Bill for Introduction into the National Assembly —

The Civil Aviation Bill, 2012 .......................................................... 5757

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THE CIVIL AVIATION BILL, 2012

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THE CIVIL AVIATION BILL, 2012
A Bill for

AN ACT of Parliament to repeal and re-enact the Civil Aviation Act, with amendments, to provide for the control, regulation and orderly development of civil aviation in Kenya; and for connected purposes

ENACTED by the Parliament of Kenya, as follows—

PART I —PRELIMINARY

1. This Act may be cited as the Civil Aviation Act, 2012.

2. In this Act, unless the context otherwise requires—

"accident" means any occurrence associated with the operation of an aircraft which, in the case of a manned aircraft, takes place between the time any person boards the aircraft with the intention of flight until such time as all such persons have disembarkeled, or in the case of an unmanned aircraft, takes place between the time the aircraft is ready to move with the purpose of flight until such time as it comes to rest at the end of the flight and the primary propulsion system is shut down, in which—

(a) a person is fatally or seriously injured as a result of—

(i) being in the aircraft, or
(ii) direct contact with any part of the aircraft, including parts which have become detached from the aircraft, or

(iii) direct exposure to jet blast,

except when the injuries are from natural causes, self-inflicted or inflicted by other persons, or when the injuries are to stowaways hiding outside the areas normally available to the passengers and crew; or

(b) the aircraft sustains damage or structural failure which—

(i) adversely affects the structural strength, performance or flight characteristics of the aircraft, and

(ii) would normally require major repair or replacement of the affected component,

except for engine failure or damage, when the damage is limited to a single engine, (including its cowlings or accessories), to propellers, wing tips, antennas, probes, vanes, tires, brakes, wheels, fairings, panels, landing gear doors, windscreens, the aircraft skin (such as small dents or puncture holes), or for minor damages to main rotor blades, tail rotor blades, landing gear, and those resulting from hail or bird strike (including holes in the radome; or

(c) the aircraft is missing or is completely inaccessible;

"acts of unlawful interference" means any acts,
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conspiracy or attempted acts intended to or which have the result of jeopardizing the safety of civil aviation and air transport and include—

(a) unlawful seizure of aircraft in flight or on the ground;
(b) hostage taking on board aircraft or on aerodromes;
(c) forcible intrusion on board an aircraft, at an aerodrome or on the premises of an aeronautical facility;
(d) introduction on board aircraft or at an airport of a weapon or hazardous device or material intended for criminal purposes;
(e) communication of false information such as to jeopardize the safety of an aircraft in flight or on the ground, of passengers, crew, ground personnel or the general public, at an airport or on the premises of a civil aviations facility;

(f) destroying or causing damage to air navigation facilities, or interfering with their operation, if any such act is likely to endanger the safety of aircraft in flight;
(g) violence against a person on board an aircraft in flight, if that act is likely to endanger the safety of that aircraft;

(h) causing destruction to an aircraft in service, or causing damage to an aircraft which renders it incapable of flight or which is likely to endanger its safety in flight;
(i) unlawfully and intentionally using any device, substance or weapon, to—

(i) perform an act of violence against a person at an airport serving civil aviation which causes or is likely to cause serious injury or death;

(ii) destroy or seriously damage the facilities of an airport serving civil aviation or an aircraft not in service located at the airport or disrupting the services of the airport, if that act endangers or is likely to endanger safety at that airport;

(j) use of an aircraft in service for the purpose of causing death, serious bodily injury, or serious damage to property or the environment;

"aerial work" means any purpose other than commercial transport for which an aircraft is flown if hire or reward is given or promised in respect of the flight or the purpose of the flight;

"aerodrome" means any defined area on land or on water, including any building, installation or equipment therein, used or intended to be used either wholly or in part for the arrival, departure and surface movement of aircraft, and includes any such area as the Cabinet Secretary may by notice in the Gazette declare to be an aerodrome;

"aircraft" means any machine that can derive support in the atmosphere from the reactions of the air, other than reactions of the air against the earth’s surface, and includes all flying machines, aeroplanes, gliders,
seaplanes, rotorcrafts, airships, balloons, gyroplanes, helicopters, ornithopters and other similar machines but excludes state aircraft;

“airway” means a designated control area or portion thereof established in the form of a corridor;

“air navigation services” means—

(a) communication services, whether ground to air or ground to ground, provided for the safety of the aircraft;

(b) navigational services, that is to say radio, radar and visual aids to navigation;

(c) air traffic services provided for the safety of aircraft; and

(d) aeronautical information services;

“air route” means navigable airspace between two points and the terrain beneath such air space identified, to the extent necessary, for the application of flight rules;

“air transport enterprise” includes persons, corporate bodies and unincorporated bodies, companies, firms, partnerships, societies and associations, now or hereafter operating an air transport service for public hire, under proper authority, in the transport of passengers, mail or cargo;
“air transport service” means any air service performed by aircraft for commercial transport of passengers, mail or cargo;

“Authority” means the Kenya Civil Aviation Authority established under section 4 of this Act;

“authorised employee” means an employee authorised by the Director-General to exercise the powers or perform the duties and functions in respect of which the expression is used;

“aviation security” means a combination of measures, human and material resources intended to safeguard civil aviation against acts of unlawful interference;

“Board” means the Board of Directors of the Authority constituted under section 13 of this Act;

“Cabinet Secretary” means the Cabinet Secretary for the time being responsible for matters relating to civil aviation;

“cargo” means any movable property carried in an aircraft;

“Certification” means the process of determining that a person or organisation possesses the knowledge, skills and key competencies required of a specified operation;

“charges” means all sums received or receivable, charged or chargeable under this Act or regulations made thereunder for any service performed or facilities
provided by the Authority;

"Chicago Convention" means the Convention on International Civil Aviation concluded at Chicago on the 7th December 1944;

"commercial transport" means the carriage of passengers or cargo for hire or reward;

"Contracting State" means any State which is party to the Chicago Convention;

"controlled area" means a controlled airspace extending upwards from a specified limit above the earth;

"convention" means any international convention or protocol and any annex thereto relating to civil aviation to which Kenya is a signatory or has acceded, or to which Kenya is in any way party to, whether made, concluded, signed or acceded to before or after the commencement of this Act, and includes the Chicago Convention;

"crew" includes any person assigned by the owner to perform duty on an aircraft during flight

"investigator-in-charge" means the investigator-in-charge appointed under section 53 of this Act;

"Director-General" means the Director-General of the Authority appointed under section 19;

"financial year" means the period of twelve months ending on the thirtieth June in each year;
“former Authority” means the Kenya Civil Aviation Authority established under the repealed Civil Aviation Act; 

“Government aerodrome” means an aerodrome under the control of the Government;

“inappropriate use” means the use of safety information for purposes different from the purposes for which it was collected for;

“incident” means an occurrence, other than an accident, associated with the operation of an aircraft which affects or may affect the safety of operation;

“Kenya aircraft” means an aircraft registered in Kenya;

“licence” includes any certificate, permit or document, authorising any person to do or to omit to do anything under this Act;

“operator” in relation to an aircraft, means a person having the management of the aircraft for the time being or, in relation to time, at the time;

“owner” means, in relation to an aircraft or aerodrome, a person in whose name the aircraft or aerodrome is registered or licensed, and includes any person who is or has been acting as agent in Kenya for a foreign owner, or any person by whom the aircraft or aerodrome is hired at the time;

“passenger” means any person being conveyed by
an aircraft and who is not a member of the crew;

"private aerodrome" means an aerodrome other than an aerodrome under the control of Government, Governmental agency, military or police;

"publication" includes information given in any of the following publications issued, whether before or after the commencement of this Act—

(a) notices to airmen;

(b) aeronautical information publications;

(c) notices to licensed aircraft maintenance engineers and to owners of civil aircraft;

(d) civil aviation publications;

(e) aeronautical information circulars;

(f) manuals of air traffic control instructions; and

(g) such other official publications issued for the purpose of enabling any of the provisions of this Act or regulations made thereunder to be complied with;

"regulated agent" means an agent, freight forwarder or any other entity approved by the appropriate Authority that conducts business with an air operator and provides security controls that are accepted or required by the appropriate Authority in respect of
cargo, courier and express parcels or mail;

"relevant person" means the pilot-in-command, operator, or the owner of the aircraft at the time of the accident or serious incident, or where the accident or serious incident occurs on or adjacent to an aerodrome in Kenya, the owner or operator of the aerodrome;

"rocket" means any projectile for projection through the air by the combustion of its own contents and having a total weight before firing of more than 2.2 kilogrammes;

"safety factors" means causal factors identified in the course of an aircraft accident or incident investigation including direct causes, root causes and contributory factors;

"safety information" means information contained in safety data collection and processing systems established for the sole purpose of improving aviation safety and qualified to be protected under specified conditions;

"safety recommendation" means a proposal of the investigator-in-charge, based on information derived from an investigation or other sources, made with the intention of preventing accidents or incidents and which in no case has the purpose of presumption of blame or liability for an accident or incident;

"safety sensitive person" means a person who might endanger aviation safety if that person performs his or her duties and functions improperly and this includes
technical air crew, cabin crew, aircraft maintenance personnel, air traffic controllers and security screeners;

"screening" means the application of technical or other means which are intended to identify or detect weapons, explosives or other dangerous devices, articles or substances which may be used to commit an act of unlawful interference;

"security programme" means any measures and procedures adopted to safeguard civil aviation against acts of unlawful interference;

"serious incident" means an incident involving circumstances indicating that there was a high probability of an accident associated with the operation of an aircraft which, in the case of a manned aircraft, takes place between the time any person boards the aircraft with the intention of flight until such time as all such persons have disembarked, or in the case of an unmanned aircraft, takes place between the time the aircraft is ready to move with the purpose of flight until such time as it comes to rest at the end of the flight and the primary propulsion system is shut down;

"state aircraft" means aircraft used in military, customs and police services of Kenya or of any other State or any other civil registered aircraft at the time performing a state function and fully converted to offer services to heads of States, military service, customs or police or to any other State;

"State Safety Programme" means an integrated set of regulations and activities promulgated and performed by the State aimed at improving safety and efficient
delivery of aviation services; and

"Tribunal" means the National Civil Aviation Administrative Review Tribunal established under section 66 of this Act.

(2) Any reference in this Act to goods or articles shall be construed as including a reference to baggage, mail and animals.

(3) Despite subsection (1), until after the first election under the Constitution, references in this Act to the words "Cabinet Secretary" or "Principal Secretary" shall be construed to mean "Minister" or "Permanent Secretary" respectively.

3. (1) The provisions of this Act or any regulations made thereunder shall, except where expressly or by implication excluded, apply to—

(a) all aircraft whilst in or over any part of Kenya;

(b) all Kenya aircraft and the crew and other persons on board wherever they may be; and

(c) all aerodromes and service providers within aerodromes.

(2) The provisions of this Act shall not, except where expressly included or if the Cabinet Secretary so directs by order published in the Gazette, apply to state aircraft or to any class or classes of state aircraft.

(3) Despite the provisions of subsection (2), in the
interest of aviation safety, all aircraft shall be subject to the requirements of this Act in respect of rules of the air.

PART II — ESTABLISHMENT, COMPOSITION AND FUNCTIONS OF THE KENYA CIVIL AVIATION AUTHORITY

4. (1) There is established an authority to be known as the Kenya Civil Aviation Authority.

(2) The Authority shall be a body corporate with perpetual succession, and a common seal and shall in its corporate name, be capable of—

(a) suing and being sued;

(b) taking, purchasing or otherwise acquiring, holding and disposing of movable and immovable property;

(c) borrowing money with the approval of the Cabinet Secretary and the Cabinet Secretary for the time being responsible for matters relating to finance;

(d) entering into contracts; and

(f) doing or performing all such other things or acts necessary for the proper discharge of its functions under this Act, which may be lawfully done or performed by a body corporate.

(3) The Authority shall be the state agency for the management of aviation safety in Kenya.
5. The Headquarters of the Authority shall be in Nairobi.

6. The object and purpose for which the Authority as established shall be, to economically and efficiently plan develop, manage civil aviation, regulate and operate a safe civil aviation system in Kenya in accordance with the provisions of this Act.

7. (1) The Authority shall be responsible for—

(a) the licensing of air services;

(b) the provision of air navigation services;

(c) the establishment and maintenance of a system for the registration and the marking of civil aircraft;
(d) securing sound development of the civil aviation industry in Kenya;

(e) advising the Government on matters concerning civil aviation;

(f) the co-ordination and direction of search and rescue services;

(g) the facilitation and provision of all the necessary support for the aircraft accident and incident investigations conducted by the investigator-in-charge;

(h) carrying out investigations on incidents that are not classified as accidents and serious incidents;

(i) the safety, security, economic and technical regulation of civil aviation;

(j) dealing with incidents of unlawful interference with aviation security;

(k) the establishment, co-ordination and maintenance of State Safety Security Programmes;

(l) the certification of aircraft operators;

(m) enforcement of approved technical standards of aircraft;

(n) the licensing and monitoring of
aeronautical personnel;

(o) the provision of technical services for the design, installation, and modification of electronic, radio and other equipment used in the provision of air navigation services;

(p) ensuring the integrity of the systems, equipment and facilities of the Authority;

(q) the issuance and dissemination of the publications referred to in this Act;

(r) the production of accurate, timely comprehensive and relevant air transport information for planning and decision making purposes;

(s) the approval, certification and licensing of aircraft maintenance organisations and regulation of aviation training institutions in Kenya;

(t) the establishment, management and operation of training institutions for the purposes of the Authority;

(u) the registration of rights and interests in aircraft;

(v) the planning, development and formulation of the airspace master plan for the safe and efficient utilization of
Kenyan airspace;

(w) the establishment, co-ordination and maintenance of state aviation safety and security programmes;

(x) licensing and certification of aerodromes, regulated agents and air navigation service provider

(y) performing economic over. of air services, protecting consumer rights, environment and ensuring fair trading practices;

(z) giving effect to the Chicago Convention and other international agreements relating to civil aviation to which Kenya is party to; and

(aa) the performance of such other functions as may, from time to time, be conferred on it by the Cabinet Secretary or by any other written law.

(2) The Authority shall provide air navigation services in Kenya airspace, and for any areas outside of Kenya for which Kenya has, in pursuance of international arrangements, undertaken to provide air navigation services, alerting service and to co-ordinate search and rescue, therein.

(3) The Authority shall carry out its functions in a manner consistent with the Chicago Convention, any Annex to the Convention relating to international
standards and recommended practices and any amendment thereto or other international conventions and protocols relating to civil aviation that Kenya is party to.

(4) The Authority shall be responsible for the performance of any obligations required by any agreement, treaty or arrangement between Kenya and any other country, inter-Governmental organisation or other body with respect to the safety, regularity and efficiency of air navigation and aviation safety in general.

(5) In the discharge of its responsibility for aviation safety and security, the Authority shall co-ordinate its activities with other agencies of the Government, including the Kenya Airports Authority, the Department of Defence and the National Police Service.

8.(1) The Authority shall have all the powers necessary for the proper performance of its functions under this Act.

(2) Without prejudice to the generality of subsection (1), the Authority shall have power to—

(a) determine, set out and levy rates, charges, dues or fees for any services performed by the Authority, or for use by any person of the facilities provided by the Authority or for the grant, renewal or validation of a licence, permit or certificate, subject to the approval of the Cabinet Secretary;

(b) receive any gifts, grants, donations or
endowments made to it or any other monies in respect of it and to make legitimate disbursement therefrom in accordance with the provisions of this Act;

(c) invest any monies not immediately required for its purposes in the manner provided in this Act or any other written law;

(d) enter into contracts, arrangements, agency, associations or partnerships with any person, Government agency or authority, whether, within or outside Kenya, subject to any limitations that may be set out by the Cabinet Secretary;

(e) acquire, hire, hold, lease out, or dispose of all types of assets or property including land:

Provided that the Authority shall not sell, let or otherwise dispose of any buildings, land or other assets vested in it by virtue of section 40 except with the consent of and subject to any conditions that may be set out by the Government.

9.(1) Where the Authority has reasons to believe that a person is capable of supplying information, producing a document or giving evidence that may assist in the performance of any of its functions, the Director-General may, by summons signed by himself or a delegated officer of the Authority and served on that person, require the person—

(a) to furnish the information in writing signed by the person served and in the case of a body
corporate, signed by a competent officer of the body corporate;

(b) to produce the document to the Authority; and

(c) to appear before the Authority to give evidence.

(2) A summon under this section shall specify the required time and manner of compliance.

(3) The Authority may require that any evidence referred to under this section be given in writing.

(4) A person shall not be excused from complying with summons under this section on the grounds that compliance may incriminate the person or make the person liable to a penalty:

Provided that such information, documents or evidence shall not be put to inappropriate use.

(5) Where the Authority has reason to believe that a person is in possession or control of any information or document which may assist in the performance of its functions and that the person has refused or failed to supply such information or document, the Director-General may apply to the Tribunal for issuance of a warrant authorising a police officer to enter into any premises believed to contain or into which a document is kept or hidden and conduct search and make copies or take extracts of documents therein.

10. Aviation safety and security information obtained, gathered or voluntarily or otherwise given to
the Authority under this Act or regulations made thereunder shall not be put to any inappropriate use:

Provided that the Authority shall not be precluded from sharing aviation safety and security information with other Civil Aviation Authorities in the Contracting States subject to appropriate safeguards.

11. A person who without lawful excuse refuses or fails to comply with a summons, gives false or misleading information or evidence either voluntarily in any proceedings of the Authority or in purported compliance with a summons under this section, commits an offence and shall be liable on conviction to a fine not exceeding two hundred thousand shillings.

12. (1) When any matter to be determined by the Authority under this Act appears to it to involve a point of law, the Authority may, after giving notice to the concerned parties, refer the matter to the Tribunal for direction.

(2) Where any matter has been referred to the Tribunal under subsection (1), the Authority and the parties to the proceedings shall be entitled to be heard by the Tribunal before any decision is made in respect of such matter and may appear personally or be represented by an advocate of the High Court.

13. (1) There shall be a Board of Directors of the Authority which shall be the governing body of the Authority consisting of—

(a) a Chairperson who shall be appointed by the
Cabinet Secretary;

(b) the Director-General appointed under section 19;

(c) the Principal Secretary of the Ministry for the time being responsible for matters relating to civil aviation or his representative;

(d) the Principal Secretary to the National Treasury or his representative;

(e) the Principal Secretary of the Ministry for the time being responsible for matters relating to internal security or his representative;

(f) the Principal Secretary of the Ministry for the time being responsible for matters relating to Tourism or his representative;

(g) five other persons, not being public officers, to be recruited through a competitive process and to be appointed from a list of at most three qualified persons by the Cabinet Secretary of whom—

(i) two shall have knowledge and experience either in aviation, air transport matters, piloting, aeronautical engineering or any other related field;
Chapter Six of the Constitution; or

(e) ceases to be a member of the Board for any other reason other than the above.

(6) The Chairperson shall notify the Cabinet Secretary as soon as a vacancy occurs in the membership of the Board, and the Cabinet Secretary shall, appoint a member to fill such vacancy within three months of receiving the notice and the person so appointed shall hold office until the expiration of the term of office of the member in whose place he or she was appointed.

14. (1) The Cabinet Secretary may terminate the appointment of a member appointed under section 13(1) (a) and (g) if that person—

(a) has been absent from three consecutive meetings of the Board without permission;

(b) is adjudged bankrupt or enters into a composition scheme or arrangement with his creditors;

(c) is convicted of an offence involving dishonesty or fraud;

(d) is convicted of a criminal offence and sentenced to imprisonment for a term
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exceeding six months or to a fine exceeding one hundred thousand shillings;

(e) is incapacitated by prolonged physical or mental illness; or

(f) fails to comply with the provisions of this Act relating to disclosure of interest.

(2) A member appointed under section 13 (a) or (g) may resign his office in writing under his hand to the Cabinet Secretary.

15. (1) The Board shall be responsible for the general control of the performance and management of the undertakings and affairs of the Authority, and shall include a general duty to ensure that the functions of the Authority are carried out in an efficient, transparent and ethical manner and that no particular person or body is given undue preference or subjected to any undue disadvantage.

(2) The Board shall consider and advise the Cabinet Secretary on the development and maintenance of civil aviation policy framework and the objectives of the Authority.

(3) Without prejudice to the generality of subsection (1) and (2), the Board shall—
Meetings of the Board.

17. (1) The Board shall meet at least four times in every financial year and not more than four months shall lapse between the date of one meeting and the date of the next meeting.

(2) The quorum at a meeting of the Board shall be six members excluding the Director-General.

(3) The conduct and regulation of the business and affairs of the Board shall be as provided in the First Schedule.

The common seal of the Authority.

18. (1) The Common Seal of the Authority shall be kept in such custody as the Board may direct and shall not be used except on the order of the Board.

(2) The Common Seal of the Authority when affixed to a document and duly authenticated, shall be judicially and officially noticed and unless and until the contrary is proved, any necessary order or authorisation by the Board under this section shall be presumed to have been duly given.

Appointment of Director-General.

19. (1) There shall be a Director-General of the Authority who shall be appointed by the Cabinet Secretary, from a list of at most three qualified persons recommended by the Board following a competitive recruitment process.

(2) Subject to this section, the terms and conditions of service of the Director-General shall be determined
by the Board.

(3) The Director-General shall be the Chief Executive Officer of the Authority and shall neither engage in any other paid employment nor hold a position or have such interests that are likely to place him or her in a position of conflict of interest or impose undue influence on the Authority or its employees in discharging its functions under this Act or regulations made thereunder.

(4) A person shall not qualify for appointment as the Director-General under subsection (1) unless that person—

(a) is a citizen of Kenya;

(b) meets the requirements of Chapter Six of the Constitution; and

(c) has knowledge and experience in matters relating to civil aviation.

(5) The Director-General shall hold office for a term of three years from the date of appointment but shall, upon the recommendation of the Board, be eligible for re-appointment for one further term of three years.

(6) The Cabinet Secretary may, in consultation with the Board, terminate the appointment of the Director-General if he or she—
its expenditure is properly chargeable to its revenue.

27. (1) The funds of the Authority shall consist of—

(a) monies that may accrue to the Authority in the discharge of its functions;

(b) grants and loans from the Government;

(c) grants and loans from any body, organization or persons;

(d) interest on savings made by the Authority;

(e) such monies that may be provided by Parliament for the purposes of the Authority, and

(f) money from any other source.

(2) The Authority may open and operate its own bank accounts in both domestic and foreign currencies in banks approved by the Board.

(3) The Authority may, with the approval of the Cabinet Secretary, invest any funds of the Authority not immediately required for use by the Authority in such securities as the Board deems fit.

(4) The Government may provide appropriations to meet operating deficits and capital funding of the Authority.
28. The Authority may, with a written approval of the Cabinet Secretary —

(a) subscribe to or purchase shares, debentures or other securities of a company;

(b) form a company that would be a subsidiary of the Authority;

(c) enter into partnership with any body, organisation or enterprise whose objectives are compatible with the purposes for which the Authority has been established.

29.(1) At least three months before the commencement of each financial year, the Board shall cause to be prepared estimates of the revenue and expenditure of the Authority for that year.

(2) The annual estimates shall make provision for the financial year concerned, and in particular shall provide for—

(a) the payment of the salaries, allowances and other charges in respect of the staff of the Authority and the members of the Board;

(b) the payment of the pensions, gratuities and other charges in respect of retirement benefits to staff of the Authority;
(c) the proper maintenance of buildings and the grounds of the Authority;

(d) the proper maintenance, repair and replacement of the equipment and other movable property of the Authority;

(e) the creation of such reserve funds to meet future or contingent liabilities in respect of retirement benefits, insurance or replacement of buildings or equipment or in respect of such other matters pertaining to the Authority as the Board may decide;

(f) the provisions of air navigation services;

(g) the provision of personnel training

(3) The annual estimates shall be submitted to the Cabinet Secretary for approval before the commencement of the financial year to which they relate provided that once approved, the sum provided in the estimates shall not be increased without the prior consent of the Cabinet Secretary.

(4) An expenditure shall not be incurred for purposes of the Authority except in accordance with the annual estimates approved under subsection (3) or in pursuance of an authorisation of the Cabinet Secretary.
30.(1) The Authority shall prepare a five-year business plan which shall be reviewed yearly.

(2) The business plan shall contain financial targets and performance indicators for the Authority.

(3) When preparing the business plan, the Authority shall consider—

(a) standards of aviation safety;
(b) the objectives and policies of the Government;
(c) funds of the Authority;
(d) assets and liabilities of the Authority;
(e) any other consideration the Authority deems appropriate.

(4) The business plan and the revisions thereof shall be prepared by the Authority at least six months prior to the commencement of the Authority's financial year.

31. (1) The Authority may borrow funds by the issue of loan stock on such terms as may be approved by the Cabinet Secretary responsible for matters relating to finance upon recommendation of the Cabinet Secretary.

(2) The Authority may in line with principles of public finance management as set out in the Constitution
36. The Authority may contract out any of its services provided that such contracting out shall not abrogate from the Authority's regulatory functions and compromise safety and security standards.

37. (1) In the performance of its functions and exercise of its powers, the Authority shall, where appropriate, consult with Government departments, other authorities, bodies or persons and users of the Authority's facilities and services.

(2) The Authority shall establish any consultative mechanism it deems necessary to obtain the views of the users of the Authority's facilities and services.

38. The Authority may authorise an aerodrome to provide air navigation services for the use of such aerodrome subject to such conditions as may be set by the Authority.

39. (1) The Authority shall inspect any aerodrome used for civil aviation operations, premises of any regulated agent or premises of the holder of an air service license, certificate, authorisation or other approval document issued by the Authority or any aircraft on Kenyan territory regardless of their state of registry or Kenya registered aircraft wherever it may be for reasons of aviation safety, security, consumer protection and for any other reasons for which the
Authority is established.

(2) The Authority's inspectors shall have unhindered access to aerodromes, premises of any regulated agent or premises of the holder of air service license, certificate, authorisation or other approval document or aircraft wherever it may be and the related facilities and installations and to any records, information and explanation that may be required in the course of their inspections.

(3) The Authority's inspectors shall, where they find that an aerodrome operator, regulated agent or a holder of air service licence, certificate, authorisation or approval document or an aircraft is in violation of this Act or regulations made hereunder, issue an infringement notice to such licence, certificate or authorisation holder as provided in the Second Schedule stating the particulars of the violation, the period within which to comply and the attendant penalty for the stated violation.

(4) A licence, certificate and authorisation holder, regulated agent or any person that may be aggrieved by any of the matters raised by the infringement notice issued by the Authority's inspector, such licence, certificate or authorisation holder, regulated agent or any person so aggrieved shall have a right to appeal to the Director-General within twenty-eight days from the time of issuance of the infringement
member of the crew of the aircraft or by tampering with the aircraft or its equipment, or by disorderly conduct or by any other means;

(b) cause or permit an aircraft to endanger any person or property;

c) interfere or tamper with an air navigation facility.

(2) A person who contravenes the provisions of subsection (1) commits an offence and shall be liable upon conviction to a fine not exceeding two million shillings.

47. (1) A safety sensitive person shall not, when involved in aviation safety and security operations or operation of any aircraft whether in-flight or on the ground or being carried in any aircraft for the purpose of so acting be under the influence of alcohol or drugs.

(2) An employee of the Authority shall not report on duty or be on duty when under the influence of alcohol or drugs.

(3) Without prejudice to the provisions of the Narcotic Drugs and Psychotropic Substances (Control) Act, 2007 and the Employment Act, 2011 a person who contravenes the provisions of subsections (1) and (2) commits an offence and shall be liable upon conviction
to a fine not exceeding five hundred thousand shillings or a suspension of his or her privileges, withdrawal or cancellation of licence or any other sanction on the certificate or licence as the Director-General may deem fit.

48. (1) An operator shall have an effective drug and alcohol testing system approved by the Authority.

(2) An operator who contravenes the provisions of subsection (1) commits an offence and shall be liable upon conviction to a penalty not exceeding two million shillings or may have suspension of his or her privileges, withdrawal or cancellation of licence or any other sanction on the certificate or licence as the Director-General may deem fit.

49. (1) The Authority may upon an application by an operator, a license or a certificate holder or a holder of any authorisation, as the case may be, on aviation safety or security matters, grant exemptions on such terms and conditions as may be necessary, with respect to the application of any regulations made under this Act provided that any such exemptions granted shall not compromise aviation safety and security standards.

(2) Exemptions granted under subsection (1) shall be in writing and shall specify the time when the aviation service provider is expected by the Authority to fully comply with the requirements of this Act and
regulations made thereunder and the period within which the exemption shall cease to be effective provided that the duration of any such exemption shall not exceed six months.

(3) Despite the provisions of this Act, and in particular those relating to exemptions, the Cabinet Secretary may, by Gazette notice, set aside, vary or revoke an exemption issued by the Authority.

50. Despite the provisions of this Act, the Cabinet Secretary may, upon the recommendation of the Authority, by way of the Gazette notice and on such terms and conditions as may be necessary, exempt any aircraft, person, aerodrome facility or service or enterprise from the application of any regulations made under this Act, if such exemption is in the public interest and is not likely to adversely affect aviation safety and security.

PART IV- POWERS AND RESPONSIBILITIES OF THE CABINET SECRETARY

51. (1) The Cabinet Secretary shall have powers to determine the policy framework within which the Authority shall operate and for that purpose but with due regard to the need to uphold the Authority's autonomy the Cabinet Secretary may—

(a) give directions of a general nature to the
Board regarding the operations of the Authority;

(b) approve alterations in the tariffs, rates, fees and any other charges levied for the services and facilities provided by the Authority;

(c) approve any individual capital work for the purposes of the Authority, whose estimated cost exceeds prescribed limit set by the Cabinet Secretary, from time to time;

(d) from time to time, in writing, either generally or particularly, delegate to the Director-General any of the powers, exercisable by him under any written law, but not including this present power of delegation.

(2) The Director-General may exercise the delegated powers under subsection (1)(d) in the same manner and with the same effect as if they had been conferred on him or her directly by this section and not by delegation subject to any direction given or condition attached by the Cabinet Secretary;

(3) Every delegation under this section shall be revocable and no such delegation shall prevent the exercise of any power by the Cabinet Secretary.

(4) Any such delegation under this section shall, until revoked, continue in force according to its tenure,
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despite the fact that the Cabinet Secretary by whom it was made may have ceased to hold office.

52. The Cabinet Secretary shall be responsible for—

(a) civil aviation policies;

(b) investigation of civil aircraft accidents and incidents for the purpose of prevention of further occurrence of similar accidents and incidents;

(c) establishment of incident reporting systems to facilitate collection of information on actual and potential safety deficiencies;

(d) establishment and review of air services agreement in an open and transparent manner;

(e) submission of variations to the Chicago Convention, any Annex to the Convention relating to international standards and recommended practices and any amendment thereto, or other international conventions and protocols, relating to civil aviation that Kenya is party to.
53. (1) For the purposes of carrying out responsibilities under section 52(b) and (c), the Cabinet Secretary shall appoint, by way of Gazette notice, investigators of accidents from whom he or she shall appoint an investigator-in-charge of air accidents and his or her Deputy.

(2) The objective of the investigation of an accident or incident shall be the determination of the safety factors and where possible the probable cause and the prevention of accidents and incidents and not to apportion blame or liability.

(3) Investigators appointed under subsection (1) shall have a professional pilot's background, or an aeronautical engineering qualification, or air traffic control qualification or, as appropriate, experience in specialized areas of aviation such as operations, aerodynamics and aircraft design.

(4) The Cabinet Secretary may appoint in writing any persons with special skills or knowledge in specialized areas of aviation in an advisory capacity in any case where it appears to the Cabinet Secretary that such special skills or knowledge are required for proper completion of the investigation.

54. (1) Where the whole or any part of the investigation is carried out in Kenya, the investigator-in-charge shall have—
(a) free and unhindered access to the site of the accident or incident as well as to the aircraft, its contents or its wreckage;

(b) powers to secure and preserve the scene of the accident; and

(c) free access to any relevant information or records held by the owner, the operator, the operator's maintenance contractors and sub-contractors, the hirer, the designer or the manufacturer of the aircraft and by the authorities for civil aviation or airport operation or Air Traffic Service.

(2) The Cabinet Secretary shall establish an incident reporting system to facilitate collection of information on actual and potential safety deficiencies.

(3) Upon completion of the accident investigation, the person in charge of investigation shall submit a final report of the findings to the Cabinet Secretary who shall have it published in the Gazette.

(4) The person in charge of investigation may, at any stage of an investigation—

(a) recommend to the appropriate authorities, including those in other Contracting States, any preventive action that he or she
considers necessary to be taken promptly to enhance aviation safety; and

(b) communicate to relevant persons or authorities in Kenya, the recommendations referred above or those received from another Contracting State.

(5) Any person or authority in Kenya to whom a recommendation has been communicated under subsection (4), shall take that recommendation into consideration and, where appropriate, act upon it or provide a full explanation as to why no measures shall be taken to implement the recommendation.

(6) Information gathered in the course of an accident investigation and through the incident reporting system shall not be put to inappropriate use.

(7) Where the investigator-in-charge has reasons to believe that a person is capable of supplying information, producing a document or giving evidence that may assist in the performance of an investigation, the investigator-in-charge may by summons signed by himself or herself or the person in charge of investigation and served on that person—

(a) to furnish the information in writing signed by the person served, and in the case of a
body corporate, signed by a competent officer of the body corporate;

(b) to produce documents; and

(c) to give evidence.

(8) A summon made under subsection (7) shall specify the required time and manner of compliance.

(9) A person shall not be excused from complying with summons under this section on the grounds that compliance may incriminate the person or make the person liable to a penalty:

Provided that such information, documents or evidence shall not be admissible against that person other than proceedings under this Act.

(10) A person who, without lawful excuse, refuses or fails to comply with a summon under this section commits an offence and is liable on conviction to a fine of not less than fifty thousand shillings or to imprisonment for a term not less than six months or to both.

(11) Where the investigator-in-charge has reason to believe that a person is in possession or control of any information or document which may assist in the performance of an investigation and that person has
refused or failed to supply such information or document, the investigator-in-charge may apply to the Tribunal for issuance of a warrant authorising a police officer to enter into any premises believed to contain or into which a document is kept or hidden and conduct search and make copies or take extracts of documents therein.

(12) Any person, who knowingly gives false or misleading information or evidence in purported compliance with a summons under this section, commits an offence and shall be liable on conviction to a fine not exceeding fifty thousand shillings or to imprisonment for a term not exceeding six months.

55. (1) The Cabinet Secretary shall assess and audit the performance standards of the functions of the Authority to ensure that they meet prescribed international standards at such time intervals as he or she may consider desirable.

(2) The Cabinet Secretary may appoint audit inspectors to carry out the assessment and audit referred to in subsection (1).

(3) The audit inspectors appointed under subsection (2) shall have unhindered access to all records, information, facilities and installations and to any explanation that may be required in the course of their duties.

(4) The Cabinet Secretary may, on the advice of any
audit inspector, take appropriate action to ensure that noted safety deficiencies are corrected and appropriate standards are maintained.

PART V-PROVISIONS RELATING TO PROHIBITIONS, OFFENCES, EXEMPTIONS, ETC.

56. (1) Despite the provisions of any written law, or the terms of any deed, grant, lease or license concerning the use and occupation of land, the Cabinet Secretary may, where he considers it to be necessary in the interests of the safety of air navigation, by order published in the Gazette, prohibit the erection within a declared area of any building or structure above a height specified in the order.

(2) For the purposes of this section, “declared area” means any area adjacent to or in the vicinity of an aerodrome which the Cabinet Secretary may by notice in the Gazette declare to be a declared area.

(3) Any person who contravenes the provisions of an order made under subsection (1) commits an offence and shall be liable on conviction to a fine not exceeding two million shillings or to imprisonment for a term not exceeding three years, or to both.

57. (1) If the Director-General considers that provisions for civil aviation safety and security or efficiency of air navigation ought to be made—
(a) whether by lighting or otherwise for giving aircraft warning of the presence of any building, structure, tree or natural growth or formation on or in the vicinity of an aerodrome; or

(b) by the removal or reduction in height of any such obstruction or surface,

he or she may by order, and subject to any conditions specified in the order, require or authorise either the owner or occupier of the land on which the obstruction is situated or any person acting on behalf of the Director-General to enter upon the land and carry out such work as is necessary to enable the warning to be given or the obstruction to be reduced in height.

(2) The Director-General shall before making an order under subsection (1), cause to be published, in such manner as he or she thinks best for informing persons concerned, notice of the proposal to make the order, and of the place where copies of the draft order may be obtained free of charge.

(3) The Director-General shall take into consideration any representations with respect to the proposed order under subsection (1) which may, within such period not being less than two months after the publication of the notice as may be specified therein, be made to him or her by any person appearing to him or her to have an interest in any land which would be
(2) Any person being the owner of or for time being having charge of, a domestic animal which trespasses in or upon a Government aerodrome or licensed aerodrome commits an offence and shall be liable on conviction,

(a) in the case of a first offence, to a fine not exceeding fifty thousand shillings, and

(b) in the case of a second or subsequent offence, to a fine not exceeding one hundred thousand shillings.

(3) The application of subsection (1) and (2) is without prejudice to the provisions of the Trespass Act provided that it shall be a good defence for an offender under this provision to prove to the satisfaction of the court that he has previously been charged for the same offence under subsection (1).

59.(1) An action shall not lie in respect of trespass or in respect of nuisance, by reason only of the flight, or the ordinary incidents of the flight, of an aircraft over any property at a height above the ground, which, having regard to wind, weather and all the circumstances of the case is reasonable, so long as the provisions of any written law or convention are complied with.

(2) Where material loss or damage is caused to any
person or property on land or water by, or by a person in, or by an article or person falling from, an aircraft while in flight, taking off or landing, then, unless the loss or damage was caused or contributed to by the negligence of the person by whom it was suffered, damages in respect of the loss or damage shall be recoverable without proof of negligence or intention or other cause of action, as if the loss or damage had been caused by the wilful act, neglect or default of the owner of the aircraft:

Provided that where such material loss or damage is caused in circumstances in which—

(a) damages are recoverable in respect of such loss or damage by virtue only of the foregoing provisions of this subsection; and

(b) a legal liability is created in some person other than the owner to pay damages in respect of such loss or damage,

the owner shall be entitled to be indemnified by that other person against any claim in respect of such loss or damage.

(3) Despite section 2, where an aircraft has been bona fide demised, let or hired out for any period exceeding fourteen days to any person by the owner thereof, and during such period no pilot, commander,
navigator or operative member of the crew of the aircraft is in the employment of the owner, this section shall have effect as if for reference therein to the owner there were substituted a reference to the person to whom the aircraft has been so demised, let or hired out.

60. (1) Regulations made under section 82 may provide for regulating the conditions under which noise and vibration may be caused by aircraft and may provide that subsection (2) of this section shall apply to any aerodrome concerning which provision as to noise and vibration is so made.

(2) An action shall not lie in respect of nuisance by reason only of the noise and vibration caused by aircraft on an aerodrome to which this subsection applies by virtue of regulations made under section 82 so long as the provisions of any such regulations are complied with.

61. (1) Where an aircraft is flown in such a manner as to cause unnecessary danger to any person or property on land or water, the pilot or the person in charge of the aircraft and the owner thereof, unless he or she proves that the aircraft was so flown without his or her knowledge or consent commits an offence and shall be liable upon conviction to a fine not exceeding two hundred thousand shillings or a suspension of his or her privileges, withdrawal or cancellation of licence or any other sanction on the certificate or licence as the
Director-General may deem fit.

(2) The provisions of this section shall be in addition to and not in derogation of the powers conferred upon the Cabinet Secretary under this Act or regulations made thereunder.

62. (1) Any lawful entry into Kenya or any lawful transit across Kenya, with or without landing, of an aircraft to which this section applies shall not entail seizure or detention of the aircraft or any proceedings being brought against the owner or operator thereof or any other interference therewith by or on behalf of any person in Kenya on the ground that the construction, mechanism, parts, accessories or operation of the aircraft is or are an infringement of any patent, design or model.

(2) The importation into and storage in Kenya of spare parts and spare equipment for aircraft to which this section applies and the use and installation thereof in the repair of such an aircraft shall not entail any seizure or detention of the aircraft or of the spare parts or spare equipment or any proceedings being brought against the owner or operator of the aircraft or the owner of the spare parts or spare equipment or any other interference with the aircraft by or on behalf of any person in Kenya on the ground that the spare parts or spare equipment or their installation are or is an infringement of any patent, design or model.
Provided that this subsection shall not apply in relation to any spare parts or spare equipment, which are sold or distributed in Kenya or are, exported for sale or distribution.

(3) This section shall apply—

(a) to an aircraft registered in any country or territory in respect of which there is in force a notice made by the Cabinet Secretary and published in the Gazette, with a view to the fulfilment of the provisions of Article 27 of the Chicago Convention, that the benefits of those provisions apply to that country or territory; and

(b) to such other aircraft as the Cabinet Secretary may prescribe.

63. Regulations made under this Act may provide for the detention of aircraft to secure compliance with this Act or any regulations made thereunder and may make such further provisions as appear to the Cabinet Secretary to be necessary or expedient for securing such detention.

64. Any offence under this Act or regulations made under this Act and any offence committed on a Kenya
aircraft shall, for the purpose of conferring jurisdiction, be deemed to have been committed in any place within Kenya where the offender may for the time being be:

Provided that if such offence is committed in or over Kenya, the offence may be tried by any court having jurisdiction in Kenya.

65. Where an offence under this Act or regulations made thereunder is committed by a body corporate or any other association of individuals, every person who at the time of the commission of the offence was a director, partner or any other similar officer of the body corporate, or acting or purporting to act in management of its affairs, commits an offence unless that person proves that—

(a) the act or omission constituting the offence took place without his or her knowledge, consent or connivance; or

(b) he or she exercised all such diligence to prevent the commission of the offence as he ought to have exercised having regard to the nature of his or her functions in that capacity and to all the circumstances.
PART VI- THE NATIONAL CIVIL AVIATION ADMINISTRATIVE REVIEW TRIBUNAL

66. (1) There is established a tribunal to be known as the National Civil Aviation Administrative Review Tribunal which shall consist of —

(a) a Chairperson nominated through a competitive process by the Judicial Service Commission, who shall be a person qualified for appointment as a Judge of the High Court of Kenya;

(b) an advocate of the High Court of Kenya nominated by the Law Society of Kenya through a competitive process with knowledge, experience and professional qualifications in aviation law;

(c) two persons to be recruited through a competitive recruitment process from the aviation industry who shall have knowledge and experience in aviation matters; and

(d) one other person recruited competitively and who shall be a holder of such other qualifications and experience of proven ability in such other fields as the Cabinet Secretary may deem necessary.

(2) All appointments to the Tribunal shall be
done by the Cabinet Secretary by name and through a Gazette notice.

(3) The members of the Tribunal shall be appointed at different times so that the respective expiry dates of their terms of office shall fall at different times.

67. (1) A member of the Tribunal shall hold office for a term of three years but shall be eligible for re-appointment for one further term of three years.

(2) The office of a member of the Tribunal shall become vacant—

(a) at the expiration of three years from the date of his or her appointment;

(b) if he or she accepts any office the holding of which, if he or her were not a member of the Tribunal, would give rise to the existence of a conflict of interest with his or her membership to the Tribunal;

(c) if he or she is removed from membership of the Tribunal by the Cabinet Secretary upon findings of an inquiry determining his or her failure to discharge the functions of his or her office (whether arising from infirmity of body or mind or from any other cause) or for misbehavior;
(d) if he or she resigns the office of member of the Tribunal; or

(e) upon death.

(3) Members of the Tribunal shall be paid allowances approved by the Cabinet Secretary, in consultation with the Cabinet Secretary for the time being responsible for matters relating to finance.

68. (1) The Tribunal shall have a Secretary who shall be a public officer appointed by the Cabinet Secretary.

(2) The Secretary shall hold office on the terms and conditions specified in the letter of appointment.

(3) The Secretary shall be responsible for the day to day affairs of the Tribunal and shall be answerable to the Tribunal in performance of his or her functions.

(4) The Secretary shall perform any other functions determined by the Tribunal.

69. The Tribunal shall have the jurisdiction to hear and determine complaints or appeals arising from—

(a) any refusal to grant a licence, a certificate or any other authorisation by
the Authority or transfer of a licence under this Act or regulations made thereunder;

(b) the imposition of any condition, limitation or restriction on a licence under this Act or regulations made thereunder;

(c) any revocation, suspension or variation of a licence under this Act or regulations made thereunder;

(d) any amount of money which is required to be paid as a fee under this Act or regulations made thereunder;

(e) the imposition of any order or direction by the Authority under this Act or regulations made thereunder;

(f) consumer protection compliance and enforcement activities related to areas such as right violations, unfair and deceptive practices and unfair competition by air carriers and travel agents, deceptive airline advertising including fare, on-time performance, schedule, code sharing, and violations of rules concerning denied boarding
compensation, ticket refunds, baggage liability requirements, flight delays and charter flights or

(g) any exercise of powers to make decisions, but not powers in respect of staff employment, granted to the Director-General or the Authority under this Act or regulations made thereunder.

Proceedings of Tribunal.

70. (1) The Tribunal shall, upon an appeal made to it in writing, within thirty days after the occurrence of the event against which a party is dissatisfied, inquire into the matter and make an award, give directions, make orders or make decisions thereon, and every award, direction, order or decision made shall be notified by the Tribunal to the parties concerned, the Authority or any relevant committee thereof, as the case may be.

(2) The Tribunal shall sit at such times and in such places as it may appoint by Gazette Notice.

(3) The proceedings of the Tribunal shall be open to the public save where the Tribunal, for good cause, otherwise directs.

(4) Except as expressly provided in this Act or any regulations made thereunder, the Tribunal shall regulate its proceedings as it deems fit.
(5) A person who is party to the proceedings before the Tribunal may appear in person or be represented by an advocate of the High Court.

(6) The Tribunal shall not be bound by the rules of evidence as set out in Evidence Act.

71. (1) On hearing of a complaint or an appeal, the Tribunal shall have all the powers to—

(a) summon witnesses, take evidence on oath or affirmation and order the production of documents; or

(b) summon expert evidence as may be necessary;

(2) Where the Tribunal considers it desirable for the purposes of minimising expenses, to avoid delay or for any special reason, it may receive evidence by affidavit and administer interrogatories and require the person to whom the interrogatories have been made to respond.

72. (1) The Tribunal may—

(a) award damages;

(b) confirm, set aside or vary the order or
(3) Upon the hearing of an appeal under this section, the High Court may—

(a) confirm, set aside or vary the decision or order in question;

(b) remit the proceedings to the Tribunal with such instructions for further consideration, report, proceedings or evidence as the Court may deem fit to give;

(c) exercise any of the powers which could have been exercised by the Tribunal in the proceedings in connection with which the appeal is brought; or

(d) make such other order as it may deem just, including an order as to costs of the appeal or of earlier proceedings in the matter before the Tribunal.

78. A person aggrieved by the decision or order of the High Court may, within sixty days of that decision or order, appeal against that decision or order to the Court of Appeal on matter of law.

PART VII - GENERAL PROVISIONS

79. (1) The Chairperson or any other members of the Tribunal shall not be liable to be sued in a civil court
for an act done or omitted to be done or ordered to be
done by them in the discharge of their duty as members
of the Tribunal, whether or not within the limits of their
jurisdiction, provided they, at the time, in good faith,
believed themselves to have jurisdiction to do or order
the act complained of, and no officer of the Tribunal or
other person bound to execute the lawful warrants,
orders or other process of the Tribunal shall be liable to
be sued in any court for the execution of a warrant,
order or process which he would have been bound to
execute if within the jurisdiction of the Tribunal.

80. A person who commits an offence under this
Act for which no specific penalty is provided for shall
be liable on conviction to a fine not exceeding one
hundred thousand shillings or to imprisonment for a
term not exceeding twelve months, or to both.

81. (1) Any employee of the authority authorised
by name in that behalf by the Director-General, or any
police officer not below the rank of the inspector, may
compound any offence under this Act or Regulations.

(2) All fines or penalties levied for any offence
under this Act or Regulations made under it, shall be
paid to the funds of the Authority.

(3) Where an offence is compounded in
accordance with the provisions of subsection (1) and
any proceedings are brought against the offender for
the same offence, it shall be a good defence for such
offender to prove to the satisfaction of the court that the offence with which he or she is charged has been compounded under subsection (1).

82. (1) The Cabinet Secretary shall make regulations to give effect to and for the better carrying out of the objects and purposes of this Act, to provide generally for regulating air navigation, air transport, air accident investigation and carrying out and giving effect to any convention.

(2) Without prejudice to the generality of subsection (1), the Cabinet Secretary may make regulations—

(a) regulating, by establishing licensing authorities and a system of licensing and otherwise, the use of aircraft—

(i) for commercial transport; and

(ii) for aerial work;

(b) providing for the registration and marking of aircraft;

(c) prohibiting the flying of any aircraft—

(i) unless there is in force in respect of such aircraft a certificate of airworthiness or permit to fly issued or recognized in accordance with regulations made under
this Act; and

(ii) except upon compliance with such conditions as to maintenance and repair as may be prescribed or specified in the certificate or permit;

(d) requiring the flight crew, and persons, performing prescribed functions in relation to the operation or maintenance of aircraft, air navigation services, design and construction of aircraft to be the holders of licences of specified kinds;

(f) providing for the manner and conditions of issue, validation, renewal, extension or variation of any licence required in regulations and for the form, custody, production, cancellation, suspension, endorsement and surrender of such;

(g) providing for the conditions under which and in particular the aerodromes to or from which, aircraft entering or leaving Kenya may fly and the conditions under which aircraft may fly from one part of Kenya to another;

(h) providing for the conditions under which passenger and cargo may be carried by air and under which aircraft may be used for other commercial, industrial or gainful purposes, and
for prohibiting the carriage by air of goods of such classes as may be prescribed;

(i) minimizing or preventing interference with the use or effectiveness of apparatus used in connection with air navigation and air navigation services and prohibiting or regulating the use of such apparatus and the display of signs and lights liable to endanger aircraft;

(j) generally securing the safety, efficiency, and regularity of air navigation and safety of aircraft and of persons and cargo carried therein, and for preventing aircraft endangering other persons;

(k) requiring persons engaged in or in connection with meteorology to supply meteorological information for the purpose of air navigation;

(l) regulating the making of signals and other communications by or to aircraft and persons carried therein;

(m) subject to any other written law, prescribing a civil air ensign for Kenya and regulating the use of any other ensign established for purposes connected with air navigation;
(n) prohibiting aircraft from flying over such areas in Kenya as the Cabinet Secretary may by order published in the Gazette declare to be prohibited areas;

(o) prescribing the fees to be paid in respect of the issue, validation, renewal, extension or variation of any license, or the undergoing of any examination or test required by regulations made under this Act or any other matters in respect of which it appears to the Cabinet Secretary to be expedient to charge fees;

(p) prescribing charges or enabling some other authority to prescribe charges to be paid in respect of air navigation services, regulatory services and providing for the recovery of such charges;

(q) providing for consumer protection and any other related matter;

(r) exempting any aircraft or persons or classes of aircraft or persons from the provisions of any regulations made under this Act;

(s) providing for the investigation in such manner as may be prescribed, including by means of a tribunal established for the purpose, of any accident arising out of or in
(c) all disciplinary proceedings which immediately before the commencement of this Act were pending shall be continued or concluded as if instituted under this Act;

(d) all appeal processes, which immediately before the commencement of this Act were pending, shall proceed as if instituted under this Act;

(e) the persons employed by the former Authority shall be transferred to the Authority established under this Act; and

(f) a contract subsisting between the former Authority and another person before the commencement of this Act shall subsist between the Authority established under this Act and that person.

FIRST SCHEDULE

PROVISIONS RELATING TO THE MEETINGS OF THE BOARD OF DIRECTORS

1 The Chairperson may call a special meeting of the Board of Directors at any time, where he or she considers it expedient for the transaction of the business of the Board of Directors.
2. Other than a special meeting, or unless three quarters of members agree, at least fourteen days' written notice of every meeting of the Board of Directors shall be given to every member of the Board of Directors by the secretary.

3. The quorum at a meeting of the Board of Directors shall be half of the members or a greater number determined by the Board of Directors, in respect of an important matter.

4. The Chairperson shall preside at the meetings of the Board of Directors and in his or her absence the vice-chairperson, and in the absence of a vice-chairperson, a member of the Board of Directors elected by the members present from among their number, shall preside.

5. The matters of the Board of Directors shall be decided by a majority of the members present and voting and in the event of equality of votes, the person presiding shall have a casting vote.

6. The proceedings of the Board of Directors shall not be invalidated by reason of a vacancy among the members or a defect in the appointment or qualification of a member.

7. At the first meeting of the Board of Directors, the members shall elect a vice-chairperson, not being an ex officio member, from among its members.

8. Subject to the provisions of this Schedule, the Board of the Directors may determine its own procedure and the procedure for any committee of the Board of Directors and for attendance of any other persons at the meetings and may make standing orders in respect thereof.

(1) Where an infringement notice is not withdrawn, and the person to whom it is issued for an offence pays the fine stated in the notice—

(a) any liability of the person for the offence is discharged;

(b) the person may not be prosecuted in a court of law for the offence;

(c) the person is not taken to have been convicted of the offence.

(2) Where two or more infringement notices are issued to a person for the same offence, the person's liability to be prosecuted for the offence ceases if the person pays the fine stated in any of the notices.

10. Withdrawal of infringement notice.

(1) A person may apply in writing to the Authority, before the end of twenty eight days after receiving an infringement notice, for the infringement notice to be withdrawn.

(2) The Authority shall, within fourteen days after receiving the application—

(a) withdraw or refuse to withdraw the notice;

(b) notify the person in writing of the decision and, if the decision is a refusal, the reasons for the decision.

(3) Where the Authority fails to approve the withdrawal of the notice within the period allowed by paragraph (2), the Authority shall be
11. Notice of withdrawal of infringement notice.

(1) Notice of the withdrawal of an infringement notice may be served on a person in any way in which the infringement notice could have been served on the person.

(2) A notice withdrawing an infringement notice served on a person for an offence —

(a) shall include the following information —

(i) the full name, or surname and initials, and address of the person upon whom it was issued;

(ii) the number of the infringement notice;
(iii) the date of issue of the infringement notice;

(b) shall state that the notice is withdrawn; and

(c) if the Authority intends to prosecute the person in court for the offence, shall state that the person may be prosecuted in a court for the offence.

12. Refund of fine.

Where an infringement notice is withdrawn after the fine stated in it has been paid, the Authority shall refund the fine to the person who paid it, within sixty days after the withdrawal of the notice.

MEMORANDUM OF OBJECTS AND REASONS

The principal object of this Bill is to repeal and re-enact with amendments the Civil Aviation Act to make provisions for aviation operations such as the development and implementation of the National Civil Aviation Safety Policy, oversight of aviation security, certification of aerodromes and air navigation service. This will ensure that Kenya discharges its international obligation as set out under Article 12 of the Chicago Convention (which Kenya is party to) and comply with the International Civil Aviation Organisation (ICAO) standards in aviation safety and security matters.

PART I (Clauses 1-3) of the Bill provides for preliminary matters that includes the interpretation and the cope of application of the Act.

Clause 3 of the Bill spells out the application of the Act to include-

(a) all aircraft whilst in or over any part of Kenya;
(b) all Kenya aircraft and the crew and other persons on board wherever they may be; and

(c) all aerodromes and service providers within aerodromes.

**PART II** (Clauses 4-45) of the Bill deals with the establishment, composition and the functions of the Kenya Civil Aviation Authority.

**Clause 7** of the Bill sets out the functions of the Authority which shall include-

(a) the licensing of air services;

(b) the provision of air navigation services;

(c) the establishment and maintenance of a system for the registration and the marking of civil aircraft; etc.

**Clause 8** of the Bill further provides for the powers of the Authority in discharging its functions under the Act, notably-

(a) to determine, set out and levy rates, charges, dues or fees for any services performed by the Authority, or for use by any person of the facilities provided by the Authority or for the grant, renewal or validation of a licence, permit or certificate, subject to the approval of the Cabinet Secretary; and

(b) acquire, hire, hold, lease out, or dispose of all types of assets or property including land:

**Clause 19** of the Bill provides for the appointment of the Director-General of the Authority with powers to-
and deceptive practices and unfair competition by air carriers and travel agents, deceptive airline advertising including fare, on-time performance, schedule, code sharing, and violations of rules concerning denied boarding compensation, ticket refunds, baggage liability requirements, flight delays and charter flights or

(g) any exercise of powers to make decisions, but not powers in respect of staff employment, granted to the Director-General or the Authority under this Act or regulations made thereunder.

PART VII (Clauses 79-82) of the Bill contains general provisions.

Clause 82 of the Bill gives the Cabinet Secretary powers to make Regulations to give effect to better carrying of the objects and purposes of the Act.

The enactment of the Bill shall occasion additional expenditure of the public funds which shall be provided for in the annual estimates.

Dated the 19th November, 2012.

AMOS KIMUNYA,
Minister for Transport.