



REPUBLIC OF NAMIBIA

MINISTRY OF WORKS AND TRANSPORT

OFFICE OF THE MINISTER

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Private Bag 13341

6719 Bell Street, Snyman Circle

Windhoek, NAMIBIA

Our Ref:.....

URGENT!Your Ref:.....**17 July 2023**.....

Mr Shaun ELLIS
ELLIS AND PARTNERS LEGAL PRACTITIONERS
P. O. Box 91000
WINDHOEK
Republic of Namibia

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**IRREGULAR PROMULGATION OF NEW NAMIBIAN CIVIL AVIATION
REGULATIONS; PARTS 61-67 AND 141.**

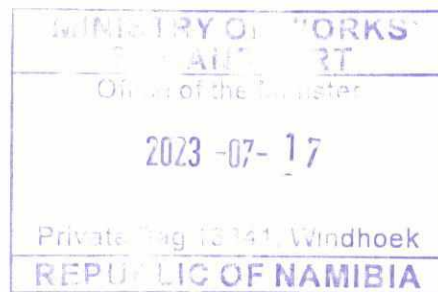
1. Your letter, dated, Friday 14 July 2023; has reached me, today, Monday 17 July 2023, at 13H00.
2. A careful reading of PARAGRAPH 5, on PAGE 2 and PARAGRAPH 6, PAGE 3; of your said letter; as well as the demand or instruction, as conveyed in PARAGRAPH 8 of your 14 July 2023 letter, is lucidly clear: the requested "URGENT MEETING" is neither genuine; nor intended "to come to an amicable resolution," of the matter, at all.
3. The Ministry of Works and Transport (MWT) and the Namibia Civil Aviation Authority (NCAA), as juristic entities; respectively; must most certainly, be allowed to consult, their respective Legal Advisors, with regard to the entire content of your 14 July 2023 letter; with particular emphasis on your not so reasonable demand, as articulated in PARAGRAPH 7 of your said letter, to quote: "which we submit (with respect) can only be the withdrawal of the New Regulations," (my own underlining for emphasis only).




John MUTORWA, MP
MINISTER

Copies:

1. Honourable Attorney General of Namibia;
2. Honourable Minister of Justice;
3. Honourable DM: MWT;
4. Chairperson: NCAA Board of Directors;
5. ED: MWT;
6. Chief Executive Officer: NAC.



Received:
17.7.2023
13:00



ELLIS & PARTNERS
legal practitioners

MINISTRY OF WORKS
& TRANSPORT
Office of the Minister
2023-07-17
Private Bag 104, Windhoek
REPUBLIC OF NAMIBIA

EXTREMELY URGENT

Our Ref: SE/mb

Your Ref:

14 July 2023

The Honourable Minister


Ministry of Works and Transport
Snyman Circle
Windhoek

Mr Ellis' 14 July 2023 letter; was responded to, on 17.7.2023, as per the attached letter, addressed to Mr Ellis, and copied to the Chairperson: NCAA Board, too.

JHE 17.7.2023

Dear Honourable Minister,

IRREGULAR PROMULGATION OF NEW NAMIBIAN CIVIL AVIATION REGULATIONS: PARTS 61 - 67 AND 141

1. We act herein on behalf of the Aircraft Owners and Pilots Association of Namibia ("our client"), who represents the interest of the majority of Namibian aircraft operators, aircraft maintenance organisations and aircraft training organisations.
2. Reference is made to Government Gazette No. 8119 dated 26 June 2023 and published on 30 June 2023 (the "Gazette") and through which Gazette you (unlawfully and irregularly) published new regulations to the Civil Aviation Act, 2016 (the "Act"), namely the regulations under Parts 60 to 67 and 141 (the "New Regulations").
3. The purpose of this letter is two-fold, namely:
 - 3.1 to point out that the regulation making procedures, as set out in SUBPART 1: PROCEDURES FOR MAKING REGULATIONS under Part 3 of the Namibian Civil Aviation Regulations, 2001 as amended (the "NAMCARS") were not followed; 

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(Authorised and regulated by the Law Society of Namibia)

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17.7.2023,
13H00.



and

- 3.2 to urgently seek a meeting with your office to convey to you the gross shortcomings of the regulation making process prescribed in the NAMCARS.
4. Due to the urgent nature of the matter, we cannot delve into the detail of the process and therefore simply highlight the following:
- 4.1 During or about December 2020, the Namibia Civil Aviation Authority ("NCAA") published on its website new draft regulations under Parts 60 – 67 and 141 of the NAMCARS.
- 4.2 During or about October 2021, the aviation industry was invited by the NCAA to render input on the aforesaid draft regulations, which it did.
- 4.3 Since October 2021, no feedback had been received from the NCAA on the proposed amendments to these regulations.
- 4.4 Without notice and to the entire industry's surprise, the New Regulations were published in the aforesaid Gazette and came into effect immediately.
- 4.5 We point out that the New Regulations contain drastic differences to the drafts which were shared with the industry and deliberated on with the industry.
- 4.6 To illustrate the core differences in the regulations, we enclose hereunder two letter (directed to the NCAA by AOPA and Signa Aviation Services) which highlight some of the substantial amendments which were slipped into the New Regulations without any industry consultation.
5. Against the aforesaid background, you will (should) certainly agree that the principle of audi alterem partem was flagrantly disregarded when you promulgated substantially different regulations to those that were shared with industry and without the industry having been heard. It is furthermore abundantly clear the regulation-making process, set out in Part 3 of the NAMCARS, was not followed. On the aforesaid alone, your decision to promulgate the New Regulations (which have immediate effect) stands to be reviewed and set aside by the High Court of Namibia.



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17.7.2023, 13H00.

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2023-07-17
Private Bag 10341 Windhoek
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6. The New Regulations materially and adversely affect rights of the entire aviation industry (some effects are set out in the enclosed letters) and therefore our client, along with its members, will have no other choice than to ask the High Court to set them aside.
7. In order to avoid costly litigation, we therefore seek an urgent meeting with your office to discuss the aforesaid and to come to an amicable resolution, which we submit (with respect) can only be the withdrawal of the New Regulations.
8. Due to the urgency of the matter, we kindly ask that we receive your response to the letter by no later than close of business on 17 July 2023.

Yours faithfully,

ELLIS & PARTNERS

PER: MR SHAUN ELLIS

