

SWAZILAND GOVERNMENT GAZETTE EXTRAORDINARY

NO. 90 OF 2011

LEGAL NOTICE NO.112 OF 2011

CIVIL AVIATION AUTHORITY ACT, 2009
(Act No. 10 of 2009)

CIVIL AVIATION AUTHORITY (COMMERCIAL AIR TRANSPORT OPERATIONS BY
FOREIGN AIR OPERATOR) REGULATIONS, 2011
(Under section 104)

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PART I
PRELIMINARY

In exercise of the powers conferred by section 104 of the Civil Aviation Authority Act, 2009, the Minister of Public Works and Transport makes the following regulations-

Citation and commencement

- 1. These regulations may be cited as the Civil Aviation Authority (Commercial Air Transport Operations By Foreign Air Operator) Regulations, 2011, and shall come into force on the date of publication in the Gazette.

Interpretation

- 2. In these regulations, unless the context otherwise requires, words or expressions used in the Act have the same meaning as in these Regulations, and-

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

“aeroplane” means a power-driven heavier-than-air aircraft, deriving its lift in flight chiefly from aerodynamic reactions on surfaces which remain fixed under given conditions of flight;

“aircraft” means a machine that derives support in the atmosphere from the reactions of the air, other than the reactions of the air against the surface of the earth;

“article” means any item, including but not limited to, an aircraft, airframe, aircraft engine, propeller, appliance, accessory, assembly, subassembly, system, subsystem, component, unit, product or part;

“authorized person” means a person authorized by the Authority either generally or in relation to a particular case or class of cases and includes references to the holder of any office designated by the Authority;

“Authority” means the Civil Aviation Authority, established under the Civil Aviation Authority Act;

“balloon” means a non-power-driven lighter-than-air aircraft;

“commercial air transport operation” means an aircraft operation involving the transport of passengers, cargo or mail for remuneration or hire;

“certificate of release to service” means a document containing a certification that inspection and maintenance work has been performed satisfactorily in accordance with the methods prescribed by the Authority;

“crew member” is a person assigned by the operator to duty on an aircraft during a flight duty period;

“flight crew member” means a licensed crewmember charged with duties essential to the operation of an aircraft during flight time;

“flight plan” means specified information provided to air traffic services units, relative to an intended flight or portion of a flight of an aircraft;

“flight time” means the total time from the moment an aircraft first moves under its own power for the purpose of taking off until the moment it comes to rest at the end of the flight;

“foreign air operator” means an operator, not being a Swazi air operator, who undertakes, whether directly or indirectly or by lease or any other arrangement, to engage in commercial air transport operations in and out of Swaziland, whether on a scheduled or charter basis;

“foreign authority” means the civil aviation authority that issues and oversees the air operator certificate (AOC) of the foreign operator;

“helicopter” means a heavier-than-air aircraft supported in flight chiefly by the reactions of the air on one or more power-driven rotors on substantially vertical axis;

“inspection” means the examination of an aircraft or aircraft component to establish conformity with a standard approved by the Authority;

“maintenance” means tasks required to ensure the continued airworthiness of an aircraft or aircraft component including any one or combination of overhaul, repair, inspection, replacement, modification and defect rectification;

“modification” means a change to the type design of an aircraft or aeronautical product which is not a repair;

“night” means the time between 15 minutes after sunset and 15 minutes before sunrise, sunrise and sunset being determined at surface level, and includes anytime between sunset and sunrise when unlighted aircraft or other unlighted prominent object cannot clearly be seen at a distance of 4,572 metres;

“NOTAM” means Notice to Airmen;

“operational flight plan” means the plan of the operator for the safe conduct of the flight based on considerations of aeroplane performance, other operating limitations and relevant expected conditions on the route to be followed and at the aerodromes concerned;

“operations manual” means a manual containing procedures, instructions and guidance for use by operational personnel in the execution of their duties;

“operations specifications” means a document containing authorizations, conditions, limitations and other provisions with which an air operator shall comply;

“overhaul” means the restoration of an aircraft or aircraft component using methods, techniques, and practices acceptable to the Authority, including disassembly, cleaning and inspection as permitted, repair as necessary and reassembly; and tested in accordance with approved standards and technical data or in accordance with current standards and technical data acceptable to the Authority, which have been developed and documented by the State of Design, holder of the type certificate, supplemental type certificate or a material, part, process or appliance approval under parts manufacturing authorization (PMA) or technical standard order (TSO);

“package” means the complete product of the packing operation consisting of the packaging and its contents prepared for transport;

“packaging” means receptacles and any other components or materials necessary for the receptacle to perform its containment function;

“pre-flight information bulletin (PIB)” means a presentation of current NOTAM information of operational significance, prepared prior to flight;

“propeller” means a device for propelling an aircraft that has blades on a powerplant driven shaft and that, when rotated, produces by its action on the air, a thrust approximately perpendicular to its plane of rotation; and includes control components normally supplied by its manufacturer, but does not include main and auxiliary rotors or rotating airfoils of powerplants;

“repair” means the restoration of an aircraft or aircraft component to a serviceable condition in conformity with an approved standard;

“standard” means an object, artifact, tool, test equipment, system or experiment that stores, embodies or otherwise provides a physical quantity, which serves as the basis for measurement of the quantity and it includes a document describing the operations and process that shall be performed in order for a particular end to be achieved;

“state of design” means the Contracting State which approved the original type certificate and any subsequent supplemental type certificates for an aircraft or which approved the design of an aeronautical product or appliance;

“state of operator” means the State in which the principal place of business of the operator is located or if there is no such place of business, the permanent residence of the operator;

“state of registry” means the Contracting State on whose registry an aircraft is entered;

“technical instructions” means the latest effective edition of the Technical Instructions for the Safe Transport of Dangerous Goods by Air (Doc. 9284-AN/905), including the supplement and any addendum, approved and published by decision of the Council of the ICAO;

“technical logbook” means a document carried on an aircraft that contains information to meet ICAO requirements; a technical logbook contains 2 independent sections: a journey record section and an aircraft maintenance record section;

“training programme” means a programme that consists of courses, courseware, facilities, flight training equipment and personnel necessary to accomplish a specific training objective; it may include a core curriculum and a specialty curriculum.

Application

3. These Regulations prescribe the requirements applicable to the operation of any civil aircraft in and out of Swaziland for the purpose of commercial air transportation operations by any foreign air operator whose air operator certificate is issued and controlled by a civil aviation authority other than the Authority.

PART II

GENERAL REQUIREMENTS

Compliance requirements

4. A foreign air operator shall not operate an aircraft in and out of Swaziland in commercial air transport operations contrary to the requirements of-

- (a) these Regulations;
- (b) the Civil Aviation (Instruments and Equipment) Regulations, the Civil Aviation (Operation of Aircraft) Regulations and the Civil Aviation (Airworthiness) Regulations, as applicable;
- (c) standards contained in Parts I or III of ICAO Annex 6, as applicable; and
- (d) any other requirements the Authority may specify.

Authority to inspect

5. No foreign air operator shall, while in Swaziland, hinder or obstruct any person authorized by the Authority from boarding a foreign registered aircraft operated for commercial air transport at any time without prior notice to inspect the documents and manuals required by these Regulations.

Operations specifications

6. A foreign air operator shall conduct its operations in accordance with operations specifications or equivalent document issued by the state of operator and acceptable to the Authority.

Certificate of airworthiness and certificate of registration

7. A foreign air operator may operate an aircraft in and out of Swaziland-

- (a) if that aircraft has a valid certificate of airworthiness and certificate of registration issued or validated by the state of registry and displays the nationality and registration markings of that State; and
- (b) in accordance with the limitations on maximum certificated mass prescribed for that aircraft and that operation by the state of design.

Air traffic rules and procedures

8. (1) A pilot in command of a foreign registered aircraft shall comply with the rules of the air and air traffic control specified in the Civil Aviation (Rules of the Air and Air Traffic Control) Regulations.

(2) A foreign air operator shall establish procedures to ensure that each of its pilots complies with the requirements of sub-regulation (1), and shall check the ability of each of the pilots to operate safely according to applicable rules and procedures.

PART III
DOCUMENTS

Foreign air operator aircraft technical logbook

9. A foreign air operator shall use an aircraft technical logbook containing the following information for each aircraft-

- (a) information about each flight necessary to ensure continued flight safety;
- (b) the current certificate of release to service or an equivalent document;
- (c) the current maintenance statement giving the aircraft maintenance status of what next scheduled and out of phase maintenance is due, unless the Authority agrees to the maintenance statement being kept elsewhere;
- (d) all outstanding deferred defects that affect the operation of the aircraft; and
- (e) any necessary guidance instructions on maintenance support arrangement.

Foreign air operator aircraft journey logbook

10. (1) A foreign air operator shall maintain journey logbook containing information on each flight, which may include-

- (a) aircraft nationality and registration marks;
- (b) date of the flight;
- (c) names of crew members;
- (d) duty assignments of crew members;
- (e) place of departure;
- (f) place of arrival;
- (g) time of departure;
- (h) time of arrival;
- (i) duration of flight;
- (j) purpose of flight;
- (k) incidents, and observations, if any; and

(1) signature of the pilot in command.

(2) The Authority may waive the requirement of sub-regulation (1) if the relevant information is available in the aircraft technical log referred to in regulation 9.

(3) A foreign air operator shall ensure that all entries in the journey log are made concurrently and are permanent in nature.

Operations manual to be carried

11. A foreign air operator shall ensure that the following manuals are on board the aircraft on each flight, current-

- (a) parts of the operations manual relevant to the duties of the crew;
- (b) parts of the operations manual which are required for the conduct of a flight which shall be easily accessible to the crew; and
- (c) approved aircraft flight manual, rotorcraft flight manual or an aircraft operating manual.

Documents and additional information to be carried on board the aircraft

12. (1) A foreign air operator shall ensure that the following documents are carried on each flight-

- (a) the aircraft certificate of registration;
- (b) the aircraft certificate of airworthiness;
- (c) the appropriate licences for each member of the crew;
- (d) the aircraft journey or technical logbook;
- (e) the aircraft radio station licence;
- (f) in the case of a passenger carrying aircraft, a list of the names of the passengers and places of embarkation and destination;
- (g) in the case of a cargo aircraft, a manifest and detailed declaration of the cargo;
- (h) load sheet;
- (i) copy of air operator certificate and attachments;

- (j) insurance certificate;
- (k) certificate of release to service or equivalent document;
- (l) operational flight plan;
- (m) pre-flight information bulletin;
- (n) current maps and charts for the area of operation;
- (o) copy of applicable operations specifications; and
- (p) notification of special loads including dangerous goods.

(2) The Authority may specify other documents and information to be carried on board in addition to those referred to in sub-regulation (1).

Access to and production of documentation, manuals and records

13. (1) A foreign air operator shall-

- (a) give an authorized person access to any documents, manuals and records which are related to flight operations and maintenance; and
- (b) produce all such documents, manuals and records, when requested to do so by the Authority, within 14 days.

(2) A pilot in command of an aircraft operated by a foreign air operator shall, when requested to do so by an authorized person, produce to that person the documentation, manuals and records required to be carried on board an aircraft.

Preservation and production of flight recorded data

14. (1) Following an aircraft accident or incident, or when the Authority so directs, a foreign air operator shall preserve the original recorded data for a period of 60 days unless otherwise directed by the investigating authority.

(2) The recorded data under sub-regulation (1) shall be produced when the Authority or investigating authority so requires.

**PART IV
PERFORMANCE**

Computation of passenger and baggage mass

15. (1) A foreign air operator shall compute the mass of passengers and checked baggage using the-

- (a) actual weighed mass of each person and the actual weighed mass of baggage; or

- (b) standard mass values specified by the appropriate authority of the State of Registry.

(2) The Authority may require a foreign registered air operator to produce evidence validating any standard mass values used.

Approach and landing conditions

16. Before initiating an approach to land, the pilot in command of an aircraft operated by a foreign air operator shall determine that, according to the information available-

- (a) weather at the aerodrome and the conditions of the runway are safe for the approach and landing; and
- (b) in the case of a missed approach, the aircraft is able to meet the performance requirements contained in the operations manual.

Aircraft security

17. A foreign air operator shall-

- (a) ensure that all appropriate personnel are familiar and comply with the relevant requirements of the national security programmes of the State of the operator and those of Swaziland;
- (b) establish and use a security programme approved by the appropriate authority of the State of the operator and accepted by the Authority;
- (c) ensure that all aircraft carry a checklist of the procedures to be followed for that type in searching for concealed weapons, explosives or other dangerous devices;
- (d) ensure that the flight crew compartment door, if installed, on all aircraft operated for the purpose of carrying passengers shall be capable of being locked from within the compartment in order to prevent unauthorised access, and is closed and locked from the time all external doors are closed following embarkation until any such door is opened for disembarkation, except when necessary to permit access and egress by authorized persons;
- (e) establish, maintain and conduct approved training programmes which enable the personnel of the operator to take appropriate action to prevent acts of unlawful interference such as sabotage or unlawful seizure of aircraft and to minimize the consequences of such events should they occur; and
- (f) following an act of unlawful interference on board an aircraft, the pilot in command or in their absence the operator, shall submit, without delay, a report of such an act to the designated local authority and the appropriate authority in the State of the operator.

Unauthorized carriage

18. A foreign air operator shall take measures to ensure that a person or cargo is not concealed on board the aircraft.

Reporting of incidents and accidents

19. A foreign air operator or the pilot in command shall report to the Authority incidents and accidents occurring while operating in the Swaziland airspace within 72 hours of the incident, accident or discovery unless exceptional circumstances prevent such reporting within the time stipulated.

PART V

CARRIAGE OF DANGEROUS GOODS, WEAPONS AND MUNITIONS OF WAR

Carriage of dangerous goods by air

20. A foreign air operator shall-

- (a) not offer or accept for transportation dangerous goods as defined by the International Civil Aviation Organization Technical Instructions for the Safe Transport of Dangerous Goods by air in and out of Swaziland unless the operator has-
 - (i) been authorized to do so by the State of the operator and approved by the Authority; and
 - (ii) conducted the required personnel training;
- (b) properly classify, document, certify, describe, package, mark, label and put in a fit condition for transport, dangerous goods as required by the dangerous goods programme of the operator as approved by the state of the operator;
- (c) state in the operations specifications required in regulation 6 whether or not that operator has been authorized to accept dangerous goods by the state of operator; and
- (d) provide a copy of its dangerous goods programme to the Authority where the foreign air operator has been granted authority to accept dangerous goods and has an approved dangerous goods programme by the state of the operator.

Carriage of weapons of war and munitions of war

21. A foreign air operator conducting commercial air transport operations in and out of Swaziland shall-

- (a) not transport weapons and munitions of war by air unless an approval to do so has been granted by the state of operator, state of origin, states over which the aircraft overflies and at state of destination;

- (b) ensure that weapons and munitions of war are-
 - (i) stowed in the aircraft in a place which is inaccessible to the passengers during flight; and
 - (ii) unloaded in case of firearms, unless, before the commencement of the flight, an approval has been granted by all States which the aircraft originate, overfly and land that such weapons and munitions of war may be carried in circumstances that differ in part or in total from those specified in this sub-paragraph; and
- (c) ensure that the pilot in command is notified before the flight begins of the details and location on board the aircraft of any weapons and munitions of war that are intended to be carried.

Carriage of sporting weapons and ammunition

22. (1) A foreign air operator conducting commercial air transport operations to Swaziland shall take all necessary measures to ensure that any sporting weapons intended to be carried by air are reported to the Authority.

(2) A foreign air operator accepting the carriage of sporting weapons shall ensure that they are-

- (a) stowed in the aircraft in a place which is inaccessible to passengers during flight unless the Authority has determined that compliance is impractical and has approved other procedures; and
- (b) unloaded in the case of firearms or other weapons that contains ammunitions.

(3) A foreign air operator may allow a passenger to carry ammunition for sporting weapons in the checked baggage of the passenger, but such carriage shall be approved by the Authority.

PART VI

GENERAL

Possession of the licence

23. (1) A holder of a licence, certificate or authorization issued by the Authority shall have it in their physical possession or at the work site when exercising the privileges of that licence, certificate or authorizations.

(2) A flight crew member of a foreign registered aircraft shall hold a valid licence, certificate or authorizations, including an appropriate and current medical certificate, issued by the State of Registry and have it in their physical possession or at the work site when exercising the privileges of that licence, certificate or authorization.

Drug and alcohol testing and reporting

24. (1) A crew member of a foreign air operator shall not perform or attempt to perform, a crew member function while under the influence of drugs or alcohol.

(2) A crew member of a foreign air operator may be tested for drug or alcohol usage.

(3) A crew member of a foreign air operator who tests positive for drug or alcohol usage or who refuses to submit to a test, shall be prohibited from boarding a flight to perform any crew member function.

(4) The Authority shall report the positive test result or the refusal to submit to a test, by a crew member of a foreign air operator to the State of the operator.

Inspection of licences and certificates

25. A person who holds a licence, certificate or authorization required by these Regulations shall present it for inspection upon a request from the Authority or any person authorized by the Authority.

Use and retention of certificates and records

26. (1) No person shall-

- (a) use any certificate, approval, permission, exemption or other document issued or required by or under these Regulations which has been forged, altered, revoked or suspended or to which that person is not entitled;
- (b) forge or alter any certificate, approval, permission, exemption or other document issued or required by or under these Regulations;
- (c) lend any certificate, approval, permission, exemption or other document issued or required by or under these Regulations to any other person; or
- (d) make any false representation for the purpose of procuring for that person or any other person the issue renewal or variation of any such certificate, approval, permission or exemption or other document.

(2) During the period for which a record is required under these Regulations to be preserved, no person shall mutilate, alter, render illegible or destroy any records, or any entry made in the record, required by or under these Regulations to be maintained or knowingly make or procure or assist in the making of, any false entry in any such record or wilfully omit to make a material entry in such record.

(3) A record required to be maintained by or under these Regulations shall be recorded in a permanent and indelible material.

(4) No person shall issue any certificate, document or exemption under these Regulations unless that person is authorized to do so by the Authority.

(5) No person shall issue any certificate referred to in sub-regulation (4) unless that person is satisfied that all statements in the certificate are correct and that the applicant is qualified to hold that certificate.

Reports of violation

27. (1) A person who knows of a violation of the Civil Aviation Authority Act or any regulation or order issued under the Act shall report it to the Authority.

(2) The Authority will determine the nature and type of any additional investigation or enforcement action that need be taken.

Enforcement of directions

28. A person who fails to comply with any directive given by the Authority or by any authorized person under any provision of these Regulations shall be deemed for the purposes of these Regulations to have contravened that provision.

Aeronautical user fees

29. (1) The Authority may notify the fees to be charged in connection with the issue, validation, renewal, extension or variation of any document including the issue of a copy of the document or the undergoing of any examination, test, inspection or investigation or the grant of any permission or approval, required by or for the purpose of these Regulations or any orders, notices or proclamations made under these Regulations.

(2) Upon an application being made in connection with which fee is chargeable in accordance with sub-regulation (1), the applicant shall be required, before the application is entertained, to pay the fee so chargeable.

(3) If, after that payment has been made, the application is withdrawn by the applicant or otherwise ceases to have effect or is refused, the Authority shall not refund the payment made.

Application of regulations to Government and visiting forces

30. (1) These Regulations shall apply to aircraft, not being military aircraft, belonging to or exclusively employed in the service of the Government, and for the purposes of that application, the Department or other authority for the time being responsible for management of the aircraft shall be deemed to be the operator of the aircraft, and in the case of an aircraft belonging to the Government, to be the owner of the interest of the Government in the aircraft.

(2) Except as otherwise expressly provided, the naval, military and air force authorities and member of any visiting force and property held or used for the purpose of that force shall be exempt from the provisions of these regulations to the same extent as if the visiting force formed part of the military force of Swaziland.

PART VII

OFFENCES AND PENALTIES

Contravention of Regulations

31. A person who contravenes any provision of these Regulations may have their licence, certificate, approval, authorization, exemption or other document revoked or suspended.

Offences and penalties

32. (1) If any provision of these Regulations, orders, notices or proclamations made under these Regulations is contravened in relation to an aircraft, the operator of that aircraft and the pilot in command, if the operator or the pilot in command is not the person who contravened that provision shall, without prejudice to the liability of any other person under these Regulations for that contravention, be deemed to have contravened that provision unless the operator or pilot proves that the contravention occurred without their consent or connivance and that all due diligence was exercised to prevent the contravention.

(2) A person who contravenes any provision specified as an “A” provision in the Schedule Regulations commits an offence and is liable, on conviction to a fine not exceeding fifty thousand Emalangeni for each offence or to imprisonment for a term not exceeding one year or to both.

(3) A person who contravenes any provision specified as a “B” provision in the Schedule to these Regulations commits an offence and is liable on conviction to a fine not exceeding one hundred thousand Emalangeni for each offence or to imprisonment for a term not exceeding three years or to both.

(4) A person who contravenes any provision of these Regulations not being a provision referred to in the Schedule, commits an offence and is liable to a fine not one hundred thousand Emalangeni and in the case of a second or subsequent conviction for a similar offence to a fine not exceeding two hundred thousand Emalangeni.

**PART VIII
EXEMPTIONS**

Exemptions

33. (1) The Authority may exempt any aircraft or persons or classes of aircraft or persons from any of the provisions of these Regulations, either absolutely or subject to certain conditions as the Authority may determine.

(2) Any interested person may apply to the Authority for an exemption from these Regulations and only the Authority may issue the exemption.

(3) No person may take or cause to be taken any action not in compliance with these Regulations unless the Authority has issued an exemption to that person.

(4) An exemption shall only be granted in accordance with this regulation.

Application for exemption

34. (1) An application for an exemption shall be submitted at least 60 days in advance of the proposed effective date, to obtain timely review.

(2) The application shall contain the following-

- (a) name of applicant;
- (b) street address and mailing address, if different;
- (c) telephone number;
- (d) fax number if available;
- (e) email address if available;
- (f) the agent for all purposes related to the application;
- (g) a citation of the specific requirement from which the applicant seeks relief;
- (h) an explanation of why the exemption is needed;
- (i) a description of the type of operations to be conducted under the proposed exemption;
- (j) the proposed duration of the exemption;
- (k) an explanation of how the exemption would be in the public interest, that is, benefits the public as a whole;
- (l) a detailed description of the alternative means by which the applicant will ensure a level of safety equivalent to that established by the regulation in question; and
- (m) discussion of any known safety concerns with the requirement, including a review of information about any relevant accidents or incidents of which the applicant is aware.

(3) If the applicant seeks emergency processing, the application shall contain supporting facts and reasons that the application was not timely filed, and the reasons it is an emergency.

(4) The Authority may deny an application if the Authority finds that the applicant has not justified the failure to apply in a timely manner.

(5) If the applicant is not a citizen or legal resident of Swaziland, the application shall specify a Swaziland agent for service.

Decision of Authority

35. (1) The Authority shall notify the applicant in writing of its decision to grant or refuse the application for exemption.

(2) An exemption granted under these Regulations shall-

- (a) specify the duration of the exemption and any conditions or limitations of the exemption;
- (b) be published in the Gazette.

PART IX
TRANSITION AND SAVINGS

Transition and savings

36. A valid licence, certificate, permit or authorization issued or granted by the Authority before the commencement of these Regulations shall remain operational until it expires or is revoked, annulled or replaced.

SCHEDULE
OFFENCES AND PENALTIES

Registration No	Title	Part
4	Compliance requirements	A
5	Authority to inspect	A
7	Certificates of airworthiness and certificate of registration	A
8	Air traffic control rules and procedures	A
9	Foreign air operator aircraft technical logbook	A
10	Foreign air operations journey logbook	A
11	Operations manual to be carried	A
12	Documents and additional information to be carried on board the aircraft	A
13	Access to and production of documentation, manuals, records	A
14	Preservation and production of flight recorded data	A
15	Computation of passenger and	B

	baggage mass	
16	Approach and landing conditions	A
17	Aircraft security	A
18	Unauthorized carriage	A
19	Reporting of incidents and accidents	A
20	Carriage of dangerous goods by air	B
21	Carriage of weapons and munitions of war	B
22	Carriage of sporting weapons and ammunition	A
23	Possession of the licence	A
24 (2), (3)	Drug and alcohol testing and reporting	B
25	Inspection of licences and certificates	A
26	Use and retention of certificates and records	A
28	Enforcement of directions	A

N. Dlamini
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