of charts and aeronautical information, and to enter into arrangements with any other person or organisation to collect, publish, and distribute such charts and information;
  - (g) to provide to the Minister, the Director or a Chief Investigator such information, advice, service or resource which may assist in the implementation of this Act and its regulations and rules;

- (h) to promote safety and security in the civil aviation system by providing safety and security information and advice, and fostering safety and security information education programmes;
  - (i) to enter into technical or operational arrangements with any civil aviation authority of another country; and
  - (j) to carry out other functions given to it under this Act or any other written law.
- (3) The Authority shall carry out any other civil aviation functions and duties that:
  - (a) are conferred on it by this Act or any other written law; and
  - (b) the Minister may prescribe by regulations.

## **11 Compliance with Government policy directions**

- (1) In the exercise of its functions and powers under this Act, the Authority shall have regard to the policy of the Government in relation to civil aviation, and shall comply with any directions relating to that policy given to it in writing and signed by the Minister.
- (2) The Minister shall not give any direction under subsection (1) which requires the Authority to do, or refrain from doing, a particular act, or bring about a particular result, in respect of any particular person or persons.

## **12 Other powers**

- (1) The Authority has other powers or authority conferred on it under this Act or any other law.
- (2) The Authority shall not exercise any of its rights, powers, or privileges except for the purpose of performing its functions.

## **13 Contracting of functions and powers**

Subject to this Act, the Authority shall, in the course of performing its functions and powers, consider whether it could most efficiently and effectively perform those functions and powers by means of its own

operations or by delegating or contracting out those operations to appropriate persons selected after an appropriate competitive process.

#### **14 Use of “Civil Aviation Authority”**

No company or other body shall be incorporated or registered under a name that contains the words “Civil Aviation Authority” or under any name that so resembles such a name as to be likely to deceive, and no individual shall use such words, except the Authority or any person authorised in writing by the Authority.

### **Division 3 Director**

#### **15 Director of Civil Aviation**

- (1) There shall be a Director of Civil Aviation to be appointed by the Minister on the recommendation of the Authority.
- (2) The Director shall have and may exercise such functions and powers as may be conferred or imposed on the Director by this Act, or its regulations or rules, and such functions and powers as may be delegated to the Director by the Authority under section 26.
- (3) Without limiting subsection (2), the Director shall:
  - (a) exercise control over entry into the civil aviation system through the granting of aviation documents under this Act; and
  - (b) take such action as may be appropriate in the public interest to enforce this Act and its regulations and rules, including the carrying out or requiring of inspections and monitoring.
- (4) In performing or exercising any functions or powers in relation to:
  - (a) the granting of aviation documents;
  - (b) the suspension of aviation documents;
  - (c) the revocation of aviation documents;
  - (d) the issuance, suspension, or revocation of medical certificates;

- (e) the granting of exemptions; or
- (f) the enforcement of this Act or any other Act, or of rules or regulations made under this or that other Act,

in respect of any particular case, the Director shall act independently and shall not be subject to the directions of the Minister, the Authority or any other persons for the performance or exercise of such functions or powers.

- (5) Without limiting subsection (2), where the Director believes on reasonable grounds:
  - (a) that an unsafe condition exists in any aircraft or aeronautical product; and
  - (b) that condition is likely to exist or develop in any other aircraft or aeronautical products of the same design,

the Director may, by notice in the *Gazette*, issue an airworthiness directive in respect of aircraft or aeronautical products of that design.

- (6) An airworthiness directive issued under subsection (5) comes into force on the date specified in the directive, which may be a date earlier than the date of notification of the issuing of the directive in the *Gazette* under subsection (5), if:
  - (a) the Director considers that urgent action is required;
  - (b) the Director notifies the affected parties before the directive comes into force; and
  - (c) notification of the issuing of the directive is given in the *Gazette* not later than 28 days after the directive comes into force.
- (7) If for any reason the Director is unable to perform his functions, powers and duties under this Act, such functions, powers and duties may be exercised and performed by:
  - (a) any officer or employee directed in writing by the Authority; or
  - (b) any other person appointed by the Authority,



whether the direction or appointment has been given or made before the absence or vacancy occurs or while the absence or vacancy continues.

- (8) No direction or appointment pursuant to subsection (7), and no acts done by any employee or other person acting pursuant to any such direction or appointment, shall in any proceedings be questioned on the ground that the occasion for the direction or appointment had not arisen or had ceased, or on the ground that the officer or employee or other person has not been appointed to any position to which the direction or appointment relates.
- (9) No person employed within the Aviation Security Service shall be given any direction or appointment by the Authority under subsection (7) without the prior written approval of the Minister.

**16 Powers of Director in relation to examinations, etc.**

For the purposes of granting or renewing aviation documents under this Act, the Director may set, conduct, and administer examinations and tests, conduct flight testing, and carry out such other functions in relation to such examinations, tests, and flight testing as may be necessary.

**17 Director may require or carry out safety and security inspections and monitoring**

- (1) The Director may in writing require any person who:
  - (a) holds an aviation document; or
  - (b) operates, maintains, or services, or does any other act in respect of any aircraft, aeronautical product, aviation related service, air traffic service, or aeronautical procedure,to undergo or carry out such inspections and such monitoring as the Director considers necessary in the interests of civil aviation safety and security.
- (2) Notwithstanding subsection (1), the Director may, carry out such inspections and monitoring as the Director considers necessary in the interests of civil aviation safety and security.

- (3) For the purposes of subsection (2), the Director may, in writing, direct such person to provide any information as the Director considers relevant to the inspection or the monitoring.

**18 Power of Director to investigate holder of aviation document**

- (1) The Director may, in writing, require any holder of an aviation document to undergo an investigation conducted by the Director if the Director believes, on reasonable grounds, that it is necessary in the interests of civil aviation safety and security, and if the Director:
  - (a) has reasonable grounds to believe that the holder has failed to comply with any conditions of an aviation document or with the requirements of section 54; or
  - (b) considers that the privileges or duties for which the document has been granted are being carried out by the holder in a careless or incompetent manner.
- (2) If the Director requires a holder to undergo an investigation, the Director shall:
  - (a) conclude the investigation as soon as practicable; and
  - (b) in writing, inform the holder of:
    - (i) the date on which the investigation will begin; and
    - (ii) the results of the investigation, including any recommendations arising out of the investigation, and the grounds for such recommendations.

**19 Power of Director to suspend aviation document or impose conditions**

- (1) The Director may suspend any aviation document issued under this Act or its rules or impose conditions in respect of any such document, if he considers such action is necessary in the interests of safety, and if he:
  - (a) considers such action is necessary to ensure compliance with this Act or its rules; or

- (b) is satisfied that the holder has failed to comply with any conditions of an aviation document or with section 54; or
  - (c) is satisfied that the holder has contravened or failed to comply with section 186; or
  - (d) considers that the privileges or duties for which the document has been granted are being carried out by the holder in a careless or incompetent manner.
- (2) Without limiting subsection (1), if the Director considers that there is reasonable doubt as to the airworthiness of the aircraft or as to the quality or safety of the aeronautical product or service to which the document relates, the Director may:
  - (a) suspend any aviation document relating to the use of any aircraft, aeronautical product, or the provision of any service; or
  - (b) impose conditions on such document.
- (3) The suspension of any aviation document and any conditions imposed under subsection (1) or (2) remain in force until the Director determines what action, if any, referred to in subsection (4) is to be taken; but any such suspension or conditions expire 10 working days after the date that the suspension or conditions are imposed unless, before the expiry of that 10-working day period, the Director extends the suspension or conditions for a further specified period.
- (4) The Director may take one or more of the following actions:
  - (a) impose conditions for a specified period;
  - (b) withdraw any conditions;
  - (c) suspend any aviation document for a specified period;
  - (d) revoke or partially revoke any aviation document under section 20.
- (5) If notice of a proposed revocation of an aviation document is given under section 59, either at the same time as the suspension of the document under this section is imposed or while the suspension is in force, the document to which the notice relates remains suspended

until the Director finally decides whether to revoke the document under section 20.

- (6) Any person whose aviation document has been suspended or made subject to conditions under subsection (4) shall forthwith produce that document to the Director for appropriate endorsement.
- (7) The whole or any part of an aviation document may be suspended under this section.
- (8) Any person in respect of whom any decision is taken under this section may appeal against that decision under Part XVII.

**20      Power of Director to revoke aviation document or impose conditions**

- (1) The Director may, if he considers it necessary in the interests of aviation safety after an inspection, monitoring, or investigation carried out under this Act, revoke an aviation document or impose permanent conditions on an aviation document.
- (2) Revocation under this section may be in respect of the whole or any part of an aviation document.
- (3) If the Director proposes to take action under this section, he shall give notice in accordance with section 59, which applies as if the proposed action were a proposed adverse decision under this Act.
- (4) A person whose aviation document is revoked or made subject to permanent conditions under this section shall:
  - (a) if the document is made subject to permanent conditions or revoked in part, immediately produce the document to the Director for appropriate endorsement;
  - (b) if the whole document is revoked, immediately surrender the document to the Director.
- (5) Any person in respect of whom any decision is taken under this section may appeal against that decision under Part XVII.

## **21            Criteria for action taken under section 19 or 20**

- (1) This section applies for the purpose of determining whether an aviation document should be suspended or made subject to conditions under section 19 or revoked or made subject to conditions under section 20.
- (2) If this section applies, the Director may have regard to, and give such weight as the Director considers appropriate to, the following matters:
  - (a) the person's compliance history with aviation transport safety regulatory requirements;
  - (b) any conviction for any aviation transport safety offence, whether or not:
    - (i) the conviction was in a Solomon Islands court; or
    - (ii) the offence was committed before the commencement of this Act;
  - (c) any evidence that the person has committed any aviation transport safety offence or has contravened or failed to comply with any rule;
  - (d) any other matters and evidence as may be relevant.
- (3) The Director may:
  - (a) seek and receive such information as the Director thinks fit; or
  - (b) consider information obtained from any source.
- (4) If the Director proposes to take into account any information that is or may be prejudicial to a person, the Director shall, subject to subsection (5):
  - (a) as soon as is practicable; or
  - (b) for the suspension of an aviation document or the imposition of conditions under section 19, within 5 working days after suspending the aviation document or imposing conditions,

disclose that information to that person and give that person a reasonable opportunity to refute or comment on it.

- (5) Nothing in subsection (4) requires the Director to disclose:
- (a) any information, the disclosure of which would endanger the safety of any person; or
  - (b) any information or the fact of non-disclosure of that information, before suspending an aviation document or imposing conditions in respect of an aviation document under section 19.

## **22 Power of Director to amend or revoke aviation document in other cases**

- (1) The Director may, upon written request by the holder of any aviation document, amend that document in the manner requested or revoke that document.
- (2) Subject to subsection (3), the Director may:
- (a) amend any aviation document to reflect the fact that any privilege or duty for which the document has been granted is no longer being carried out, or is no longer able to be carried out, by the holder;
  - (b) revoke any aviation document if none of the privileges or duties for which the document has been granted are being carried out, or are able to be carried out, by the holder; or
  - (c) amend any aviation document to correct any clerical error or obvious mistake on the face of the document.
- (3) Before a decision is made under subsection (2), the Director shall, in writing, notify the holder of the proposed decision and give the holder the opportunity to comment or make submissions on it.
- (4) The power to amend an aviation document under this section includes:
- (a) the power to revoke the document and issue a new document in its place; and

- (b) the power to impose reasonable conditions.
- (5) When the holder of an aviation document is notified that specified action is proposed under this section, the holder shall forthwith produce the document to the Director.

**23 Powers of Director to detain aircraft, seize aeronautical products, and impose prohibitions and conditions and powers in relation to dangerous goods**

- (1) If the Director believes on reasonable grounds that the operation or use of any aircraft or aeronautical product or any class of aircraft or aeronautical products may endanger persons or property, the Director may, upon application, apply for a warrant to a judicial officer who may issue such warrant authorizing the Director to do all or any of the following:
  - (a) detain the aircraft or any aircraft of that class;
  - (b) seize the aeronautical product or any aeronautical products of that class; or
  - (c) prohibit or impose conditions on the operation of the aircraft or aircraft of that class, or the use of any aeronautical product or any aeronautical products of that class.
- (2) Where the Director believes on reasonable grounds that the operation or use of any aircraft or aeronautical product or any class of aircraft or aeronautical products may endanger persons or property and that prompt action is necessary to prevent the danger, the Director may do all or any of the following:
  - (a) prohibit or impose conditions on the operation of any aircraft or all aircraft of that class;
  - (b) prohibit or impose conditions on the use of the aeronautical product or aeronautical products of that class; or
  - (c) detain any aircraft or seize any aeronautical product where necessary in order to prevent its operation or use.
- (3) Any detention or seizure under subsection (1) or (2) shall be

maintained for only such time as is necessary in the interest of safety; but, if the aircraft, aeronautical product, or part of it is required for the purpose of evidence in any prosecution under this Act, such aircraft, product or part may be retained by the Director for such period as the Director considers necessary for that purpose.

- (4) The Director shall, if requested by the owner or the person-in-charge of an aircraft detained or an aeronautical product seized under subsection (1), provide in writing to the owner or that person the reasons for the detention or seizure.
- (5) Any person in respect of whom any decision is taken under this section may appeal against that decision under Part XVII.
- (6) For the purpose of subsections (1) and (2), the Director shall notify the owner or person-in-charge of any prohibitions or conditions as the Director considers necessary by such means of communication, whether or not of a permanent nature, as the Director considers appropriate in the circumstances.
- (7) The Director may search any receptacle, container, package or goods, offered for carriage by air, if the Director believes on reasonable grounds that the receptacle, container, package or goods, may contain dangerous goods that are:
  - (a) forbidden for carriage under the Technical Instructions;
  - (b) not classified, documented, certificated, described, packaged, marked or labelled in accordance with the Technical Instructions; or
  - (c) not in the condition for shipment pursuant to the Technical Instructions.
- (8) The Director may seize and detain any dangerous goods offered for carriage by air that are of a nature described in any of paragraphs (a) to (c) of subsection (7) for the purpose of:
  - (a) preventing the carriage by air of such dangerous goods;
  - (b) use as evidence in any prosecution under this Act or any other written law; or



- (c) the safe disposal of such dangerous goods, if authorised by this Act or any other written law.
- (9) Any seizure or detention under subsection (8) may be maintained only for such time as is necessary to achieve the relevant purpose or purposes in subsection (8).

## **24 General power of entry**

- (1) For the purpose of carrying out his functions, duties, or powers under this Act or its regulations or rules, a person duly authorised by the Director has a right of access at any reasonable time to the following:
  - (a) any aircraft, aerodrome, building, or place;
  - (b) any document or record concerning any aircraft, aeronautical product, or aviation related service.
- (2) Without limiting the power conferred by subsection (1), a person duly authorised by the Director who has reasonable grounds to believe that:
  - (a) any breach of this Act or of its regulations or rules is being or about to be committed;
  - (b) a condition imposed under any civil aviation document is not being complied with; or
  - (c) a situation exists within the civil aviation system or is about to exist that constitutes a danger to persons or property,may at any reasonable time enter any aircraft, aerodrome, building, or place, and carry out an inspection to determine whether or not a matter referred to in paragraphs (a) to (c) exists.
- (3) Any person who is authorised to enter any aircraft, aerodrome, building, or place under subsection (1) or (2):
  - (a) may require any person who is in possession of an aviation document, or of any certificate, book, manual, record, list, notice, or other document that is required to be kept under this Act or its regulations or rule, to produce or surrender it; and

- (b) shall, if a document is surrendered under paragraph (a), inform the relevant aviation document holders orally, as soon as practicable, and in writing that the document has been surrendered.
- (4) For the purposes of subsection (1) or (2), no person shall enter any dwelling house, or any meeting house or building associated with a meeting house unless the person acts under a warrant which may be issued by a judicial officer on application on oath if the judicial officer is satisfied that the entry is essential to enable the inspection to be carried out.
- (5) Any warrant issued under subsection (4) shall be directed to a named person and shall be valid for a period of 1 month from the date of its issue or such lesser period as the judicial officer considers appropriate, and the period of validity shall be shown in the warrant.
- (6) Any person exercising the power of entry conferred by subsection (1) or (2) shall carry a written authority issued by the Director specifying:
  - (a) the name of the person and his official designation; and
  - (b) the nature and extent of authorization and the power to be exercised under subsections (1) and (2).
- (7) Any person exercising the power of entry under subsections (1) and (2) shall produce the written authority and evidence of identity:
  - (a) if practicable, on first entering the aircraft, aerodrome, building, or place; and
  - (b) whenever subsequently reasonably required to do so.
- (8) A police officer has the power to exercise any or all of the powers conferred on a person who has been duly authorised by the Director under this section.

## **Division 4            Delegations of Functions and Powers**

### **25            Delegation by Minister to Authority**

- (1) The Minister may, by notice in the *Gazette*, delegate to the Authority

any of his functions or powers under this Act.

- (2) No delegation under this section shall include the power to sub-delegate under this section.
- (3) The power of the Minister to delegate under this section:
  - (a) is subject to section 33(8) and to any prohibitions, restrictions, or conditions contained in any other Act in relation to the delegation of the Minister's functions or powers; but
  - (b) does not limit any power of delegation conferred on the Minister by any other Act.
- (4) Subject to any general or special directions given or conditions imposed by the Minister, the Authority may exercise any functions or powers so delegated to the Authority in the same manner and with the same effect as if they had been conferred on the Authority directly by this section and not by delegation.
- (5) Where the Authority purports to act pursuant to any delegation under this section, the Authority shall, in the absence of proof to the contrary, be presumed to be acting in accordance with the terms of the delegation.
- (6) No such delegation shall affect or prevent the exercise of any function or power by the Minister, nor shall any such delegation affect the responsibility of the appropriate Minister for the actions of any person acting under the delegation.

## **26 Delegation by Authority to employees**

- (1) The Authority may, by notice in the *Gazette*, either generally or particularly, delegate to the Director or any other employee of the Authority any of its functions and powers under this Act or any other written law, or under any regulations or rules made under this Act, including functions or powers delegated to the Authority under this Act.
- (2) The Authority shall not delegate any functions or powers delegated to the Authority by the Minister without the written consent of the Minister.

- (3) If the Authority has delegated any functions or powers to any employees of the Authority under this section, that employee may, with the prior approval in writing of the Authority, delegate to any other employee of the Authority such of those functions or powers as are so approved.
- (4) No delegation of any functions and powers delegated to the Director by the Authority under this section shall be delegated by the Director under subsection (3) without the written consent of the Authority.
- (5) Subject to any general or special directions given or conditions imposed by the Authority, any employee of the Authority to whom any functions or powers are delegated under this section may perform those functions and exercise those powers in the same manner and with the same effect as if such functions and powers had been conferred or imposed on that employee directly by this Act and not by delegation.
- (6) Any employee of the Authority purporting to act pursuant to any delegation under this section shall, in the absence of proof to the contrary, be presumed to be acting in accordance with the terms of the delegation.
- (7) Any delegation under this section may be made to an employee or class of employees or to a holder of an office or class of holders of offices of the Authority.
- (8) No delegation under this section shall affect or prevent the performance of any function or the exercise of any power by the Authority, nor shall any such delegation affect the responsibility of the Authority for the actions of any employee of the Authority acting under the delegation.
- (9) Any delegation under this section shall, until it is revoked, continue in force according to its tenor, notwithstanding the fact that the employee of the Authority by whom it was made may cease to hold office, and shall continue to have effect as if made by the employee holding that office.
- (10) Any employee of the Authority purporting to act under any delegation under this section shall when reasonably requested to do so produce evidence of his or her authority to so act.

- (11) The Authority may not delegate any function or power that does not relate to the functions or powers of the Aviation Security Service to any person in the Aviation Security Service or outside that Service without the prior written approval of the Minister.

**27        Delegation by Director to employees**

- (1) The Director may, by notice in the *Gazette*, either generally or particularly, delegate to any employee of the Authority any of the Director's functions and powers under this Act or any other written law, or under any regulations or rules made under this Act, including functions or powers delegated to the Director under this Act.
- (2) No delegation under this section shall include the power to sub-delegate under this section.
- (3) Notwithstanding subsection (1), the Director shall not delegate:
- (a) any functions or powers delegated to the Director by the Authority without the written consent of the Authority; or
  - (b) the power under section 20 to revoke an aviation document.
- (4) Section 26 applies to delegations under this section as if:
- (a) references in those provisions to the Authority were references to the Director; and
  - (b) references in those provisions to the Director or to any employee of the Authority were references to any employee of the Authority other than the Director.

**28        Delegation by Authority or Director to persons outside Authority**

- (1) Subject to this section, the Authority may, by notice in the *Gazette*, either generally or particularly, delegate to any person who is not an employee of the Authority any of the Authority's functions and powers under this Act or its regulations or rules.
- (2) Subject to this section, the Director may either generally or particularly delegate to any person who is not an employee of the Authority any of the Director's functions and powers under this Act or

its regulations or rules, other than:

- (a) the power under section 20 to revoke aviation documents; or
  - (b) the power under section 52 to suspend or revoke aviation documents for non-payment of fees and charges.
- (3) No delegation shall be made under this section without the written consent of the Minister.
- (4) In any case where the Authority or the Director has delegated any functions or powers to any person under this section, that person may, with the prior approval in writing of the Minister, delegate to any other person such of those functions or powers as are so approved.
- (5) Subject to any general or special directions given or conditions imposed by the Authority or the Director, any person to whom any functions or powers are delegated under this section may perform those functions and exercise those powers in the same manner and with the same effect as if they had been conferred or imposed on that person directly by this Act and not by delegation.
- (6) Any delegation under this section may be made to a person or class of persons or to a holder or class of holders of offices.
- (7) Any delegation under this section shall be given for a specified period but in any event shall be revocable at will.
- (8) No delegation under this section shall affect or prevent the performance of any function or the exercise of any power by the Authority or by the Director, nor shall any such delegation affect the responsibility of the Authority or the Director, for the actions of any person acting under the delegation.
- (9) Any delegation under this section shall, until it is revoked or it expires, continue in force according to its tenor, notwithstanding the fact that the person by whom it was made may cease to hold office, and shall continue to have effect as if it was made by the person holding that office.
- (10) Any person purporting to act under any delegation under this section shall when reasonably requested to do so produce evidence of his or

her authority to so act.

- (11) Any person who exercises any function or power under a delegation made under this section may charge the person in respect of whom the function or power is exercised a reasonable fee in respect of the exercise of that function or power.
- (12) Neither the Authority nor the Director may delegate any function or power that does not relate to the functions or powers of the Aviation Security Service to any person in the Aviation Security Service or outside that Service without the prior written approval of the Minister.

## **Division 5          Aviation Special Fund**

### **28A          Establishment and source of Fund**

The Aviation Special Fund ("Fund"), established under section 24A of the *Civil Aviation Act* (Cap. 47) shall continue as such under this section, as a special Fund pursuant to section 100(2) of the *Constitution*, into which shall be paid:

- (a) any money appropriated by Parliament for such purposes;
- (b) any prescribed air navigation fees paid in respect of aircraft of a prescribed class that operate within the airspace above the territory of Solomon Islands; and
- (c) money from other sources received on behalf of the Fund, whether by way of donation or under any other written law.

### **28B          Control and management of the Fund**

- (1) The Authority shall control and manage the Fund, subject to any directions given under subsection (2) which the Authority shall comply with.
- (2) Subject to section 28C, the Minister of Finance may give written directions on the control and management of the Fund to the Authority, including:
  - (a) the manner in which payments from the money held in the Fund are to be made; and

- (b) the purposes for which the money held in the Fund may be expended.

## **28C      Purposes of the Fund**

- (1) The Fund is established for the purposes of operating, developing and maintaining aviation infrastructure and facilities in Solomon Islands in accordance with international safety standards, and shall only be expended for such purposes, including one or more of the following purposes:
  - (a) development and maintenance of landside or airside infrastructure and facilities of airports;
  - (b) development and maintenance of any other aviation infrastructure and facilities not referred to in paragraph (a) that are necessary for the operation of aviation;
  - (c) payment of financial obligations under international service agreements and other contracts relating to the operation of aviation;
  - (d) payment of membership fees to national, regional and international aviation bodies;
  - (e) development and training of human resources in accordance with international safety standards;
  - (f) any other purposes authorised, in writing, by the Minister for Finance.
- (2) In this section:

***‘airside infrastructure and facilities’*** means infrastructure and facilities on the part of an airport where members of the public who are not travelling on a plane are not authorised to access;

***‘landside infrastructure and facilities’*** means infrastructure and facilities on the part of an airport where members of the public who are not travelling on a plane are authorised to access.



## **28D      Application of other Acts to Aviation Special Fund**

- (1) Sections 5(3), 21(2) and 38(1)(a)(v) and (2)(a) of the *Public Finance and Audit Act* apply to the Fund, as if it were a Special Fund under those sections.
- (2) The Fund is without prejudice to the National Transport Fund established under the *National Transport Fund Act 2009*.

## **PART III            REGISTRIES AND INFORMATION SERVICES**

### **29            The Solomon Islands Register of Aircraft**

The Authority shall establish and maintain a register to be called the Solomon Islands Register of Aircraft.

### **30            Civil Aviation Registry**

- (1) The Authority shall establish a Civil Aviation Registry.
- (2) Copies or appropriate evidence of the following shall be recorded and maintained at the Registry:
  - (a) any current aviation document;
  - (b) the Solomon Islands Register of Aircraft;
  - (c) any regulation or rule made under this Act;
  - (d) any material incorporated into a rule by reference under section 46;
  - (e) any accident and incident notification given under Part VIII;
  - (f) any airworthiness directive issued by the Director under section 15(5);
  - (g) any delegation, authorisation, and exemption granted in writing under this Act;
  - (h) the address for service of any current applicant for an aviation document and of any current aviation document holder;

- (i) all information collected under section 31.
- (3) Documents kept at the Registry shall be made available by the Authority for inspection by the public free of charge.

### **31 Information services**

- (1) The Authority shall ensure that an information service is provided which shall comprise the collection and dissemination of aeronautical information and instructions relating to the safety, regularity, and efficiency of air navigation.
- (2) The Authority shall ensure that such information and instructions are readily available to any person upon payment of a reasonable charge fixed by the Authority.

## **PART IV RULES**

### **32 Interpretation**

In relation to any of the Minister's powers to make ordinary rules in this Part, **“make”** is deemed to include the power of the Minister to adopt by reference any civil aviation rule part or rule parts of a foreign jurisdiction pursuant to section 42.

### **33 Power of Minister to make ordinary rules**

- (1) The Minister may make rules (in this Act called “ordinary rules”) for all or any of the following purposes:
  - (a) the implementation of the obligations of Solomon Islands under the Convention;
  - (b) the provision of aviation meteorological services, search and rescue services, and civil aviation security programmes and services;
  - (c) any matter related or reasonably incidental to any of the following:
    - (i) the Minister's functions under sections 5, 6, 7 and 8;
    - (ii) the Authority's functions under section 10; and

- (iii) the Director's functions under section 15; and
  - (d) any other matter contemplated under this Act.
- (2) Any ordinary rule may apply generally or with respect to different classes of aircraft, aerodromes, aeronautical products, aeronautical procedures, or aviation related services, or with respect to the same class of aircraft, aerodrome, aeronautical product, aeronautical procedure, or aviation related service in different circumstances.
- (3) Any ordinary rule may apply generally throughout Solomon Islands or within any specified part or parts of Solomon Islands.
- (4) The commencement of any ordinary rule may be wholly suspended until it is applied by the Minister by notice in the *Gazette*.
- (5) No ordinary rule shall be invalid only because it confers any discretion upon or allows any matter to be determined or approved by the Authority or the Director or any other person, or allows the Authority or the Director or any other person to impose requirements as to the performance of any activities.
- (6) No breach of any ordinary rule shall constitute an offence against this Act unless that offence is prescribed by regulations.
- (7) So far as any bylaws of any local authority are inconsistent with or repugnant to any rule made under this Act in force in the same locality, the rule shall prevail.
- (8) The Minister shall not delegate his power to make ordinary rules under this Act.

#### **34 Rules relating to safety and security**

Without limiting the power conferred by section 33, the Minister may, in the interests of safety or security within the civil aviation system, make all or any of the following ordinary rules:

- (a) rules providing for the use of aerodromes and other aviation related facilities, including but not limited to the following:
  - (i) the provision of identification procedures for persons, aircraft, and any other aviation related things; and

- (ii) the prevention of interference with aerodromes and other aviation related facilities;
- (b) general operating rules, air traffic rules, and flight rules, including but not limited to the following:
  - (i) the conditions under which aircraft may be used or operated, or under which any act may be performed in or from an aircraft; or
  - (ii) the prevention of aircraft endangering persons or property;
- (c) rules providing for the control of things likely to be hazardous to aviation safety, including but not limited to the following:
  - (i) the safe carriage of firearms and other dangerous or hazardous goods or substances by air; or
  - (ii) the construction, use, or operation of anything likely to be hazardous to aviation safety.

### **35 Rules relating to airspace**

Without limiting the power conferred by section 33:

- (a) in the interests of safety or security within the civil aviation system;
- (b) in the interests of national security; or
- (c) for any other reason in the public interest,

the Minister may make ordinary rules providing for the classification, designation, special use, prohibition, and the restriction of airspace and things affecting navigable airspace, including airspace used by aircraft used by any Solomon Islands disciplined force or a visiting force.

### **36 Rules for noise abatement purposes**

Without limiting the power conferred by section 33, the Minister may make ordinary rules prescribing flight rules, flight paths, altitude

restrictions, and operating procedures for the purposes of noise abatement in the vicinity of aerodromes.

### **37 Rules relating to general matters**

Without limiting the power conferred by section 33, the Minister may make ordinary rules for all or any of the following purposes:

- (a) the designation, classification, and certification of all or any of the following:
  - (i) aircraft;
  - (ii) aircraft pilots;
  - (iii) flight crew members;
  - (iv) air traffic service personnel;
  - (v) aviation security service personnel;
  - (vi) aircraft maintenance personnel;
  - (vii) air services;
  - (viii) air traffic services;
  - (ix) aerodromes and aerodrome operators;
  - (x) navigation installation providers;
  - (xi) aviation training organisations;
  - (xii) aircraft design, manufacture, and maintenance organisations;
  - (xiii) aeronautical procedures;
  - (xiv) aviation security services;
  - (xv) aviation meteorological services;
  - (xvi) aviation communications services; or

- (xvii) any other person who provides services in the civil aviation system, and any aircraft, aeronautical products, aviation related services, facilities, and equipment operated in support of the civil aviation system, or classes of such persons, aircraft, aeronautical products, aviation related services, facilities, and equipment operated in support of the civil aviation system;
- (b) the setting of standards, specifications, restrictions, and licensing requirements for all or any of those persons or things specified in paragraph (a), including but not limited to the following:
  - (i) the specification of the privileges, limitations, and ratings associated with licences or other forms of approval;
  - (ii) the setting of standards for training systems and techniques, including recurrent training requirements;
  - (iii) the setting of medical standards for personnel;
  - (iv) the requirement for proof of access to appropriate weather services;
  - (v) the specification of standards of design, construction, manufacture, maintenance, processing, testing, supply, approval, and identification of aircraft and aeronautical products;
  - (vi) the requirements for notification of insurance coverage for air services;
  - (vii) the format of aviation documents, forms, and applications, including the specification of information required on all application forms for aviation documents; or
  - (viii) the provision of information to the Authority or the Director by applicants for or holders of aviation documents;
- (c) the conditions of operation of foreign aircraft and international flights to, from, or within the Solomon Islands;

- (d) the definitions, abbreviations, and units of measurement to apply within the civil aviation system; or
- (e) prescribing the design and colours of the Solomon Islands Civil Air Ensign, and where and by whom it may be flown.

**38 Power of Director to make emergency rules**

- (1) Subject to subsection (2), the Director may, in accordance with section 45, make such emergency rules as may be necessary to alleviate or minimise any risk of death or of serious injury to persons, or of damage to property.
- (2) The Director shall not make emergency rules unless it is impracticable in the circumstances of the particular case for the Minister to make ordinary rules to effectively alleviate or minimise the risk concerned.
- (3) The Minister may revoke any emergency rule made under subsection (1), and the revocation shall be notified as if it were an emergency rule.

**39 Procedures relating to rules**

Any ordinary rule or emergency rule shall:

- (a) be signed;
- (b) contain a statement specifying the objective of the rule and the extent of any consultation by the Minister under section 41 or Director under section 45; and
- (c) set out fully the requirements of the rule, except where by reason of size or length certain information is incorporated in the rule by reference under section 46.

**40 Matters to be taken into account in making rules**

- (1) The ordinary rules and the emergency rules shall be consistent with the following:
  - (a) the standards of ICAO relating to aviation safety and security, to the extent adopted by Solomon Islands; and

- (b) the international obligations of Solomon Islands relating to aviation safety and security.
- (2) In making any rule the Minister or the Director shall have regard to, and shall give such weight as he considers appropriate in each case to, the following:
  - (a) the recommended practices of ICAO relating to aviation safety and security, to the extent adopted by Solomon Islands;
  - (b) the level of risk existing to aviation safety in each proposed activity or service;
  - (c) the nature of the particular activity or service for which the rule is being established;
  - (d) the level of risk existing to aviation safety and security in Solomon Islands in general;
  - (e) the need to maintain aviation safety and security;
  - (f) the costs of implementing aviation safety and security measures;
  - (g) the international circumstances in respect of aviation safety and security; and
  - (h) such other matters as the Minister or the Director considers appropriate in the circumstances.

#### **41 Procedures for making ordinary rules**

- (1) Before making any ordinary rule, the Minister shall:
  - (a) publish a notice of his intention to make the rule in the *Gazette* and in any other medium the Minister considers appropriate;
  - (b) give interested persons a reasonable time, which shall be specified in the notice published under paragraph (a), to make submissions on the proposed ordinary rule; and
  - (c) consult with such persons, representative groups within the aviation industry or elsewhere, or Government departments as



the Minister in each case considers appropriate.

- (2) Subject to subsection (3), an ordinary rule shall be published in the *Gazette* and be made available by the Ministry for purchase by members of the public at a reasonable price, and the publication shall specify a place where the rule is available for inspection free of charge and for purchase.
- (3) Where for reasons of security it is inappropriate to publish a rule under subsection (2), the Minister shall notify such persons as he considers appropriate or necessary in the circumstances and service of notification may be effected in such other manner as the Minister considers appropriate or necessary in the circumstances, and the rule shall apply only to the persons so notified, and such notification is deemed to be a publication in the *Gazette*.
- (4) An ordinary rule shall come into force on the 28th day after the date of its publication in the *Gazette* or on such later day as may be specified in the rule or under section 33(4) or, where notified by service on any person under subsection (3), immediately upon service of the rule upon that person and in respect of that person only.
- (5) The requirements of subsections (1) to (3) shall not apply to the making of ordinary rules by adoption under section 42.

## **42 Making ordinary rules by adoption**

- (1) Notwithstanding any other procedure by which the Minister may make ordinary rules under this Act, the Minister may when he deems it appropriate make an ordinary rule or rules by adopting, with or without modification, a civil aviation rule part or parts of a foreign jurisdiction under this section. Any such adopted rule part or parts shall be incorporated by reference as an ordinary rule part or parts of Solomon Islands and shall have full force and effect in Solomon Islands notwithstanding that the foreign rule part from which Solomon Islands rule part is derived may at any time have ceased to be in force within the jurisdiction of its origin.
- (2) In this section **“a civil aviation rule part of a foreign jurisdiction”** means any ordinary civil aviation rule part which has been duly promulgated and published by any member state of ICAO other than

Solomon Islands and which may be readily accessed by the public in Solomon Islands in electronic form or otherwise.

- (3) Any rule part made by adoption under this section need not be reproduced in either electronic or printed form in Solomon Islands but after determining to make any rule pursuant to this section the Minister shall publish in the *Gazette* a notice of the making of a rule by adoption which shall contain:
  - (a) a Rule Adoption Statement set out in Schedule 2 identifying by country of origin and part number in the country of origin the rule part which has been adopted by reference and the part number by which it will be known in the civil aviation system of Solomon Islands and specifying the date on which it shall become effective as a rule in Solomon Islands; and
  - (b) a Rule Interpretation Statement set out in Schedule 2 containing any modifications, directions and information as the Minister may deem appropriate for the application of the adopted rule in the context of the Solomon Islands civil aviation system including but not limited to:
    - (i) any words (including place names) and numbers (including section numbers of Solomon Islands Acts to be substituted);
    - (ii) any part or parts of the adopted rule which shall not apply in Solomon Islands;
    - (iii) any general exemptions which will apply in Solomon Islands;
    - (iv) any additional provision which shall apply in Solomon Islands;
    - (v) any amendment to, or repeal of, any rule previously adopted in accordance with the provisions and procedures in this section;
    - (vi) any forms to be used in Solomon Islands;
    - (vii) any equivalent documents to be substituted for

documents referred to in the adopted rule part;

- (viii) any direction as to the application or non application to Solomon Islands of any amendment or repeal of an adopted rule part in its country of origin;
  - (ix) any standards, requirements, recommended practices, rules or any other written materials or documents incorporated by reference under section 46; or
  - (x) any other matter to assist in the practical, clear and unambiguous interpretation of the adopted rule in Solomon Islands.
- (4) Any rule made under this section may, in consultation with the Director and Authority, be amended or repealed by the Minister in accordance with the provisions and procedures in this section as if the amendment or repeal were an ordinary rule made under this Part.
- (5) Where a rule is adopted under this Act, all departments of Government, judicial officers of the courts of Solomon Islands and officials, participants in the Solomon Islands civil aviation system, Government officials or any other person before whom such rule comes for consideration shall, in their interpretation of such rule or decision or action to be taken under it, give effect to the adopted rule according to its purpose and intent to the fullest extent practicable.
- (6) No adopted rule or its part, shall be rendered invalid, inoperative or unenforceable only because it contains a reference to any law, agency, authority, document, procedure, person or thing that is not in existence in, or is not applicable to the laws of Solomon Islands, and any such reference:
- (a) shall, to the extent that it is practicable to do so, be deemed to be a reference to the corresponding law, agency, authority, document, procedure, person or thing within Solomon Islands or under the laws of Solomon Islands; and
  - (b) where there is no corresponding law, agency, authority, document, procedure, person or thing within Solomon Islands or under the laws of Solomon Islands shall be deemed to refer to the closest equivalent law, agency, authority, document,

procedure, person or things within Solomon Islands or under the laws of Solomon Islands and in any such case regard shall be had to any directive issued under subsection (7).

- (7) For the purpose of the clarification and effective implementation of any adopted rule, the Minister may issue a directive and shall forthwith publish, distribute or otherwise make the directive available to participants within the Solomon Islands civil aviation system.
- (8) If any person referred to in subsection (5) identifies any matter within an adopted rule upon which uncertainty has arisen or might reasonably arise with regard to its meaning, interpretation or application, and in respect of which no directive has been issued, that person may, in writing, notify the Director who shall consider the matters in the notice and within 30 days of his receipt of notice, shall make a recommendation to the Minister with regard to the issue of a directive under subsection (7) or other appropriate action.

#### **43           No requirement for translation or sale of adopted rules**

- (1) For the purposes of section 61(1)(a) of the *Interpretation and General Provisions Act*, the publication of the notice of the making of a rule by adoption in accordance with the requirements of section 42(3) shall, with respect to each rule adopted, be deemed to be a publication of such rule in the *Gazette*.
- (2) A copy of each adopted rule and its Rule Adoption Statement and Rule Interpretation Statement and any directive made under section 42(7) shall be kept at the Registry of the Authority and shall be available for inspection at all reasonable times.
- (3) There shall be no requirement that the content of any adopted rule be printed or made available for sale in Solomon Islands.

#### **44           Amendments to adopted rules in country of origin**

- (1) Where an adopted rule is amended in its country of origin the amendment shall in the first instance be deemed to apply in Solomon Islands from the date of its coming into force in the country of origin unless the Minister determines otherwise.
- (2) Where the Minister determines that the amendment shall not apply

in Solomon Islands or shall apply only in part or with modification or shall come into force in its entirety or in part on a date other than that applicable in the country of origin the Minister shall publish in the *Gazette* a notice containing a revised Rule Adoption Statement and Rule Interpretation Statement and that determination shall take effect accordingly.

#### **45 Procedures for making emergency rules**

- (1) Before making an emergency rule, the Director shall consult with such persons, representative groups within the aviation industry or elsewhere, Government departments, and other persons as the Director in each case considers appropriate.
- (2) Subject to subsection (4), an emergency rule shall be notified in the *Gazette* and other medium as the Director may consider appropriate in each case and the notification shall specify a place where the rule is available for inspection free of charge and available for purchase.
- (3) An emergency rule shall come into force immediately upon its being notified in the *Gazette*, or, where notified by service on any person under subsection (4), immediately upon service of notification upon that person and in respect of that person only.
- (4) Where for reasons of safety or security it is impracticable or inappropriate to notify an emergency rule under subsection (2), the Director shall notify such persons as he considers appropriate or necessary in the circumstances and service of such notification may be effected by facsimile, telephone, or such other manner as the Director considers appropriate or necessary in the circumstances, and such notification is deemed to be a publication of such rule in the *Gazette*.
- (5) An emergency rule may be in force for a period not exceeding 90 days, and may be renewed by the Director once only for a further period not exceeding 90 days.
- (6) The Minister may, by notice in the *Gazette*, renew an emergency rule which is in force for a further period not exceeding 180 days from the date of the notification, subject to subsection (7).
- (7) Before renewing an emergency rule under subsection (6), the

Minister shall consult with such persons, representative groups within the aviation industry or elsewhere, Government departments, and others as the Minister thinks appropriate.

- (8) So far as any emergency rule is inconsistent or repugnant to any ordinary rule made under this Act, the emergency rule shall prevail.

#### **46 Incorporation by reference**

- (1) The following may be incorporated by reference into a rule made by the Minister or the Director:
  - (a) standards, requirements, or recommended practices of international aviation organisations;
  - (b) standards, requirements, or rules prescribed under law by any other contracting State of ICAO;
  - (c) standards, requirements, or rules of any aviation sport or aviation recreational organisation; or
  - (d) any other written material or document that, in the opinion of the Minister or the Director is too large or impractical to be printed as part of the rule.
- (2) Any material incorporated in a rule by reference under subsection (1) shall be deemed for all purposes to form part of the rule, and, unless otherwise provided in the rules, an amendment to any material so incorporated by reference that is made by the person or organisation originating the material shall, subject to subsections (3) and (4), be deemed to be part of the rule.
- (3) The Director shall, by notice in the *Gazette*, specify the date on which any amendment to material incorporated by reference under subsection (1) shall take effect.
- (4) All material incorporated by reference under subsection (1) or (2) shall be made available at the Civil Aviation Registry for inspection by the public free of charge.
- (5) Where an ordinary rule is made by adoption pursuant to section 42 and that rule, subsequent to its adoption, has material incorporated

into it by reference in its country of origin, that material shall in the first instance be deemed to form part of the adopted rule in Solomon Islands from the date of its incorporation in the country of origin unless the Minister determines otherwise.

- (6) If the Minister determines that material referred to in subsection (5) does not apply in Solomon Islands or that it applies only in part or with modification or be incorporated in its entirety or in part on a date other than that applicable in the country of origin, the Minister shall publish in the *Gazette* a notice containing a revised Rule Adoption Statement and Rule Interpretation Statement and that determination takes effect accordingly.

#### **47 Exemption power of Director**

- (1) The Director may, if he considers it appropriate and upon such conditions as he considers appropriate, exempt any person, aircraft, aeronautical product, aerodrome, or aviation related service from any specified requirement in any rule made under section 33, 34, 37 or 42, by notification in the *Gazette*.
- (2) Before granting an exemption under subsection (1), the Director shall be satisfied in the circumstances of each case that:
  - (a) the requirement has been substantially complied with and that further compliance is unnecessary;
  - (b) the action taken or provision made in respect of the matter to which the requirement relates is as effective as or more effective than actual compliance with the requirement;
  - (c) the prescribed requirements are clearly unreasonable or inappropriate in the particular case; or
  - (d) events have occurred that make the prescribed requirements unnecessary or inappropriate in the particular case; and
  - (e) the risk to safety will not be significantly increased by the granting of the exemption.
- (3) This section does not apply if any rule specifically provides that no exemptions are to be granted.

## **PART V                    REGULATIONS, FEES AND CHARGES**

### **48                    Regulations**

- (1) The Minister may make regulations to give effect to this Act, and in particular to make regulations for all or any of the following purposes:
- (a) prescribing forms, fees and charges for the purposes of this Act;
  - (b) prescribing offences for breaches of rules;
  - (c) prescribing those breaches of rules made under this Act that constitute infringement offences against this Act;
  - (d) prescribing the penalty for each offence prescribed under paragraph (b), which,:
    - (i) in the case of an individual, a fine not exceeding 5,000 penalty units; or
    - (ii) in the case of a body corporate, a fine not exceeding 30,000 penalty units;
  - (e) prescribing the infringement fine for each offence prescribed under paragraph (c), which,:
    - (i) in the case of an individual, a fine not exceeding 2,000 penalty units; or
    - (ii) in the case of a body corporate, a fine not exceeding 12,000 penalty units;
  - (f) prescribing the matters in respect of which fees or charges are to be payable under Part XI, the amount of the fees or charges, and the persons liable to pay the fees or charges;
  - (g) providing for the refund or waiver of any fee or charge payable under Part XI, in whole or in part, in any specified case or class of cases;
  - (h) prescribing the information and documents that may be required to be supplied by applicants for scheduled international air services licences under Part XI, and the time



within which such information or documents shall be supplied.

- (2) Any regulations may be made to regulate:
  - (a) different classes of persons, aerodromes, aircraft, aeronautical products, aviation related services, or aeronautical procedures; or
  - (b) same class of person, aerodrome, aircraft, aeronautical product, aviation related service, or aeronautical procedure in different circumstances.

## **49 Fees and charges**

- (1) Without limiting the power to make regulations conferred by section 48, but subject to this Act, the Minister may make regulations prescribing, or providing for the fixing of, fees and charges payable for all or any of the following purposes:
  - (a) to provide funds for the establishment, maintenance, and operation of works, facilities, and services under this Act;
  - (b) to defray the costs and expenses incurred by the Ministry or the Authority or any of their employees in the exercise of functions, powers, and duties, and in providing services, under this Act; or
  - (c) generally for the purposes of civil aviation.
- (2) Different rates of fees and charges may be so prescribed or fixed in respect of different classes of persons, aerodromes, aircraft, aeronautical products, aviation related services, air traffic services, or aeronautical procedures, or on the basis of different times of use, or on any other differential basis.
- (3) Any such regulations may:
  - (a) specify the persons by whom and to whom any fees or charges are payable;
  - (b) prescribe penal or overtime or additional fees or charges or rates for work or services carried out outside normal working hours or at weekends or on statutory holidays;

- (c) prescribe additional charges for reimbursement of traveling time, accommodation, and other expenses;
  - (d) require returns to be made by persons by whom any fees or charges are payable, and prescribe conditions relating to the making of such returns; or
  - (e) provide for the refund or waiver of any fee or charge in whole or in part, in any specified case or class of cases.
- (4) Fees and charges in respect of the use of any aerodrome shall not be prescribed, except on the advice of the Minister given after consultation with the operator of that aerodrome.
  - (5) The power to prescribe, or provide for the fixing of, fees and charges in respect of any matter under this Act includes the power to prescribe, or provide for the fixing of, fees or charges, or both, in respect of any matter under this Act.

## **50 Rebates**

- (1) The department, authority, organisation or person to whom any fees or charges are payable under regulations made under this Act may grant a rebate of such fees or charges to any person who is liable to pay them.
- (2) Any rebate of fees or charges granted under subsection (1) shall:
  - (a) be based on the quantity of services used by the person liable to pay the fees or charges;
  - (b) be offered on an equal percentage basis to any other person using a similar quantity of such services; and
  - (c) be granted in accordance with regulations made under this Act.

## **51 Payment of fees and charges**

- (1) Except as otherwise provided in regulations made under this Act, an application under this Act shall be accompanied by payment of all relevant prescribed fees and charges.
- (2) Any regulations made under this Act may prescribe a date by which

any such fee or charge is payable or authorise the Authority to fix the date by which the fee or charge is payable.

**52        Suspension or revocation of aviation document where prescribed fees or charges unpaid**

- (1) Where any fee or charge payable under this Act is not paid:
  - (a) by the date prescribed or fixed for payment of that fee or charge, the Director may suspend the aviation document to which the unpaid fee or charge relates; or
  - (b) within 6 months after the date prescribed or fixed for payment of that fee or charge, the Director may revoke the aviation document to which the fee or charge relates.
- (2) Before suspending or revoking an aviation document under subsection (1), the Director shall notify the holder of such document of his intention to suspend or revoke the document, including the right of appeal.
- (3) Where a fee or a charge is payable in respect of an application or service under this Act:
  - (a) the Authority;
  - (b) the Director; or
  - (c) other person asked to process the application or provide the service,may, unless the safety of any person would be put at risk, decline to process that application or provide that service until the appropriate fee or charge has been paid, or arrangements acceptable to the Authority or the Director, for payment of the fee or charge have been made.
- (4) The holder of an aviation document that is suspended or revoked under subsection (1) may appeal against that decision under Part XVII.

### **53            Recovery of fees and charges**

- (1) Subject to subsection (2), where a fee or charge is payable under this Act in respect of any function, power, duty, or service carried out or provided by the Authority or the Director in respect of any aircraft, the person whose name appears on the Solomon Islands Register of Aircraft in respect of that aircraft shall be deemed to be liable to pay the fee or charge.
- (2) Any person who would be liable to pay a fee or charge under subsection (1) is not liable for the fee or charge if that person:
  - (a) proves that during any relevant period of use of the aircraft that person was not entitled, whether alone or together with some other person, to possession of the aircraft or that another person was unlawfully in possession of it; and
  - (b) has taken all reasonable steps to supply the Authority with such information as would identify the actual user.

## **PART VI            THE SOLOMON ISLANDS CIVIL AVIATION SYSTEM: ENTRY, GENERAL REQUIREMENTS, RESPONSIBILITIES AND PROTECTIONS**

### **54            General requirements for participants in the Solomon Islands civil aviation system**

- (1) Any person (“participant”) who does anything for which an aviation document is required shall ensure that the appropriate aviation documents and all the necessary qualifications and other documents are held by that person.
- (2) Any participant shall comply with this Act, the relevant rules made under this Act, and the conditions attached to the relevant aviation documents.
- (3) Any participant shall ensure that the activities or functions for which the aviation document has been granted are carried out by the participant, and by all persons for whom the participant is responsible, safely and in accordance with the relevant prescribed safety standards and practices.

- (4) Any participant who holds an aviation document that authorises the provision of a service within the civil aviation system:
  - (a) shall, if so required by any rules, establish and follow a management system that will ensure compliance with the relevant prescribed safety standards and the conditions attached to the document;
  - (b) shall provide training and supervision to his employees who are or will be required to be engaged in doing anything to which the document relates, so as to maintain compliance with the relevant prescribed safety standards and the conditions attached to the document and to promote safety; and
  - (c) shall provide sufficient resources to ensure compliance with the relevant prescribed safety standards and the conditions attached to the document.

## **55 Requirement for aviation document**

- (1) Rules may require that an aviation document shall be required by or in respect of all or any of the following:
  - (a) Solomon Islands registered aircraft;
  - (b) aircraft pilots;
  - (c) flight crew members;
  - (d) air traffic service personnel;
  - (e) aviation security service personnel;
  - (f) aircraft maintenance personnel;
  - (g) air services;
  - (h) air traffic services;
  - (i) aerodromes and aerodrome operators;
  - (j) navigation installation providers;

- (k) aviation training organisations;
  - (l) aircraft design, manufacture, and maintenance organisations;
  - (m) aeronautical procedures;
  - (n) aviation security services;
  - (o) aviation meteorological services;
  - (p) aviation communications services;
  - (q) any persons, services, or things within any of the classes specified in paragraphs (a) to (p);
  - (r) such other persons, aircraft, aeronautical products, aviation related services, facilities, and equipment operated in support of the civil aviation system, or classes of such persons, aircraft, aeronautical products, aviation related services, facilities, and equipment operated in support of the civil aviation system, as may, in the interests of safety or security, be specified in the rules; or
  - (s) any person who is an aviation examiner or medical examiner.
- (2) The requirements, standards, and application procedure for each aviation document, and the maximum period for which each document may be issued, shall be prescribed by rules.
  - (3) Subject to any rules, an aviation document may be issued by the Director for such specified period and subject to such conditions as the Director considers appropriate in each particular case.
  - (4) Any person in respect of whom any decision is taken under this section may appeal against that decision under Part XVII.

## **56 Application for aviation document**

- (1) An application for the grant or renewal of an aviation document shall be made to the Director in the prescribed form or, if there is no prescribed form, in such form as the Director may require.
- (2) Any applicant for an aviation document shall include in the

application the applicant's address for service in Solomon Islands including, where applicable, telephone and facsimile numbers.

- (3) The holder of an aviation document shall maintain the currency of the information provided under subsection (2) by promptly notifying the Director of any changes to the address, telephone number, or facsimile number.
- (4) The Director shall ensure that a record of all information provided under this section is maintained at the Registry.
- (5) Service of any notification under this Act on a holder of, or applicant for, an aviation document shall be effective service if served on the address last provided by that holder or applicant under this section.

## **57 Grant or renewal of aviation document**

- (1) After considering any application for the grant or renewal of an aviation document, the Director shall, as soon as is practicable, grant the application if he is satisfied that:
  - (a) all things in respect of which the aviation document is sought meet the relevant prescribed requirements;
  - (b) the applicant and any person who is to have or is likely to have control over the exercise of the privileges under the document:
    - (i) either of them holds the relevant prescribed qualifications and experience or holds such foreign qualifications as are acceptable to the Director under subsection (2);
    - (ii) are fit and proper persons to have such control or hold the document; and
    - (iii) meet all other relevant prescribed requirements; and
  - (c) it is not contrary to the interests of aviation safety for the document to be granted or renewed.
- (2) For the purpose of granting or renewing an aviation document, the Director may, subject to any provisions in the rules, accept such foreign qualifications or recognise such foreign certifications as he considers appropriate in each case.

- (3) It shall be a condition of any current aviation document that the holder and any person who has or is likely to have control over the exercise of the privileges under the document continue to satisfy the fit and proper person test specified in subsection (1)(b)(ii).
- (4) Where the Director declines to grant an application for the grant or renewal of an aviation document under this section, the applicant may appeal against that decision under Part XVII.

**58 Criteria for fit and proper person test**

- (1) For the purpose of determining whether or not a person is a fit and proper person for any purpose under this Act, the Director shall, having regard to the degree and nature of the person's proposed involvement in the Solomon Islands civil aviation system, have regard to, and give such weight as the Director considers appropriate to, the following matters:
  - (a) the person's compliance history with transport safety regulatory requirements;
  - (b) any related experience of the person within the transport industry;
  - (c) the person's knowledge of the applicable civil aviation system regulatory requirements;
  - (d) any history of physical or mental health or serious behavioural problems;
  - (e) any conviction for any transport safety offence, whether or not:
    - (i) the conviction was in Solomon Islands; or
    - (ii) the offence was committed before the commencement of this Act; and
  - (f) any evidence that the person has committed a transport safety offence or has contravened or failed to comply with any rule.
- (2) The Director shall not be confined to consideration of the matters specified in subsection (1) and may take into account such other matters and evidence as may be relevant.



- (3) The Director may, for the purpose of determining whether or not a person is a fit and proper person for any purpose under this Act,:
  - (a) seek and receive such information (including medical reports) as the Director thinks fit;
  - (b) consider information obtained from any source; and
  - (c) have regard to, and give such weight as the Director thinks appropriate to, any advice and recommendations provided by approved organisations contracted by the Minister under section 5(1)(f).
- (4) Subsection (1) applies to a body corporate with the following modifications:
  - (a) paragraphs (a), (b), (c), (e), and (f) of that subsection shall be read as if they refer to the body corporate and its officers; and
  - (b) paragraph (d) of that subsection shall be read as if it refers only to the officers of the body corporate.
- (5) If the Director proposes to take into account any information that is or may be prejudicial to a person, the Director shall, subject to subsection (6), disclose that information to that person and, in accordance with section 59, give that person a reasonable opportunity to refute or comment on it.
- (6) Nothing in subsection (5) shall require the Director to disclose any information the disclosure of which would be likely to endanger the safety of any person.

## **59 Rights of persons affected by proposed adverse decisions**

- (1) In this section, unless the context otherwise requires:

**“adverse decision”** means a decision of the Director to the effect that a person is not a fit and proper person for any purpose under this Act;

**“affected document holder”**, in relation to a person directly affected by an adverse decision, means the holder of or the applicant for the

aviation document;

**“person directly affected”**, in relation to any adverse decision, means the person who would be entitled under Part XVII to appeal against that adverse decision;

**“person on the basis of whose character the adverse decision arises”**, in relation to any adverse decision made or proposed to be made on the grounds referred to in section 58, means the person whom the Director assesses as not being a fit and proper person.

- (2) If the Director proposes to make an adverse decision under this Act in respect of any person, the Director shall, by notice in writing:
  - (a) notify the person directly affected by the proposed decision;
  - (b) subject to subsection (4), inform that person of the grounds for the proposed decision;
  - (c) specify a date by which submissions may be made to the Director in respect of the proposed decision, which date shall not be less than 21 days after the date on which the notice is given;
  - (d) where appropriate, specify the date on which the proposed decision will, unless the Director otherwise determines, take effect, being a date not less than 28 days after the date on which the notice is given;
  - (e) notify the person of the person's right of appeal under Part XVII in the event of the Director proceeding with the proposed decision; and
  - (f) specify such other matters as in any particular case may be required by this Act or any other written law.
- (3) Where the Director gives a notice under subsection (2), the Director:
  - (a) shall also supply a copy of the notice to:
    - (i) any person on the basis of whose character the adverse decision arises, where that person is not the person directly affected by the proposed decision; and

- (ii) any affected document holder, where the Director considers that the proposed decision is likely to have a significant impact on the operations of the document holder; and
  - (b) may supply a copy of the notice to any other affected document holder.
- (4) No notice or copy of a notice given under this section shall include or be accompanied by any information referred to in section 58(1), except to the extent that:
- (a) the notice or copy is supplied to the person to whom the information relates; or
  - (b) the person consents to the supply of the information to any other person.
- (5) Where any notice or copy of a notice is given to any person under this section, the following provisions shall apply:
- (a) it shall be the responsibility of that person to ensure that all information that that person wishes to have considered by the Director in relation to the proposed decision is received by the Director within the period specified in the notice under subsection (2)(c), or within such further period as the Director may allow;
  - (b) the Director may consider any information supplied by that person after the expiry of the period referred to in paragraph (a), other than information requested by the Director and supplied by that person within such reasonable time as the Director may specify;
  - (c) the Director shall consider any submissions made in accordance with paragraph (a), other than information requested by the Director and supplied pursuant to a request referred to in paragraph (b).
- (6) After considering the matters referred to in subsection (5), the Director shall:

- (a) finally determine whether or not to make the proposed adverse decision; and
- (b) as soon as practicable thereafter, notify in writing the person directly affected, and any other person of a kind referred to in subsection (3)(a), of:
  - (i) the Director's decision and the grounds for the decision;
  - (ii) the date on which the decision will take effect; and
  - (iii) for an adverse decision, the consequences of that decision and the right of appeal under Part XVII.

## **60 Requirement to register aircraft**

- (1) Except as otherwise provided in this Act or its rules, any person lawfully entitled to the possession of an aircraft for a period of 28 days or longer which flies to, from, within, or over Solomon Islands territory shall register that aircraft and hold a valid certificate of registration for that aircraft from:
  - (a) the Director;
  - (b) the appropriate aeronautical authorities of a contracting State of ICAO; or
  - (c) the appropriate aeronautical authorities of another State that is party to an agreement with the Government of Solomon Islands which provides for the acceptance of each other's registrations.
- (2) No aircraft shall be registered in or remain registered in Solomon Islands if it is registered in any other country.
- (3) The Director may decline to register any aircraft in accordance with the provisions of rules.
- (4) Any person in respect of whom any decision is taken under this section may appeal against that decision under Part XVII.

## **61 Responsibilities of pilot-in-command and operator**

- (1) The pilot-in-command of an aircraft shall:

- (a) be responsible for the safe operation of the aircraft in-flight, the safety and well-being of all passengers and crew, and the safety of cargo carried;
  - (b) have final authority to control the aircraft while in command and for the maintenance of order and discipline by all persons on board; and
  - (c) subject to subsections (2) to (6), be responsible for compliance with all relevant requirements of this Act and its regulations and rules.
- (2) Subject to subsections (3) and (6), in an emergency that arises in-flight, the pilot-in-command may breach this Act or its regulations or rules without being liable for such breach.
- (3) For the purposes of subsection (2), a breach of any prescribed requirement is permitted only if the pilot-in-command is satisfied that:
  - (a) the emergency involves a danger to life or property;
  - (b) the extent of the breach of the prescribed requirement goes only as far as is necessary to deal with the emergency;
  - (c) there is no other reasonable means of alleviating, avoiding, or assisting with the emergency; and
  - (d) the degree of danger involved in complying with the prescribed requirement is clearly greater than the degree of danger involved in deviating from such a requirement.
- (4) Subject to subsections (5) to (6), where an emergency (not being an emergency that arises in-flight) necessitates the urgent transportation of persons or medical or other supplies for the protection of life or property, the pilot-in-command or operator of the aircraft may breach this Act or its regulations or rules without being liable for such breach, provided the pilot or operator is satisfied with the matters listed in subsection (3).
- (5) Nothing in subsection (4) permits:
  - (a) the operation of an aircraft that is not registered in Solomon

Islands or elsewhere;

- (b) the breach of any prescribed requirement as to the airworthiness of an aircraft; or
  - (c) the operation of an aircraft by a person who is not lawfully entitled to operate that aircraft.
- (6) Where, in any emergency described in this section, a pilot-in-command or an operator breaches this Act or its regulations or rules under this section, the pilot-in-command or the operator, shall:
- (a) immediately after the emergency has abated notify the relevant air traffic control service of the action; and
  - (b) as soon as practicable, notify the Director of the action and the circumstances that necessitated it, and, if requested by the Director, provide to the Director a written report in respect of the action.

## **62        Nuisance, trespass, and responsibility for damage**

- (1) No action for nuisance may be brought in respect of the noise or vibration caused by aircraft or aircraft engines on an aerodrome, if the noise or vibration is of a kind specified in any rules made under section 33, 34 or 37, so long as the provisions of the rules are duly complied with.
- (2) No action shall lie in respect of trespass, or in respect of nuisance, by reason only of the flight of aircraft over any property at a height above the ground which having regard to wind, weather, and all the circumstances of the case is reasonable, so long as this Act and any of its rules are duly complied with.
- (3) Where material damage or loss is caused to property on land or water by an aircraft in-flight, taking-off, landing, or alighting, or by any person or article in or falling from any such aircraft, damages shall be recoverable from the owner of the aircraft, without proof of negligence or intention or other cause of action, as if the damage or loss was caused by his or her fault, except where the damage or loss was caused by or contributed to by the fault of the person by whom the same was suffered.

- (4) Where damage or loss is caused in the manner described in subsection (3) and in circumstances in which:
- (a) damages are recoverable from the owner of the aircraft in respect of the damage or loss by virtue only of the provisions of subsection (3); and
  - (b) some person other than the owner is liable to pay damages in respect of the damage or loss,
- the owner shall be entitled to be indemnified by that other person against any claim in respect of the damage or loss.
- (5) Where damage or loss is contributed to by the fault of the person by whom the same was suffered, the law relating to apportionment in respect of contributory negligence shall apply.
- (6) Damages shall not be recoverable under subsection (4) from the owner of an aircraft in respect of damage or loss caused by a person descending from the aircraft by parachute.
- (7) Damages shall be recoverable from the person descending and the provisions of subsection (4) shall, with the necessary modifications, apply as if the person descending were the owner of the aircraft.
- (8) Subsections (6) and (7) do not apply to damage or loss caused by a person descending from an aircraft by parachute where the descent is required to avoid injury or death.
- (9) Where an aircraft has been hired out to any other person by the owner thereof, for a period greater than 28 days and no pilot, commander, navigator, or operative member of the crew of the aircraft is in the employment of the owner, this section shall apply as if a reference to the owner were a reference to the person to whom the aircraft has been so hired out.
- (10) In this section, “**fault**” means negligence, breach of statutory duty, or other act which gives rise to a liability in tort or would, apart from any statutory provision in respect of contributory negligence, give rise to the defence of contributory negligence.

## PART VII MEDICAL CERTIFICATION

### 63 Interpretation

- (1) In this Part, unless the context otherwise requires:

**“applicant”** means a person who has applied for recognition of a foreign medical certificate; and includes a licence holder who has reapplied for recognition of a foreign medical certificate;

**“foreign medical certificate”** means a medical certificate validly issued by or on behalf of the aviation authority of any member State of ICAO other than Solomon Islands;

**“licence holder”** means a person who:

- (a) holds an aviation document or is a pilot; and
- (b) holds, or is required under the rules to hold, a medical certificate;

**“operator”** includes an air traffic service provider;

**“privileges to which a medical certificate relates”**, means those privileges under this Act that may be exercised by a person who:

- (a) holds a current aviation document; or
- (b) is permitted under the rules to operate an aircraft solo as a pilot.

- (2) A medical certificate is not an aviation document.

### 64 Power of Director to grant recognition to a foreign medical certificate

- (1) For the purpose of validating an overseas licence or issuing a flight crew's or an air traffic service officer's licence in Solomon Islands, and subject to this Act, the Director:
- (a) shall grant recognition to, and treat as a valid medical certificate for the purposes of this Act and its rules, any current and validly issued medical certificate of Australia, New Zealand, the United States of America and the United Kingdom; or



- (b) may grant recognition to, and treat as a valid medical certificate for the purposes of this Act and its rules, a current and validly issued medical certificate of any member State of ICAO other than those referred to in paragraph (a) upon being satisfied (at the cost of the applicant) that the relevant standards of that issuing authority are comparable to those of Australia, New Zealand, the United States of America or the United Kingdom and substantially meet the medical requirements or standards in rules made under this Act;

unless, regardless of whether paragraph (a) or (b) is applicable, the Director has reasonable grounds to believe that the applicant has any characteristic that may interfere with the safe exercise of the privileges to which the medical certificate relates.

- (2) The Director may impose any conditions, restrictions, or endorsements on a medical certificate granted recognition under this section.
- (3) Before granting recognition to a foreign medical certificate, the Director may require the applicant, at the applicant's expense, to undertake any other tests, examinations, or re-examinations conducted by any suitably qualified and experienced person, or to provide any medical information, as the Director reasonably considers necessary to assess the applicant.
- (4) The Director shall maintain a register of current medical certificates granted recognition under this section.
- (5) Any decision made under this section by the Director in relation to a medical certificate other than a decision under subsection (3) is subject to right of appeal under Part XVII.

## **65 Changes in medical condition of licence holder**

- (1) If a licence holder is aware of, or has reasonable grounds to suspect, any change in his medical condition or the existence of any previously undetected medical condition that may interfere with the safe exercise of the privileges to which his medical certificate relates, the licence holder:
  - (a) shall advise the Director of the change as soon as practicable;

and

- (b) may not exercise the privileges to which the licence holder's medical certificate relates.
- (2) If a registered medical practitioner has reasonable grounds to believe that a person is a licence holder and is aware, or has reasonable grounds to suspect, that the licence holder has a medical condition that may interfere with the safe exercise of the privileges to which the licence holder's medical certificate relates, the registered medical practitioner shall, as soon as practicable:
- (a) inform the licence holder that the Director will be advised of the condition; and
  - (b) advise the Director of the condition.
- (3) A registered medical practitioner is not subject to any civil or criminal liability for:
- (a) doing an indemnified act in good faith in the course of carrying out his functions under this Part; or
  - (b) doing an indemnified act in good faith in the course of answering any questions put to him by the Director that:
    - (i) concern a licence holder; and
    - (ii) are relevant to any action the Director may take under this Part.
- (4) In this section, “**indemnified act**” means any of the following acts:
- (a) advising the Director, whether in writing or otherwise, that a licence holder:
    - (i) may not meet the medical standards prescribed in the rules; or
    - (ii) may be unable to exercise safely the privileges to which the licence holder's medical certificate relates;
  - (b) expressing to the Director, whether in writing or otherwise, an

opinion that the licence holder who has been examined or treated may be unable to exercise safely the privileges to which the licence holder's medical certificate relates because of:

- (i) illness or any bodily or mental infirmity, defect, incapacity, or risk of incapacity suffered by the licence holder; or
  - (ii) the effect on the licence holder of treatment for any illness, infirmity, defect, incapacity, or risk of incapacity;
- (c) stating to the Director, whether in writing or otherwise:
- (i) the nature of a licence holder's illness, infirmity, defect, incapacity, or risk of incapacity; or
  - (ii) the effect on a licence holder of treatment for any illness, infirmity, defect, incapacity, or risk of incapacity.

#### **66 Medical disclosure**

The Director may, by written notice, require any applicant to disclose, or authorise the disclosure of, any information relevant to his medical condition or history for the purpose of determining whether or not the applicant is eligible for recognition of, or the continued holding of, a medical certificate.

#### **67 Extension from expiry of medical certificate**

The Director may, upon receiving an application from a licence holder before the expiry of his existing medical certificate, grant an extension of no more than 60 days from the expiry date of the licence holder's existing medical certificate with any additional conditions, restrictions, or endorsements as the Director considers necessary.

#### **68 Investigation of medical condition of licence holder**

- (1) The Director may, by written notice, require any licence holder, at the licence holder's expense, to undertake any tests, examinations, or re-examinations conducted by any suitably qualified and experienced person, or to provide any medical information, at any time before the expiry of his medical certificate, if the Director has reasonable grounds to believe that the licence holder:

- (a) may be unable to exercise safely the privileges to which the medical certificate relates; or
  - (b) has obtained his medical certificate fraudulently.
- (2) The Director may, by written notice, require any licence holder, at the licence holder's expense, to undertake any tests, examinations, or re-examinations conducted by any suitably qualified and experienced person, or to provide any medical information, at any time before the expiry of his medical certificate if the Director has reasonable grounds to believe that the licence holder's medical certificate was issued in error
- (3) The Director may, by written notice, require any licence holder to disclose, or authorise the disclosure of, any relevant information for the purpose of determining whether or not the licence holder:
  - (a) meets the medical standards prescribed in the rules; or
  - (b) is able to exercise safely the privileges to which the medical certificate relates.

**69      Revocation, suspension, amendment, and surrender of medical certificate**

- (1) If the Director has reasonable grounds to believe that a licence holder:
  - (a) may be unable to exercise safely the privileges to which the licence holder's medical certificate relates, the Director may, by written notice to the licence holder:
    - (i) suspend any medical certificate issued to the licence holder; or
    - (ii) impose or amend any conditions, restrictions, or endorsements on any medical certificate issued to the licence holder; or
  - (b) is unable to exercise safely the privileges to which the licence holder's medical certificate relates, the Director shall, by written notice to the licence holder:

- (i) suspend any medical certificate issued to the licence holder;
  - (ii) revoke any medical certificate issued to the licence holder; or
  - (iii) impose or amend any conditions, restrictions, or endorsements on any medical certificate issued to the licence holder.
- (2) Any notice issued under this section shall state the grounds for the Director's decision.
- (3) A notice of suspension issued under subsection (1)(a)(i) or (b)(i) remains in force until the Director determines what action, if any, referred to in subsection (5) is to be taken, but any such suspension expires 30 working days after the date that the suspension is imposed unless, before the expiry of that 30 working day period, the Director extends the suspension for a further specified period not exceeding 30 working days (the aggregate suspension period may not exceed 60 working days after the date on which the suspension is imposed).
- (4) Any conditions, restrictions, or endorsements that are imposed or made under subsection (1)(a)(ii) or (b)(iii) remain in force until the Director determines what action, if any, referred to in subsection (5) is to be taken, but any of those conditions, restrictions, or endorsements expire 30 working days after the date that they are imposed unless, before the expiry of that 30 working day period, the Director extends the conditions, restrictions, or endorsements for a further specified period not exceeding 30 working days (the aggregate period may not exceed 60 working days after the date on which the conditions, restrictions, or endorsements are imposed).
- (5) If a notice is issued under subsection (1)(a) or (b), the Director may, by written notice, take one or more of the following actions:
  - (a) impose or amend conditions, restrictions, or endorsements for a specified period;
  - (b) withdraw any conditions, restrictions, or endorsements;

- (c) disqualify the licence holder from holding the medical certificate for a specified period;
  - (d) revoke the medical certificate; or
  - (e) cancel the suspension.
- (6) A person who has had his medical certificate revoked, withdrawn, or suspended or who is disqualified from holding the medical certificate for a specified period shall surrender the medical certificate to the Director, a person authorised by the Director, or a police officer.
- (7) If the Director issues a notice under this section, the Director:
- (a) shall also, if practicable, notify any aviation document holder affected by the notice, other than the licence holder, if the Director reasonably considers it necessary for reasons of aviation safety; and
  - (b) may notify any other affected aviation document holder.
- (8) The Director may, by written notice, revoke a medical certificate if a licence holder fails, without reasonable excuse, to comply with a notice under section 66 within a reasonable period of time.
- (9) Any licence holder may return his medical certificate to the Director and ask the Director, in writing, to cancel the medical certificate.
- (10) If a licence holder asks the Director to cancel his medical certificate, the Director shall:
- (a) cancel the medical certificate; and
  - (b) update the register of current medical certificates.

## **70 Right of appeal**

Any person affected by a decision of the Director under section 64 or 69(1) (other than a decision made under section 64(3)) has a right of appeal under Part XVII.

**71 Savings**

Any medical certificate validly issued or granted recognition under the laws of Solomon Islands before the commencement of this Act is deemed to be a medical certificate granted recognition under this Act.

**PART VIII ACCIDENT AND INCIDENT INVESTIGATION**

**72 Obligation to notify all accidents and incidents**

- (1) The pilot-in-command of any aircraft that is involved in an accident shall notify the accident to the Authority as soon as practicable.
- (2) Any person who:
  - (a) operates, maintains, or services, or does any other act in respect of any aircraft, aeronautical product, or aviation related service; and
  - (b) is involved in an incident,shall, if the rules so provides, notify the incident to the Authority.
- (3) If, due to injuries or death, the pilot-in-command is unable to give the necessary notice under subsection (1), the operator shall provide the necessary notice.
- (4) The coordinator of any search and rescue operation for any aircraft shall notify the Authority of the operation as soon as practicable.
- (5) The Authority may, on being notified under any of subsections (1) to (4), request such additional information, in such form as it considers appropriate in each specific case, and the pilot-in-command, operator, or other person of whom the request is made shall provide the additional information forthwith.

**73 Authority to further notify certain accidents and incidents**

- (1) The Authority shall, as soon as practicable, notify the Minister and the Director after receiving any notification relating to:
  - (a) an accident involving an aircraft; or

- (b) a serious incident in accordance with the provisions of the Convention.
- (2) Without limiting subsection (1), the Authority shall advise the Minister to appoint a Chief Investigator to investigate an accident or incident, if it appears to the Authority that the accident or incident:
  - (a) is required by the Convention to be investigated; or
  - (b) involves circumstances:
    - (i) which have, or are likely to have, significant implications for civil aviation safety; or
    - (ii) which may allow a Chief investigator to establish findings or make recommendations that increase civil aviation safety.
- (3) If an aircraft to which an accident has occurred is registered in another country other than Solomon Islands, the Authority shall forward to that country's aviation authority or registry a copy of the relevant notification received by the Authority and a copy of all relevant information held by the Authority, including an advice as to the nature of the inquiry being conducted on the accident.

#### **74 Director to take further action**

- (1) If the Director is notified under section 73(1), the Director shall:
  - (a) consider what action, if any, to take under this Act or its regulations or rules;
  - (b) investigate and review the accident or incident; and
  - (c) take any other action appropriate in the circumstances.
- (2) If the accident or incident is referred to a Chief Investigator under section 75(3), subsection (1)(b) is subject to the limitations set out in section 79.



**75 Appointment of Chief Investigator and referral of accident or incident**

- (1) The Minister shall appoint a Chief Investigator recommended by the Authority where:
  - (a) the Authority advises the Minister to do so under section 73(2); or
  - (b) the Minister considers that an accident or incident notified to the Minister under section 73(1) should be referred to and investigated by a Chief Investigator.
- (2) The Authority shall employ or engage the Chief Investigator:
  - (a) for the duration that the Authority considers necessary for the Chief Investigator to properly discharge his functions under section 76 in relation to the accident or incident referred to him; and
  - (b) on terms and conditions determined by the Authority, subject to this Act.
- (3) The Authority shall refer the relevant accident or incident to the Chief Investigator by forwarding to the Chief Investigator the notification received and all relevant information held by the Authority.

**76 Functions of Chief Investigator**

- (1) The principal function of the Chief Investigator is to investigate the accident or incident referred to him under section 75 to determine the circumstances and causes of that accident or incident, with a view to avoiding similar occurrences in the future, rather than to ascribe blame to any person.
- (2) Without limiting subsection (1), the other functions of the Chief Investigator are:
  - (a) to make such inquiries and conduct such investigation as he considers appropriate in order to ascertain the cause or causes of the accident or incident;
  - (b) to co-ordinate and direct the investigation and to determine any

other party which should be involved in the investigation;

- (c) to prepare and make available to the Minister any preliminary report or preliminary recommendation that has major consequences for civil aviation safety or security;
  - (d) to prepare and deliver a written report to the Minister following the investigation, setting out findings and any recommendations for changes and improvements that the Chief Investigator considers will ensure the avoidance, or minimization of risk, of such an accident or incident in the future;
  - (e) to co-operate and co-ordinate with any overseas accident investigation bodies, including taking evidence on their behalf; and
  - (f) to perform any other function, duty or power conferred on him by this Act or to exercise powers as are necessary or expedient to carry out his functions and duties under this Act.
- (3) As soon as practicable after the expiry of 21 days from the date that the report referred to in subsection (2)(d) is delivered to the Minister, the Chief Investigator shall do the following in respect of that report:
- (a) publish it;
  - (b) make it available for inspection by the public free of charge; and
  - (c) issue it to any person who asks for it on payment of a reasonable charge fixed by the Authority.

## **77 General powers of Chief Investigator**

- (1) For the purposes of carrying out his functions and duties under this Act, the Chief Investigator has the powers of a commission of inquiry under the *Commission of Inquiry Act* (with necessary modifications), subject to this Act.
- (2) The power of the Chief Investigator to investigate an accident or incident includes the power to investigate accidents or incident involving military aircrafts (including military personnel or things).

## **78 Powers of entry and investigation**

- (1) Without limiting the powers conferred by section 77, for the purposes of carrying out the Chief Investigator's functions, duties, or powers under this Act, an authorised investigator may:
  - (a) enter any aircraft, aerodrome, building, or place, and inspect any thing where the authorised investigator believes on reasonable grounds that it is necessary to do so for the purposes of investigating an accident or incident;
  - (b) require the owner, operator, or occupier, of the aircraft, aerodrome, building, or place, to state, and produce satisfactory evidence of, his or her name and address;
  - (c) inspect, make copies of, or take extracts from, or retain any document or record that the authorised investigator believes on reasonable grounds is relevant to the investigation of an accident or incident;
  - (d) where the authorised investigator believes on reasonable grounds that it is necessary to preserve or record evidence, or to prevent the tampering with or alteration, mutilation, or destruction of any place or thing involved in any manner in an accident or incident, prohibit or restrict access of persons or classes of persons to the site of any accident or incident or to any thing involved in the accident or incident;
  - (e) where the authorised investigator believes on reasonable grounds that any thing is or contains evidence relevant to the investigation of any accident or incident, direct that the thing be taken to a place nominated by the authorised investigator; or
  - (f) without limiting paragraphs (a) to (e), seize, detain, remove, preserve, protect, or test any place or thing that the authorised investigator believes on reasonable grounds will assist in establishing the cause of an accident or incident.
- (2) Nothing in this section confers on any person the power to enter any dwelling house unless the entry is authorised by a warrant given by a judicial officer on written application on oath; and such warrant shall not be granted unless the judicial officer is satisfied that the entry is

essential to enable the inspection to be carried out.

- (3) A warrant issued under subsection (2) shall be directed to a named person and is valid for a period of one month from the date of its issue or such lesser period as the judicial officer considers appropriate; and the period of validity shall be shown in the warrant.
- (4) Any person exercising the power of entry under subsection (1) shall carry, in the case of:
  - (a) the Chief Investigator, documentary evidence of his appointment as Chief Investigator; or
  - (b) any other person, a warrant of authority issued by the Chief Investigator specifying:
    - (i) the name and the office or offices held by the person; and
    - (ii) that the person is authorised by the Chief Investigator to exercise the power conferred by this section to enter aircraft, aerodromes, buildings and places, and to carry out inspections.
- (5) Any person exercising the power of entry under subsection (1) shall produce the document required to be carried, and where applicable the warrant issued under subsection (2):
  - (a) if practicable on first entering the aircraft, aerodrome, building, or place; and
  - (b) whenever subsequently reasonably required to do so.
- (6) In this section, “**authorised investigator**” means:
  - (a) the Chief Investigator;
  - (b) any person appointed under section 80(1) and authorised in terms of subsection (4)(b) by the Chief Investigator.

## **79 Conduct of investigation**

- (1) When an accident or incident is under investigation by the Chief Investigator, the Chief Investigator is in-charge of that investigation.

- (2) The Chief Investigator shall permit the participation or representation of any overseas bodies in any investigation pursuant to the Convention.
- (3) Except with the consent of the Chief Investigator, which consent shall not be unreasonably withheld, no other person (including the Authority or the Director) may:
  - (a) participate in any investigation being undertaken by the Chief Investigator;
  - (b) undertake any independent investigation at the site of any accident or incident being investigated by the Chief Investigator; or
  - (c) examine or cause to be examined any material removed from the site of any accident or incident being investigated by the Chief Investigator.
- (4) If the Chief Investigator refuses consent under subsection (3), he shall give the person refused consent a written statement of the reasons for his refusal.
- (5) If any preliminary report issued by the Chief Investigator states or infers that the act or conduct of any person has contributed to the cause of an accident or incident being investigated by the Chief Investigator, the Chief Investigator shall, before issuing a final report on the matter:
  - (a) give that person an opportunity to comment on or refute that statement or inference, either in a written statement or at a hearing, or both; and
  - (b) have regard to that person's statement or other evidence.

## **80 Appointment of investigators or assessors**

- (1) The Chief Investigator may, with the approval of the Authority, appoint any suitably qualified person he considers necessary for the purpose of any investigation under this Act.
- (2) With the approval of the Authority, the Chief Investigator may

delegate to any person appointed under subsection (1) any of his function or power under this Act, and as such:

- (a) subsections 28(1), (5), (6), (7) and (10), with the necessary modifications, apply to such a delegation; and
  - (b) no such delegation shall:
    - (i) affect or prevent the performance of any function or the exercise of any power by the person making that delegation; or
    - (ii) affect the responsibility of the person making the delegation for the actions of the delegate.
- (3) The Authority may, if the Authority considers appropriate, employ or engage any person appointed under subsection (1) on terms and conditions determined by the Authority, subject to this Act.

## **PART IX                    DISCLOSURE AND ADMISSIBILITY OF ACCIDENT AND INCIDENT INVESTIGATION INFORMATION**

### **81                    Interpretation**

For the purposes of this Part, unless the context otherwise requires:

***“Chief Investigator”***:

- (a) means the Chief Investigator appointed under section 75; and
- (b) includes any person appointed by the Chief Investigator under section 80.

***“disclose”***, in relation to a record referred to in this Part, includes:

- (a) relating the whole or part of the contents of the record orally; and
- (b) producing the record, or a copy of the record, in whole or in part in any form;

***“proceedings”*** means:

- (a) proceedings before a court or tribunal, including a court martial or other inquiry or tribunal established in respect of a disciplined force;
- (b) an inquiry under the *Death and Fire Inquiries Act*;
- (c) an arbitration under the *Arbitration Act* or any other law;
- (d) proceedings before:
  - (i) an inquiry under the *Commission of Inquiry Act* or any other law; or
  - (ii) a body, other than the Chief Investigator, having the powers or any of the powers of a commission of inquiry; and
- (e) inquiry or investigation by any person other than the Chief Investigator.

**82 Circumstances of disclosure, and admissibility, of certain investigation records**

- (1) A record specified in subsection (2):
  - (a) shall not be disclosed except by the Chief Investigator, or another person with the written consent of the Chief Investigator, for the purposes of an investigation by the Chief Investigator into an accident or incident to which the record relates; and
  - (b) is not admissible in any proceeding.
- (2) A record referred to in subsection (1) is:
  - (a) a statement or submission made to the Chief Investigator in the course of an investigation;
  - (b) a recording of an interview by a person engaged in an investigation by the Chief Investigator that is generated in the course of an investigation, or a transcript of such a recording;
  - (c) a note or opinion of a person engaged in an investigation by the

Chief Investigator that is generated in the course of an investigation; or

- (d) information relating to an investigation that is provided in confidence by the Chief Investigator to any other person (unless that information is a record specified in section 83(2)).
- (3) Notwithstanding subsection (1), a person who made a statement or submission referred to in subsection (2)(a), or who supplied any statement contained in a record referred to in subsection (2)(b) or (c), may disclose the information contained in the statement or submission to any other person.

**83        Circumstances of disclosure of cockpit recordings and certain investigation records supplied to the Chief Investigator**

- (1) A record specified in subsection (2) shall not be disclosed except:
  - (a) by the Chief Investigator, or another person with the written consent of the Chief Investigator, for the purposes of an investigation by the Chief Investigator into an accident or incident to which the record relates; or
  - (b) by order of the High Court under section 85 or 86.
- (2) A record referred to in subsection (1) is:
  - (a) a cockpit voice recording (or its transcript) from an aircraft other than military aircraft;
  - (b) a cockpit video recording (or its transcript) from an aircraft other than military aircraft; or
  - (c) a document or other record held by the Chief Investigator that contains information about an identifiable individual that was supplied to the Chief Investigator in the course of an investigation (not being information included in any statement, submission, recording, transcript, or note referred to in section 82(2)(a), (b), or (c)).
- (3) Nothing in subsection (1) prevents a person who is recorded on a record referred to in subsection (2)(a) or (b), or who supplied



information contained in a record referred to in subsection (2)(c), from making a statement to any person about the accident or incident.

- (4) No judicial officer may issue a search warrant in respect of a record specified in subsection (2) or section 82(2).

#### **84 Admissibility of cockpit recordings and certain investigation records**

- (1) A record specified in section 83 (2) is not admissible in:
  - (a) civil proceedings other than proceedings of a kind to which section 86 applies; or
  - (b) proceedings before a martial court or inquiry or tribunal established in respect of a disciplined force.
- (2) A record specified in section 83(2) is not admissible against a member of the flight crew of a military or a non-military aircraft in any proceedings.
- (3) Nothing in subsection (2) affects the admissibility of a record specified in section 83(2) against a person other than a member of the flight crew of a military or a non-military aircraft.
- (4) A record specified in section 83(2) is only admissible in particular civil proceedings of a kind to which section 86 applies if it was disclosed in relation to such proceedings in accordance with an order made under section 85 or 86.
- (5) Nothing in this section renders admissible any record that is inadmissible under any other law.

#### **85 Disclosure of record before civil proceedings commenced**

- (1) A person who intends to commence civil proceedings (where the amount of damages claimed exceeds \$200,000) may apply to the High Court for an order for disclosure of any record specified in section 83(2).
- (2) The Court may make an order for the disclosure of a record to a person who applies under subsection (1) if:

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- (a) it appears to the Court that:
  - (i) the person is or may be entitled to claim relief in the proceedings; and
  - (ii) it is impossible or impracticable for the person to formulate the person's claim without reference to the record sought; and
- (b) the Court is satisfied that the interests of justice in the disclosure of the record outweigh the adverse domestic and international impact the disclosure may have on the investigation to which the record relates or any future investigation into an accident or incident.

## **86 Disclosure of record in pending civil proceedings**

A party to any pending civil proceedings (where amount of the damages claimed exceeds \$200,000) may apply to the High Court for an order for the disclosure of any record specified in section 83(2), and the Court may make such order if it is satisfied with the matter set out in section 85(2)(b).

## **87 Provisions in relation to application under section 85 or 86**

- (1) Subject to this section, an application under section 85 or 86 shall be made and dealt with in accordance with the rules of court applicable to interlocutory applications.
- (2) The applicant shall notify the following persons of the making of the application:
  - (a) the person who owns or has possession of the record; and
  - (b) an individual who is the subject of the record or, if that person is deceased, that person's next of kin.
- (3) A person who is served with a notice of an application, and any other person who satisfies the Court that he has a legitimate interest in the application, may appear before the Court and be heard in respect of the application.
- (4) Only the following persons are permitted to be present at the hearing

of an application under this section:

- (a) the presiding Judge;
  - (b) officers of the Court;
  - (c) the applicant and the applicant's legal counsel;
  - (d) other parties to the proceedings to which the application relates (or intended parties in the case of an application under section 85 and their legal counsel;
  - (e) witnesses; or
  - (f) any person referred to in subsection (3).
- (5) The Court may exclude any witness, or any person referred to in subsection (3), from any part of the hearing of the application.
  - (6) The Court may, on its own initiative or on application, adjourn the hearing of an application under section 85 or 86 at any time if it appears to the Court, that the making of a disclosure order will prejudice any investigation into an accident or incident that is being undertaken by the Chief Investigator.
  - (7) Subsection (6) does not limit any other power of the Court to adjourn proceedings.

## **88 Court may order record to be produced**

- (1) For the purpose of determining whether a record should be disclosed under section 85 or 86, the Court may order any person who has possession of the record to produce it to the Court.
- (2) Subject to section 90, the Court may deal with the record as it thinks fit.

## **89 Restriction on publication of reports of proceedings**

- (1) No person may publish any report of an application under section 85 or 86 without the leave of the Court.
- (2) Notwithstanding subsection (1), a person may publish:

- (a) the names and addresses of the parties;
- (b) the name of the presiding Judge; or
- (c) the order made by the Court.

**90 Further provisions relating to disclosure of records**

- (1) If the High Court makes a disclosure order under section 85 or 86, the order relates only to the parts of the record that are relevant to the purpose for which the disclosure was ordered, and any part of the record that is not relevant shall not be disclosed.
- (2) The record may be used only for the purpose for which the disclosure was ordered, and no person is permitted to copy the record or make notes from the record without leave of the Court.
- (3) The record shall be returned to the person who produced the record to the Court when the record is no longer needed for the purpose for which the disclosure was ordered.
- (4) No record that is ordered to be disclosed under section 85 or 86 may be broadcast or published in the media.

**91 Certain actions do not constitute disclosure**

The following actions do not constitute disclosure of a record referred to in section 82 or 83:

- (a) the inclusion of the whole or part of a record in any finding, recommendation, or report, whether preliminary or otherwise, made, issued, or published by the Chief Investigator in the course of or following an investigation;
- (b) the return of a recording to its owner with the consent of all the individuals recorded on it; and
- (c) the broadcast or publication in the media of any information disclosed to any person under section 82(3) or any statement made under section 83(3).

**92        Admissibility of accident or incident findings, recommendations, or report**

No finding, recommendation, or report, whether preliminary or otherwise, made, issued, or published by the Chief Investigator following an investigation is admissible as evidence in any proceedings except:

- (a) an inquiry under the *Death and Fire Inquiries Act*; or
- (b) an application for judicial review of a decision of the Chief Investigator.

**93        Investigators not compellable to give opinion evidence in certain proceedings**

No person engaged in an investigation by the Chief Investigator is compellable to give evidence in any proceedings to which the Chief Investigator is not a party as to:

- (a) that person's opinion concerning any aspect of an investigation; or
- (b) any matter included in any analysis, finding or recommendation made in the course of or following an investigation.

**PART X                    AVIATION SECURITY**

**94        Aviation security**

The Police and any authorised provider of aviation security services at an aerodrome, installation or facility are jointly responsible for:

- (a) the prevention of the commission of offences against this Part or Part XV at any security designated aerodrome, security designated navigation installation or security designated servicing facility; and
- (b) the protection of persons and property from dangers arising from the commission or attempted commission of such offences.

## **95 Responsibility of Minister**

The Minister shall ensure that aviation security services are provided at all security designated aerodromes, security designated navigation installations and security designated servicing facilities.

## **96 Authorised aviation security service providers**

- (1) Subject to subsection (2), aviation security services at any security designated aerodrome, security designated navigation installation or security designated servicing facility may be provided by:
  - (a) the Aviation Security Service; or
  - (b) the operator of that aerodrome, navigation installation or servicing facility.
- (2) No operator of an aerodrome, navigation installation or servicing facility, and no person employed by any such operator to provide aviation security services, shall provide aviation security services at that aerodrome, installation or facility, except pursuant to a current aviation document granted by the Director under section 57.
- (3) The holder of a current aviation document shall comply with the relevant prescribed requirements and standards.

## **97 Functions and duties of Aviation Security Service**

Without limiting the powers, functions, duties, or responsibilities of the Police under this Act or any other written law, and without limiting section 95, the Aviation Security Service shall have the following functions and duties:

- (a) to undertake the screening and search of any of the persons and things specified in sections 100(1), 101(1), 105(1), 106 and 108(1);
- (b) to exercise the functions and powers of authorised persons for the purposes of this Part;
- (c) to undertake, to the extent authorised in writing by the Director, the duties of in-flight security officers;

- (d) to liaise with, co-operate with and support, to the extent authorised in writing by the Director, approved in-flight security officers or persons with equivalent functions and duties, not being aviation security officers of Solomon Islands as defined in section 2, who enter Solomon Islands on board an aircraft registered in a member State of ICAO other than Solomon Islands;
- (e) to provide security support services to the Police when requested by the Commissioner of Police, but only subject to the following conditions:
  - (i) the Commissioner of Police is satisfied that the provision of those services to the Police is necessary to enable the Police to carry out its security duties; and
  - (ii) the aviation security service is satisfied that such support services to the Police will not compromise aviation security;
- (f) to carry out aerodrome security patrols and patrols of navigation installations;
- (g) to provide security support services to the Police when requested by the Commissioner of Police, but only when the Commissioner is satisfied that the provision of those services to the Police is necessary to enable the Police to carry out its security duties and the Aviation Security Service is satisfied that the provision of those services to the Police will not compromise aviation security;
- (h) to review, inquire into, and keep itself informed on security techniques, systems, devices, practices, and procedures related to the protection of civil aviation and persons employed in or using them;
- (i) to undertake, or encourage or supervise, such experimental or research work in respect of any aspect of aviation security as the Director may specify;
- (j) for the purpose of better carrying out any of its functions under this Act, to co-operate with the Police, Government

departments, airport authorities, operators, and authorities administering the airport security services of other countries, including any appropriate international body; and

- (k) to exercise and perform such other functions and duties as may be conferred on it under any other written law.

## **98 Further provisions relating to Aviation Security Service**

- (1) Notwithstanding sections 57 and 96, but subject to subsection (2), the Minister may, by notice in the *Gazette*, specify that only the Aviation Security Service may be granted an aviation document to provide aviation security services at any security designated aerodrome, security designated navigation installation or security designated servicing facility.
- (2) If any person already holds an aviation document entitling that person to provide aviation security services at a security designated aerodrome, security designated navigation installation or security designated servicing facility, the Minister shall not give a notice under subsection (1) in respect of that aerodrome, navigation installation or servicing facility without the consent of that person.
- (3) The Minister may, in an emergency or other crisis, appoint the Aviation Security Service to provide aviation security services at any designated aerodrome, security designated navigation installation or security designated servicing facility, notwithstanding:
  - (a) section 96; or
  - (b) that the operator of that aerodrome, navigation installation or servicing facility is providing aviation security services.
- (4) Any appointment made by the Minister under subsection (3) shall have effect for a period specified by the Minister, being not more than 10 days.

## **99 Functions and duties of other aviation security service providers**

- (1) Aviation security service providers (other than the Aviation Security Service) shall have such functions and duties as may be prescribed



by rules.

- (2) Such aviation security service providers shall designate employees to be aviation security officers; and such officers shall have and may exercise, in relation to the aerodrome, navigation installation or security designated servicing facility at which they are employed, all the powers of an aviation security officer under this Part, except the powers to arrest and detain any person.

## **100 Powers and duties of Director to require screening and search**

- (1) The Director may, if he believes on reasonable grounds that a security risk exists, direct an aviation security service entity by notice in writing to undertake screening and search under subsection (2) or (3).
- (2) For the purpose of subsection (1), an aviation security service may screen:
  - (a) any person boarding an aircraft;
  - (b) at random, and on a proportional basis determined by risk assessment, any person, having access to or, in the opinion of the Director, having the potential to access:
    - (i) whether lawfully or unlawfully; or
    - (ii) whether in person or indirectly by way of placement or delivery of any item, thing, matter or substance to, on, within or in close proximity to,
    - (iii) any aircraft or any security area, security enhanced area or sterile area at any airport, navigation installation or security designated servicing facility; or
  - (c) any thing to be carried by an aircraft; or
  - (d) any thing carried by or in the apparent possession of any of the persons referred to in paragraphs (a) and (b).
- (3) When undertaking screening under subsection (2), an aviation security service may, if necessary, search:

- (a) any person boarding an aircraft; or
  - (b) any person, having access to, or in the opinion of the Director, having the potential to access:
    - (i) whether lawfully or unlawfully; or
    - (ii) whether in person or indirectly by way of placement or delivery of any item, thing, matter or substance to, on, within or in close proximity to,
    - (iii) any aircraft or any security area, security enhanced area or sterile area at any airport or navigation installation or any security designated servicing facility; or
  - (c) any thing to be carried by an aircraft;
  - (d) any thing carried by or in the apparent possession of any of the persons referred to in paragraphs (a) and (b);
  - (e) any vehicle within any security area, security enhanced area or sterile area at any airport or navigation installation or any security designated servicing facility or in any defined area adjacent to any such airport, installation or facility;
  - (f) any aircraft or class of aircraft;
  - (g) any aerodrome or class of aerodrome;
  - (h) any navigation installation or class of navigation installation; or
  - (i) any security designated servicing facility
- (4) Before directing an aviation security provider under subsection (1), the Director shall, to determine whether or not the direction is necessary to meet the security risk, consult, as the Director in each case considers appropriate, representative groups in the aviation industry, and any Government department.
- (5) The Director may rescind a direction made under subsection (1).
- (6) A direction remains in effect until it is rescinded.

**101 Powers and duties of aviation security officer relating to dangerous goods**

- (1) Without limiting section 97(a) and (b), an aviation security officer may screen any person boarding an aircraft or any thing to be carried by an aircraft for the purpose of detecting dangerous goods.
- (2) If dangerous goods are detected and the aviation security officer has reasonable grounds to believe that the goods may not be lawfully carried on an aircraft, the aviation security officer may seize and detain the dangerous goods for the purpose of determining whether or not the goods may be lawfully carried on an aircraft.
- (3) If the aviation security officer determines that the dangerous goods may not be lawfully carried on an aircraft, the aviation security officer shall notify the relevant operator or delivery service as soon as practicable and the officer:
  - (a) may detain the dangerous goods until they are dealt with in accordance with paragraph (b) or (c);
  - (b) may deliver the dangerous goods to the operator or delivery service; or
  - (c) may, if the Director agrees, destroy or dispose of the dangerous goods.
- (4) If the aviation security officer determines that the dangerous goods may be lawfully carried on an aircraft, the aviation security officer shall, as far as practicable, return the dangerous goods to the owner of the dangerous goods.
- (5) Notwithstanding anything in this section, if the aviation security officer has reasonable grounds to believe that the dangerous goods pose an imminent risk to safety, the aviation security officer may destroy or otherwise dispose of the dangerous goods.
- (6) The aviation security officer shall report the detection of dangerous goods in accordance with the rules or, in the absence of rules, as the Director may direct.

**102      Security designated aerodromes, navigation installations and servicing facilities**

- (1) The Minister may, by notice in the *Gazette*, designate any aerodrome or navigation installation or servicing facility as a security designated aerodrome, security designated navigation installation or security designated servicing facility.
- (2) Any designation under subsection (1) may at any time be revoked, in whole or in part, or amended by the Minister by notice in the *Gazette*.

**103      Right of access**

- (1) Subject to subsections (2) and (3), an aviation security officer while on duty may, for the purpose of exercising and carrying out his powers, functions, and duties under this Act, enter:
  - (a) any security designated aerodrome, security designated navigation installation or security designated servicing facility;
  - (b) any aircraft or building; or
  - (c) a place in any part of a security designated aerodrome or security designated navigation installation or security designated servicing facility.
- (2) Unless the aviation security officer is accompanied by a police officer, the power of entry conferred by subsection (1) shall be limited to peaceful and non-forceable entry.
- (3) If the Police have taken command of any situation at an aerodrome or navigation installation or security designated servicing facility, the rights of aviation security officers to enter any part thereof or any aircraft, building, or place shall be subject to limitations specified by the senior police officer present at the aerodrome, navigation installation or servicing facility.
- (4) If an aircraft or vehicle is not being used for commercial purposes, subsection (1) does not apply unless the aviation security officer believes on reasonable grounds that there is in that vehicle or aircraft a person or thing likely to endanger the aerodrome or installation or any of its facilities or security designated servicing facility or any

person.

## **104 Security areas**

- (1) The Director may declare, by a sign or signs affixed at the perimeter thereof, that an area within any security designated aerodrome or security designated navigation installation or security designated servicing facility is a security area.
- (2) No person other than a police officer on official duties or an aviation security officer shall enter or remain in any security area unless authorised by the Director or the airport manager or other person having control thereof.
- (3) When requested by an aviation security officer, a person in a security area shall:
  - (a) state his name and address (which shall include production of satisfactory evidence of the correctness of his stated name and address);
  - (b) the purpose of his presence in the security area; and
  - (c) his authority to enter the security area.
- (4) The aviation security officer may order a person to leave the aviation security area if the person:
  - (a) fails or refuses to provide an aviation security officer with satisfactory evidence of his name and address when requested by the aviation security officer; or
  - (b) fails to satisfy the aviation security officer that he is authorised to be there.
- (5) An aviation security officer, and any person whom he calls to his assistance, may use such reasonable force necessary to remove from any security area any person who fails or refuses forthwith to leave the security area after having been ordered by an aviation security officer to do so under subsection (4).
- (6) Any person who refuses to comply with subsection (3) or (4) and, after having been warned that he commits an offence, persists in its

97

commission, may be detained by an aviation security officer and in that case he shall, as soon as practicable be delivered to a police officer.

- (7) A passenger embarking or disembarking directly through gateways or thoroughfares in an airport approved for that purpose by the licensee of the airport shall be deemed to be authorised by the Director to pass through any security area forming part of those gateways or thoroughfares.

## **105 Screening and search of passengers and baggage**

- (1) Any authorised person may, with the consent of the passenger, screen and search any passenger and baggage, personal effects, or other articles, not being checked baggage, in the possession of the passenger, or in the possession of another person (being a person accompanying the passenger or an employee or agent of the carrier) before the passenger boards any aircraft in Solomon Islands pursuant to any contract providing for the carriage of the passenger by air from any place in Solomon Islands to any other place (whether in Solomon Islands or elsewhere).
- (2) If the passenger declines to allow himself or his baggage to be screened or searched:
  - (a) the carrier may refuse to carry the passenger or his baggage (whether checked or unchecked);
  - (b) the Director, or any authorised person, may direct the carrier to refuse embarkation of that passenger or the loading of that person's baggage, whether checked or unchecked, onto any aircraft;
  - (c) the passenger, where embarkation is refused under paragraph (b), may be directed in writing by an authorised person to leave the airport within a period of up to 24 hours; or
  - (d) the passenger may be placed under surveillance at the airport by an authorised person.
- (3) A carrier is not liable to any civil proceeding (other than a proceeding in respect of any right that the passenger may have for the recovery

of the fare or any part thereof) if the carrier has refused to carry, or has been directed by the Director or any authorised person, not to carry, or to load the baggage of, a passenger who has declined to allow himself or his baggage to be screened or searched.

- (4) The following provisions shall apply to any search made under subsection (1):
  - (a) the passenger shall not for the purpose of being searched be required to remove any article of clothing other than:
    - (i) shoes or other footwear;
    - (ii) a coat or similar article of outer clothing; or
    - (iii) any glasses, sunglasses, hat, face mask, head covering or similar apparel; and
  - (b) except where the search is made by means of any mechanical or electrical or electronic or other similar device, no female shall be searched except by a female.
- (5) In this section, “**passenger**” includes a person accompanying the passenger or an employee or agent of carrier.

## **106 Screening and search of other persons and things**

- (1) Any authorised person may, subject to subsection (4) and with the consent of the person affected, screen and search:
  - (a) any person and any personal effects, tools, packages or any other item or substance whatsoever in the possession or apparent possession of that person where that person is found in any security area, enhanced security area or sterile area; or
  - (b) any person having access to, or, in the opinion of the Director, having the potential to access:
    - (i) whether lawfully or unlawfully; or
    - (ii) whether in person, or indirectly by way of placement or delivery of any item, thing, matter or substance, on, within, to or in close proximity to,

any aircraft or any security area, enhanced security area or sterile area at any airport, navigation installation or security designated servicing facility.

- (2) Any authorised person may, subject to subsection (4), search:
  - (a) any vehicle within any security area, enhanced security area or sterile area or in any defined area adjacent to any of such areas;
  - (b) any aircraft or class of aircraft;
  - (c) any aerodrome or class of aerodrome;
  - (d) any navigation installation or class of navigation installation; or
  - (e) any security designated servicing facility.
- (3) Section 105(4) applies to screening and search under subsection (1).
- (4) Searches by authorised persons under subsections (1) and (2) may be undertaken:
  - (a) at random and at minimum on a proportional basis determined by risk assessment of the Director;
  - (b) if the commission, or likely commission, of an offence against Part XV is reasonably suspected; or
  - (c) if the Director determines that such search would be desirable in the interests of aviation safety and security and is justifiable.

## **107 Search of persons declining to allow screening or search**

- (1) If:
  - (a) a passenger has refused to consent to the screening or search of himself or his baggage pursuant to section 105(1);
  - (b) a person has refused to consent to a screening or search pursuant to section 106(1); or
  - (c) a passenger or any other person has refused to consent to a search pursuant to section 108(2),



a police officer may exercise the powers under subsection (2) if the officer has reasonable grounds to suspect that an offence against this Act has been, is being, or is likely to be, committed, whether by the passenger or that other person.

- (2) For the purposes of subsection (1), the police officer may:
  - (a) without warrant, search such person and any articles in his possession;
  - (b) detain such person for the purposes of that search;
  - (c) take possession of any article referred to in section 209 found in the course of that search.
- (3) A police officer exercising the power of search under subsection (2) shall:
  - (a) identify himself to the person searched (including evidence that he is a police officer if not in uniform, if so required by the person); and
  - (b) inform the person that the search is being made under that subsection.

## **108 Screening and search of checked baggage, cargo and mail**

- (1) Any authorised person may screen or examine any checked baggage, cargo and mail before it is loaded on to any aircraft in Solomon Islands pursuant to a contract providing for the carriage of the cargo by air from a place in Solomon Islands to any other place (whether in Solomon Islands or elsewhere).
- (2) Where any authorised person, upon screening or examination of any checked baggage, cargo or mail, has reasonable grounds to suspect that an offence against this Act or its rules, in relation to the aircraft on which that checked baggage, cargo or mail was to be carried, has been, is being, or is likely to be, committed or breached, whether by a passenger, consignor of cargo or mail or by any other person, the authorised person may, with the consent of any such person:
  - (a) if the suspected offence or breach relates to checked baggage,

search any passenger or other person who checked, or is reasonably suspected of having, checked, that baggage;

- (b) if the suspected offence or breach relates to cargo, search any person who has delivered, or is reasonably suspected of having delivered, the cargo to the aerodrome; or
- (c) if the suspected offence or breach relates to mail, search any person who has delivered, or is reasonably suspected of having delivered the mail to the aerodrome,

and may take possession of any article referred to in section 209 found in the course of that search.

## **109 Evidence of offences**

- (1) Nothing found in the course of a screening, search or examination made pursuant to section 105, 106, 107 or 108 shall be admissible as evidence in any criminal proceedings against:
  - (a) the person who, or whose baggage, has been screened, searched or examined; or
  - (b) the consignor of any cargo or mail that has been screened, searched or examined.
- (2) Subsection (1) does not apply to proceedings in respect of:
  - (a) an offence against this Act;
  - (b) an offence of treason or any other offence punishable by imprisonment for life or for a term of 3 years or more;
  - (c) an offence relating to the unlawful possession of firearms and ammunition under the *Firearms and Ammunition Act*; or
  - (d) an offence relating to the importation, sale, supply and possession of certain dangerous drugs under the *Dangerous Drugs Act*.

## **110 Powers of aircraft commander**

- (1) If the commander of an aircraft in-flight, wherever that aircraft may

be, has reasonable grounds to believe that any person on board the aircraft has done or is about to do on board the aircraft:

- (a) anything which is an offence under the law of the country in which the aircraft is registered (not being a law of a political nature or a law based on racial or religious discrimination); or
- (b) anything (whether an offence or not) which jeopardises or may jeopardise:
  - (i) the safety of the aircraft or of persons or property on board the aircraft; or
  - (ii) good order and discipline on board the aircraft,

the commander may take with respect to that person such reasonable measures, including restraint, as may be necessary:

- (aa) to protect the safety of the aircraft or of persons or property on board the aircraft; or
- (bb) to maintain good order and discipline on board the aircraft; or
- (cc) to enable the commander to disembark or deliver that person in accordance with subsection (4) or (5).

- (2) Any member of the crew of an aircraft and any other person on board the aircraft may:

- (a) at the request or with the authority of the commander of the aircraft, and any member of the crew shall if so required by the commander, assist in restraining any person whom the commander is entitled under subsection (1) to restrain; or
- (b) without the commander's authority, take with respect to any person on board the aircraft such reasonable measures, including restraint, as he has reasonable grounds to believe are immediately necessary to protect the safety of the aircraft or of persons or property on board the aircraft.

- (3) Any restraint imposed on any person on board an aircraft under the powers conferred by subsection (1) or (2) shall not be continued after

the aircraft ceases to be in-flight, unless the commander of the aircraft notifies the appropriate authorities of the country in which the aircraft ceases to be in-flight, either before or as soon as reasonably practicable after that time, that a person on board is under restraint and the reasons for such restraint, but, provided that notification has been given, restraint may be continued:

- (a) for any period (including the period of any further flight) between that time and the first occasion thereafter on which the commander is able with the requisite consent of the appropriate authorities to disembark or deliver the person under restraint in accordance with subsection (4) or (5); or
  - (b) if the person under restraint agrees to continue his journey under restraint on board that aircraft.
- (4) If the commander of an aircraft has reasonable grounds to believe that a person on board the aircraft has done or is about to do on board the aircraft anything (whether an offence or not) which jeopardises or may jeopardise:
- (a) the safety of the aircraft or of persons or property on board the aircraft; or
  - (b) good order and discipline on board the aircraft,
- the commander may, if he considers it necessary to do so in order to protect the safety of the aircraft, disembark that person in any country in which the aircraft may be.
- (5) If the commander of an aircraft has reasonable grounds to believe that any person on board the aircraft has done on board the aircraft anything which in the commander's opinion is a serious offence under the law of the country in which the aircraft is registered, the commander may deliver that person:
- (a) in Solomon Islands, to any police officer; or
  - (b) in any other country which is a party to the Tokyo Convention, to any person exercising functions corresponding to those of a police officer of the Solomon Islands Police Force.

- (6) If the commander of an aircraft disembarks any person pursuant to subsection (4), in the case of a Solomon Islands aircraft, in any country, or, in the case of any other aircraft, in Solomon Islands, the commander shall report the fact of, and the reasons for, that disembarkation to an appropriate authority in the country of disembarkation (being, in Solomon Islands, a police officer).
- (7) If the commander of an aircraft intends to deliver any person in accordance with subsection (5) in Solomon Islands or, in the case of a Solomon Islands aircraft, in any other country which is a party to the Tokyo Convention, the commander shall, before or as soon as practicable after landing, give notification of his intention and of the reasons for his intention to an appropriate authority in that country (being, in Solomon Islands, a police officer).
- (8) Any commander of an aircraft who without reasonable cause fails to comply with the requirements of subsection (6) or (7) is liable on conviction to a fine not exceeding 4000 penalty units.
- (9) A person who in good faith imposes reasonable measures, including restraint, on another person under this section does not commit an offence and is not liable to any civil proceeding in respect of those measures.

#### **111 Power to search persons on aircraft**

If the commander of an aircraft in-flight has reasonable grounds to suspect that an offence against this Act has been, is being, or is likely to be, committed on board or in relation to that aircraft, the commander, or any member of the crew of the aircraft or any other person on board the aircraft authorised by the commander to do so, may:

- (a) search any person or baggage on board the aircraft; and
- (b) take possession of any article found which has been used or could be used to effect or facilitate the commission of an offence under this Act.

#### **112 Arrest of person delivered to Police**

- (1) A police officer shall accept delivery of a person whom the

commander of an aircraft seeks to deliver to such officer under section 110(5) if the officer has reasonable grounds to suspect that person of having done or committed on board that aircraft anything that is an offence against this Act or any other written law.

- (2) If a police officer accepts delivery of a person under subsection (1), the officer shall forthwith arrest that person.
- (3) A police officer shall accept delivery of a person whom an aviation security officer seeks to deliver to him under this Part if he has reasonable grounds to suspect that person of having done or omitted on board an aircraft anything that is an offence against this Act or any other written law.
- (4) A police officer who accepts delivery of a person under subsection (3) shall forthwith arrest that person.

### **113 Power of arrest and detention by aviation security officers**

- (1) An aviation security officer is justified in arresting without warrant any person on or in the vicinity of any security designated aerodrome or security designated navigation installation or security designated aviation servicing facility if the officer has reasonable grounds to believe that an offence has been or is being or is likely to be committed by that person under any of the following:
  - (a) Part XV;
  - (b) section 22, 42 or 44 of the *Firearms and Ammunition Act*;
  - (c) section 8(1)(d)(ii) of the *Explosives Act*.
- (2) Any person called upon to do so by an aviation security officer is justified in assisting him in good faith to arrest any person.
- (3) An aviation security officer shall, as soon as practicable, deliver any person he arrests to a police officer.
- (4) An aviation security officer who detains any person under section 104(6) and delivers him to a police officer, and any person who, upon request and in good faith, assists an aviation security officer in doing so, is justified in so detaining and delivering that person and in using

reasonable force necessary in doing so.

- (5) A police officer who accepts delivery of a person under subsection (3) or section 104(6) shall forthwith arrest that person.

## **114 Powers of Police**

A police officer may exercise all or any of the powers conferred on an aviation security officer under this Act or its regulations or rules.

# **PART XI INTERNATIONAL AIR SERVICES**

## **Division 1 General**

### **115 Interpretation**

In this Part:

**“capacity”**, in relation to a scheduled international air service, means:

- (a) with respect to the transport of passengers, the number of seats provided a week on each route followed (expressed either as a number of seats or in terms of aircraft equivalents); and
- (b) with respect to the transport of cargo, the amount of cargo space provided a week on each route followed (expressed in terms of cargo aircraft equivalents);

**“foreign international airline”** means an air transport entity of a country or territory other than Solomon Islands that is offering or operating a scheduled international air service or intends to offer or operate such a service;

**“licensee”** means the holder of a valid licence issued under this Part;

**“Solomon Islands international airline”** means a Solomon Islands air transport entity that is offering or operating a scheduled international air service or intends to offer or operate such service;

**“scheduled international air service”** means a series of flights

performed by aircraft for the carriage of passengers, cargo, or mail between Solomon Islands and one or more points in any other country or territory, where the flights are so regular or frequent as to constitute a systematic service, whether or not in accordance with a published timetable, and which are operated in such a manner that each flight is open to use by members of the public; and, in relation to a Solomon Islands international airline, includes a seventh freedom service;

**“seventh freedom service”** means a series of flights between one or more points in one country or territory other than Solomon Islands and one or more points in another country or territory other than Solomon Islands, if:

- (a) the airline is designated by Solomon Islands under the air services agreement (or similar arrangement) between Solomon Islands and each country or territory in which the service is being performed;
- (b) the service is performed according to the traffic rights allocated to the airline under those agreements (or arrangements); and
- (c) the service is a scheduled international air service.

**116 Scheduled international air service not to be carried on except pursuant to licence**

No person shall carry on in Solomon Islands any scheduled international air service otherwise than pursuant to and in conformity with the terms of a scheduled international air service licence or, as the case may be, an open aviation market licence.

**117 Application for licence**

- (1) An application for a licence under this Part shall be lodged with the Minister.
- (2) An applicant for a licence shall, when making the application:
  - (a) supply such information and documents required by regulations or as the Minister may specify; and



- (b) pay any prescribed fees and charges.

## **Division 2          Scheduled International Air Service Licences for Solomon Islands International Airlines**

### **118          Minister to be licensing authority for Solomon Islands international airlines**

- (1) The Minister shall be the licensing authority to grant scheduled international air service licences to Solomon Islands international airlines and to exercise jurisdiction in respect of those licences in accordance with this Part.
- (2) In this Division, “***scheduled international air service licence***”, means a licence issued under section 121.

### **119          Notice of application**

If an application under section 117 for a scheduled international air service licence is lodged by a Solomon Islands international airline, the Minister shall:

- (a) give notice in the *Gazette* that the application has been received; and
- (b) specify in the notice a time, being not less than 21 clear days from the date of the notice, within which the Minister will receive written representations from any person relating to the application.

### **120          Consideration of application for scheduled international air service licence by Solomon Islands international airlines**

- (1) In considering any application for a scheduled international air service licence made by a Solomon Islands international airline the Minister shall take into account the following matters:
  - (a) any relevant international agreement, convention, or arrangement to which Solomon Islands is a party;
  - (b) the safety and security requirements issued by the Director;

- (c) the financial ability of the applicant to operate the proposed service;
  - (d) the likelihood of the applicant carrying on the proposed service satisfactorily;
  - (e) any written representations received by the Minister in relation to the application; and
  - (f) such other matters as the Minister thinks fit.
- (2) If the granting of the licence would be contrary to any agreement, convention, or arrangement referred to in subsection (1)(a), the Minister shall refuse to grant the licence.

**121 Scheduled international air service licence may be granted subject to conditions**

- (1) the Minister may, after taking into account the matters under section 120:
- (a) grant the licence (wholly or partly), subject to conditions; or
  - (b) refuse to grant the licence.
- (2) The scheduled international air service licence shall be in a form approved by the Minister.
- (3) The Minister may, in granting any scheduled international air service licence under subsection (1), specify in the licence:
- (a) the countries or territories, or points within those countries or territories that may be served and the route or routes that may be followed;
  - (b) the maximum capacity that may be provided; and
  - (c) a date not later than which the service shall be commenced.

**122 Duration of scheduled international air service licence**

- (1) A scheduled international air service licence granted under section 121 is effective from the date stated in the licence, and may be

granted for such period as the Minister considers appropriate in the particular case.

- (2) If an application is made under section 123 for the renewal of a scheduled international air service licence, the licence shall, where the application is not disposed of before the date of expiry of the licence, continue in force until the application is disposed of, unless the Minister otherwise directs.

### **123      Renewal of scheduled international air service licence**

- (1) The Minister may renew a scheduled international air service licence granted under section 121, taking into account all the matters set out in section 120.
- (2) An application for the renewal of a scheduled international air service licence granted under section 121 shall be lodged with the Minister not less than 3 months before the date on which the licence expires.
- (3) Sections 117(2) and 119 applies to an application for the renewal of the licence as if it were an application for a new licence.
- (4) No person is entitled as of right to a renewal of a scheduled international air service licence.
- (5) The renewal of the licence is effective from the date of the expiry of the licence for which the renewal is granted, and may be for such period as the Minister considers appropriate in the particular case.

### **124      Variation of terms and conditions of scheduled international air service licence**

- (1) The Minister may, on his own initiative or on the application of the licensee, amend or revoke any of the terms and conditions of the licence, or add any new terms or conditions that in the Minister's opinion are necessary or desirable in the public interest.
- (2) If on his own initiative the Minister proposes to exercise the power under subsection (1), the Minister shall give the licensee not less than 21 clear days' notice in writing of his intention to exercise that power.

- (3) The Minister shall comply with section 119 and shall take into account all the matters referred to in section 120, if the application for proposed variation involves:
  - (a) a change or addition to the route or routes to be operated; or
  - (b) an increase in the capacity of the service to be provided.
- (4) Where the Minister has varied the terms or conditions of any scheduled international air service licence under this section, the Minister shall give notice in the *Gazette* of the fact of, and the terms of, that variation.

## **125      Transfer of scheduled international air service licence**

- (1) The Minister may, upon application, transfer any scheduled international air service licence to any person pursuant to this section, after taking into account all the matters set out in section 120.
- (2) An application for the transfer of a scheduled international air service licence shall:
  - (a) be lodged with the Minister not less than 3 months before the date of the proposed transfer; and
  - (b) be subject to the procedures set out in section 119.

## **Division 3      Scheduled International Air Service Licences for Foreign International Airlines**

### **126      Minister to be licensing authority for foreign international airlines**

- (1) The Minister shall be the licensing authority to grant scheduled international air service licences to foreign international airlines and to exercise jurisdiction in respect of those licences in accordance with this Part.
- (2) In this Division, “***scheduled international air service licences***” or “***licence***” means the scheduled international air service licence granted under section 128.

**127      Consideration of application for scheduled international air service licence by foreign international airlines**

- (1) In considering any application for a scheduled international air service licence made by a foreign international airline the Minister shall take into account the following matters:
  - (a) any relevant air services agreement and associated arrangements, and any other international agreement, convention, or arrangement to which Solomon Islands is a party;
  - (b) the safety and security requirements of the Director; and
  - (c) such other matters as the Minister thinks fit and has determined in writing should be taken into account.
- (2) If the granting of the licence would be contrary to any agreement, arrangement, or convention referred to in subsection (1)(a), the Minister shall refuse to grant the licence.

**128      Scheduled international air service licence may be granted subject to conditions**

- (1) The Minister may, after taking into account the matters under section 127:
  - (a) grant the licence wholly or partly, and subject to such conditions as the Minister thinks fit to impose; or
  - (b) refuse to grant the licence.
- (2) The scheduled international air service licence shall be in such form as the Minister may approve.
- (3) The Minister may, when granting a licence under subsection (1), specify in respect of the scheduled international air service:
  - (a) the countries or territories, or points within those countries or territories that may be served and the route or routes that may be followed;
  - (b) the maximum capacity that may be provided; and

- (c) the date not later than which the service shall be commenced.
- (4) The Minister shall give notice in the *Gazette* of any licence granted under this Division.

**129 Duration of scheduled international air service licence**

- (1) A scheduled international air service licence is effective from the date stated in the licence, and may be granted for such period as the Minister considers appropriate in the particular case or, if the Minister thinks fit, for an indefinite term.
- (2) Where an application is made under section 130 for the renewal of a scheduled international air service licence, the licence shall, where the application is not disposed of before the date of expiry of the licence, continue in force until the application is disposed of, unless the Minister otherwise directs.

**130 Renewal of scheduled international air service licence**

- (1) The Minister may, after taking into account all the matters referred to in section 127, renew a scheduled international air service licence.
- (2) An application for the renewal of a scheduled international air service licence shall be lodged with the Minister not less than 1 month before the date on which the licence expires.
- (3) Section 117(2) shall apply to an application for the renewal of the licence as if it were an application for a new licence.
- (4) No person is entitled as of right to a renewal of a scheduled international air service licence.
- (5) The renewal of the licence is effective from the date of the expiry of the licence for which the renewal is granted and may be for such period as the Minister considers appropriate in the particular case or, if the Minister thinks fit, for an indefinite term.

**131 Variation of terms and conditions of scheduled international air service licence**

- (1) The Minister may, on his own initiative or on the application of the licensee, amend or revoke any of the terms and conditions of the

licence or add any new terms or conditions that in the Minister's opinion are necessary or desirable in the public interest.

- (2) If on his own initiative, the Minister proposes to exercise the power under subsection (1), the Minister shall give 21 clear days' written notice of his intention to exercise that power to the licensee.
- (3) The Minister shall take into account all the matters referred to in section 127, if the application for proposed variation involves:
  - (a) a change or addition to the route or routes to be operated; or
  - (b) an increase in the capacity of the service to be provided.
- (4) The Minister shall, if the terms and conditions of the licence are varied, give notice in the *Gazette* of the variation and its terms.

#### **Division 4          Open Aviation Market Licences**

##### **132          Minister may designate countries or territories for open aviation market licences**

- (1) The Minister may, by notice in the *Gazette*, designate any one or more countries or territories in respect of which:
  - (a) scheduled international air services; and
  - (b) non-scheduled international flights engaged in the carriage of passengers, cargo, or mail for remuneration or hire,may be carried on pursuant to and in conformity with an open aviation market licence.
- (2) In this Division, “**open aviation market licence**” or “**licence**” means an open aviation market licence granted under section 135.

##### **133          Minister to be licensing authority**

The Minister shall be the licensing authority to grant open aviation market licences to Solomon Islands international airlines and foreign international airlines and to exercise jurisdiction in respect of those licences in accordance with this Part.

**134      Consideration of application for open aviation market licence**

- (1) In considering an application for an open aviation market licence made by a Solomon Islands international airline or a foreign international airline the Minister shall take into account the following matters:
  - (a) any relevant air services agreement and associated arrangements, and any other international agreement, convention, or arrangement to which Solomon Islands is a party;
  - (b) the safety and security requirements issued by the Director; and
  - (c) such other matters as the Minister thinks fit and has determined in writing should be taken into account.
- (2) If the granting of the open aviation market licence would be contrary to any agreement, convention, or arrangement referred to in subsection (1)(a), the Minister shall refuse to grant the licence.

**135      Open aviation market licence may be granted subject to conditions**

- (1) The Minister may, after taking into account the matters under section 134:
  - (a) grant the licence wholly or partly, and subject to such conditions as the Minister thinks fit;
  - (b) refuse to grant the licence.
- (2) The Minister shall, when granting a licence under subsection (1), specify the countries or territories that may be served in respect of any scheduled international air service and non-scheduled international flight carried on under the licence.
- (3) The open aviation market licence shall be in a form approved by the Minister.
- (4) The Minister shall, if a licence is granted, give notice in the *Gazette* of the granting of the licence.



**136      Duration of open aviation market licences**

- (1) An open aviation market licence is effective from the date stated in the licence, and may be granted for such period as the Minister considers appropriate in the particular case or, in respect of a foreign international airline, if the Minister thinks fit, for an indefinite term.
- (2) If an application is made under section 137 for the renewal of an open aviation market licence, the licence shall, where the application is not disposed of before the date of expiry of the licence, continue in force until the application is disposed of, unless the Minister otherwise directs.

**137      Renewal of open aviation market licences**

- (1) The Minister may, after taking into account the matters referred to in section 134, renew an open aviation market licence.
- (2) An application for the renewal of an open aviation market licence shall:
  - (a) be lodged with the Minister not less than 3 months before the date on which the licence expires; and
  - (b) comply with the procedures in section 117(2).
- (3) No person is entitled as of right to a renewal of an open aviation market licence.
- (4) The renewal of the open aviation market licence is effective from the date of expiry of the licence for which the renewal is granted and may be for such period as the Minister considers appropriate in the particular case or, in respect of a foreign international airline, if the Minister thinks fit, for an indefinite term.

**138      Variation of terms and conditions of open aviation market licence**

- (1) The Minister may, on his own initiative or on the application of the licensee, amend or revoke any of the terms and conditions of the licence or add any new terms or conditions that in the Minister's opinion are necessary or desirable in the public interest.

- (2) If on his own initiative, the Minister proposes to exercise the power under subsection (1), the Minister shall give the licensee not less than 21 clear days' notice in writing of the Minister's intention to exercise that power.
- (3) If an application under subsection (1) seeks approval for a change or addition to the country or countries, or territory or territories, to be served pursuant to the open market aviation licence, the Minister shall take into account the matters referred to in section 134 as if the application were an application for a new licence.
- (4) The Minister shall, if the terms and conditions of a licence are varied, give notice in the *Gazette* of such variation and its terms.

### **139      Transfer of open aviation market licences**

- (1) The Minister may, upon application, transfer an open aviation market licence granted to a Solomon Islands international airline to another Solomon Islands international airline, subject to the Minister taking into account the matters in section 134.
- (2) An application for the transfer of an open aviation market licence shall be lodged with the Minister not less than 3 months before the date of the proposed transfer.
- (3) The Minister shall, if a licence is transferred, give notice in the *Gazette* of the transfer of the licence.

### **140      Right to operate non-scheduled international flights**

The holder of an open aviation market licence is entitled to carry on, to or from the countries or territories specified under section 135(2) that may be served pursuant to the licence, non-scheduled international flights engaged in the carriage of passengers, cargo, or mail for remuneration or hire without authorisation under section 145.

## **Division 5      Requirements on Licensees**

### **141      Insurance cover against liability**

The Minister may, before granting or renewing any licence under this Part, or at any other time while the licence is in force, require the

applicant or the licensee to provide, to the satisfaction of the Minister, proof that the liability of the applicant or the licensee which may arise out of or in connection with the operation of the service in respect of the death of or bodily injury to any person and in respect of loss of or damage to any property is covered by insurance.

**142 Returns to be furnished**

A person carrying on a scheduled international air service or non-scheduled international flight pursuant to a licence under this Part shall provide to the Minister with such financial and statistical returns and statements, as the Minister may require by notice in writing addressed to that person.

**Division 6 Suspension and Revocation of Licences**

**143 Suspension of licences**

If the Minister is satisfied that a licensee has wilfully committed a breach of any of the conditions of a licence granted under this Part, the Minister may suspend the licence for such period as the Minister thinks fit.

**144 Revocation of licences**

The Minister may revoke a licence granted under this Part if:

- (a) the service authorised by the licence is not commenced on the date specified in the licence;
- (b) the Minister is satisfied that the service authorised by the licence is not being carried on in conformity with the terms and conditions of the licence;
- (c) the service authorised by the licence has been terminated;
- (d) the licence has been granted under or in accordance with any convention, agreement, or arrangement between the Government of Solomon Islands and the Government of any other country (whether or not any other Government is also a party thereof) and that convention, agreement, or arrangement has been terminated or has ceased to bind the Government of

Solomon Islands or the Government of that other country; or

- (e) the licence has been granted under or in accordance with any such convention, agreement, or arrangement referred to in paragraph (d) and circumstances have occurred or any condition has been fulfilled whereby the Minister, or the Government of Solomon Islands, has become entitled under or in accordance with the convention, agreement, or arrangement, to revoke the licence.

## **Division 7            Non-scheduled International Flights**

### **145            Commercial non-scheduled international flight not to be operated except as authorised by Minister**

- (1) Subject to section 140, no person shall operate a non-scheduled international flight engaged in the carriage of passengers, cargo, or mail for remuneration or hire between Solomon Islands and one or more points in any other country or territory, except as authorised by the Minister and in accordance with conditions imposed by Minister pursuant to guidelines issued under subsection (2).
- (2) For the purposes of this section, the Minister may issue, review or amend guidelines to regulate flights described in subsection (1).
- (3) The Minister shall, when requested by any person, make a copy of the guidelines issued in accordance with subsection (2) available to that person.

## **Division 8            No Exemption from Regulations and Rules**

### **146            This Part is in addition to regulations and rules**

No aircraft being used in connection with any scheduled international air service pursuant to a licence granted under this Part or a non-scheduled international flight shall, by virtue of its being used in connection with that service or flight, be exempt from the operation of any regulation or rules.

## Division 9      Prohibition of Smoking on Air Routes

### 147      Prohibition on smoking

- (1) For the purposes of this section and section 229, “***Solomon Islands international airline***” means a Solomon Islands air transport entity that is offering or operating a scheduled international air service or a non-scheduled international flight.
- (2) Smoking shall be prohibited on all Solomon Islands aircraft carrying passengers on an international or domestic air route.
- (3) Subject to subsection (2), the Minister may, by notice in the *Gazette*, designate other non-smoking air routes or designate routes in which smoking may be allowed.
- (4) The Minister shall, before giving any notice under subsection (3), consult with Solomon Islands international airlines.
- (5) The owner or operator of any Solomon Islands international airline that is operating an aircraft carrying passengers on any route designated as a non-smoking route pursuant to this section shall ensure that:
  - (a) there are prominent notices displayed in the aircraft indicating that smoking is not permitted; and
  - (b) an announcement is made to passengers on the aircraft at the commencement of each journey on the route advising that smoking is not permitted.
- (6) The owner or operator of any Solomon Islands international airline that is operating an aircraft carrying passengers on any route designated as a non-smoking route pursuant to this section shall ensure that no person is permitted to smoke on that aircraft.
- (7) No person shall smoke while on any aircraft operated by a Solomon Islands international airline carrying passengers on any route designated as a non-smoking route pursuant to this section.

## Division 10      International Air Carriage Competition

### 148      **Authorisation of contracts, arrangements and understanding relating to international carriage by air**

(1) In this Division, unless the context otherwise requires,:

**“capacity”** means a statement, expressed to apply:

- (a) to one or more designated airlines;
- (b) to all airlines other than one or more designated airlines; or
- (c) to all airlines,

specifying the number of flights to be undertaken between specified points in a period or successive periods by the airline or airlines, whether or not by reference to designated classes of aircraft or the number of seats or volume of cargo space to be provided;

**“commission regime”** means a statement, expressed to apply:

- (a) to any specified international carriage by air, specifying the rates and bases of calculation of agency commissions (including any benefit, whether in monetary form or otherwise, supplied to an agent) to be allowed, charged, disbursed, given, offered, paid, provided, or retained, in relation to the international carriage by air to which it is expressed to apply; and
- (b) to the circumstances and conditions under and subject to which any such commission is to be allowed, charged, disbursed, given, offered, paid, provided, or retained; and different rates, bases, circumstances, and conditions may be specified in respect of all or any of the following:
  - (i) international carriage by air provided by different airlines;
  - (ii) international carriage by air arranged by persons of different classes;
  - (iii) international carriage by air provided for persons of different classes;

**“international carriage by air”** means the carriage by air of persons, baggage, or cargo:

- (a) between Solomon Islands and any place outside Solomon Islands; or
- (b) where that carriage is purchased, sold, or arranged in Solomon Islands, between places outside Solomon Islands

**“tariff”** means a statement, expressed to apply to one or more specified airlines, or to all airlines other than one or more specified airlines, or to all airlines, specifying:

- (a) the fares, rates, and charges applicable to international carriage by air between specified points (whether direct or indirect, and whether or not including any stopovers) that may at any time be provided by the airlines to which it is expressed to apply;
  - (b) any conditions subject to which any such fares, rates, and charges, or any of them, are to apply to international carriage by air between specified points; and
  - (c) any conditions subject to which international carriage by air between those points is to be provided on such fares, rates, and charges.
- (2) The Minister may authorise all or any provisions of a contract, arrangement, or understanding made between 2 or more persons in respect of international carriage by air and related to such carriage so far as the provisions relate, whether directly or indirectly, to the fixing of tariffs, the application of tariffs, or the fixing of capacity, or any combination thereof.
  - (3) In considering whether to grant authorisation under subsection (2), the Minister shall ensure that the granting of such authorisation will not prejudice compliance with any relevant international convention, agreement, or arrangement to which the Government of Solomon Islands is a party.
  - (4) Subject to subsection (5), authorisation shall not be given under this section to any contract, arrangement, or understanding that:

- (a) provides that any party to it may directly or indirectly enforce it through any form of action by way of fines or market pressures against any person, whether or not that person is a party to the contract, arrangement, or understanding;
  - (b) has the purpose or effect of breaching the terms of a commission regime issued under section 149(1);
  - (c) unjustifiably discriminates between consumers of international air services in the access they have to competitive tariffs;
  - (d) so far as it relates to tariffs, has the effect of excluding any supplier of international carriage by air from participating in the market to which it relates;
  - (e) has the purpose or effect of preventing any party from seeking approval, in terms of section 149(2), for the purpose of selling international carriage by air at any other tariff so approved; or
  - (f) prevents any party from withdrawing without penalty on reasonable notice from the contract, arrangement, or understanding.
- (5) Notwithstanding subsection (4), the Minister may authorise any provision of any contract, arrangement, or understanding under this section if the Minister believes that to decline authorisation would have an undesirable effect on international comity between Solomon Islands and any other State.
- (6) If the Minister declines to authorise any provision of any contract, arrangement, or understanding under this section, the Minister shall give notice in the *Gazette* that authorisation has been declined.

#### **149 Commission regime and tariffs**

- (1) The Minister may, by notice in the *Gazette*:
- (a) issue commission regimes; and
  - (b) amend or revoke any commission regime so issued.
- (2) The Minister may authorise any tariff in respect of international carriage by air where the relevant places of departure and destination



are within Solomon Islands and another country or territory, whether or not there is to be a break in the carriage or a trans-shipment.

- (3) In giving authorisation under subsection (2) the Minister shall:
- (a) have regard to:
    - (i) whether the proposed tariff is excessive in terms of a reasonable return on investment by the supplier of the carriage;
    - (ii) whether it is likely that supply of the relevant carriage can be carried on for a reasonable period at the level of tariff proposed; and
    - (iii) whether there is likely to be a substantial degree of benefit accruing to consumers generally, or to a significant group of consumers, as a result of the application of the proposed tariff; and
  - (b) ensure that the granting of such authorisation will not prejudice compliance with any international convention, agreement, or arrangement to which the Government of Solomon Islands is a party.

## **PART XII            INTERNATIONAL CARRIAGE BY AIR**

### **Division 1            General**

#### **150            Interpretation**

In this Part, unless the context otherwise requires:

**“Additional Protocol No 1”** means Additional Protocol No 1 to amend the Warsaw Convention which was opened for signature at Montreal on 25 September 1975;

**“Additional Protocol No 2”** means Additional Protocol No 2 to amend the Warsaw Convention and The Hague Protocol which was opened for signature at Montreal on 25 September 1975;

**“amended Convention”** means the Convention, the English text of

which is set out in Schedule 3, being the Warsaw Convention as amended by the following protocols;

- (a) The Hague Protocol; and
- (b) additional Protocols Nos 1 and 2, and Protocol No 4;

**“court”** in relation to an arbitration allowed by the amended Convention or the Guadalajara Convention, includes an arbitrator;

**“Guadalajara Convention”** means the Convention, the English text of which is set out in Schedule 4, being a Convention, supplementary to the Warsaw Convention, for the unification of certain rules relating to international carriage by air performed by a person other than the contracting carrier, which opened for signature at Guadalajara on 18 September 1961;

**“Hague Protocol”** means the Protocol opened for signature at The Hague on 28 September 1955;

**“High Contracting Party”** has the same meaning as in Article 40A of the amended Convention;

**“Montreal Convention”** means the Convention, the English text of which is set out in Schedule 5, for the unification of certain rules relating to international carriage by air done at Montreal on 28 May 1999;

**“Protocol No 4”** means Protocol No 4 to amend the Warsaw Convention and The Hague Protocol which was opened for signature at Montreal on 25 September 1975;

**“Warsaw Convention”** means the Convention for the unification of certain rules relating to international carriage by air, which opened for signature at Warsaw on 12 October 1929; and includes the Additional Protocol to that Convention.

## **151 Application of Guadalajara Convention**

In this Part, references to the amended Convention or to any Article of that Convention are, where applicable and subject to any necessary modifications, to be read as references to that Convention

or Article as supplemented by the Guadalajara Convention.

**152 Conventions to have force of law**

- (1) The Montreal Convention, the amended Convention and the Guadalajara Convention have the force of law in Solomon Islands in relation to any carriage by air to which the Montreal Convention, the amended Convention or the Guadalajara Convention, as the case may require, applies.
- (2) Notwithstanding subsection (1), the Montreal Convention, the amended Convention and the Guadalajara Convention have the force of law in Solomon Islands only in so far as they relate to the rights and liabilities of carriers, carriers' employees and agents, passengers, consignors, consignees, and other persons.
- (3) The Montreal Convention, the amended Convention and the Guadalajara Convention apply in Solomon Islands under subsection (1), irrespective of the nationality of the aircraft performing that carriage.
- (4) The Montreal Convention, the amended Convention and the Guadalajara Convention apply in Solomon Islands subject to this Part.
- (5) Each version of Article 22 of the amended Convention set out in Schedule 3 applies in the circumstances outlined in the heading of that version.

**153 Inconsistency between French and English texts**

- (1) If there is any inconsistency between the English text of the amended Convention which is set out in Schedule 3 and the corresponding text in French, the text in French prevails.
- (2) If there is any inconsistency between the English text of the Guadalajara Convention which is set out in Schedule 4 and the corresponding text in French, the text in French prevails.
- (3) A certificate may be given by or on behalf of the Minister stating that a document to which the certificate is annexed is a true copy of the authentic text in the French language of 1 or more of the following:

- (a) Additional Protocol No 1;
  - (b) Additional Protocol No 2;
  - (c) the Guadalajara Convention;
  - (d) The Hague Protocol;
  - (e) Protocol No 4;
  - (f) the Warsaw Convention.
- (4) Any certificate given under subsection (3) shall be received in evidence in any proceedings and, in the absence of proof to the contrary, is sufficient evidence of the matters stated in the certificate.

#### **154 Limitation of liability**

- (1) The limitations on liability referred to in Articles 21 and 22 of the Montreal Convention or in Article 22 of the amended Convention apply whatever the nature of the proceedings by which liability may be enforced and, in particular:
- (a) those limitations apply where proceedings are brought by a tortfeasor to obtain contribution from another tortfeasor if the tortfeasor from whom contribution is sought is the carrier or an employee or agent of the carrier; and
  - (b) the limitation for each passenger referred to in Article 21 of the Montreal Convention or in paragraph (1) of Article 22 applies to the aggregate liability of the carrier in all proceedings which may be brought against the carrier under the laws of Solomon Islands, together with any proceedings brought against the carrier outside Solomon Islands.
- (2) A court before which proceedings are brought to enforce a liability which is limited by Articles 21 and 22 of the Montreal Convention or Article 22 of the amended Convention may at any stage of the proceedings make any order that appears to the Court to be just and equitable, in view of:
- (a) the provisions of Articles 21 and 22 of the Montreal Convention or Article 22 of the amended Convention; and

- (b) any other proceedings which have been, or are likely to be, commenced in Solomon Islands or elsewhere to enforce the liability in whole or in part.
- (3) A court before which proceedings are brought to enforce a liability which is limited by Article 22 of the amended Convention has jurisdiction, where the liability is, or may be, partly enforceable in other proceedings in Solomon Islands or elsewhere to:
  - (a) award an amount less than the court would have awarded if the limitation applied solely to the proceedings before the court; or
  - (b) make any part of its award conditional on the result of any other proceedings.
- (4) Subsection (3) does not limit the powers conferred on a court by subsection (2).
- (5) Unless the context otherwise requires, references in this section to Article 22 of the amended Convention are, subject to any necessary modifications, to be read as references to that Article as applied or supplemented by Article 25A of the amended Convention and Articles 5 and 6 of the Guadalajara Convention.

## **155 Value of special drawing right**

- (1) For the purposes of Article 23 of the Montreal Convention or Article 22 of the amended Convention, the value of one special drawing right shall be treated as equal to such a sum in the Solomon Islands currency as is fixed by the International Monetary Fund as being the equivalent of one special drawing right for:
  - (a) the date of judgment;
  - (b) any other relevant date; or
  - (c) if no sum has been so fixed for that date, the last preceding date for which a sum has been so fixed.
- (2) For the purposes of subsection (1), a certificate may be given by or on behalf of the Governor of the Central Bank acting on advice of the Minister stating that:

- (a) a particular sum in the Solomon Islands currency has been fixed as the equivalent of one special drawing right for a particular date; or
  - (b) no sum has been fixed for that date, and that a particular sum has been so fixed for the date most recently preceding a particular date.
- (3) Any certificate given under subsection (2) shall be received in evidence in any proceedings and, in the absence of proof to the contrary, is sufficient evidence of the value of one special drawing right in terms of the Solomon Islands currency for the purposes of subsection (1).
- (4) Unless the context otherwise requires, references in this section to Article 22 of the amended Convention are, subject to any necessary modifications, to be read as references to that Article as applied or supplemented by Article 25A of the amended Convention and Articles 5 and 6 of the Guadalajara Convention.

## **156 Time for bringing proceedings**

- (1) No action against a carrier's employee or agent, which arises out of damage to which this Part relates, may be brought after more than 2 years if the employee or agent was acting within the scope of that person's employment.
- (2) For the purposes of subsection (1), the period of 2 years is calculated from the earliest of the following dates:
  - (a) the date of arrival at the destination;
  - (b) the date the aircraft ought to have arrived; or
  - (c) the date carriage stopped.
- (3) Neither Article 35 of the Montreal Convention nor Article 29 of the amended Convention applies to any proceedings for contribution between tortfeasors.
- (4) Notwithstanding subsection (3), no action may be brought by a tortfeasor to obtain a contribution from a carrier in respect of a tort to

which Article 35 of the Montreal Convention or Article 29 of the amended Convention applies after the expiration of 2 years from the time when judgment is obtained against the person seeking to obtain the contribution.

- (5) Subsections (1) to (4) and the provisions of Article 35 of the Montreal Convention and Article 29 of the amended Convention have effect as if references in those provisions to an action included references to an arbitration, and the provisions of the *Arbitration Act* and the *Limitation Act* apply for the purposes of this subsection.

#### **157      Action against Parties to High Contracting Parties**

- (1) A High Contracting Party to the amended Convention is to be regarded as having submitted to the jurisdiction of the Court in the circumstances described in subsection (2).
- (2) Subsection (1) applies where any action is brought in a court in Solomon Islands against a High Contracting Party in accordance with the provisions of Article 28 of the amended Convention or Article 8 of the Guadalajara Convention to enforce a claim in respect of carriage undertaken by that Party.
- (3) Rules of court may provide for the manner in which any action to which subsection (1) applies is to be commenced and carried on.
- (4) Nothing in this section authorises the issue of execution against the property of any High Contracting Party.
- (5) Subsection (1) does not apply to any High Contracting Party to the amended Convention which has availed itself of the provisions of the Additional Protocol, which appears before the Additional Provisions of The Hague Protocol affecting the Warsaw Convention in the amended Convention, as set out in Schedule 3.

#### **158      Action against Parties to Montreal Convention**

- (1) A Party to the Montreal Convention is to be regarded as having submitted to the jurisdiction of the court in the circumstances described in subsection (2).
- (2) Subsection (1) applies if any action is brought in a court in the

Solomon Islands against a Party to the Montreal Convention in accordance with Article 46 of the Montreal Convention to enforce a claim in respect of carriage undertaken by that Party.

- (3) Section 157(3) and (4) applies to this section, and reference to **“High Contracting Party”** in section 157(4) shall be read as reference to **“Party to the Montreal Convention”**.

## **159 Designation of Parties**

- (1) The Minister may, by order, certify:
- (a) the identity of:
    - (i) the High Contracting Parties to the amended Convention;
    - (ii) the Parties to the Guadalajara Convention;
    - (iii) the Parties to The Hague Protocol;
    - (iv) the Parties to Additional Protocol No 1;
    - (v) the Parties to Additional Protocol No 2;
    - (vi) the Parties to Protocol No 4;
    - (vii) the High Contracting Parties to the Warsaw Convention;  
or
    - (viii) the Parties to the Montreal Convention;
  - (b) the territories in respect of which the parties referred to in paragraph (a)(i), (ii), (iii), (iv), (v), (vi), (vii) or (viii) are respectively parties; or
  - (c) to what extent the parties referred to in paragraph (a)(i), (ii), (iii), (iv), (v), (vi), or (vii) have availed themselves of the Additional Protocol, which appears before the Additional Provisions of The Hague Protocol affecting the Warsaw Convention in the amended Convention, as set out in Schedule 3.
- (2) An order under this section is, except in so far as it has been superseded by a subsequent order, sufficient evidence of the matters



so certified.

- (3) An order under this section may contain such transitional and other consequential provisions as the Minister considers to be desirable.

#### **160 Article 40A of amended Convention**

- (1) Paragraph (2) of Article 40A of the amended Convention does not extend references in the amended Convention to the territory of a High Contracting Party to include any territory in respect of which that High Contracting Party is not a Party.
- (2) Subsection (1) does not apply to references in the amended Convention to the territory of any State, whether a High Contracting Party or not.

#### **161 Power to exclude aircraft in use for military purposes**

- (1) The Minister may, by order in the *Gazette*, declare that subsection (2) applies or ceases to apply to Solomon Islands or any other State specified in the order.
- (2) The Montreal Convention or the amended Convention does not apply to the carriage of persons, cargo, and baggage for the military authorities of a State to which this subsection applies in aircraft registered in that State if the whole capacity of the aircraft has been reserved by, or on behalf of, those authorities.

### **Division 2 Transitional Provisions**

#### **162 Occurrences before commencement of this Part**

This Part does not apply so as to affect rights or liabilities arising out of an occurrence before the commencement of this Part.

#### **163 High Contracting Parties not Party to Hague Protocol**

- (1) This section applies where, by reason of the fact that any High Contracting Party to the Warsaw Convention is not a Party to The Hague Protocol, the amended Convention is not applicable to any carriage by air.
- (2) For the purposes of subsection (1), the law applicable to any

133

international carriage by air is the law which would have been applicable as if Article 5 and Schedule 3 to the Carriage by Air (Application of Provisions) (Overseas Territories) Order 1967 (as it read immediately before its repeal) had continued in force.

- (3) Notwithstanding subsection (2), if the Guadalajara Convention applies to carriage by air where that subsection applies, the applicable law:
  - (a) is the law which would have been applicable as if Article 5 and Schedules 3 and 4 to the Carriage by Air (Application of Provisions) (Overseas Territories) Order 1967 (as it read immediately before its repeal) had continued in force;
  - (b) includes the provisions of that Convention which have the force of law in Solomon Islands under section 157.
- (4) Notwithstanding subsection (2), if Additional Protocol No 1 applies to carriage by air where that subsection applies, the applicable law includes:
  - (a) the provisions of Article 22 of the Warsaw Convention as substituted by Additional Protocol No 1; and
  - (b) section 155.

#### **164 High Contracting Parties not Party to Montreal Protocol**

- (1) This section applies where, by reason of the fact that any High Contracting Party or Party to the Warsaw Convention and The Hague Protocol is not a Party to any of Additional Protocols Nos. 1 and 2 and Protocol No 4, the amended Convention is not applicable to any carriage by air.
- (2) For the purposes of subsection (1), the law applicable to any carriage by air is the law which would have been applicable if the Carriage by Air (Overseas Territories) Order 1967 (as it read immediately before its repeal) had continued in force.

#### **165 High Contracting Parties not Party to Protocol No 4**

- (1) This section applies where, by reason of the fact that any High

Contracting Party or Party to the Warsaw Convention and The Hague Protocol is a Party to Additional Protocol No 2 but not Protocol No 4, Protocol No 4 is not applicable to any carriage by air.

- (2) For the purposes of subsection (1), the law applicable to any carriage by air is the law which would have been applicable if the amended Convention had not included the amendments inserted by Protocol No 4.

**166 High Contracting Parties not Party to Protocol No 2**

- (1) This section applies if, by reason of the fact that any High Contracting Party or Party to the Warsaw Convention and The Hague Protocol is a Party to Protocol No 4 but not Additional Protocol No 2, Additional Protocol No 2 is not applicable to any carriage by air.
- (2) For the purpose of subsection (1), the law applicable to any carriage by air is the law which would have been applicable if the amended Convention had not included the amendments inserted by Protocol No 2.

**167 High Contracting Party or party not Party to Montreal Convention**

- (1) This section applies where by reason of the fact that any High Contracting Party or Party is not a party to the Montreal Convention, the Montreal Convention does not apply.
- (2) If subsection (1) applies and the High Contracting Party or Party referred to in subsection (1) is a Party to the Warsaw Convention, The Hague Protocol, the Additional Protocol No 1 or 2 or the Protocol No 4, the law applicable to any carriage by air is the law referred to in whichever of the following sections (as amended, where appropriate, in the manner set out in the following paragraphs) that is applicable to that High Contracting Party or Party:
  - (a) section 150 as amended by omitting the reference to the "Montreal Convention";
  - (b) section 151;
  - (c) section 152 as amended by omitting the words "the Montreal

Convention,” in each of subsections (1), (2), (3) and (4) of that section;

- (d) section 153;
- (e) section 154(1) as amended by omitting the words “Articles 21 and 22 of the Montreal Convention or in”;
- (f) section 154(1)(b) as amended by omitting the words “Article 21 of the Montreal Convention or in”;
- (g) section 154(2) as amended by omitting the words “Articles 21 and 22 of the Montreal Convention or”;
- (h) section 154(2)(a) as amended by omitting the words “Articles 21 and 22 of the Montreal Convention or”;
- (i) section 155 as amended by omitting the words “Article 23 of the Montreal Convention or” from subsection (1);
- (j) section 156(3) as amended by omitting the words “Neither Article 35 of the Montreal Convention nor Article 29 of the amended Convention applies” and substituting the words “Article 29 of the amended Convention does not apply”;
- (k) section 156(4) as amended by omitting the words “Article 35 of the Montreal Convention or”;
- (l) section 156(5) as amended by omitting the words “Article 35 of the Montreal Convention and”;
- (m) section 157;
- (n) section 158;
- (o) section 159(1) (a) as amended by omitting subparagraph (viii);
- (p) section 160;
- (q) section 161 as amended by omitting the words “The Montreal Convention or the amended Convention do” and substituting the words “The amended Convention does”;

- (r) section 163;
  - (s) section 164;
  - (t) section 165;
  - (u) section 166.
- (3) This section applies as if a High Contracting Party to the amended Convention is not a Party to the Montreal Convention.
- (4) For the purpose of subsection (3):
- (a) the law applicable to any carriage by air is the law set out in the amended Convention; and
  - (b) each version of Article 22 of the amended Convention set out in Schedule 3 applies in the circumstances outlined in the heading of that version.

#### **168 Currency equivalent notices**

- (1) The Governor of the Central Bank acting on advice of the Minister may, by notice in the *Gazette*, specify the respective amounts which for the purpose of Article 22 of the Warsaw Convention (as amended by The Hague Protocol and as set out in the First Annex to Schedule 1 of the Carriage by Air (Overseas Territories) Order 1967) and in particular of paragraph 5 of that Article, are to be taken as equivalent to the sums expressed in francs which are mentioned in that Article.
- (2) Any currency equivalent notice made under Solomon Islands domestic law before the commencement of this Act shall continue in force as if it had been made under subsection (1) until replaced under that subsection.

#### **169 Regulations**

The Minister may make regulations to give effect to or due administration of the provisions of this Part, and in particular:

- (a) to amend Schedule 3 by making such amendments to the text of the amended Convention set out in that Schedule as are required to bring that text up to date or to revoke Schedule 3,

and substitute a new schedule setting out in an up-to-date form the text of the amended Convention;

- (b) to amend Schedule 4 by making such amendments to the text of the Guadalajara Convention set out in that Schedule as are required to bring that text up to date or to revoke Schedule 4, and substitute a new schedule setting out in an up-to-date form the text of the Guadalajara Convention.

## **PART XIII SAFETY OFFENCES**

### **170 Endangerment caused by holder of aviation document**

- (1) The holder of an aviation document who, in respect of any activity or service to which the document relates, does or omits to do any act or causes or permits any act, if the act causes unnecessary danger to any other person or to any property commits an offence and is liable on conviction:
  - (a) for an individual, to fine not exceeding 10,000 penalty units or to imprisonment for a term not exceeding 12 months; or
  - (b) for a body corporate, to a fine not exceeding 100,000 penalty units.
- (2) This section is in addition to and not in derogation of any regulations or rules.

### **171 Operating aircraft in careless manner**

Without limiting any regulations or rules, any person who operates any aircraft in a careless manner commits an offence and is liable on conviction:

- (a) for an individual, to a fine not exceeding 10,000 penalty units; or
- (b) for a body corporate, to a fine not exceeding 100,000 penalty units.

**172      Dangerous activity involving aircraft, aeronautical product, or aviation related service**

(1) Any person who:

- (a) operates, maintains, or services; or
- (b) does any other act in respect of:

any aircraft, aeronautical product, or aviation related service, in a manner which causes unnecessary danger to any other person or to any property, commits an offence and is liable on conviction:

- (i) for an individual, to a fine not exceeding 10,000 penalty units or to imprisonment for a term not exceeding 12 months; or
- (ii) for a body corporate, to a fine not exceeding 100,000 penalty units.

(2) Any person who:

- (a) causes or permits any aircraft, aeronautical product, or aviation related service to be operated, maintained, or serviced; or
- (b) causes or permits any other act to be done in respect of any aircraft, aeronautical product, or aviation related service,:

in a manner which causes unnecessary danger to any other person or to any property, commits an offence and is liable on conviction:

- (i) for an individual, to a fine not exceeding 10,000 penalty units or to imprisonment for a term not exceeding 12 months; or
- (ii) for a body corporate, to a fine not exceeding 100,000 penalty units.

(3) This section is in addition to and not in derogation of any regulations or rules.

**173 Failure to comply with inspection or monitoring requirement**

Any person who, without reasonable excuse, fails to comply with any requirement of the Director under subsection (1) or (3) of section 17 commits an offence and is liable on conviction:

- (a) for an individual, to a fine not exceeding 10,000 penalty units and, if the offence is a continuing one, to a further fine not exceeding 2,000 penalty units for every day or part of a day during which the offence is continued; or
- (b) for a body corporate, to a fine not exceeding 100,000 penalty units and, if the offence is a continuing one, to a further fine not exceeding 20,000 penalty units for every day or part of a day during which the offence is continued.

**174 Court may disqualify holder of aviation document or impose conditions on holder of document in respect of certain offences**

- (1) In addition to any penalty imposed on a person convicted under section 170, 171, 172 or 173, the court may:
  - (a) disqualify the person from holding or obtaining an aviation document or a particular aviation document; or
  - (b) impose on any aviation document held by or issued to the person such restrictions or conditions as the Court may impose, having regard to the circumstances of the offence,

for such period not exceeding 12 months.

- (2) Subsection (1) does not affect or prevent the exercise by the Director of his powers under section 57.

**175 Acting without necessary aviation document**

Any person who:

- (a) operates, maintains, or services; or
- (b) does any other act in respect of:



any aircraft, aeronautical product, or aviation related service, either without holding the appropriate current aviation document or knowing that a current aviation document is required to be held in respect of that aircraft, product, or service before that act may lawfully be done and knowing that the appropriate aviation document is not held, commits an offence and is liable on conviction:

- (i) for an individual, to fine not exceeding 10,000 penalty units or to imprisonment for a term not exceeding 12 months; or
- (ii) for a body corporate, to a fine not exceeding 100,000 penalty units.

**176      Acting without required medical certificate**

Any person who exercises the privileges of any aviation document or operates an aircraft solo commits an offence if that person:

- (a) does not hold an appropriate current medical certificate granted recognition by the Director under Part VII;
- (b) knows or has reasonable grounds to suspect that he can no longer exercise safely the privileges to which his medical certificate relates; or
- (c) fails to comply with any conditions, restrictions, or endorsements specified by the Director under section 64(2), 69(1)(a)(ii), 69(1)(b)(iii) or 69(5)(a),

and is liable on conviction to a fine not exceeding 10,000 penalty units or to imprisonment for a term not exceeding 12 months.

**177      Fraudulent, misleading, etc., statements to obtain medical certificate**

Any person who makes or causes to be made:

- (a) any fraudulent, misleading, or intentionally false statement for the purpose of obtaining a medical certificate under Part VII;
- (b) any fraudulent, misleading, or intentionally false entry in any logbook, record, form, or report that is required to be kept,

141

made, or used to show compliance with any conditions, restrictions, or endorsements placed on any medical certificate under Part VII;

- (c) any reproduction or alteration for fraudulent purposes of any medical certificate issued under Part VII; or
- (d) any fraudulent, misleading, or intentionally false statement during an investigation under section 68,

commits an offence and is liable on conviction to a fine not exceeding 10,000 penalty units or to imprisonment for a term not exceeding 12 months.

**178 Failure to disclose information required by Director**

Any person who fails to disclose, without reasonable excuse, information required by the Director under section 65(1) or 68 commits an offence and is liable on conviction to a fine not exceeding 5,000 penalty units or to imprisonment for a term not exceeding 12 months.

**179 Additional penalty for offences involving commercial gain**

- (1) In addition to any penalty imposed on a person convicted under section 170, 171, 173 or 175, the court may order that person to pay an amount not exceeding 3 times the value of any commercial gain resulting from the commission of that offence if the court is satisfied that the offence was committed in the course of producing a commercial gain.
- (2) For the purpose of subsection (1), the value of any gain shall be assessed by the court, and shall be recoverable in the same manner as a fine.

**180 Effect of disqualification**

- (1) If the holder of an aviation document is disqualified by an order of a court from holding or obtaining an aviation document, the document shall be deemed to be suspended while the disqualification continues in force, and during the period of suspension shall be of no effect.

- (2) If the holder of an aviation document is disqualified from holding or obtaining a document, and the disqualification will expire before the expiration of the term of the document, the document shall, on the expiration of the disqualification, continue to be of no effect until the holder of it undergoes and passes such tests and fulfils such requirements as the Director may specify.

#### **181 Commencement of period of disqualification**

If an order is made disqualifying any person from holding or obtaining an aviation document, the period of disqualification shall commence on the date of the making of the order unless the court making the order directs that the period of disqualification shall commence on a later date.

#### **182 Retention and custody of document**

- (1) If the holder of an aviation document is disqualified by a court from holding or obtaining a document, the holder of such document shall forthwith, and whether or not demand is made, surrender the document to the Director.
- (2) The Director shall, when an aviation document is surrendered, endorse the terms of the disqualification on the document and retain it until the disqualification has expired or been removed and the person entitled to the document has made a request in writing for its return.
- (3) If the person entitled to the document is a person to whom section 180(2) applies, the document shall not be returned to that person until that person has passed the tests and fulfilled the requirements referred to in that provision.

#### **183 Removal of disqualification**

- (1) If a person is disqualified by a court for a period exceeding 6 months from holding or obtaining an aviation document, the person may, after the expiration of such time ordered by the court, apply to that court for an order to remove the disqualification.
- (2) The court may, upon application under subsection (1), order the removal of the disqualification or refuse the application, having

regard to:

- (a) the character of the applicant and the applicant's act or conduct subsequent to the order;
  - (b) the nature of the offence; and
  - (c) any other circumstances of the case.
- (3) A copy of an application under subsection (1) shall be served on the Director who has the right to appear and be heard in respect of the matter.

**184 Particulars of disqualification orders, etc., to be sent to Director**

Where a court makes an order disqualifying a person from holding or obtaining an aviation document or imposes restrictions or conditions on any aviation document held by or issued to any person or makes an order under section 183 removing any disqualification, particulars of the order shall be sent by the Registrar of the court to the Director.

**184A Presence of alcohol in person's blood**

A person commits an offence if, while there is present in the person's blood a concentration of alcohol of 50 milligrams or more in 100 millilitres of blood, the person:

- (a) operates an aircraft; or
- (b) occupies a pilot's seat of an aircraft and attempts to put the aircraft in motion.

Penalty:

- (a) for a first offence – 10,000 penalty units or imprisonment for 12 months, or both;
- (b) for a second or subsequent offence – 20,000 penalty units or imprisonment for 2 years, or both.

## **PART XIV      GENERAL OFFENCES**

### **185      Applying for aviation document while disqualified**

Any person who applies for or obtains an aviation document while being disqualified by an order of a court from obtaining such a document (and any such document so obtained shall be of no effect) commits an offence and is liable on conviction:

- (a) for an individual, to a fine not exceeding 10,000 penalty units or to imprisonment for a term not exceeding 6 months; or
- (b) for a body corporate, to a fine not exceeding 100,000 penalty units,

and in addition to such penalty, the court may order the person to be disqualified from holding or obtaining an aviation document for such period not exceeding 12 months.

### **186      Communicating false information or failing to disclose information relevant to granting or holding of aviation document**

Any person who:

- (a) by any means, provides to the Authority or the Director information relevant to the Authority's or the Director's exercise of powers under this Act or its regulations or rules, knowing the information to be false; or
- (b) being an applicant for an aviation document, fails, without reasonable excuse, to provide to the Authority or the Director information known to that person which is relevant to the Authority's or the Director's exercise of powers under this Act or its regulations or rules; or
- (c) being the holder of an aviation document, fails, without reasonable excuse, to provide to the Authority or the Director information known to that person which is relevant to the condition specified in section 57(3),

commits an offence and is liable on conviction:

- (i) for an individual, to a fine not exceeding 5,000 penalty units or to imprisonment for a term not exceeding 12 months; or
- (ii) for a body corporate, to a fine not exceeding 50,000 penalty units.

**187 Carrying on scheduled international air service without licence**

Any person who:

- (a) carries on a scheduled international air service in Solomon Islands without a licence granted under Part XI; or
- (b) being the holder of a licence granted under Part XI, carries on a scheduled international air service in Solomon Islands in a manner contrary to the terms and conditions of the licence,

commits an offence and is liable on conviction:

- (i) for an individual, to a fine not exceeding 10,000 penalty units; or
- (ii) for a body corporate, to a fine not exceeding 100,000 penalty units.

**188 Operating unauthorised non-scheduled international flight or carrying on non-scheduled international flight contrary to licence**

Any person who:

- (a) operates a non-scheduled international flight to which section 145 applies contrary to the provisions of that section; or
- (b) being the holder of an open aviation market licence, carries on a non-scheduled international flight in a manner contrary to the terms and conditions of the licence,

commits an offence and is liable on conviction:

- (i) for an individual, to a fine not exceeding 10,000 penalty units; or

- (ii) for a body corporate, to a fine not exceeding 100,000 penalty units.

**189      Obstruction of persons duly authorised by Director**

- (1) Any person who obstructs or impedes any person who is duly authorised by the Director and acting in the performance or exercise of any functions, duties, or powers conferred on him by this Act or its rules, commits an offence and is liable on conviction:
  - (a) for an individual, to a fine not exceeding 5,000 penalty units or to imprisonment for a term not exceeding 3 months; or
  - (b) for a body corporate, to a fine not exceeding 50,000 penalty units.
- (2) Subsection (1) applies only where the person obstructed or impeded is in uniform or produces evidence of his authority.

**190      Failure to produce or surrender documents**

Any person who, without reasonable excuse, fails or refuses to comply with a requirement made under section 24(3) commits an offence and is liable on conviction to a fine not exceeding 5,000 penalty units.

**191      Trespass**

Any person who, without reasonable excuse, enters or remains within any aerodrome or any building or area in which are operated technical facilities or services for civil aviation, when directed not to enter or not to remain:

- (a) by a person duly authorised by the Director in writing for that purpose;
- (b) by a police officer;
- (c) by an aviation security officer; or
- (d) by means of a notice posted under the authority of the persons mentioned under paragraphs (a) to (c ),

commits an offence and is liable on conviction to a fine not exceeding 5,000 penalty units or to imprisonment for a term not exceeding 3 months.

**192 Failure to maintain accurate records**

Any person who is required under this Act or its regulation or rule:

- (a) to make accurate entries in a record;
- (b) to maintain an accurate record; or
- (c) to produce to the Authority or the Director an accurate record,

and fails to comply with it commits an offence and is liable on conviction:

- (i) for an individual, to a fine not exceeding 5,000 penalty units; or
- (ii) for a body corporate, to a fine not exceeding 50,000 penalty units.

**193 Failure to notify emergency breach**

Any pilot-in-command who, without reasonable excuse, fails to comply with section 61(6), commits an offence and is liable on conviction to a fine not exceeding 5,000 penalty units.

**194 Failure to notify accident or incident**

Any pilot-in-command or operator who, without reasonable excuse, fails to comply with subsection (1), (2) or (4) of section 72, commits an offence and is liable on conviction:

- (a) for an individual, to a fine not exceeding 10,000 penalty units;  
or
- (b) for a body corporate, to a fine not exceeding 100,000 penalty units.



**195 Offences relating to disclosure of records**

Any person who:

- (a) discloses a record specified in section 82(2) or 83(2) in breach of section 82(1) or 83(1); or
- (b) contravenes section 90(2),

commits an offence is liable on conviction:

- (i) for an individual, to a fine not exceeding 5,000 penalty units; or
- (ii) for a body corporate, to a fine not exceeding 50,000 penalty units.

**196 Offences relating to publication of reports of proceedings or publication of records**

Any person who contravenes section 89(1) or section 90(4), commits an offence and is liable on conviction:

- (a) for an individual, to a fine not exceeding 5,000 penalty units; or
- (b) for a body corporate, to a fine not exceeding 50,000 penalty units.

**197 Failure to provide identifying information**

The operator of an aircraft or holder of a certificate of registration who, without reasonable excuse, fails to comply with section 237, commits an offence and is liable on conviction:

- (a) for an individual, to a fine not exceeding 5,000 penalty units; or
- (b) for a body corporate, to a fine not exceeding 50,000 penalty units.

**198 Contravention of emergency rule, prohibition, or condition**

Any person who, without reasonable excuse, acts in contravention of or fails to comply with any emergency rule made under section 38 or

any prohibition or condition notified under section 23 commits an offence and is liable on conviction:

- (a) for an individual, to a fine not exceeding 5,000 penalty units; or
- (b) for a body corporate, to a fine not exceeding 50,000 penalty units.

**199 Flight over foreign country without authority or for improper purpose**

- (1) This section applies to:
  - (a) any aircraft that is registered or required to be registered in Solomon Islands under this Act; and
  - (b) any other aircraft operated by a person who is a permanent resident of Solomon Islands or whose principal place of business is in Solomon Islands.
- (2) Any person commits an offence who, being the operator or pilot-in-command of an aircraft to which this section applies that is being flown over a foreign country or territory, knowingly allows that aircraft to be used for a purpose that is prejudicial to the security of, public order or public health of, or the safety of air navigation in relation to that country or territory.
- (3) In any prosecution for an offence against subsection (2), where it is proved by the prosecution that the aircraft was used for a purpose that is prejudicial to the security of, public order or public health of, or the safety of air navigation in relation to, the foreign country or territory, in the absence of evidence to the contrary it shall be presumed that the defendant knew that the aircraft was being so used.
- (4) Any person commits an offence who, being the operator or pilot-in-command of an aircraft to which this section applies that is being flown over any foreign country or territory, knowingly fails to comply with any direction that is given in respect of the aircraft by the appropriate aeronautical authority of that country or territory where:
  - (a) the flight is not duly authorised; or

- (b) there are reasonable grounds for the appropriate aeronautical authority to believe that the aircraft is being or will be used for a purpose that is prejudicial to the security of, public order or public health of, or the safety of air navigation in relation to, that country or territory,;

unless the lives of persons on board the aircraft or the safety of the aircraft would be endangered by complying with the direction.

- (5) In any prosecution for an offence against subsection (4), where it is proved by the prosecution that the defendant failed to comply with a direction that was given in respect of that aircraft by the appropriate aeronautical authority, in the absence of evidence to the contrary it shall be presumed that the defendant knew that the direction had been given.
- (6) The requirement in subsection (4) is without prejudice to any other requirement to comply with directions given by an aeronautical authority.
- (7) In this section, “**appropriate aeronautical authority**” includes any person, whether a member of the military authorities or the civil authorities of the foreign country or territory, who is authorised under the law of the foreign country or territory to issue directions to aircraft flying over that country or territory.
- (8) Any person who is convicted of an offence under subsection (2) or (4) is liable on conviction:
  - (a) for an individual, to a fine not exceeding 10,000 penalty units or to imprisonment for a term not exceeding 12 months; or
  - (b) for a body corporate, to a fine not exceeding 100,000 penalty units.

## **PART XV                    OFFENCES RELATED TO ENDANGERMENT OF AIRCRAFT AND AIRPORTS**

### **200                    Application**

In this Part:

**“airport”** includes the meaning given to “aerodrome” in section 2 and further includes any defined area of land adjacent to any aerodrome in Solomon Islands;

**“foreign country”**, for the purpose of sections 202 and 214, includes any territory for whose international relations the Government of a foreign country is responsible and to which the extradition treaty and the Montreal Protocol extend;

**“firearm”** means any gun, rifle, or pistol, whether acting by force of explosives or not, and includes any such gun, rifle, or pistol which is not capable of discharging any shot, bullet, or other missile, but which by its completion or the replacement of any component part or parts or the correction or repair of any defect or defects, would be so capable; and also includes any such gun, rifle, or pistol which is being dismantled;

**“offence”**, for the purpose of sections 202 and 214, includes:

- (a) an attempt to commit that crime;
- (b) aiding, abetting, inciting, counselling, or procuring a person to commit that crime;
- (c) inciting, counselling, or attempting to procure a person to commit that crime when it is not in fact committed; and
- (d) being an accessory after the fact to that crime.

## **201 Offences relating to international airports**

- (1) A person who, whether in or outside Solomon Islands, uses any device, substance, or weapon, and intentionally does any of the following acts that endangers or is likely to endanger the safety of an international airport:
  - (a) at the international airport, commits an act of violence that causes or is likely to cause serious injury or death to any other person;
  - (b) destroys or seriously damages the facilities of the international airport;

(c) destroys or seriously damages an aircraft that is not in service and is located at the international airport; or

(d) disrupts the services of the international airport,

subject to subsection (2), commits an offence and is liable on conviction to imprisonment for a term not exceeding 14 years.

(2) A person who commits an offence against subsection (1)(a):

(a) if the act concerned is the same as the act described as murder under the *Penal Code*, shall on conviction be sentenced to imprisonment for life; and

(b) if the act concerned is the same as act described as manslaughter or other offences involving act of violence or causing serious injury under the *Penal Code*, is liable on conviction to imprisonment for life.

## **202 Offences against sections 201 and 203 deemed to be included in extradition treaties**

(1) For the purposes of the *Extradition Act*, the offences under sections 201 and 203 are deemed to be an offence described in any extradition treaty concluded before the commencement of this section in force between Solomon Islands and any foreign country which is a party to the Montreal Protocol.

(2) For the purpose of subsection (1), a person whose surrender is sought under the *Extradition Act* in respect of an offence deemed under that subsection is liable to be surrendered in accordance with the provisions of that Act, whether the act for such offence occurred before or after the date on which the offence was deemed to be an offence described in the extradition treaty.

(3) This section does not apply in respect of an act that, had it occurred within the jurisdiction of Solomon Islands, would not at that time have constituted an offence under Solomon Islands law.

(4) A certificate given by the Minister that any foreign country is a party to the Montreal Protocol is sufficient evidence of that fact.

## **203      Offences relating to airports not being international airports**

- (1) A person who, whether in or outside Solomon Islands, uses any device, substance, or weapon, and intentionally does any of the following acts that endangers or is likely to endanger the safety of any airport not being an international airport:
- (a) at the airport, commits an act of violence that causes or is likely to cause serious injury or death;
  - (b) destroys or seriously damages the facilities of the airport;
  - (c) destroys or seriously damages an aircraft that is not in service and is located at the airport; or
  - (d) disrupts the services of the airport.
- subject to subsection (2), commits an offence and is liable on conviction to imprisonment for a term not exceeding 7 years.
- (2) A person who commits an offence against subsection (1)(a):
- (a) if the act concerned is the same as the act described as manslaughter under the *Penal Code* shall on conviction be liable to imprisonment for life; and
  - (b) if the act concerned is the same as the act described as intentional assault resulting in permanent damage or death under the *Penal Code* is liable on conviction to imprisonment for life.

## **204      Endangering the public at an airport**

A person who acts in a manner that endangers any member or members of the public at an airport, commits an offence and is liable on conviction to a fine not exceeding 10,000 penalty units or to imprisonment for a term not exceeding 2 years.

## **205      Disruptive or alarming conduct at an airport**

Any person who, while in an airport, and in a manner contrary to public order or safety at the airport:

- (a) uses any threatening, offensive or insulting words or gestures;
- (b) behaves in a threatening, offensive or insulting manner;
- (c) without justification makes an alarming statement or uses alarming words or behaves in an alarming manner;
- (d) behaves in a manner that interferes with the performance by aircrew, airline officials or airport workers of their duties; or
- (e) behaves in a manner that interferes with or is likely to interfere with the performance by aviation security officers of their duties,

commits an offence and is liable on conviction:

- (i) for an offence against paragraph (a), (b) (c) or (d), to a fine not exceeding 5,000 penalty units;
- (ii) for offence against paragraph (e), to a fine not exceeding 50,000 penalty units or to imprisonment for a term not exceeding 2 years.

## **206 Security area offences**

Any person who, on being found in a security area:

- (a) refuses to state his name, address, and authority to enter the security area after:
  - (i) having been informed that he is in a security area; and
  - (ii) having been requested by an aviation security officer to state those particulars; or
- (b) refuses forthwith to leave the security area after having been ordered by an aviation security officer to do so,

commits an offence and is liable on conviction to a fine not exceeding 5,000 penalty units or to imprisonment for a term not exceeding 3 months.

**207      Offences of impersonation or obstructions of authorised persons**

Any person who, not being an authorised person:

- (a) by words, act, conduct, demeanour, or the assumption of the dress, name, designation, or description of an authorised person, holds himself out as being an authorised person; or
- (b) wilfully obstructs, or incites or encourages any person to obstruct an authorised person in the execution of his duty,

commits an offence and is liable on conviction to a fine not exceeding 5,000 penalty units or to imprisonment for a term not exceeding 3 months.

**208      Communicating false information affecting safety**

- (1) Any person who, by any means, provides to another person information relating to the safety of an aircraft, aerodrome, aeronautical product, aviation related service, or any other facility or product used in or connected with aviation, or any person associated therewith, knowing the information to be false or in a manner reckless as to whether it is false, commits an offence and is liable on conviction:

- (a) for an individual, to a fine not exceeding 5,000 penalty units or to imprisonment for a term not exceeding 12 months; or
- (b) for a body corporate, to a fine not exceeding 50,000 penalty units.

- (2) Where:

- (a) the commission of an offence against subsection (1) causes financial loss to any person; and
- (b) a court imposes a fine under subsection (1) in respect of that offence,

the court may order not more than one-half of the fine be awarded as compensation to that person.



## 209 Taking firearms, explosives, etc., on to aircraft

(1) Any person who, without lawful authority or reasonable excuse, or without the permission of the owner or operator of the aircraft or of a person duly authorised by either of them to give such permission, takes or attempts to take on board any aircraft:

- (a) any firearm;
- (b) any other dangerous or offensive weapon or instrument of any kind;
- (c) any ammunition;
- (d) any explosive substance or device, or any other injurious substance or device of any kind whatsoever which could be used to endanger the safety of the aircraft or of persons on board the aircraft; or
- (e) any other prohibited item,

commits an offence and is liable on conviction to a fine not exceeding 100,000 penalty units or to imprisonment for a term not exceeding 5 years.

(2) For the purpose of subsection (1), **“lawful authority”**, **“reasonable excuse”** or **“permission”** is deemed to have been established in respect of any person who:

- (a) is a person, or a member of a class of persons, duly designated, authorised and approved in writing by the Director to act on board any aircraft as an in-flight security officer; and
- (b) takes any of the items in subsection (1)(a), (b), (c), (d) or (e) on board any aircraft or into any security area for the purposes of his duties as an in-flight security officer.

## 210 Taking firearms, explosives, etc., into a security area

(1) Any person who, without lawful authority or reasonable excuse, or without the permission of the owner or operator of any installation within or containing a designated security area, security enhanced area or sterile area, or of a person duly authorised by either of them

157

to give such permission, takes or attempts to take into any such area:

- (a) any firearm;
- (b) any other dangerous or offensive weapon or instrument of any kind whatsoever;
- (c) any ammunition;
- (d) any explosive substance or device, or any other injurious substance or device of any kind whatsoever which could be used to endanger the safety of the security area or persons in or near it; or
- (e) any other prohibited item,

commits an offence and is liable on conviction to a fine not exceeding 100,000 penalty units or to imprisonment for a term not exceeding 5 years.

- (2) For the purposes of subsection (1) **“lawful authority”**, **“reasonable excuse”** or **“permission”** is deemed to have been established in respect of any person who;
  - (a) is a person, or a member of a class of persons, duly designated, authorised and approved in writing by the Director to act on board any aircraft as an in-flight security officer; and
  - (b) takes any of the items in subsection (1)(a), (b), (c), (d) or (e) on board any aircraft or into any security area for the purposes of his duties as an in-flight security officer.

## **211 Hijacking**

Any person who, while on board an aircraft in-flight, whether in or outside Solomon Islands, unlawfully, by force or threat of force or by any form of intimidation, seizes or exercises control or attempts to seize or exercise control, of that aircraft, commits the offence of hijacking and is liable on conviction to imprisonment for life.

## **212 Offences in connection with hijacking**

- (1) Any person who, while on board an aircraft in-flight outside Solomon

Islands, does or omits anything which, if done or omitted by that person in Solomon Islands, would be a criminal offence, commits that offence if the act occurred in connection with the offence of hijacking.

- (2) Without limiting the generality of subsection (1), an act by any person shall be deemed to occur in connection with the offence of hijacking if it was done or omitted with intent:
- (a) to commit or facilitate the commission of the offence of hijacking;
  - (b) to avoid the detection of himself or of any other person in the commission of the offence of hijacking; or
  - (c) to avoid the arrest or facilitate the flight of himself or of any other person upon the commission of the offence of hijacking.

## **213 Other offences relating to aircraft**

Any person who, whether in or outside Solomon Islands:

- (a) on board an aircraft in-flight, commits an act of violence which is likely to endanger the safety of the aircraft;
- (b) destroys an aircraft in service;
- (c) causes damage to an aircraft in service which renders the aircraft incapable of flight or which is likely to endanger the safety of the aircraft in-flight;
- (d) places or causes to be placed on an aircraft in service anything which is likely to destroy the aircraft, or to cause damage to the aircraft which will render it incapable of flight, or which is likely to endanger the safety of the aircraft in-flight;
- (e) destroys, damages, or interferes with the operation of any air navigation facility used in international air navigation, where the destruction, damage, or interference is likely to endanger the safety of an aircraft in-flight; or
- (f) endangers the safety of an aircraft in-flight by communicating to any other person any information which the person supplying the information knows to be false,

commits an offence and is liable on conviction to a fine not exceeding 300,000 penalty units or to imprisonment for a term not exceeding 14 years.

**214 Offences deemed to be included in extradition treaties**

- (1) For the purposes of the *Extradition Act* and any order published in the *Gazette* under that Act, the offence of hijacking, if not already described in the treaty, is deemed to be an offence described in any extradition treaty, concluded before the commencement of this Act, in force between Solomon Islands and any foreign country that is a party to The Hague Convention.
- (2) For the purposes of the *Extradition Act* and any order published in the *Gazette* under that Act, each offence in section 213 is deemed to be an offence described in any extradition treaty, concluded before the commencement of this Act, in force between Solomon Islands and any foreign country that is a party to the Montreal Convention.
- (3) If, under subsection (1) or (2), an offence is deemed to be an offence described in an extradition treaty, a person may be surrendered for that offence under the *Extradition Act* even if the act occurred before the date on which the crime was deemed to be an offence described in the extradition treaty.
- (4) Subsection (3) does not apply in respect of an act that, had it occurred within the jurisdiction of Solomon Islands, would not at that time have constituted an offence under the law of Solomon Islands.
- (5) A certificate given by the Minister responsible for Foreign Affairs that a country is a party to The Hague Convention or the Montreal Convention is sufficient evidence of that fact.

**215 Application of sections 211, 212, and 213**

- (1) Section 211 or 212 does not apply if both the place of take-off and the place of actual landing of the aircraft (not being a Solomon Islands aircraft) are in the territory of the country in which the aircraft is registered, or, in the case of an aircraft that is subject to joint or international registration, in the territory of one of the countries having an interest in the aircraft, unless:

- (a) the alleged offender is a Solomon Islands citizen or a person ordinarily resident in Solomon Islands;
  - (b) the act occurred in Solomon Islands;
  - (c) the alleged offender is present in Solomon Islands; or
  - (d) the aircraft is leased without crew to a lessee:
    - (i) whose principal place of business is in Solomon Islands; or
    - (ii) in any other case, who is a Solomon Islands citizen or a person ordinarily resident in Solomon Islands.
- (2) Paragraph (a), (b), (c), (d), or (f) of section 213 does not apply if both the place of take-off and the place of actual or intended landing of the aircraft (not being a Solomon Islands aircraft) are in the territory of a country in which the aircraft is registered, or, in the case of an aircraft that is subject to joint or international registration, in the territory of one of the countries having an interest in the aircraft, unless:
- (a) the alleged offender is a Solomon Islands citizen or a person ordinarily resident in Solomon Islands;
  - (b) the act occurred in Solomon Islands;
  - (c) the alleged offender is present in Solomon Islands; or
  - (d) the aircraft is leased without crew to a lessee:
    - (i) whose principal place of business is in Solomon Islands; or
    - (ii) in any other case, who is a citizen of or ordinarily resident in Solomon Islands.
- (3) Subsections (1) and (2) do not apply to aircraft used in military, customs, or police service unless:
- (a) the alleged offender is a citizen of or ordinarily resident in Solomon Islands; or

- (b) the act occurred in Solomon Islands.

**216 Application of certain provisions of the Penal Code**

Nothing in the *Penal Code* relating to jurisdiction in respect of offences on ships or aircraft beyond Solomon Islands shall apply to limit the application of this Act or the application of the criminal law of Solomon Islands with respect to the offence of hijacking or to any of the offences under section 212 or 213 committed in connection with the offence of hijacking.

**PART XVI UNRULY PASSENGER OFFENCES**

**217 Application of this Part**

- (1) This Part applies to any unruly passenger offence committed:
  - (a) on an aircraft in Solomon Islands, regardless of the nationality of the aircraft; or
  - (b) outside Solomon Islands on an aircraft in-flight, regardless of the nationality of the aircraft, if the next landing of the aircraft is in Solomon Islands.
- (2) For the purposes of this Part, an aircraft is in-flight from the time when all its external doors are closed after embarkation until the time when any external door is opened for disembarkation.
- (3) Notwithstanding subsection (2), in the case of a forced landing an aircraft is in-flight until the time when the competent authorities of the country in which the forced landing takes place, or, in the case of a forced landing in a place that is not within the territorial limits of any country, the competent authorities of any country, assume responsibility for the aircraft and for persons and property on board the aircraft.

**218 Liability for unruly passenger**

Any person who commits an act on an aircraft in-flight outside Solomon Islands that would be an offence against this Part if it occurred within Solomon Islands is, subject to this Act, liable as if the act had occurred in Solomon Islands.

**219 Liability for other offences**

- (1) Any person who commits an act on an aircraft in-flight outside Solomon Islands that would, if such act occurred in Solomon Islands, be an offence of disorderly behaviour or fighting in a public place or common assault or wilful damage or indecent exposure under the *Penal Code* is liable as if the act had occurred in Solomon Islands.
- (2) For the purpose of an offence under subsection (1), “**public place**”, as used in the *Penal Code*, includes an aircraft.

**220 Consent of the Director of Public Prosecutions**

- (1) No proceedings for an unruly passenger offence may be commenced without the written consent of the Director of Public Prosecutions if:
  - (a) the offence has been committed on a foreign aircraft outside Solomon Islands; and
  - (b) the offence prescribes a maximum imprisonment term of 3 months or more.
- (2) A person may, in respect of an unruly passenger offence, be arrested, charged, remanded in custody, or released on bail before the Director of Public Prosecutions decides whether or not to consent to proceedings.

**221 Strict liability for acts endangering safety**

A person who acts in a manner that endangers an aircraft or any person in an aircraft commits an offence and is liable on conviction to a fine not exceeding 100,000 penalty units or to imprisonment for a term not exceeding 2 years.

**222 Disruptive conduct towards crew member**

Any person who, while in an aircraft:

- (a) uses any threatening, offensive, or insulting words towards a crew member;
- (b) behaves in a threatening, offensive, insulting, or disorderly manner towards a crew member;

- (c) behaves in a manner that interferes with the performance by a crew member of his duties; or
- (d) intentionally interferes with the performance by a crew member of his duties,

commits an offence and is liable on conviction to a fine not exceeding 10,000 penalty units, except that a person convicted under paragraph (d) is liable to a fine not exceeding 50,000 penalty units or to imprisonment for a term not exceeding 2 years.

## **223 Interference with aircraft**

Any person who tampers or interferes with any aircraft, any component of an aircraft, or its equipment, including, but not limited to, smoke detectors commits an offence and is liable on conviction to a fine not exceeding 5,000 penalty units.

## **224 Intoxicated persons on aircraft**

- (1) Any person (except a person under medical care) who:

- (a) is intoxicated and boards an aircraft; or
- (b) becomes intoxicated on an aircraft,

commits an offence and is liable on conviction to a fine not exceeding 5,000 penalty units or to imprisonment for a term not exceeding 6 months.

- (2) For the purposes of this section, a person is intoxicated if the pilot-in-command (or senior flight attendant authorised by the pilot-in-command for this purpose) has reasonable grounds to believe that the person is under the influence of an intoxicating liquor, or substance to such an extent as to:
  - (a) be incapable of properly conducting himself;
  - (b) present a hazard or potential hazard to the aircraft or to persons on the aircraft; or
  - (c) offend against the good order and discipline required on an aircraft.



(3) In this section:

**“person”** includes a pilot-in-command, a flight attendant or any other person on duty on board the aircraft;

**“person under medical care”** means a person who:

- (a) is under the supervision of an attendant; and
- (b) has become intoxicated as a result of taking prescription medication in accordance with a medical authorisation.

**225 Non-compliance with commands given by pilot-in-command**

Any person who fails to comply with any commands given to the person directly by the pilot-in command, or indirectly by the pilot-in-command through a crew member, in accordance with his duties under section 61 or the rules, section 33(6) notwithstanding, commits an offence and is liable on conviction to a fine not exceeding 5,000 penalty units.

**226 Offensive behaviour or words**

Any person who, on any aircraft:

- (a) behaves in a threatening, offensive, insulting, or disorderly manner; or
- (b) uses threatening, offensive, or insulting words,

commits an offence and is liable on conviction to a fine not exceeding 5,000 penalty units.

**227 Portable electronic devices not to be operated**

Notwithstanding section 33(6), any person who operates a portable electronic device on board an aircraft in breach of the rules, commits an offence and is liable on conviction to a fine not exceeding 5,000 penalty units.

**228 Non-compliance with seating and seatbelt instructions**

Any person who fails to comply with an instruction given by a crew

member or through any passenger information sign or placard to:

- (a) occupy a seat or berth; and
- (b) fasten and keep fastened about the person any installed safety belt or safety harness,

commits an offence and is liable on conviction to a fine not exceeding 5,000 penalty units.

**229 No smoking**

- (1) Any person who smokes:

- (a) when instructed not to smoke by a crew member or through a passenger information sign or placard; or
- (b) in contravention of section 147(6),

commits an offence and is liable on conviction to a fine not exceeding 5,000 penalty units.

- (2) The owner or operator of a Solomon Islands international airline who, without reasonable excuse:

- (a) fails to comply with the requirements of section 147(5); or
- (b) without reasonable excuse, permits any person to smoke in contravention of section 147(6),

commits an offence and is liable on conviction to a fine not exceeding 5,000 penalty units.

**230 Dangerous goods**

Notwithstanding section 33(6), any person who, in breach of the rules, carries or causes to be carried on an aircraft any dangerous goods, commits an offence and is liable on conviction to a fine not exceeding 100,000 penalty units.

**231 Procedure for certain unruly passenger offences**

- (1) If any offence specified under sections 221 to 230 is alleged to have

been committed by any person (“**offender**”), the pilot-in-command of the aircraft at the time of the alleged offence may, by any available means, notify, or cause to be notified:

- (a) an aviation security officer; or
  - (b) a police officer.
- (2) If an aviation security officer or a police officer has reasonable cause to suspect that a person has committed any offence specified under sections 221 to 230, the officer may require the person to give his full name, address, and date of birth.
- (3) If the aviation security officer or the police officer has reasonable grounds to believe that any details provided under subsection (2) are false or misleading, the officer may require the person to give such verification of those details as it is reasonable in the circumstances to require that person to provide.
- (4) If a person, without reasonable excuse, refuses or fails to comply with a request under subsection (2) or (3), and persists in that refusal or failure after being warned by the aviation security officer or the police officer that the person may be arrested for committing an offence by that refusal or failure, the police officer may arrest that person without warrant.
- (5) A person commits an offence and is liable on conviction to a fine not exceeding 1,000 penalty units, if the person, without reasonable excuse:
- (a) refuses or fails to comply with a request under subsection (2) or (3); or
  - (b) gives details that are false or misleading in a material respect to an aviation security officer or police officer in response to such a request.
- (6) Evidence produced by the offender to the aviation security officer or a police officer under subsection (3) shall be inspected without delay and returned to the offender as soon as practicable after the inspection has concluded.

## PART XVII RIGHTS OF APPEAL

### 232 Appeals to Minister or Authority

- (1) A person who is aggrieved by a decision made under section 6, 8, 50, 51, 52, 53, 143, 144 or 149 may appeal to the Minister against such decision.
- (2) A person who is aggrieved by a decision made under section 16, 17, 18, 19, 20, 21, 22, 23, 24, 57, 58, 59, 62, 64, 65, 66, 67, 68, 69, 100, 101, 104, 105, 106, 107, 108, 111 or subsection (6) may appeal to the Authority against such decision.
- (3) In this section “**aggrieved person**” means:
  - (a) the person:
    - (i) is a person in respect of whom the decision was made; and
    - (ii) is dissatisfied with the decision; or
  - (b) the person is the owner, operator, or person for the time being in charge of the aircraft or aeronautical product that is the subject of the decision.
- (4) The Minister or Authority may confirm, reverse, or modify the decision appealed against.
- (5) A decision appealed against under this section continues in force pending the determination of the appeal, and no person is excused from complying with this Act on the ground that any appeal is pending.
- (6) Even though an appeal under this section may have been determined in favour of the appellant, the Director may, subject to the like right of appeal, refuse to grant, revoke, suspend, disqualify, or otherwise deal with, under this Act, any aviation document, any person to which or to whom the appeal related, or any aviation document or approval granted or restored in compliance with the decision of the Minister or Authority on the appeal, on any sufficient grounds supported by facts or evidence discovered since the hearing

of the appeal.

**233 Appeal to High Court on question of law**

A party to an appeal under section 232 may appeal to the High Court on a question of law.

**234 Appeals on disqualifications**

- (1) An order of a court by which any person is disqualified from holding or obtaining an aviation document shall be deemed to be a sentence or part of a sentence. If a notice of appeal against any such order is filed, the appellate court may defer the operation of the order pending the appeal, but otherwise the order shall have immediate effect.
- (2) Any person who is disqualified by an order of a court from holding or obtaining an aviation document and who applies for a removal of that disqualification and whose application is refused, may appeal against the refusal to the High Court.
- (3) Where application is made to the Court of Appeal for leave to appeal to that Court against a sentence of the High Court that is or includes an order of disqualification, the High Court may defer the operation of the order pending the application for leave to appeal and, if leave is granted, pending the appeal.
- (4) Where an appeal to the High Court or Court of Appeal is allowed under this section, whether in whole or in part, the Registrar of the High Court shall send notice thereof to the Director who shall have a right to appear and be heard in respect of the matter.
- (5) In determining the expiration of the period for which a person is disqualified from holding or obtaining an aviation document, any time during which the operation of the disqualification order is deferred under this section shall be disregarded.

**PART XVIII MISCELLANEOUS PROVISIONS**

**235 Evidence and proof**

- (1) In any proceedings for an offence against this Act, the following provisions shall apply:

- (a) a copy of any aviation document which is certified correct by the Authority or the Director shall be sufficient, in the absence of proof to the contrary, to prove that document;
  - (b) evidence of the contents of the Solomon Islands Register of Aircraft may be given by a certificate signed by the Authority or Director and such certificate shall be sufficient evidence of the matters stated in it, until the contrary is proved;
  - (c) the production of a certificate signed by the Authority or Director to the effect that on a specified date a person or organisation was or was not the holder of any aviation document or any specified type of aviation document shall be sufficient evidence of the matter certified, until the contrary is proved;
  - (d) the production of a written statement signed by the Director to the effect that on a specified date a person was or was not the holder of a current medical certificate granted recognition under Part VII, or otherwise validly issued or recognized before the commencement of this Act, is sufficient evidence of the matter stated, until the contrary is proved;
  - (e) until the contrary is proved, it shall be presumed that a certificate purporting to have been certified or given under this section has been certified or given by the Authority or Director; and
  - (f) any licence granted under Part XI may be proved by the production of a copy of that licence certified to be correct by the Authority.
- (2) Without limiting any other method of proof, the production in any proceedings of a copy of:
- (a) any ordinary rule purporting to have been made by the Minister under Part IV; or
  - (b) any emergency rule purporting to have been made by the Director under section 38,

shall, in the absence of proof to the contrary, be sufficient evidence of the rule and of the fact that it has been made in accordance with

the provisions of that Part.

**236 Evidence of air traffic services provider**

- (1) Any document used in recording services in relation to the movement of any aircraft and purporting to have been initiated at the time of the movement by an employee of a person providing air traffic services shall be admissible in court and in any judicial examination or proceeding as *prima facie* evidence that the air traffic services described in such document were provided on the date and for the aircraft referred to in the document.
- (2) A document certified by an authorised officer of a person providing air traffic services purporting to be a computer record of the provision of air traffic services, the particulars of which have been recorded or stored in the usual and ordinary course of the business of such person, shall be admissible as if it were a document to which subsection (1) applies.
- (3) In this section, “**computer record**” includes a microfiche, a microfiche printout, a computer printout, or any other document produced by a device by means of which information is recorded or stored.

**237 Obligation to identify pilot-in-command**

- (1) If a pilot in command of an aircraft is alleged to have committed an offence under this Act or the rules, the Director or a police officer may:
  - (a) inform the operator of the aircraft or the holder of the certificate of registration for the aircraft of the alleged offence; and
  - (b) require that person to give all information in that person's possession or reasonably obtainable by that person that may lead to the identification of the pilot.
- (2) A request under subsection (1) may be made orally or in writing, and the operator or holder of the certificate of registration shall comply with the request within 10 working days.
- (3) Subsection (1) does not apply if the operator or holder of the

certificate of registration has been arrested or detained in relation to the suspected offence.

**238      Infringement notices**

- (1) The Authority may issue infringement notices, in the prescribed form, for breach of an offence under this Act, regulations or rules.
- (2) The fine to be specified under infringement notices:
  - (a) shall be prescribed by regulations;
  - (b) shall be a fixed amount; and
  - (c) shall not exceed one-fifth of the maximum fine specified for that offence.
- (3) Infringement notices shall provide for elections for payment of the fixed fine and for avenue to a court if the offence is disputed.
- (4) Any infringement notice shall be issued on behalf of the Authority by persons authorised by it in writing.
- (5) If a person admits the offence under an infringement notice and pays the full fixed penalty amount:
  - (a) the person is deemed to have been convicted under such offence; and
  - (b) no further proceedings for that offence shall be instituted against the person except for any civil claim for damages arising of that offence.

**239      Repeals, revocation, amendments and savings**

- (1) The following written laws are repealed:
  - (a) the *Aircraft (Tokyo, Hague and Montreal Conventions) Act*
  - (b) the *Civil Aviation Act*,
  - (c) the *Civil Aviation (Accident Investigation) Regulations 1978*;



- (d) the United Kingdom Air Navigation (Overseas Territories) Order 2001.
- (2) The following written laws are repealed on the day appointed by the Minister, by notice in the *Gazette*:
  - (a) Article 5 and Schedules 3 and 4 of The Carriage by Air (Application of Provisions) (Overseas Territories) Order 1967;
  - (b) The Carriage by Air (Overseas Territories) Order 1967.
- (3) Despite the repeal of written laws under subsection (1) or (2):
  - (a) any subsidiary legislation made under a repealed Act; and
  - (b) any other order and subsidiary legislation in relation to air navigation made applicable to the Solomon Islands by an Order in Council or otherwise,

and in force on the date of the commencement of this Act and not inconsistent with this Act, shall be deemed to be subsidiary legislation made under this Act and shall continue in force until such time as the Minister may by order, revoke, amend or rescind such subsidiary legislation or any part thereof, or replace the same.
- (4) A licence, rating, certificate, permit, authorisation, approval, or other document issued under the *Civil Aviation Act* and Regulations in force immediately before the commencement of this Act, shall be deemed to be an aviation document issued under this Act, and shall have effect and be subject to this Act accordingly.
- (5) Despite the repeal of any written law under this section, the Minister may make regulations to provide for any other transitional matters, including the transfer of public officers from the Civil Aviation Division to the Authority, and transfer of Government property, assets and liability to the Authority.
- (6) The power under subsection (5) shall be exercised within 2 years from the second commencement date.

## **SCHEDULE 1**

**(section 9)**

### **Provisions relating to the Civil Aviation Authority of Solomon Islands**

#### **1 Chairman and Deputy Chairman**

- (1) The Chairperson shall:
  - (a) keep the Minister fully informed concerning the activities and operations of the Authority; and
  - (b) provide the Minister with such information as the Minister may request with respect to any particular matter relating to the activities or operations of the Authority.
- (2) In the absence or inability of the Chairperson, the Deputy Chairperson shall perform the functions of the Chairperson.

#### **2 Allowances**

- (1) The member appointed under section 9(1)(c) is entitled to travelling, attendances allowances and other expenses determined by the Minister.
- (2) The members under section 9(1)(a) and (b) are entitled to an attendance allowances determined under subparagraph (1) for meetings held on a Saturday, Sunday or public holiday.

#### **3 Meetings**

- (1) The Authority shall meet at such times as may be necessary or expedient for the transaction of business, and such meetings shall be held at such places and times and on such days as the Authority shall determine.
- (2) The Chairperson may at any time call a special meeting of the Authority and shall call a special meeting to be held within 7 days of a written request to that effect addressed to him by any two members.

- (3) The quorum of the Authority shall be 2 (the Chairperson and another member).
- (4) Minutes in proper form for each meeting shall be kept and shall be confirmed, whenever practicable, at the next meeting. Certified copies of such minutes when so confirmed shall be forwarded to the Minister.
- (5) The Authority may co-opt any person to attend any particular meeting of the Authority for the purposes of assisting or advising the Authority, but no such co-opted person shall have any right to vote.
- (6) Subject to the provisions of this Schedule, the Authority may regulate its own proceedings.

#### **4 Disclosure of interests**

If a member of the Authority has any pecuniary interest, direct or indirect, in any contract or proposed contract or other matter, and is present at a meeting of the Authority at which the contract or other matter is the subject of consideration, he shall, as soon as practicable after the commencement of the meeting, disclose to the Authority the fact and nature of his interest, and shall not take part in the consideration or discussion of the contract or other matter or vote on any question with respect to it.

#### **5 Execution of documents**

All documents, other than those required by law to be under seal, made by, and all decisions of, the Authority may be signed by the Chairperson or any member authorised to act in that behalf.

#### **6 Contracting out of functions**

The Authority has the power to delegate or contract out some of its functions or powers to other agencies or consultants if it considers these may be better carried out by such agencies or consultants in accordance with section 13. Such contracting out should be considered where the required expertise is unavailable within Solomon Islands.

#### **7 Terms**

A member holds office as a member of the Authority as long as the member holds the position mentioned in section 9(1)(a), (b) or (c).

## **8 Exemption of liability**

No action, suit, prosecution or other proceedings shall be brought or instituted personally against any member of the Authority in respect of any act done, in good faith, in pursuance or execution or intended execution of this Act or its regulations or rule.

## **9 Officers and staff**

- (1) The Authority has the power:
  - (a) to establish posts as it considers necessary and proper for the due and efficient administration, management, and enforcement of this Act; and
  - (b) to make appointments (including power to confirm, suspend, terminate appointments or to transfer officers and employees) to posts created under subparagraph (a); and
  - (c) to exercise disciplinary control over officers and staff of the Authority
- (2) The Public Service Commission may second to any office in the service of the Authority any officer from the public service, and the Public Service Commission may approve the transfer of an officer from the service of the Authority to the public service or from the public service to the service of the Authority.

## **10 Managerial duties of Director**

- (1) Subject to this Act, the Director has the overall management and control of officers and employees and all other administrative and operational functions of the Authority.
- (2) All officers and employees charged with the receipt, accounting for, or disbursement of moneys or with the custody or delivery of stores or other property, belonging to the Authority shall be individually responsible for the due and efficient discharge of their respective duties, and for the exercise of proper supervision of the accounts

kept or controlled by them and of all the property entrusted to their care, and for the due observance of all rules and regulations and of all orders and instructions prescribed for their guidance.

## **11 Annual Reports**

The Chairperson is to provide an annual report to the Minister on the activities, operations and financial dealings of the Authority.

## **SCHEDULE 2**

**(section 42)**

### **Form of Notice of Making Rules By Adoption**

**“Solomon Islands Civil Aviation Rules Part [number of rule part]**

**Name/Topic of Rule Part**

**Adoption Statement**

This Part may be cited as Solomon Islands Civil Aviation Rule Part [...] comprises an adoption of the [ *insert overseas jurisdiction* ] Rules Part, as modified hereunder and which Rule Part shall be read subject to the following Interpretation Statement.

**Interpretation Statement**

- (i) any words (including place names) and numbers (including section numbers of Solomon Islands Acts of Parliament) to be substituted.*
- (ii) any part or parts of the adopted rule which shall not apply in the Solomon Islands.*
- (iii) any general exemptions which will apply in the Solomon Islands.*
- (iv) any additional provisions or requirements not found in the [overseas jurisdiction] Part but which will apply in the Solomon Islands.*

- (v) *any amendment to, or repeal of, any rule previously adopted in accordance with the provisions and procedures in this section.*
- (vi) *any forms to be used in the Solomon Islands.*
- (vii) *any equivalent documents to be substituted for documents referred to in the adopted rule part.*
- (viii) *any direction as to the application or non application to the Solomon Islands of any amendment or repeal of an adopted rule part in its country of origin.*
- (ix) *any standards, requirements, recommended practices, rules or other written material or document incorporated by reference under section 46.*
- (x) *any other matter which would assist in the practical, clear and unambiguous interpretation and application of the adopted rule in the Solomon Islands.*

**Dated this     day of     20...”**

### **SCHEDULE 3**

**(section 152)**

#### **The Warsaw Convention (as amended by The Hague Protocol of 1955 and the Montreal Additional Protocols Nos 1 and 2 and Protocol No 4 of 1975)**

#### **CONVENTION FOR THE UNIFICATION OF CERTAIN RULES RELATING TO INTERNATIONAL CARRIAGE BY AIR**

#### **Chapter 1**

#### **SCOPE—DEFINITIONS**

#### **Article 1**

- (1) This Convention applies to all international carriage of persons, baggage or cargo performed by aircraft for reward. It applies equally to gratuitous carriage by aircraft performed by an air transport undertaking.
- (2) For the purposes of this Convention, the expression *international carriage* means any carriage in which, according to the agreement between the parties, the place of departure and the place of destination, whether or not there be a break in the carriage or a transshipment, are situated either within the territories of two High Contracting Parties or within the territory of a single High Contracting Party if there is an agreed stopping place within the territory of another State, even if that State is not a High Contracting Party. Carriage between two points within the territory of a single High Contracting Party without an agreed stopping place within the territory of another State is not international carriage for the purposes of this Convention.
- (3) Carriage to be performed by several successive air carriers is deemed, for the purposes of this Convention, to be one undivided carriage if it has been regarded by the parties as a single operation, whether it had been agreed upon under the form of a single contract or of a series of contracts, and it does not lose its international character merely because one contract or a series of contracts is to be performed entirely within the territory of the same State.

## **Article 2**

- (1) This Convention applies to carriage performed by the State or by legally constituted public bodies provided it falls within the conditions laid down in Article 1.
- (2) In the carriage of postal items the carrier shall be liable only to the relevant postal administration in accordance with the rules applicable to the relationship between the carriers and the postal administrations.
- (3) Except as provided in paragraph (2) of this Article, the provisions of this Convention shall not apply to the carriage of postal items.

## **Chapter 2**

### **DOCUMENTS OF CARRIAGE**

#### **SECTION 1—PASSENGER TICKET**

## **Article 3**

- (1) In respect of the carriage of passengers a ticket shall be delivered containing:

- (a) an indication of the places of departure and destination;
  - (b) if the places of departure and destination are within the territory of a single High Contracting Party, one or more agreed stopping places being within the territory of another State, an indication of at least one such stopping place;
  - (c) a notice to the effect that, if the passenger's journey involves an ultimate destination or stop in a country other than the country of departure, the Warsaw Convention may be applicable and that the Convention governs and in most cases limits the liability of carriers for death or personal injury and in respect of loss of or damage to baggage.
- (2) The passenger ticket shall constitute *prima facie* evidence of the conclusion and conditions of the contract of carriage. The absence, irregularity or loss of the passenger ticket does not affect the existence or the validity of the contract of carriage which shall, none the less, be subject to the rules of this Convention. Nevertheless, if, with the consent of the carrier, the passenger embarks without a passenger ticket having been delivered, or if the ticket does not include the notice required by paragraph (1)(c) of this Article, the carrier shall not be entitled to avail himself of the provisions of Article 22.

## SECTION 2—BAGGAGE CHECK

### Article 4

- (1) In respect of the carriage of registered baggage, a baggage check shall be delivered, which, unless combined with or incorporated in a passenger ticket, which complies with the provisions of Article 3, paragraph (1), shall contain:
- (a) an indication of the places of departure and destination;
  - (b) if the places of departure and destination are within the territory of a single High Contracting Party, one or more agreed stopping places being within the territory of another State, an indication of at least one such stopping place;
  - (c) a notice to the effect that, if the carriage involves an ultimate destination or stop in a country other than the country of departure, the Warsaw Convention may be applicable and that the Convention governs and in most cases limits the liability of carriers in respect of loss of or damage to baggage.



(2) The baggage check shall constitute *prima facie* evidence of the registration of the baggage and of the conditions of the contract of carriage. The absence, irregularity or loss of the baggage check does not affect the existence or the validity of the contract of carriage which shall, none the less, be subject to the rules of this Convention. Nevertheless, if the carrier takes charge of the baggage without a baggage check having been delivered or if the baggage check (unless combined with or incorporated in the passenger ticket which complies with the provisions of Article 3, paragraph (1)(c)) does not include the notice required by paragraph (1)(c) of this Article, he shall not be entitled to avail himself of the provisions of Article 22, paragraph (2).

### SECTION 3—DOCUMENTATION RELATING TO CARGO

#### Article 5

1. In respect of the carriage of cargo an air waybill shall be delivered.
2. Any other means which would preserve a record of the carriage to be performed may, with the consent of the consignor, be substituted for the delivery of an air waybill. If such other means are used, the carrier shall, if so requested by the consignor, deliver to the consignor a receipt for the cargo permitting identification of the consignment and access to the information contained in the record preserved by such other means.
3. The impossibility of using, at points of transit and destination, the other means which would preserve the record of the carriage referred to in paragraph 2 of this Article does not entitle the carrier to refuse to accept the cargo for carriage.

#### Article 6

1. The air waybill shall be made out by the consignor in three original parts.
2. The first part shall be marked “for the carrier”; it shall be signed by the consignor. The second part shall be marked “for the consignee”; it shall be signed by the consignor and by the carrier. The third part shall be signed by the carrier and handed by him to the consignor after the cargo has been accepted.
3. The signature of the carrier and that of the consignor may be printed or stamped.
4. If, at the request of the consignor, the carrier makes out the air waybill, he shall be deemed, subject to proof to the contrary, to have done so on behalf of the consignor.

## **Article 7**

When there is more than one package:

- a) the carrier of cargo has the right to require the consignor to make out separate air waybills;
- b) the consignor has the right to require the carrier to deliver separate receipts when the other means referred to in paragraph 2 of Article 5 are used.

## **Article 8**

The air waybill and the receipt for the cargo shall contain:

- a) an indication of the places of departure and destination;
- b) if the places of departure and destination are within the territory of a single High Contracting Party, one or more agreed stopping places being within the territory of another State, an indication of at least one such stopping place; and
- c) an indication of the weight of the consignment.

## **Article 9**

Non-compliance with the provisions of Articles 5 to 8 shall not affect the existence or the validity of the contract of carriage, which shall, none the less, be subject to the rules of this Convention including those relating to limitation of liability.

## **Article 10**

1. The consignor is responsible for the correctness of the particulars and statements relating to the cargo inserted by him or on his behalf in the air waybill or furnished by him or on his behalf to the carrier for insertion in the receipt for the cargo or for insertion in the record preserved by the other means referred to in paragraph 2 of Article 5.
2. The consignor shall indemnify the carrier against all damage suffered by him, or by any other person to whom the carrier is liable, by reason of the irregularity, incorrectness or incompleteness of the particulars and statements furnished by the consignor or on his behalf.
3. Subject to the provisions of paragraphs 1 and 2 of this Article, the carrier

shall indemnify the consignor against all damage suffered by him, or by any other person to whom the consignor is liable, by reason of the irregularity, incorrectness or incompleteness of the particulars and statements inserted by the carrier or on his behalf in the receipt for the cargo or in the record preserved by the other means referred to in paragraph 2 of Article 5.

### **Article 11**

1. The air waybill or the receipt for the cargo is *prima facie* evidence of the conclusion of the contract, of the acceptance of the cargo and of the conditions of carriage mentioned therein.
2. Any statements in the air waybill or the receipt for the cargo relating to the weight, dimensions and packing of the cargo, as well as those relating to the number of packages, are *prima facie* evidence of the facts stated; those relating to the quantity, volume and condition of the cargo do not constitute evidence against the carrier except so far as they both have been, and are stated in the air waybill to have been, checked by him in the presence of the consignor, or relate to the apparent condition of the cargo.

### **Article 12**

1. Subject to his liability to carry out all his obligations under the contract of carriage, the consignor has the right to dispose of the cargo by withdrawing it at the airport of departure or destination, or by stopping it in the course of the journey on any landing, or by calling for it to be delivered at the place of destination or in the course of the journey to a person other than the consignee originally designated, or by requiring it to be returned to the airport of departure. He must not exercise this right of disposition in such a way as to prejudice the carrier or other consignors and he must repay any expenses occasioned by the exercise of this right.
2. If it is impossible to carry out the orders of the consignor the carrier must so inform him forthwith.
3. If the carrier obeys the orders of the consignor for the disposition of the cargo without requiring the production of the part of the air waybill or the receipt for the cargo delivered to the latter, he will be liable, without prejudice to his right of recovery from the consignor, for any damage which may be caused thereby to any person who is lawfully in possession of that part of the air waybill or the receipt for the cargo.
4. The right conferred on the consignor ceases at the moment when that of the consignee begins in accordance with Article 13. Nevertheless, if the

consignee declines to accept the cargo, or if he cannot be communicated with, the consignor resumes his right of disposition.

### **Article 13**

1. Except when the consignor has exercised his right under Article 12, the consignee is entitled, on arrival of the cargo at the place of destination, to require the carrier to deliver the cargo to him, on payment of the charges due and on complying with the conditions of carriage.
2. Unless it is otherwise agreed, it is the duty of the carrier to give notice to the consignee as soon as the cargo arrives.
3. If the carrier admits the loss of the cargo, or if the cargo has not arrived at the expiration of seven days after the date on which it ought to have arrived, the consignee is entitled to enforce against the carrier the rights which flow from the contract of carriage.

### **Article 14**

The consignor and the consignee can respectively enforce all the rights given them by Articles 12 and 13, each in his own name, whether he is acting in his own interest or in the interest of another, provided that he carries out the obligations imposed by the contract of carriage.

### **Article 15**

1. Articles 12, 13 and 14 do not affect either the relations of the consignor and the consignee with each other or the mutual relations of third parties whose rights are derived either from the consignor or from the consignee.
2. The provisions of Articles 12, 13 and 14 can only be varied by express provision in the air waybill or the receipt for the cargo.

### **Article 16**

1. The consignor must furnish such information and such documents as are necessary to meet the formalities of customs, octroi or police before the cargo can be delivered to the consignee. The consignor is liable to the carrier for any damage occasioned by the absence, insufficiency or irregularity of any such information or documents, unless the damage is due to the fault of the carrier, his servants or agents.
2. The carrier is under no obligation to enquire into the correctness or

sufficiency of such information or documents.

### **Chapter 3**

#### **LIABILITY OF THE CARRIER**

##### **Article 17**

The carrier is liable for damage sustained in the event of the death or wounding of a passenger or any other bodily injury suffered by a passenger, if the accident which caused the damage so sustained took place on board the aircraft or in the course of any of the operations of embarking or disembarking.

##### **Article 18**

1. The carrier is liable for damage sustained in the event of the destruction or loss of, or damage to, any registered baggage, if the occurrence which caused the damage so sustained took place during the carriage by air.
2. The carrier is liable for damage sustained in the event of the destruction or loss of, or damage to, cargo upon condition only that the occurrence which caused the damage so sustained took place during the carriage by air.
3. However, the carrier is not liable if he proves that the destruction, loss of, or damage to, the cargo resulted solely from one or more of the following:
  - a) inherent defect, quality or vice of that cargo;
  - b) defective packing of that cargo performed by a person other than the carrier or his servants or agents;
  - c) an act of war or an armed conflict;
  - d) an act of public authority carried out in connection with the entry, exit or transit of the cargo.
4. The carriage by air within the meaning of the preceding paragraphs of this Article comprises the period during which the baggage or cargo is in the charge of the carrier, whether in an airport or on board an aircraft, or, in the case of a landing outside an airport, in any place whatsoever.
5. The period of the carriage by air does not extend to any carriage by land, by sea or by river performed outside an airport. If, however, such carriage takes place in the performance of a contract for carriage by air, for the

purpose of loading, delivery or transhipment, any damage is presumed, subject to proof to the contrary, to have been the result of an event which took place during the carriage by air.

#### **Article 19**

The carrier is liable for damage occasioned by delay in the carriage by air of passengers, baggage or cargo.

#### **Article 20**

In the carriage of passengers and baggage, and in the case of damage occasioned by delay in the carriage of cargo, the carrier shall not be liable if he proves that he and his servants and agents have taken all necessary measures to avoid the damage or that it was impossible for them to take such measures.

#### **Article 21**

1. In the carriage of passengers and baggage, if the carrier proves that the damage was caused by or contributed to by the negligence of the person suffering the damage the Court may, in accordance with the provisions of its own law, exonerate the carrier wholly or partly from his liability.
2. In the carriage of cargo, if the carrier proves that the damage was caused by or contributed to by the negligence or other wrongful act of the person claiming compensation, or the person from whom he derives his rights, the carrier shall be wholly or partly exonerated from his liability to the claimant to the extent that such negligence or wrongful act caused or contributed to the damage.

#### **Article 22 (As It Reads Where Additional Protocol No 1 Applies)**

1. In the carriage of persons the liability of the carrier for each passenger is limited to the sum of 8 300 Special Drawing Rights. Where, in accordance with the law of the court seised of the case, damages may be awarded in the form of periodic payments, the equivalent capital value of the said payments shall not exceed this limit. Nevertheless, by special contract, the carrier and the passenger may agree to a higher limit of liability.
2. In the carriage of registered baggage and of cargo, the liability of the carrier is limited to a sum of 17 Special Drawing Rights per kilogramme, unless the consignor has made, at the time when the package was handed over to the carrier, a special declaration of interest in delivery at destination and has paid a supplementary sum if the case so requires. In that case the carrier will be liable to pay a sum not exceeding the declared sum, unless he proves that

that sum is greater than the consignor's actual interest in delivery at destination.

3. As regards objects of which the passenger takes charge himself the liability of the carrier is limited to 332 Special Drawing Rights per passenger.

4. The sums mentioned in terms of the Special Drawing Right in this Article shall be deemed to refer to the Special Drawing Right as defined by the International Monetary Fund. Conversion of the sums into national currencies shall, in case of judicial proceedings, be made according to the value of such currencies in terms of the Special Drawing Right at the date of the judgment. The value of a national currency, in terms of the Special Drawing Right, of a High Contracting Party which is a Member of the International Monetary Fund, shall be calculated in accordance with the method of valuation applied by the International Monetary Fund, in effect at the date of the judgment, for its operations and transactions. The value of a national currency, in terms of the Special Drawing Right, of a High Contracting Party which is not a Member of the International Monetary Fund, shall be calculated in a manner determined by that High Contracting Party.

Nevertheless, those States which are not Members of the International Monetary Fund and whose law does not permit the application of the provisions of paragraphs 1, 2 and 3 of Article 22 may, at the time of ratification or accession or at any time thereafter, declare that the limit of liability of the carrier in judicial proceedings in their territories is fixed at a sum of 125 000 monetary units per passenger with respect to paragraph 1 of Article 22; 250 monetary units per kilogramme with respect to paragraph 2 of Article 22; and 5 000 monetary units per passenger with respect to paragraph 3 of Article 22. This monetary unit corresponds to sixty-five and a half milligrammes of gold of millesimal fineness nine hundred. These sums may be converted into the national currency concerned in round figures. The conversion of these sums into national currency shall be made according to the law of the State concerned.

#### **Article 22 (As It Reads Where Additional Protocol No 2 Applies But Not Protocol No 4)**

1. In the carriage of persons the liability of the carrier for each passenger is limited to the sum of 16 600 Special Drawing Rights. Where, in accordance with the law of the court seised of the case, damages may be awarded in the form of periodic payments, the equivalent capital value of the said payments shall not exceed this limit. Nevertheless, by special contract, the carrier and the passenger may agree to a higher limit of liability.

2.

- a) In the carriage of registered baggage and of cargo, the liability of the carrier is limited to a sum of 17 Special Drawing Rights per kilogramme, unless the passenger or consignor has made, at the time when the package was handed over to the carrier, a special declaration of interest in delivery at destination and has paid a supplementary sum if the case so requires. In that case the carrier will be liable to pay a sum not exceeding the declared sum, unless he proves that that sum is greater than the passenger's or consignor's actual interest in delivery at destination.
- b) In the case of loss, damage or delay of part of registered baggage or cargo, or of any object contained therein, the weight to be taken into consideration in determining the amount to which the carrier's liability is limited shall be only the total weight of the package or packages concerned. Nevertheless, when the loss, damage or delay of a part of the registered baggage or cargo or of an object contained therein, affects the value of other packages covered by the same baggage check or the same air waybill, the total weight of such package or packages shall also be taken into consideration in determining the limit of liability.

3. As regards objects of which the passenger takes charge himself the liability of the carrier is limited to 332 Special Drawing Rights per passenger.

4. The limits prescribed in this Article shall not prevent the court from awarding, in accordance with its own law, in addition, the whole or part of the court costs and of the other expenses of the litigation incurred by the plaintiff. The foregoing provision shall not apply if the amount of the damages awarded, excluding court costs and other expenses of the litigation, does not exceed the sum which the carrier has offered in writing to the plaintiff within a period of six months from the date of the occurrence causing the damage, or before the commencement of the action, if that is later.

5. The sums mentioned in terms of the Special Drawing Right in this Article shall be deemed to refer to the Special Drawing Right as defined by the International Monetary Fund. Conversion of the sums into national currencies shall, in case of judicial proceedings, be made according to the value of such currencies in terms of the Special Drawing Right at the date of the judgment. The value of a national currency, in terms of the Special Drawing Right, of a



High Contracting Party which is a Member of the International Monetary Fund, shall be calculated in accordance with the method of valuation applied by the International Monetary Fund, in effect at the date of the judgment, for its operations and transactions. The value of a national currency, in terms of the Special Drawing Right, of a High Contracting Party which is not a Member of the International Monetary Fund, shall be calculated in a manner determined by that High Contracting Party.

Nevertheless, those States which are not Members of the International Monetary Fund and whose law does not permit the application of the provisions of paragraphs 1, 2 a) and 3 of Article 22 may, at the time of ratification or accession or at any time thereafter, declare that the limit of liability of the carrier in judicial proceedings in their territories is fixed at a sum of 250 000 monetary units per passenger with respect to paragraph 1 of Article 22; 250 monetary units per kilogramme with respect to paragraph 2 a) of Article 22; and 5 000 monetary units per passenger with respect to paragraph 3 of Article 22. This monetary unit corresponds to sixty-five and a half milligrammes of gold of millesimal fineness nine hundred. These sums may be converted into the national currency concerned in round figures. The conversion of these sums into national currency shall be made according to the law of the State concerned.

**Article 22 (As It Reads Where Additional Protocol No 2 And Protocol No 4 Apply)**

1. In the carriage of persons the liability of the carrier for each passenger is limited to the sum of 16 600 Special Drawing Rights. Where, in accordance with the law of the court seised of the case, damages may be awarded in the form of periodic payments, the equivalent capital value of the said payments shall not exceed this limit. Nevertheless, by special contract, the carrier and the passenger may agree to a higher limit of liability.

2.

- a) In the carriage of registered baggage, the liability of the carrier is limited to a sum of 17 Special Drawing Rights per kilogramme, unless the passenger or consignor has made, at the time when the package was handed over to the carrier, a special declaration of interest in delivery at destination and has paid a supplementary sum if the case so requires. In that case the carrier will be liable to pay a sum not exceeding the declared sum, unless he proves that that sum is greater than the passenger's or consignor's actual interest in delivery at

destination.

- b) In the carriage of cargo, the liability of the carrier is limited to a sum of 17 Special Drawing Rights per kilogramme, unless the consignor has made, at the time when the package was handed over to the carrier, a special declaration of interest in delivery at destination and has paid a supplementary sum if the case so requires. In that case the carrier will be liable to pay a sum not exceeding the declared sum, unless he proves that that sum is greater than the consignor's actual interest in delivery at destination.
- c) In the case of loss, damage or delay of part of registered baggage or cargo, or of any object contained therein, the weight to be taken into consideration in determining the amount to which the carrier's liability is limited shall be only the total weight of the package or packages concerned. Nevertheless, when the loss, damage or delay of a part of the registered baggage or cargo or of an object contained therein, affects the value of other packages covered by the same baggage check or the same air waybill, the total weight of such package or packages shall also be taken into consideration in determining the limit of liability.

3. As regards objects of which the passenger takes charge himself the liability of the carrier is limited to 332 Special Drawing Rights per passenger.

4. The limits prescribed in this Article shall not prevent the court from awarding, in accordance with its own law, in addition, the whole or part of the court costs and of the other expenses of the litigation incurred by the plaintiff. The foregoing provision shall not apply if the amount of the damage awarded, excluding court costs and other expenses of the litigation, does not exceed the sum which the carrier has offered in writing to the plaintiff within a period of six months from the date of the occurrence causing the damage, or before the commencement of the action, if that is later.

5. The sums mentioned in terms of the Special Drawing Right in this Article shall be deemed to refer to the Special Drawing Right as defined by the International Monetary Fund. Conversion of the sums into national currencies shall, in case of judicial proceedings, be made according to the value of such currencies in terms of the Special Drawing Right at the date of the judgment. The value of a national currency, in terms of the Special Drawing Right, of a High Contracting Party which is a Member of the International Monetary Fund,

190

shall be calculated in accordance with the method of valuation applied by the International Monetary Fund, in effect at the date of the judgment, for its operations and transactions. The value of a national currency, in terms of the Special Drawing Right, of a High Contracting Party which is not a Member of the International Monetary Fund, shall be calculated in a manner determined by that High Contracting Party.

Nevertheless, those States which are not Members of the International Monetary Fund and whose law does not permit the application of the provisions of paragraphs 1, 2 a) and 3 of Article 22 may, at the time of ratification or accession or at any time thereafter, declare that the limit of liability of the carrier in judicial proceedings in their territories is fixed at a sum of 250 000 monetary units per passenger with respect to paragraph 1 of Article 22; and 250 monetary units per kilogramme with respect to paragraph 2 a) of Article 22 and 5000 monetary units per passenger with respect to paragraph 3 of article 22. This monetary unit corresponds to sixty-five and a half milligrammes of gold of millesimal fineness nine hundred. These sums may be converted into the national currency concerned in round figures. The conversion of these sums into national currency shall be made according to the law of the State concerned.

6. The sums mentioned in terms of the Special Drawing Right in this Article shall be deemed to refer to the Special Drawing Right as defined by the International Monetary Fund. Conversion of the sums into national currencies shall, in case of judicial proceedings, be made according to the value of such currencies in terms of the Special Drawing Right at the date of the judgment. The value of a national currency, in terms of the Special Drawing Right, of a High Contracting Party which is a Member of the International Monetary Fund, shall be calculated in accordance with the method of valuation applied by the International Monetary Fund, in effect at the date of the judgment, for its operations and transactions. The value of a national currency, in terms of the Special Drawing Right, of a High Contracting Party which is not a Member of the International Monetary Fund, shall be calculated in a manner determined by that High Contracting Party.

Nevertheless, those States which are not Members of the International Monetary Fund and whose law does not permit the application of the provisions of paragraph 2 b) of Article 22 may, at the time of ratification or accession or at any time thereafter, declare that the limit of liability of the carrier in judicial proceedings in their territories is fixed at a sum of two hundred and fifty monetary units per kilogramme. This monetary unit corresponds to sixty-five and a half milligrammes of gold of millesimal fineness nine hundred. This sum may be converted into the national currency

concerned in round figures. The conversion of this sum into the national currency shall be made according to the law of the State concerned.

### **Article 23**

(1) Any provision tending to relieve the carrier of liability or to fix a lower limit than that which is laid down in this Convention shall be null and void, but the nullity of any such provision does not involve the nullity of the whole contract, which shall remain subject to the provisions of this Convention.

(2) Paragraph (1) of this Article shall not apply to provisions governing loss or damage resulting from the inherent defect, quality or vice of the cargo carried.

### **Article 24**

1. In the carriage of passengers and baggage, any action for damages, however founded, can only be brought subject to the conditions and limits set out in this Convention, without prejudice to the question as to who are the persons who have the right to bring suit and what are their respective rights.

2. In the carriage of cargo, any action for damages, however founded, whether under this Convention or in contract or in tort or otherwise, can only be brought subject to the conditions and limits of liability set out in this Convention without prejudice to the question as to who are the persons who have the right to bring suit and what are their respective rights. Such limits of liability constitute maximum limits and may not be exceeded whatever the circumstances which gave rise to the liability.

### **Article 25**

In the carriage of passengers and baggage, the limits of liability specified in Article 22 shall not apply if it is proved that the damage resulted from an act or omission of the carrier, his servants or agents, done with intent to cause damage or recklessly and with knowledge that damage would probably result; provided that, in the case of such act or omission of a servant or agent, it is also proved that he was acting within the scope of his employment.

### **Article 25A**

(1) If an action is brought against a servant or agent of the carrier arising out of damage to which this Convention relates, such servant or agent, if he proves that he acted within the scope of his employment, shall be entitled to avail himself of the limits of liability which that carrier himself is entitled to invoke under Article 22.

(2) The aggregate of the amounts recoverable from the carrier, his servants and agents, in that case, shall not exceed the said limits.

3. In the carriage of passengers and baggage, the provisions of paragraphs 1 and 2 of this Article shall not apply if it is proved that the damage resulted from an act or omission of the servant or agent done with intent to cause damage or recklessly and with knowledge that damage would probably result.

### **Article 26**

(1) Receipt by the person entitled to delivery of baggage or cargo without complaint is *prima facie* evidence that the same has been delivered in good condition and in accordance with the document of carriage.

(2) In the case of damage, the person entitled to delivery must complain to the carrier forthwith after the discovery of the damage, and, at the latest, within seven days from the date of receipt in the case of baggage and fourteen days from the date of receipt in the case of cargo. In the case of delay the complaint must be made at the latest within twenty-one days from the date on which the baggage or cargo have been placed at his disposal.

(3) Every complaint must be made in writing upon the document of carriage or by separate notice in writing, despatched within the times aforesaid.

(4) Failing complaint within the times aforesaid, no action shall lie against the carrier, save in the case of fraud on his part.

### **Article 27**

In the case of the death of the person liable, an action for damages lies in accordance with the terms of this Convention against those legally representing his estate.

### **Article 28**

(1) An action for damages must be brought, at the option of the plaintiff, in the territory of one of the High Contracting Parties, either before the court having jurisdiction where the carrier is ordinarily resident, or has his principal place of business, or has an establishment by which the contract has been made or before the court having jurisdiction at the place of destination.

(2) Questions of procedure shall be governed by the law of the court seised of the case.

### **Article 29**

- (1) The right to damages shall be extinguished if an action is not brought within two years, reckoned from the date of arrival at the destination, or from the date on which the aircraft ought to have arrived, or from the date on which the carriage stopped.
- (2) The method of calculating the period of limitation shall be determined by the law of the court seised of the case.

### **Article 30**

- (1) In the case of carriage to be performed by various successive carriers and falling within the definition set-out in the third paragraph of Article 1, each carrier who accepts passengers, baggage or cargo is subjected to the rules set out in this Convention, and is deemed to be one of the contracting parties to the contract of carriage in so far as the contract deals with that part of the carriage which is performed under his supervision.
- (2) In the case of carriage of this nature, the passenger or his representative can take action only against the carrier who performed the carriage during which the accident or the delay occurred, save in the case where, by express agreement, the first carrier assumed liability for the whole journey.
- (3) As regards baggage or cargo, the passenger or consignor will have a right of action against the first carrier, and the passenger or consignee who is entitled to delivery will have a right of action against the last carrier, and further, each may take action against the carrier who performed the carriage during which the destruction, loss, damage or delay took place. These carriers will be jointly and severally liable to the passenger or to the consignor or consignee.

### **Article 30A**

Nothing in this Convention shall prejudice the question whether a person liable for damage in accordance with its provisions has a right of recourse against any other person.

## **Chapter 4**

### **PROVISIONS RELATING TO COMBINED CARRIAGE**

### **Article 31**

- (1) In the case of combined carriage performed partly by air and partly by

any other mode of carriage, the provisions of this Convention apply only to the carriage by air, provided that the carriage by air falls within the terms of Article 1.

(2) Nothing in this Convention shall prevent the parties in the case of combined carriage from inserting in the document of air carriage conditions relating to other modes of carriage, provided that the provisions of this Convention are observed as regards the carriage by air.

## **Chapter 5**

### **GENERAL AND FINAL PROVISIONS**

#### **Article 32**

Any clause contained in the contract and all special agreements entered into before the damage occurred by which the parties purport to infringe the rules laid down by this Convention, whether by deciding the law to be applied, or by altering the rules as to jurisdiction, shall be null and void. Nevertheless for the carriage of cargo arbitration clauses are allowed, subject to this Convention, if the arbitration is to take place within one of the jurisdictions referred to in the first paragraph of Article 28.

#### **Article 33**

Except as provided in paragraph 3 of Article 5, nothing in this Convention shall prevent the carrier either from refusing to enter into any contract of carriage, or from making regulations which do not conflict with the provisions of this Convention.

#### **Article 34**

The provisions of Articles 3 to 8 inclusive relating to documents of carriage shall not apply in the case of carriage performed in extraordinary circumstances outside the normal scope of an air carrier's business.

#### **Article 35**

The expression “days” when used in this Convention means current days not working days.

#### **Article 36**

The Convention is drawn up in French in a single copy which shall remain

deposited in the archives of the Ministry for Foreign Affairs of Poland and of which one duly certified copy shall be sent by the Polish Government to the Government of each of the High Contracting Parties.

### **Article 37**

(1) This Convention shall be ratified. The instruments of ratification shall be deposited in the archives of the Ministry for Foreign Affairs of Poland, which will notify the deposit to the Government of each of the High Contracting Parties.

(2) As soon as this Convention shall have been ratified by five of the High Contracting Parties it shall come into force as between them on the ninetieth day after the deposit of the fifth ratification. Thereafter it shall come into force between the High Contracting Parties who shall have ratified and the High Contracting Party who deposits his instrument of ratification on the ninetieth day after the deposit.

(3) It shall be the duty of the Government of the Republic of Poland to notify to the Government of each of the High Contracting Parties the date on which this Convention comes into force as well as the date of the deposit of each ratification.

### **Article 38**

(1) This Convention shall, after it has come into force, remain open for accession by any State.

(2) The accession shall be effected by a notification addressed to the Government of the Republic of Poland, which will inform the Government of each of the High Contracting Parties thereof.

(3) The accession shall take effect as from the ninetieth day after the notification made to the Government of the Republic of Poland.

### **Article 39**

(1) Any one of the High Contracting Parties may denounce this Convention by a notification addressed to the Government of the Republic of Poland, which will at once inform the Government of each of the High Contracting Parties.

(2) Denunciation shall take effect six months after the notification of denunciation, and shall operate only as regards the Party who shall have proceeded to denunciation.

### **Article 40**



(1) Any High Contracting Party may, at the time of signature or of deposit of ratification or of accession declare that the acceptance which he gives to this Convention does not apply to all or any of his colonies, protectorates, territories under mandate, or any other territory subject to his sovereignty or his authority, or any territory under his suzerainty.

(2) Accordingly any High Contracting Party may subsequently accede separately in the name of all or any of his colonies, protectorates, territories under mandate or any other territory subject to his sovereignty or to his authority or any territory under his suzerainty which has been thus excluded by his original declaration.

(3) Any High Contracting Party may denounce this Convention, in accordance with its provisions, separately or for all or any of his colonies, protectorates, territories under mandate or any other territory subject to his sovereignty or to his authority, or any other territory under his suzerainty.

#### **Article 40A**

(1) In Article 37 paragraph 2, and Article 40, paragraph 1, the expression a *High Contracting Party* shall mean a *State*. In all other cases, the expression *High Contracting Party* shall mean a State whose ratification of or adherence to the Convention has become effective and whose denunciation thereof has not become effective.

(2) For the purposes of the Convention the word *territory* means not only the metropolitan territory of a State but also all other territories for the foreign relations of which that State is responsible.

#### **Article 41**

Any High Contracting Party shall be entitled not earlier than two years after the coming into force of this Convention to call for the assembling of a new international Conference in order to consider any improvements which may be made in this Convention. To this end he will communicate with the Government of the French Republic which will take the necessary measures to make preparations for such Conference.

This Convention done at Warsaw on the 12th October, 1929, shall remain open for signature until the 31st January, 1930.

*(Here follow the signatures of the Plenipotentiaries of the States on behalf of which the Convention was signed.)*

#### **ADDITIONAL PROTOCOL**

(With reference to Article 2)

The High Contracting Parties reserve to themselves the right to declare at the time of ratification or of accession that the first paragraph of Article 2 of this Convention shall not apply to international carriage by air performed directly by the State, its colonies, protectorates or mandated territories or by any other territory under its sovereignty, suzerainty or authority.

## **Additional Provisions Of The Hague Protocol Affecting The Warsaw Convention**

### **CHAPTER 2**

#### **SCOPE OF APPLICATION OF THE CONVENTION AS AMENDED**

##### **Article 18**

The Convention as amended by this Protocol shall apply to international carriage as defined in Article 1 of the Convention, provided that the places of departure and destination referred to in that Article are situated either in the territories of two parties to this Protocol or within the territory of a single party to this Protocol with an agreed stopping place within the territory of another State.

### **CHAPTER 3**

#### **FINAL CLAUSES**

##### **Article 19**

As between the Parties to this Protocol, the Convention and the Protocol shall be read and interpreted together as one single instrument and shall be known as the Warsaw Convention as amended at The Hague, 1955.

##### **Article 20**

Until the date on which this Protocol comes into force in accordance with the provisions of Article 22, paragraph 1, it shall remain open for signature on behalf of any State which up to that date has ratified or adhered to the Convention or which has participated in the Conference at which this Protocol was adopted.

##### **Article 21**

1. This Protocol shall be subject to ratification by the signatory States.
2. Ratification of this Protocol by any State which is not a party to the Convention shall have the effect of adherence to the Convention as amended by this Protocol.
3. The instruments of ratification shall be deposited with the Government of the People's Republic of Poland.

## **Article 22**

1. As soon as thirty signatory States have deposited their instruments of ratification of this Protocol, it shall come into force between them on the ninetieth day after the deposit of the thirtieth instrument of ratification. It shall come into force for each State ratifying thereafter on the ninetieth day after the deposit of its instrument of ratification.
2. As soon as this Protocol comes into force it shall be registered with the United Nations by the Government of the People's Republic of Poland.

## **Article 23**

1. This Protocol shall, after it has come into force, be open for adherence by any non-signatory State.
2. Adherence to this Protocol by any State which is not a Party to the Convention shall have the effect of adherence to the Convention as amended by this Protocol.
3. Adherence shall be effected by the deposit of an instrument of adherence with the Government of the People's Republic of Poland and shall take effect on the ninetieth day after the deposit.

## **Article 24**

1. Any Party to this Protocol may denounce the Protocol by notification addressed to the Government of the People's Republic of Poland.
2. Denunciation shall take effect six months after the date of receipt by the Government of the People's Republic of Poland of the notification of denunciation.
3. As between the Parties to this Protocol, denunciation by any of them of the Convention in accordance with Article 39 thereof shall not be construed in any way as a denunciation of the Convention as amended by this Protocol.

## **Article 25**

1. This Protocol shall apply to all territories for the foreign relations of which a State Party to this Protocol is responsible, with the exception of territories in respect of which a declaration has been made in accordance with paragraph 2 of this Article.
2. Any State may, at the time of deposit of its instrument of ratification or adherence, declare that its acceptance of this Protocol does not apply to any one or more of the territories for the foreign relations of which such State is responsible.
3. Any State may subsequently, by notification to the Government of the People's Republic of Poland, extend the application of this Protocol to any or all of the territories regarding which it has made a declaration in accordance with paragraph 2 of this Article. The notification shall take effect on the ninetieth day after its receipt by that Government.
4. Any State Party to this Protocol may denounce it, in accordance with the provisions of Article 24, paragraph 1, separately for any or all of the territories for the foreign relations of which such State is responsible.

## **Article 26**

No reservation may be made to this Protocol except that a State may at any time declare by a notification addressed to the Government of the People's Republic of Poland that the Convention as amended by this Protocol shall not apply to the carriage of persons, cargo and baggage for its military authorities on aircraft, registered in that State, the whole, capacity of which has been reserved by or on behalf of such authorities.

## **Article 27**

The Government of the People's Republic of Poland shall give immediate notice to the Governments of all States signatories to the Convention or this Protocol, all States Parties to the Convention or this Protocol, and all States Members of the International Civil Aviation Organisation or of the United Nations and to the International Civil Aviation Organisation:

- (a) of any signature of this Protocol and the date thereof;
- (b) of the deposit of any instrument of ratification or adherence in respect of this Protocol and the date thereof;

- (c) of the date on which this Protocol comes into force in accordance with Article 22, paragraph 1;
- (d) of the receipt of any notification of denunciation and the date thereof;
- (e) of the receipt of any declaration or notification made under Article 25 and the date thereof; and
- (f) of the receipt of any notification made under Article 26 and the date thereof.

IN WITNESS WHEREOF the undersigned Plenipotentiaries, having been duly authorised, have signed this Protocol.

DONE at The Hague on the twenty-eighth day of the month of September of the year One Thousand Nine Hundred and Fifty-five, in three authentic texts in the English, French and Spanish languages. In the case of any inconsistency, the text in the French language, in which language the Convention was drawn up, shall prevail.

This Protocol shall be deposited with the Government of the People's Republic of Poland with which, in accordance with Article 20, it shall remain open for signature, and that Government shall send certified copies thereof to the Governments of all States signatories to the Convention or this Protocol, all States Parties to the Convention or this Protocol, and all States Members of the International Civil Aviation Organisation or of the United Nations, and to the International Civil Aviation Organisation.

*(Here follow the signatures of the Plenipotentiaries of the States on behalf of which the Protocol was signed.)*

## **Additional Provisions Of Additional Protocol No 1 Affecting The Warsaw Convention**

### **CHAPTER 2**

#### **SCOPE OF APPLICATION OF THE CONVENTION AS AMENDED**

##### **Article 3**

The Warsaw Convention as amended by this Protocol shall apply to international carriage as defined in Article 1 of the Convention, provided that the place of departure and destination referred to in that Article are situated

either in the territories of two Parties to this Protocol, or within the territory of a single Party to this Protocol with an agreed stopping place in the territory of another State.

### CHAPTER 3

#### FINAL CLAUSES

##### **Article 4**

As between the Parties to this Protocol, the Convention and the Protocol shall be read and interpreted together as one single instrument and shall be known as the *Warsaw Convention as amended by Additional Protocol No 1 of Montreal, 1975*.

##### **Article 5**

Until the date on which this Protocol comes into force in accordance with the provisions of Article 7, it shall remain open for signature by any State.

##### **Article 6**

1. This Protocol shall be subject to ratification by the signatory States.
2. Ratification of this Protocol by any State which is not a Party to the Warsaw Convention shall have the effect of accession to the Convention as amended by this Protocol.
3. The instruments of ratification shall be deposited with the Government of the Polish People's Republic.

##### **Article 7**

1. As soon as thirty signatory States have deposited their instruments of ratification of this Protocol, it shall come into force between them on the ninetieth day after the deposit of the thirtieth instrument of ratification. It shall come into force for each State ratifying thereafter on the ninetieth day after the deposit of its instrument of ratification.
2. As soon as this Protocol comes into force it shall be registered with the United Nations by the Government of the Polish People's Republic.

##### **Article 8**

1. This Protocol, after it has come into force, shall be open for accession by any non-signatory State.

2. Accession to this Protocol by any State which is not a Party to the Convention shall have the effect of accession to the Convention as amended by this Protocol.

3. Accession shall be effected by the deposit of an instrument of accession with the Government of the Polish People's Republic and shall take effect on the ninetieth day after the deposit.

### **Article 9**

1. Any Party to this Protocol may denounce the Protocol by notification addressed to the Government of the Polish People's Republic.

2. Denunciation shall take effect six months after the receipt by the Government of the Polish People's Republic of the notification of denunciation.

3. As between the Parties to this Protocol, denunciation by any of them of the Convention in accordance with Article 39 thereof shall not be construed in any way as a denunciation of the Convention as amended by this Protocol.

### **Article 10**

No reservation may be made to this Protocol.

### **Article 11**

The Government of the Polish People's Republic shall promptly inform all States Parties to the Warsaw Convention or of that Convention as amended, all signatory or acceding States to the present Protocol, as well as the International Civil Aviation Organisation, of the date of each signature, the date of deposit of each instrument of ratification or accession, the date of coming into force of this Protocol, and other relevant information.

### **Article 12**

As between the Parties to this Protocol which are also Parties to the Convention, Supplementary to the Warsaw Convention, for the Unification of Certain Rules Relating to International Carriage by Air Performed by a Person Other than the Contracting Carrier, signed at Guadalajara on 18 September 1961 (hereinafter referred to as the "Guadalajara Convention") any reference to the "Warsaw Convention" contained in the Guadalajara Convention shall include reference to the *Warsaw Convention as amended by Additional Protocol No 1 of Montreal, 1975*, in cases where the carriage under the

agreement referred to in Article 1, paragraph b) of the Guadalajara Convention is governed by this Protocol.

### **Article 13**

This Protocol shall remain open for signature until 1 January 1976 at the Headquarters of the International Civil Aviation Organisation and thereafter until it comes into force in accordance with Article 7 at the Ministry for Foreign Affairs of the Polish People's Republic. The International Civil Aviation Organisation shall promptly inform the Government of the Polish People's Republic of any signature and the date thereof during the time that the Protocol shall be open for signature at the Headquarters of the International Civil Aviation Organisation.

IN WITNESS WHEREOF the undersigned Plenipotentiaries, having been duly authorised, have signed this Protocol.

DONE at Montreal on the twenty-fifth day of the month of September of the year One Thousand Nine Hundred and Seventy-five in four authentic texts in the English, French, Russian and Spanish languages. In the case of any inconsistency, the text in the French language, in which language the Warsaw Convention of 12 October 1929 was drawn up, shall prevail

### **Additional Provisions Of Additional Protocol No 2 Affecting The Warsaw Convention**

#### **CHAPTER 2**

#### **SCOPE OF APPLICATION OF THE CONVENTION AS AMENDED**

### **Article 3**

The Warsaw Convention as amended at The Hague in 1955 and by this Protocol shall apply to international carriage as defined in Article 1 of the Convention, provided that the places of departure and destination referred to in that Article are situated either in the territories of two Parties to this Protocol or within the territory of a single Party to this Protocol with an agreed stopping place in the territory of another State.

#### **CHAPTER 3**

#### **FINAL CLAUSES**



#### **Article 4**

As between the Parties to this Protocol, the Warsaw Convention as amended at The Hague in 1955 and this Protocol shall be read and interpreted together as one single instrument and shall be known as the *Warsaw Convention as amended at The Hague, 1955, and by Additional Protocol No 2 of Montreal, 1975*.

#### **Article 5**

Until the date on which this Protocol enters into force in accordance with the provisions of Article 7, it shall remain open for signature by any State.

#### **Article 6**

1. This Protocol shall be subject to ratification by the signatory States.
2. Ratification of this Protocol by any State which is not a Party to the Warsaw Convention or by any State which is not a Party to the Warsaw Convention as amended at The Hague, 1955, shall have the effect of accession to the *Warsaw Convention as amended at The Hague, 1955, and by Additional Protocol No 2 of Montreal, 1975*.
3. The instruments of ratification shall be deposited with the Government of the Polish People's Republic.

#### **Article 7**

1. As soon as thirty signatory States have deposited their instruments of ratification of this Protocol, it shall come into force between them on the ninetieth day after the deposit of the thirtieth instrument of ratification. It shall come into force for each State ratifying thereafter on the ninetieth day after the deposit of its instrument of ratification.
2. As soon as this Protocol comes into force it shall be registered with the United Nations by the Government of the Polish People's Republic.

#### **Article 8**

1. This Protocol, after it has come into force, shall be open for accession by any non-signatory State.
2. Accession to this Protocol by any State which is not a Party to the Warsaw Convention or by any State which is not a Party to the Warsaw Convention as amended at The Hague, 1955, shall have the effect of accession to the *Warsaw Convention as amended at The Hague, 1955, and by Additional*

*Protocol No 2 of Montreal, 1975.*

3. Accession shall be effected by the deposit of an instrument of accession with the Government of the Polish People's Republic and shall take effect on the ninetieth day after the deposit.

### **Article 9**

1. Any Party to this Protocol may denounce the Protocol by notification addressed to the Government of the Polish People's Republic.

2. Denunciation shall take effect six months after the date of receipt by the Government of the Polish People's Republic of the notification of denunciation.

3. As between the Parties to this Protocol, denunciation by any of them of the Warsaw Convention in accordance with Article 39 thereof or of The Hague Protocol in accordance with Article XXIV thereof shall not be construed in any way as a denunciation of the *Warsaw Convention as amended at The Hague, 1955, and by Additional Protocol No 2 of Montreal, 1975.*

### **Article 10**

No reservation may be made to this Protocol except that a State may at any time declare by a notification addressed to the Government of the Polish People's Republic that the Convention as amended by this Protocol shall not apply to the carriage of persons, cargo and baggage for its military authorities on aircraft, registered in that State, the whole capacity of which has been reserved by or on behalf of such authorities.

### **Article 11**

The Government of the Polish People's Republic shall promptly inform all States Parties to the Warsaw Convention or to that Convention as amended, all signatory or acceding States to the present Protocol, as well as the International Civil Aviation Organisation, of the date of each signature, the date of deposit of each instrument of ratification or accession, the date of coming into force of this Protocol, and other relevant information.

### **Article 12**

As between the Parties to this Protocol which are also Parties to the Convention, Supplementary to the Warsaw Convention, for the Unification of Certain Rules Relating to International Carriage by Air Performed by a Person

Other than the Contracting Carrier, signed at Guadalajara on 18 September 1961 (hereinafter referred to as the “Guadalajara Convention”) any reference to the “Warsaw Convention” contained in the Guadalajara Convention shall include reference to the *Warsaw Convention as amended at The Hague, 1955, and by Additional Protocol No 2 of Montreal, 1975*, in cases where the carriage under the agreement referred to in Article 1, paragraph b) of the Guadalajara Convention is governed by this Protocol.

### **Article 13**

This Protocol shall remain open for signature until 1 January 1976 at the Headquarters of the International Civil Aviation Organisation and thereafter until it comes into force in accordance with Article 7 at the Ministry for Foreign Affairs of the Polish People's Republic. The International Civil Aviation Organisation shall promptly inform the Government of the Polish People's Republic of any signature and the date thereof during the time that the Protocol shall be open for signature at the Headquarters of the International Civil Aviation Organisation.

IN WITNESS WHEREOF the undersigned Plenipotentiaries, having been duly authorised, have signed this Protocol.

DONE at Montreal on the twenty-fifth day of the month of September of the year One Thousand Nine Hundred and Seventy-five in four authentic texts in the English, French, Russian and Spanish languages. In the case of any inconsistency, the text in the French language, in which language the Warsaw Convention of 12 October 1929 was drawn up, shall prevail.

### **Additional Provisions Of Protocol No 4 Affecting The Warsaw Convention**

#### **CHAPTER 2**

#### **SCOPE OF APPLICATION OF THE CONVENTION AS AMENDED**

### **Article 14**

The Warsaw Convention as amended at The Hague in 1955 and by this Protocol shall apply to international carriage as defined in Article 1 of the Convention, provided that the places of departure and destination referred to in that Article are situated either in the territories of two Parties to this Protocol or within the territory of a single Party to this Protocol with an agreed stopping place in the territory of another State.

## CHAPTER 3

### FINAL CLAUSES

#### **Article 15**

As between the Parties to this Protocol, the Warsaw Convention as amended at The Hague in 1955 and this Protocol shall be read and interpreted together as one single instrument and shall be known as the *Warsaw Convention as amended at The Hague, 1955, and by Protocol No 4 of Montreal, 1975*.

#### **Article 16**

Until the date on which this Protocol enters into force in accordance with the provisions of Article 18, it shall remain open for signature by any State.

#### **Article 17**

1. This Protocol shall be subject to ratification by the signatory States.
2. Ratification of this Protocol by any State which is not a Party to the Warsaw Convention or by any State which is not a Party to the Warsaw Convention as amended at The Hague, 1955, shall have the effect of accession to the *Warsaw Convention as amended at The Hague, 1955, and by Protocol No 4 of Montreal, 1975*.
3. The instruments of ratification shall be deposited with the Government of the Polish People's Republic.

#### **Article 18**

1. As soon as thirty signatory States have deposited their instruments of ratification of this Protocol, it shall come into force between them on the ninetieth day after the deposit of the thirtieth instrument of ratification. It shall come into force for each State ratifying thereafter on the ninetieth day after the deposit of its instrument of ratification.
2. As soon as this Protocol comes into force it shall be registered with the United Nations by the Government of the Polish People's Republic.

#### **Article 19**

1. This Protocol, after it has come into force, shall be open for accession by any non-signatory State.
2. Accession to this Protocol by any State which is not a Party to the Warsaw

Convention or by any State which is not a Party to the Warsaw Convention as amended at The Hague, 1955, shall have the effect of accession to the *Warsaw Convention as amended at The Hague, 1955, and by Protocol No 4 of Montreal, 1975*.

3. Accession shall be effected by the deposit of an instrument of accession with the Government of the Polish People's Republic and shall take effect on the ninetieth day after the deposit.

## **Article 20**

1. Any Party to this Protocol may denounce the Protocol by notification addressed to the Government of the Polish People's Republic.

2. Denunciation shall take effect six months after the date of receipt by the Government of the Polish People's Republic of the notification of denunciation.

3. As between the Parties to this Protocol, denunciation by any of them of the Warsaw Convention in accordance with Article 39 thereof or of The Hague Protocol in accordance with Article XXIV thereof shall not be construed in any way as a denunciation of the *Warsaw Convention as amended at The Hague, 1955, and by Protocol No 4 of Montreal, 1975*.

## **Article 21**

1. Only the following reservations may be made to this Protocol:

- a) a State may at any time declare by a notification addressed to the Government of the Polish People's Republic that the *Warsaw Convention as amended at The Hague, 1955, and by Protocol No 4 of Montreal, 1975*, shall not apply to the carriage of persons, baggage and cargo for its military authorities on aircraft, registered in that State, the whole capacity of which has been reserved by or on behalf of such authorities; and
- b) any State may declare at the time of ratification of or accession to the Additional Protocol No 3 of Montreal, 1975, or at any time thereafter, that it is not bound by the provisions of the *Warsaw Convention as amended at The Hague, 1955, and by Protocol No 4 of Montreal, 1975*, in so far as they relate to the carriage of passengers and baggage. Such declaration shall have effect ninety days after the date of receipt of the declaration by the Government of the Polish People's Republic.

2. Any State having made a reservation in accordance with the preceding paragraph may at any time withdraw such reservation by notification to the Government of the Polish People's Republic.

## **Article 22**

The Government of the Polish People's Republic shall promptly inform all States Parties to the Warsaw Convention or to that Convention as amended, all signatory or acceding States to the present Protocol, as well as the International Civil Aviation Organisation, of the date of each signature, the date of deposit of each instrument of ratification or accession, the date of coming into force of this Protocol, and other relevant information.

## **Article 23**

As between the Parties to this Protocol which are also Parties to the Convention, Supplementary to the Warsaw Convention, for the Unification of Certain Rules Relating to International Carriage by Air Performed by a Person Other than the Contracting Carrier, signed at Guadalajara on 18 September 1961 (hereinafter referred to as the "Guadalajara Convention") any reference to the "Warsaw Convention" contained in the Guadalajara Convention shall include reference to the *Warsaw Convention as amended at The Hague, 1955, and by Protocol No 4 of Montreal, 1975*, in cases where the carriage under the agreement referred to in Article 1, paragraph (b) of the Guadalajara Convention is governed by this Protocol.

## **Article 24**

If two or more States are Parties both to this Protocol and to the Guatemala City Protocol, 1971, or to the Additional Protocol No 3 of Montreal, 1975, the following rules shall apply between them:

- (a) the provisions, resulting from the system established by this Protocol, concerning cargo and postal items, shall prevail over the provisions resulting from the system established by the Guatemala City Protocol, 1971, or by the Additional Protocol No 3 of Montreal, 1975;
- (b) the provisions resulting from the system established by the Guatemala City Protocol, 1971, or by the Additional Protocol No 3 of Montreal, 1975, concerning passengers and baggage, shall prevail over the provisions resulting from the system established by this Protocol.

210

## **Article 25**

This Protocol shall remain open for signature until 1 January 1976 at the Headquarters of the International Civil Aviation Organisation and thereafter until it comes into force in accordance with Article 18 at the Ministry for Foreign Affairs of the Polish People's Republic. The International Civil Aviation Organisation shall promptly inform the Government of the Polish People's Republic of any signature and the date thereof during the time that the Protocol shall be open for signature at the Headquarters of the International Civil Aviation Organisation.

IN WITNESS WHEREOF the undersigned Plenipotentiaries, having been duly authorised, have signed this Protocol.

DONE AT MONTREAL on the twenty-fifth day of September of the year One Thousand Nine Hundred and Seventy-five in four authentic texts in the English, French, Russian and Spanish languages. In the case of any inconsistency, the text in the French language, in which language the Warsaw Convention of 12 October 1929 was drawn up, shall prevail.]

## **SCHEDULE 4**

**(section 153)**

### **The Guadalajara Convention**

#### **Part 1**

##### **THE ENGLISH TEXT**

CONVENTION,  
SUPPLEMENTARY TO THE WARSAW CONVENTION, FOR THE  
UNIFICATION OF  
CERTAIN RULES RELATING TO INTERNATIONAL CARRIAGE BY AIR  
PERFORMED  
BY A PERSON OTHER THAN THE CONTRACTING CARRIER.

##### **THE STATES SIGNATORY TO THE PRESENT CONVENTION**

NOTING that the Warsaw Convention does not contain particular rules relating to international carriage by air performed by a person who is not a party to the agreement for carriage

CONSIDERING that it is therefore desirable to formulate rules to apply in such

211

circumstances

HAVE AGREED AS FOLLOWS:

### **Article 1**

In this Convention:

- (a) “Warsaw Convention” means the Convention for the Unification of Certain Rules Relating to International Carriage by Air signed at Warsaw on 12 October 1929, or the Warsaw Convention as amended at The Hague, 1955, according to whether the carriage under the agreement referred to in paragraph (b) is governed by the one or by the other;
- (b) “contracting carrier” means a person who as a principal makes an agreement for carriage governed by the Warsaw Convention with a passenger or consignor or with a person acting on behalf of the passenger or consignor;
- (c) “actual carrier” means a person, other than the contracting carrier, who, by virtue of authority from the contracting carrier, performs the whole or part of the carriage contemplated in paragraph (b) but who is not with respect to such part a successive carrier within the meaning of the Warsaw Convention. Such authority is presumed in the absence of proof to the contrary.

### **Article 2**

If an actual carrier performs the whole or part of carriage which, according to the agreement referred to in Article I, paragraph (b), is governed by the Warsaw Convention, both the contracting carrier and the actual carrier shall, except as otherwise provided in this Convention, be subject to the rules of the Warsaw Convention, the former for the whole of the carriage contemplated in the agreement, the latter solely for the carriage which he performs.

### **Article 3**

1. The acts and omissions of the actual carrier and of his servants and agents acting within the scope of their employment shall, in relation to the carriage performed by the actual carrier, be deemed to be also those of the contracting carrier.
2. The acts and omissions of the contracting carrier and of his servants and agents acting within the scope of their employment shall, in relation to the



carriage performed by the actual carrier, be deemed to be also those of the actual carrier. Nevertheless, no such act or omission shall subject the actual carrier to liability exceeding the limits specified in Article 22 of the Warsaw Convention. Any special agreement under which the contracting carrier assumes obligations not imposed by the Warsaw Convention or any waiver of rights conferred by that Convention or any special declaration of interest in delivery at destination contemplated in Article 22 of the said Convention, shall not affect the actual carrier unless agreed to by him.

#### **Article 4**

Any complaint to be made or order to be given under the Warsaw Convention to the carrier shall have the same effect whether addressed to the contracting carrier or to the actual carrier. Nevertheless, orders referred to in Article 12 of the Warsaw Convention shall only be effective if addressed to the contracting carrier.

#### **Article 5**

In relation to the carriage performed by the actual carrier, any servant or agent of that carrier or of the contracting carrier shall, if he proves that he acted within the scope of his employment, be entitled to avail himself of the limits of liability which are applicable under this Convention to the carrier whose servant or agent he is unless it is proved that he acted in a manner which, under the Warsaw Convention, prevents the limits of liability from being invoked.

#### **Article 6**

In relation to the carriage performed by the actual carrier, the aggregate of the amounts recoverable from that carrier and the contracting carrier, and from their servants and agents acting within the scope of their employment, shall not exceed the highest amount which could be awarded against either the contracting carrier or the actual carrier under this Convention, but none of the persons mentioned shall be liable for a sum in excess of the limit applicable to him.

#### **Article 7**

In relation to the carriage performed by the actual carrier, an action for damages may be brought, at the option of the plaintiff, against that carrier or the contracting carrier, or against both together or separately. If the action is brought against only one of those carriers, that carrier shall have the right to require the other carrier to be joined in the proceedings, the procedure and effects being governed by the law of the court seised of the case.

### **Article 8**

Any action for damages contemplated in Article 7 of this Convention must be brought, at the option of the plaintiff, either before a court in which an action may be brought against the contracting carrier, as provided in Article 28 of the Warsaw Convention, or before the court having jurisdiction at the place where the actual carrier is ordinarily resident or has his principal place of business.

### **Article 9**

1. Any contractual provision tending to relieve the contracting carrier or the actual carrier of liability under this Convention or to fix a lower limit than that which is applicable according to this Convention shall be null and void, but the nullity of any such provision does not involve the nullity of the whole agreement, which shall remain subject to the provisions of this Convention.

2. In respect of the carriage performed by the actual carrier, the preceding paragraph shall not apply to contractual provisions governing loss or damage resulting from the inherent defect, quality or vice of the cargo carried.

3. Any clause contained in an agreement for carriage and all special agreements entered into before the damage occurred by which the parties purport to infringe the rules laid down by this Convention, whether by deciding the law to be applied, or by altering the rules as to jurisdiction, shall be null and void. Nevertheless, for the carriage of cargo arbitration clauses are allowed, subject to this Convention, if the arbitration is to take place in one of the jurisdictions referred to in Article 8.

### **Article 10**

Except as provided in Article 7, nothing in this Convention shall affect the rights and obligations of the two carriers between themselves.

### **Article 11**

Until the date on which this Convention comes into force in accordance with the provisions of Article 13, it shall remain open for signature on behalf of any State which at that date is a Member of the United Nations or of any of the Specialized Agencies.

### **Article 12**

1. This Convention shall be subject to ratification by the signatory States.
2. The instruments of ratification shall be deposited with the Government of the United States of Mexico.

### **Article 13**

1. As soon as five of the signatory States have deposited their instruments of ratification of this Convention, it shall come into force between them on the ninetieth day after the date of the deposit of the fifth instrument of ratification. It shall come into force for each state ratifying thereafter on the ninetieth day after the deposit of its instrument of ratification.

2. As soon as this Convention comes into force, it shall be registered with the United Nations and the International Civil Aviation Organisation by the Government of the United States of Mexico.

#### **Article 14**

1. This Convention shall, after it has come into force, be open for accession by any State Member of the United Nations or any of the Specialised Agencies.

2. The accession of a State shall be effected by the deposit of an instrument of accession with the Government of the United States of Mexico and shall take effect as from the ninetieth day after the date of such deposit.

#### **Article 15**

1. Any Contracting State may denounce this Convention by notification addressed to the Government of the United States of Mexico.

2. The Denunciation shall take effect six months after the date of receipt by the Government of the United States of Mexico of the notification of denunciation.

#### **Article 16**

1. Any Contracting State may at the time of its ratification of or accession to this Convention or at any time thereafter declare by notification to the Government of the United States of Mexico that the Convention shall extend to any of the territories for whose international relations it is responsible.

2. The Convention shall, ninety days after the date of the receipt of such notification by the Government of the United States of Mexico, extend to the territories named therein.

3. Any Contracting State may denounce this Convention in accordance with the provisions of Article 15 separately for any or all of the territories for the international relations of which such State is responsible.

#### **Article 17**

No reservation may be made to this Convention.

#### **Article 18**

The Government of the United States of Mexico shall give notice to the International Civil Aviation Organisation and to all States Members of the United Nations or of any of the Specialised Agencies:

- (a) of any signature of this Convention and the date thereof;
- (b) of the deposit of any instrument of ratification or accession and the date thereof;
- (c) of the date on which this Convention comes into force in accordance with Article 13, paragraph 1;
- (d) of the receipt of any notification of denunciation and the date thereof;
- (e) of the receipt of any declaration or notification made under Article 16 and the date thereof.

IN WITNESS WHEREOF the undersigned Plenipotentiaries, having been duly authorised, have signed this Convention.

DONE at Guadalajara on the eighteenth day of September One Thousand Nine Hundred and Sixty-one in three authentic texts drawn up in the English, French and Spanish languages. In case of any inconsistency, the text in the French language, in which language the Warsaw Convention of 12 October 1929 was drawn up, shall prevail. The Government of the United States of Mexico will establish an official translation of the text of the Convention in the Russian language.

This Convention shall be deposited with the Government of the United States of Mexico with which, in accordance with Article 11, it shall remain open for signature, and that Government shall send certified copies thereof to the International Civil Aviation Organisation and to all States Members of the United Nations or of any Specialised Agency.

*(Here follow signatures.)*

## **SCHEDULE 5**

**(section 150)**

### **The Montreal Convention**

The English Text

216

Reprint authorised by the Attorney General and published under the *Legislation Act 2023*

# **CONVENTION FOR THE UNIFICATION OF CERTAIN RULES FOR INTERNATIONAL CARRIAGE BY AIR**

## **THE STATES PARTIES TO THIS CONVENTION**

RECOGNIZING the significant contribution of the Convention for the Unification of Certain Rules Relating to International Carriage by Air signed in Warsaw on 12 October 1929, hereinafter referred to as the “Warsaw Convention”, and other related instruments to the harmonization of private international air law;

RECOGNIZING the need to modernize and consolidate the Warsaw Convention and related instruments;

RECOGNIZING the importance of ensuring protection of the interests of consumers in international carriage by air and the need for equitable compensation based on the principle of restitution;

REAFFIRMING the desirability of an orderly development of international air transport operations and the smooth flow of passengers, baggage and cargo in accordance with the principles and objectives of the Convention on International Civil Aviation, done at Chicago on 7 December 1944;

CONVINCED that collective State action for further harmonization and codification of certain rules governing international carriage by air through a new Convention is the most adequate means of achieving an equitable balance of interests;

HAVE AGREED AS FOLLOWS:

### **Chapter I**

#### **General Provisions**

##### **Article 1 — Scope of Application**

1. This Convention applies to all international carriage of persons, baggage or cargo performed by aircraft for reward. It applies equally to gratuitous carriage by aircraft performed by an air transport undertaking.
2. For the purposes of this Convention, the expression international carriage means any carriage in which, according to the agreement between the parties, the place of departure and the place of destination, whether or not there be a break in the carriage or a transshipment, are situated either within the territories of two States Parties, or within the territory of a single State

Party if there is an agreed stopping place within the territory of another State, even if that State is not a State Party. Carriage between two points within the territory of a single State Party without an agreed stopping place within the territory of another State is not international carriage for the purposes of this Convention.

3. Carriage to be performed by several successive carriers is deemed, for the purposes of this Convention, to be one undivided carriage if it has been regarded by the parties as a single operation, whether it had been agreed upon under the form of a single contract or of a series of contracts, and it does not lose its international character merely because one contract or a series of contracts is to be performed entirely within the territory of the same State.

4. This Convention applies also to carriage as set out in Chapter V, subject to the terms contained therein.

## **Article 2 — Carriage Performed by State and Carriage of Postal Items**

1. This Convention applies to carriage performed by the State or by legally constituted public bodies provided it falls within the conditions laid down in Article 1.

2. In the carriage of postal items, the carrier shall be liable only to the relevant postal administration in accordance with the rules applicable to the relationship between the carriers and the postal administrations.

3. Except as provided in paragraph 2 of this Article, the provisions of this Convention shall not apply to the carriage of postal items.

## **Chapter II**

### **Documentation and Duties of the Parties Relating to the Carriage of Passengers, Baggage and Cargo**

## **Article 3 — Passengers and Baggage**

1. In respect of carriage of passengers, an individual or collective document of carriage shall be delivered containing:

- (a) an indication of the places of departure and destination;
- (b) if the places of departure and destination are within the territory of a single State Party, one or more agreed stopping places being within the territory of another State, an indication of at least one such stopping place.

2. Any other means which preserves the information indicated in paragraph 1 may be substituted for the delivery of the document referred to in that

paragraph. If any such other means is used, the carrier shall offer to deliver to the passenger a written statement of the information so preserved.

3. The carrier shall deliver to the passenger a baggage identification tag for each piece of checked baggage.

4. The passenger shall be given written notice to the effect that where this Convention is applicable it governs and may limit the liability of carriers in respect of death or injury and for destruction or loss of, or damage to, baggage, and for delay.

5. Non-compliance with the provisions of the foregoing paragraphs shall not affect the existence or the validity of the contract of carriage, which shall, nonetheless, be subject to the rules of this Convention including those relating to limitation of liability.

#### **Article 4 — Cargo**

1. In respect of the carriage of cargo, an air waybill shall be delivered.

2. Any other means which preserves a record of the carriage to be performed may be substituted for the delivery of an air waybill. If such other means are used, the carrier shall, if so requested by the consignor, deliver to the consignor a cargo receipt permitting identification of the consignment and access to the information contained in the record preserved by such other means.

#### **Article 5 — Contents of Air Waybill or Cargo Receipt**

The air waybill or the cargo receipt shall include:

- (a) an indication of the places of departure and destination;
- (b) if the places of departure and destination are within the territory of a single State Party, one or more agreed stopping places being within the territory of another State, an indication of at least one such stopping place; and
- (c) an indication of the weight of the consignment.

#### **Article 6 — Document Relating to the Nature of the Cargo**

The consignor may be required, if necessary, to meet the formalities of customs, police and similar public authorities to deliver a document indicating the nature of the cargo. This provision creates for the carrier no duty, obligation or liability resulting therefrom.

#### **Article 7 — Description of Air Waybill**

1. The air waybill shall be made out by the consignor in three original parts.

219

2. The first part shall be marked “for the carrier”; it shall be signed by the consignor. The second part shall be marked “for the consignee”; it shall be signed by the consignor and by the carrier. The third part shall be signed by the carrier who shall hand it to the consignor after the cargo has been accepted.
3. The signature of the carrier and that of the consignor may be printed or stamped.
4. If, at the request of the consignor, the carrier makes out the air waybill, the carrier shall be deemed, subject to proof to the contrary, to have done so on behalf of the consignor.

### **Article 8 — Documentation for Multiple Packages**

When there is more than one package:

- (a) the carrier of cargo has the right to require the consignor to make out separate air waybills;
- (b) the consignor has the right to require the carrier to deliver separate cargo receipts when the other means referred to in paragraph 2 of Article 4 are used.

### **Article 9 — Non-compliance with Documentary Requirements**

Non-compliance with the provisions of Articles 4 to 8 shall not affect the existence or the validity of the contract of carriage, which shall, nonetheless, be subject to the rules of this Convention including those relating to limitation of liability.

### **Article 10 — Responsibility for Particulars of Documentation**

1. The consignor is responsible for the correctness of the particulars and statements relating to the cargo inserted by it or on its behalf in the air waybill or furnished by it or on its behalf to the carrier for insertion in the cargo receipt or for insertion in the record preserved by the other means referred to in paragraph 2 of Article 4. The foregoing shall also apply where the person acting on behalf of the consignor is also the agent of the carrier.
2. The consignor shall indemnify the carrier against all damage suffered by it, or by any other person to whom the carrier is liable, by reason of the irregularity, incorrectness or incompleteness of the particulars and statements furnished by the consignor or on its behalf.
3. Subject to the provisions of paragraphs 1 and 2 of this Article, the carrier shall indemnify the consignor against all damage suffered by it, or by any other person to whom the consignor is liable, by reason of the irregularity,



incorrectness or incompleteness of the particulars and statements inserted by the carrier or on its behalf in the cargo receipt or in the record preserved by the other means referred to in paragraph 2 of Article 4.

### **Article 11 — Evidentiary Value of Documentation**

1. The air waybill or the cargo receipt is *prima facie* evidence of the conclusion of the contract, of the acceptance of the cargo and of the conditions of carriage mentioned therein.

2. Any statements in the air waybill or the cargo receipt relating to the weight, dimensions and packing of the cargo, as well as those relating to the number of packages, are *prima facie* evidence of the facts stated; those relating to the quantity, volume and condition of the cargo do not constitute evidence against the carrier except so far as they both have been, and are stated in the air waybill or the cargo receipt to have been, checked by it in the presence of the consignor, or relate to the apparent condition of the cargo.

### **Article 12 — Right of Disposition of Cargo**

1. Subject to its liability to carry out all its obligations under the contract of carriage, the consignor has the right to dispose of the cargo by withdrawing it at the airport of departure or destination, or by stopping it in the course of the journey on any landing, or by calling for it to be delivered at the place of destination or in the course of the journey to a person other than the consignee originally designated, or by requiring it to be returned to the airport of departure. The consignor must not exercise this right of disposition in such a way as to prejudice the carrier or other consignors and must reimburse any expenses occasioned by the exercise of this right.

2. If it is impossible to carry out the instructions of the consignor, the carrier must so inform the consignor forthwith.

3. If the carrier carries out the instructions of the consignor for the disposition of the cargo without requiring the production of the part of the air waybill or the cargo receipt delivered to the latter, the carrier will be liable, without prejudice to its right of recovery from the consignor, for any damage which may be caused thereby to any person who is lawfully in possession of that part of the air waybill or the cargo receipt.

4. The right conferred on the consignor ceases at the moment when that of the consignee begins in accordance with Article 13. Nevertheless, if the consignee declines to accept the cargo, or cannot be communicated with, the consignor resumes its right of disposition.

### **Article 13 — Delivery of the Cargo**

1. Except when the consignor has exercised its right under Article 12, the consignee is entitled, on arrival of the cargo at the place of destination, to require the carrier to deliver the cargo to it, on payment of the charges due and on complying with the conditions of carriage.
2. Unless it is otherwise agreed, it is the duty of the carrier to give notice to the consignee as soon as the cargo arrives.
3. If the carrier admits the loss of the cargo, or if the cargo has not arrived at the expiration of seven days after the date on which it ought to have arrived, the consignee is entitled to enforce against the carrier the rights which flow from the contract of carriage.

#### **Article 14 — Enforcement of the Rights of Consignor and Consignee**

The consignor and the consignee can respectively enforce all the rights given to them by Articles 12 and 13, each in its own name, whether it is acting in its own interest or in the interest of another, provided that it carries out the obligations imposed by the contract of carriage.

#### **Article 15— Relations of Consignor and Consignee or Mutual Relations of Third Parties**

1. Articles 12, 13 and 14 do not affect either the relations of the consignor and the consignee with each other or the mutual relations of third parties whose rights are derived either from the consignor or from the consignee.
2. The provisions of Articles 12, 13 and 14 can only be varied by express provision in the air waybill or the cargo receipt.

#### **Article 16 — Formalities of Customs, Police or Other Public Authorities**

1. The consignor must furnish such information and such documents as are necessary to meet the formalities of customs, police and any other public authorities before the cargo can be delivered to the consignee. The consignor is liable to the carrier for any damage occasioned by the absence, insufficiency or irregularity of any such information or documents, unless the damage is due to the fault of the carrier, its servants or agents.
2. The carrier is under no obligation to enquire into the correctness or sufficiency of such information or documents.

### **Chapter III**

#### **Liability of the Carrier and Extent of Compensation for Damage**

#### **Article 17 — Death and Injury of Passengers — Damage to Baggage**

1. The carrier is liable for damage sustained in case of death or bodily injury of

a passenger upon condition only that the accident which caused the death or injury took place on board the aircraft or in the course of any of the operations of embarking or disembarking.

2. The carrier is liable for damage sustained in case of destruction or loss of, or of damage to, checked baggage upon condition only that the event which caused the destruction, loss or damage took place on board the aircraft or during any period within which the checked baggage was in the charge of the carrier. However, the carrier is not liable if and to the extent that the damage resulted from the inherent defect, quality or vice of the baggage. In the case of unchecked baggage, including personal items, the carrier is liable if the damage resulted from its fault or that of its servants or agents.

3. If the carrier admits the loss of the checked baggage, or if the checked baggage has not arrived at the expiration of twenty-one days after the date on which it ought to have arrived, the passenger is entitled to enforce against the carrier the rights which flow from the contract of carriage.

4. Unless otherwise specified, in this Convention the term “baggage” means both checked baggage and unchecked baggage.

#### **Article 18 — Damage to Cargo**

1. The carrier is liable for damage sustained in the event of the destruction or loss of, or damage to, cargo upon condition only that the event which caused the damage so sustained took place during the carriage by air.

2. However, the carrier is not liable if and to the extent it proves that the destruction, or loss of, or damage to, the cargo resulted from one or more of the following:

- (a) inherent defect, quality or vice of that cargo;
- (b) defective packaging of that cargo performed by a person other than the carrier or its servants or agents;
- (c) an act of war or an armed conflict;
- (d) an act of public authority carried out in connection with the entry, exit or transit of the cargo.

3. The carriage by air within the meaning of paragraph 1 of this Article comprises the period during which the cargo is in the charge of the carrier.

4. The period of the carriage by air does not extend to any carriage by land, by sea or by inland waterway performed outside an airport. If, however, such carriage takes place in the performance of a contract for carriage by air, for the purpose of loading, delivery or transhipment, any damage is presumed,

subject to proof to the contrary, to have been the result of an event which took place during the carriage by air. If a carrier, without the consent of the consignor, substitutes carriage by another mode of transport for the whole or part of a carriage intended by the agreement between the parties to be carriage by air, such carriage by another mode of transport is deemed to be within the period of carriage by air.

### **Article 19 — Delay**

The carrier is liable for damage occasioned by delay in the carriage by air of passengers, baggage or cargo. Nevertheless, the carrier shall not be liable for damage occasioned by delay if it proves that it and its servants and agents took all measures that could reasonably be required to avoid the damage or that it was impossible for it or them to take such measures.

### **Article 20 — Exoneration**

If the carrier proves that the damage was caused or contributed to by the negligence or other wrongful act or omission of the person claiming compensation, or the person from whom he derives his or her rights, the carrier shall be wholly or partly exonerated from its liability to the claimant to the extent that such negligence or wrongful act or omission caused or contributed to the damage. When by reason of death or injury of a passenger compensation is claimed by a person other than the passenger, the carrier shall likewise be wholly or partly exonerated from its liability to the extent that it proves that the damage was caused or contributed to by the negligence or other wrongful act or omission of that passenger. This Article applies to all the liability provisions in the Convention, including paragraph 1 of Article 21.

### **Article 21 — Compensation in Case of Death or Injury of Passengers**

1. For damages arising under paragraph 1 of Article 17 not exceeding 100 000 Special Drawing Rights for each passenger, the carrier shall not be able to exclude or limit its liability.

2. The carrier shall not be liable for damages arising under paragraph 1 of Article 17 to the extent that they exceed for each passenger 100 000 Special Drawing Rights if the carrier proves that:

- (a) such damage was not due to the negligence or other wrongful act or omission of the carrier or its servants or agents; or
- (b) such damage was solely due to the negligence or other wrongful act or omission of a third party.

### **Article 22 — Limits of Liability in Relation to Delay, Baggage and Cargo**

1. In the case of damage caused by delay as specified in Article 19 in the carriage of persons, the liability of the carrier for each passenger is limited to 4 150 Special Drawing Rights.
2. In the carriage of baggage, the liability of the carrier in the case of destruction, loss, damage or delay is limited to 1 000 Special Drawing Rights for each passenger unless the passenger has made, at the time when the checked baggage was handed over to the carrier, a special declaration of interest in delivery at destination and has paid a supplementary sum if the case so requires. In that case the carrier will be liable to pay a sum not exceeding the declared sum, unless it proves that the sum is greater than the passenger's actual interest in delivery at destination.
3. In the carriage of cargo, the liability of the carrier in the case of destruction, loss, damage or delay is limited to a sum of 17 Special Drawing Rights per kilogramme, unless the consignor has made, at the time when the package was handed over to the carrier, a special declaration of interest in delivery at destination and has paid a supplementary sum if the case so requires. In that case the carrier will be liable to pay a sum not exceeding the declared sum, unless it proves that the sum is greater than the consignor's actual interest in delivery at destination.
4. In the case of destruction, loss, damage or delay of part of the cargo, or of any object contained therein, the weight to be taken into consideration in determining the amount to which the carrier's liability is limited shall be only the total weight of the package or packages concerned. Nevertheless, when the destruction, loss, damage or delay of a part of the cargo, or of an object contained therein, affects the value of other packages covered by the same air waybill, or the same receipt or, if they were not issued, by the same record preserved by the other means referred to in paragraph 2 of Article 4, the total weight of such package or packages shall also be taken into consideration in determining the limit of liability.
5. The foregoing provisions of paragraphs 1 and 2 of this Article shall not apply if it is proved that the damage resulted from an act or omission of the carrier, its servants or agents, done with intent to cause damage or recklessly and with knowledge that damage would probably result; provided that, in the case of such act or omission of a servant or agent, it is also proved that such servant or agent was acting within the scope of its employment.
6. The limits prescribed in Article 21 and in this Article shall not prevent the court from awarding, in accordance with its own law, in addition, the whole or part of the court costs and of the other expenses of the litigation incurred by the plaintiff, including interest. The foregoing provision shall not apply if the

amount of the damages awarded, excluding court costs and other expenses of the litigation, does not exceed the sum which the carrier has offered in writing to the plaintiff within a period of six months from the date of the occurrence causing the damage, or before the commencement of the action, if that is later.

### **Article 23 — Conversion of Monetary Units**

1. The sums mentioned in terms of Special Drawing Right in this Convention shall be deemed to refer to the Special Drawing Right as defined by the International Monetary Fund. Conversion of the sums into national currencies shall, in case of judicial proceedings, be made according to the value of such currencies in terms of the Special Drawing Right at the date of the judgement. The value of a national currency, in terms of the Special Drawing Right, of a State Party which is a Member of the International Monetary Fund, shall be calculated in accordance with the method of valuation applied by the International Monetary Fund, in effect at the date of the judgement, for its operations and transactions. The value of a national currency, in terms of the Special Drawing Right, of a State Party which is not a Member of the International Monetary Fund, shall be calculated in a manner determined by that State.

2. Nevertheless, those States which are not Members of the International Monetary Fund and whose law does not permit the application of the provisions of paragraph 1 of this Article may, at the time of ratification or accession or at any time thereafter, declare that the limit of liability of the carrier prescribed in Article 21 is fixed at a sum of 1 500 000 monetary units per passenger in judicial proceedings in their territories; 62 500 monetary units per passenger with respect to paragraph 1 of Article 22; 15 000 monetary units per passenger with respect to paragraph 2 of Article 22; and 250 monetary units per kilogramme with respect to paragraph 3 of Article 22. This monetary unit corresponds to sixty-five and a half milligrammes of gold of millesimal fineness nine hundred. These sums may be converted into the national currency concerned in round figures. The conversion of these sums into national currency shall be made according to the law of the State concerned.

3. The calculation mentioned in the last sentence of paragraph 1 of this Article and the conversion method mentioned in paragraph 2 of this Article shall be made in such manner as to express in the national currency of the State Party as far as possible the same real value for the amounts in Articles 21 and 22 as would result from the application of the first three sentences of paragraph 1 of this Article. States Parties shall communicate to the depositary the manner

of calculation pursuant to paragraph 1 of this Article, or the result of the conversion in paragraph 2 of this Article as the case may be, when depositing an instrument of ratification, acceptance, approval of or accession to this Convention and whenever there is a change in either.

#### **Article 24 — Review of Limits**

1. Without prejudice to the provisions of Article 25 of this Convention and subject to paragraph 2 below, the limits of liability prescribed in Articles 21, 22 and 23 shall be reviewed by the Depositary at five-year intervals, the first such review to take place at the end of the fifth year following the date of entry into force of this Convention, or if the Convention does not enter into force within five years of the date it is first open for signature, within the first year of its entry into force, by reference to an inflation factor which corresponds to the accumulated rate of inflation since the previous revision or in the first instance since the date of entry into force of the Convention. The measure of the rate of inflation to be used in determining the inflation factor shall be the weighted average of the annual rates of increase or decrease in the Consumer Price Indices of the States whose currencies comprise the Special Drawing Right mentioned in paragraph 1 of Article 23.

2. If the review referred to in the preceding paragraph concludes that the inflation factor has exceeded 10 per cent, the Depositary shall notify States Parties of a revision of the limits of liability. Any such revision shall become effective six months after its notification to the States Parties. If within three months after its notification to the States Parties a majority of the States Parties register their disapproval, the revision shall not become effective and the Depositary shall refer the matter to a meeting of the States Parties. The Depositary shall immediately notify all States Parties of the coming into force of any revision.

3. Notwithstanding paragraph 1 of this Article, the procedure referred to in paragraph 2 of this Article shall be applied at any time provided that one-third of the States Parties express a desire to that effect and upon condition that the inflation factor referred to in paragraph 1 has exceeded 30 per cent since the previous revision or since the date of entry into force of this Convention if there has been no previous revision. Subsequent reviews using the procedure described in paragraph 1 of this Article will take place at five-year intervals starting at the end of the fifth year following the date of the reviews under the present paragraph.

#### **Article 25 — Stipulation on Limits**

A carrier may stipulate that the contract of carriage shall be subject to higher

limits of liability than those provided for in this Convention or to no limits of liability whatsoever.

### **Article 26 — Invalidity of Contractual Provisions**

Any provision tending to relieve the carrier of liability or to fix a lower limit than that which is laid down in this Convention shall be null and void, but the nullity of any such provision does not involve the nullity of the whole contract, which shall remain subject to the provisions of this Convention.

### **Article 27 — Freedom to Contract**

Nothing contained in this Convention shall prevent the carrier from refusing to enter into any contract of carriage, from waiving any defences available under the Convention, or from laying down conditions which do not conflict with the provisions of this Convention.

### **Article 28 — Advance Payments**

In the case of aircraft accidents resulting in death or injury of passengers, the carrier shall, if required by its national law, make advance payments without delay to a natural person or persons who are entitled to claim compensation in order to meet the immediate economic needs of such persons. Such advance payments shall not constitute a recognition of liability and may be offset against any amounts subsequently paid as damages by the carrier.

### **Article 29 —Basis of Claims**

In the carriage of passengers, baggage and cargo, any action for damages, however founded, whether under this Convention or in contract or in tort or otherwise, can only be brought subject to the conditions and such limits of liability as are set out in this Convention without prejudice to the question as to who are the persons who have the right to bring suit and what are their respective rights. In any such action, punitive, exemplary or any other non-compensatory damages shall not be recoverable.

### **Article 30 — Servants, Agents — Aggregation of Claims**

1. If an action is brought against a servant or agent of the carrier arising out of damage to which the Convention relates, such servant or agent, if they prove that they acted within the scope of their employment, shall be entitled to avail themselves of the conditions and limits of liability which the carrier itself is entitled to invoke under this Convention.
2. The aggregate of the amounts recoverable from the carrier, its servants and agents, in that case, shall not exceed the said limits.
3. Save in respect of the carriage of cargo, the provisions of paragraphs 1 and



2 of this Article shall not apply if it is proved that the damage resulted from an act or omission of the servant or agent done with intent to cause damage or recklessly and with knowledge that damage would probably result.

### **Article 31 — Timely Notice of Complaints**

1. Receipt by the person entitled to delivery of checked baggage or cargo without complaint is *prima facie* evidence that the same has been delivered in good condition and in accordance with the document of carriage or with the record preserved by the other means referred to in paragraph 2 of Article 3 and paragraph 2 of Article 4.
2. In the case of damage, the person entitled to delivery must complain to the carrier forthwith after the discovery of the damage, and, at the latest, within seven days from the date of receipt in the case of checked baggage and fourteen days from the date of receipt in the case of cargo. In the case of delay, the complaint must be made at the latest within twenty-one days from the date on which the baggage or cargo have been placed at his or her disposal.
3. Every complaint must be made in writing and given or dispatched within the times aforesaid.
4. If no complaint is made within the times aforesaid, no action shall lie against the carrier, save in the case of fraud on its part.

### **Article 32 — Death of Person Liable**

In the case of the death of the person liable, an action for damages lies in accordance with the terms of this Convention against those legally representing his or her estate.

### **Article 33 — Jurisdiction**

1. An action for damages must be brought, at the option of the plaintiff, in the territory of one of the States Parties, either before the court of the domicile of the carrier or of its principal place of business, or where it has a place of business through which the contract has been made or before the court at the place of destination.
2. In respect of damage resulting from the death or injury of a passenger, an action may be brought before one of the courts mentioned in paragraph 1 of this Article, or in the territory of a State Party in which at the time of the accident the passenger has his or her principal and permanent residence and to or from which the carrier operates services for the carriage of passengers by air, either on its own aircraft, or on another carrier's aircraft pursuant to a commercial agreement, and in which that carrier conducts its business of

carriage of passengers by air from premises leased or owned by the carrier itself or by another carrier with which it has a commercial agreement.

3. For the purposes of paragraph 2,

(a) “commercial agreement” means an agreement, other than an agency agreement, made between carriers and relating to the provision of their joint services for carriage of passengers by air;

(b) “principal and permanent residence” means the one fixed and permanent abode of the passenger at the time of the accident. The nationality of the passenger shall not be the determining factor in this regard.

4. Questions of procedure shall be governed by the law of the court seised of the case.

#### **Article 34 — Arbitration**

1. Subject to the provisions of this Article, the parties to the contract of carriage for cargo may stipulate that any dispute relating to the liability of the carrier under this Convention shall be settled by arbitration. Such agreement shall be in writing.

2. The arbitration proceedings shall, at the option of the claimant, take place within one of the jurisdictions referred to in Article 33.

3. The arbitrator or arbitration tribunal shall apply the provisions of this Convention.

4. The provisions of paragraphs 2 and 3 of this Article shall be deemed to be part of every arbitration clause or agreement, and any term of such clause or agreement which is inconsistent therewith shall be null and void.

#### **Article 35 — Limitation of Actions**

1. The right to damages shall be extinguished if an action is not brought within a period of two years, reckoned from the date of arrival at the destination, or from the date on which the aircraft ought to have arrived, or from the date on which the carriage stopped.

2. The method of calculating that period shall be determined by the law of the court seised of the case.

#### **Article 36 — Successive Carriage**

1. In the case of carriage to be performed by various successive carriers and falling within the definition set out in paragraph 3 of Article 1, each carrier which accepts passengers, baggage or cargo is subject to the rules set out in

this Convention and is deemed to be one of the parties to the contract of carriage in so far as the contract deals with that part of the carriage which is performed under its supervision.

2. In the case of carriage of this nature, the passenger or any person entitled to compensation in respect of him or her can take action only against the carrier which performed the carriage during which the accident or the delay occurred, save in the case where, by express agreement, the first carrier has assumed liability for the whole journey.

3. As regards baggage or cargo, the passenger or consignor will have a right of action against the first carrier, and the passenger or consignee who is entitled to delivery will have a right of action against the last carrier, and further, each may take action against the carrier which performed the carriage during which the destruction, loss, damage or delay took place. These carriers will be jointly and severally liable to the passenger or to the consignor or consignee.

#### **Article 37 — Right of Recourse against Third Parties**

Nothing in this Convention shall prejudice the question whether a person liable for damage in accordance with its provisions has a right of recourse against any other person.

### **Chapter IV**

#### **Combined Carriage**

#### **Article 38 — Combined Carriage**

1. In the case of combined carriage performed partly by air and partly by any other mode of carriage, the provisions of this Convention shall, subject to paragraph 4 of Article 18, apply only to the carriage by air, provided that the carriage by air falls within the terms of Article 1.

2. Nothing in this Convention shall prevent the parties in the case of combined carriage from inserting in the document of air carriage conditions relating to other modes of carriage, provided that the provisions of this Convention are observed as regards the carriage by air.

### **Chapter V**

#### **Carriage by Air Performed by a Person other than the Contracting Carrier**

#### **Article 39 — Contracting Carrier — Actual Carrier**

The provisions of this Chapter apply when a person (hereinafter referred to as “the contracting carrier”) as a principal makes a contract of carriage governed

by this Convention with a passenger or consignor or with a person acting on behalf of the passenger or consignor, and another person (hereinafter referred to as “the actual carrier”) performs, by virtue of authority from the contracting carrier, the whole or part of the carriage, but is not with respect to such part a successive carrier within the meaning of this Convention. Such authority shall be presumed in the absence of proof to the contrary.

#### **Article 40 — Respective Liability of Contracting and Actual Carriers**

If an actual carrier performs the whole or part of carriage which, according to the contract referred to in Article 39, is governed by this Convention, both the contracting carrier and the actual carrier shall, except as otherwise provided in this Chapter, be subject to the rules of this Convention, the former for the whole of the carriage contemplated in the contract, the latter solely for the carriage which it performs.

#### **Article 41 — Mutual Liability**

1. The acts and omissions of the actual carrier and of its servants and agents acting within the scope of their employment shall, in relation to the carriage performed by the actual carrier, be deemed to be also those of the contracting carrier.
2. The acts and omissions of the contracting carrier and of its servants and agents acting within the scope of their employment shall, in relation to the carriage performed by the actual carrier, be deemed to be also those of the actual carrier. Nevertheless, no such act or omission shall subject the actual carrier to liability exceeding the amounts referred to in Articles 21, 22, 23 and 24. Any special agreement under which the contracting carrier assumes obligations not imposed by this Convention or any waiver of rights or defences conferred by this Convention or any special declaration of interest in delivery at destination contemplated in Article 22 shall not affect the actual carrier unless agreed to by it.

#### **Article 42 — Addressee of Complaints and Instructions**

Any complaint to be made or instruction to be given under this Convention to the carrier shall have the same effect whether addressed to the contracting carrier or to the actual carrier. Nevertheless, instructions referred to in Article 12 shall only be effective if addressed to the contracting carrier.

#### **Article 43 — Servants and Agents**

In relation to the carriage performed by the actual carrier, any servant or agent of that carrier or of the contracting carrier shall, if they prove that they acted within the scope of their employment, be entitled to avail themselves of the

conditions and limits of liability which are applicable under this Convention to the carrier whose servant or agent they are, unless it is proved that they acted in a manner that prevents the limits of liability from being invoked in accordance with this Convention.

#### **Article 44 — Aggregation of Damages**

In relation to the carriage performed by the actual carrier, the aggregate of the amounts recoverable from that carrier and the contracting carrier, and from their servants and agents acting within the scope of their employment, shall not exceed the highest amount which could be awarded against either the contracting carrier or the actual carrier under this Convention, but none of the persons mentioned shall be liable for a sum in excess of the limit applicable to that person.

#### **Article 45 — Addressee of Claims**

In relation to the carriage performed by the actual carrier, an action for damages may be brought, at the option of the plaintiff, against that carrier or the contracting carrier, or against both together or separately. If the action is brought against only one of those carriers, that carrier shall have the right to require the other carrier to be joined in the proceedings, the procedure and effects being governed by the law of the court seised of the case.

#### **Article 46 — Additional Jurisdiction**

Any action for damages contemplated in Article 45 must be brought, at the option of the plaintiff, in the territory of one of the States Parties, either before a court in which an action may be brought against the contracting carrier, as provided in Article 33, or before the court having jurisdiction at the place where the actual carrier has its domicile or its principal place of business.

#### **Article 47 — Invalidity of Contractual Provisions**

Any contractual provision tending to relieve the contracting carrier or the actual carrier of liability under this Chapter or to fix a lower limit than that which is applicable according to this Chapter shall be null and void, but the nullity of any such provision does not involve the nullity of the whole contract, which shall remain subject to the provisions of this Chapter.

#### **Article 48 — Mutual Relations of Contracting and Actual Carriers**

Except as provided in Article 45, nothing in this Chapter shall affect the rights and obligations of the carriers between themselves, including any right of recourse or indemnification.

### **Chapter VI**

## Other Provisions

### **Article 49 — Mandatory Application**

Any clause contained in the contract of carriage and all special agreements entered into before the damage occurred by which the parties purport to infringe the rules laid down by this Convention, whether by deciding the law to be applied, or by altering the rules as to jurisdiction, shall be null and void.

### **Article 50 — Insurance**

States Parties shall require their carriers to maintain adequate insurance covering their liability under this Convention. A carrier may be required by the State Party into which it operates to furnish evidence that it maintains adequate insurance covering its liability under this Convention.

### **Article 51 — Carriage Performed in Extraordinary Circumstances**

The provisions of Articles 3 to 5, 7 and 8 relating to the documentation of carriage shall not apply in the case of carriage performed in extraordinary circumstances outside the normal scope of a carrier's business.

### **Article 52 — Definition of Days**

The expression “days” when used in this Convention means calendar days, not working days.

## **Chapter VII**

### Final Clauses

### **Article 53 — Signature, Ratification and Entry into Force**

1. This Convention shall be open for signature in Montreal on 28 May 1999 by States participating in the International Conference on Air Law held at Montreal from 10 to 28 May 1999. After 28 May 1999, the Convention shall be open to all States for signature at the Headquarters of the International Civil Aviation Organisation in Montreal until it enters into force in accordance with paragraph 6 of this Article.

2. The Convention shall similarly be open for signature by Regional Economic Integration Organisations. For the purpose of this Convention, a “Regional Economic Integration Organisation” means any organisation which is constituted by sovereign States of a given region which has competence in respect of certain matters governed by this Convention and has been duly authorised to sign and to ratify, accept, approve or accede to this Convention. A reference to a “State Party” or “States Parties” in this Convention, otherwise than in paragraph 2 of Article 1, paragraph 1(b) of Article 3, paragraph (b) of

Article 5, Articles 23, 33, 46 and paragraph (b) of Article 57, applies equally to a Regional Economic Integration Organisation. For the purpose of Article 24, the references to “a majority of the States Parties” and “one-third of the States Parties” shall not apply to a Regional Economic Integration Organisation.

3. This Convention shall be subject to ratification by States and by Regional Economic Integration Organisations which have signed it.

4. Any State or Regional Economic Integration Organisation which does not sign this Convention may accept, approve or accede to it at any time.

5. Instruments of ratification, acceptance, approval or accession shall be deposited with the International Civil Aviation Organisation, which is hereby designated the Depositary.

6. This Convention shall enter into force on the sixtieth day following the date of deposit of the thirtieth instrument of ratification, acceptance, approval or accession with the Depositary between the States which have deposited such instrument. An instrument deposited by a Regional Economic Integration Organisation shall not be counted for the purpose of this paragraph.

7. For other States and for other Regional Economic Integration Organisations, this Convention shall take effect sixty days following the date of deposit of the instrument of ratification, acceptance, approval or accession.

8. The Depositary shall promptly notify all signatories and States Parties of:

- (a) each signature of this Convention and date thereof;
- (b) each deposit of an instrument of ratification, acceptance, approval or accession and date thereof;
- (c) the date of entry into force of this Convention;
- (d) the date of the coming into force of any revision of the limits of liability established under this Convention;
- (e) any denunciation under Article 54.

#### **Article 54 — Denunciation**

1. Any State Party may denounce this Convention by written notification to the Depositary.

2. Denunciation shall take effect one hundred and eighty days following the date on which notification is received by the Depositary.

## **Article 55 — Relationship with other Warsaw Convention Instruments**

This Convention shall prevail over any rules which apply to international carriage by air:

1. between State Parties to this Convention by virtue of those States commonly being Party to

- (a) the Convention for the Unification of Certain Rules Relating to International Carriage by Air Signed at Warsaw on 12 October 1929 (hereinafter called the Warsaw Convention);
- (b) the Protocol to Amend the Convention for the Unification of Certain Rules Relating to International Carriage by Air Signed at Warsaw on 12 October 1929, Done at The Hague on 28 September 1955 (hereinafter called The Hague Protocol);
- (c) the Convention, Supplementary to the Warsaw Convention, for the Unification of Certain Rules Relating to International Carriage by Air Performed by a Person Other than the Contracting Carrier, signed at Guadalajara on 18 September 1961 (hereinafter called the Guadalajara Convention);
- (d) the Protocol to Amend the Convention for the Unification of Certain Rules Relating to International Carriage by Air Signed at Warsaw on 12 October 1929 as Amended by the Protocol Done at The Hague on 28 September 1955 Signed at Guatemala City on 8 March 1971 (hereinafter called the Guatemala City Protocol);
- (e) Additional Protocol Nos. 1 to 3 and Montreal Protocol No. 4 to amend the Warsaw Convention as amended by The Hague Protocol or the Warsaw Convention as amended by both The Hague Protocol and the Guatemala City Protocol Signed at Montreal on 25 September 1975 (hereinafter called the Montreal Protocols); or

2. within the territory of any single State Party to this Convention by virtue of that State being Party to one or more of the instruments referred to in subparagraphs (a) to (e) above.

## **Article 56 — States with more than one System of Law**

1. If a State has two or more territorial units in which different systems of law are applicable in relation to matters dealt with in this Convention, it may at the

236

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time of signature, ratification, acceptance, approval or accession declare that this Convention shall extend to all its territorial units or only to one or more of them and may modify this declaration by submitting another declaration at any time.

2. Any such declaration shall be notified to the Depositary and shall state expressly the territorial units to which the Convention applies.

3. In relation to a State Party which has made such a declaration:

- (a) references in Article 23 to “national currency” shall be construed as referring to the currency of the relevant territorial unit of that State; and
- (b) the reference in Article 28 to “national law” shall be construed as referring to the law of the relevant territorial unit of that State.

### **Article 57 — Reservations**

No reservation may be made to this Convention except that a State Party may at any time declare by a notification addressed to the Depositary that this Convention shall not apply to:

- (a) carriage by air performed and operated directly by that State Party for non-commercial purposes in respect to its functions and duties as a sovereign State; and/or
- (b) the carriage of persons, cargo and baggage for its military authorities on aircraft registered in or leased by that State Party, the whole capacity of which has been reserved by or on behalf of such authorities.

IN WITNESS WHEREOF the undersigned Plenipotentiaries, having been duly authorised, have signed this Convention.

DONE at Montreal on the 28th day of May of the year one thousand nine hundred and ninety-nine in the English, Arabic, Chinese, French, Russian and Spanish languages, all texts being equally authentic. This Convention shall remain deposited in the archives of the International Civil Aviation Organisation, and certified copies thereof shall be transmitted by the Depositary to all States Parties to this Convention, as well as to all States Parties to the Warsaw Convention, The Hague Protocol, the Guadalajara Convention, the Guatemala City Protocol, and the Montreal Protocols.

## ENDNOTES

### 1

#### KEY

amd = amended	Pt = Part
Ch = Chapter	rem = remainder
Div = Division	renum = renumbered
exp = expires/expired	rep = repealed
GN = Gazette Notice	Sch = Schedule
hdg = heading	Sdiv = Subdivision
ins = inserted	SIG = Solomon Islands Gazette
lt = long title	st = short title
LN = Legal Notice	sub = substituted
nc = not commenced	

### 2

#### LIST OF LEGISLATION

##### ***Civil Aviation Act 2008 (No. 7 of 2008)***

Assent date	18 December 2008
Gazetted	5 June 2009
Commenced	Parts I to XI; Parts XIII to XVIII & Schs 1 & 2: 5 June 2009; Part XII & Schs 3, 4 & 5: 5 June 2009* (*Note: Part XII & Schs 3, 4 & 5 commencement date of 5 June 2009 validated by Legislation Amendment, Repeal and Validation Act 2023 (No. 17 of 2023))

##### ***Civil Aviation (Amendment) Act 2009 (No. 5 of 2009)***

Assent date	8 May 2009
Gazetted	5 June 2009
Commenced	5 June 2009 [*Note the date of publication in the Gazette and the Commencement date have been validated by s4 of the Constitution (Amendment and Validation) Act 2023 and s10 of the Legislation Amendment, Repeal and Validation Act 2023]

##### ***Penalties Miscellaneous Amendments Act 2009 (No. 14 of 2009)***

Assent date	29 July 2009
Gazetted	1 October 2009
Commenced	1 October 2009

##### ***Police and Transport Legislation (Amendment) (Alcohol Testing) Act 2016 (No. 4 of 2016)***

Assent date	18 May 2016
Gazetted	25 May 2016
Commenced	1 June 2016

##### ***Legislation Amendment, Repeal and Validation Act 2023 (No. 17 of 2023)***

Assent date	29 December 2023
Gazetted	29 December 2023
Commenced	5 February 2024

### 3 LIST OF AMENDMENTS

s 28A	amd by Act No. 17 of 2023
Div 5	ins by Act No. 5 of 2009
s 48	amd by Act No. 14 of 2009
s 100	amd by Act No. 17 of 2023
s 110	amd by Act No. 14 of 2009
s 170	amd by Act No. 14 of 2009
s 171	amd by Act No. 14 of 2009
s 172	amd by Act No. 14 of 2009
s 173	amd by Act No. 14 of 2009
s 175	amd by Act No. 14 of 2009
s 176	amd by Act No. 14 of 2009
s 177	amd by Act No. 14 of 2009
s 178	amd by Act No. 14 of 2009
s 184A	ins by Act No. 4 of 2016
s 185	amd by Act No. 14 of 2009
s 186	amd by Act No. 14 of 2009
s 187	amd by Act No. 14 of 2009
s 188	amd by Act No. 14 of 2009
s 189	amd by Act No. 14 of 2009
s 190	amd by Act No. 14 of 2009
s 191	amd by Act No. 14 of 2009
s 192	amd by Act No. 14 of 2009
s 193	amd by Act No. 14 of 2009
s 194	amd by Act No. 14 of 2009
s 195	amd by Act No. 14 of 2009
s 196	amd by Act No. 14 of 2009
s 197	amd by Act No. 14 of 2009
s 198	amd by Act No. 14 of 2009
s 199	amd by Act No. 14 of 2009
s 204	amd by Act No. 14 of 2009
s 205	amd by Acts No. 14 of 2009; No. 17 of 2023
s 206	amd by Act No. 14 of 2009
s 207	amd by Act No. 14 of 2009
s 208	amd by Act No. 14 of 2009
s 209	amd by Act No. 14 of 2009
s 210	amd by Act No. 14 of 2009
s 213	amd by Act No. 14 of 2009
s 221	amd by Act No. 14 of 2009
s 222	amd by Act No. 14 of 2009
s 223	amd by Act No. 14 of 2009
s 224	amd by Act No. 14 of 2009
s 225	amd by Act No. 14 of 2009

s 226	amd by Act No. 14 of 2009
s 227	amd by Act No. 14 of 2009
s 228	amd by Act No. 14 of 2009
s 229	amd by Act No. 14 of 2009
s 230	amd by Act No. 14 of 2009
s 231	amd by Act No. 14 of 2009
s 238	amd by Act No. 17 of 2023