

CIVIL AVIATION (LICENSING OF AIR SERVICES) REGULATIONS

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(SECTION 5)

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PART I GENERAL

Citation.

1. These Regulations may be cited as the Civil Aviation (Licensing of Air Services) Regulations.

Interpretation.

2. In these Regulations, unless the context otherwise requires-

"the Act" means the Civil Aviation Act;

"air service" means any service performed by any aircraft for hire or reward;

"the Board" means the Air Transport Advisory Board constituted by regulation 6;

"the International Air Service Transit Agreement" means the Agreement concluded at Chicago on the 7th day of December, 1944;

"licence" means a licence granted under regulation 8;

"permit" means a permit granted under regulation 23;

"provisional licence" means a licence granted under regulation 14;

"reward" in relation to any flight by an aircraft, includes any form of consideration received or to be received wholly or partly in connection with a flight, irrespective of the person by or to whom the consideration has been or is to be given;

"scheduled journey" means one of a series of journeys which are undertaken between the same two places and which together amount to a systematic service operated in such a manner that the benefits thereof are available to members of the public from time to time seeking to take advantage of them.

Exemptions.

3. Nothing in these Regulations shall apply to any flight-

- (a) by a civil aircraft registered in a country (other than The Bahamas) which is for the time being a party to the Chicago Convention, on a journey which is not a scheduled journey and which is undertaken solely for the purpose of the carriage of passengers, none of whom are taken on or discharged from the aircraft in The Bahamas, or the

- carriage of cargo or mail none of which is taken on or discharged in The Bahamas;
- (b) by a civil aircraft registered in a country (other than The Bahamas) which is for the time being a party to the International Air Services Transit Agreement, which flies across The Bahamas without landing or lands in The Bahamas in accordance with the provisions of that Agreement;
 - (c) solely for the purpose of training or testing of persons in the performance of duties in connection with aircraft provided-
 - (i) the aircraft is owned or is operated under arrangements entered into by a Flying Club (approved as such by the Director) of which both the person giving and the person receiving instruction are members; or
 - (ii) the person carrying out the training or testing has been granted approval by the Director to carry out such training or testing without a permit;
 - (d) solely for the purpose of providing ambulance or rescue facilities where such facilities are not provided for hire or reward;
 - (e) solely for the purpose of carrying emergency food or emergency medical supplies where such food and supplies are not carried for reward;
 - (f) solely for the purpose of testing or demonstrating any aircraft or any apparatus or equipment whether or not that apparatus or equipment is carried in the aircraft;
 - (g) being a positioning flight on which no passengers or cargo are carried, that is to say a flight solely to enable the aircraft to arrive at a place at which-
 - (i) the aircraft is to be used for a flight; or
 - (ii) the aircraft is to be parked or stored; or
 - (iii) the aircraft or any part of the aircraft or its equipment is to be modified, inspected, tested, overhauled or repaired, or any part of the aircraft or its equipment is to be replaced;
 - (h) beginning in accordance with the terms of a licence or permit, but ending otherwise than in accordance with such terms by reason of-
 - (i) an emergency occurring after the beginning of the flight; or
 - (ii) any other circumstances beyond the control of the operator and commander of the aircraft;
 - (i) ending in accordance with the terms of a licence or permit, but beginning otherwise than in accordance with such terms, being a flight which the aircraft next makes after such a flight as is mentioned in subparagraph (h).

PART II

LICENCES FOR SCHEDULED JOURNEYS

Application of Part II.

4. This Part shall not apply to the carriage of passengers, mail or cargo by air for hire or reward upon journeys other than scheduled journeys.

Restriction on operation without licence.

5. (1) Subject to the provisions of these Regulations, no person shall use any aircraft in The Bahamas for the carriage of passengers, mail or cargo for hire or reward upon any scheduled journey between two places of which at least one is in The Bahamas except under, and in accordance with, the provisions of a licence or provisional licence granted by the Minister.

(2) Any person who uses any aircraft in contravention of this regulation shall be guilty of an offence and shall be liable on summary conviction, in the case of a first offence, to a fine not exceeding five thousand dollars or to imprisonment for a term not exceeding one year and in the case of a second subsequent offence to a fine not exceeding ten thousand dollars or to imprisonment for a term not exceeding two years.

Appointment of Board.

6. (1) There shall be established a body to be known as the Air Transport Advisory Board which shall be responsible for advising the Minister on matters relating to the licensing of air services in The Bahamas.

(2) The Board shall consist of not less than three nor more than five members who shall be appointed by the Minister by instrument in writing.

(3) The persons appointed under paragraph (2) shall hold office for such period and on such terms as may be determined at the date of their respective appointments.

(4) The Minister shall appoint one of the members to be the Chairman of the Board,

(5) Any member of the Board may at any time resign his office by instrument in writing addressed to the Minister, and, from the date of the receipt by the Minister of such instrument, that member shall cease to be a member of the Board.

(6) The Minister may appoint a person to be secretary to the Board.

(7) A majority of the members of the Board shall form a quorum.

(8) The Board may regulate its own proceedings.

Minister not bound to act on advice given by Board.

7. In the exercise of his functions under the Act and these Regulations relating to the licensing of air services, the Minister may consult with the Board from time to time as he thinks fit but shall not be bound to act upon the advice of the Board.

Minister may grant a licence.

8. (1) The Minister may grant to any person applying therefor a licence to carry passengers, mail or cargo by air for hire or reward on such scheduled journeys, and subject to such

conditions as may be specified in the licence.

(2) The Minister may attach such conditions to any licence as he thinks fit, having regard to the nature and circumstances of the application therefor.

(3) It shall be a condition of every licence-

- (a) that the holder of the licence and any person having a financial interest in the business of the holder of the licence shall refrain from stipulating that any other person shall-
 - (i) refuse booking facilities to any other holder of a licence;
 - (ii) grant such facilities to such holder only on onerous terms; and
- (b) that the holder of the licence shall perform all such reasonable services as the Postmaster General may from time to time require in regard to the conveyance of mails and of any persons who may be in charge thereof upon journeys made under the licence, the remuneration for any such services being such as may from time to time be determined by agreement between the Postmaster General and the holder of the licence; and
- (c) that any dispute, difference or question which may arise as to the remuneration to be paid to the holder of the licence in respect of such services, or as to the rights, duties or liabilities of the holder of the licence or the Postmaster General hereunder, or otherwise in relation to any of the matters aforesaid, shall in default of agreement be referred to arbitration in accordance with the provisions of the Arbitration Act.

Application for licences.

9. (1) Applications for licences shall be made in writing to the Minister and shall contain such particulars as may be required by the Minister.

(2) Every applicant shall furnish to the Minister such further information as the Minister may reasonably require.

(3) As soon as may be after receipt of an application under paragraph (1), the Minister shall cause to be published in at least two issues of a newspaper published and circulating in The Bahamas, at an interval of not less than one week, and twice in the *Gazette*, such particulars of any application received by him as he thinks fit.

Objections and representations.

10. Responsible persons or bodies who may reasonably be considered by the Minister to have any interest in the grant or refusal of a licence, may in such form and manner and within such time as the Minister may require, make representations or objections with regard to any application for a licence.

Public enquiry.

11. (1) The Minister shall, for the purpose of determining applications for licences, hold or cause enquiries to be held in public, unless he otherwise decides in relation to the whole or part

of a particular case.

(2) Before any such enquiry is held, the Minister shall give notice in writing to the applicant and to any person who has made representations or objections with regard to the application, and shall give the applicant and any such person an opportunity of being heard at the enquiry.

Power of Minister to grant short term special licences.

12. (1) Where an application is made to the Minister for a licence to remain in force for a period not exceeding ninety days and the Minister is satisfied that it is in the public interest that the application should be dealt with expeditiously, he may deal with the application and grant a licence accordingly.

(2) The provisions of this Part as to the publication of particulars of applications, the making of objections and representations, and the holding of enquiries at the instance of the applicant or an objector shall not apply to an application made under paragraph (1).

Duration of licence.

13. (1) Subject to paragraph (3), the Minister may grant licences to remain in force for such a period not exceeding 5 years, as he may in each case determine, commencing on the date on which the licence is expressed to take effect.

(2) The Minister may, on the expiration of a licence and on payment of the prescribed fee, renew the licence for a further period not exceeding five years subject to such conditions as he thinks fit.

(3) If at the date of the expiration of a licence, an application to the Minister is pending for the renewal of a licence, the existing licence shall continue in force until the application is granted or refused.

Power of Minister to grant provisional licences.

14. The Minister may, pending the consideration of an application for a licence, grant to the applicant a provisional licence which shall remain in force until the application is granted or refused.

Publication of Minister's decisions.

15. The Minister shall cause to be published in the *Gazette* such particulars of his decisions on applications for licences and of his decisions to revoke or suspend a licence as he deems fit.

Matters to be considered in granting or refusing licence.

16. The Minister shall, in exercising his functions under regulation 8, consider-

- (a) whether he is satisfied that, having regard to the applicant's experience, financial resources, his competence to ensure that aircraft operated by him will be operated safely, his ability to provide satisfactory equipment, organisation and staffing arrangements, the applicant is competent and a fit and proper person to operate aircraft for the purposes for which he seeks a licence;

- (b) the provision made or proposed to be made against any liability in respect of loss or damage to persons or property which may be incurred in connection with aircraft operated by the applicant;
- (c) any unfair advantage of the applicant over other operators by reason of the terms and conditions of employment of his servants;
- (d) the existing or potential need or demand for any air service proposed;
- (e) in the case of any air service proposed, the adequacy of any similar service authorised by any licence already granted in respect of that similar service;
- (f) any objections or representations made in accordance with these Regulations.

Revocation or suspension of licences.

17. (1) Subject to paragraph (2), the Minister may revoke or suspend a licence if-

- (a) the holder of the licence has, since the licence was granted, been convicted of an offence against these Regulations; or
- (b) where the holder of the licence is a body corporate, any officer of that body corporate has, since the licence was granted, been convicted, in his capacity as such officer, of an offence against these Regulations; or
- (c) the holder of the licence has failed to comply with any conditions subject to which the licence was granted; or
- (d) the holder of the licence fails to operate the services to which the licence refers or fails to operate the said services with sufficient regularity and capacity to satisfy the Minister; or
- (e) the holder of the licence or any person acting on his behalf has made any false statement, whether wilfully or otherwise, either in the application for a licence or at the enquiry of such application.

(2) Before revoking or suspending any licence under subparagraph (c) or (d) of paragraph (1), the Minister shall-

- (a) give notice in writing to the holder of the licence specifying the grounds upon which it is proposed to revoke or suspend the licence and requesting the holder of the licence to show cause why the licence should not be revoked or suspended; and
- (b) hold or cause an enquiry to be held in public, and the Minister shall not revoke or suspend the licence under subparagraph (c) of paragraph (1) unless he is satisfied that having regard to the frequency of the failure on the part of the holder of the licence to comply with conditions or to the failure having been wilful, the licence ought to be revoked or suspended.

(3) The expression "officer" in subparagraph (b) of paragraph (1) means a director, general manager, secretary or other similar officer and includes any person who, with the authority of the body corporate, acts as such officer.

Surrender of licences.

18. (1) A licence may at any time be surrendered by the holder to the Minister for cancellation.

(2) If, during the currency of the licence, the holder applies for a new licence, in substitution for the current licence, he shall, if a new licence is granted, surrender the current licence for cancellation on the date from which the new licence is expressed to take effect.

Licence fees

19. (1) Subject to paragraph (2), there shall be paid to the Treasurer-

- (a) in respect of every licence or renewal of a licence, a fee of five hundred dollars in respect of each year, or part of a year, of the term for which the licence is expressed to remain in force;
- (b) in respect of every provisional licence, a fee of fifty dollars;
- (c) in respect of every short term special licence granted under regulation 12, a fee of eighty dollars.

(2) The Minister may exempt any person from the provisions of this regulation in respect of the payment of fees for licences.

Monthly returns by holders of licences.

20. (1) Every holder of a licence shall make a monthly return in writing to the Minister giving, in respect of the month to which the return relates, such statistical information and particulars with regard to all air services authorised by the licence, as the Minister may require.

(2) Such return shall be sent to the Minister not later than two months after the end of the month to which the return relates.

PART III PERMITS FOR JOURNEYS OTHER THAN SCHEDULED JOURNEYS

Application of Part III.

21. This Part shall not apply to the carriage of passengers, mail or cargo by air for hire or reward on scheduled journeys.

Restriction on operation without a permit.

22. (1) Subject to the provisions of these Regulations, no person shall use any aircraft for the provision in The Bahamas of any air services except under, and in accordance with, a permit granted by the Minister.

(2) Any person who uses any aircraft in contravention of the provisions of this regulation shall be guilty of an offence and shall be liable on summary conviction-

- (a) in the case of a first offence to a fine not exceeding five thousand dollars or to

imprisonment for a term not exceeding one year;

- (b) in the case of a second or subsequent offence to a fine not exceeding ten thousand dollars or to imprisonment for a term not exceeding two years.

Applications for permits.

23. (1) Applications for permits shall be made to the Minister and shall be in such form and shall contain such information as the Minister may require.

(2) Every applicant shall furnish to the Minister such further information as the Minister may reasonably require.

(3) The Minister may grant a permit to use aircraft for the provision in The Bahamas of such air services (other than such a service as is referred to in paragraph (1) of regulation 5) for such period not exceeding five years, and on such conditions as may be specified in the permit and on payment of the prescribed fee.

(4) The Minister may, on the expiration of the permit and on payment of the prescribed fee, renew the permit for a further period not exceeding five years subject to such conditions as he thinks fit.

(5) The Minister may attach such conditions to any permit as he, having regard to the nature and circumstances of the application therefor, thinks fit.

Revocation and suspension of permits.

24. (1) The Minister may revoke or suspend any permit-

- (a) if the holder of the permit has, since the permit was granted, been convicted of an offence against these Regulations; or
- (b) where the holder of the permit is a body corporate, if any officer of that body corporate has since the permit was granted, been convicted, in his capacity as such officer, of an offence against these Regulations;
- (c) if the holder of the permit has failed to comply with any condition subject to which the permit was granted.

(2) The expression "officer" in subparagraph (b) of paragraph (1) means a director, general manager, secretary or other similar officer and includes any person who, with the authority of the body corporate, acts as such officer.

Fees for permits.

25. There shall be paid to the Treasurer in respect of a permit or renewal of a permit-

- (a) where it is granted for one flight only \$10.00;
- (b) where it is expressed to be in force for more than one flight and does not exceed a period of-

(i)	one month	\$75.00
(ii)	three months	\$200.00
(iii)	six months	\$300.00
(iv)	twelve months	\$500.00;
(c)	where it is granted for more than twelve months	\$500.00 for each twelve month period or part thereof.

PART IV MISCELLANEOUS PROVISIONS

Conditions of licences and permits.

26. It shall be a condition of every licence or permit that the requirements of any law or statutory instrument having the force of law, for the time being in force in The Bahamas, relating to air navigation or air transport, shall be complied with at all times during the currency of the licence or permit in connection with all journeys made under the licence or permit.

Licences and permits not transferable or assignable.

27. (1) A licence or permit shall not be capable of being transferred or assigned.

(2) In the event of the death, incapacity, bankruptcy, sequestration or liquidation of the holder of a licence or permit, or the appointment of a receiver or manager or trustee in relation to the business of the holder of a licence or permit, the person for the time being carrying on that business shall if, within fourteen days of his commencing so to do, he makes application to the Minister for a new licence or permit, be entitled to provide the air services authorized by the existing licence or permit subject to the conditions thereof, until the application is dealt with.

Information as to financial resources to be treated as confidential.

28. Nothing in these Regulations shall require the disclosure by any applicant for a licence or permit to any person other than the Minister, of information as to the financial resources of the applicant, and any such information received by the Minister shall be treated as confidential.

"Licence" includes provisional licence.

29. Any references to a licence in paragraphs (2) and (3) of regulation 8, regulations 20, 26, 27, 30 and 33 shall be construed as including references to a provisional licence.

No right to continuance of benefit.

30. Nothing in these Regulations shall confer upon the holder of a licence or permit or upon any other person any right to the continuance of any benefits arising from the provisions of these Regulations or from any licence or permit granted thereunder or from any conditions

attached to any such licence or permit.

Proceedings for an offence against these Regulations.

31. (1) No proceedings for an offence against these Regulations shall be instituted except with the consent of the Attorney-General.

(2) Where an offence against these Regulations has been committed by a body corporate, any person who at the time of the commission of the offence was a director, general manager or other similar officer of the body corporate, or was purporting to act in such capacity, shall be deemed to be guilty of that offence, if he proves that the offence was committed without his consent or connivance and that he exercised all such diligence to prevent the commission of the offence as he ought to have exercised having regard to the nature of his functions in that capacity and to all the circumstances.

Appeals.

32. Any of the following persons, that is to say-

- (a) an applicant for a licence under regulation 9 or 12 whose application has been refused;
- (b) a holder of a licence whose licence is revoked or suspended under regulation 17;
- (c) a person who has made representations or objections under regulation 10;
- (d) an applicant for a permit under regulation 23 whose application has been refused;
- (e) a holder of a permit suspended or revoked under regulation 24,

may appeal from the decision of the Minister to the Supreme Court on a point of law only, and the decision of the Supreme Court on any such appeal shall be final.

Minister to have regard to International Agreements

33. In considering any application for the grant of a licence or a permit the Minister shall have regard to the requirements and provisions of every Agreement relating to or affecting civil aviation which has been entered into by the Government.

Revocation.

34. (1) The Air Transport (Licensing of Air Services) Regulations are revoked.

(2) Any licence, provisional licence or permit granted and any requirement, agreement or recommendation made and any other things done under the provisions of the Regulations revoked by paragraph (1), having effect immediately before the commencement of these Regulations shall continue to have effect and shall be deemed for all purposes to have been granted, made or done under the provisions of these Regulations.

(3) All pending applications for licences or representations or objections thereto made under the provisions of the Regulations revoked by paragraph (1), shall be deemed to be made under the provisions of these Regulations.

Transitional.

35. Notwithstanding anything contained in these Regulations, where at the date of the commencement of these Regulations any scheduled journey is operated to or from The Bahamas under any air service agreement or arrangement, such scheduled journey may continue to be operated to or from The Bahamas after the date of the commencement of these Regulations in accordance with the terms and conditions of that agreement or arrangement except where any such terms and conditions are inconsistent with the provisions of these Regulations, until a new agreement or arrangement is concluded.