

PROCESSING OF APPLICATION FOR AIRLINE FRANCHISE APPROVAL

1.0 PURPOSE

This Advisory Circular (AC) is issued to provide information and guidance to an air operator who intends to operate under Airline Franchise agreement.

2.0 REFERENCES

- 2.1 The Civil Aviation Act
- 2.2 The Civil Aviation (Licensing of Air Services) Regulations.

3.0 DEFINITIONS

Franchise means the rights and privileges granted by an airline to another airline under a franchise agreement.

Franchise agreement means an agreement under which a franchise is granted.

Franchise approval means an approval granted under the Civil Aviation (Licensing of Air Services) Regulations.

Franchisor means the Airline granting the franchise.

Franchisee means the airline granted rights and privileges under a franchise agreement to market and/or operate air services subject to standards and controls established by the franchisor.

4.0 GENERAL

This Advisory Circular (AC) is issued by the Kenya Civil Aviation Authority (KCAA) and contains information about the requirements for Airline Franchise approval.

5.0 GUIDANCE AND PROCEDURE

- 5.1 Applications shall contain particulars prescribed under the Ninth Schedule.
- 5.2 Guidance and procedure for obtaining approval for Airline Franchise between;
 - (i) Kenyan Operators
 - (ii) Kenyan and Foreign Operator where the Kenyan Operator is the Franchisee



- 5.2 Application for Airline Franchise approval will be made to the Authority by the franchisee in the form of a letter with the following details:
- (i) Name and address of the Franchisee
 - (ii) Name and address of the Franchisor
 - (iii) Duration of the Franchise
 - (iv) Routes to be operated under the franchise arrangement
- 5.3 The following documents shall be attached;
- (i) Air Operator Certificate and operations specifications for both parties
 - (ii) Air Service Licence for both parties
 - (iii) Operating Authorization if Franchisor is foreign operator
 - (iv) Insurance for both parties
 - (v) The Franchise Agreement
- 5.4 The franchisee shall disclose the following franchise information to the Authority;
- a) Legal name, address and the principal place of business of the franchisor and the franchisee;
 - b) Any name other than the legal name under which the Franchisor carries on or intends to carry on business;
 - c) A description of airline experience of the franchisor including the length of time during which the franchisor has offered franchises;
 - d) Details of shareholding, directorship and senior management of Franchisor and Franchisee;
 - e) The names, business addresses, positions held, business experience and qualifications of any person who has senior management responsibilities for the franchisor's business operations in relation to the franchise;
 - f) Relevant details relating to any criminal convictions or any finding of liability in a civil action involving franchises or other businesses relating to fraud, misrepresentation, or similar acts or practices of—
 - (i) The franchisor;
 - (ii) Any affiliate of the franchisor who is engaged in franchising; and
 - (iii) Any of the persons indicated in (d);
 - g) relevant details concerning any bankruptcy, insolvency or comparable proceeding involving the franchisor for the previous five years;
 - h) the total number of franchises in the Franchisor network;
 - i) the names and business addresses of all the franchisees;
 - j) information about the franchisees that have ceased to be franchisees of the franchisor during the five preceding fiscal years, with an indication of the reasons for which the franchisees have ceased to be franchisees of the franchisor. Disclosure of the following categories would fulfil the disclosure requirement: voluntarily terminated or not renewed; reacquired by purchase by the franchisor; otherwise reacquired by the franchisor; refused renewal by the franchisor; terminated by the franchisor;

- k) the following information regarding the franchisor's intellectual property relevant for the franchise, in particular trademarks, service marks, logotypes and designator codes—
 - (i) the registration or the application for registration, if any; and
 - (ii) litigation or other legal proceedings, if any, which could have a material effect on the franchisee's legal right, exclusive or non-exclusive, to use the intellectual property under the franchise agreement in the State in which the franchised business is to be operated;
- l) financial matters, including—
 - (i) financing offered or arranged by the franchisor, if any;
 - (ii) audited or otherwise independently verified financial Statements of the franchisor, including balance sheets and statements of profit and loss, for the previous three years and if the most recent audited financial statements are as of a date more than 180 days before the date of delivery of the disclosure document, then unaudited financial statements as of a date within 90 days of the date of delivery of the disclosure document;
- m) a description of the franchise to be operated by the franchises;
- n) the term and conditions of renewal of the franchise;
- o) a description of the initial and on-going training Programme;
- p) the nature and extent of exclusive rights granted, if any, including rights relating to territory or customers;
- q) the conditions under which the franchise agreement may be terminated by the franchisor or franchisee and the effects of such termination;
- r) the limitations imposed on the franchisee, if any, in relation to territory and/or to customers;
- s) in-term and post-term non-compete covenants;
- t) any reservation by the franchisor of the right
 - (i) to use, or to license the use of, the trademarks covered by the franchise agreement;
 - (ii) to sell or distribute the goods or services authorized for sale by the franchisee directly or indirectly through the same or any other channel of distribution, whether under the trademarks covered by the agreement or any other trademark;
- u) restrictions or conditions imposed on the franchisee in relation to services that the franchisee may offer;
- v) Copies of Air Service Licence, Air Operators certificate issued to Franchisee and Franchisor.
- w) Certified copies of the current conditions of carriage for passenger baggage and mail of the prospective Franchisor and the prospective Franchisee;
- x) Certified copies of the current conditions of carriage for cargo of the prospective Franchisee and the prospective Franchisee and the prospective Franchisor;



- y) Description of the safety record of the Franchisor for the past ten years;
- z) Details of the financing of aircraft purchase and leasing of Franchisee;
- aa) A draft of the proposed Franchise Agreement (excluding financial clauses);
and
- bb) Any other information, data, certification or document the authority may request.

- 5.5 The Authority may prescribe additional requirements relating to franchise agreement.
- 5.6 The application will be processed within 30 days and approval granted subject to meeting regulatory requirements.
- 5.7 The Franchise approval will remain in force for a renewable period of one (1) year.
- 5.8 There will be an applicable processing fee for the approval of Airline Franchise.



Civil Aviation Authority