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**CIVIL AVIATION (AMENDMENT) BILL, 2017**

**MEMORANDUM**

The purpose of this Bill is to amend the Civil Aviation Act [*Chapter 13:16*] (No. 7 of 1998), to achieve the following principal objectives:

- To provide for the spinning off of certain functions of the Authority in relation to airports and aerodromes to a new entity called the Airports Company of Zimbabwe (Private) Limited.
- To bring the principal Act into line with the 2008 recommendations of the ICAO audit of the Authority (some of the more important of which are further elaborated in the bullets below).
- To change the title of the chief executive of the Authority from that of “General Manager” to “Director-General” and further refine his or her duties and powers.
- To add additional sections to the principal Act to mandate expanded State Safety and State Security programmes in the sphere of civil aviation.
- To align certain provisions of the principal Act with the new Constitution.

In more detail the individual clauses of the Bill provide as follows:

*Clause 1*

This clause sets out the Bill’s short title.

*Clause 2*

This clause inserts or amends certain definitions of words and phrases to be used in the principal Act.

*Clause 3*

This clause replaces section 5 of the Act so as to limit the scope of the Civil Aviation Authority’s objects to civil aviation safety and security and related matters. Those objects concerned with the running of airports will be spun off to the new Airports Company of Zimbabwe (Private) Limited.

*Clause 4*

In section 6 of the principal Act, the existing function of the Civil Aviation Authority of Zimbabwe to “to establish, develop, operate and own aerodromes in Zimbabwe” needs to be qualified in the light of the proposed establishment of the Airports Company of Zimbabwe.

*Clause 5*

This clause requires appointment to the Board of the Civil Aviation Authority to observe the principle of gender balance in conformity with the Constitution.

*Clause 6*

This clause disqualifies holders of “public offices” (including members of the Cabinet, the judiciary and of other public entities) from being appointed as members of the Board of the Civil Aviation Authority. This is in conformity with the requirement of section 194(1)(d) of the Constitution which mandates that “public administration in all tiers of government, including institutions and agencies of the State, and government-controlled entities and other public enterprises” must provide their services to the public “impartially, fairly, equitably and without bias”.

*Clause 7*

This clause will amend the proviso to section 16(1) of the principal Act by shortening the period within which the Minister must fill a vacancy in the Board of the Civil Aviation Authority from three months to one month.

*Clause 8*

This clause will amend section 17(2) of the principal Act by shortening the period within which the Minister must fill a vacancy in the chair of the Board of the Civil Aviation Authority from three months to one month.

*Clause 9*

Section 198 of the Constitution provides for “standards of good corporate governance to be observed by government controlled entities and other commercial entities owned or wholly controlled by the State”. With a view to ensuring the disclosure and prevention of conflicts of interest affecting members of Board of the Civil Aviation Authority, this clause will stiffen the penalties for concealing such conflicts.

*Clause 10*

This clause replaces section 24 of the principal Act by three new sections that, among other things: (a) change the title of the chief executive of the Authority from that of “General Manager” to “Director-General” in line with international civil aviation nomenclature; (b) better define the qualifications and role of the Director General of the Authority; and (c) mandate the Director General of the Authority to establish training centres and facilities to advance civil aviation skills.

*Clause 11*

The new section 26 substituted by this clause will devolve greater authority to the Director-General to appoint, promote and develop the staff of the Authority, while reserving to the Board the power to fix, review and amend the staff establishment. However the establishment of certain senior posts by the Board will require the Minister’s prior approval.

*Clause 12*

This clause replaces section 32 (“Funds of Authority”) of the Act by an expanded section that identifies additional sources of funds for the Authority.

*Clauses 13 and 19*

The ICAO audit of the Authority in 2008 recognised that at operational level the Authority’s manuals and regulations established at administrative and policy level were compliant with the safety and security measures, while requiring that certain principles on safety and security be incorporated in primary legislation. Accordingly, this clause will add additional sections to the principal Act to mandate expanded State Safety and State Security programmes, and provide for the establishment of the National Civil Aviation Security Committee to coordinate security activities. The Committee is ultimately charged with advising the Minister on the review and adoption of effective security measures and procedures.

*Clause 14*

This clause amends section 53 of the principal Act by listing additional grounds for the cancellation of an air operator’s certificate.

*Clause 15*

This clause replaces section 55 (“Appointment and functions of Chief Inspector of Accidents and other inspectors”) by two new sections. The new section 55 provides for a similar functionary to the superseded “Chief Inspector of Accidents”, to be called the “Chief Investigator of Accidents”, whose qualifications and functions are set forth in subsections (2) and (3). As before, this functionary will be a Civil Servant appointed independently of the Authority. However (given the scarcity of qualified persons for this post, and the fact that the holder thereof will not be engaged all the time but only as occasion requires, the Authority will, at the request of the Minister, second to the Ministry that is responsible for administering this Act an employee of the Authority who has any of the qualifications referred to in subsection (2) to be the Chief Investigator of Accidents for an initial period not exceeding twenty-four months and, if needed, for subsequent consecutive periods not exceeding twelve months at a time. A similar rule applies in respect of the Chief Investigator’s assistants, called “accident inspectors”. For all practical purposes, seconded officials will be employees of, and therefore answerable and subject to the discipline of, the Ministry, not the Authority.

The new section 55A provides for the funding to be availed to Chief Investigator of Accidents for the purpose of investigating “occurrences” (aviation accidents and other incidents impacting on civil aviation safety). The Chief Investigator of Accidents will have power to retain any person (whether domestic or foreign) whose specialist or expert knowledge or skills are required for the investigation of the occurrence and the determination of its causes.

*Clause 16*

This clause will insert a new section in the principal Act that provides for the levying of an “aviation safety surcharge”, whose proceeds will be used in the investigation of occurrences by the Chief Investigator of Accidents. The surcharge will be a strictly limited premium upon every fee, levy and charge payable to the Authority for registrations effected, licences, permits or certificates issued, services rendered or anything else done by it under this Act (but not including the Airport Departure Fee prescribed in Statutory Instrument 165 of 2003 or any other regulations that may be substituted for the same).

*Clauses 17*

The ICAO audit of the Authority in 2008 noted the absence of sufficient powers for authorised officials to discharge their functions in the interests of aviation safety and security. This clause will remedy that defect.

*Clause 18*

This clause will replace by a new Part the existing Transitional Part of the principal Act, which provided for the transformation of the Government’s Department of Civil Aviation into the autonomous entity that is now the Civil Aviation Authority. The new Part will provide for the transfer of certain functions of the Civil Aviation Authority to the Airports Company of Zimbabwe (Private) Limited.

# BILL

To amend the Civil Aviation Act [*Chapter 13:16*] (No. 7 of 1998); to provide for the spinning off of certain functions of the Authority to a new entity called the Airports Company of Zimbabwe (Private) Limited; and to provide for matters connected with or incidental thereto.

ENACTED by the Parliament and the President of Zimbabwe.

## 1 Short title

This Act may be cited as the Civil Aviation Amendment Act, 2017.

## 2 Amendment of section 2 of Cap. 24:20

Section 2 (“Interpretation”) of the Civil Aviation Act [*Chapter 13:16*] (hereinafter called “the principal Act”) is amended—

(a) by the insertion of the following definitions—

“air navigation” means the science and technology of determining the position of an aircraft with respect to the surface of the earth and accurately maintaining a desired course;

“air navigation facility” means any facility used in, available for use in, or designed for use in aid of air navigation, including airports, landing areas, lights, any apparatus or equipment for disseminating weather information, for signalling, for radio directional finding, or for radio or other electromagnetic communication, and any other structure or mechanism having a similar purpose for guiding or controlling flight in the air or the landing and take-off of aircraft;

H.B. 4, 2017.]

- “air operator” means any organisation which undertakes to engage in domestic commercial air transport or international commercial air transport, whether directly or indirectly or by a lease or any other arrangement;
- “air transport” means any aspect of civil aviation concerned with the commercial and non-commercial transport of persons and goods by air; 5
- “authorised person” means an officer designated in terms of section 26(2)(b);
- “aviation safety surcharge” means the surcharge levied in terms of section 59A; 10
- “Chief Investigator of Accidents” means the person appointed as such in terms of section 55;
- “civil aviation” means the non-military use of aircraft;
- “civil aviation industry” means all persons in Zimbabwe who are engaged in the business of commercial air transport and associated services; 15
- “Director-General” means the Director-General of the Authority appointed in terms of section 24;
- “investigator” means an accident investigator so designated in terms of section 55; 20
- “National Civil Aviation Security Committee” means the Committee established in terms of section 44B;
- “security programmes” means an integrated set of regulations and activities and performed by the State aimed at improving safety and efficient delivery of aviation services;” 25
- (b) by the repeal of the definition of “General Manager”;
- (c) by the repeal of the definition of “inspector” and the substitution of—  
 ““safety and security oversight inspector” or “inspector” means an employee of the Authority appointed in terms of section 26.”. 30

**3 New section substituted for section 5 of Cap. 13:16**

Section 5 of the principal Act is repealed and the following is substituted—

**“5 Objects of Authority**

- “(1) The objects of the Authority are—
- (a) to promote and regulate civil aviation safety and security; 35  
 and
- (b) to develop air transport; and
- (c) to establish and maintain air navigation facilities and provide air navigation services, including in particular air traffic control; and 40
- (d) to foster the development of the civil aviation industry and oversee its activities; and
- (e) to ensure compliance with this Act and the Convention and discharge in accordance with best practices and maximum efficiency the regulatory function assigned to it by this Act.”. 45

**4 Amendment of section 6 of Cap. 13:16**

Section 6 (“Functions of Authority”)(1) of the principal Act is amended by the repeal of paragraph (h) and the substitution of—

5 “(h) subject to this Act, to establish, develop, operate and own aerodromes in Zimbabwe;”.

**5 Amendment of section 10 of Cap. 13:16**

Section 10 (“Board of Authority”) of the principal Act is amended by the insertion of the following subsection after subsection (3)—

10 “(4) In appointing the members of the Board, the Minister shall endeavour to secure that at least half the appointed members are women.”.

**6 Amendment of section 11 of Cap. 13:16**

Section 11 (“Disqualifications for appointment to Board”) of the principal Act is amended—

15 (a) in subsection (2) by the insertion after paragraph (b) of the following paragraph—

“(c) the holder of a public office;”;

(b) in subsection (3) by the insertion after paragraph (b) of the following paragraph—

20 “(c) “public office” means—

(i) the office of a member of the Cabinet; or

(ii) a paid office in the service of the State, a statutory body or a local authority; or

(iii) the office of a judge or magistrate or other person presiding over a court or tribunal.”.

25 **7 Amendment of section 16 of Cap. 13:16**

Section 16 (“Filling of vacancies on Board”) of the principal Act is amended in the proviso to subsection (1) by the deletion of “three months” and the substitution of “one month”.

**8 Amendment of section 17 of Cap. 13:16**

30 Section 17 (“Chairman and vice-chairman of Board”)(2) of the principal Act is amended by the deletion of “three months” and the substitution of “one month”.

**9 Amendment of section 20 of Cap. 13:16**

35 Section 20 (“Members of Board and committees to disclose connection with companies and firms dealing with Authority”) of the principal Act is amended by the repeal of subsection (3) and the substitution of—

“(3) A member of the Board or a committee who contravenes subsection (1) or (2) shall be guilty of an offence and liable—

40 (a) if he or she obtained a consideration, advantage or benefit as a result of the contravention, to a fine not exceeding level fourteen or twice the value of the consideration, advantage or benefit, whichever is the greater amount, or to imprisonment for a period not exceeding ten years or to both such fine and such imprisonment; or

(b) to a fine not exceeding level fourteen or to imprisonment for a period not exceeding five years or to both such fine and such imprisonment.

if he or she did not or it is not established that he or she obtained a consideration, advantage or benefit as a result of a contravention.”.

**10 New section substituted for section 24 of Cap. 13:16**

Section 24 of the principal Act is repealed and the following sections are substituted—

**“24 Director-General of Authority**

(1) Subject to this Act, the Board, after consultation with the Minister, shall appoint, on such terms and conditions as the Board may fix, a person to be the Director-General of the Authority.

(2) When appointing the Director-General the Board— 10

(a) must appoint someone who is—

- (i) a citizen of Zimbabwe who is ordinarily resident in Zimbabwe: and
- (ii) of good moral character and proved integrity: and
- (iii) in its opinion, suitable and competent to undertake the efficient discharge of the Director-General’s functions under this Act: 15

and

(b) shall take into consideration the following factors (which factors must not, however, override the suitability and competence criterion referred to in paragraph (a)(iii)— 20

- (i) the person’s professional and technical qualifications and experience in the field of civil aviation;
- (ii) the person’s management qualifications and experience, preferably in the field of civil aviation; 25

and

(c) shall not appoint someone who is employed or retained by, or receives any form of allowance, benefit or remuneration from, any aviation or aeronautical enterprise, unless such person discloses this fact to the Board and satisfies the Board that he or she will cease to be employed or retained by, or cease to receive any form of allowance, benefit or remuneration from, the enterprise on or before appointment as Director-General: and 30

(d) shall not appoint someone who owns, owns securities in or has any material interest in any aviation or aeronautical enterprise, unless such person discloses this fact to the Board and explains to the satisfaction of Board how — 35

- (i) he or she proposes to dispose of such ownership interest, securities or other interest on, before or as soon as reasonably possible after appointment as Director-General: or 40
- (ii) he or she will so arrange his or her affairs so as to ensure that the holding of the securities or interest in question will not cause any conflict with his or her duties as the Director-General. 45

(3) The appointment of the Director-General shall terminate if—

(a) he or she would be required in terms of section 13(1)(c), (d) or (e) to vacate his or her office had that section, and section 11(2)(a) or (b) applied to him or her: or 50



- (b) without the prior written approval of the Board, given after consultation with the Minister—
- (i) he or she acquires any securities or other material interest in any aviation or aeronautical enterprise; or
  - (ii) he or she breaches any arrangement referred to in subsection (2)(d)(ii) that was made to avoid the conflict of interest there referred to;
- (c) he or she acquires ownership of, or becomes employed in any capacity or is retained by, or receives any form of allowance, benefit or remuneration from, any aviation or aeronautical enterprise.

(4) Subject to any other law governing the terms of office of heads of public entities, the term of office of the Director-General shall be five years, which may be renewed for one more term only.

#### 24A Duties of Director-General

(1) Subject to this Act, the Director-General shall—

- (a) on behalf of the Board, ensure that the functions of the Authority referred to in section 6 are performed or exercised; and
- (b) be the head of the Authority's administration and manage its affairs, in which capacity he or she is responsible for—
  - (i) the appointment, deployment, organisation, direction and discipline of the staff of the Authority;
  - (ii) the formation and development of an efficient administration for the Authority;
  - (iii) the establishment and maintenance of a register of inspectors, authorised officers and authorised persons;
  - (iv) the implementation and enforcement of international best standards and practices in the sphere of civil aviation;
- (c) establish and maintain a school and other training facilities for the purpose of offering instruction and training in skills related to the aviation industry; and
- (d) submit to the Board an annual report concerning the activities of the Authority, with particular emphasis on accident investigation and prevention; and
- (e) perform such functions as the Board may assign to him or her:
  - Provided that such assignment of functions by the Board—
    - (i) may be made generally or specially and subject to such conditions, restrictions, reservations and exceptions as the Board may determine;
    - (ii) may be revoked by the Board at any time;
    - (iii) shall not preclude the Board itself from exercising the functions.
- (f) do any other thing as by or under this Act the Director-General may be required to do.

**24B Powers of Director-General**

(1) In addition to the powers vested in him or her by or under this Act, the Director-General shall have such powers as are reasonably necessary to enable him or her to perform his or her statutory duties, or that are incidental to the performance thereof. 5

(2) The Director-General issues on behalf of the Authority and in the prescribed manner, all licences, permits, certificates, restrictions and registrations that are required to be issued by or under this Act.

(3) In furtherance of the objects referred to in section 5, the Director-General shall, when performing his or her duties or exercising his or her powers, endeavour to consult interested persons engaged in civil aviation or the civil aviation industry. 10

**11 New section substituted for section 26 of Cap. 13:16**

Section 26 of the principal Act is repealed and substituted by—

“26 Other staff of Authority and powers of Director-General in relation thereto 15

(1) Subject to any other law, the Authority shall employ, on such terms and conditions as the Board may fix, such persons as the Board considers necessary for conducting the Authority’s operations, and may promote, suspend or discharge any such employee: 20

(2) Pursuant to subsection (1) the Board shall fix, review and amend the staff establishment of the Authority, and the Director-General shall employ the persons needed to fill posts and vacancies in the establishment and promote persons to any post in that establishment:

Provided that— 25

(a) the Board shall obtain the Minister’s approval before establishing any post of such class or grade as the Minister, by written notice to the Board, may designate; and

(b) the Director-General shall obtain the Board’s approval before appointing or promoting any person to a post of such class or grade as the Board, by written directive to the Director-General, may designate. 30

(2) With the approval of the Board, the Director-General may designate any—

(a) employee of the Authority as a safety and security oversight inspector or authorised officer; 35

(b) person who is not an employee of the Authority as a safety and security oversight inspector or authorised officer.

(3) The qualifications and duties designated under subsection (1) shall be as prescribed.”. 40

**12 New section substituted for section 32 of Cap. 13:16**

Section 32 of the principal Act is repealed and substituted by—

“32 Funds of Authority

(1) The funds of the Authority shall consist of—

- (a) fees, levies and charges payable to the Authority for registrations effected, licences, permits or certificates issued, services rendered or anything else done by it under this Act; and
- 5 (b) the aviation safety surcharge levied in terms of section 59A; and
- (c) such moneys as may be payable to the Authority from moneys appropriated for the purpose by Act of Parliament; and
- (d) grants and loans from the Government; and
- 10 (e) any other moneys than those referred to in paragraph (d) that the Authority may obtain, with the approval of the Minister and the Minister responsible for finance, by way of grants and donations; and
- (f) any other moneys that may vest in or accrue to the Authority, whether in terms of this Act or otherwise.
- 15 (2) The Authority shall keep the following separate accounts, namely—
  - (a) the Accidents and Occurrences Contingency Account, in respect of moneys accruing to the Authority from the aviation safety surcharge; and
  - 20 (b) the General Aviation Account, in respect of income accruing to the Authority from the other sources mentioned in subsection (1).
- (3) Without derogating from the requirements of the Public Debt Management Act [*Chapter 22:21*] (No. 5 of 2015), the Authority may, with the approval the Minister given after consultation with the Minister responsible for finance, raise money by way of loans.”
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### **13 New sections inserted in Cap. 13:16**

The principal Act is amended by the insertion after section 44 of the following sections—

- 30 “44A Civil aviation security programmes
- (1) Subject to this Act the Authority shall—
    - (a) with the approval of the Minister, be responsible for the development of national civil aviation security policies, strategies and programmes in Zimbabwe; and
    - 35 (b) with due regard to Zimbabwe’s obligations under the Chicago Convention, any other international convention, treaty or agreement relating to civil aviation to which Zimbabwe is a party, and to international best standards and practices—
      - (i) be responsible for the establishment, compilation, revision and publication of national civil aviation security programmes;
      - (ii) regulate the security operations of aerodromes, ground handlers, catering operators and other workers or agents in the civil aviation industry, in order to—
        - 40
        - 45 A. protect passengers, crew, aerodrome staff and other users of aerodrome and aviation facilities;

- B. prevent aerial piracy and other unlawful interference with civil aviation;
- C. ensure that appropriate action is taken when aerial piracy or other acts of unlawful interference with civil aviation occurs or threatens to occur: 5
- (c) co-ordinate activities under a national civil aviation security programme and other programmes referred to in paragraph (d):
- (d) specifically develop, and ensure the implementation of, the following national programmes—
  - (i) a national civil aviation security programme, in order to safeguard civil aviation against acts of aerial piracy and other acts of unlawful interference with civil aviation through practices and procedures which take into account the safety, regularity and efficiency of flights; and 10 15
  - (ii) a national civil aviation security training programme, in order to train personnel of all entities involved with, or who are responsible for, the implementation of various aspects of the national civil aviation security programme; and 20
  - (iii) a national civil aviation security quality control programme, which shall provide the structure, responsibilities, processes and procedures that promote and establish an environment and culture of continuing improvement and enhancement of civil aviation security in an effective manner; and 25
  - (iv) a national civil aviation screener certification programme.

(2) The national programmes developed under subsection (1) shall be considered by the National Civil Aviation Security Committee, and the Committee shall recommend to the Minister the approval of such programmes. 30

(3) The national programmes developed under subsection (1) shall be reviewed and updated from time to time as required by changing circumstances. 35

(4) The National Civil Aviation Security Committee shall ensure that the management, setting of priorities and organisation of the national civil aviation security quality control programme is undertaken independently from the entities and persons responsible for the implementation of the measures taken under that programme. 40

(5) The Authority shall make available to aerodrome operators and aircraft operators and other interested persons written copies of the appropriate part of the national civil aviation security quality control programme that is relevant to them.

**44B National Civil Aviation Security Committee** 45

(1) The Minister shall establish a National Civil Aviation Security Committee, which shall have the following mandate—

- (a) to define, allocate and co-ordinate tasks in the sphere of civil aviation security —

- (i) among and between Ministries, departments, agencies and other organisations; and
  - (ii) between aerodromes and air operators; and
  - (iii) among and between entities concerned with, or responsible for the implementation of various aspects of, the national civil aviation security programme;
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- (b) to advise the Minister with regard to civil aviation security policy;
  - (c) to review the effectiveness of civil aviation security measures and procedures and make appropriate recommendations to the Minister and the Authority.
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(2) The National Civil Aviation Security Committee shall consist of—

- (a) the Director-General, who shall be the chairperson of the Committee, and in whose absence a member of the Committee chosen by the membership thereof shall act as chairperson; and
  - (b) an officer responsible for national air transport facilitation in the Ministry responsible for civil aviation designated by the Minister; and
  - (c) an officer of the Authority designated by the Director-General; and
  - (d) an employee of the company established under section 82 designated by the chief executive officer of that company; and
  - (e) a commissioned member of the Zimbabwe Defence Forces designated by the Commander thereof; and
  - (f) a member of the Intelligence Services designated by the Director-General thereof; and
  - (g) a commissioned member of the Zimbabwe Republic Police designated by the Commissioner-General thereof; and
  - (h) an officer in the Ministry of foreign affairs designated by the Minister thereof; and
  - (i) an immigration officer designated by the Minister responsible for home affairs; and
  - (j) an officer responsible for customs administration designated by the Commissioner-General of the Zimbabwe Revenue Authority; and
  - (k) one or more persons invited by the Director-General from time to time for their knowledge, qualifications, experience or competence in any matter to be considered by the Committee.
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(3) In discharging its mandate the National Civil Aviation Security Committee shall consult interested persons engaged in civil aviation or the civil aviation industry.”

45 **14 Amendment of section 53 of Cap. 13:16**

Section 53 (“Cancellation of air operator’s certificate”) (1) of the principal Act is amended by the insertion after paragraph (g) of the following paragraphs—

“or

- (h) the holder's operations are unsafe or compromise public safety;
- (i) the aircraft or related equipment used by the holder are not or are not being designed, constructed, repaired, overhauled, maintained, operated or used to the extent necessary to render the holder's aircraft airworthy or to avoid endangering lives; 5
- (j) the holder has otherwise become an unfit person to hold an air operator's licence.".

**15 New sections substituted for section 55 of Cap. 13:16**

Section 55 of the principal Act is repealed and substituted by the following sections -- 10

**"55 Appointment and functions of Chief Investigator of Accidents and accident investigators.**

(1) There shall be a Chief Investigator of Accidents and such accident investigators as may be necessary for the purposes of this Part, whose offices shall be public offices and form part of the Public Service, and who shall (subject to subsection (5)) all be employed in the Ministry that is responsible for administering this Act. 15

(2) The Chief Inspector of Accidents and every accident investigator shall have or have held a professional pilot's qualification, or an aeronautical engineering qualification, or an air traffic control qualification or experience in one of the specialised areas of aviation such as operations, aerodynamics or aircraft design. 20

(3) The functions of the Chief Investigator of Accidents referred to in subsection (1) shall be --

- (a) to investigate and determine the causes of all occurrences and to report thereon to the Minister; and 25
- (b) to recommend to the Authority and the Minister measures for preventing and dealing with occurrences; and
- (c) to ensure the proper co-ordination of measures to prevent and deal with occurrences; and 30
- (d) to conduct such inspections and carry out such investigations as may be necessary or desirable to ensure that measures for preventing and dealing with occurrences are being implemented; and
- (e) to perform such other functions as may be prescribed; and 35
- (f) to co-operate with authorities and agencies outside Zimbabwe in the exercise of his or her functions under this section.

(4) Accident investigators shall perform, subject to the directions of the Chief Investigator, such of his or her functions as he or she may assign to them. 40

(5) Until such time as a substantive Chief Investigator of Accidents who is qualified in terms of subsection (2) is identified and appointed, the Authority shall, at the request of the Minister, second to the Ministry that is responsible for administering this Act an employee of the Authority who has any of the qualifications referred to in subsection (2) to be the Chief Investigator of Accidents for an initial period not exceeding twenty-four months and, if needed, for subsequent consecutive periods not exceeding twelve months at a time. 45

(6) The Chief Investigator of Accidents referred to in subsection (5) shall continue to be paid by the Authority and have the same conditions of service as are applicable to other employees of the Authority of his or her seniority within the Authority, but he or she shall otherwise be answerable to the head of the Ministry that is responsible for administering this Act and be subject to the discipline of the Civil Service while he or she is so seconded.

(7) Until such time as one or more substantive accident investigators who are qualified in terms of subsection (2) are identified and appointed, subsections (5) and (6) shall apply to the secondment of such investigators as they apply to the secondment of an Chief Inspector of Accidents in terms of those subsections.

(8) In the event of an occurrence the Minister may, at the request of the Chief Investigator of Accidents, request the Authority to second to the Ministry that is responsible for administering this Act one or more employees of the Authority who has any of the qualifications referred to in subsection (2) to assist the Chief Investigator as investigators for the duration of an investigation into the causes of the occurrence, and subsection (6) shall apply to the secondment of such investigators as they apply to the secondment of an Chief Investigator of Accidents.

(9) For the avoidance of doubt it is declared that no employee of the Authority who is seconded to the Ministry in terms of this section shall, by reason of such secondment or anything done in good faith pursuant to such secondment, be dismissed or penalised or suffer any diminution in his or her conditions of service with the Authority upon the termination of such secondment.

#### 55A Expenses of investigation of occurrences

(1) For the purpose of investigating an occurrence, the Chief Investigator of Accidents shall have power to require the Authority to pay any moneys from the Accidents and Occurrences Contingency Account referred to in section 32(2)(a) the expenses of—

- (a) retaining any person whose specialist or expert knowledge or skills are required for the investigation of the occurrence and the determination of its causes; and
- (b) having any item or sample connected with the occurrence tested inside or outside Zimbabwe; and
- (c) doing any other thing necessary to discover the causes of any occurrence and to complete the investigation pertaining thereto.

(2) At the conclusion of an investigation in respect of which any moneys have been paid from the Accidents and Occurrences Contingency Account in terms of subsection (1), the Chief Investigator of Accidents shall, in a written report to the head of the Ministry responsible for administering this Act render an account of the manner in which he or she has expended the moneys.

(3) The head of the Ministry shall copy the report referred to in subsection (2) to the Board, which may, through the head of the Ministry, require the Chief Investigator of Accidents to answer any questions put to him or her in writing by the Board that the Board may wish to have answered in connection therewith.”

**16 New section inserted in Part IX of Cap. 13:16**

Part IX (“Investigation of occurrences”) of the principal Act is amended by the insertion after section 59 of the following section—

**“59A Aviation safety surcharge**

(1) For the purpose of section 55A, there is hereby levied an aviation safety surcharge in accordance with this section. 5

(2) With effect from such date as the Minister, in consultation with the Board, shall fix by a notice in a Statutory Instrument (hereinafter called the “surcharge notice”), a surcharge is levied at the rate to be prescribed in the surcharge notice (not exceeding zero comma five *per centum* of the amount upon which it is surcharged, rounded upwards to the nearest unit of a dollar) upon every fee, levy and charge payable to the Authority for registrations effected, licences, permits or certificates issued, services rendered or anything else done by it under this Act (but not including the Airport Departure Fee prescribed in Statutory Instrument 165 of 2003 or any other regulations that may be substituted for the same). 10 15

(3) The Minister may in the surcharge notice, after consultation with the Board—

(a) exclude for any compelling reason from the scope of the aviation safety surcharge (whether indefinitely or temporarily) any class, category or description of registrations effected, licences, permits or certificates issued, services rendered or anything else done by the Authority under this Act for which any fee, levy or charge is payable; 20

(b) charge different rates of aviation security surcharge for different classes, categories or descriptions of registrations effected, licences, permits or certificates issued, services rendered or anything else done by the Authority under this Act for which any fee, levy or charge is payable. 25

(3) The Authority shall collect and account for the aviation safety surcharge in the same manner as it collects and accounts for all fees, levies and charges payable to it, and shall credit the proceeds from the surcharge to the Accidents and Occurrences Contingency Account referred to in section 32(2)(a): 30

Provided that the Authority may in respect of the expenses it incurs in collecting and accounting for the aviation safety surcharge and in administering the Accidents and Occurrences Contingency Account, deduct (by way of transfer to the General Account) from the moneys standing to the credit of Accidents and Occurrences Contingency Account at the end of every financial year an amount to be stipulated in the surcharge notice, not exceeding two point five *per centum* of such moneys.”. 35 40

**17 New section inserted in Cap. 13:16**

The principal Act is amended by the insertion after section 69 of the following section—

**“69A Powers of entry, inspection, etc. by safety and security oversight inspectors 45**

(1) A safety and oversight security inspector may, without warrant or the consent of the owner or occupier thereof (but subject to the



production on demand of an identity document issued by the Authority), inspect and enter any aircraft or aerodrome, and enter and inspect any any land or premises whereon or wherein such aircraft is situated, if he or she has reasonable grounds for believing that—

- 5 (a) the inspection, entry or search is necessary in the interests of defence, public safety, or public order; or
- (b) there are reasonable grounds for believing that the inspection, search or entry is necessary for the prevention, investigation or detection of an offence under this Act, or for the seizure  
10 of property which is the subject matter of such an offence or evidence relating to such an offence.

(2) For the purposes of subsection (1) a safety and oversight security inspector may—

- (a) take possession of any article, record or document; and
  - 15 (b) examine and make extracts from or copies of any record or document; and
  - (c) require any person—
    - (i) present at, within or about the aircraft or aerodrome, or within the land or premises wherein or whereon it  
20 is situated, to provide such information concerning the purpose for which the inspection is being conducted as the person can provide;
    - (ii) who has control or custody of any record or document pertaining to the purpose for which the inspection is  
25 being conducted, to explain any entry in the record or document;
- and
- (d) prevent an aircraft from flying, whether temporarily or indefinitely; and
  - 30 (e) prohibit any person from exercising the privileges of an air operator's certificate or other aviation licence or permit, whether temporarily or indefinitely.

(3) An inspector shall not retain any article taken in terms of subsection (1) or (2) for longer than is necessary for the purposes of his  
35 inspection.

(4) In any case of urgency affecting aviation safety or security, and pending the adoption of more definitive measures under this Act, the Director-General may issue (generally or in relation to a specific case or cases) a direction ordering to be done anything referred to in subsection  
40 (2)(d) and (e) and having effect for a period not exceeding seven days at a time.

(5) The Director-General shall as soon as possible after issuing a direction under subsection (4) publish it in the same way as a notice referred to in section 45(3) is published.

45 (6) Any person who hinders or obstructs an inspector in the exercise of his or her functions, or who contravenes a direction referred to in subsection (4), shall be guilty of an offence and liable to a fine not exceeding level five or to imprisonment for a period not exceeding six months or to both such fine and such imprisonment.”

**18 Amendment of section 79 of Cap. 13:16**

Section 79 (“Regulations”) (2) of the principal Act is amended by the repeal of paragraph (y) and the substitution of—

- “(y) the establishment of civil aviation security standards as advised by the National Civil Aviation Security Committee or which, in the opinion of the Minister, are necessary to enhance the security programmes referred to in section 44A and to meet international criteria in that field; 5
- (z) the transfer of certain functions from the State of registry of aircraft to the State of the operator of an aircraft in the case of lease, charter or interchange or any similar arrangements with respect to such aircraft pursuant to Article 83bis of the Chicago Convention; 10
- (aa) the assignment or delegation to the Authority of any function referred to in paragraphs (a) to (z).”.

**19 New Part substituted for Part XII of Cap. 13:16**

Part XII of the principal Act is repealed and substituted by— 15

“PART XII

FORMATION, ETC., OF AIRPORTS COMPANY OF ZIMBABWE (PRIVATE) LIMITED

**81 Interpretation in Part XII**

In this Part—

“airport” means any aerodrome of the Authority that is transferred to the Airports Company in terms of this Part and any other aerodrome it may establish or acquire; 20

“Airports Company” means the Airports Company of Zimbabwe (Private) Limited referred to section 82(2);

“fixed date” means the date of commencement of this Act; 25

“securities”, in relation to the Airports Company, includes shares, debentures, bonds and other securities of the Airports Company, whether or not constituting a charge on the Company’s assets;

“transfer date” means the date or dates referred to in section 84(1). 30

**82 Formation of Airports Company**

(1) Subject to this Part, the Minister is empowered to take such steps as are necessary under the Companies Act [*Chapter 24:03*] to secure the formation of a company limited by shares called the Airports Company of Zimbabwe (Private) Limited, the principal objects of which are the following— 35

- (a) to acquire, establish, develop, maintain, manage, control and operate airports in Zimbabwe; and
- (b) to establish, provide and maintain roads, approaches, apparatus, equipment, buildings and facilities in connection with airports; and 40
- (c) to provide any service or facility for the purposes of—
  - (i) the landing, parking and take-off of aircraft; and
  - (ii) the handling or clearing of aircraft, the supply of provisions to aircraft, including, but not limited to, 45

- 5 food, oils and fuels, and the emergency servicing of aircraft on an apron; and
- (iii) the handling of aircraft passengers and their baggage and of cargo at all stages while they are on the premises of an airport, including the transfer of such passengers and their baggage, and of cargo, to and from an aircraft;
- (iv) to undertake any other lawful activity at any airport; and
- 10 (d) to plan, design, construct, equip, maintain, repair, adapt and modify airports to the standards required or approved by the Authority and the Government of Zimbabwe, for the authorised carriage by air of passengers, baggage, cargo and freight; and
- 15 (e) to provide such services as the Board of the Airports Company considers can be properly provided by the Airports Company, and to charge for those services such fees as the Board may determine from time to time; and
- 20 (f) to develop identified airports in Zimbabwe as regional air transportation, cargo and passenger hubs, and support airline hub operations; and
- 25 (g) to provide safety and security measures for the handling of passengers, baggage, cargo and aircraft, together with the personnel requisite thereto, in accordance with local and international standards and recommended best practices and procedures; and
- 30 (h) to carry on the business of importers and exporters, carriers, shipping, forwarding, re-forwarding, clearing and transport agents, bonded warehousemen, storekeepers, publishers, printers and general merchants, and to buy or sell and deal in every merchantable commodity, substance and product; and
- 35 (i) to enter into agreements with any person connected with the business of the handling of passengers, baggage, cargo and freighting at international and domestic terminals; and
- (j) to establish and manage agencies or branches for the purposes of the Airports Company; and
- (k) to do such other things as a body corporate may do, as specified in its Memorandum and Articles of Association.

40 (2) The Airports Company of Zimbabwe (Private) Limited, a wholly owned company of the Government incorporated in terms of the Companies Act [*Chapter 24:03*] on the 20th August, 2014, shall be deemed to have been formed in accordance with this section with effect from the date of its incorporation.

### 83 Board of Airports Company

45 (1) Subject to subsection (2) the Board of the Airports Company shall consist of not fewer than five members and not more than seven members, appointed by the Minister in consultation with the President.

50 (2) In appointing the members of the Board, the Minister shall endeavour to secure that members are representative of the different groups or sectors of the community having an interest in aviation services and in

particular that at least three members are chosen for their experience or professional qualifications in the areas of aviation, law and accountancy.

(3) A member of the Board shall hold office for a period not exceeding three years.

(4) A member of the Board shall hold office on such terms and conditions of service as the Minister in consultation with the Minister responsible for finance may fix in relation to members generally. 5

(5) A retiring member of the Board is eligible for reappointment as a member provided that no member may be reappointed for a third consecutive term of office. 10

(6) The terms and conditions of office of a member of the Board shall not without the member's consent be altered to his or her detriment during the member's tenure of office.

(7) The Minister in consultation with the President shall designate one of the members as chairperson of the Board and another member as vice-chairperson. 15

(8) The vice-chairperson of the Board shall perform the chairperson's functions whenever the chairperson is for any reason unable to perform them.

(9) The chairperson or vice-chairperson of the Board may at any time resign from office as such by not less than one month's notice in writing to the Minister. 20

(10) Whenever the office of the chairperson or the vice-chairperson falls vacant, the Minister in consultation with the President shall fill the vacancy within three weeks. 25

**84 Transfer of certain assets, obligations, etc., of Authority to Airports Company, and valuation thereof**

(1) With effect from such date (the "transfer date") as the Minister shall specify by Statutory Instrument (which date may be before or after the fixed date, and which date may be a different date in relation to different assets and liabilities or classes thereof so transferred), the airports and aerodromes transferred to the Authority under Statutory Instrument 193 of 2003, are transferred to and shall vest in the Airports Company, together with— 30

(a) all the other the assets and rights of the Authority which, before the fixed date, were used or otherwise connected with the functioning of those airports and aerodromes: and 35

(b) subject to section 89, any liabilities and obligations attaching to the assets and rights of the Authority referred to in paragraph (a): and

(c) such buildings, infrastructure, runways, equipment, vehicles and all attachments relating to the functioning of the airports and aerodromes transferred to the Authority, and such other assets, rights, liabilities and obligations connected with the Authority's functions in relation to airports and aerodromes, as are specified by the Minister, with the approval of the Minister responsible for finance. 40 45

(2) The valuation of the assets, rights, liabilities and obligations transferred to the Airports Company under subsection (1) shall be mutually agreed between the Government, the Authority and the Airports Company.

(3) All bonds, hypothecations, deeds, contracts, instruments, documents and working arrangements which subsisted immediately before the relevant transfer date in relation to any asset, right, liability or obligation transferred to the Airports Company under this section and to which the Authority was a party shall, on and after that date, be as fully effective and enforceable against or in favour of the Airports Company as if, instead of the Authority, the Airports Company had been named therein.

(4) It shall not be necessary for the Registrar of Deeds to make any endorsement on title deeds or other documents or in his or her registers in respect of any immovable property, right or obligation which passes to the Airports Company under this section, but the Registrar of Deeds, when so requested in writing by the Airports Company, in relation to any particular such property, right or obligation, shall cause the name of the Airports Company to be substituted, free of charge, for that of the Authority on the appropriate title deed or other document or in the appropriate register.

(5) Any cause of action or proceeding which existed or was pending by or against the Authority immediately before the relevant transfer date in respect of any asset, right, liability or obligation that passes to the Airports Company under this section, may be enforced or continued, as the case may be, by or against the Airports Company in the same way that it might have been enforced or continued, as the case may be, by or against the Authority had this Act not been passed.

#### 85 Employees of Airports Company

(1) All employees of the Authority engaged on duties connected with the functioning of the airports and aerodromes transferred to the Airports Company under section 84, and identified by the Authority in consultation with the Minister and the Airports Company, are deemed to be seconded for a period of twelve months from the fixed date to the Airports Company and for that period shall be subject to the direction and control of the Board of the Airports Company:

Provided that any conflict between a seconded employee's duties to the Airports Company and the Authority shall during that period be determined by the Authority.

(2) After the period of twelve months referred to in subsection (1), or such longer period as the Airports Company and the Minister may agree, the Airports Company may engage, with the consent of the employees concerned, and (unless they agree to less favourable terms) on such terms not less favourable than those enjoyed by them immediately prior to their engagement by the Airports Company, any of the employees who on the fixed date were deemed to be seconded to the Airports Company under subsection (1):

Provided that, for the avoidance of doubt it is declared that any employee who refuses or is not offered to be engaged by the Airports Company shall remain as an employee of the Authority.

(3) Persons referred to in subsection (2) who are engaged by the Airports Company shall, if they were contributing to a pensions scheme managed by the Authority, be permitted to continue contributing to that scheme.

**86 Authorised share capital of Airports Company**

(1) The initial authorised share capital of the Airports Company shall be the sum of three thousand two hundred United States Dollars (\$3 200.00) divided into six thousand four hundred (6 400) ordinary shares of a nominal value of fifty United States cents (\$0.50) each. 5

(2) With the approval of the Minister and the Minister responsible for finance, the Board of the Airport Company may by resolution increase the Company's share capital.

(3) Where the Board of the Company has increased the Company's share capital, the Minister shall cause notice thereof to be published in the *Gazette*. 10

**87 Sharing of certain revenues between Airports Company and Authority, etc.**

(1) Ninety *per centum* of—

(a) the airport departure fee (commonly known as the passenger service charge) levied in terms of the Civil Aviation (Airport Departure Fee) Regulations, 2003, published in Statutory Instrument 165 of 2003, shall be retained by the Airports Company and the remaining ten *per centum* shall be paid by the Company to the Authority; and 15 20

(b) landing and parking fees charged to air operators shall be retained by the Airports Company and the remaining ten *per centum* shall be paid by the Company to the Authority; and

(c) the fuel levy charged to fuel service providers at the airports and aerodromes of the Airports Company shall be retained by the Airports Company and the remaining ten *per centum* shall be paid by the Company to the Authority. 25

(2) The rental, if any, to be charged by the Authority in consideration for the use by the Airports Company of its land long leased to it in terms of Statutory Instrument 193 of 2003 and of any of the Authority's buildings thereon, shall be as agreed between the Minister, Authority and Airports Company. 30

**88 Issue of securities in consideration for transfer of assets**

(1) In consideration for the transfer of the assets of the Authority to the Airports Company by virtue of section 84, the Airports Company, if so required by the Minister, shall issue such securities as the Minister may direct to— 35

(a) the Minister or a person nominated by the Minister; and  
 (b) any person entitled to require the issue of securities following their initial allotment to a person referred in paragraph (a). 40

(2) Securities issued pursuant to a direction under subsection (1)—

(a) shall be issued or allotted at such times and on such terms and conditions as the Minister may direct; and 45

(b) shall be regarded as fully paid, and treated for the purposes of the Companies Act [*Chapter 24:03*] as if they had been paid up by virtue of the payment to the Airports Company of their nominal value in cash.

(3) Any dividends or other moneys received by the Minister or any other person on behalf of the State in right of or on the disposal of any security or right acquired by virtue of this section shall be paid to the Consolidated Revenue Fund.

5 (4) Stamp duty shall not be chargeable under the Stamp Duties Act [Chapter 23:09]—

(a) in respect of any security issued in compliance with a direction under subsection (1); or

10 (b) where any convertible securities were issued in compliance with a direction under subsection (1), in respect of the exercise of the conversion rights attached to any such security.

(5) The Minister shall not—

15 (a) give a direction under subsection (1) at a time when the Airports Company has ceased to be wholly owned by the State; or

(b) exercise any power conferred on him or her by this section, or dispose of any security issued or allotted to him or her pursuant to this section, or dispose of any right in such security, except after consultation with the Minister responsible for finance.

89 Assumption of debts; conversion of loans transferred to Airports Company

(1) In this section—

25 “transferred loan” means any moneys lent to the Authority by the State, the liability to repay which vests in the Airports Company by virtue of section 84.

(2) The assumption of or succession to the liabilities in respect of domestic and international debts of the Authority and Government before the transfer date shall be as agreed between the Minister, Authority, Airports Company and the Minister responsible for finance.

30 (3) In relation any loans transferred to the Airports Company, the Company, if directed to do so by the Minister, shall issue such securities as the Minister may require to—

(a) the Minister or a person nominated by the Minister; or

35 (b) any person entitled to require the issue of the securities following their initial allotment to a person referred to in paragraph (a);

up to an amount equal to the amount of any transferred loan.

40 (4) The issue of securities in terms of subsection (3) shall have the effect of extinguishing by novation the transferred loan in respect of which the securities were issued, up to the nominal value of the securities.

(5) Section 88(2) to (5) shall, with such changes as may be necessary, apply to the issue of securities under this section and to the rights of holders of such securities.

45 90 Minister may give directions to Authority

(1) Notwithstanding anything to the contrary in the Act, the Minister may give the Board of the Authority directions in writing in order

to ensure the proper transfer of the assets and liabilities of the Authority to the Airports Company, and the Board shall without delay comply with every such direction.

(2) Without derogating from subsection (1), directions given under that subsection may provide for— 5

(a) the cessation of all or any of the functions of the Authority and any person in relation to matters for which the Airports Company has become, is or will be responsible in pursuance of its objects referred to in section 82(1);

(b) the termination of any contract entered into between the Authority and any person: 10

Provided that no such direction shall authorise the Authority to commit an unlawful breach of any such contract:

(c) the production of any report and the provision of any information concerning the conduct of the Authority or the Board of the Authority or anything done by or on behalf of the Authority or the Board of the Authority: 15

**91 Airports Company deemed to be licensed**

(1) Notwithstanding any other provision of this Act the Airports Company or any subsidiary company formed by it for the purpose shall be deemed to be the holder of an operation licence issued in terms of this Act and authorising the Company to provide and operate the same operational services and systems that the Authority provided and operated immediately before the fixed date. 20

(2) The Authority shall without delay cause the relevant licences to be issued to the companies referred to in subsection (1), and those licences may be renewed, amended, suspended or cancelled in all respects as if they had been issued in terms of this Act.”. 25

**20 Minor amendments to Cap. 13:16**

The provisions of the principal Act specified in the first column of the Schedule are amended to the extent set out opposite thereto in the second column. 30

SCHEDULE (Section 19)

MINOR AMENDMENTS TO CIVIL AVIATION ACT [CHAPTER 13:16] (NO. 7 OF 1998)

<i>Provision</i>	<i>Extent of Amendment</i>	
Sections 56(1), (2) and (3) and 59	By the deletion of “inspector” and the substitution of “investigator”.	35
Section 57	By the deletion of “Chief Inspector” and the substitution of “Chief Investigator”.	
Section 64(1)	By the deletion of “sections 16 and 17” and the substitution of “sections 57 and 71”.	40
Section 67(4)	By the deletion of “section 17” and the substitution of “section 57”.	