



Our Ref : ED/NCAA/26/08/2022

21 September 2022

**The Executive Director**

Namibia Civil Aviation Authority (NCAA)

Rudolph Herzog Street

Windhoek

Namibia

Sent via e-mail: [sem@ncaa.na](mailto:sem@ncaa.na)

Dear Ms. Toska Sem,

**RE: PART 139 OF REGULATIONS TO CIVIL AVIATION ACT, 2016 AND STAKEHOLDER CONSULTATION**

1. We refer to the stakeholders' consultation arranged by the NCAA, which took place on 15 September 2022, and which related to the proposed new Part 139 of the Regulations to the Civil Aviation Act, 2016 ("Part 139").
2. We submit that these stakeholder consultations are prescribed by the procedural fairness principles of administrative law, in that parties (whose rights shall be affected by new legislation) need to be granted an opportunity to raise their concerns regarding the intended legislation.
3. The aforesaid stakeholder consultation was attended by a number of stakeholders, including AOPA, airlines, members of the tourism industry (such as the Hospitality Association of Namibia) and members of the hunting industry.
4. As a point of departure, we wish to thank the NCAA for arranging the consultation and providing a platform where the various stakeholders could raise their concerns.

5. We do however feel that there are a number of material aspects in Part 139, which need to be clarified and further deliberated on (extensively) before Part 139 can come into force.
6. It is common cause that the Hon. Minister of Works and Transport postponed the commencement of Part 139 to 1 October 2022, a mere 10 days from now. We therefore strongly (but respectfully) suggest that your good office approach the Hon. Minister for a further postponement of at least 6 (six) months.
7. During the stakeholder consultation you mentioned that the Hon. Minister will only consider postponing the commencement of Part 139 if presented with sound reasons. The purpose of this letter is therefore to table some of the material aspects of Part 139, which need to be further deliberated on between the NCAA and stakeholders.
8. The material aspects include the following:
  - 8.1 The most recent draft of Part 139 and the corresponding (incomplete) NAMCATS were shared with stakeholders at 18h40 the evening before the stakeholder consultation. Stakeholders have therefore not been given time to properly consider the lengthy and complex documents (which materially differ from previous forms) and provide commentary thereon. Procedural fairness predicts that more stakeholder consultations are required to discuss the drafts, which are far from final form.
  - 8.2 The current Part 139 is ambiguous and creates uncertainties in the following respects:
    - 8.2.1 Regulation 139.01.1(2) states that no place in Namibia may be used as a place for landing or take-off by an aircraft operated in terms of regulation in Part 121, Part 135 and aircraft used during *ab initio* flying training unless that place has been certified in accordance with Sub-Parts 3, 4, 5 or 6 and operated in accordance with this Part.
      - 8.2.1.1 The aforesaid implies that aerodromes used exclusively for private non-commercial flights need not be certified under Part 139.
      - 8.2.1.2 The NCAA however created the impression at the stakeholders' consultation that aerodromes used exclusively

for private non-commercial flights fall under Category E Aerodromes and need to be certified.

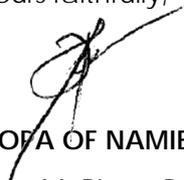
- 8.2.2 As it stands Category A and B Aerodromes (as categorised in regulation 139.01.5) comprise of aerodromes available for use by both scheduled and non-scheduled domestic air traffic. There is no weight or passenger number thresholds for these aerodromes, which creates obvious difficulties.
- 8.2.2.1 As it stands, An aerodrome to which a non-scheduled domestic flight under Part 135 is performed needs to be certified as a Category A Aerodrome.
- 8.2.2.2 This means that aerodromes such as Ongava, Sesriem and Bagani need to be certified as Category A Aerodromes before a Part 135 flight may be conducted into/from same.
- 8.2.2.3 It comes without saying that these aerodromes will never be able to comply with the stringent certification requirements of Category A Aerodromes.
- 8.2.2.4 The entire charter industry in Namibia will come to a categorical halt if the current version of Part 139 comes into operation 1 October 2022.
- 8.2.3 The current draft of the NAMCATS is incomplete, in that none of the annexures to the NAMCATS (such as the self-assessment checklist mentioned in regulation 139.05.3(2)(b)) are included in the draft.
- 8.2.3.1 Stakeholders cannot provide comments or render input on the annexures, which we submit play a crucial role in the certificate process.
- 8.2.3.2 Should Part 139 and the NAMCATS be promulgated before stakeholders are presented with the annexures to the NAMCATS, the requirements of procedural fairness would not have been fulfilled and would constitute a ground for review.
- 8.2.4 Any aircraft operator will have tremendous difficulties in insuring its aircraft and/or operations, as the current categorisation of aerodromes

is extremely ambiguous. Insurers will be hesitant to insure commercial flights as it is unclear to which category of aerodromes such flights may and may not be conducted.

9. We note that there was an attempt by the drafters of the current Part 139 to incorporate some of the previous stakeholder concerns, but we respectfully submit that even more uncertainty now exists.
10. These are only some of the material concerns that we have and on these alone, we respectfully submit, the commencement of Part 139 should be postponed.
11. Should the commencement of Part 139 be postponed, we wish to propose that an immediate meeting be convened between AOPA, its legal practitioners and the NCAA to discuss some of the core issues of Part 139 and to devise a way forward. We verily believe that once the core issues and uncertainties are identified, AOPA and the NCAA can work together to identify solutions to the issues.
12. Part 139, read with the applicable NAMCATS, is far too voluminous and complex to deliberate on at one sitting or at one stakeholder consultation. The lengthy history of the Part 139 saga proves this.
13. In light of the underlying urgency of the matter, we tht kindly ask that you respond to this letter by no later than close of business on 23 September 2022, with your views on what is recorded herein and whether you agree that the commencement of Part 139 should be postponed.
14. Our rights remain reserved.

Please accept, Ma'am, the assurance of our highest considerations.

Yours faithfully,



**AOPA OF NAMIBIA**

Per: Mr Riaan Burger

Acting President

