



BERMUDA

BERMUDA CIVIL AVIATION AUTHORITY ACT 2016

2016 : 28

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Whereas it is expedient to establish the Bermuda Civil Aviation Authority and make provision for connected matters;

Be it enacted by The Queen's Most Excellent Majesty, by and with the advice and consent of the Senate and the House of Assembly of Bermuda, and by the authority of the same, as follows:

PART 1
PRELIMINARY

Citation

1 This Act may be cited as the Bermuda Civil Aviation Authority Act 2016.

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Interpretation

2 In this Act, unless the context otherwise requires—

“air navigation” includes—

- (a) the navigation or movement of aircraft in the air or on the ground; or
- (b) the control or movement of vehicles in any part of an airport used for the movement of aircraft other than movement on the apron;

“Air Navigation (Overseas Territories) Order” means any Air Navigation (Overseas Territories) Order or other statutory instrument of a similar nature made under any United Kingdom Act;

“air transport services” means any service for the carriage of passengers, cargo or mail performed by any aircraft for hire or reward, except that a member of a club carried in any aircraft belonging to the club for the purpose of instruction shall not, if the instructor is also a member of the club, be deemed to be carried for hire or reward, notwithstanding that payment is made for such instruction or carriage;

“airport” means an area on land or water (including any buildings, installations, and equipment) intended to be used either wholly or in part for the arrival, departure and surface movement of aircraft;

“apron” means an area in an airport on land, intended to accommodate aircraft for the purposes of loading or unloading passengers, mail or cargo, fuelling, parking, or maintenance of aircraft;

“authorised person” means any person authorised in writing—

- (a) by the Governor; or
- (b) by the Director-General under section 24(6),

to exercise a particular function or power referred to in this Act or pursuant to any Air Navigation (Overseas Territories) Order;

“Authority” means the Bermuda Civil Aviation Authority established under section 3;

“Bermuda Civil Aviation Authority fees ” means the fees or charges relating to the operation of and services provided by the Authority that are prescribed under—

- (a) the Air Navigation (Fees for Certificates and Services) Regulations 2012;
- (b) the Mortgaging of Aircraft and Aircraft Engines (Fees) Regulations 1999;
- (c) the Civil Aviation (Air Transport Licensing) Regulations 2007; or
- (d) any other law;

“Board” means the Board of Directors of the Authority referred to in section 7;

“Chairman” means the Chairman of the Board;

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- “commencement date”, in relation to a particular provision or Part of this Act, means the date that the provision or Part, as the case may be, comes into operation in accordance with section 31;
- “Convention” means the Convention on International Civil Aviation, signed in Chicago on the 7th December 1944;
- “Director” means a voting member of the Board referred to in section 7(2);
- “Director-General” means the person appointed as such pursuant to section 24;
- “employee” has the meaning given in section 3 of the Employment Act 2000;
- “ICAO” means the International Civil Aviation Organization established by the Convention;
- “Minister” means the Minister responsible for civil aviation;
- “net loss” means a situation in which, in any year, after accounting for bad and doubtful debts, depreciation in assets and other contingencies, the Authority’s costs exceed its revenues;
- “net surplus” means a situation in which, in any year, after accounting for bad and doubtful debts, depreciation in assets and other contingencies, the Authority’s revenues exceed its costs;
- “Operating Fund” means the Authority’s Operating Fund established pursuant to section 15;
- “Register of Aircraft” means the Bermuda National Register maintained in Bermuda in pursuance of article 4 of the Air Navigation (Overseas Territories) Order 1989 and continued under any Order amending or replacing that Order;
- “Register of aircraft engine mortgages” means the register referred to in section 6(1)(a) of the Mortgaging of Aircraft and Aircraft Engines Act 1999;
- “Register of aircraft mortgages” means the register referred to in section 6(1)(a) of the Mortgaging of Aircraft and Aircraft Engines Act 1999;
- “Reserve Fund” means the Authority’s Reserve Fund established pursuant to section 16;
- “Secretary” means the person selected as the Secretary of the Authority under paragraph 1 of Schedule 1.

PART 2

BERMUDA CIVIL AVIATION AUTHORITY

Establishment of the Bermuda Civil Aviation Authority

3 (1) There is established an authority to be known as the “Bermuda Civil Aviation Authority”.

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(2) The Authority is a body corporate, having perpetual succession and a common seal.

(3) The Authority may sue and be sued in its corporate name and may for all purposes be described by that name.

Principal functions

- 4 (1) The principal functions of the Bermuda Civil Aviation Authority are—
- (a) such functions as are, for the time being, conferred on the Governor by or under any Air Navigation (Overseas Territories) Order and designated in writing by the Governor with respect to—
 - (i) the regulation of civil aviation in Bermuda (including the registration of aircraft);
 - (ii) the safety of air navigation and aircraft (including airworthiness);
 - (iii) the regulation of air traffic;
 - (iv) the certification of operators of aircraft and the licensing of air crews;
 - (v) the certification and licensing of airports; and
 - (vi) licensing of aircraft maintenance and other aviation personnel;
 - (b) the licensing of air transport services;
 - (c) the enforcement of this Act, and of all laws of the United Kingdom relating to civil aviation and having application in Bermuda, other than laws relating to the investigation of accidents;
 - (d) to ensure that civil aviation in Bermuda conforms to the standards and recommended practices of ICAO;
 - (e) the inspection of aircraft for the purpose of checking and enforcing compliance with this Act;
 - (f) the continuation and maintenance of the Register of Aircraft;
 - (g) the continuation and maintenance of the Register of aircraft mortgages and the Register of aircraft engine mortgages;
 - (h) the inspection of airports, including airport safety management practices for the purpose of checking and enforcing compliance with this Act;
 - (i) the inspection of air transport operators' facilities, air traffic control facilities, air navigation aids, and aircraft maintenance facilities, for the purpose of checking and enforcing compliance with this Act,

and nothing in this Act relating to the Authority shall be construed as derogating from any power exercisable by virtue of this or any other law to make regulations conferring any further function on the Authority.

- (2) In particular, and without prejudice to subsection (1), the Authority shall—

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- (a) provide aircraft registration services, and maintain a register of aircraft, a register of aircraft mortgages and a register of aircraft engine mortgages;
- (b) provide aircraft regulatory services, including—
 - (i) survey and inspection services for all aircraft on the register;
 - (ii) documentation and certification services for all aircraft on the register and all crew serving on those aircraft;
 - (iii) monitoring in respect of all aircraft on the register to ensure compliance with applicable requirements of international conventions relating to aircraft which have been extended to Bermuda together with related instruments and codes;
 - (iv) issuance, in appropriate circumstances, of exemptions and dispensations from the requirements referred to in subparagraph (iii);
 - (v) detention of unsafe or unairworthy aircraft;
 - (vi) preparation of cases for prosecution of offences committed under any Air Navigation (Overseas Territories) Order and regulations made thereunder;
 - (vii) regulatory oversight of aircraft search and rescue in co-ordination with relevant Government departments and bodies;
 - (viii) provision of aeronautical information services, issuance of aircraft notices disseminating advice and information to the aircraft industry; and
 - (ix) international relations within the civil aviation sector including co-operation under regional agreements on civil aviation;
- (c) promote the development of Bermuda as an international aircraft centre;
- (d) provide advice to the Governor and Minister on civil aviation policy, legislative requirements and economic issues pertaining to the activities in this section and with respect to the administration of civil aviation matters in Bermuda;
- (e) represent Bermuda at international fora related to civil aviation affairs; and
- (f) discharge such other functions as are for the time being conferred on it by virtue of this Act or any other Act.

(3) The Authority shall have such other functions relating to the regulation of civil aviation as the Governor may, from time to time, in writing, specify either to the Authority or to an authorised person.

(4) The functions of the Authority specified in this section shall be exercised and discharged in such manner as not to conflict or be inconsistent with—

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- (a) any provision of law in force in Bermuda relating to civil aviation or any direction, order or notice made, given or issued under any such provision of law;
- (b) any international convention relating to civil aviation adhered to for the time being by the United Kingdom Government or by Bermuda, in so far as such provisions apply in relation to civil aviation in Bermuda;
- (c) any agreement relating to civil aviation in Bermuda entered into and for the time being subsisting between the United Kingdom or Bermuda and any other jurisdiction.

General powers

5 (1) For the purposes of carrying out its functions, but subject to the provisions of this Act, the Authority shall have the power—

- (a) to carry on such business and other activities;
- (b) to do all such things and enter into all such transactions,

as appear to the Authority to be necessary, or advantageous, for it to carry on or perform or enter into, for or in connection with the discharge of its functions.

(2) Without prejudice to the generality of the foregoing provisions of this Act, but subject to the provisions of this Act, the Authority may—

- (a) engage such staff, consultants and other persons as it considers necessary, on such terms and conditions as it considers appropriate, subject to the requirements of applicable law of Bermuda;
- (b) provide an advisory service and disseminate information and guidance on matters relating to civil aviation, regulatory requirements and civil aviation legislation in Bermuda;
- (c) make such charges, as the Authority may determine, for the provision of its services under this subsection and collect Bermuda Civil Aviation Authority fees; and
- (d) with the approval of the Minister and the Minister of Finance, borrow money and otherwise raise capital in accordance with this Act.

Minister may give general directions

6 Subject to section 4(4), the Minister may, after consultation with the Board, and after taking into account and having due regard to such representations as the Board may make to him, give such general and specific directions in written form—

- (a) on matters relating to finances; and
- (b) as to the policy to be followed by the Authority in the performance of its functions,

and the Board shall give effect to such directions.

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Board of Directors

7 (1) There shall be a Board of Directors of the Authority which, subject to the provisions of this Act and legislation relating to civil aviation, shall be responsible for the actions of the Authority and the general administration of its affairs and business.

(2) The Board shall consist of not less than five nor more than seven Directors appointed by the Minister who are voting members of the Board from persons appearing to him to be qualified having had experience of, or having shown capacity in, matters relating to—

- (a) civil aviation;
- (b) industry;
- (c) commerce;
- (d) transportation;
- (e) finance;
- (f) law;
- (g) government; or
- (h) administration,

and one non-voting member.

(3) The Directors shall be paid such fees and allowances as the Minister may determine.

(4) The provisions of Schedule 1 shall have effect with respect to the constitution and proceedings of the Board and, subject to the provisions of Schedule 1, the Board may regulate its own proceedings.

Interest register

8 (1) The Minister shall cause to be compiled and maintained, in accordance with this Act and in such form as the Minister considers appropriate, an interest register.

(2) Where any Director has an interest in any business conducted and regulated by the Authority, the Director shall file a written notice in the interest register as soon as reasonably practicable after the Director becomes aware that such business is being transacted.

Delegation of powers

9 (1) Subject to this Act, the Board may delegate to—

- (a) a Director;
- (b) a committee appointed by the Board;
- (c) the Director-General; or
- (d) any employee,

any of the functions or powers of the Authority under this Act, except the power of delegation conferred by this section.

(2) Every delegation under this section shall be in writing and shall be revocable by the Board, but no such delegation shall prevent the Board from exercising the powers so delegated.

PART 3
FINANCE AND BUDGET

Financial year

10 (1) The financial year of the Authority is the period of twelve months ending on the 31st day of March in any year.

(2) The first financial year shall consist of the period commencing on the date of the establishment of the Authority and ending on the 31st day of March of the following year.

Work plan and budget

11 (1) The Authority shall prepare an annual budget, which shall include—

- (a) an estimate of total operating expenditures for the upcoming financial year;
- (b) an estimate of the total capital expenditures for the upcoming financial year; and
- (c) an estimate of the total revenues, by source.

(2) Not later than six months before the commencement of each financial year, the Authority shall prepare its work plan for the upcoming financial year, which shall include—

- (a) the Authority's strategic priorities for the upcoming financial year;
- (b) any major activities that the Authority anticipates undertaking during the upcoming financial year;
- (c) any quantitative indicators that the Authority has adopted to measure its performance during the upcoming financial year; and
- (d) a preliminary estimate of the Authority's budget for the upcoming financial year.

(3) Not later than three months before the commencement of each financial year, the Authority shall submit to the Minister and to the Minister of Finance—

- (a) a preliminary report setting out the Authority's proposed work plan for the next financial year; and
- (b) a proposed budget, with a request for approval, in such form and in such detail as the Ministers may require, for the upcoming financial year.

- (4) The Minister of Finance shall—
- (a) consider—
 - (i) the documents submitted under subsection (3) and any other information submitted by the Authority; and
 - (ii) any information submitted by the Minister;
 - (b) after taking into account and having due regard to such representations made by the Authority and the Minister, make any modifications to the proposed budget that the Minister of Finance deems necessary and proper; and
 - (c) issue a written decision approving the budget.

(5) The budget that is approved under subsection (4)(c) shall constitute the Authority's budget for the upcoming financial year and shall be published in the Gazette.

(6) Once the budget has been approved, the Authority shall issue a final report setting out the Authority's work plan for the next financial year.

(7) The Authority shall not, without the approval of the Minister, spend in total in any financial year more than the total amount of expenditures specified in the approved budget for that financial year.

(8) The Authority shall make annual or periodic budget reports in respect of its activities in such form as the Minister may direct.

(9) The Authority shall submit to the Minister its reports quarterly during each financial year or as the Minister may from time to time otherwise require.

(10) The Authority shall specify in its annual report the title and corresponding salary of every senior executive within the Authority.

(11) In this section, "senior executive" means—

- (a) a Director or the Director General; and
- (b) any other person who, under the immediate authority of a Director or the Director General—
 - (i) exercises managerial functions; or
 - (ii) is responsible for maintaining accounts or other records of the Authority.

Funds of the Authority

12 (1) The funds of the Authority for the performance of its functions shall consist of—

- (a) the authorised and paid-up capital;
- (b) the Operating Fund; and

(c) the Reserve Fund.

(2) The Authority may create such special funds as appropriate with the express approval of the Minister of Finance.

(3) The Authority, consistent with its approved budget, shall apply its funds and revenues—

(a) towards—

(i) remuneration and allowances to the officers, employees and other persons employed or engaged by the Authority; and

(ii) allowances and fees for Directors of the Board of the Authority;

(b) in the repayment of any sums provided or advanced by the Government under section 13 or borrowed under section 5(2)(d);

(c) to meet all other costs and expenditures properly incurred in carrying out the functions of the Authority.

(4) The authorised capital of the Authority—

(a) shall be established by agreement between the Minister and the Board, with the approval of the Minister of Finance; and

(b) shall include sufficient capital to allow the Authority to operate efficiently;

(c) shall be subscribed at such times and in such amounts as the Board, with the approval of the Minister of Finance, may require.

(5) The Authority may increase the authorised capital, subject to the approval of the Minister and the Minister of Finance.

Initial paid-up capital and advances

13 (1) The initial paid-up capital of the Authority shall be established by agreement between the Minister and the Board, and approved by the Minister of Finance, and shall be used—

(a) to fund the start-up of the Authority; and

(b) to cover the operating expenses that the Authority incurs during the period from the establishment of the Authority until the later of—

(i) the 31st day of March of the year following the date of the initial meeting of the Board; or

(ii) the date by which the Authority has collected sufficient revenues from fees to cover operating expenses on a going forward basis.

(2) The Minister may from time to time, with the consent of the Minister of Finance, out of money appropriated by the Legislature for the purpose, make advances to the Authority.

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(3) The Minister may enter into agreements with the Authority for the repayment, on terms and conditions satisfactory to the Minister of Finance, of the initial paid-up capital and any amount from time to time provided or advanced to the Authority by the Government.

Loans

14 (1) The Minister may, with the consent of the Minister of Finance, make loans to the Authority, in which case the Minister shall specify in writing the terms and conditions of the loan, including the duration of the loan and the rate of interest to be charged.

(2) The Authority, with the consent of the Minister of Finance, may enter into loan agreements with licensed financial institutions, which may be secured by either—

- (a) the full faith and credit of the Government; or
- (b) the future anticipated revenue that the Authority will derive from the payment of the Authority's fees.

(3) The Minister of Finance may provide a guarantee to any financial institution that makes a loan to the Authority pursuant to subsection (2).

Operating Fund

15 (1) The Authority shall establish and maintain an Operating Fund.

(2) The Operating Fund shall consist of—

- (a) any moneys as from time to time—
 - (i) are provided or advanced by the Government pursuant to section 13 or borrowed by the Authority pursuant to section 5(2)(d), as the case may be; or
 - (ii) accrue to the Authority from its operations, including registration fees, annual fees, or other aircraft fees or any other law relating to the powers and functions of the Authority;
- (b) such other property as may from time to time be lawfully vested in the Authority.

Reserve Fund

16 (1) The Authority shall establish and maintain a Reserve Fund.

(2) The Reserve Fund shall consist of funds necessary—

- (a) to cover any immediate incident expenditures prior to insurance claims; and
- (b) to cover expenditures in case of loss of business.

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Investment

17 (1) The Authority shall open bank accounts, and purchase the financial instruments specified in subsection (4), in its own name.

(2) Subject to subsection (3), the Authority shall maintain its Operating Fund in interest-bearing bank accounts, wherever possible, within or outside Bermuda.

(3) With the prior approval of the Minister of Finance and in accordance with his directions, the Authority may maintain any part of the funds in its Operating Account in interest-bearing bank accounts in a bank outside Bermuda—

- (a) if the bank outside Bermuda in which the funds will be kept is approved by that Minister for such purpose; and
- (b) in accordance with that Minister's instructions relating to how such account shall be managed.

(4) The Authority shall maintain its Reserve Fund in an amount agreed with the Minister of Finance and in—

- (a) interest-bearing bank accounts;
- (b) certificates of deposit; and
- (c) Treasury bills issued by the Government of the United States of America.

[Section 17 subsection (2) deleted and substituted by 2021 : 30 s. 2 effective 22 July 2021]

Transfer of net surplus

18 (1) In any year in which the Authority realises a net surplus, the Authority, after recouping any net losses, shall transfer any remaining surplus in the manner and in the amounts (by reference to a percentage amount) as from time to time agreed by the Minister and the Board, with the approval of the Minister of Finance, to—

- (a) the Consolidated Fund;
- (b) the paid-up capital of the Authority; and
- (c) the Reserve Fund.

(2) Notwithstanding subsection (1), in any year in which making the payment specified in subsection (1)(b) would cause paid-up capital and the Reserve Fund to exceed the Authority's authorised capital, the Authority—

- (a) after making the payment specified pursuant to subsection (1)(a); and
- (b) after making any payment necessary to cause paid-up capital and the Reserve Fund to equal the Authority's authorised capital,

shall pay the balance of the net surplus to the Consolidated Fund.

Accounts and audit

19 (1) The Authority shall—

- (a) keep proper accounts and records of its transactions and affairs;
- (b) do all things necessary to ensure that all payments out of its moneys are properly authorised and correctly made, and that adequate control is maintained over its assets, or those assets in its custody, and its expenditure; and
- (c) for each financial year, prepare financial statements in such form as the Accountant General may direct.

(2) The accounts of the Authority shall be audited by the Auditor General or such other auditor as may be appointed annually by the Auditor General.

(3) A person shall not be qualified for appointment as an auditor under subsection (2) unless he is a public accountant who is registered or deemed to be registered under the Chartered Professional Accountants of Bermuda Act 1973.

(4) Within three months after the end of each financial year, the Authority shall submit to the auditor its financial statements for the year and shall meet any reasonable request from the auditor for information relevant to the audit.

(5) The auditor shall as soon as practicable after the financial statements have been submitted for audit, conduct the audit and send a report of his audit to the Authority.

(6) If the Auditor General appoints an auditor under subsection (2), the remuneration of that auditor shall be paid by the Authority.

(7) The Authority shall submit a copy of the audited accounts to the Minister together with a copy of any report made by the auditor.

(8) The auditor shall also submit such periodical and special reports to the Minister and to the Authority as may appear to the auditor to be necessary or as the Minister or the Authority may require.

(9) In subsections (4) to (8), where an auditor has not been appointed under subsection (2), "auditor" includes the Auditor General.

Publication of accounts and annual report

20 (1) The Authority, within 60 days of receiving the auditor's report referred to in section 19(7), shall prepare and transmit to the Minister —

- (a) a report on the operations of the Authority during the preceding financial year, including a discussion of—
 - (i) the major activities undertaken;
 - (ii) any significant deviations from the work plan adopted by the Authority pursuant to section 11;
 - (iii) any significant deviations from the budget adopted by the Authority pursuant to section 11; and
 - (iv) the results achieved; and

- (b) a copy of the annual financial statements of the Authority certified by the auditor.
- (2) The Minister shall as soon as practicable after receipt thereof—
 - (a) lay a copy of such audited accounts before each House of the Legislature, together with a copy of any report made by the auditor on the accounts; and
 - (b) cause a copy of the report referred to in subsection (1)(a) and the annual financial statements to be laid before both Houses of the Legislature.

[Section 20 subsection (1) amended by 2021 : 30 s. 3 effective 22 July 2021]

PART 4
PROTECTION OF BOARD

Immunity from suit

21 No action, suit, prosecution or other proceedings shall lie against any Director, any member of the staff or any person acting on behalf of the Authority in respect of any act done, or any omission made, in good faith in the execution or intended execution of any function under this Act.

Confidentiality

22 (1) Subject to subsection (2), a person, being a Director, an officer, employee, agent or adviser or member of staff of the Authority shall not reveal or in any manner communicate or disclose to any other person, except as authorised or required by law, any information acquired by him by reason of his office or employment or in exercise of the Authority's function under or for the purposes of this Act or any other law, which information relates to the affairs of—

- (a) the Authority;
 - (b) any aircraft on the Register of Aircraft and any mortgages relating to such registered aircraft or aircraft engine on the Register of aircraft mortgages or the Register of aircraft engine mortgages; or
 - (c) a registered owner of an aircraft.
- (2) Subsection (1) shall not apply to a disclosure—
- (a) lawfully required or permitted by a court of competent jurisdiction in Bermuda;
 - (b) made for the purpose of assisting the Authority to exercise a function conferred on it by this Act or any other law;
 - (c) made in respect of the affairs of an aircraft or its owner for which consent has been voluntarily given by the owner;

- (d) where the information disclosed is or has been available to the public from any other source;
 - (e) where the information disclosed is in a summary or in statistics expressed in a manner that does not enable the identity of the person to whom, or an aircraft to which, the information relates to be ascertained; or
 - (f) lawfully made to a person entitled to obtain such information under the laws of Bermuda.
- (3) A person who contravenes subsection (1) commits an offence and is liable—
- (a) on summary conviction, to a fine not exceeding \$20,000 or to imprisonment not exceeding one year or to both such fine and imprisonment; or
 - (b) on conviction on indictment, to a fine not exceeding \$50,000 or to imprisonment for a term not exceeding two years or to both such fine and imprisonment.

PART 5

STAFF OF THE AUTHORITY

Appointment of staff

23 (1) The Authority shall appoint and employ as staff qualified persons necessary for the performance of its functions.

(2) The Director-General may arrange with the Permanent Secretary of the Ministry or department concerned the secondment of a public officer to work at the Authority, and any person so seconded shall, in relation to salary, pensions, gratuity or conditions of service, be treated as continuing in the service of the Government.

(3) Consistent with its approved budget, and subject to this Act and all applicable laws, the Authority shall establish the remuneration, terms and conditions of employment of each member of the staff.

Director-General

24 (1) The Board shall appoint and employ a Director-General as the principal officer of the Authority who shall have—

- (a) general managing direction of the Authority;
- (b) superintendence of aircraft registered in Bermuda; and
- (c) responsibility for the enforcement and administration, on behalf of the Governor and the Board, of the provisions of law relating to civil aviation that are applicable in Bermuda or any other related law.

(2) The Director-General shall be responsible for the day-to-day management and administration of the Authority to the extent of the authority delegated to him by the Board, and as designated to the Authority by the Governor, including—

- (a) the overall safety and security of civil aviation in Bermuda;
- (b) financial and operational matters;
- (c) developing administrative and human resource development manuals for approval by the Authority;
- (d) preparing regular financial and operational reports for the Authority; and
- (e) the administration of the Register of Aircraft, the Register of aircraft mortgages and the Register of aircraft engine mortgages maintained by the Authority.

(3) In the Director-General's absence or inability to fulfil his functions, the Board may appoint a senior employee of the Authority who is an authorised person to discharge the functions of the Director-General during the period of his absence or inability.

(4) Any person appointed pursuant to subsection (3), when acting within the scope of the appointment, shall exercise the full authority of the Director-General, and shall be eligible for remuneration commensurate to the service provided.

(5) Subject to this Act and applicable law, the terms and conditions on which the Director-General holds office are to be as determined by the Board.

(6) The Director-General may authorise an employee of the Authority to exercise any of the functions or powers of the Authority that the Director-General considers appropriate relating to—

- (a) licences;
- (b) certification;
- (c) approval;
- (d) permission,

except the power to authorise conferred by this subsection.

Transfer of Department of Civil Aviation officers to the Authority

25 (1) A person who immediately before the coming into force of this Act was a public officer in the service of the Department of Civil Aviation, may be offered employment by the Authority.

(2) If he accepts such offer, the person shall become an employee of the Authority on terms and conditions of employment no less favourable than those that applied to his office immediately before the coming into force of this Act, except—

- (a) to the extent that other terms and conditions of employment are agreed between him and the Authority (subject to the Employment Act 2000 and other applicable laws);

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- (b) that disciplinary matters shall be dealt with in accordance with the disciplinary rules and procedures established by the Authority (which shall be subject to the Employment Act 2000 and other applicable laws);
- (c) to the extent that applicable law otherwise provides.

(3) Every public officer who accepts employment with the Authority offered to him pursuant to this section shall be deemed to have transferred into employment as an employee with the Authority on the date of such acceptance.

Authority to comply with National Pension Scheme (Occupational Pensions) Act 1998
26 For the avoidance of doubt, the Authority shall comply with the National Pension Scheme (Occupational Pensions) Act 1998 in relation to pensions for employees of the Authority.

Applicability of Health Insurance Act 1970
27 For the avoidance of doubt, the Health Insurance Act 1970 shall apply to the Authority.

PART 6

SAVINGS, TRANSITIONAL AND FINAL PROVISIONS

Regulations

28 (1) The Minister may make regulations prescribing anything which may be or is required to be prescribed under this Act.

(2) The Minister may by Regulations repeal or amend any provision relating to civil aviation—

- (a) in any law that is passed before this Act; or
- (b) in any other instrument made under an Act before the passing of this Act,

where it appears to him that that provision is inconsistent with, or requires amendment consequentially upon, or has become unnecessary in consequence of, the provisions of this Act or regulations made hereunder.

(3) Regulations made by the Minister pursuant to this Act shall be subject to the negative resolution procedure.

Savings and transitional

29 The savings and transitional provisions that are set out in Schedule 2 shall have effect.

Consequential amendments

30 The consequential amendments that are set out in Schedule 3 shall have effect.

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Commencement

31 (1) This Act shall come into operation on such day as the Minister may by notice in the Gazette appoint.

(2) The Minister may appoint different days for different provisions of this Act.

SCHEDULE 1

(Section 7(4))

CONSTITUTION AND PROCEEDINGS OF BOARD

Appointment of Board, Chairman and other officers

- 1 (1) The Minister shall appoint Directors as follows—
- (a) two shall be selected by the Governor; and
 - (b) the other Directors shall be appointed by the Minister, after consultation with the Governor.
- (2) The Minister shall appoint from among the Directors a Chairman and a Deputy Chairman, and the Directors shall select one of the members of the Board as a Secretary.
- (3) The Minister shall appoint the Director-General to be an ex-officio, non-voting member of the Board.

Tenure of office of Directors

- 2 (1) Subject to subparagraph (2), a Director shall hold office on such conditions and for such term as the Minister may determine.
- (2) The initial Directors of the Board shall be appointed as follows—
- (a) at least one for a term of two years; and
 - (b) at least one for a term of three years.
- (3) A Director may be reappointed for any term not exceeding three years.

Resignation

- 3 Any Director may resign from his appointment at any time by giving notice in writing to the Minister.

Filling of vacancies

- 4 If a Director resigns, dies or otherwise vacates his office before the expiry of the term for which he has been appointed, the Minister may appoint another person for the unexpired period of the term of office of the Director in whose place he is appointed.

Disclosure of interest by Directors

- 5 (1) A Director who is in any way, directly or indirectly, interested in any matter relating to a contract, other transaction or project of the Board shall (whether or not his interest appears in the register of interests kept under section 8(1)), disclose the nature of his interest at the first meeting of the Board at which he is present after the relevant facts have come to his knowledge.
- (2) A disclosure under subparagraph (1) shall be recorded in the minutes of the meeting of the Board and, after the disclosure, that Director shall not take part in any deliberation of the Board with respect to that contract, transaction or project.

(3) For the purpose of determining whether there is a quorum, a Director shall be treated as being present at a meeting notwithstanding that under subparagraph (2) he cannot vote or has withdrawn from the meeting in respect of the matter in question.

Committees of Board

6 (1) For the purpose of advising or assisting the Board in the performance of its functions, the Board may appoint such committees as the Board determines is appropriate.

(2) Each committee appointed by the Board shall consist of at least two Directors together with such other persons as the Board determines is appropriate for the purpose in respect of which the committee is appointed.

(3) On receipt of advice from any of its committees, the Board shall decide whether or not to adopt that advice, in whole or in part or with such modifications as the Board thinks fit.

(4) A committee appointed under this paragraph shall, in the performance of functions delegated by the Board under subparagraph (2), at all times be subject to such directions, conditions and restrictions as may be imposed by the Board and shall adhere to all policies of the Board.

(5) The chairman of each committee appointed under this paragraph shall ensure that the committee prepares and submits to the Chairman of the Board a report of the functions delegated to the committee, and the progress thereof, before the end of every quarter in the year.

Use of Seal, authentication and authenticity of documents

7 (1) The seal of the Authority shall be authenticated by the Chairman or Deputy Chairman, together with the signature of the Director-General or other officer or servant of the Authority duly authorised to act on behalf of the Director-General, and the seal shall be judicially noticed.

(2) All instruments, contracts and other documents issued by the Authority, other than those required by law to be under seal, and all decisions of the Authority, shall be signed by the Chairman or some other member, officer or employee of the Authority authorised by the Board to do so on behalf of the Authority.

(3) A document purporting to be an instrument issued by the Authority, and to be sealed or signed on behalf of the Authority in accordance with this paragraph, shall be received in evidence and shall be deemed to be such an instrument without further proof unless the contrary is shown.

Meetings and proceedings of Board

8 (1) The Chairman shall summon meetings as often as may be required and must summon at least two meetings every year.

(2) The quorum at every meeting of the Board shall be three Directors.

(3) A decision at a meeting of the Board shall be adopted by a simple majority of the Directors present and voting except that in the case of an equality of votes the Chairman,

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Deputy Chairman or Director presiding shall have a casting vote in addition to his original vote.

(4) The Chairman, or in his absence the Deputy Chairman, shall preside at all meetings of the Board.

(5) Where both the Chairman and the Deputy Chairman are absent from a meeting, the Directors present may elect a Director to preside at that meeting.

(6) Where not less than four Directors of the Board request the Chairman by notice in writing signed by them to convene a meeting of the Board for any purpose specified in the notice, the Chairman shall, within seven days from the receipt of the notice, convene a meeting for that purpose.

(7) The Board may act notwithstanding any vacancy in its appointment.

(8) Subject to the provisions of this Act, the Board may regulate its own procedure generally, and, in particular, the holding of meetings, the notice to be given of such meetings, the proceedings thereat, the keeping of minutes and the custody, production and inspection of such minutes.

Validity of acts

9 Provided a quorum is present, the validity of any proceeding of the Authority shall not be affected by any vacancy amongst the members thereof or by any defect in the appointment of a member thereof.

SCHEDULE 2

(Section 29)

SAVINGS AND TRANSITIONAL MATTERS

Continuity of Registers

1 (1) Anything done by or in relation to the Register of Aircraft, Register of aircraft mortgages and Register of aircraft engine mortgages (the "Registers") and having effect immediately before the commencement date shall, so far as is required for continuing its effect thereafter, be treated as if it had been done by or in relation to the Authority.

(2) The Authority shall continue to maintain the Registers.

(3) The Registers shall continue to contain the information that is set out respectively in the Air Navigation (Overseas Territories) Order and the Mortgaging of Aircraft and Aircraft Engines Act 1999, as the case may be.

Continuity of certificates, licences etc.

2 Where, immediately before the commencement date, there is in force a valid certificate, licence or other such document issued or deemed to be issued by the Department of Civil Aviation or the Governor or other person responsible for issuing documents relating to civil aviation under any law or pursuant to the provisions of any enactment with respect to civil aviation (a "prior certificate"), the prior certificate shall continue in force and be deemed—

- (a) to have been issued by the Authority in relation to the purpose for which it was issued;
- (b) to cover the matters set out therein; and
- (c) to expire on the date set out in the prior certificate.

Transfer of Registers

3 (1) The Registers shall transfer to the Authority together with all the powers and functions vested in the appointments relating to registration.

(2) References in enactments and instruments to the Register of Aircraft, Register of aircraft mortgages and Register of aircraft engine mortgages shall be construed accordingly.

Transfer of appointments

4 The person who immediately before the commencement date was the holder of the office of Director of Civil Aviation, shall hold the office of Director-General under and for the purposes of this Act as if that person had been appointed under this Act on the same terms and conditions, subject to any applicable law, that applied to the office of Director of Civil Aviation immediately before that date.

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Transfer of property, rights and liabilities

5 (1) With effect from the commencement date, all chattels and movable property vested immediately before that date in the Bermuda Government and used by it for the operation of the Department of Civil Aviation are hereby transferred to and vested in the Authority in the same manner and for the same purpose as previously held by the Government.

(2) The transfer and vesting as set out in subparagraph (1) shall extend to the whole of such chattels or movable property and undertakings and shall include—

- (a) all rights, powers, privileges and all things necessary or ancillary thereto which are held or enjoyed in connection with, or appertaining to, the same; and
- (b) all liabilities and other obligations,

to which, immediately before the commencement date, the Government in relation to the Registers was subject to.

(3) Subject to the provisions of this Act, all laws, rules, regulations, orders, judgments, decrees, awards, deeds, bonds, contracts, agreements, instruments, permits, certificates, documents, warrants and other arrangements subsisting immediately before the date of coming into force of this Act affecting or relating to any of the chattels, movable properties or undertakings transferred to the Authority by or under this Act shall—

- (a) have full force and effect against or in favour of the Authority; and
- (b) be enforceable fully and effectually,

as if instead of the Government, the Authority had been named therein or had been a party thereto, and otherwise in substitution of the Government.

Transfer of proceedings etc.

6 (1) Anything in the process of being done by the Government or in relation to the Registers or the Department of Civil Aviation on the commencement date, including any legal proceedings then pending to which either of those bodies is a party, may be continued by or in relation to the Authority.

(2) Where immediately before the commencement date—

- (a) any legal proceedings are pending to which the Government is or is entitled to be a party; and
- (b) such proceedings are related to any of the chattels, movable properties or undertakings, or any right or liability transferred by or under this Act,

the Authority shall, as from the date aforesaid, be substituted in such proceedings for the Government or shall be made a party thereto in like manner as the Government could have become, and such proceedings shall not abate by reason of the substitution.

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Transitional period for contribution to Public Service Superannuation Fund

7 (1) In this section, “the Fund” means the Public Service Superannuation Fund established by the Public Treasury (Administration and Payments) Act 1969.

(2) Notwithstanding section 3 of the Public Service Superannuation Act 1981 and for the period of six months beginning with the commencement date of section 26, a public officer who accepts employment with the Authority and is transferred to the Authority thereby becoming an employee of the Authority—

- (a) may elect to continue to participate in the Fund for that six-month period as if he were continuing in the service of the Government; and
- (b) if he so elects, shall remain subject to the Public Service Superannuation Act 1981 for that six-month period.

(3) No employee of the Authority is entitled to continue to contribute to the Fund for that six-month period unless that employee is eligible to contribute to the Fund under this section.

(4) An employee of the Authority is eligible to continue to contribute to the Fund for that six-month period if, and only if —

- (a) he was, on the commencement date of section 26 employed in the Department of Civil Aviation and contributing to the Fund; and
- (b) he elects, within 30 days after the coming into operation of this section, to continue to contribute to the Fund (if, immediately before the coming into operation of this section, he is contributing to the Fund).

(5) An election under subsection (4)(b) shall be made in writing to the Accountant General in such form as the Accountant General may determine.

(6) It is hereby declared, for the avoidance of doubt, that the Authority will be responsible for making contributions for the purposes of this section as the employer.

(7) The Minister may, with the consent of the Minister of Finance, by order extend the time limit imposed pursuant to this section for a further period not exceeding three months if he considers it expedient to do so.

(8) An order made by the Minister under subsection (7) shall be subject to the negative resolution procedure.

Transitional period for contribution to Government Employees Health Insurance Act

8 (1) In this section, “the Scheme” means the health insurance scheme for government employees and retired government employees established under section 3 of the Government Employees (Health Insurance) Act 1986.

(2) For the period of six months beginning with the commencement date of section 27, any public officer who accepts employment with the Authority and is transferred to the Authority thereby becoming an employee of the Authority—

- (a) may elect to continue to participate in the Scheme for that six-month period as if he were continuing in the service of the Government; and

(b) if he so elects, he shall remain subject to this Act for that six-month period.

(3) No employee of the Authority is entitled to contribute to the Scheme unless that employee is eligible to contribute to the Scheme under this section.

(4) An employee of the Authority is eligible to contribute to the Scheme if, and only if—

(a) he was immediately before the coming into operation of this section employed as a public officer in the Department of Civil Aviation and contributing to the Scheme; and

(b) he elects, within 30 days after the coming into operation of this section, to continue to contribute to the Scheme (if, immediately before the coming into operation of this section, he is contributing to the Scheme).

(5) It is hereby declared, for the avoidance of doubt, that the Authority will be responsible for making contributions for the purposes of this section as the employer.

(6) An election under subsection (4)(b) shall be made in writing to the Accountant General in such form as the Accountant General may determine.

(7) The Minister may, with the consent of the Minister of Finance, by order extend the time limit imposed pursuant to this section for a further period not exceeding three months in aggregate if he considers it reasonable to do so.

(8) An order made by the Minister under subsection (7) shall be subject to the negative resolution procedure.

SCHEDULE 3

(Section 30)

CONSEQUENTIAL AMENDMENTS

Civil Airports Act 1949

1 The Civil Airports Act 1949 is amended as follows—

(a) in section 1—

(i) by deleting the definition of “the Airport Department”, and substituting the following—

“ “Airport Department” means the Department of Airport Operations established under section 2(1);”;

(ii) by deleting the definition of “Officer of the Airport Department” and substituting the following—

“ “Officer of the Airport Department” means any public officer duly appointed to the Airport Department;”;

(b) in section 2—

(i) in subsection (1), by deleting the words “and, subject to section 9, the Department of Civil Aviation are”, and substituting the word “is”;

(ii) in section 2, by repealing subsection (2) and substituting the following—

“(2) The Airport Department shall, subject to the general direction and control of the Minister, be under the supervision of a public officer who shall be known as the Permanent Secretary and, in addition to the Permanent Secretary, the Airport Department shall consist of a public officer who shall be known as the General Manager of Airport Operations.”;

(c) by repealing section 2A(2);

(d) by substituting “Department” for “Departments”, wherever the word “Departments” appears.

Civil Aviation (Air Transport Licensing) Act 2007

2 The Civil Aviation (Air Transport Licensing) Act 2007 is amended as follows—

(a) in section 2—

(i) by deleting the definition of “Department”;

(ii) by inserting in the appropriate alphabetical order the following definitions—

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“Authority” means the Bermuda Civil Aviation Authority established by section 3 of the Bermuda Civil Aviation Authority Act 2016;

“Director-General” means the person who holds the office of Director-General of the Authority;”;

- (b) in section 3(2)(a), by deleting the words “Director of Civil Aviation” and substituting “Director-General”;
- (c) in section 4, by deleting the words “Department of Civil Aviation” and substituting the word “Authority”;
- (d) in section 9(8)(b), by deleting “the Minister” and substituting “the Supreme Court” and any reference to an appeal to the Minister shall be construed as a reference to an appeal to the Supreme Court;
- (e) in section 14, by deleting the words “any public officer” wherever they appear and substituting the words “the Authority”;
- (f) in section 18(2)(g), by substituting after the word “paid” the words “to the Authority”.

Civil Aviation (Air Transport Licensing) Regulations 2007

3 The Civil Aviation (Air Transport Licensing) Regulations 2007 are amended as follows—

- (a) in regulation 2, by inserting in the appropriate alphabetical order the following definition—

“Authority” means the Bermuda Civil Aviation Authority established by section 3 of the Bermuda Civil Aviation Authority Act 2016;”;
- (b) in regulation 5, by deleting the words “Department of Civil Aviation” and substituting the word “Authority”;
- (c) in regulation 10(3), by deleting the words “Director of Civil Aviation” and substituting “Director-General”;
- (d) in regulation 12(1)(c), by deleting the words “Director of Civil Aviation” and substituting “Director-General”.

Mortgaging of Aircraft and Aircraft Engines Act 1999

4 The Mortgaging of Aircraft and Aircraft Engines Act 1999 is amended—

- (a) in section 2, by inserting in the appropriate alphabetical order the following definition—

“Authority” means the Bermuda Civil Aviation Authority established by section 3 of the Bermuda Civil Aviation Authority Act 2016;”;

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- (b) in section 5, by deleting the words “The Minister shall establish and maintain” and substituting the words “The Authority shall, on behalf of the Minister, continue to maintain”;
- (c) in section 7(1)(b), by inserting after the word “charges” the words “to be paid to the Authority”.

Mortgaging of Aircraft and Aircraft Engines (Fees) Regulations 1999

5 The Mortgaging of Aircraft and Aircraft Engines (Fees) Regulations 1999 are amended as follows—

- (a) in regulation 2, by inserting after the word “payable” the words “to the Bermuda Civil Aviation Authority (the “Authority”);
- (b) in regulation 3—
 - (i) by substituting “Authority” for “Minister”;
 - (ii) in paragraph (b), by substituting “, Authority” for “he”;
 - (iii) in paragraph (d), by substituting “Authority” for “Department of Civil Aviation”.

Mortgaging of Aircraft (Procedures) Regulations 1999

6 The Mortgaging of Aircraft (Procedures) Regulations 1999 are amended—

- (a) in regulation 2—
 - (i) by deleting the definition of “Department”;
 - (ii) by inserting in the appropriate alphabetical order the following—

“ “Authority” means the Bermuda Civil Aviation Authority established by section 3 of the Bermuda Civil Aviation Authority Act 2016;”;
- (b) in—
 - (i) regulation 3(8), by deleting the word “Department” and substituting the word “Authority”;
 - (ii) regulations 3, 4, 5, 6, 7, 13 and 14, by deleting the word “Minister” wherever it appears and substituting the word “Authority”.

Air Navigation (Fees for Certificates and Services) Regulations 2012

7 The Air Navigation (Fees for Certificates and Services) Regulations 2012 are amended—

- (a) in regulation 2—
 - (i) in the definition of “Director”, by inserting after “1949” the words “whose appointment and office is continued under the Bermuda Civil Aviation Authority Act 2016 and whose office is in that Act referred to as “Director-General”;

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(ii) by inserting in the appropriate alphabetical order the following—

“ Authority” means the Bermuda Civil Aviation Authority established by section 3 of the Bermuda Civil Aviation Authority Act 2016;”;

(b) in regulation 5, by inserting after the word “chargeable” the words “by the Authority”;

(c) in column 1 of Part 3 of the Schedule—

(i) in paragraph (a), by deleting the words “Department of Civil Aviation (DCA)” and the word “DCA”, and substituting the word “ Authority”;

(ii) in paragraph (b), by deleting the words “Department of Civil Aviation ” and substituting the word “ Authority”;

(iii) in paragraph (d), by deleting the words “Department of Civil Aviation ” and substituting the word “ Authority”.

References to “Director of Civil Aviation” and “Department of Civil Aviation”

8 (1) Paragraph 1 of the Second Schedule to the Bermuda (Air Terminal (Fees) Regulations 1952 is amended in the definition of “designated parking area”, by deleting the words “Director of Civil Aviation” and substituting “General Manager of Airport Operations”.

(2) Paragraph 8 of the Parking of Vehicles (Designated Areas) Orders 1973 - 1984 is amended by deleting the words “Director of Civil Aviation” and substituting “General Manager of Airport Operations”.

(3) Paragraph 4A of the Schedule to the Public Service (Delegation of Powers) Regulations 2001 is revoked.

(4) The Schedule to the Civil Establishments Act 1998 is amended in the reference in that Schedule to section 2(2) of the Civil Aviation Act 1949, by deleting the words “Airport and Aviation Departments” and substituting the words “Airport Department”.

[Assent Date: 12 July 2016]

[Operative Date: 01 October 2016]

Amended by

2021 30]