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THE PRESIDENCY

No. 1301

19 December 2006

It is hereby notified that the President has assented to the following Act, which is hereby published for general information:—

No. 15 of 2006: Carriage by Air Amendment Act, 2006.



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GENERAL EXPLANATORY NOTE:

] Words in bold type in square brackets indicate omissions from existing enactments.

Words underlined with a solid line indicate insertions in existing enactments.

(English text signed by the President.)
(Assented to 14 December 2006.)

ACT

To amend the Carriage by Air Act, 1946, so as to insert certain definitions; to give effect to the International Convention for the Unification of Certain Rules for International Carriage by Air; to apply certain words contained in the said Convention; to extend the Minister's power to make regulations; and to replace the Schedule; and to provide for matters connected therewith.

BE IT ENACTED by the Parliament of the Republic of South Africa, as follows:—

Amendment of section 1 of Act 17 of 1946, as amended by section 1 of Act 5 of 1964

1. Section 1 of the Carriage by Air Act, 1946 (hereinafter referred to as the principal Act), is hereby amended—

(a) by the insertion before the definition of "Minister" of the following definition:

" 'Convention' means the Convention for the Unification of Certain Rules for International Carriage by Air, signed at Montreal on 28 May 1999, as set out in the Schedule;"; and

(b) by the insertion after the definition of "Republic" of the following definition: " 'this Act' includes any regulation made under section 8."

Repeal of section 2 of Act 17 of 1946

2. Section 2 of the principal Act is hereby repealed.

Amendment of section 3 of Act 17 of 1946, as amended by section 2 of Act 5 of 1964 and section 1 of Act 81 of 1979

3. Section 3 of the principal Act is hereby amended—

(a) by the substitution for subsection (2) of the following subsection:

"(2) The Minister may from time to time by notice in the *Gazette* declare who are the [High Contracting] States Parties to the Convention[,] and in respect of what territories they are respectively parties, [and to what extent they have availed themselves of the provisions of the Additional Protocol to the Convention] and any such notice shall, except in so far as it has been varied or superseded by a subsequent notice, be conclusive evidence of the matters so declared."

- (h) by the substitution for subsection (3) of the following subsection:
 “(3) Any reference in the [said] Schedule to the territory of any **[High Contracting] State** Party to the Convention shall be construed as a reference to the territories subject to **[his]** its sovereignty, suzerainty, mandate or authority, in respect of which **[he]** it is a party.”; 5
- (c) by the substitution for subsection (4) of the following subsection:
 “(4) Not more than one action shall be brought in the Republic to enforce liability under **[Article seventeen]** paragraph 1 of Article 17, of the [said] Schedule in respect of the death of any one passenger, and every such action, by whomsoever brought, shall be for the benefit of all such persons entitled to sue for damages in respect of the death of that passenger as either are domiciled in the Republic or, if not so domiciled, have indicated their desire to take the benefit of the action.”; 10
- (d) by the substitution in subsection (6) for paragraph (ii) of the following paragraph: 15
 “(ii) make such order as appears to the court to be just and equitable in view of the provisions of the [said] Schedule limiting the liability of a carrier and of any proceedings which have been or are likely to be commenced outside the Republic in respect of the death of the passenger in question.”; and 20
- (e) by the deletion of subsection (7).

Repeal of section 4 of Act 17 of 1946

4. Section 4 of the principal Act is hereby repealed.

Amendment of section 5 of Act 17 of 1946, as amended by Act 5 of 1964

5. Section 5 of the principal Act is hereby amended— 25
- (a) by the substitution for subsection (1) of the following subsection:
 “(1) The **[State]** President may do all things necessary to ratify or adhere or accede to or cause to be ratified or adhered or acceded to on behalf of the Republic any amendments of or additions to the Convention which may from time to time be made, and by proclamation in the *Gazette* declare that the amendments or additions so ratified or adhered or acceded to shall be observed and have the force of law in the Republic: **Provided that copies of any amendments or additions so ratified or adhered or acceded to or proclaimed shall be laid upon the Tables of both Houses of Parliament within fourteen days after their publication in the *Gazette* if Parliament be then in session or, if Parliament be not then in session, within fourteen days after the commencement of its next ensuing ordinary session.**”; and 30 35
- (b) by the addition of the following subsection:
 “(3) A proclamation under subsection (1) may not be made by the President unless the amendments of or additions to the Convention have been approved by resolution of Parliament.” 40

Amendment of section 7 of Act 17 of 1946, as amended by section 5 of Act 5 of 1964

6. Section 7 of the principal Act is hereby amended by the substitution for paragraph (b) of the following paragraph: 45
- “(b) the manner in which any action under the [said] Schedule against any **[High Contracting] State** Party is to be commenced and carried out.”.

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| (a) prescribing the procedure to be followed by a carrier in connection with the settlement of claims under paragraph (1) of Article 17 of the Convention in respect of the death of any passenger before any action has been instituted in a court of law or any other appropriate forum; | 5 |
| (b) generally, on any other ancillary or incidental administrative or procedural matter which it is necessary or expedient to prescribe for the proper implementation or administration of this Act. | 10 |
| (2) Any regulation made in terms of subsection (1) may provide that— | |
| (a) contravention thereof, or failure to comply therewith, is an offence; and | |
| (b) a person convicted of that offence is punishable with a fine or | 15 |

8. The Schedule to this Act is hereby substituted for the Schedule to the principal Act.

Short title and commencement

9. This Act is called the Carriage by Air Amendment Act, 2006, and comes into operation on a date fixed by the President by proclamation in the *Gazette*. 20

SCHEDULE

CONVENTION FOR THE UNIFICATION OF CERTAIN RULES FOR INTERNATIONAL CARRIAGE BY AIR

The States Parties to this Convention

RECOGNISING the significant contribution of the Convention for the Unification of Certain Rules Relating to International Carriage by Air signed in Warsaw on 12 October 1929, hereinafter referred to as the “Warsaw Convention”, and other related instruments to the harmonisation of private international air law;

RECOGNISING the need to modernise and consolidate the Warsaw Convention and related instruments;

RECOGNISING the importance of ensuring protection of the interests of consumers in international carriage by air and the need for equitable compensation based on the principle of restitution;

REAFFIRMING the desirability of an orderly development of international air transport operations and the smooth flow of passengers, baggage and cargo in accordance with the principles and objectives of the Convention on International Civil Aviation, done at Chicago on 7 December 1944;

CONVINCED that collective State action for further harmonisation and codification of certain rules governing international carriage by air through a new Convention is the most adequate means of achieving an equitable balance of interests;

HAVE AGREED AS FOLLOWS:—

CHAPTER I

General Provisions

Article 1 — Scope of Application

1. This Convention applies to all international carriage of persons, baggage or cargo performed by aircraft for reward. It applies equally to gratuitous carriage by aircraft performed by an air transport undertaking.

2. For the purposes of this Convention, the expression international carriage means any carriage in which, according to the agreement between the parties, the place of departure and the place of destination, whether or not there be a break in the carriage or a transshipment, are situated either within the territories of two States Parties, or within the territory of a single State Party if there is an agreed stopping place within the territory of another State, even if that State is not a State Party. Carriage between two points within the territory of a single State Party without an agreed stopping place within the territory of another State is not international carriage for the purposes of this Convention.

3. Carriage to be performed by several successive carriers is deemed, for the purposes of this Convention, to be one undivided carriage if it has been regarded by the parties as a single operation, whether it had been agreed upon under the form of a single contract or of a series of contracts, and it does not lose its international character merely because one contract or a series of contracts is to be performed entirely within the territory of the same State.

4. This Convention applies also to carriage as set out in Chapter V, subject to the terms contained therein.

Article 2 — Carriage Performed by State and Carriage of Postal Items

1. This Convention applies to carriage performed by the State or by legally constituted public bodies provided it falls within the conditions laid down in Article 1.