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**ACTS, 2016**

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**THE CIVIL AVIATION (AMENDMENT) ACT, 2016**  
**No. 42 of 2016**

*Date of Assent: 13th September, 2016*

*Date of Commencement: 4th October, 2016*

**AN ACT of Parliament to amend the Civil Aviation Act**

**ENACTED** by the Parliament of Kenya, as follows—

**1.** This Act may be cited as the Civil Aviation (Amendment) Act, 2016.

**2.** Section 2 of the Civil Aviation Act, 2013, in this Act referred to as the “principal Act” is amended—

(1) in subsection (1)—

(a) by deleting the definition of the word “Chicago Convention” and substituting therefor the following definition—

“Convention” means the Convention on International Civil Aviation, signed at Chicago on December 7, 1944 and includes—

(a) any amendment to the Convention which has entered into force under Article 94 (a) of the Convention and has been ratified by Kenya;

(b) any annex or amendment thereto accepted under Article 90 of the Convention; and

(c) the international standards and recommended practices from time to time accepted and amended by the International Civil Aviation Organization pursuant to Article 37 of the Convention.

(b) by deleting the definition of the words “inappropriate use” and substituting therefor the following definition—

“inappropriate use” means the use of aviation safety information for a different purpose other than the purpose for which it was collected, including use of information for disciplinary, civil, administrative and criminal proceedings against operational personnel and disclosure of the information to the public;

(c) under the definition of the word “publication”—

Short title.

Amendment of section 2 of No. 21 of 2013,

- (i) by deleting paragraph (e) and substituting therefor the following paragraph—
  - (e) aeronautical information circulars for aviation meteorology;
- (ii) by deleting paragraph (f) and substituting therefor the following paragraph—
  - (f) manuals of procedures;
- (iii) by deleting paragraph (g) and substituting therefor the following paragraph—
  - (g) advisory circulars and orders; and
- (iv) by inserting the following paragraph immediately after paragraph (g)—
  - (h) technical standards.

- (d) by inserting the following new definitions in their proper alphabetical sequence—

“air navigation” means the process of planning and directing the progress of an aircraft between selected geographic points or over a selected route;

“air navigation facility” means any facility used, available for use or designed for use, in aid of air navigation and any other structure or mechanism having a similar purpose for guiding or controlling flight on the movement areas in the air, or the landing and take-off of an aircraft;

“aircraft piracy” means any actual or attempted seizure or exercise of control, of an aircraft within the jurisdiction of Kenya, by force, violence or by any other form of intimidation, with wrongful intent;

“Article 83 *bis*” means the provisions of Article 83 *bis* of the Convention on International Civil Aviation, 1944 (Chicago Convention);

“Article 83 *bis* Agreement” means an agreement between two Contracting States that have ratified Article 83 *bis*, in terms of which the State of Registry transfers all or some of its functions and duties to the State of the Operator;

“aviation document” means any licence, permit, certificate including a medical certificate, or other

document issued under this Act to or in respect of any person, aircraft, aerodrome, aeronautical procedure, aeronautical product, or aviation related service;

“civil aircraft” means aircraft other than State aircraft;

“danger area” means an airspace of defined dimensions within which activities dangerous to the flight of aircraft may exist at specified times;

“dangerous goods” means goods capable of posing risk to health, safety or property when transported by air;

“domestic air transportation” means transportation by air carried out between places in Kenya;

“Kenya aircraft” means any aircraft registered in Kenya;

“flight crew member” means licensed crew member charged with duties essential to the operation of an aircraft during a flight duty period;

“foreign aircraft” means any aircraft not registered in Kenya;

“foreign air carrier” means an air carrier, not being a Kenyan air operator engaged in commercial air transport operations within the borders or airspace of Kenya;

“in-flight” means at any time from the moment when the external doors of an aircraft are closed following embarkation until the moment when any such door is opened for disembarkation and in the case of forced landing, the flight shall be deemed to continue until the competent authorities take over responsibility for the aircraft and for the persons and property aboard;

“international air transportation” means transportation by air between a place in Kenya and a place outside thereof, or from and to a place in Kenya with a stopping outside thereof;

“order” means a written directive of the Authority issued under this Act or regulations issued hereunder;

“prohibited area” means an airspace of defined dimensions within which the flight of an aircraft is prohibited;

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“restricted area” means an airspace of defined dimensions within which the flight of an aircraft is restricted in accordance with certain specified conditions;

“unmanned aerodrome” means any aerodrome where air traffic services are not provided;

“unmanned aerial vehicle” means a pilotless aircraft which is flown without a pilot -in-command on-board and is either remotely and fully controlled from another place (ground, another aircraft, space) or programmed and fully autonomous; and

“validation” means a written acceptance by the Director-General of an action of the civil aviation authority of another State in lieu of an action that this Act assigns to the Authority.

(2) by deleting subsection (3).

3. Section 3 of the principal Act, 2013, is amended—

Amendment of  
section 10 of No.21  
of 2013.

(a) by deleting subsection (1) and substituting therefor the following subsection—

(1) The provisions of this Act or any Regulations made thereunder shall, except where expressly excluded, apply to—

- (a) aerodromes used for civil aviation in Kenya;
- (b) air services established or operating in Kenya;
- (c) any aircraft registered by the Authority;
- (d) any foreign aircraft within the Kenya territory;
- (e) aviation personnel and training schools certified by the Authority;
- (f) enterprises operating in Kenya in the design, manufacture, maintenance, repair and modification of aircraft and aircraft parts or components; and
- (g) air navigation facilities and services in Kenya.

(b) by inserting the following new subsection immediately after subsection (3)—

(4) Despite the provisions of subsection (1), the Authority may, by agreement made with the appropriate foreign civil aviation authority under the Chicago Convention—

- (a) transfer to the concerned civil aviation authority of another State all or part of the Authority's responsibilities for a Kenya aircraft operated by a foreign operator; or
- (b) vest in the Authority all or part of the responsibilities of the civil aviation authority of another State for an aircraft registered by that State and operated by a Kenyan operator.

4. Section 4 of the principal Act, 2013, is amended in subsection (3) by inserting the words "and security" immediately after the word "safety".

Amendment of section 4 of No. 21 of 2013.

5. Section 7 of the principal Act, 2013, is amended—

Amendment of section 7 of No. 21 of 2013.

(a) in subsection (1)—

- (i) by deleting paragraph (k);
- (ii) by deleting paragraph (x) and substituting therefor the following paragraph—
  - (x) licensing, certification, registration and surveillance of aerodromes;
- (iii) by inserting the following paragraphs immediately after paragraph (x)—
  - (y) certification and surveillance of air navigation service providers;
  - (z) licensing and certification of regulated agents;
  - (aa) implementing and enforcing the provisions of this Act, regulations and directives issued hereunder and treaties to which Kenya is a party;
- (bb) taking measures to minimize, to the extent possible, any disturbance to the public and any adverse effect on the environment from noise, vibration, atmospheric pollution or any other cause

attributable to the use of aircraft for the purpose of civil aviation.

(iv) by renumbering paragraphs (y),(z) and (aa) accordingly.

(b) in subsection (4), by inserting the words “and security” immediately after the words “aviation safety”.

6. Section 10 of the principal Act, 2013, is amended in the marginal note by inserting the words “and security” immediately after the word “safety”.

7. Section 13 of the principal Act, 2013, is amended—

(a) by deleting subsection (1) and substituting therefor the following subsection—

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

- (a) Chairperson, who shall be appointed by the President;
- (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) five other persons, not being public officers, appointed by the Cabinet Secretary through a competitive process and who shall be independent upon appointment and maintain such independence during their term of service on the Board, and of whom—



- (i) two shall have demonstrable knowledge and experience in the field of civil aviation;
  - (ii) one shall have qualification and expertise in financial management or accounting and be a bona fide member of a professional body regulating the accountancy or the auditing profession, and in compliance with the requirements thereof;
  - (iii) one shall have demonstrable knowledge and experience in aviation law or business; and
  - (iv) one shall have demonstrable knowledge and experience in management.
- (b) by inserting the following new subsection immediately after subsection (1)—
- (1A) For the purposes of subsection (1), a Board member shall be considered independent if he or she—
- (a) is not in the Service of the national government or county government or of any statutory body or institution owned or controlled by the national government or county government and who is not connected or does not have any other relationship, whether pecuniary or otherwise, with the Authority;
  - (b) has not been employed by the Authority in an executive capacity within the last five (5) years;
  - (c) is not associated to an advisor or consultant to the Authority or a member of the Authority's senior management or a significant customer, operator or supplier of the Authority;
  - (d) has no personal service contract with the Authority or a member of the Authority's senior management;

- (e) is not a member of the immediate family of any person described herein.
- (c) in subsection (3), by deleting the expression “(1)(g)” and substituting the expression “(1)(f)”;
- (d) in subsection (4)—
  - (i) by deleting the expression “(g)” and substituting therefor the expression “(f)”;
  - (ii) by inserting the words “subject to a favourable evaluation” at the end of the sentence.
- (e) in subsection (5), by deleting the expression “(g)” and substituting the expression “(f)”.

**8.** The principal Act, 2013, is amended by inserting the following new section immediately after section 13—

Insertion of new section 13A in No. 21 of 2013

Conflict of interest.

**13A.** (1) The Chairperson or a member of the Board, who has a direct or indirect personal interest in a matter being considered or to be considered by the Board, shall as soon as reasonably practicable after the relevant facts concerning the matter have come to their knowledge, disclose the nature of such interest.

(2) A disclosure of interest made under subsection (1) shall be recorded in the minutes of the meeting and the Chairperson or a member shall not take part in the consideration or discussion on or vote during any deliberations on the matter.

(3) A person who fails to make the requisite disclosure under this section commits an offence.

(4) A member of the Board shall excuse himself or herself from proceedings before the Board in which he or she has apparent or perceived conflict of interest.

**9.** Section 19 of the principal Act, 2013, is amended—

Amendment of section 19 of No. 21 of 2013.

- (a) in subsection (4), by deleting paragraph (c) and substituting therefor the following paragraph—

- (c) possesses management and technical experience in the field of civil aviation of not less than ten years;
- (b) in subsection (5), by deleting the expression “three” wherever it appears and substituting therefor the expression “four”.

**10.** Section 20 of the principal Act, 2013, is amended—

Amendment of section 20 of No. 21 of 2013.

- (a) in subsection (2)(f), by inserting the word “of” immediately after the word “purpose”; and
- (b) by inserting the following new subsection immediately after subsection (2)—

(3) Without limiting the the powers of the Director-General as provided for under subsections (1) and (2) of this section, the Director-General—

- (a) shall exercise the powers and duties of the Authority specified under section 7 of this Act;
- (b) shall establish a safety oversight system which shall be implemented in accordance with—
  - (i) the provisions of this Act and Regulations made thereunder;
  - (ii) the State system and functions of the Authority;
  - (iii) technical guidance of qualified technical personnel, tools and provision of safety-critical information;
  - (iv) licensing, certification, authorization or approval obligations;
  - (v) surveillance obligations;
  - (vi) the resolution of safety concerns;
- (c) shall search any aircraft for compliance with documents stipulated under the Chicago Convention;
- (d) shall prohibit an aircraft from flying until an unsafe condition is rectified;
- (e) shall prohibit a person from exercising the privileges of any aviation document;

- (f) shall suspend, revoke or vary the privileges of any aviation document or any other authorisation issued by the Authority;
- (g) shall impose operating restrictions and sanctions on the operators or holders of aviation documents in the event of non-compliances with approval, licensing and certification requirements or unresolved safety and security deficiencies or concerns;
- (h) shall determine the technical and financial capability of a prospective operator to conduct the proposed operations;
- (i) shall, where he or she believes on reasonable grounds that an unsafe condition exists in any aircraft or aeronautical product and may, by notice in writing, issue an airworthiness directive in respect of aircraft or aeronautical products, as the case may be, of that design; and
- (j) may prohibit a foreign registered aircraft from flying if a major defect or damage is found whilst within Kenya.

**11.** Section 27(1) of the principal Act, 2013, is amended by deleting paragraph (f) and substituting therefor the following paragraph—

Amendment of section 27 of No. 21 of 2013.

(f) money collected under the Air Passenger Service Charge Act and from any other source.

**12.** Section 30(3) of the principal Act, 2013, is amended in paragraph (a) by inserting the words “and security” at the end of the sentence.

Amendment of section 30 of No. 21 of 2013.

**13.** The principal Act, 2013, is amended by inserting the following new sections immediately after section 35—

Insertion of new sections 35A, 35B and 35C in No. 21 of 2013.

Establishment of Fund.

**35A.** There is established a Fund to be known as the Kenya Civil Aviation Authority Fund (hereinafter referred to as “the Fund”).

Sources of Fund.

**35B.** There shall be paid into the Fund—

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(a) a prescribed portion of the proceeds from the charge collected under the Air Passenger Service Charge Act;

- (b) any monies appropriated by Parliament for the purposes of the Authority;
- (c) the rates, charges, dues, or fees levied by the Authority under this Act;
- (d) such sums as may be payable to the Authority pursuant to this Act or any other written law, or pursuant to any gift or trust; and
- (e) all moneys from any other sources provided for or donated or lent to the Authority.

Payments out of  
the Fund

**35C.** There shall be paid out of the Fund any expenditure incurred by the Authority in the exercise of its powers or the performance of its functions under this Act.

**14.** The principal Act, 2013 is amended by repealing section 39 of the Act and replacing therefor the following section—

Repeal and  
replacement of  
section 39 of No.  
21 of 2013.

Inspection of  
Aircraft, Aerodromes,  
premises and  
documents.

**39.** (1) The Director-General shall inspect—

- (a) any aerodrome used for civil aviation operations; or
- (b) any premises or facilities of a holder of aviation document issued by the Authority; or
- (c) any Kenyan registered aircraft wherever it may be, for reasons of aviation safety and security, economic regulation, facilitation, aviation consumer protection or for any other reasons for which the Authority is established; or
- (d) any aircraft and crew of any other state whilst in Kenya.

(2) In the performance of the functions under this section, the Director-General

shall have unhindered access to aerodromes, premises of a holder of aviation document, any aircraft wherever it may be, any aviation facilities and installations, and to any records or related documents, information and explanation that may be required.

**15.** The principal Act, 2013, is amended by inserting the following new sections immediately after section 39—

Insertion of new sections 39A, 39B, 39C and 39D in No. 21 of 2013.

Investigation and Enforcement

**39A.** (1) The Director-General shall have power to carry out investigations into complaints, occurrences, save for accidents and serious incidents, after due notice to the person concerned.

(2) A complaint may be—

- (a) filed with the Director-General by any person in writing; or
- (b) initiated by the Director-General on any matter, with respect to an action committed or omitted by any person in contravention of any provision of this Act or its regulations for investigation and appropriate action.

(3) The Director-General shall have the same power to proceed with an investigation of a complaint instituted on the Director-General's own initiative as though it had been made by another person.

(4) The Director-General shall, after investigations on a complaint filed by the person or initiated by him or her, and has established that there has been violation of the provisions of this Act or its Regulations, require a person in default to take corrective action to comply with, and prevent further violation of the provisions of this Act and its Regulations.

(5) If the Director-General finds, after having required the person in default to take

corrective action under subsection (4) of this section, such person has failed to take corrective action to comply with the provisions of this Act, the Director-General shall, consistent with the provisions of this Act and its Regulations, impose appropriate penalty or refer such violations to the Tribunal.

(6) The trial of any offence under this Act shall be by the Tribunal.

(7) Without prejudice to the provisions of subsection (1), the Director-General may investigate a holder of aviation document if he or she—

- (a) believes, on reasonable grounds, that it is necessary in the interests of civil aviation safety and security;
- (b) has reasonable grounds to believe that the holder has failed to comply with any conditions of an aviation document or with the requirements of this Act and Regulations made thereunder;
- (c) considers that the privileges or duties for which the aviation document or any other authorisation has been granted are being carried out by the holder in a careless or incompetent manner;
- (d) establishes that the aviation document was erroneously issued based on a mistake, misrepresentation, dishonesty or fraud; or
- (e) considers it necessary to investigate for any other cause in the course of exercising his or her functions under this Act.

(8) If the Director-General is satisfied after such investigation that a person is

violating any provisions of this Act, Regulations, Rules or Orders, as the case may be, he or she shall by order require that person to take such action consistent with the provision of this Act, Regulations, Rules or Orders as may be necessary in his or her opinion to prevent further violation of the provisions of this Act, Regulations, Rules or Orders.

(9) The Director-General shall have power to take all steps reasonably necessary, including issuance of infringement notice as provided for under the Second Schedule, ground any aircraft and to close the premises of any air transport service provider or provider of allied aviation service, in order to ensure compliance with the provisions of this Act, Regulations, Rules and Orders made thereunder.

(10) Where the Director-General issues an infringement notice under subsection (9), the notice shall state the particulars of the violation, the period within which to comply and the attendant penalty for the stated violation.

(11) A holder of an aviation document or any person aggrieved by any of the matters raised by the infringement notice issued by the Director-General shall have a right to appeal for review to the Director-General within twenty eight days from the time of issuance of the infringement notice.

(12) The Director-General may upon receipt of an appeal consider the grounds for review and may—

- (a) confirm, set aside or vary the order or decision in question;
- (b) exercise any of the powers which could have been exercised by the Authority in the proceedings in connection with which the appeal is brought; or



(c) make such other order as he may deem just and expedient.

(13) Any person aggrieved by the order of the Director-General under subsection (12) of this section may appeal to the Tribunal in accordance with the relevant provisions of this Act.

Aviation personnel  
certificates.

**39B.** (1) Any person having the requisite qualifications may file with the Authority an application for an aviation personnel certificate.

(2) Where the Authority finds, after investigation, that the applicant possesses the proper qualifications for, and is physically able to perform, the duties pertaining to the aviation personnel certificate sought, it shall issue such certificate.

(3) The Authority may consider prior issuance of an aviation personnel certificate by a foreign country that is a member of the International Civil Aviation Organization as satisfactory evidence, in whole or in part, that the applicant possesses the qualifications and physical ability to perform the duties pertaining to the aviation personnel certificate sought.

(4) The certificate may contain such terms and tests of physical fitness as the Authority may determine to be necessary to assure safety in civil aviation.

(5) The Authority may adopt rules to determine the categories and eligibility requirements of certificates to be issued to aviation personnel including personnel in charge of training and inspection of crew members or personnel engaged in the maintenance of aircraft, aircraft engines, propellers and appliances.

(6) The Authority may issue certificate of validation with respect to an aviation personnel certificate issued by another state.

(7) A holder of an aviation document or any person affected by this Act shall observe and comply with any rules, orders, directives, circulars, notices, regulation, licence or certificate issued under this Act.

Aircraft in distress.

**39C.** (1) The Authority shall provide such measures of assistance to aircraft in distress within Kenya as it may consider practicable.

(2) In the provision of the assistance referred in subsection (1), the Authority shall collaborate in coordinated measures which may be recommended from time to time in pursuant to the provisions of the Convention.

(3) The Authority may enter into mutual arrangements with other States in respect to the provision of the assistance and for coordination purposes mentioned in subsections (1) and (2) of this section.

(4) Subject to the control of the Kenyan authorities, the Authority shall permit the owners and operators of the aircraft or authorities of the State in which the Aircraft is registered to provide such measures of assistance as may be necessitated by the circumstances.

Search and Rescue.

**39D.** (1) The Authority shall—

- (a) establish search and rescue units which shall render such assistance as may be required by any aircraft missing or in distress within the territory of Kenya;
- (b) co-ordinate government offices and other organizations to pool resources and manpower for the conduct of aircraft search and rescue services.

(2) In the event the aircraft missing or in distress is registered in another State, the Authority may permit the owner of the

aircraft or the authorities of such other State to provide such measures of assistance as may be required under the circumstances, provided that the furnishing of any such assistance shall, at all time, be under the control of the Authority.

(3) The Authority may consider requests by another State or international organization to render search and rescue assistance to aircraft missing or in distress in adjacent territories.

**16.** Section 43 of the principal Act, 2013, is amended—

Amendment of section n 43 of No. 21 of 2013.

- (a) by deleting expression “(1)”; and
- (b) by deleting paragraph (b) and substituting therefore the following new paragraph—
  - (b) no immovable or movable property of the Authority or any of its current assets or any vessels, vehicles, aircraft or its equivalent, machinery, fixture or fittings, shall be seized or taken by any person having by law, power to attach or distrain property without the previous written permission of the Director-General.

**17.** Part III of the principal Act, 2013, is amended in the heading by inserting the words “and security” immediately after the word “safety”.

Amendment of Part III of No. 21 of 2013.

**18.** Section 46 of the principal Act, 2013 is amended—

Amendment of section 46 of No. 21 of 2013.

- (a) in the marginal note, by inserting the words “and security” immediately after the word “safety”; and
- (b) in subsection (1)(a), by inserting the words “and security” immediately after the word “safety”.

**19.** The principal Act, 2013, is amended by inserting the following new sections immediately after section 46—

Insertion of new sections 46A and 46B in No. 21 of 2013.

Documents to be carried on Board.

**46A.** (1) No person shall fly an aircraft within the airspace of Kenya unless the following documents are carried on board—

- (a) the certificate of registration;
- (b) the certificate of airworthiness;
- (c) the aviation personnel certificate of each flight crew member;
- (d) the journey logbook;
- (e) the aircraft radio license;
- (f) the passengers list or the cargo manifest, if carried;
- (g) the flight manual; and
- (h) in case of commercial flight, the air operator certificate.

(2) Documents carried aboard an aircraft registered in another State shall be in conformity with the requirements of that State, but the Authority shall have the power to require the production of such documents for examination.

Prohibited,  
restricted or  
danger areas.

**46B.** (1) Any pilot-in-command of an aircraft flying over or maneuvering within the Kenyan airspace shall adhere to the air routes as established by the Authority and shall avoid those areas designated as prohibited, restricted or danger areas.

(2) Any aircraft deviating from an established air route or entering a prohibited, restricted or danger area shall be considered as unauthorized operation and pilot-in-command involved in such an unauthorized operation shall take immediate corrective measures to resume the authorized course and shall strictly comply with any special instructions of the competent authorities, including any instruction to land at a designated location.

**20.** The principal Act, 2013, is amended by repealing section 49 and replacing therefor the following new section—

Repeal and  
replacement of  
section 49 of No.  
21 of 2013.

Exemption by the  
Director-General.

**49.** (1) The Director-General may grant exemption or special authorisation on any civil aviation matter upon an application by

a holder of aviation document or any authorisation, as the case may be, 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 and shall be in the interest of the public.

(2) Without limiting the provisions of subsection (1), exemptions shall be issued in accordance with the procedure for applications and approvals prescribed in the regulations.

**21.** The principal Act, 2013, is amended by repealing section 50 of the Act.

Repeal of section 50 of No. 21 of 2013.

**22.** Section 52 of the principal Act, 2013, is amended by renumbering paragraphs (e),(f) and (e) accordingly.

Amendment of section 52 of No. 21 of 2013.

**23.** Section 55 of the principal Act is amended in subsection (4) by inserting the words “and security” immediately after the word “safety”.

Amendment of section 55 of No. 21 of 2013.

**24.** The principal Act, 2013, is amended by inserting the following new section immediately after section 60—

Insertion of new section 60A in No. 21 of 2013.

Flying from  
unmanned  
aerodrome.

**60A.** (1) Where an aircraft is flown from any unmanned aerodrome or point within Kenya to another unmanned aerodrome or point within Kenya, the pilot-in-command of such aircraft and the operator of such aerodrome shall be required to provide such information as the Authority may specify from time to time.

(2) The information under subsection (1) shall include details of the flight and the nature of the operations.

**25.** The principal Act, 2013, is amended by inserting the following new sections immediately after section 61—

Insertion of new sections 61A to 61I in No. 21 of 2013.

Use of weapons  
against civil  
aircraft.

**61A.** (1) A person shall not use weapon against civil aircraft in flight and in case of