

REGULATIONS
Civil Aviation Act 6 of 2016

Namibian Civil Aviation Regulations, 2001

PART 114
AVIATION SECURITY BACKGROUND CHECKS

[Part 114 is inserted by GN 293/2018.]

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SUBPART 1
GENERAL

Applicability

114.01.1 (1) Subject to the provisions of sections 134 and 135 of the Act, this Part applies to -

- (a) persons employed at an airport, including persons who are responsible for -
 - (i) implementing security controls with regard to cargo and aircraft inflight supplies, whether at an airport or any other location;
 - (ii) implementing screening of baggage and cargo at the airport or any other location;
 - (iii) access controls at an aviation installation; and
 - (iv) transportation of air cargo and mail;
- (b) pilots and cabin crew attendants;
- (c) aircraft maintenance engineers;
- (d) regulated agents, approved known consignors and suppliers of in-flight supplies;
- (e) at the discretion of the Executive Director, staff members and authorised persons of the Authority; and
- (f) any other person or category of persons who may be required by the Executive Director to undergo security background checks pursuant to section 134 of the Act.

(2) In order to carry a security background check the Executive Director may seek assistance from competent authorities in Namibia and, where necessary, in other States.

(3) A security background check is carried out for purposes of establishing whether a person is a threat to civil aviation security.

SUBPART 2
PROCEDURES FOR SECURITY BACKGROUND CHECKS
FOR PURPOSES OF CIVIL AVIATION

Procedure for security background check

114.02.1 (1) A security background check must be conducted in a reasonable manner to protect the privacy and integrity of all persons.

(2) A person in respect of whom a security background check is conducted will be informed of such action verbally and in writing, and his or her consent must be obtained and recorded and counter-signed by that person.

(3) A person in respect of whom a security background check is to be conducted must be informed of the consequences of refusing to consent to the background check.

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Authority to act as participant or holder

114.02.2 (1) A person referred to in regulation 114.01.1 may not act as a participant or holder unless a security background check has been performed on such person or entity and granted approval, to be a participant or holder by the Executive Director.

(2) Without prejudice to section 134 of the Act, employers of participants referred to in regulation 114.01.1 must cause a security background check to be conducted by competent authorities in Namibia.

(3) The Executive Director must make known, in an Aeronautical Information Circular, to potential civil aviation participants referred to in regulation 114.01.1 the competent authorities of the State or other entities which may be authorised to conduct security background checks for the purposes of this Part.

Recording of security background checks

114.02.3 (1) Employers of participants referred to in regulation 114.01.1 must maintain a register including written proof that a security background check was conducted on its employees or entities.

(2) A register referred to in subregulation (1) must be kept in a safe place by the employer and, where so required, be provided to the Authority for inspection.

Period of validity of security background checks

114.02.4 (1) A security background check for the purposes of this Part is valid for a period not exceeding 24 months.

(2) Security background checks must be conducted after every 24 months.

Proof of identity of persons

114.02.5 Subject to regulation 114.02.6, a person's identity must, for the purposes of a civil aviation security background check, be established on production of one of the following original documents:

- (a) in the case of Namibian citizens or permanent residents, either a Namibian identification card, a valid passport or a valid Namibian driver's licence; and
- (b) in the case of non-Namibian citizens or non-permanent residents, a valid passport together with an original immigration office document confirming the individual's right to work, study or reside in Namibia.

Alternative method of identification

114.02.6 (1) Where a person conducting a security background check is satisfied that the person whose identity is to be established cannot reasonably provide the documentation required under regulation 114.02.5, that person is required to provide the following original documents:

- (a) a birth or adoption certificate;

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- (b) a registration or naturalisation document;
- (c) proof of residence in Namibia;
- (d) a passport-sized photograph endorsed on its back with the signature of a commissioner of oaths; and
- (f) the testimony of two persons aged 18 years or above who have known the person, either personally or professionally, for a minimum period of three years and a signed statement under oath or affirmation confirming that the signatory knows the person identified.

[This paragraph is mislabelled in the *Government Gazette*; it should be paragraph (e).]

(2) The statement referred to in subregulation (1)(f) must contain the signatory's full name, identification number or passport number, occupation, residential address and telephone number.

Criminal records

114.02.7 (1) Criminal records must be produced in the form of an official police criminal record certificate (CRC), known as a "certificate of conduct", and in the case of non-Namibian citizens or non-permanent residents, a document equivalent to the certificate of conduct.

[The word "non-Namibian" is misspelt in the *Government Gazette*, as reproduced above.]

(2) A certificate of conduct remains valid for a period of six months from the date of issue.

Unfavourable certificate of determination

114.02.8 (1) Where it has been determined in the course of security background check that an applicant or employee has been convicted of a criminal offence listed in the Appendix, that applicant or employee cannot be allowed to become or continue to be a participant or holder, unless the Executive Director has issued a certificate of favourable determination relating to such conviction.

[The word "an" before "participant or holder" should be "a".]

(2) Despite subregulation (1), where a period of 20 years has lapsed from the date of conviction for the offences referred to in the Appendix, that convicted person may be allowed to become a participant or holder.

Procedure for issuing certificate of favourable determination

114.02.9 (1) Before issuing a certificate of favourable determination the Executive Director must cause the person who was convicted of an offence in the Appendix to undergo a fit and proper person test in the manner contemplated by section 69 of the Act, and the following additional information, if not already provided for the purposes of this Part, must be considered:

- (a) whether the person so convicted showed any remorse for the crime committed;
- (b) whether there is a likelihood that the person will repeat the same offence;

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- (c) the aviation document applied for;
- (d) the person's propensity to committing crimes; and
- (e) any other relevant factor.

(2) A person who was convicted of an offence listed in the Appendix may apply in writing to the Executive Director for a certificate of favourable determination, and -

- (a) the Executive Director must, within 14 days of receipt of the application, inform the applicant of the date, time and place where a fit and proper person test may be conducted; and
- (b) the applicant must pay the fee prescribed under Part 187.

Verification of education or employment

114.02.10 A person who is conducting a security background on another person must obtain written confirmation from employers, educational establishments or other sources capable of verifying the information provided by the person for the purpose of the security background check.

Self-employment

114.02.11 Where a security background check reveals that the person was self-employed, either wholly or in part, during any of the period covered by the check, written confirmation of the dates of the periods of self-employment must be obtained from any relevant third parties.

Security background check features

114.02.12 The minimum security background checks must include the following features:

- (a) establish the person's identity on the basis of documentary evidence;
- (b) cover criminal records, where relevant, of at least the preceding five years from the date of enquiry;
- (c) cover employment, education and any gaps in records during at least the preceding five years; and
- (d) establish that relevant institutions provided credible information on the person's profile regarding his or her involvement with terrorist activities.

Security background check on prospective employees

114.02.13 A security background check must be completed before any prospective employee referred to in regulation 114.01.1 undergoes any security training involving access to information which is not publicly available.

Filing of recruitment records

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114.02.14 Recruitment records, including results of any assessment tests, must be kept for all persons recruited for at least the duration of their employment.

Foreign criminal record checks

114.02.15 (1) Where a person has been resident outside the territory of Namibia, criminal record certificates are required for each country that the person has been continuously resident in for six months or more, preceding a period of five years from the date of enquiry.

(2) Where a person has served abroad in the service of the State for a period of five years preceding the enquiry, he or she must provide an extract from his or her service records.

(3) The extract referred to in subregulation (1) must expressly disclose any convictions the person may have, and must cover periods spent overseas of six months or more.

[The word “subregulation” is misspelt in the *Government Gazette*, as reproduced above.]

Applicants who cannot obtain foreign criminal record check

114.02.16 In exceptional cases including, but not limited to a situation where official sources do not exist or officials are unable to supply the individual with a certificate, the individual must provide -

- (a) a statement under oath or affirmation;
- (b) a character reference from a referee; and
- (c) reasons as to why it is not possible to obtain the criminal record certificate.

Suitable referees

114.02.17 A person conducting a security background check of an employee or a prospective employee and considering references provided by the applicant must in addition to any other relevant factors take into account the following factors:

- (a) whether the referee has known the applicant for a period of three years or more;
- (b) whether the referee is resident in Namibia;
- (c) whether the referee holds a Namibian passport or a Namibian identity document;
- (d) whether the applicant and the referee are related to each other by birth, adoption, marriage or other conjugal relationship akin to that of husband and wife;
- (e) whether the applicant and the referee live at the same address; and
- (f) whether there is any specific reason why the referee offered to testify to the character of the individual.

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APPENDIX

Convictions disqualifying a person from participating in the Namibian civil aviation system

Any person convicted of offences and acts below is disqualified from becoming an aviation participant or holder, unless a period of 20 years has lapsed from the date of conviction or the Executive Director has issued a certificate of favourable consideration.

- (a) terrorism;
- (b) unlawful possession, use, sale, distribution, or manufacture of an explosive or weapon;
- (c) interference with air navigation installation;
- (d) espionage or cybercrime;
- (e) commission of certain crimes aboard aircraft in-flight;
- (f) treason;
- (g) carrying a weapon or explosive aboard aircraft;
- (h) kidnapping or hostage taking;
- (i) human trafficking;
- (j) crimes involving dishonesty;
- (k) aircraft piracy and any other piracy;
- (l) unlawful entry into an aircraft or airport area;
- (m) any offence connected with bomb threats and or hoaxes, to the detriment of airport security;
- (n) armed robbery;
- (o) destruction of an aircraft or aircraft facility;
- (p) smuggling of specially protected game products and drugs or dependence producing substance; and
- (q) conspiracy or attempt to commit any of the aforementioned criminal acts.