

Namibia

Carriage by Air Act, 1946

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Table of Contents

Carriage by Air Act, 1946	3
Act 17 of 1946	3
1. Definitions	4
2. Ratification of Convention	4
3. Provisions of Convention to have force of law	4
4. Provisions as to actions against High Contracting Parties who undertake carriage by air	5
5. Power to carry out Convention	5
6. Provision for applying Act and Convention to carriage by air which is not international	6
7. Rules of Court	6
8. Regulations	6
9. Short title	6
Schedule	6



Republic of Namibia
Annotated Statutes

Carriage by Air Act, 1946

Act 17 of 1946

Published in [South African Government Gazette no. 3649](#) on 13 May 1946

Assented to on 8 May 1946

Commenced on 22 March 1955 by [Proclamation 69 of 1955](#)

[Up to date as at 14 July 2020]

[Amended by [Carriage by Air Amendment Act, 1964 \(Act 5 of 1964\)](#) on 21 February 1964]

[Amended by [Additions to the Warsaw Convention \(Proclamation R93 of 1974\)](#) on 4 April 1974]

[Amended by [Amendment to the Warsaw Convention \(Proclamation R294 of 1967\)](#) on 17 December 1974]

[Amended by [Carriage by Air Amendment Act, 1992 \(Act 14 of 1992\)](#) on 3 July 1992]

[APPLICABILITY TO SOUTH WEST AFRICA: Section 1 originally stated “In this Act, ‘Union’ includes the Mandated Territory of South-West Africa and the port and settlement of Walvis Bay.” It was amended by [Act 5 of 1964](#) to remove the reference to “Union” and to define “Republic” to include “any territory in respect of which Parliament is competent to legislate”.]

[TRANSFER TO SOUTH WEST AFRICA: The administration of this Act was transferred to South West Africa by the Executive Powers (Transport) Transfer Proclamation, AG 14 of 1978, dated 15 March 1978. There were only two amendments to the Act in South Africa after the date of transfer and prior to Namibian independence – the [Carriage by Air Amendment Act 81 of 1979 \(RSA GG 6529\)](#) and the [Transfer of Powers and Duties of the State President Act 97 of 1986 \(RSA GG 10438\)](#) – neither of which was made expressly applicable to South West Africa.]

[Section 3(1)(a) of the transfer proclamation excluded section 5 of the Act (which deals with the ratification of amendments to the Warsaw Convention by the State President) from the operation of section 3(1) of the General Proclamation, meaning that the administration of this section was not transferred to South West Africa.]

[Section 3(2) of the transfer proclamation excluded the reference to “Republic” throughout the Act from the operation of section 3(1)(c) of the General Proclamation, and specified that it should be read to include South West Africa as well as South Africa.]

ACT

To give effect to a Convention for the unification of certain rules relating to international carriage by air; to make provision for applying the rules contained in the said Convention, subject to exceptions, adaptations and modifications, to carriage by air which is not international carriage within the meaning of the Convention; and for matters incidental thereto.

(Afrikaans Text signed by the Governor-General)

BE IT ENACTED by the King's Most Excellent Majesty, the Senate and the House of Assembly of the Union of South Africa, as follows:-

[Act 5 of 1964 amends the Act throughout to substitute "Republic" for "Union". Act 14 of 1992 amends the Act throughout to substitute "Namibia" for "the Republic".]

1. Definitions

"Minister" means the Minister of Works, Transport and Communication.

[Section 1 originally read as follows: "In this Act, 'Union' includes the Mandated Territory of South-West Africa and the port and settlement of Walvis Bay."

Section 1 was substituted by Act 5 of 1964 to read as follows: "Minister" means the Minister of Transport; "Republic" includes any territory in respect of which Parliament is competent to legislate."

Act 14 of 1992 amended the definition of "Minister" and deleted the definition of "Republic".]

2. Ratification of Convention

- (1) The International Convention for the unification of certain rules relating to international carriage by air, signed at Warsaw on the twelfth day of October, 1929 (hereinafter referred to as the Convention), is hereby ratified and confirmed.
- (2) A translation of the Convention is set out in the Schedule to this Act.

3. Provisions of Convention to have force of law

- (1) The provisions of the Convention shall, so far as they relate to the rights and liabilities of carriers, passengers, consignors, consignees and other persons, and subject to the provisions of this Act, have the force of law in Namibia in relation to any carriage by air to which the Convention applies, irrespective of the nationality of the aircraft performing the carriage.
- (2) The Minister may from time to time by notice in the *Gazette* declare who are the High Contracting Parties to the Convention, in respect of what territories they are respectively parties and to what extent they have availed themselves of the provisions of the Additional Protocol to the Convention, and any such notice shall, except in so far as it has been varied or superseded by a subsequent notice, be conclusive evidence of the matters so declared.

[subsection (2) amended by Act 5 of 1964 to substitute "Minister" for "Governor-General", and "notice" for "proclamation"]

- (3) Any reference in the said Schedule to the territory of any High Contracting Party to the Convention shall be construed as a reference to the territories subject to his sovereignty, suzerainty, mandate or authority, in respect of which he is a party.
- (4) Not more than one action shall be brought in Namibia to enforce liability under Article seventeen of the said Schedule in respect of the death of any one passenger, and every such action, by whomsoever brought, shall be for the benefit of all such persons entitled to sue for damages in respect of the death of that passenger as either are domiciled in Namibia or, if not so domiciled, have indicated their desire to take the benefit of the action.

- (5) Subject to the provisions of sub-section (6) the amount recovered in any such action shall be divided between the successful claimants in such manner as the court may deem just.
- (6) The court in which any such action is brought may, at any stage of the proceedings -
- (i) issue a rule calling upon interested parties to join in the action within a specified period;
 - (ii) make such order as appears to the court to be just and equitable in view of the provisions of the said Schedule limiting the liability of a carrier and of any proceedings which have been or are likely to be commenced outside Namibia in respect of the death of the passenger in question.
- (7) Any sum in francs mentioned in Article twenty-two of the said Schedule shall, for the purposes of any action against a carrier, be converted into currency of Namibia in the manner determined by the Minister and notified by notice in the *Gazette*.

[Subsection (7) amended by Act 5 of 1964 and by Act 14 of 1992.

Section 2(2) of Act 14 of 1992 provides the following transitional provision:

“(2) A manner determined before the commencement of this Act [Act 14 of 1992, which commenced on 3 July 1992] under subsection (7) of section 3 of the principal Act [Act 17 of 1946] shall apply in Namibia as if it were determined by the Minister of Works, Transport and Communication on the date of commencement of this Act [3 July 1992] and notified in the Gazette under the said subsection (7) of section 3, as amended by subsection (1) of this section.”]

4. Provisions as to actions against High Contracting Parties who undertake carriage by air

Every High Contracting Party to the Convention who has not availed himself of the provisions of the Additional Protocol thereto shall, for the purposes of any action brought in a court in Namibia in accordance with the provisions of Article twenty-eight of the Schedule to this Act, to enforce a claim in respect of carriage undertaken by him, be deemed to have submitted to the jurisdiction of that court: Provided that nothing in this section shall authorize the issue of execution against the property of any High Contracting Party.

5. Power to carry out Convention

- (1) The President may by proclamation in the *Gazette* make such incidental or supplementary provisions as appear to him or her necessary for carrying out the Convention or any amendment thereof or addition thereto ratified or adhered to or acceded to on behalf of Namibia, and for giving due effect thereto or to any of the provisions thereof.
- (2) For the purposes of this Act, any amendments or additions so ratified or adhered to or acceded to, shall, subject to any provisions so made in terms of subsection (1), be deemed to be incorporated in the Schedule to this Act.

[Section 5 is substituted by Act 14 of 1992. For historical purposes, it may be helpful to note how section 5 stood immediately prior to its substitution (as amended by Act 5 of 1964):

5. “Ratification of amendments of and additions to Convention

(1) The State President may do all things necessary to ratify or adhere or accede to or cause to be ratified or adhered or acceded to on behalf of the Republic any amendments of or additions to the Convention which may from time to time be made, and by proclamation in the Gazette declare that the amendments or additions so ratified or adhered or acceded to shall be observed and have the force of law in the Republic: Provided that copies of any amendments or additions so ratified or adhered or acceded to or proclaimed shall be laid upon the Tables of both Houses of Parliament within fourteen days after their publication in the Gazette if Parliament be then in session or, if Parliament be not then in session, within fourteen days after the commencement of its next ensuing ordinary session.

(1) bis Any proclamation under sub-section (1) may provide for such exceptions and contain such incidental or

supplementary provisions as may be necessary to give due effect to the relevant amendments of or additions to the Convention or to ensure that the international obligations of the Republic will be fulfilled.

(2) For the purposes of this Act, any amendments or additions so ratified, adhered or acceded to and proclaimed shall subject to any exceptions or provisions referred to in sub-section (1)bis be deemed to be incorporated in the Schedule to this Act.”]

6. Provision for applying Act and Convention to carriage by air which is not international

The Minister may, by notice in the *Gazette* apply any of the provisions of the Schedule to this Act and any provision of section three to such carriage by air, not being international carriage by air as defined in the said Schedule, as may be specified in the notice, subject to such exceptions, adaptations and modifications, if any, as may be so specified.

[Section 6 is amended by Act 5 of 1964 to substitute “Minister” for “Governor-General”, and “notice” for “proclamation”.]

7. Rules of Court

Rules of court may be made in the manner provided in section 39 of the High Court Act, 1990 (Act 16 of 1990), as to -

- (a) the manner in which any action to enforce liability under Article seventeen of the Schedule to this Act, or under the provisions of that Article as applied under section six, is to be commenced and carried out, and the intervention by and addition of any party to any such action; and
- (b) the manner in which any action under the said Schedule against any High Contracting Party is to be commenced and carried out.

[section 7 amended by Act 5 of 1964 and by Act 14 of 1992]

8. Regulations

The Minister may make regulations prescribing the procedure to be followed by a carrier in connection with the payment, before action has been brought, of claims under Article seventeen of the Schedule to this Act, in respect of the death of any passenger, and all other matters which he considers necessary or expedient to prescribe in order that the purposes of this Act may be achieved.

[Section 8 is amended by Act 5 of 1964 to substitute “Minister” for “Governor-General”.]

9. Short title

This Act shall be called the Carriage by Air Act, 1946, and shall come into operation on a date to be fixed by the Governor-General by proclamation in the *Gazette*.

[The Republic of South Africa Constitution Act 32 of 1961 provided in Article 3(b) that as from 31 May 1961, any reference to the Governor-General in any law in force in the Union of South Africa or in any other territory in respect of which Parliament is competent to legislate shall be construed as a reference to the Republic or the State President as the circumstances may require. However, by this time the Act had already come into operation on a date fixed by the Governor-General.]

Schedule

[The original publication of this Act included the text of the conventions below. Instead, we link to the official text of the conventions and incorporate them by reference.]

[The Schedule is amended and supplemented pursuant to section 5(2) (as that subsection stood prior to its substitution

in 1992) by RSA Proc. R.294 of 1967 (RSA GG 1892) and by RSA Proc. R.93 of 1974 (RSA GG 4276). The text of both of these Proclamations is reproduced below.

Warsaw Convention: The Warsaw Convention is formally known as the Convention for the Unification of Certain Rules Relating to International Carriage by Air. The official text is in French only. A reliable English translation is available at <https://treaties.un.org/doc/Publication/UNTS/LON/Volume%20137/v137.pdf>.

Hague Protocol: The Hague Protocol is formally known as the Protocol to Amend the Convention for the Unification of Certain Rules Relating to International Carriage by Air signed at Warsaw on 12 October 1929. The amendments to the Warsaw Convention contained in the Hague Protocol reproduced in the Schedule to RSA Proc. R.294 of 1967 have been incorporated into the text of the Convention in the Schedule to the Act, as directed by section 5(2) of the Act (prior to its substitution by Act 14 of 1992). The remainder of the provisions of the Hague Protocol are inserted below the Warsaw Convention, as being supplementary to it. The Hague Protocol, unlike the Warsaw Convention, had official texts in English, French and Spanish. A reliable English version of the Hague Protocol is available at <https://treaties.un.org/doc/Publication/UNTS/Volume%20478/volume-478-I-6943-English.pdf>.

Guadalajara Convention: The Guadalajara Convention is formally known as the Convention, Supplementary to the Warsaw Convention, for the Unification of Certain Rules Relating to International Carriage by Air Performed by a Person Other than the Contracting Carrier. The Guadalajara Convention is reproduced in the Schedule to RSA Proc. R.93 of 1974. It is inserted below the Warsaw Convention in this Schedule, as being supplementary to it. The Guadalajara Convention, unlike the Warsaw Convention, had official texts in English, French and Spanish. A reliable English version of the Guadalajara Convention is available at <https://treaties.un.org/doc/Publication/UNTS/Volume%20500/volume-500-7305-English.pdf>.

It should be noted that Namibia ratified the Montreal Convention, formally known as the Convention for the Unification of Certain Rules relating to International Carriage by Air, 1999, on 27 September 2001 (source: the international depositary, the International Civil Aviation Organization), and it became binding on Namibia on 4 November 2003 when it entered into force internationally. The Montreal Convention supersedes and replaces the Warsaw Convention for those states that are parties to both systems, in terms of Article 55 of the Montreal Convention, which reads as follows:

“This Convention shall prevail over any rules which apply to international carriage by air:

- 1. between States Parties to this Convention by virtue of those States commonly being Party to -*
 - (a) the Convention for the Unification of Certain Rules relating to International Carriage by Air signed at Warsaw on 12 October 1929 (hereinafter called the Warsaw Convention);*
 - (b) the Protocol to amend the Convention for the Unification of Certain Rules relating to International Carriage by Air signed at Warsaw on 12 October 1929, done at The Hague on 28 September 1955 (hereinafter called The Hague Protocol);*
 - (c) the Convention, Supplementary to the Warsaw Convention, for the Unification of Certain Rules relating to International Carriage by Air Performed by a Person other than the Contracting Carrier, signed at Guadalajara on 18 September 1961 (hereinafter called the Guadalajara Convention);*
 - (d) the Protocol to amend the Convention for the Unification of Certain Rules relating to International Carriage by Air signed at Warsaw on 12 October 1929 as amended by the Protocol done at The Hague on 28 September 1955, signed at Guatemala City on 8 March 1971 (hereinafter called the Guatemala City Protocol);*
 - (e) Additional Protocol Nos. 1 to 3 and Montreal Protocol No. 4 to amend the Warsaw Convention as amended by The Hague Protocol or the Warsaw Convention as amended by both The Hague Protocol and the Guatemala City Protocol, signed at Montreal on 25 September 1975 (hereinafter called the Montreal Protocols); or*
- 2. within the territory of any single State Party to this Convention by virtue of that State being Party to one or more of the instruments referred to in sub-paragraphs (a) to (e) above.”*

Thus, the international conventions presented in this Schedule have only limited current relevance.]