



MEDIA RELEASE

Date: 23 January 2019
To: All members of the media

BRIEF ON AIR NAMIBIA AND CHALLENGE AIR

Following several articles on this matter reported by local and international media, Air Namibia hereby wishes to provide an objective insight and update the general public on the matter between Air Namibia and Challenge Air. The background to this long pending commercial dispute is as follows:

BACKGROUND

- Some time back during or about 9 March 1998, a written sublease agreement was concluded between Air Namibia as Lessee and a Belgian Company, Challenge Air SA as Lessor.
- A maintenance and crew support agreement was thereafter concluded on 26 March 1998. Subsequently Air Namibia discovered that the aircraft leased was in many respects defective and Challenge Air, the lessor and current claimant against Air Namibia, was unable to rectify the defects.
- On account of the above and four months later, on 27 July 1998 the maintenance and crew support agreement was cancelled by Air Namibia.
- Precisely one day thereafter, being on 28 July 1998 Challenge Air SA was placed in liquidation. This was primarily due to the fact that the lease agreement constituted the sole business of the lessor. The appointed liquidators, who are the current claimants against Air Namibia, were obliged under Belgian Law to decide whether to perform the agreements or to terminate them. They decided to terminate them.
- On 6 and 7 August 1998, a multi-party meeting was held in Frankfurt, Germany with the purpose of attempting to resolve the uncertainty consequent upon the liquidation of Challenge Air.
- Subsequent to the end of August 1998 the parties continued to implement the said agreement.

Board of Directors: Adv. Deidre Sauls- Deckenbrock (Chairperson), Ms. Nangula Kauluma (Vice-Chairperson), Ms. Heritha Muyoba, Mr. Willy Mertens, Mr. Escher Luanda, Capt. Alois Nyandoro, Adv. E.P. Samson (Acting Managing Director), Ms. Ingrid Cupido (Company Secretary)

- The sub-lease agreement contained an arbitration clause to the effect that arbitration is agreed on in terms of the IATA Arbitration Rules. Both Agreements provided that Namibian law would govern the Agreements.

START OF ARBITRATION

- On 10 May 2004 Air Namibia, in anticipation of the then pending arbitration and in reply to other litigation initiated by the liquidator in the Namibian High Court, obtained an order of court providing for the arbitration procedures to be stayed, pending cases in Namibian courts between parties being finalized and amongst other declaring the arbitration agreement unenforceable and null and void in its favour.
- Since April 2004, Ancet Baum had been pressing IATA to compel the applicants to proceed with the arbitration. Air Namibia maintained throughout at the time that the prerequisites for arbitration did not exist and that IATA should respect the stay order of the Court. Presentations were thereafter made by both parties to IATA, and IATA then held that the arbitration must proceed and that the parties should nominate their arbitrators by 21 January 2005.

FIRST ATTEMPT ATTACHMENT

Following a protracted arbitration proceedings in London, where Air Namibia was represented by both South African, European as well as Namibian senior legal counsel before a one man arbitrator, an award was made in favour of the Liquidator under circumstances where, despite several legal and factual misdirection by the arbitrator, the award could not be appealed due to the provisions of the arbitration agreement.

- Air Namibia received service of the award on 24 January 2014 through the German Embassy containing a 'Petition for declaring the enforceability of a foreign award'.
- In its first initiative to execute the award, Challenge Air approached the German Court in Munich for an order both recognizing and enforcing the award.
- In 2015 Air Namibia was informed that Challenge Air has applied for an attachment order against Aviareps in respect of funds held by it on behalf of Air Namibia. These actions were aimed at recovering the legal costs to which Challenge Air is entitled by virtue of the proceedings which took place in Germany in which Challenge Air sought to make the Arbitration award an order of court. The order was granted with cost by the Munich regional court on 12 January 2015 and remains enforceable only in Germany.

- Thus far the above proceedings were restricted to Germany as the award has no legal efficacy in Namibia.
- Currently Air Namibia is seized with legal proceedings in The Namibian High Court by the claimant seeking to have recognition of its award in Namibia and which is opposed amongst others on the basis of the pre-existing Namibian High Court Order declaring the award unenforceable.

CURRENT STATUS

While the outcome of the Court proceedings referred to above in the High Court is pending following the reservation of the judgement, Challenge Air initiated attachment proceedings in Germany based on the German enforcement order it has secured.

Although Air Namibia has throughout maintained its legal position on the matter and has unsuccessfully prosecuted its position in these transactions mostly hostile European tribunals with the best available local and international counsel, Air Namibia received a written communication on 11 October 2018 from the firm of Sisa Namandje incorporated, informing of the fact that they were acting on the instructions of Wilhelm Shali and Anicet Baum. Mr Baum is the court-appointed liquidator of Challenge Air.

The 11 October 2018 letter was delivered to the office of the Minister of Works and Transport and legal counsel. The recent steps taken by Challenge Air in Europe, despite the outcome of the proceedings in the Namibian High Court still being awaited, has caused financial prejudice to the airline such as being clearly aimed at exerting pressure.

The airline hereby takes the opportunity to assure all its stakeholders that all necessary steps are being taken, including but not limited to engaging the claimant directly to find a permanent solution to the matter.

To this end EASA shall be equally engaged with a view to explaining the current efforts of the airline in engaging the claimant in this respect.

ISSUED BY THE CORPORATE COMMUNICATIONS DEPARTMENT

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