

OBJECTS AND REASONS

This Bill would amend the *Civil Aviation Act* (Act 2004-18) to provide for the registration of aircraft mortgages, the establishment of the National Civil Aviation Security Committee and for related matters.

Arrangement of Sections

Section

1. Short title.
2. Amendment of section 2 of Act 2004-18.
3. Amendment of section 5 of Act 2004-18.
4. Amendment of section 7 of Act 2004-18.
5. Amendment of section 9 of Act 2004-18.
6. Amendment of section 10 of Act 2004-18.
7. Amendment of section 19 of Act 2004-18.
8. Amendment of section 24 of Act 2004-18.
9. Amendment of section 25 of Act 2004-18.
10. Insertion of Part VIA in Act 2004-18.
11. Amendment of section 27 of Act 2004-18.
12. Insertion of sections 28A, 28B and 28C in Act 2004-18.
13. Amendment of section 33 of Act 2004-18.

Section

14. Amendment of section 34 of Act 2004-18.
15. Amendment of section 36 of Act 2004-18.
16. Amendment of section 43 of Act 2004-18.
17. Amendment of section 46 of Act 2004-18.
18. Amendment of section 59 of Act 2004-18.
19. Amendment of section 79 of Act 2004-18.
20. Amendment of section 80 of Act 2004-18.
21. Amendment of section 82 of Act 2004-18.
22. Amendment of section 89 of Act 2004-18.
23. Amendment of Schedules to Act 2004-18.
24. Commencement.

SCHEDULE

BARBADOS

A Bill entitled

An Act to amend the *Civil Aviation Act*.

ENACTED by the Parliament of Barbados as follows:

- 1. This Act may be cited as the *Civil Aviation (Amendment) Act*, Short title. 2007.**

Amendment
of section 2
of 2004-18.

2. Section 2 of the *Civil Aviation Act*, in this Act referred to as the principal Act, is amended

(a) by inserting the following definitions in the appropriate alphabetical order:

"act of unlawful interference" means an act which seeks to or jeopardizes the safety of civil aviation and air transport such as the

- (a) unlawful seizure of an aircraft in flight or on the ground;
- (b) taking of hostages on board an aircraft or at an airport;
- (c) forcible intrusion on board an aircraft, at an airport or at a facility relating to aeronautics;
- (d) introduction of a weapon, hazardous device or material intended for criminal purposes on board an aircraft or at an airport; or
- (e) communication of false information so as to jeopardise the safety of
 - (i) aircraft in flight or on the ground; or
 - (ii) passengers, crew, ground personnel or the general public at an airport or at the premises of a civil aviation facility;

"air operator" means a person, organization or enterprise that undertakes to engage in domestic or international commercial air transport, whether directly or indirectly or by a lease or any other arrangement;"; and

- (b) by deleting the definitions of "airport manager" and "Director" and substituting the following respectively:

"airport manager" means the Chief Executive Officer of the Grantley Adams International Airport Inc.;

"Director" means the Director of Civil Aviation;".

3. The principal Act is amended by deleting section 5 and substituting the following:

Amendment
of section 5
of Act 2004-
18.

"Respon-
sibilities of
the Minister.

5. The Minister is responsible for the development, regulation and supervision of aeronautics, and in the discharge of those responsibilities the Minister may

- (a) encourage the development of aeronautics by such means as the Minister considers appropriate;
- (b) construct and operate airports, and establish and provide other facilities and services relating to aeronautics;
- (c) investigate matters concerning aviation safety;
- (d) establish and provide facilities and services for the collection, publication or dissemination of information relating to aeronautics;
- (e) co-operate with persons undertaking projects, technical research and studies in the development of aeronautics;
- (f) establish aerial works;

- (g) liaise with other government departments that may need assistance with aerial work;
- (h) co-operate or enter into arrangements with foreign governments with respect to any matter relating to aeronautics;
- (i) control and manage all aircraft and aircraft equipment necessary for the conduct of any services on behalf of the Government;
- (j) implement

 - (i) any obligations under any international convention relating to air navigation and air transport to which Barbados is a party;
 - (ii) any Standards and Recommended Practices issued by ICAO in respect of the Convention;
- (k) ensure the provision of aviation weather services that will facilitate the safe, efficient and regular operation of aircraft;
- (l) enter into arrangements with an agency that is responsible for providing aviation weather services in such form and manner and at such places as the Minister considers necessary; and
- (m) undertake such other activities in relation to aeronautics as the Minister may consider appropriate.

4. Section 7 of the principal Act is amended

Amendment
of section 7
of Act 2004-
18.

(a) in subsection (2), by

- (i) deleting paragraphs *(m)* and *(n)* and substituting the following:

"*(m)* administer and enforce regulations and standards generally and in particular those regulations and standards in respect of the registration and certification of aircraft, personnel and airports;"

- (ii) renumbering paragraphs *(o)* and *(s)* as paragraphs *(n)* to *(r)*;

- (iii) deleting the word "and" appearing at the end of paragraph *(q)* as renumbered;

- (iv) deleting the full-stop appearing at the end of paragraph *(r)* as renumbered and substituting a semi-colon;

- (v) by inserting immediately after paragraph *(r)* as renumbered, the following new paragraphs:

"*(s)* enter any aircraft, airport facility relating to aeronautics or any premises used for the design, manufacture, distribution, maintenance or installation of aeronautical products, for the purpose of conducting an inspection;

(*t*) enter any place for the purpose of conducting an investigation of matters concerning aviation safety; and

(*u*) seize anything found in any place referred to in paragraph (*s*) or (*t*) that the Director believes on reasonable ground will afford evidence of an offence as a result of an inspection or investigation.";

(*b*) in subsection (3), by deleting the word "airline" appearing therein and substituting the words "owner or operator of the aircraft"; and

(*c*) by inserting immediately after subsection (3) the following new subsection:

"(4) Any document or article seized in accordance with paragraph (*u*) of subsection (2) shall be seized in the manner specified in section 48."

Amendment
of section 9
of Act
2004-18.

5. Section 9 of the principal Act is amended

(*a*) in subsection (1), by deleting

(*i*) the words "oversee the" appearing at the beginning of paragraph (*f*) and substituting the word "provide";

- (ii) the word "and" appearing at the end of paragraph *(f)*;
 - (iii) the full-stop appearing at the end of paragraph *(g)* and inserting the words "; and";
- (b)* by re-numbering subsection (2) as subsection (3); and
- (c)* by inserting immediately after subsection (1) the following as subsection (2):

"(2) The inspectors may for the purpose of conducting an inspection,

- (a)* enter an aircraft, airport, facility relating to aeronautics or any premises used for the design, manufacture, distribution, maintenance or installation of aeronautical products;
- (b)* enter any place for the purpose of an investigation of matters concerning aviation safety; and
- (c)* seize anything found in any place referred to in paragraph *(a)* or *(b)* that the inspector believes on reasonable ground will afford evidence of an offence as a result of an inspection or investigation."

Amendment
of section 10
of Act
2004-18.

6. Section 10 of the principal Act is amended

(a) in subsection (1), by

(i) deleting paragraph (d) and substituting the following:

"(d) the approval of aircraft instruments and equipment, flight training equipment and aviation training facilities;"

(ii) deleting the word "route" appearing in paragraph (r) and substituting the word "works";

(iii) deleting paragraph (v) and substituting the following:

"(v) the

(i) preservation, protection, removal and testing of aircraft involved in an accident; and

(ii) protection of sites where an accident has occurred for the purpose of conducting an investigation into an aircraft accident;"

(iv) deleting paragraph (z) and substituting the following:

"(z) the taking of statements by investigators for the purpose of an investigation into any accident or incident involving an aircraft.";

(b) in subsection (2), by

(i) deleting paragraph (b) and substituting the following:

"(b) for the licensing of air services;"

(ii) deleting the word "and" appearing at the end of paragraph (f);

(iii) deleting the full-stop at the end of paragraph (g); and

(iv) by inserting the following as paragraphs *(h)*, *(i)*, and *(j)*:

- "*(h)* for the purpose of ensuring aviation security;
- (i)* for the certification of aviation security personnel and organisations; and
- (j)* for the development and implementation of a National Civil Aviation Security Programme referred to in section 28B."

7. Section 19 of the principal Act is amended in subsection (1), by
- (a)* inserting a comma after the word "road" appearing in paragraph *(b)*;
 - (b)* deleting the word "would" appearing in paragraph *(c)*;
 - (c)* inserting the word "or" after the word "road" appearing in paragraph *(d)*.

Amendment
of section 19
of Act 2004-
18.

8. Section 24 of the principal Act is amended in subsection (2), by deleting the words "it is provided that" appearing therein.

Amendment
of section 24
of Act 2004-
18.

9. Section 25 of the principal Act is amended
- (a)* by deleting subsection (1) and substituting the following:

Amendment
of section 25
of Act 2004-
18.

"(1) No action shall lie in respect of an act of trespass or nuisance by reason only of the flight of aircraft over any property at a height above the ground that, having regard to wind, weather and all the circumstances of the case

- (a)* is reasonable; or
 - (b)* is in the ordinary flight of the aircraft,
- if there is compliance with this Act."; and

(b) in subsection (3) by deleting paragraph (b) and substituting the following:

"(b) a legal liability is created in respect of a person other than the owner of the aircraft to pay damages related to the loss or damage,".

Insertion of Part VIA in Act 2004-18.

10. The principal Act is amended by inserting immediately after Part VI the following:

"PART VIA

Registration of Mortgages of Aircraft

Mortgages of aircraft.

26A. An aircraft registered in Barbados or capable of being so registered may be made security for a loan or other valuable consideration.

Power to register mortgages of aircraft.

26B. (1) Where a mortgage exists in respect of an aircraft that is registered in Barbados or that is capable of being registered, the mortgage shall be registered in accordance with the provisions of this Part.

(2) The registration of a mortgage of an aircraft referred to in subsection (1)

(a) may extend to any store of spare parts for that aircraft;

(b) may include provisions that correspond, subject to such modifications as appear to the Minister to be necessary or expedient, to any of the provisions of the *Shipping Act*, relating to the mortgaging of ships;

Cap. 296.

(c) shall accurately reflect the rights and liabilities of mortgagors and mortgagees of such aircraft,

rights and the relationship of such rights to other rights in or over such aircraft, including possessory liens for work done to such aircraft;

- (d) shall stipulate in relation to the aircraft, the provision and application of any enactments for the time being in force in Barbados relating to the registration of mortgages charged on the property of companies;
- (e) shall provide for the rights of mortgagees of aircraft to be exercisable, in such circumstances as the regulations may specify, in relation to payments for the use of the aircraft; and
- (f) shall confer on any court in Barbados powers in respect of any register maintained in pursuance of this Act and in respect of transactions affecting aircraft registered therein.

Cap. 308.

(3) Division A of Part II of the *Companies Act* shall not apply to mortgages of aircraft registered under this Act.

(4) Notwithstanding subsection (3), where a mortgage of aircraft has been registered under this Act, the Director shall within 14 days of the registration, submit to the Registrar of Companies a notice under the Director's hand that the mortgage has been recorded by him and the time and date of the making of that record.

Cap. 308.

Cap. 306.

(5) Where a mortgage in respect of an aircraft has been registered under the *Companies Act* or the *Bills of Sale Act*, that mortgage may within 6 months of the commencement of this Act, be transferred to the Register and shall have priority according to the time that it was registered under the *Companies Act* or *Bills of Sale Act*, as the case may be.

Register of
Aircraft
Mortgages.

26C. The Minister shall maintain a Register of Aircraft Mortgages in which a record of all aircraft mortgages registered under this Act is kept.

Records.

26D. (1) The records required to be kept pursuant to section 26C may be maintained in a form other than a written form.

(2) Where the records are maintained in a form other than a written form,

(a) the Minister must furnish any copy required to be furnished under this Act in an intelligible written form; and

(b) a report reproduced from those records is admissible in evidence to the same extent as the original written records would be admissible, if the report is certified by the Minister.

Service of
documents.

26E. (1) A document may be served upon the Minister by leaving it at the office of the Director or by sending it by telex, facsimile, pre-paid post or cable addressed to the Director at his office.

(2) A notice required to be sent to the owner, mortgagee or mortgagor of an aircraft may be sent by telex, facsimile, pre-paid post or cable

(a) addressed to, or delivered personally to, such owner, mortgagee or mortgagor;

(b) where the owner, mortgagee or mortgagor is a company, addressed to the registered office of that company.

(3) A notice sent in accordance with subsection (2) is for the purposes of this Act presumed to be received by the owner, mortgagee or mortgagor at the time it would ordinarily be delivered by the Post Office.

(4) The sending of a notice required to be sent pursuant to this Act may be waived by the person entitled to receive it.

Proof of documents.

26F. (1) The Minister may require that a document or a fact stated in a document required or sent in accordance with this Act be verified in accordance with subsection (2).

(2) A document or fact referred to in subsection (1) may be verified by affidavit or affirmation.

(3) The Minister may require of a body corporate the authentication of a document; and the authentication may be signed by the secretary, a director or by the attorney-at-law, for the body corporate.

Retention of documents.

26G. The Minister need not produce any document of a prescribed class after 6 years from the date on which he received it.

Registrar's certificate.

26H. The Minister may furnish any person with a certificate stating that a mortgage

(a) has not been registered; or

(b) was or was not on the Register on a stated date.

Refusal power.

26I. (1) The Minister may refuse to receive, file or register a document submitted to him, if the Minister is of the opinion that the document

(a) contains matter contrary to the law;

(b) by reason of any omission or error in description has not been duly completed;

- (c) does not comply with the requirements of this Act or regulations made under this Act;
- (d) contains an error, alteration or erasure;
- (e) is not sufficiently legible; or
- (f) is not sufficiently permanent for his records.

(2) The Minister may request that a document refused under subsection (1) be amended or completed and re-submitted, or that a new document be submitted in its place.

(3) If a document that is submitted to the Minister is accompanied by a statutory declaration made by an attorney-at-law that the document contains no matter contrary to law and has been duly completed in accordance with the requirements of this Act, the Minister may accept the declaration as sufficient proof of the facts therein declared.

Filing form. **25J.** Every document sent to the Minister must be in typed or printed form.

Seal. **26K.** A seal prescribed by the Minister may be used for the authentication of documents relating to the mortgage of aircraft."

Amendment
of section 27
of 2004-18.

11. Section 27 of the principal Act is amended by

(a) inserting in the appropriate alphabetical order the following:

" "airport security officer" means a person who has successfully completed training in accordance with the security training requirements of the approved Airport Operator's Security Programme, and who has been appointed as such by the airport operator;"

(b) by deleting the definition of "explosives" and substituting the following:

" "explosives" mean gunpowder, nitro-glycerine, dynamite, gun-cotton, blasting powder, fulminate of mercury or of other metals, coloured flares and every other substance that has the capacity to explode, whether or not similar to those mentioned herein."

12. The principal Act is amended by inserting immediately after section 28 the following new sections:

Insertions of sections 28A, 28B and 28C in Act 2004-18.

"Establishment of the National Civil Aviation Security Committee. Second Schedule.

28A. (1) For the purposes of this Act, there is established a Committee to be known as the National Civil Aviation Security Committee.

(2) The provisions of the *Second Schedule* to this Act have effect with respect to the constitution of the Committee and otherwise in relation thereto.

Functions of the Committee.

28B. The functions of the Committee are

- (a) to advise the Minister and regulate the aviation industry on the aviation security measures required to meet threats to civil aviation and civil aviation facilities;
- (b) to devise a National Civil Aviation Security Programme that shall
 - (i) set out the Government's security policy in respect of civil aviation within Barbados, and in respect of Barbadian civil aircraft overseas; and
 - (ii) provide through the establishment of standards and guidelines, the necessary safeguards against acts of unlawful interference;

- (c) to assign responsibilities for the implementation of the Programme and establish the means of ensuring co-ordination between Government departments and other relevant agencies for that purpose;
- (d) to review and maintain the effectiveness of the Programme, including re-evaluating security measures and procedures following an act of unlawful interference, and taking such action as may be necessary to remedy weaknesses and prevent the recurrence of any act of unlawful interference;
- (e) to consider recommendations made by the Airport Security Committee of the Grantley Adams International Airport Inc., and where appropriate, recommend those changes to the Director;
- (f) to co-ordinate the exchange and dissemination of information on incidents, threats and appropriate counter measures relating to the security of civil aviation;
- (g) to promote security considerations in the design of new airports or the expansion of existing facilities; and
- (h) to keep under constant review the level of civil aviation operations in Barbados and make adjustments as necessary to the Programme.

Aviation
security
agency.

28C. (1) There is hereby established an Aviation Security Agency for the development and implementation of the Programme referred to in section 28B.

(2) The Director shall be the designated appropriate Aviation Security Agency for the development and implementation of the Programme.

(3) The Director shall

- (a) monitor the implementation of the Programme by the Government departments and identify the bodies to which responsibilities have been assigned by the Committee;
- (b) approve the security programme devised by the airport operators, airline operators, regulated agents, and air traffic service providers prior to the implementation and monitoring of the security programme;
- (c) liaise with the Committee and the National Security Service on all matters of aviation security and take adequate measures to respond to different levels of threats."

13. Section 33 of the principal Act is amended

Amendment
of section 33
of Act 2004-
18.

- (a) is subsection (2), by inserting the words "or an airport security officer" immediately after the words "member of the Police Force on duty";
- (b) by deleting
 - (i) subsection (3) and substituting the following:

"(3) A member of the Police Force or an airport security officer may order any person who

- (a) fails or refuses to give satisfactory evidence in accordance with subsection (2) when so requested by the member of the Police Force or airport security officer;
or

(b) has failed to satisfy the member of the Police Force or airport security officer that he is a person authorised to be in a protected or restricted area,

to leave the protected or restricted area; and the person shall comply with the order;"; and

(ii) subsection (5) and substituting the following:

"(5) A member of the Police Force or an airport security officer may use such force as may be reasonably necessary to remove from any protected or restricted area any person who fails or refuses to leave the protected or restricted area after having been so ordered by the member of the Police Force or an airport security officer to do so, in accordance with subsection (3)."

Amendment
of section 34
of Act 2004-
18.

14. The principal Act is amended in section 34 by deleting subsection (3) and substituting the following:

"(3) For the purpose of this section, a person who is

(a) in an aircraft; or

(b) in an airport

shall be treated as having with him in the aircraft or in the airport an article to which this section applies where

(i) he has in the aircraft an article that forms part of his baggage or he has brought or caused to be brought on the aircraft as being or forming part of any other property to be carried on the aircraft; or

- (ii) he is in an airport and has with him an article that forms part of his baggage or he has brought or caused to be brought into the airport an article that forms part of any property to be carried on an aircraft on which he is also to be carried,

notwithstanding that apart from this subsection, he would not be regarded as having the article with him or in the aircraft or in a part of the airport, as the case may be."

15. Section 36 of the principal Act is amended in subsection (1) by inserting immediately after the words "A member of the Police Force", the words "an airport security officer". Amendment of section 36 of Act 2004-18.

16. Section 43 of the principal Act is amended in subsection (1) by deleting the word "Commissioner" and substituting the words "Chief Executive Officer of the Grantley Adams International Airport". Amendment of section 43 of Act 2004-18.

17. Section 46 of the principal Act is amended by deleting the definition "aircraft incident" and substituting the following definition in the appropriate alphabetical order: Amendment of section 46 of Act 2004-18.

"aviation incident" means an occurrence, other than an accident, associated with the operation of an aircraft, which affects or could affect the safety of aircraft operations;".

18. Section 59 of the principal Act is amended by Amendment of section 59 of Act 2004-18.

- (a) inserting the word "and" at the end of paragraph (d);
- (b) deleting the word "and" appearing at the end of paragraph (e) and inserting a full-stop; and
- (c) deleting paragraph (f).

Amendment
of section
79 of Act
2004-18.

19. The principal Act is amended by deleting section 79 and substituting the following:

"Exemption
of aircraft
from seizure
on patent
claims.

- 79.** (1) No person may
- (a) seize, detain or interfere with an aircraft; or
 - (b) institute any proceedings against the owner or operator of an aircraft

on the grounds that

- (i) the construction or any mechanism, part, accessory or operation of the aircraft; or
- (ii) any spare part, or spare equipment imported into or stored in Barbados for the purpose of installation in that aircraft

is an infringement of a patent, design or model.

(2) Subsection (1) does not apply in relation to any spare part or spare equipment that is sold or distributed in Barbados, or is exported from Barbados for sale or distribution.

(3) This section applies to

- (a) aircraft other than aircraft used in the military, customs or police services, that is registered in a country in which there is a declaration made with a view to the fulfilment of provisions of the Chicago Convention to which this section relates, that the benefits of those provisions apply to that country; and
- (b) such other aircraft as the Minister by Order specifies."

- 20.** Section 80 of the principal Act is amended in subsection (2) by deleting the words "to which this section applies" appearing therein. Amendment of section 80 of Act 2004-18.
- 21.** The principal Act is amended by deleting section 82 and substituting the following: Amendment of section 82 of Act 2004-18.
- "Failure to licence aircraft. **82.** Any person who is required to have a licence or permit to use an aircraft under this Act or the Regulations made hereunder and who
- (a) fails to obtain the licence or permit; or
- (b) contravenes a condition contained in the licence or permit
- is guilty of an offence and is liable on summary conviction to a fine of \$250 000 or to imprisonment for a term of 3 years or to both, and in the case of a continuing offence is liable to a fine of \$5 000 for each day or part thereof during which the offence continues."
- 22.** Section 89 of the principal Act is amended in subsection (2) by deleting the words "*Second Schedule*" and substituting the words "*Third Schedule*". Amendment of section 89 of Act 2004-18.
- 23.** The principal Act is amended by Amendment of Schedules to Act 2004-18.
- (a) deleting the following enactment from the *Second Schedule*:
- "S.I. 1998 No. 2 *Civil Aviation (Mortgaging of Aircraft) Order, 1998*";
- (b) re-designating the "*Second Schedule*" as the "*Third Schedule*"; and
- (c) inserting as the *Second Schedule*, the *Schedule* to this Act.
- 24.** This Act shall come into force on a date to be fixed by Proclamation. Commencement.

SCHEDULE

"SECOND SCHEDULE

(Section 28A(2))

*Constitution and Procedure of the National Civil Aviation
Security Committee*

1. The Committee shall consist of a Chairman and not less than 12 other members.

2. The Minister shall, by instrument in writing, appoint the following persons as members of the Committee:

- (a)* Director of Civil Aviation or his nominee;
- (b)* Permanent Secretary, Ministry of Defence and Security or his Deputy;
- (c)* Permanent Secretary, Ministry of Foreign Affairs or her Deputy;
- (d)* Permanent Secretary, Ministry of International Transport or his Deputy;
- (e)* Commissioner of Police or his Deputy;
- (f)* Chief of Staff, Barbados Defence Force or his Deputy;
- (g)* Chairman of Airport Security Committee or his Deputy;
- (h)* Comptroller of Customs or his Deputy;
- (i)* Chief Immigration Officer or his Deputy;
- (j)* Chief Executive Officer, Grantley Adams International Inc.;
- (k)* Chief Fire Officer or his Deputy;
- (l)* Post Master General or his Deputy.

3. The Committee shall be presided over by

- (a)* the Director of Civil Aviation, as Chairman, when the matters being considered by the Committee relate to preventative security measures and procedures; or

- (b) the Commissioner of Police, as Chairman, when the matters being considered by the Committee relate to contingency plans in response to an occurrence.
- 4. The Committee shall determine its own procedure and shall meet at intervals not exceeding 3 months.
- 5. The Chairman may co-opt persons with specialised knowledge to attend any of the meetings for the purpose of assisting or advising it respecting any matters with which it is dealing.
- 6. A quorum consists of seven members.
- 7. The decisions of the Committee shall be by a majority of votes.
- 8. The Committee may assign a person to be Secretary of the Committee and the Secretary shall perform the duties assigned to him by the Committee.
- 9. The minutes of each meeting of the Committee shall be kept in proper form by the Secretary and shall be confirmed in writing at the next meeting by the Chairman."