

ARRANGEMENT OF SECTIONS

Sections

1. Section 3 of Act 678 amended
2. Section 9 of Act 678 amended
3. Section 13 of Act 678 amended
4. Section 21 of Act 678 amended
5. Section 25 of Act 678 amended
6. Section 28 of Act 678 amended
7. Section 40A of Act 678 amended
8. Section 40D of Act 678 amended
9. Sections 40F, 40G and 40H of Act 678 inserted
10. Section 42 of Act 678 amended
11. Section 43 of Act 678 amended
12. Section 44 of Act 678 amended
13. First Schedule to Act 678 amended



THE NINE HUNDRED AND EIGHTY-FIFTH

ACT

OF THE PARLIAMENT OF THE REPUBLIC OF GHANA
ENTITLED

GHANA CIVIL AVIATION (AMENDMENT) ACT, 2019

AN ACT to amend the Ghana Civil Aviation Act, 2004 (Act 678) to ensure that the Republic is compliant with the Standards of the International Civil Aviation Organisation and to provide for related matters.

DATE OF ASSENT: *13th March, 2019*

PASSED by Parliament and assented to by the President:

Section 3 of Act 678 amended

1. The Ghana Civil Aviation Act, 2004 (Act 678) referred to in this Act as the “principal enactment” is amended in section 3 by the substitution for subsection (1), of

“(1) The Authority is responsible

(a) generally for the following:

- (i) administering and giving effect to this Act;
- (ii) advising the Government on matters relating to civil aviation;

- (iii) ensuring due compliance with the Conventions, Annexes, Protocols, Technical Instructions, Standards and Recommended Practices of the International Civil Aviation Organisation through their domestication into Directives issued under section 21 and Instruction and Circulars issued under section 9;
- (iv) carrying out continuous surveillance activities to ensure compliance with the Conventions, Annexes, Protocols, Technical Instructions, Standards and Recommended Practices of the International Civil Aviation Organisation as domesticated in the Directives issued pursuant to this Act;
- (v) carrying out any other Treaty or Agreement in the field of Civil Aviation to which Ghana is a party;
- (vi) developing guidelines and guidance for the implementation of a safety management system that requires operators and stakeholders in the aviation sector to incorporate safety management systems in their operational activities;
- (vii) entering into Agreements for co-operative endeavours in the field of civil aviation, aviation safety and security with other international and regional contracting States;
- (viii) establishing a safety programme to achieve an acceptable level of safety in the operation of aircraft, aerodromes, air traffic management, aviation training organisations and aircraft maintenance;
- (ix) the establishment and enforcement of the requirements contained in the National Civil Aviation Security Programme;
- (x) coordinating facilitation activities with other governmental agencies and aviation stakeholders;
- (xi) establishing, implementing and maintaining the National Air Transport Facilitation Programme and the National Air Transport Facilitation Committee;

- (xii) establishment and administration of a National Aeronautical Search and Rescue Committee;
- (xiii) expropriating property for use in aeronautical search and rescue in emergency situations when necessary;
- (xiv) carrying out investigations into incidents, complaints, or occurrences of a safety or a security nature;
- (xv) taking all steps reasonably necessary, including the power to ground any aircraft and to seal the premises of any air transport service provider or provider of allied aviation service, in order to ensure compliance with the provisions of this Act and the Directives, Instructions and Circulars issued under this Act and Regulations made under this Act;
- (xvi) taking enforcement action and imposing penalties or other administrative action against any violations of this Act, Directives, Instructions and Circulars of any nature issued by the Authority;
- (xviii) safeguarding aerodromes, navigational sites, proposed aerodromes, proposed navigational sites and navigable airspace from obstructions, interferences and intrusions which affect safety or security of air transportation;
- (xix) access to and inspection of all aviation documents;
- (xx) providing consultancy and management services relating to this Act, both within and outside the territory of Ghana;
- (xxi) performing functions of the Authority outside the territory of Ghana when it is necessary in order to achieve the objects of the Authority;
- (xxii) ensuring the protection of consumers of services in the aviation industry;
- (xxiii) granting exemptions or exceptions from compliance with provisions of the Directives or other Instructions and circulars, where necessary upon application by an operator;

(b) for the regulation of air navigation services including

- (i) promoting and developing safety in civil aviation and ensuring safety of air navigation and aircraft;
- (ii) regulating, promoting, developing and supervising air transport operations and services;
- (iii) the licensing and certification of air operators and the provision of accommodation in aircrafts;
- (iv) collaborating in securing to the highest degree practicable, uniformity in regulations, standards and procedures in relation to aircraft, personnel, airways and auxiliary services in order to facilitate and improve air navigation by adopting and amending where practicable, the Standards and Recommended Practices and Technical Guidelines issued by the International Civil Aviation Organisation to contracting States;
- (v) acting internationally as the national Authority or body representing the Republic in respect of matters relating to civil aviation;
- (vi) entering into mutual agreements in the event of a lease, charter or interchange of an aircraft for the transfer of all or part of the safety oversight responsibilities in respect of the aircraft to ensure continuous surveillance of the registered aircraft to the State of the operator;
- (vii) licensing of cockpit and cabin crew, flight and ground engineers, air traffic controllers, air traffic safety and electronic personnel as well as other personnel engaged in aircraft operations and allied aviation services;
- (viii) prescribing measures to ensure the continuous airworthiness of aircraft;
- (ix) registering and de-registering of aircraft;
- (x) registering and de-registering interests in an aircraft or a part of an aircraft including the recognition of the validity of a certificate of licence of a foreign registered aircraft;

- (xi) taking measures for the prevention and investigation of aircraft incident and accident;
 - (xii) ensuring that international units of measurements and aeronautical charts are used in air and ground operations;
 - (xiii) ensuring a coordinated aeronautical search and rescue service within the Accra Flight Information Region;
 - (xiv) supervising the operations of an aircraft;
 - (xv) ensuring environmental protection against aircraft noise and engine emissions;
 - (xvi) establishing, implementing and maintaining a State Safety Programme across the aviation system of the Republic in order to achieve an acceptable level of safety in civil aviation;
 - (xvii) coordinating the grant or refusal of landing and overflight permits to aircraft;
 - (xviii) establishment and operation of aviation training schools;
 - (xix) regulation of aviation training schools, organisations and other aviation facilities; and
 - (xx) establishment of flying schools, recreational flying schools and other aviation related activities;
- (c) for the regulation of the provision of air navigation services including
- (i) approval of air navigation service providers for the provision of air navigation services;
 - (ii) certification of air navigation facilities and regulating the siting, design, construction, operation and maintenance of navigational facilities and sites;
 - (iii) providing standards for the provision of air navigation services; and
 - (iv) aeronautical communications;
- (d) for the establishment and regulation of aviation security, including

- (i) coordinating security activities with the relevant agencies of Government and the National Security Council for the purpose of preventing acts of unlawful interference against civil aviation;
 - (ii) licensing and certifying civil aviation inspectors, security personnel responsible for screening, special agents, auditors or other properly licensed or certified persons;
 - (iii) ensuring compliance with the provisions enshrined in the National Civil Aviation Security Programme;
 - (iv) making Directives with respect to security measures for the purpose of safeguarding civil aviation against acts of criminal violence, air piracy, the introduction of unauthorised weapons, explosives or incendiary devices onto an aircraft;
 - (v) making Directives requiring an airport operator to have in place security contingency plans;
 - (vi) taking of security measures to safeguard air transport, life and property;
 - (vii) providing for the protection of sensitive security measures, procedures, processes, data, information and other matters that may compromise the safety and security of civil aviation in the Republic; and
 - (viii) approval of the establishment of aviation security services;
- (e) for the establishment and regulation of aerodromes and all aerodrome service providers including
- (i) regulating the establishment and use of aerodromes;
 - (ii) certification and registration of aerodromes;
 - (iii) authorisation for the use of aerodromes;
 - (iv) regulating the siting, design, construction, operation, maintenance and safety management of aerodromes;
 - (v) providing standards for the establishment of aerodromes;

- (vi) taking measures to ensure that aerodrome operators provide adequate levels of rescue firefighting services for the category of aerodrome;
 - (vii) ensuring that air operators, aerodrome operators, concessionaires and users of the aerodrome abide by environmental protection laws and regulations including protection from aircraft noise and engine emissions, bird hazard control, handling of hazardous material, petroleum products seepage, waste management and applying the appropriate sanctions in the event of a violation;
 - (viii) issuing, reviewing, transferring, refusing, suspending and cancelling aerodrome certificates; and
 - (ix) licensing and certification of all aviation service providers including ground handling service providers, aviation fuel suppliers, catering service providers, cargo and mail delivery service providers and any other allied aviation service providers; and
- (f) for providing economic regulation for air transportation including
- (i) the licensing of air transport, subject to relevant rules and Directives in force, for the economic regulation of aerodromes, airlines, airline catering service providers, ground handling service operators, aviation freight forwarders, travel agents, suppliers of computer reservation systems or global distribution systems and other providers of air transport services;
 - (ii) establishing guidelines for commercial arrangements entered into by air operators for the purpose of ensuring continuous surveillance over registered operators and the development of operating licences;
 - (iii) establishing guidelines for user charges and quality service delivery for air navigation services and aerodromes; and

- (iv) developing, implementing and enforcing air transport competition rules and laws.

Section 9 of Act 678 amended

2. The principal enactment is amended in section 9 by

- (a) the deletion of paragraph (c) of subsection (5) and the insertion of
 - “ (c) to an Aviation Safety Inspector or Aviation Security Inspector; or
 - (d) to a properly qualified private person, organisation or regional body, subject to Directives, supervision and review as may be prescribed and the Director-General shall ensure that the functions are not delegated in a way to enable air operators, aerial work or general aviation operators and maintenance facilities to regulate themselves.”;
- (b) the substitution for subsection (7), of
 - “(7) The Director-General shall monitor and enforce compliance with the Conventions, Annexes, Protocols, Standards and Recommended Practices of the International Civil Aviation Organisation and the Technical Instructions of the Organisation for the transport of dangerous goods by air as domesticated by the Republic, but may make variations where necessary.”;
- (c) the substitution for subsection (8), of
 - “(8) The Director-General shall publish in the *Gazette* or on the website of the Authority, Directives, Circulars or Instructions issued under subsection (2) and section 21.”; and
- (d) the deletion of subsection (9) and the insertion of
 - “(9) The Director-General shall issue credentials to Aviation Safety Inspectors, Aviation Security Inspectors, other required personnel of the Authority and designees acting on the instructions of the Director-General.
 - (10) Credentials issued under subsection (9) shall grant to the holders of the credentials, unrestricted, unlimited and uninterrupted access to among others,

- (a) Ghanaian and foreign registered aircraft including related aircraft documents;
 - (b) Aerodromes;
 - (c) restricted areas;
 - (d) all facilities and offices used for the provision of aviation services; and
 - (e) aircraft accident and incident sites;
- in the performance of their duties.

(11) The Director-General shall

- (a) approve the State Safety Programme and be the Accountable Executive for the establishment and implementation of the State Safety Programme; and
- (b) require operators and safety providers to implement a safety management system as part of the State Safety Programme.

(12) The Director-General as the Accountable Executive, is responsible for

- (a) human resource issues related to the State Safety Programme of the Authority;
- (b) major financial issues related to the State Safety Programme of the Authority;
- (c) service provider certification and safety oversight by the Authority; and
- (d) the coordination of matters related to the State Safety Programme of the Republic.”.

Section 13 of Act 678 amended

3. The principal enactment is amended in subsection (1) of section 13 by the deletion of paragraph (e) and the insertion of

“(e) seven and a half percent of the Airport tax collected by an aerodrome operator in accordance with section 1 of the Airport Tax Act, 1963 (Act 209); and

(f) any other moneys prescribed as moneys of the Authority by the Regulations or Directives.”.

Section 21 of Act 678 amended

4. The principal enactment is amended in subsection (1) of section 21 by

- (a) the substitution for paragraph (x), of

- “(x) the inspection of documents including manuals, certificates, authorisations, approvals, permits, procedures, technical files, personnel files, personnel licences and other activities necessary to ensure compliance with this Act;”;
- (b) the substitution for subparagraph (xi) of paragraph (v), of
“(xi) aircraft in distress and investigation of safety incidents and occurrences and other matters concerned with the safety, regularity and efficiency of air transport as and when necessary;”;
- (c) the insertion after paragraph (z), of
 - “(aa) certification and approval of aviation training schools, organisations and facilities; and
 - (ab) the establishment and regulation of flying schools, recreational flying and other related aviation activities.”;
- (d) by the substitution for subsection (4), of
“(4) Directives made under subsection (1) may provide for
 - (a) the adoption of Annexes, Procedures for Air Navigation Services, Circulars, Documents, Conventions and Protocols of the International Civil Aviation Organisation;
 - (b) the empowerment of Aviation Safety Inspectors and Aviation Security Inspectors to prevent aircraft from flying for safety and security reasons when justified either directly or by an established process that can be used in a timely manner;
 - (c) the prohibition of persons from exercising privileges of their licences, certificates or other aviation documents for just cause, either directly or through an established process, that can be applied in a timely manner; and
 - (d) the requirement that commercial air transport operations shall be conducted in accordance with Directives in the interest of safety and security and in accordance with the relevant international agreement ratified by Parliament under Article 75 of the Constitution.”.

Section 25 of Act 678 amended

5. The principal enactment is amended by the substitution for section 25 of

“25. (1) The Minister shall be responsible for the investigation of aircraft accidents and serious incidents arising out of or in the course of air navigation that occurs in or over the Republic and the Accra Flight Information Region.

(2) One and a half percent of the Airport Tax collected by an aerodrome operator in accordance with section (1) of the Airport Tax Act, 1963 (Act 209) shall be paid to the Ministry for the purpose of aircraft accident investigation and prevention.

(3) The Minister shall make Regulations providing for the investigation of any accident or serious incident arising out of or in the course of air navigation and either occurring in or over the Republic or the Accra Flight Information Region.

(4) Without prejudice to the generality of subsection (3), the Regulations made under that subsection may in particular contain provisions

- (a) requiring notice to be given of any accident or serious incident in a manner and by persons as may be prescribed;
- (b) applying, for the purpose of investigations held with respect to any accident or serious incident, any of the provisions of any law in force in Ghana relating to the investigation of deaths or accidents;
- (c) prohibiting, pending investigation, access to or interference with aircraft to which an accident or serious incident has occurred and authorising any person, so far as may be necessary for the purposes of an investigation, to have access to, examine, remove, take measures for the preservation of, or otherwise deal with, any aircraft;
- (d) incorporating the provisions of Annex 13 to the Convention on International Civil Aviation.

(5) The sole objective of the investigation of an accident or serious incident shall be the prevention of accidents and serious incidents.

(6) The purpose of an investigation shall not be to apportion blame or liability.

(7) The Authority shall be informed of the findings of an accident investigation, and the Director-General shall, on the basis of the findings, take corrective actions that in the judgment of the Authority will prevent the occurrence of similar accidents in the future.

(8) The Minister and the investigator in charge of the investigation of an accident or serious incident shall have

- (a) unhindered access to and control over relevant material and evidence including flight records and air traffic service records;
- (b) unrestricted control over the wreckage and any relevant material to ensure that a detailed examination is made without delay by authorised personnel participating in the investigation.”.

Section 28 of Act 678 amended

6. The principal enactment is amended in section 28

(a) by the insertion of a new subsection (1) as follows:

“(1) The provisions contained in the Protocol to amend the Convention on Offences and Certain Other Acts Committed on Board Aircraft signed at Montreal on 4th April, 2014 and set out in the First Schedule are, from the commencement of this Act, applicable in the Republic.”.

(b) by the renumbering of subsections (1), (2), (3), (4), (5), (6), (7) and (8) as (2), (3), (4), (5), (6), (7), (8) and (9).

Section 40A of Act 678 amended

7. The principal enactment is amended in section 40A by the substitution for “regulation, rule or order”, of “Instructions or Circulars”.

Section 40D of Act 678 amended

8. The principal enactment is amended in section 40D by the substitution for subsection (1), of

“(1) For the purposes of this Act, the Director-General shall have the power to compel

- (a) a witness to appear and testify before a committee, panel or any employee, Aviation Safety Inspector or Aviation Security Inspector investigating any safety or security issue, investigation of an incident or any matter relating to the functions of the Authority; or
- (b) a person to produce books, papers or documents required by a committee, panel, any employee, Aviation Safety Inspector or Aviation Security Inspector investigating any safety or security issue, the investigation of any incident or any matters relating to the functions of the Authority.”.

Sections 40F, 40G and 40H of Act 678 inserted

9. The principal enactment is amended by the insertion after section 40E of

“Right of access for inspections

40F. (1) The Director-General shall have uninterrupted, unrestricted and unlimited access to civil aircraft wherever they are operated within Ghana for the purposes of ensuring that those aircraft are airworthy and are being operated in accordance with this Act, Directives, Circulars and Instructions issued under this Act.

(2) The Director-General shall have uninterrupted, unrestricted and unlimited access to any civil aircraft registered in Ghana wherever that aircraft is operated in the world for the purposes of ensuring that the aircraft is airworthy and is being operated in accordance with this Act, Directives, Circulars and Instructions issued under this Act.

(3) The Director-General shall have uninterrupted, unrestricted and unlimited access to operations by any Aerodrome Operator, Air Navigation Service Provider, Air Operator, Approved Maintenance Organisation or Approved Training Organisation, to any place and at any time to conduct any test or

inspection in order to determine whether the operations of the Aerodrome Operator, Air Navigation Service Provider, Air Operator, Approved Maintenance Organisation and Approved Training Organisation is conducted in accordance with this Act, Directives, Circulars and Instructions issued under this Act.

(4) The Director-General shall have uninterrupted, unrestricted and unlimited access to

- (a) all civil aviation personnel documentation,
- (b) documents,
- (c) aircraft,
- (d) Aerodromes,
- (e) aviation facilities,
- (f) air navigation facilities, workshops and ramps,
- (g) air operator offices,
- (h) cargo handling areas,
- (i) flight catering facilities, and
- (j) other allied groundhandlers

to inspect aircraft, Aerodromes, aircraft manufacturers and maintenance facilities or organisations, training facilities including simulators, fuel storage facilities and other appliances and service providers offering services designed for use in air transportation, as may be necessary to enable the Director-General determine the issuance of a certificate of registration or granting of approval to

- (k) the aircraft,
- (l) the aircraft manufacturer,
- (m) the air navigation service provider,
- (n) the aerodrome operator,
- (o) the maintenance facility or organisation and
- (p) other applicable appliances for the safety oversight functions of the Authority.

(5) The Director-General shall have uninterrupted, unrestricted and unlimited access to aircraft and aviation facilities, and to access and inspect aviation documentation for the performance of aviation security functions and duties including

- (a) entering any land, facility or building at any aerodrome for the purpose of conducting security oversight activities, or land outside an aerodrome occupied for business purposes connected with an aerodrome or aircraft operator;

- (b) entering any aircraft registered or operating in Ghana for the purpose of inspecting any security procedure;
- (c) requiring an aircraft operator, aerodrome operator or occupier of land outside the aerodrome used for business purposes connected with the aerodrome to provide information relevant to any audit, inspection, survey, test or investigation;
- (d) obtaining access to relevant security documentation and records; and
- (e) interviewing any person for the purpose of assessing the standard of security or the implementation of security procedures.

Power to prevent flight

40G. (1) The Director-General may direct the operator or crew member of a civil aircraft not to operate the aircraft

- (a) where the aircraft is found by the Authority not to be airworthy;
- (b) where the airman is not qualified, or physically or mentally capable for the flight;
- (c) where the operation would cause imminent danger to persons or property on the ground;
- (d) where the required documentation is not on board the flight; or
- (e) for any other safety or security reasons as shall be specified by the Director-General.

(2) The Director-General may take steps as are necessary directly or through an established process to detain an aircraft or a crew member under subsection (1).

Request for information

40H. (1) For the effective conduct of its functions under this Act, the Authority may request from any person or institution, information relating to the number of flights, passenger movement numbers, tonnage of air cargo, resolution of passenger complaints and any other subject that the Director-General may direct.

(2) A publication for statistical purpose or information obtained under subsection (1) shall not include personal data.

(3) A person who fails to supply information requested under subsection (1) commits an offence and is liable on summary conviction to a fine of not more than six hundred penalty units or to a term of imprisonment of not more than three months or to both and in the case of a continuing offence, to a further fine of not more than two hundred penalty units for each day on which the offence continues.”.

Section 42 of Act 678 amended

10. The principal enactment is amended in subsection (1) of section 42

(a) by the substitution for the definition of “accident”, of
“accident” means an occurrence associated with the operation of an aircraft which, in the case of a manned aircraft, takes place between the time any person boards the aircraft with the intention of flight until such time as all such persons have disembarked, or in the case of an unmanned aircraft, takes place between the time the aircraft is ready to move with the purpose of flight until the time it comes to a rest at the end of the flight and the primary propulsion system is shut down, in which

(a) a person is fatally or seriously injured as a result of being in the aircraft, or in direct contact with any part of the aircraft, including parts which have become detached from the aircraft, or direct exposure to jet blast, except when the injuries are from natural causes, self-inflicted or inflicted by other persons, or when the injuries are to stowaways hiding outside the areas normally available to the passengers and crew; or

(b) the aircraft sustains damage or structural failure which adversely affects

the structural strength, performance or flight characteristics of the aircraft, and would normally require major repair or replacement of the affected component, except for engine failure or damage, when the damage is limited to a single engine including its cowlings or accessories, to propellers, wing tips, antennas, probes, vanes, tires, brakes, wheels, fairings, panels, landing gear doors, windscreens, the aircraft skin, including as small dents or puncture holes, or for minor damages to main rotor blades, tail rotor blades, landing gear, and those resulting from hail or bird strike, including holes in the radome; or

- (c) the aircraft is missing or is completely inaccessible;
- (b) by the substitution for the definition of “aerodrome” of
“aerodrome” means a defined 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;
- (c) by the insertion after the definition of “Minister”, of
“Ministry” means the Ministry responsible for Aviation; and
“National Civil Aviation Security Programme” means the national civil aviation security programme established by the Director-General of the Ghana Civil Aviation Authority to safeguard civil aviation operations against acts of unlawful interference pursuant to Chapter 3 of International Civil Aviation Organisation Annex 17;
- (d) by the insertion after definition of “Rules of Court”,
of

“serious incident” means an incident involving circumstances indicating that there was a high probability of an accident and associated with the operation of an aircraft which, in the case of a manned aircraft, takes place between the time any person boards the aircraft with the intention of flight until such time as all such persons have disembarked or in the case of an unmanned aircraft, takes place between the time the aircraft is ready to move with the purpose of flight until the time it comes to a rest at the end of the flight and the primary propulsion system is shut down.”.

Section 43 of Act 678 amended

11. The principal enactment is amended by the insertion after subsection (2) of section 43, of

“(3) Any directives issued by the Director-General and existing immediately before the coming into force of this Act, shall, on the commencement of this Act, be deemed to be Instructions and Circulars issued under this Act.”.

Section 44 of Act 678 amended

12. The principal enactment is amended by the substitution for section 44, of

“44. (1) Until the appropriate arrangements are made and effective and efficient mechanisms are set up for a dichotomy for establishing an entity to undertake the provision of air navigation services including providing aeronautical search and rescue services within the Accra Flight Information Region, the Authority shall continue to provide air navigation services and aeronautical search and rescue services.

(2) The assets and liabilities of, and property vested in the Authority immediately before the coming into force of this Act shall vest in the Authority, subject to the directions in writing of the President.

(3) Proceedings taken by or against the Authority in respect of its regulatory functions may be continued by or against the Authority.

(4) A contract subsisting between the Authority and any other person in respect of its regulatory functions and in force immediately before the coming into force of this Act shall subsist between the Authority and that other person.

(5) An employee of the Authority who remains in the employment of the Authority following the dichotomy under subsection (1) shall continue in the employment of the Authority, on terms and conditions that are not less favourable in aggregate than the terms and conditions enjoyed by that employee under the Authority immediately preceding the dichotomy.”.

First Schedule to Act 678 amended

13. The principal enactment is amended by the deletion of the First Schedule and the insertion of a new First Schedule.

“FIRST SCHEDULE

(Section 28(1))

**PROTOCOL TO AMEND THE CONVENTION ON OFFENCES
AND CERTAIN OTHER ACTS COMMITTED ON BOARD
AIRCRAFT**

THE CONTRACTING STATES TO THIS PROTOCOL,
NOTING that States have expressed their concern about the escalation
of the severity and frequency of unruly behaviour on board aircraft that
may jeopardize the safety of the aircraft or of persons or property therein
or jeopardize good order and discipline on board;

RECOGNIZING the desire of many States to assist each other in curbing
unruly behaviour and restoring good order and discipline on board
aircraft;

BELIEVING that in order to address these concerns, it is necessary to
adopt provisions to amend those of the Convention on Offences and
Certain Other Acts Committed on Board Aircraft signed at Tokyo on 14
September 1963;

HAVE AGREED AS FOLLOWS:

Article I

This Protocol amends the Convention on Offences and Certain Other
Acts Committed on Board Aircraft, signed at Tokyo on 14 September
1963 (hereinafter referred to as “the Convention”).

Article II

Article 1, paragraph 3, of the Convention shall be replaced by the following:

“Article 1

3. For the purposes of this Convention:

- a) an aircraft is considered to be in flight at any time from the moment
when all its external doors are closed following embarkation until
the moment when any such door is opened for disembarkation; in
the case of a forced landing, the flight shall be deemed to continue
until the competent authorities take over the responsibility for the
aircraft and for persons and property on board; and

- b) when the State of the operator is not the same as the State of registration, the term “the State of registration”, as used in Articles 4, 5 and 13 of the Convention shall be deemed to be the State of the operator.”

Article III

Article 2 of the Convention shall be replaced by the following:

“Article 2

Without prejudice to the provisions of Article 4 and except when the safety of the aircraft or of persons or property on board so requires, no provision of this Convention shall be interpreted as authorizing or requiring any action in respect of offences against penal laws of a political nature or those based on discrimination on any ground such as race, religion, nationality, ethnic origin, political opinion or gender.”

Article IV

Article 3 of the Convention shall be replaced by the following:

“Article 3

1. The State of registration of the aircraft is competent to exercise jurisdiction over offences and acts committed on board.

1 bis. A State is also competent to exercise jurisdiction over offences and acts committed on board:

- a) as the State of landing, when the aircraft on board which the offence or act is committed lands in its territory with the alleged offender still on board; and
- b) as the State of the operator, when the offence or act is committed on board an aircraft leased without crew to a lessee whose principal place of business or, if the lessee has no such place of business, whose permanent residence, is in that State.

2. Each Contracting State shall take such measures as may be necessary to establish its jurisdiction as the State of registration over offences committed on board aircraft registered in such State.

2 bis. Each Contracting State shall also take such measures as may be necessary to establish its jurisdiction over offences committed on board aircraft in the following cases:

- a) as the State of landing, when:

- i) the aircraft on board which the offence is committed has its last point of take-off or next point of intended landing within its territory, and the aircraft subsequently lands in its territory with the alleged offender still on board; and
 - ii) the safety of the aircraft or of persons or property therein, or good order and discipline on board, is jeopardized;
- b) as the State of the operator, when the offence is committed on board an aircraft leased without crew to a lessee whose principal place of business or, if the lessee has no such place of business, whose permanent residence, is in that State.

2 ter. In exercising its jurisdiction as the State of landing, a State shall consider whether the offence in question is an offence in the State of the operator.

3. This Convention does not exclude any criminal jurisdiction exercised in accordance with national law.”

Article V

The following shall be added as Article 3 bis of the Convention:

“Article 3 bis

If a Contracting State, exercising its jurisdiction under Article 3, has been notified or has otherwise learned that one or more other Contracting States are conducting an investigation, prosecution or judicial proceeding in respect of the same offences or acts, that Contracting State shall, as appropriate, consult those other Contracting States with a view to co-ordinating their actions. The obligations in this Article are without prejudice to the obligations of a Contracting State under Article 13.”

Article VI

Article 5, paragraph 2, of the Convention shall be deleted.

Article VII

Article 6 of the Convention shall be replaced by the following:

“Article 6

- 1. The aircraft commander may, when he has
- c) to enable him to deliver such person to competent authorities or to disembark him in accordance with the provisions of this Chapter.

2. The aircraft commander may require or authorize the assistance of other crew members and may request or authorise, but not require, the assistance of in-flight security officers or passengers to restrain any person whom he is entitled to restrain. Any crew member or passenger may also take reasonable preventive measures without such authorisation when he has reasonable grounds to believe that such action is immediately necessary to protect the safety of the aircraft, or of persons or property therein.

3. An in-flight security officer deployed pursuant to a bilateral or multilateral agreement or arrangement between the relevant Contracting States may take reasonable preventive measures without such authorisation when he has reasonable grounds to believe that such action is immediately necessary to protect the safety of the aircraft or persons therein from an act of unlawful interference, and, if the agreement or arrangement so allows, from the commission of serious offences.

4. Nothing in this Convention shall be deemed to create an obligation for a Contracting State to establish an in-flight security officer programme or to agree to a bilateral or multilateral agreement or arrangement authorising foreign in-flight security officers to operate in its territory.”

Article VIII

Article 9 of the Convention shall be replaced by the following:

“Article 9

1. The aircraft commander may deliver to the competent authorities of any Contracting State in the territory of which the aircraft lands any person who he has reasonable grounds to believe has committed on board the aircraft an act which, in his opinion, is a serious offence.

2. The aircraft commander shall as soon as practicable and if possible before landing in the territory of a Contracting State with a person on board whom the aircraft commander intends to deliver in accordance with the preceding paragraph, notify the authorities of such State of his intention to deliver such person and the reasons therefor.

3. The aircraft commander shall furnish the authorities to whom any suspected offender is delivered in accordance with the provisions of this Article with evidence and information which are lawfully in his possession.”

Article IX

Article 10 of the Convention shall be replaced by the following:

“Article 10

For actions taken in accordance with this Convention, neither the aircraft commander, any other member of the crew, any passenger, any in-flight security officer, the owner or operator of the aircraft, nor the person on whose behalf the flight was performed shall be held responsible in any proceeding on account of the treatment undergone by the person against whom the actions were taken.”

Article X

The following shall be added as Article 15 bis of the Convention:

“Article 15 bis

1. Each Contracting State is encouraged to take such measures as may be necessary to initiate appropriate criminal, administrative or any other forms of legal proceedings against any person who commits on board an aircraft an offence or act referred to in Article 1, paragraph 1, in particular:

- a) physical assault or a threat to commit such assault against a crew member; or
- b) refusal to follow a lawful instruction given by or on behalf of the aircraft commander for the purpose of protecting the safety of the aircraft or of persons or property therein.

2. Nothing in this Convention shall affect the right of each Contracting State to introduce or maintain in its national legislation appropriate measures in order to punish unruly and disruptive acts committed on board.”

Article XI

Article 16, paragraph 1, of the Convention shall be replaced by the following:

“Article 16

1. Offences committed on board aircraft shall be treated, for the purpose of extradition between the Contracting States, as if they had been committed not only in the place in which they occurred but also in the territories of the Contracting States required to establish their jurisdiction in accordance with paragraphs 2 and 2 bis of Article 3.”

Article XII

Article 17 of the Convention shall be replaced by the following:

“Article 17

1. In taking any measures for investigation or arrest or otherwise exercising jurisdiction in connection with any offence committed on board an aircraft, the Contracting States shall pay due regard to the safety and other interests of air navigation and shall so act as to avoid unnecessary delay of the aircraft, passengers, crew or cargo.

2. Each Contracting State, when fulfilling its obligations, or exercising a permitted discretion under this Convention, shall act in accordance with the obligations and responsibilities of States under international law. In this respect, each Contracting State shall have regard for the principles of due process and fair treatment.”

Article XIII

The following shall be added as Article 18 bis of the Convention:

“Article 18 bis

Nothing in this Convention shall preclude any right to seek the recovery, under national law, of damages incurred, from a person disembarked or delivered pursuant to Article 8 or 9 respectively.”

Article XIV

The texts of the Convention in the Arabic, Chinese and Russian languages annexed to this Protocol shall, together with the texts of the Convention in the English, French, and Spanish languages, constitute texts equally authentic in the six languages.

Article XV

As between the Contracting States to this Protocol, the Convention and this Protocol shall be read and interpreted together as one single instrument and shall be known as the Tokyo Convention as amended by the Montréal Protocol, 2014.

Article XVI

This Protocol shall be open for signature in Montréal on 4 April 2014 by States participating in the International Air Law Conference held at Montréal from 26 March to 4 April 2014. After 4 April 2014, this Protocol shall be open to all States for signature at the Headquarters of the International Civil Aviation Organisation in Montréal until it enters into force in accordance with Article XVIII.

Article XVII

1. This Protocol is subject to ratification, acceptance or approval by the signatory States. The instruments of ratification, acceptance or approval shall be deposited with the Secretary General of the International Civil Aviation Organisation, who is hereby designated as the Depositary.

2. Any State which does not ratify, accept or approve this Protocol in accordance with paragraph 1 of this Article may accede to it at any time. The instruments of accession shall be deposited with the Depositary.

3. Ratification, acceptance, approval or accession to this Protocol by any State which is not a Contracting State to the Convention shall have the effect of ratification, acceptance, approval or accession to the Tokyo Convention as amended by the Montréal Protocol, 2014.

Article XVIII

1. This Protocol shall enter into force on the first day of the second month following the date of the deposit of the twenty-second instrument of ratification, acceptance, approval or accession with the Depositary.

2. For each State ratifying, accepting, approving or acceding to this Protocol after the deposit of the twenty-second instrument of ratification, acceptance, approval or accession, this Protocol shall enter into force on the first day of the second month following the date of the deposit by such State of its instrument of ratification, acceptance, approval or accession.

3. As soon as this Protocol enters into force, it shall be registered with the United Nations by the Depositary.

Article XIX

1. Any Contracting State may denounce this Protocol by written notification to the Depositary.

2. Denunciation shall take effect one year following the date on which notification is received by the Depositary.

Article XX

The Depositary shall promptly notify all signatory and Contracting States to this Protocol of the date of each signature, the date of deposit of each instrument of ratification, acceptance, approval or accession, the date of coming into force of this Protocol, and other relevant information.

IN WITNESS WHEREOF the undersigned Plenipotentiaries, having been duly authorized, have signed this Protocol.

DONE at Montréal on the fourth day of April of the year Two Thousand and Fourteen in the English, Arabic, Chinese, French, Russian and Spanish languages, all authority of the President of the Conference within ninety days hereof as to the conformity of the texts with one another. This Protocol shall be deposited with the International Civil Aviation Organization, and certified copies thereof shall be transmitted by the Depositary to all Contracting States to this Protocol.”.

Date of Gazette notification: 13th March, 2019.