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THE CIVIL AVIATION ACT

(No. 21 of 2013)

THE CIVIL AVIATION (LICENSING OF AIR SERVICES)
REGULATIONS, 2018

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THE CIVIL AVIATION ACT

(No. 21 of 2013)

IN EXERCISE of powers conferred by section 82 of the Civil Aviation Act, 2013 the Cabinet Secretary for Transport, Infrastructure, Housing and Urban Development makes the following Regulations—

CIVIL AVIATION (LICENSING OF AIR SERVICES)
REGULATIONS, 2018

PART I—PRELIMINARY

1. These Regulations may be cited as the Civil Aviation (Licensing of Air Services) Regulations, 2018. Citation.

2. In these Regulations, unless the context otherwise requires— Interpretation.

“aeronautical authority” means the Cabinet Secretary responsible for civil aviation matters in Kenya;

“air carrier” or “airline” means an enterprise licensed and approved by a competent authority of a state to offer or operate an air service;

“air operator certificate” means a certificate authorizing an air carrier to carry out specified commercial air transport operations;

“air service” means any service performed by means of an aircraft for hire or reward;

“air transport officer” means any person appointed as such under regulation 72;

“appeals Tribunal” means the National Civil Aviation Administrative Review Tribunal established under section 66 of the Act;

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

“authorization” means granting of permission in the form of designation, licence, operating authorization, temporary licence, short term licence or any other approval issued under these regulations to operate an aircraft for an air service or in transit with or without a stop in Kenya;

“capacity” means the number of seats or cargo space or both offered to the general public on an air service over a given period;

“concerted practice” means co-operative or coordinated conduct between eligible airlines, achieved through direct or indirect contact, that replaces their independent action, but which does not amount to an agreement;

“Contracting State” means a State which is a party to the Convention on international civil aviation signed at Chicago on the Seventh Day of December, 1944;

“designation” means authorization granted by the aeronautical Authority to an airline, whose principal place of business is in Kenya, to carry out international scheduled air service;

“Director-General” means the Director-General of the Kenya Civil Aviation Authority;

“domestic scheduled air service” means an air service where flights are undertaken between two or more airports within Kenya according to a published flights timetable with each flight being open to use by members of the public;

“dominant position” means a situation where an eligible airline either by itself or acting in collusion with one or more eligible airlines, is in a position to control the relevant market by means of, amongst other factors, revenue generated for a particular service or group of services;

“dry lease” means a contractual arrangement where the leased aircraft is operated by flight crew members of the lessee;

“essential air service obligation” means any public service obligation imposed upon an air carrier to take all necessary measures to ensure the provision of a service satisfying fixed standards of continuity, regularity, capacity and pricing, which standards the air carrier would not assume if it were solely considering its commercial interest;

“foreign aircraft” means an aircraft registered in a foreign State;;

“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 by the Authority to an airline to operate franchise business;

“internal air service” means an air service operated within Kenya, and includes an air service which may pass through the airspace of another state without providing air service in that other state;

“international air service” means an air service provided between Kenya and at least one other state and excludes an air service which may pass through the airspace of another state without providing air service in that other state;

“international non-scheduled air service” means an air service other than an international scheduled air service undertaken with a specific flight or a series of flights;

“international scheduled air service” means an air service where flights are undertaken between Kenya and one or more countries according to a published flights timetable with each flight being open to use by members of the public;

“licence” means a licence granted under these Regulations;

“material fact” means any information that can reasonably be expected to have a significant effect on the person making a decision;

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

“undertaking” means a sole proprietor, a partnership or a company;

“misrepresentation” means a statement represented as fact that the person making it knew or ought to have known to be untrue at the time it was made;

“inclusive tour charters” means a tour which is sold as a package consisting of—

- (a) such fixed accommodation and other land arrangements of services as may be appropriate for such persons in Kenya; and
- (b) the transport of persons by air to and from any destination in Kenya;

“operating authorization” means a licence issued under regulation 13;

“passenger” means any person, other than a crew member, who travels in an aircraft with the consent of the air carrier and includes the baggage of such person;

“temporary licence” means a licence granted under regulation 33;

“seat” means any area in an aircraft designed to be occupied by a passenger, other than the area occupied by the luggage of such passenger;

“short-term licence” means a licence granted under regulation 34; and

“wet lease” means a contractual arrangement where the leased aircraft is operated by flight crew members of the lessor.

PART II—LICENSING OF INTERNAL AIR SERVICES

3. A person shall not use an aircraft within Kenya for the provision of any air service except under and in accordance with the terms and conditions of a licence issued by the Authority under these Regulations.

Operating without a licence prohibited.

4. (1) A person who—

Application for a licence under this Part.

- (a) intends to provide any air service;
- (b) intends to renew a licence for an existing air service;
- (c) intends to vary the terms or conditions specified on the licence; or

- (d) is deemed by the Authority to have made significant changes as provided under regulation 21(3), shall apply to the Authority for a licence.

(2) An application for a licence for any of the categories of air service set out in the First Schedule shall be made to the Authority in a prescribed form and shall contain the particulars set out in the Second Schedule.

(3) The Authority shall develop procedures for processing an application for licence under this Part.

(4) An application for a licence shall be signed by—

- (a) in the case of a sole proprietor, the owner;
- (b) in the case of a body corporate, a director or an authorized officer; and
- (c) in the case of a partnership, a partner or an authorized officer.

(5) An application for a licence, other than a short-term licence, shall be made to the Authority not less than ninety days before the date on which it is desired to take effect.

(6) Where an application is made in a consolidated form for different categories of air services, the provisions of these Regulations relating to payment of fees shall apply to each category of air service as if the applications were lodged separately.

5. (1) A licence may be issued for any category of air service and aircraft as set out in the First and the Third Schedules respectively if the applicant satisfies the Authority that—

- (a) the applicant is a citizen of Kenya; or
- (b) in the case of a body corporate or a partnership, at least fifty one (51%) per cent of the voting rights are ultimately held by the State, a citizen of Kenya or both:

Provided that the Authority may exempt any person from the requirements of this provision having regard to the special nature of the air service;

- (c) the aircraft which will be used in operating the air service is a Kenyan registered aircraft:

Provided that the Authority may after considering the application, accept such other foreign registered aircraft subject to the aircraft meeting the operational and technical standards in force in Kenya;

- (d) the applicant has met the requirements of Regulations 19, 20 and 47;
- (e) the applicant is able to meet the requirements of the Authority for an air operator's certificate for the category of service and aircraft as those set out in the First and Third schedules; and

Issuance of
licence under this
Part.

- (f) the applicant meets the requirements of any law relating to aviation safety and security, public health, environmental protection and business operations in general.

(2) For the purpose of this regulation "special nature of the air service" shall include service in the interest of social welfare, charity, for purposes of salvage on humanitarian grounds or of assistance in saving life or in the public interest.

6. An air carrier licensed to operate scheduled air service within Kenya and whose principal place of business is in Kenya shall be required prior to commencement and during continuance of such operations to ensure that it—

Additional requirements for scheduled internal air service.

- (a) has an effective reservations and sales system;
- (b) has a sufficient number of aircraft to cope with the proposed route-schedule;
- (c) has toilet facilities on board aircraft operating on a sector with a flight duration of ninety minutes or more;
- (d) has submitted a flight timetable and obtained approval by the Authority prior to operation;
- (e) files monthly traffic and tariff statistics with the Authority; and,
- (f) is qualified for self-passenger handling or has engaged a qualified passenger handling entity at each airport of operation.

7. (1) The Authority may, in the interest of aviation safety and security, environmental protection, public health, and in order to ensure fair trading practices or for any other reason in the interest of the public impose conditions to a licence that—

Conditions to a licence for internal air service.

- (a) specify the routes or areas that may be operated under the licence;
- (b) determine the classes or descriptions of passengers or goods that may be carried; and
- (c) the approved schedule of air services shall be observed.

(2) Any person having a financial interest in the business of the licensee shall—

- (a) refrain from stipulating that any other person shall refuse booking facilities to any other licensee;
- (b) deny booking facilities to any other licensee; or
- (c) refrain from granting such facilities to other licensees on onerous terms.

(3) Where a licensed air carrier has started to operate a scheduled passenger air service on a new route—

- (a) with an aircraft of not more than twenty revenue seats; and

- (b) with a capacity not more than ten thousand seats per year, the Authority may decline to license another air carrier on that route for a period of two years.

8. In exercising its discretion under regulation 5, the Authority shall have regard to the co-ordination and development of air services generally with the object of ensuring the most effective service to the public while avoiding uneconomic overlap, and generally to the interests of the public, including those of persons requiring or likely to require facilities for air transport, as well as those of persons providing such facilities and in particular the Authority shall have regard to—

Public interest and development of air service.

- (a) the existence of other air services in the area through which the proposed air service is to be operated;
- (b) the possibilities of air transport in that area;
- (c) the degree of efficiency and regularity of the air services, if any, already provided in that area, whether by the applicant or by other operators;
- (d) the period for which such services have been operated by the applicant or by other operators;
- (e) the extent to which it is probable that the applicant will be able to provide a satisfactory service in respect of continuity, regularity of operation, frequency, punctuality, reasonableness of charges and general efficiency;
- (f) the financial resources of the applicant;
- (g) the type of aircraft proposed to be used on the service;
- (h) the competence of the applicant, having regard to his previous conduct and experience, organization, staffing, his equipment, maintenance and other arrangements, to secure the safe operation of aircraft of the types specified in the application on flights of the description and for the purposes so specified; and
- (i) any representation made under regulation 25.

9. (1) The Authority may, upon consultation with the Cabinet Secretary, impose an essential air service obligation to an air carrier in respect of scheduled air services to an airport serving a peripheral region or low density routes in Kenya which are considered vital for—

Essential service obligation.

- (a) the availability of services to all consumers including low income, rural and disadvantaged passengers and shippers; and
- (b) economic development of the region in which the airport is located.

(2) The Cabinet Secretary shall publish the existence of this essential service obligation in the Kenya Gazette.

(3) The Authority in imposing an essential air service obligation shall assess the adequacy of the service referred in sub-regulation (1) having regard to—

- (a) public interest;
- (b) the possibility for the region, of having recourse to other forms of transport and the ability of such forms to meet the transport needs under consideration; and
- (c) the airfares and conditions which can be quoted to users.

(4) In instances where other forms of transport cannot ensure an adequate and uninterrupted service, the Authority may include in the essential service obligation the requirement that any air carrier intending to operate the route gives a guarantee that it shall operate the route for a minimum period of two years in addition to the other terms of the essential service obligation.

(5) The right to operate the service referred to under sub regulation (4) shall be granted by way of a public tender for an airport or route(s).

(6) Where no air carrier is willing to offer the required level of service following the tendering process, the Authority may nominate any three air carriers for appointment by the Cabinet Secretary to offer the service.

(7) The Cabinet Secretary may put in place compensation mechanism based on the prevailing market rates, grant exclusive rights to the nominee referred in sub regulation (6) and shall review the situation after a period of two years.

PART III—LICENSING OF INTERNATIONAL AIR SERVICES

10. A person shall not use an aircraft for the provision of any air service, to, from or in transit through Kenya, except under and in accordance with the terms and conditions of a licence issued by the Authority under these Regulations.

Operating without a licence prohibited.

11. (1) A person who—

Application for a licence under this Part.

- (a) intends to provide any air service;
- (b) intends to renew a licence for an existing air service;
- (c) intends to vary the terms or conditions specified on the licence; or
- (d) is deemed by the Authority to have made significant changes as provided under regulation 21(3), shall apply to the Authority for a licence.

(2) An application for a licence of any of the categories set out in the First schedule shall be made to the Authority in a prescribed form and shall contain the particulars set out in the Second Schedule.

(3) The Authority shall develop procedures for processing an application for licence under this part.

(4) An application for a licence shall be signed by—

- (a) in the case of a sole proprietor, the owner;
- (b) in the case of a body corporate, a director or an authorized officer; and
- (c) in the case of a partnership, a partner or an authorized officer.

(5) An application for a licence, other than a short-term licence, shall be made to the Authority not less than ninety days before the date on which it is desired to take effect.

(6) Where an application is made in a consolidated form for different categories of air services, the provisions of these regulations relating to payment of fees shall apply to each category of air service as if the applications were lodged separately.

12. A licence may be issued for any category of air service or aircraft as set out in the First and Third Schedules respectively, if the applicant satisfies the Authority that—

Issuance of a licence under this Part.

- (a) the applicant is a citizen of Kenya; or
- (b) in the case of a body corporate or a partnership, fifty one (51%) per cent of the voting rights are ultimately held by the State, a citizen of Kenya or both:

Provided that for the purposes of this regulation, the Authority may accept any applicant eligible under a criterion set out in any multi-lateral agreement or arrangement to which Kenya is signatory;

- (c) the aircraft which will be used in operating the air service is a Kenyan registered aircraft:

Provided that the Authority may after considering the application, accept such other foreign registered aircraft subject to the aircraft meeting the operational and technical standards in force in Kenya.

- (d) the applicant has met the requirements of Regulations 19, 20 and 47;
- (e) the applicant is able to meet the requirements of the Authority for an air operator's certificate for the category of service and aircraft as those set out in the First and Third Schedules respectively;
- (f) the applicant has held a licence for domestic scheduled air service or non scheduled air service or both, for a period of one (1) year;
- (g) the applicant meets the requirements of any law relating to aviation safety and security, public health, environmental protection and business operations in general.

13. (1) An airline whose principal place of business is in a foreign State shall not operate a scheduled air service to, from, or across Kenya unless there is in force an operating authorization for that air service issued by the Authority in accordance with sub-regulation (2).

Issuance of operating authorization.

(2) The Authority shall, on request, issue to an airline referred to in sub regulation (1) an operating authorization in the event that—

- (a) there is in force between Kenya and the State in which the airline has its principal place of business an air service agreement or arrangement under which scheduled air services may be operated;
- (b) the airline has been designated in accordance with the provisions of the relevant agreement or arrangement; and
- (c) the Authority is satisfied that the airline conforms to and complies with the terms and conditions of the relevant agreement or arrangement.

(3) An operating authorization shall remain valid as long as the relevant agreement or arrangement is in force.

(4) The Operating Authorization referred in sub-regulation (2) may be amended, suspended or revoked in accordance with the terms and conditions of the relevant agreement or arrangement.

(5) The Authority shall cause to be published procedures to be followed and particulars to be supplied by applicants and the applicable fee for an authorization referred to in this regulation.

14. A licensed air carrier whose principal place of business is in Kenya shall not engage in the provision of air services outside Kenya except under and in accordance with the terms and conditions of the licence issued by the Authority.

Terms and conditions of licence.

15. An air carrier whose principal place of business is in Kenya may establish an international scheduled air transport service if the air carrier is licensed and—

Conditions for international scheduled air service.

- (a) has an effective reservations and sales system;
- (b) has a sufficient number of aircraft to cope with the proposed route-schedule;
- (c) has toilet facilities on board aircraft operating on a sector with a flight duration of ninety minutes or more;
- (d) has submitted a flight timetable and obtained approval from the Authority and State of destination prior to operation;
- (e) files monthly traffic and tariff statistics with the Authority;
- (f) is qualified for self-passenger handling or has engaged a qualified passenger handling entity at each airport of operation; and
- (g) has been duly designated for the service by the aeronautical authority in Kenya, in accordance with the relevant air service agreement or arrangement.

16. (1) A foreign aircraft shall not fly in transit non-stop across Kenya or land in Kenya for non-traffic purposes in the course of a non-scheduled flight unless authorized by the Authority.

Foreign aircraft in transit not to over-fly or land unless authorized.

(2) In granting authorization under sub-regulation (1), the Authority may impose on the flight such conditions and requirements as it deems necessary to ensure compliance with the general principles contained in the Chicago Convention and the aircraft shall comply.

(3) Where a foreign registered aircraft makes a non-scheduled flight into Kenya it shall not take on or discharge passengers, cargo or mail for reward except in accordance with the terms and conditions of the authorization issued.

(4) The Authority shall cause to be published procedures to be followed and particulars to be supplied by applicants and the applicable fee for an authorization referred to in this Regulation.

(5) Where it appears that a foreign registered aircraft intends, in the course of a non-scheduled flight over Kenya, to proceed over regions without adequate air navigation facilities, the Authority may direct, for reasons of safety, that the aircraft follows an established air route and such a flight shall be conducted in accordance with such terms and conditions as the Authority may impose.

17. (1) A licence may be issued or varied for non-scheduled international air service if the applicant satisfies the Authority that—

Conditions for non-scheduled international air service licence.

- (a) the international air service concerned shall be operated in a manner that complies with the applicable international conventions which Kenya has ratified;
- (b) the applicant is fit and able to operate the international air service;
- (c) in the case of a foreign applicant, the applicant is appropriately certificated by a competent authority in the home State for the service; and
- (d) the proposed air service does not disrupt the existing scheduled air service.

(2) When processing the application, the Authority shall have due regard to fairness, equity and reciprocal treatment accorded to Kenyan air carriers by the State of the applicant.

18. (1) A foreign air carrier issued with a licence by the Authority to operate a non-scheduled international air service shall—

Conditions for operating a non-scheduled air service.

- (a) not take on any traffic at any point in Kenya, for discharge within Kenya, except that traffic which the air carrier originally brought in;
- (b) furnish the Authority with any statistics, within thirty days from the date of the request;
- (c) make the necessary arrangements to ensure that the operation of the air service is facilitated at the terminal airport in Kenya at the time of arrival and departure; and

- (d) for air carriers operating inclusive tour charters, transport only inclusive tour package passengers unless specifically authorized by the Authority to transport other traffic.

(2) Any person who contravenes the provisions of sub-regulation (1) commits an offence and shall, on conviction, be liable, in the first instance, to a fine not exceeding one million shillings or to imprisonment for a term not exceeding one year or both and for every subsequent offence, to a fine not exceeding two million shillings or to imprisonment for a term not exceeding two years or to both.

PART IV – GENERAL PROVISIONS RELATING TO LICENCES

19. (1) An applicant for an air service licence shall—

Further conditions to application for licence.

- (a) demonstrate to the satisfaction of the Authority the ability to—
- (i) meet at any time, its actual and potential obligations, according to its business plan for a period of two years from the start of operations;
 - (ii) meet its fixed and operational costs incurred from operations according to its business plan established under realistic assumptions, for a period of three months from the start of operations without relying on revenue generated by the operations;
- (b) provide all relevant information, in particular the data referred to in Part A of the Fourth Schedule.

(2) For the purpose of sub regulation (1), an applicant shall submit a business plan for the first two years of operation, which shall be in accordance to the format set out in the Fifth Schedule.

(3) In respect of foreign air carriers, the Authority may accept as sufficient evidence, the production of licences, certificates and documents issued by competent authorities in their home States for purposes of assessing competence, technical and financial fitness of the air carrier.

(4) An air carrier licensed under these Regulations shall submit to the Authority audited financial accounts relating to the previous financial year.

(5) An air carrier who wishes to vary the terms and conditions of licence issued by the Authority shall provide the particulars listed in Part B of the Eighth Schedule.

20. (1) The Authority may require, for the purpose of issuing a licence, proof that the person(s) who shall continuously and effectively control the operations of the air carrier are of unquestionable integrity or that they have not been declared bankrupt or convicted of a criminal offence by an appropriate authority.

Proof of integrity of persons to control operations.

(2) For the purposes of sub-regulation (1) the Authority may accept as sufficient evidence in respect of foreign nationals, the production of documents issued by competent authorities in the States

of origin or the State from which the foreign national comes showing that those requirements are met.

21. (1) An air carrier shall notify the Authority in writing at least fourteen days in advance of plans for the—

Notification of change in operation by air carrier.

- (a) operation of a new scheduled air service or a non-scheduled air service to a continent or region not previously served;
- (b) changes in the type, category or number of aircraft used or a substantial change in the scale of its activities;
- (c) changes in the particulars of the membership of a partnership or changes in its legal status;
- (d) changes in the controlling shareholding or changes in the ownership of any single shareholding which represents ten per centum or more of the total shareholding of the air carrier or its parent or ultimate holding company; or
- (e) changes in the particulars of the key personnel appointed by the licensee to be responsible and accountable for the operations of the air service.

(2) The submission of a one year business plan two months in advance of the period to which it refers shall constitute sufficient notice under this regulation for the purpose of changes to current operations and circumstances which are included in that business plan.

(3) If the Authority deems the changes notified under sub-regulation (1) and (2) to have a significant bearing on the finances or control of the air carrier, it shall require the air carrier to submit an application for a new licence and return the existing one for cancellation.

22. (1) Ownership of aircraft shall not be a condition for granting or maintaining a licence.

Aircraft ownership not a condition for licence.

(2) Without prejudice to sub-regulation (1)—

- (a) an applicant for an air service licence shall have in place an arrangement for one or more aircraft through ownership or dry lease, at its disposal and under its operational control;
- (b) aircraft used by an air carrier shall be registered in its national register.

(3) The Authority may upon request by an air carrier approve operation of an aircraft under a dry lease arrangement for an initial renewable period of twelve (12) months provided that there exists evidence of adequate insurance cover for the operation under dry-lease arrangement.

(4) The Authority may upon request by an air carrier approve operation of an aircraft under a wet lease arrangement to meet temporary and exceptional requirements of an on-going air service

operation for a period of six months provided that there exists evidence of adequate insurance cover for the operation under wet-lease arrangement.

(5) Notwithstanding sub regulation (4), an approval of a one-time extension for an additional period of six months may be granted subject to—

- (a) submission of a statement justifying extension;
- (b) the insurance policy adequately covering the additional lease term;
- (c) air transport statistics for the preceding six months reflecting consistent and substantial operations; and
- (d) the air carrier making arrangements for authentication of the information provided herein at their premises.

(6) For the purpose of this regulation "exceptional circumstances" shall include air carrier's capacity constraints due to its aircraft undergoing heavy maintenance checks, clearance of backlog due to shortage of aircraft and temporary upsurge in demand for services.

23. (1) No air carrier shall use an aircraft from another carrier or provide its aircraft to another carrier for operations without prior approval from the Authority.

Approval for use of aircraft from another operator.

(2) In granting the approval referred under sub-regulation (1), the Authority shall have regard to—

- (a) the ability of the air carrier maintaining air operator certificate requirements;
- (b) liability standards and the extent of incorporation of the arrangement in the insurance cover;
- (c) extent of disclosure of the arrangement by carrier to the public; and
- (d) regularity of air service provided under such arrangement.

(3) The conditions of the approval under sub-regulation (2) shall be part of the lease, sub charter, code share or aircraft interchange agreement between the parties.

(4) The Authority may during the currency of a lease, sub-charter, interchange or code share approval on its own volition or on the application by a lessee or lessor, sub-charterer or a party to an interchange or a code share arrangement, vary, suspend or revoke any of the terms or conditions of any of these approvals or the approval in its entirety.

(5) The Authority shall develop procedures to be followed, the particulars or documents to be supplied by applicants and publish the applicable fee for the lease, sub charter, code share or aircraft interchange agreement approval referred to in this regulation.

24. A licensee under this regulation shall not provide or cause to be provided—

Condition for provision of air

- (a) air services except under a valid Air Operator Certificate (AOC); service.
- (b) flying instructions except under a valid Approved Training Organization (ATO) certificate, issued by the Authority.

25. (1) The Authority shall, after the receipt of an application for a licence other than an application for a short-term licence, cause to be published in the Kenya Gazette, a notice containing the particulars of the application and such particulars shall be those set out in the Sixth Schedule. Application particulars to be published.

(2) Any person may, within twenty-one days after the publication of the notice referred to in sub-regulation (1), make representation(s) in writing to the Authority, in favour of or against an application.

(3) Every representation in favour of or against an application for a licence shall—

- (a) be in writing;
- (b) state the specific grounds on which it is based;
- (c) specify any conditions to be attached to a licence if issued; and
- (d) be signed by the person making it, or a person authorized in the case of a body corporate or a partnership.

(4) A copy of every representation in favour of or against an application for a licence shall be sent by the person making it to the applicant at the same time it is sent to the Authority using registered mail.

(5) The Authority may dismiss any representation to an application for a licence where it considers the same to be frivolous and vexatious.

26. (1) The Authority shall hold a hearing at such places as may be notified for the purpose of determining an application. Public hearing.

(2) The Authority shall give notice of the day, time and venue of the hearing to the applicant(s) and the public.

(3) A person making representation(s) to the Authority may appear at the hearing of an application in person, by a legal representative or other duly authorized representative, but shall not be entitled to recover any costs from the Authority incurred by him or her in the proceedings.

(4) The Authority shall keep record of the proceedings.

(5) The Authority shall make a decision on an application not later than thirty days after the hearing of the application.

(6) In making a decision on an application, the Authority shall consider all representations, relevant information and supporting documents.

(7) The Authority may defer determination of an application in order to obtain further information provided that such a deferment shall not exceed six months from the date of notification of the deferment.

27. (1) The Authority shall, upon request by an applicant or a person who objected the application and subject to payment of the applicable fee, provide reasons in writing for the decision:

Reasons for refusal to issue licence.

Provided that where the reason for the decision relates to matters of national security, the Authority shall not disclose the same except with the consent of the Cabinet Secretary or by a court order.

(2) An applicant whose application for a licence has been unsuccessful may, upon expiry of three months from the date of notification of the decision, submit a new application to the Authority.

28. The Authority shall publish decisions on applications for licence, revocation and suspension of licence in the Kenya Gazette pursuant to the Seventh Schedule.

Decisions to be published.

29. (1) A licence shall be issued to an applicant for any category of air service as set out in the First Schedule on condition—

Conditions attached to a licence.

- (a) that the licensee is sufficiently insured in relation to the type of air service and type of aircraft endorsed on the licence including third party liability;
- (b) that the requirements of any law relating to aviation and any air traffic control procedure for the time being in force in Kenya are complied with during the currency of the licence; and
- (c) that uplift and discharge of air traffic in Kenya complies with national laws and rules relating to aviation safety and security, environment, customs, immigration and public health.

30. (1) The licence shall lapse—

Lapse of a licence.

- (a) where an air carrier ceases operations for six consecutive months;
- (b) where operations have not commenced within six months after issuance of the licence;
- (c) upon a licensee's death, incapacity, bankruptcy in the case of a sole proprietorship or,
- (d) as soon as the licensee is under liquidation, sequestrated, incapacitated or placed under receivership as the case may be:

Provided that in the case of death, incapacity, bankruptcy, sequestration or liquidation of the holder of a licence, the appointed receiver manager or trustee of the licensee shall forthwith notify the Authority and submit an application for a new licence within fourteen days for purposes of continuity of operations.

(2) In the case where it is not intended for the operations to continue, the licence shall be returned for cancellation within fourteen (14) days.

(3) For the purpose of this regulation an air carrier shall be deemed—

- (a) not to have commenced operations if within six months of issuance of the licence the air carrier has not operated a revenue flight under the terms and conditions of the licence; or
- (b) to have ceased operation if the air carrier has not carried out any flight six months after the last recorded revenue flight.

31. (1) The Authority may vary any terms or conditions of a licence or revoke a licence either on its own volition or on application by the licensee.

Variation, suspension or revocation of licence.

(2) Whenever it appears that an air carrier is experiencing financial problems, the Authority may, upon assessment of the carrier's performance, suspend or revoke the licence.

(3) The Authority may suspend or revoke a licence on the ground that the licensee—

- (a) has been found guilty of giving false information to the Authority under regulation 68;
- (b) has contravened any terms or condition of the licence; or
- (c) has contravened or failed to comply with any of the provisions of these Regulations.

(4) The Authority may recall a licence to amend errors of administrative nature provided that upon the lapse of twenty one days' notice without response to such recall, the Authority shall revoke the licence.

32. (1) The Authority shall give the licensee twenty one days' notice in writing before varying, revoking or suspending any licence or terms or conditions of a licence stating the grounds upon which it is proposed to vary, revoke or suspend the licence or the terms or conditions of the licence.

Procedure for revocation, variation or suspension of licence.

(2) At the expiry of the notice specified under sub-regulation (1) the Authority may—

- (a) direct a licensee to comply with such terms or conditions as it may specify within the period determined by the Authority;
- (b) vary the licence;
- (c) suspend the licence concerned for a period not exceeding two years; or
- (d) revoke the licence.

(3) Where a licence is revoked or suspended the Authority shall state in writing the reasons for its decision.

33. (1) The Authority may upon request grant a temporary licence to an applicant for a period not exceeding one hundred and twenty days pending determination of the substantive application for licence.

Temporary licence.

(2) Provisions of these Regulations as to the publication of particulars of applications and representation shall not apply, if the Authority—

- (a) is of the opinion that compliance with the procedure for processing of application referred to would defeat the objective of such application;
- (b) is satisfied that the applicant conforms to the general requirements relating to an application for licence;
- (c) is satisfied that the proposed service is in the interest of social welfare, charity, for purposes of salvage on humanitarian grounds or of assistance in saving life or in the public interest:

Provided that a temporary licence shall not be issued for purposes of acquiring an Air Operator Certificate, an Approved Training Organization Certificate or extending the duration of an expired licence.

34. (1) The Authority may upon request grant a short term licence to an applicant for a period not exceeding seven days if satisfied that the application is in public interest and requires expeditious determination, in which case the provisions of these Regulations as to publication of particulars of application and representation shall not apply.

Short-term licence.

(2) In issuing a licence referred to in sub-regulation (1), the Authority may impose such terms and conditions as it deems fit and shall have regard to—

- (a) public interest;
- (b) the need to provide reasonable protection for air carriers of scheduled air services to ensure regularity of the service between Kenya and other States;
- (c) any resolution or decision of the International Civil Aviation Organization or of the International Air Transport Association that has been approved by the Authority and is relevant to the particular application.

(3) In the case where a request for a short term licence is made subsequent to a substantive application for a licence, the provisions of sub-regulation (1) shall not apply.

(4) The Authority may refuse to grant an application for a short term licence on the basis of regularity of short term operations under this regulation.

(5) For the purpose of this sub-regulation (4), “regularity of operations” shall mean twenty one flights within the seven days’ period.

35. (1) The Authority may issue a licence in accordance with the provisions of these Regulations and such a licence shall, subject to regulation 31, remain in force for such period as specified on the licence:

Validity of a licence.

Provided that:

- (a) the duration of a licence issued under these Regulations shall not exceed five years from the date on which it is specified to take effect; or
- (b) if an application for renewal has been lodged with the Authority before expiry of the licence held by the applicant, the existing licence shall remain in force until such application has been determined.

(2) Payment of a licence fee shall be made within thirty days from the date of gazettment of the decisions.

(3) In the case where an applicant fails to make payment referred in sub regulation (2) it shall be deemed to have forfeited its right to a licence.

36. (1) When physical constraints or environmental problems exist the Authority may, subject to this regulation, impose conditions, limit or refuse the exercise of traffic rights in particular when other modes of transport can provide satisfactory levels of service.

Limitation of traffic rights in certain cases.

(2) Action taken by the Authority in accordance with sub-regulation (1) shall—

- (a) be non- discriminatory on grounds of identity of air carriers;
- (b) have a limited period of validity, not exceeding three years, after which it shall be reviewed;
- (c) not unduly affect the objectives of these Regulations;
- (d) not distort competition between air carriers; and
- (e) not be more restrictive than necessary in order to relieve the problems.

37. An application for a licence under these Regulations for any category of air service or aircraft as set out in the First and Third Schedules respectively may be made separately or in a consolidated form and if the Authority considers it convenient, it may, in a similar manner issue a licence separately for each category of air service or aircraft or, in a consolidated form:

Form of application and licence.

Provided that where—

- (a) an application is made in a consolidated form for the categories of air services and aircraft, the provisions of these

Regulations relating to payment of fees shall apply to each separate category of air service as if they were separate applications; and

- (b) a licence is issued in a consolidated form, the provisions of these Regulations relating to the payment of fees and to the imposition and variation of terms or conditions shall apply in respect of each separate category of aircraft or air service as if it were a separate licence.

38. A licence is not transferrable or assignable.

Licence not transferrable.

39. Notwithstanding the provisions of these Regulations, the Authority may require an applicant to disclose information as to his or her financial resources, and such information shall be treated as confidential.

Confidentiality of information disclosed.

40. (1) The holder of a licence shall perform all such reasonable services as the Communications Authority of Kenya may from time to time require in regard to the conveyance of mails (and of any persons who may be in charge thereof) upon air services operated under the licence.

Provisions as to conveyance of mails.

(2) The remuneration for any services performed in pursuance of this regulation shall be such as may from time to time be determined by agreement between the Communications Authority of Kenya and the licence holder.

41. (1) The holder of a licence or operating authorization shall make a monthly return in writing to the Authority giving, in respect of the month to which the return relates, the particulars set out in the Eighth schedule with regard to all air services authorized by the licence or operating authorization.

Filing of monthly returns.

(2) The returns to be made in accordance with sub-regulation (1) shall be made on a form prescribed by the Authority, and shall be sent to the Authority not later than two months after the expiration of the month to which the return relates.

42. The holder of a licence shall produce such licence for inspection upon a request from the Authority or any person authorized by the Authority.

Production of licence.

43. (1) In the event of the holder of a licence ceasing to operate the air service authorized thereby he or she shall forthwith notify the Authority and return the licence for cancellation:

Surrender and cancellation of licence.

Provided that where, owing to death, incapacity, bankruptcy, sequestration or liquidation of the holder of a licence or to the appointment of a receiver or manager or trustee in relation to the business of the holder, he or she ceases to operate the air service authorized by the licence, then if the business of the holder is being carried on by some other person, that person shall forthwith notify the Authority and unless an application has been made within fourteen days for a new licence, shall return the licence for cancellation.

(2) A licence may at any time be surrendered by the holder to the Authority for cancellation.

(3) If a licence ceases to have effect, otherwise than by the effluxion of time, or is suspended or revoked, the holder thereof shall, within fourteen days after a notice to that effect has been delivered to him or her personally or sent to him or her by registered mail at the address shown in its application or last notified in accordance with regulation 45, send or deliver the licence to the Authority for retention during the time of suspension or cancellation, and the Authority shall on the removal of a suspension return the licence to the holder.

44. If a licence has been lost, destroyed or defaced the holder thereof shall forthwith notify the Authority which shall, if satisfied that licence has been lost, destroyed or defaced, issue a duplicate, so marked, and the duplicate so issued shall have the same effect as the original:

Replacement of
a licence.

Provided that, in the case of a licence that has been defaced, the duplicate shall be issued only after surrender of the original to the Authority.

45. An air carrier shall, if it changes its address or company name during currency of its licence, notify such change to the Authority within fourteen days of such change and surrender the licence to the Authority for amendment.

Change of name
or address.

46. (1) The Authority shall keep a record of all decisions on applications for licence and such record shall contain particulars as set out below to enable the application to be identified—

Records.

- (a) the date on which the licence is due to commence;
- (b) the date on which it is due to expire;
- (c) any terms and conditions attached to a granted licence;
- (d) in the case of a scheduled air service, terminal and intermediate landing places on the specified route;
- (e) in the case of an air service other than a scheduled one, a detailed description of the type of service and the geographical area of operation; and
- (f) in the case of a rejection or deferment, reasons as the case may be.

47. (1) There shall be paid in respect of an application for, and grant of an authorization or a licence, the applicable fee in respect of each type of air service, category of aircraft and duration of authorization or licence, as may be prescribed by the Authority from time to time.

Fees.

(2) Fee paid under these Regulations shall be non-refundable.

48. (1) The holder of a licence shall issue or cause to be issued an air ticket to each passenger to be transported.

Air ticket.

- (2) An air ticket shall contain the following particulars—
- (a) name or trade name of the licensee issuing the ticket;
 - (b) name of the passenger to be transported;
 - (c) date of issue and period of validity of the ticket;
 - (d) places of departure and destination;
 - (e) place of issue of the ticket;
 - (f) serial number of the ticket;
 - (g) name, trade name or the designated International Air Transport Association code of the licensee transporting the passenger; and
 - (h) cost of the ticket including disclosure of any tax and terms and conditions attached,

Provided that where the air ticket is issued by electronic means, such ticket shall contain substantially the same particulars as set out in this sub-regulation.

(3) An air ticket issued under sub-regulation (1) shall contain an endorsement to the effect that the licensee referred to in sub-regulation (2)(g) is duly licensed and complies with the requirements of the Act and these Regulations.

(4) A licensee shall keep copies of all air tickets issued under sub-regulation (1) for a period of not less than twelve months from the date on which the flight to which the ticket relates took place.

(5) subject to the provisions of sub regulation (4), a licensee shall upon request by the Authority, furnish it with copies of any air tickets, or any information thereon, for such period as may be determined.

49. (1) The holder of a licence shall issue or cause to be issued an air waybill in respect of each consignment of cargo to be transported. Airway bill.

- (2) An airway bill shall contain the following particulars—
- (a) name or trade name of the licensee issuing the airway bill;
 - (b) contents of such consignment of cargo;
 - (c) mass and volume of such consignment of cargo;
 - (d) places of origin and destination;
 - (e) serial number of the air waybill;
 - (f) name, trade name or designated International Air Transport Association code of the licensee transporting the cargo; and,
 - (g) cargo tariff and disclosure of any tax and terms and conditions attached. applicable condition:

Provided that where the airway bill is issued by electronic means, such airway bill shall contain substantially the same particulars as set out in this sub regulation.

(3) An airway bill issued under sub-regulation (1) shall contain an endorsement to the effect that the licensee referred to in sub-regulation (2)(f) is duly licensed and complies with the requirements of the Act and these Regulations.

(4) A licensee shall keep copies of all airway bills issued under sub regulation (1) for a period not less than twelve (12) months from the date on which the flight to which the airway bill relates took place.

(5) subject to the provisions of sub regulation (4), a licensee shall upon request by the Authority, furnish it with copies of any airway bills, or any information thereon, for such period as may be determined.

50. (1) The holder of a licence shall compile or cause to be compiled before each flight a passenger manifest in respect of the flight and such a manifest shall be kept for a period not less than 12 months from the date on which the flight to which it relates took place.

Passenger
manifest.

(2) A passenger manifest compiled in terms of sub regulation (1), shall at least contain the name and nationality of each passenger.

(3) Subject to the provisions of sub regulation (1), a licensee shall upon request by the Authority, furnish it with copies of any passenger manifests or any information thereon, for such period as may be determined.

51. (1) A licensee shall be insured at all times to a minimum amount equivalent to one hundred thousand special drawing rights per seat in respect of passengers and their baggage and seventeen special drawing rights per kilogram in respect of cargo for the total number of seats or cargo weight authorized by the certificate of airworthiness applicable to aircraft to be operated.

Insurance.

(2) In respect of third party liability minimum insurance coverage will comply with the requirements of the State.

(3) The minimum amounts of coverage required for passengers, their baggage, cargo and third party liability may be insured for a combined single limit of insurance per any one occurrence.

PART V – FRANCHISING

52. (1) No airline registered in Kenya shall operate as a franchisee or enter into a franchise agreement except under and in accordance with the terms and conditions of a franchise approval granted by the Authority.

Franchise
approval.

(2) No foreign registered airline shall operate as a franchisee within Kenya except under and in accordance with the terms and conditions of a franchise approval granted by the Authority.

(3) The Authority shall develop procedures for franchise approval.

53. A franchise approval shall be granted on condition that the prospective franchisee and franchisor are holders of—

Conditions for a
franchise
approval.

- (a) an air service license, in the case of an airline registered in Kenya; and
- (b) an operating authorization, in the case of a foreign registered airline, issued in accordance with these Regulations.

54. (1) Every application for a franchise approval shall be made to the Authority and shall contain the particulars set out in the Ninth Schedule.

Application for franchise approval.

(2) The Authority may grant franchise approval in accordance with these Regulations and impose such conditions as it deems appropriate.

(3) In exercising its discretion under sub-regulation (2), the Authority shall have regard to all relevant factors including—

- (a) the need to protect public interest; and
- (b) prevention of unfair competition.

55. (1) A franchisee shall disclose franchise information to the Authority in accordance with the Ninth Schedule.

Franchise information disclosure.

(2) The disclosure document shall be updated within sixty (60) days after the end of the franchisor's fiscal year.

(3) Where there has been a material change in the information required to be disclosed under the Ninth Schedule, the disclosure document shall be updated within (30) days of the occurrence of that material change.

(4) If the disclosure document contains a misrepresentation of a material fact or if there is an omission of a material fact required to be disclosed under the Ninth Schedule the Authority without prejudice to any other action may revoke or suspend the franchise license.

(5) A franchisee shall ensure that every marketing, promotional or advertisement of its business shall contain a clear, unequivocal and prominent disclosure to the public that the franchisee is the actual operator.

(6) A franchisee shall cause to be disclosed to the public at the time of booking, ticketing, check-in and in the aircraft the identity of the actual operator of the flight.

56. Whenever the conditions of carriage of the franchisor contain more favorable terms to a passenger or shipper than those of the franchisee then those terms of the franchisor (including liability limitation) shall apply to operations by the franchisee.

Conditions of carriage.

57. The franchise approval shall not be deemed to confer the traffic rights of a franchisee upon the franchisor or vice versa.

Approval not to confer rights.

58. The Authority may during the currency of a franchise approval either on its own volition or on application by a franchisee or a franchisor vary, suspend or revoke any of the terms or conditions of the approval or the approval in its entirety.

Revocation, variation or suspension of a franchise approval.

PART VI—APPEALS FROM DECISIONS OF THE AUTHORITY

59. (1) An applicant aggrieved by a decision of the Authority in respect of an application for licence shall have a right of appeal to the Appeals Tribunal. Right to appeal.

(2) A person who has made representations only in respect to an application shall not be considered to be a person aggrieved in terms of sub-regulation (1).

(3) This regulation shall not apply to operating authorisations made under regulation 13 of these Regulations.

PART VII —COMPETITION BETWEEN UNDERTAKINGS

60. (1) Any person engaged in the provision of air service shall not be a party to any— Prohibited agreements, decisions and practices.

- (a) agreements between undertakings;
- (b) decisions of associations of such undertakings; or
- (c) concerted practices of such undertakings, which may affect provision of air service by having as their object or effect the prevention, restriction, lessening or distortion of competition in the air transport market in Kenya and any such agreements, decisions or practices are prohibited.

(2) Without prejudice to the generality of sub-regulation (1) agreements, decisions and practices prohibited shall include those that—

- (a) directly or indirectly fix air fares, rates and any conditions attached thereto;
- (b) limit or controls aircraft capacity, flight frequencies, technical development or investment;
- (c) limit sharing of air transport market or sources of supply;
- (d) apply dissimilar conditions to equivalent transactions with other trading parties, thereby placing them at a competitive disadvantage;
- (e) make the conclusion of contracts subject to acceptance by the other parties of supplementary obligations which, by their nature or according to commercial usage, have no connection with the subject of such contracts; or
- (f) otherwise prevent, distort or restrict competition.

(3) Notwithstanding the provision of sub-regulation (1) and (2), agreements decisions or practices may be exempted if their objective and effect is for improvement of provision of air services, promotion of technical development, investment for economic progress and allow consumers a fair share of the resulting benefit provided that they—

- (a) do not lead to attainment of the objectives referred to in sub-regulation (2);

(b) afford such undertakings the possibility of promoting fair trading practices in provision of air service.

(4) Agreements, decisions or practices which may be exempted in sub regulation (3) shall include joint planning, co-ordination of capacity, consultation on tariffs for scheduled air services and slot allocation.

(5) Notwithstanding the provisions of sub regulation (3), any undertaking(s) shall apply to the Authority for exemption.

(6) Any person who contravenes this regulation commits an offence and shall be liable to penalties prescribed by the Government Agency responsible for regulating competition in the country.

61. (1) Any conduct which amounts to the abuse of a dominant position by affecting competition in the provision of air services in air transport market in Kenya is prohibited.

Abuse of dominant position.

(2) Without prejudice to the generality of sub-regulation (1), abuse of dominant position may include—

- (a) directly or indirectly imposing unfair air rates, air fares or any conditions attached thereto;
- (b) limiting aircraft capacity, flight frequencies, technical development or investment;
- (c) applying dissimilar conditions to equivalent transaction with other trading parties, thereby placing them at a competitive disadvantage;
- (d) limiting sharing of air transport market or sources of supply through predatory pricing or other practices; or
- (e) making the conclusion of contract subject to acceptance by the other parties of supplementary obligations which, by their nature or according to commercial usage, have no connection with the subject of such contracts.

(3) Any person who contravenes this regulation commits an offence and shall be liable to penalties prescribed by the Government Agency responsible for regulating competition in the country.

62. (1) Any aid granted by the State or through State resources in any form whatsoever which distorts or threatens to distort competition by favouring certain undertakings engaged in the provision of air service shall, in so far as it affects trade between undertakings in air services, be incompatible with fair competition.

State aid.

(2) Notwithstanding the provision of sub-regulation (1), the following shall be compatible with fair competition—

- (a) aid having a social character, granted to individual consumers, provided that such aid is granted without discriminating similarly related consumers;
- (b) aid to make good the damage caused by natural disasters or exceptional occurrences;

- (c) aid granted to the economy of certain areas of Kenya to compensate for the economic disadvantages;
- (d) aid to promote the economic development of areas where the standard of living is abnormally low or where there is a serious underemployment;
- (e) aid to promote the execution of an important national project or to remedy a serious disturbance in the economy;
- (f) aid to facilitate the development of certain economic activities or of certain economic areas, where such aid does not adversely affect air services conditions to an extent contrary to public interest; or
- (g) aid to promote culture and heritage conservation where such aid does not affect air service conditions and competition to an extent that is contrary to public interest.

63. Undertakings licensed to provide air service shall freely fix tariffs and such a tariffs shall be reasonable taking into consideration operational cost, service characteristics, commission rates and reasonable profits.

Tariffs.

64. Undertakings entrusted with operation of services of general economic interest or having the character of revenue producing monopoly shall be subject to provisions of fair trading practices in so far as the application of such provisions do not obstruct the performance, in law and in fact, for the particular tasks assigned to them and the development of trade in air services must not be affected to such an extent as would be contrary to the public interest.

Monopoly not to affect public interest.

65. (1) The Authority shall, on its own volition or upon reference by a person whose rights or interests have been affected, review agreements, decisions or practices that may affect competition in the provision of air service and may examine books, other business records, take copies from extracts, ask for oral explanations and enter any premises, land and aircraft used by concerned parties.

Review of decisions and confidentiality.

(2) If after a review, referred to in sub-regulation (1), the Authority establishes that there has been an infringement, it shall take appropriate measures which may include—

- (a) issuing of restraining order;
- (b) imposition of a fine; or
- (c) suspension or revocation of licence.

(3) A person whose rights or interest have been affected by the decision arising from the review referred to in sub-regulation (1), may appeal to the Authority for review of the decision within twenty eight days.

(4) The Authority, its officers or servants shall not disclose information received pursuant to this regulation.

66. The Authority shall co-operate and co-ordinate matters under this part with the Government Agency responsible for regulating competition in the country.

Co-operation and co-ordination on competition.

PART IX—OFFENCES AND PENALTIES

67. Any person who contravenes the provisions of Regulations 3,10,13,14,16, 23(1), 24, 50 or 51 commits an offence and in the case of an aircraft being used for— Penalties.

- (a) international air service shall, on conviction, be liable, for a first offence, to a fine not exceeding two million shillings or to imprisonment for a term not exceeding two years or both, and for a second or subsequent offence to a fine not exceeding three million shillings or to imprisonment for a term not exceeding three years or both; and,
- (b) internal air service shall, on conviction, be liable, for a first offence to a fine not exceeding one million shillings or to imprisonment for a term not exceeding one year or both; and for a second or subsequent offence to a fine not exceeding two million shillings or to imprisonment for a term not exceeding two years or both.

68. Any person who—

Penalty for false information, etc.

- (a) falsifies, counterfeits, alters, defaces, or mutilates a licence or other approvals or is in possession of a licence or other approvals which have been thus falsified, counterfeited, altered, defaced or mutilated;
- (b) uses a licence or other approvals of which he or she is not the holder;
- (c) permits a licence or other approvals of which he or she is the holder, to be used by any other person; or
- (d) either on his own or through an agent knowingly gives false or misleading information on any matter which is material to an application, investigation, appeal to Authority or to any other matter,

commits an offence under these Regulations and shall on conviction, be liable, for a first offence to a fine not exceeding two million shillings or to imprisonment for a term not exceeding two years or both and for a second or subsequent offence to a fine not exceeding three million shillings or to imprisonment for a term not exceeding three years, or to both.

69. In any proceeding under these Regulations—

Presumption in certain cases.

- (a) an aircraft used for provision of an air service in contravention of these Regulations shall, until the contrary is proved, be presumed to have been used or caused to be used by an undertaking in whose name the aircraft is registered;
- (b) the conveyance in an aircraft of any person in addition to the normal operating crew or of any goods shall, until the contrary is proved, be presumed to be conveyance for hire or reward;

- (c) a licence issued under these Regulations, or a copy of any such document certified in writing as such by the Director-General shall be accepted as *prima facie* evidence of the facts stated therein; or
- (d) a document signed by the Director-General, stating that a licence has been granted by the Authority to a specified person, shall be accepted as *prima facie* evidence of the facts stated therein.

70. (1) Any person who contravenes or fails to comply with any of the provisions of these Regulations or of any terms or conditions of a licence or approval granted under the provisions of these Regulations for which no penalty has been provided, commits an offence and shall, on conviction, be liable for a first offence, to a fine not exceeding five hundred thousand shillings or to imprisonment for a term not exceeding six months, or to both and in the case of a second or subsequent offence to a fine not exceeding one million shillings or to imprisonment for a term not exceeding one year, or to both.

General penalty.

(2) In the case of the holder of a licence or any approval granted under these Regulations, any penalty imposed under the provisions of this regulation shall be without prejudice to powers of revocation or suspension of the licence by the Authority under Regulations 13(4), 23(4), 31(1) or 58.

(3) The Authority, or any authorised person may, without limiting the generality of this regulation, issue an infringement notice set out in the Act.

(4) An infringement notice may require that the operations of a particular operator be halted until the breach has been rectified.

PART X—MISCELLANEOUS

71. (1) The Director-General may, subject to such terms and condition, delegate in writing to an authorized officer any powers or duties conferred upon him or her by the Act or under these Regulations.

Delegation of powers by Director-General.

(2) Delegation given under sub regulation (1) shall not preclude the Director-General from exercising any powers or performing any duties exercisable by him or her under the Act.

72. (1) The Director-General may appoint air transport officers for the purpose of securing compliance with the provisions of these Regulations and any terms or conditions attached to a licence or any authorization granted thereof.

Appointment of air transport officers.

(2) An air transport officer may at any time and on production if required of his or her authority—

- (a) enter and inspect any premises of an airline on which he has reasonable cause to believe that the business of the airline is being carried out in contravention of these Regulations;
- (b) examine and take copies of any books, accounts and documents found in those premises relating to or appearing to relate to the business of an airline;

- (c) seize any books, accounts or documents found in those premises relating to or appearing to relate to the business of an airline;
- (d) question any person who appears to him or her to be engaged in, or carrying on, or employed in the business of an airline in those premises on any matter concerning the application of or compliance with these Regulations or any terms or conditions attached to a licence or any other authorization granted thereof.;
- (e) require, by notice in writing, any person who appears to him to be engaged in or carrying on the business of an airline to appear before him at such time and place as he may specify in the notice and provide information or any other document as may be required by the Authority;
- (f) board, detain or recall an aircraft already in flight and search such aircraft if he has reasonable grounds to suspect that the aircraft is being used in contravention of these Regulations or that it contains any matter which may be used as evidence in respect of an offence under these Regulations.

73. (1) Where an air transport officer detains or recalls an aircraft already in flight he or she shall, unless he or she is of the opinion that due to the nature of the offence, the aircraft is likely to be allowed to proceed on its flight within a period not exceeding three hours, immediately report such detention or recall to the Director-General:

Procedure on
detention or recall
of Aircraft.

Provided that under no circumstances shall an air transport officer detain an aircraft for more than three hours from the time of its intended departure or from the time of landing after being recalled unless such longer detention has been authorized by the Director-General under this regulation.

(2) On receipt of a report under this regulation the Director-General may, pending further investigation, order the detained aircraft to proceed on its flight if he or she is of the opinion that the report does not constitute a contravention of these Regulations.

(3) An air transport officer after investigation and upon establishing that there was contravention of these regulations shall, issue an infringement notice stating the particulars of the violation, the period within which to comply as the case may be and the attendant penalty for the stated violation.

(4) The Director-General may, in writing, delegate to any person any of his or her powers under sub regulation (1) and (2).

PART XI— REVOCATION, SAVINGS AND TRANSITIONAL PROVISIONS

74. (1) The Civil Aviation (Licensing of Air Services) Regulations, 2009 are revoked.

Revocation of
L.N.No.
114/2009.

(2) Notwithstanding the provisions of sub-regulation (1), any licence or approval in force at the date of entry into force of these Regulations shall remain valid.

FIRST SCHEDULE

(rr.4,5,11,12,29&37)

CATEGORIES OF AIR SERVICE

Part A - Scheduled Air Service

- a) Transport of passengers or cargo or mail or a combination thereof;
- b) Transport of cargo or mail or both.

Domestic

- a) Transport of passengers, cargo or mail or a combination thereof;
- b) Transport of cargo or mail or both.

Part B - Non-Scheduled Air Services (Return flights)

International

- a) Transport of passengers or cargo or mail or combination thereof;
- b) Transport of cargo or mail or both;
- c) Transport of passengers of an inclusive tour nature (inbound and outbound) with a limit of four flights in a programme;
- d) Emergency medical service;
- e) Self-fly hire.

Domestic

- a) Transport of passengers, cargo and mail or combination thereof;
- b) Transport of cargo or mail or both;
- c) Transport of passengers of an inclusive tour nature;
- d) Emergency medical service;
- e) Self-fly hire.

Part C - Aerial Work Services (Domestic/International)

- a) acrobatic operations;
- b) advertising operations;
- c) aerial patrol/observation/surveys;
- d) aerial photography/sightseeing;
- e) agricultural spraying/seeding/dusting;
- f) cloud spraying;
- g) fire spotting/control/fighting;

- h) game and livestock selection/culling/counting/herding; and
- i) parachute jumping/tag operations.

Part D - Flying instruction

Part E - Recreational Flying

- a) Micro lights
- b) Balloons

SECOND SCHEDULE (rr.4,11)

PARTICULARS TO BE FURNISHED IN CONNECTION WITH AN
APPLICATION FOR A LICENCE

I. Scheduled Air Services

- a) Name and address of applicant;
- b) Names of places between which the air service is to be operated;
- c) Proposed base of operation for the service;
- d) Names of the regular stage stopping places for the purpose of taking on or setting down passengers, cargo or mail;
- e) Times and frequencies of air service;
- f) Number and type(s) of aircraft to be used;
- g) Type of load to be carried;
- h) Maximum and minimum fares to be charged to passengers, cargo or mail in respect of the total journey or any portion of the journey thereof;
- i) Date of commencement of air service;
- j) Period for which the licence is required;
- k) If already providing air service—
 - (i) period for which the air service has been operated; and
 - (ii) details of monthly returns for the period of operation or the last twelve months, whichever is the less.
- l) List of other air services operated by the Applicant at the time of application;
- m) Particulars of any working arrangements the Applicant may have with any other company providing air service;
- n) Particulars of any financial interest which the Applicant has in any other undertaking providing passenger, cargo or mail transport facilities or controlling the business of any person who provides such facilities;

- o) The nature of the person making the application, whether individual, partnership firm or corporate body, public or private, with or without limited liability, and if a company, public or private—
 - (i) the nominal and issued capital;
 - (ii) the names and nationalities of the directors;
 - (iii) the names and Country of incorporation of any other companies holding shares in the applicant's business and the names and nationalities of the directors;
 - (iv) the names and Country of incorporation of any other subsidiary companies of the Applicant and the names and nationalities of the directors.

2. Non-scheduled Air Services and Aerial Work

- (a) Name and address of applicant;
- (b) Number and type(s) of aircraft to be used;
- (c) Proposed base of operation for the service;
- (d) Type of services to be carried out and the areas in which it is proposed to operate each type of service;
- (e) Maximum charges to be made for each type of service;
- (f) Date of commencement of air service;
- (g) Period for which licence is required;
- (h) If already providing air service—
 - (i) the period for which the air service has been operated; and
 - (ii) details of monthly returns for the period of operation or the last 12 months whichever is the less;
- (i) List of other air services operated by the Applicant at the time of application;
- (j) Particulars of any working arrangements the Applicant may have with other companies providing air services;
- (k) Particulars of any financial interest which the applicant has in any other undertaking providing air service, facilities or controlling the business of any person who provides such facilities;
- (l) The nature of the person making the application, whether individual, partnership firm or corporate body, public or private, with or without limited liability, and if a company, public or private—
 - (i) the nominal and issued capital;
 - (ii) the names and nationalities of the directors;

- (iii) the names and Country of incorporation of any other companies holding shares in the applicant's business and the names and nationalities of the directors;
- (iv) the names and Country of incorporation of any other subsidiary companies of the applicant and the names and nationalities of the directors.

3. *Flying Instructions*

- (a) Name and address of the Applicant;
- (b) Number and type(s) of aircraft to be used;
- (c) Proposed base of operation for the service;
- (d) Type of instructions to be carried out and place where it is proposed to be operated;
- (e) Maximum charges to be made for each type of instruction;
- (f) Date of commencement of air service;
- (g) Period for which the licence is required;
- (h) If already providing air service—
 - (i) period for which the air service has been operated;
 - (ii) details of monthly returns for period of operation or the last twelve months, whichever is the less;
- (i) List of other air services operated by the applicant at the time of application;
- (j) Particulars of any working arrangements the Applicant may have with other companies providing air services;
- (k) Particulars of any financial interest which the Applicant has in any other undertaking providing instructional facilities or controlling the business of any person who provides such facilities;
- (l) The nature of the person making the application, whether an individual, partnership firm or corporate body, public or private, with or without limited liability, and if a company, public or private—
 - (i) the nominal and issued capital;
 - (ii) the names and nationalities of the directors;
 - (iii) the names and Country of incorporation of any other companies holding shares in the applicant's business and names and nationalities of the directors;
 - (iv) the names and Country of incorporation of any subsidiary companies of the applicant and names and nationalities of the directors.

4. *Documents to be submitted with Application*

Part A – New Application for Licence – Local

- a) Certified true copy of certificate of incorporation;

- b) Certified true copy of memorandum and articles of association or any other founding document of the Applicant;
- c) A copy or copies of the applicant's aircraft certificate(s) of registration intended for the operation or an initialed or duly executed dry lease agreement;
- d) Certified true copy of the insurance policy or insurance arrangements in place;
- e) A business plan for a period of two years;
- f) Certified true copy of national identity card or passport and two passport size photographs in respect of each of the directors of the company;
- g) Any other document in support of the application for the air service.

Part B – New Application for Licence - Foreign

- a) A copy of Air Operator Certificate issued by the State of the applicant;
- b) Audited financial accounts for twelve months preceding the application;
- c) Certified true copy of the insurance policy in place;
- d) A copy or copies of certificate(s) of registration of aircraft;
- e) For inclusive tour charter applicants, also a copy of the charter agreement;
- f) Any other document in support of the application for the air service.

Part C – Renewal or Variation Application

- a) Audited financial accounts for twelve months preceding the application;
- b) Monthly returns specified in the Fifth Schedule;
- c) Certified true copy of the insurance policy in place;
- d) A copy of Air Operator Certificate issued by the State of the applicant;
- e) A copy or copies of certificate(s) of registration of aircraft;
- f) For inclusive tour charter applicants, also a copy of the charter agreement.

THIRD SCHEDULE

(rr.5,12&37)

CATEGORIES OF AIRCRAFT

Part A - Aircraft (fixed wing)

Category	Maximum Certificated weight
1 (LIGHT)	Less than -5700kg – (including microlights)
2 (MEDIUM LIGHT)	5701 - 13000kg
3 (MEDIUM)	13001 - 20000kg
4 (HEAVY)	20,001kg and above

Part B – Helicopter Category 5

Part C - Balloons Category 6

FOURTH SCHEDULE

(r. 19)

INFORMATION FOR ASSESSMENT OF FINANCIAL FITNESS OF NEW APPLICANT FOR AIR SERVICE LICENCE OR EXISTING AIR CARRIERS

Part A— Information to be provided by a New Applicant

- a) The most recent internal management accounts and, if available, audited accounts for the previous financial year;
- b) A two year projected balance sheet, including profit and loss account;
- c) Route viability analysis including detailed projected expenditure, traffic and revenue forecasts based on such operating costs items such as fuel, airport charges, handling charges, aircraft lease, personnel, aircraft maintenance, catering depreciation, exchange rate fluctuations, insurance, etc.;
- d) Details of the start-up costs expected to be incurred in the period from submission of application to commencement of operations and an explanation of how it is proposed to finance these costs;
- e) Documentary evidence of existing and projected sources of funds for the proposed operations, as appropriate;
- f) Details of shareholders, including nationality and type of shares held, and the Memorandum and Articles of Association;
- g) Projected cash-flow statements and liquidity plans for the first two years of operation;
- h) Details of the financing of aircraft purchase, leasing including, in the case of leasing, the terms and conditions of contract.

Part B— Information to be provided by existing licence holders

- a) If necessary, the most recent internal management accounts and audited accounts for the previous financial year;

- b) Precise details of all proposed changes such as change of type of service, proposed takeover or merger, modifications in share capital or changes in shareholders;
- c) A balance sheet, with a profit and loss account, for the preceding financial year, including all proposed changes in structure or activities with a significant bearing on finances;
- d) Past and projected expenditure and income figures on such items as fuel, fares and rates, salaries, maintenance, depreciation, exchange rate fluctuations, airport charges and insurance;
- e) Cash-flow statements and liquidity plans for the following year, including all proposed changes in structure or activities with a significant bearing on finances;
- f) Details of financing of aircraft purchase or leasing including, in the case of leasing, the terms and conditions of contract.

FIFTH SCHEDULE

(r. 19)

A FORMAT OF A BUSINESS PLAN

A business plan shall contain the following—

- (a) The company's Vision and Mission;
- (b) Market analysis and strategy;
- (c) Company's ownership structure and personnel plan;
- (d) Aircraft fleet acquisition plan;
- (e) Financial plan including source(s) of funding with documentary evidence as appropriate;
- (f) the applicant's financial links with any other commercial activities in which the applicant is engaged either directly or indirectly;
- (g) balance sheet, break-even analysis, pro-forma income projections (profit and loss statements), cash flow analysis;
- (h) proposed fares for passengers or cargo;
- (i) A strategy or the manner in which the applicant will maintain safety, regularity and reliability of the service to be operated;
- (j) Any other information in support of the Application.

SIXTH SCHEDULE

PARTICULARS OF APPLICANT TO BE PUBLISHED

(r. 25(1))

- a) Name and address of applicant;
- b) Proposed base of operation for the service;
- c) If for scheduled air service—
 - (i) Places between which the air service is to be operated;
 - (ii) Names of the regular stage stopping places for the purpose of taking on or setting down passengers, cargo or mail;
 - (iii) Time and frequency of air service;
 - (iv) Type of load to be carried;
 - (v) Commencement date of the air service; and,
 - (vi) Period for which the licence is required;
- d) If for non-scheduled air service or aerial work—
 - (i) types of service to be carried out and the areas in which it is proposed to operate each type of service;
 - (ii) commencement date of the air service; and,
 - (iii) period for which licence is required.
- e) if for flying instruction—
 - (i) types of instruction offered and the places where it is proposed to operate;
 - (ii) commencement date of the air service ; and
 - (iii) period for which the licence is required.

SEVENTH SCHEDULE

(r. 28)

PARTICULARS OF DECISIONS ON APPLICATIONS AND REVOCATION OR
SUSPENSION OF LICENCE TO BE PUBLISHED

PART A —PARTICULARS OF DECISIONS ON APPLICATIONS

- a) Name and address of applicant;
- b) The number and date of the Gazette notice in which the application was published;
- c) Such particulars as will enable the application to be identified;
- d) An indication whether the licence was granted as applied for, granted with modifications, not granted, deferred or withdrawn.

PART B— PARTICULARS OF REVOCATION OR SUSPENSION OF LICENCE
TO BE PUBLISHED

- a) Name and address of applicant;
- b) Such information as will enable the licence to be identified, and in the case of a scheduled air service, the places and regular stage stopping places to be stated;

- c) The date from which revocation or suspension takes effect and, in the case of suspension, the period of suspension;
- d) The grounds on which the licence has been revoked or suspended.

EIGHTH SCHEDULE

(r. 41)

PARTICULARS TO BE GIVEN BY A HOLDER OF A LICENCE AND OPERATING AUTHORIZATION IN MONTHLY RETURNS (EXCEPT WHERE OTHERWISE SPECIFIED) PASSENGERS SHOULD BE STATED IN NUMBERS, DISTANCES IN KILOMETRES AND CARGO AND MAIL IN KILOGRAMS

PART A - Scheduled Air Services

- (a) A list of the service numbers for all flights operated giving the names of the places between which services are operated, the names of the regular staging points on the route, the types of aircraft used and the number of flights operated by each type(s);
- (b) A copy of the current flight timetable;
- (c) A copy of the current tariffs;
- (d) For services operated under a licence for international scheduled air service or an operating authorization for each service number—
 - (i) Total number of passengers, cargo and mail, terminating and in transit, arriving in Kenya by point of discharge within Kenya (showing in addition the point of discharge of passengers outside Kenya for each point of uplift);
 - (ii) Total number of passengers, cargo and mail, originating and in transit, departing from Kenya by point of uplift within Kenya (showing in addition the point of discharge of passengers outside Kenya for each point of uplift);
 - (iii) In transit passengers at each staging point in Kenya on international services not included above, i.e. those whose airports of uplift and discharge are both within Kenya;
 - (iv) Total number of available passenger seats offered and the number of passengers carried, on flights arriving in or departing from Kenya;
 - (v) Total capacity of cargo space offered and the weight of cargo carried on flights arriving in or departing from Kenya.
 - (vi) Total number of passengers, cargo and mail carried only within Kenya by points of uplift and discharge separately for traffic between each airport in each direction.
- (e) For services operated under a licence for international scheduled air service and on sectors not wholly within Kenya—
 - (i) For each staging point outside Kenya, the passengers, cargo and mail in transit;
 - (ii) For each sector, the total number of available passenger seats offered, and the number of passengers carried; and the total capacity of cargo space offered, and the weight of cargo carried.

- (f) For services operated under the local licence the following shall be submitted including the service number—
 - (i) the total number of available passenger seats offered and the number of passengers carried;
 - (ii) the total capacity of cargo space offered and the weight of cargo carried.
- (g) The Passengers, cargo and mail carried in each direction, between all combinations of staging points.
- (h) Point to point distances flown as the case may be.

PART B - Non-Scheduled Air Services and Aerial Works

- (a) Number and type(s) of aircraft operated during the month, actual dates of any changes made to be given;
- (b) Average daily serviceability of aircraft complete;
- (c) Total number of kilometres flown on each class of work;
- (d) Total number of flights made on each class of work;
- (e) Total number of available passenger seats offered and the number of passengers carried;
- (f) Total capacity of Cargo space offered and the weight of cargo carried;
- (g) Number of flights commenced but not completed, giving cause;
- (h) Total number of requests for air service made which were not accepted given reasons.
- (i) Number of pilots, navigators, radio operators, flight engineers, stewards, photographers and any other personnel employed on flying duties, and their salaries by grade.
- (j) Copy of current schedule of charges for air services.

PART C – Flying Instructions

- (a) The number and type(s) of aircraft operated during the month, the actual dates of any changes to be given;
- (b) The average daily serviceability of aircraft complete;
- (c) The total number of hours flown—
 - (i) dual instruction;
 - (ii) Solo instruction;
 - (iii) total number of hours of non-flying instruction, per type of instruction.
- (d) The total number of flights made; (i) dual instruction; and, (ii) Solo;
- (e) The number of instructors employed and their salaries by grade;
- (f) A copy of the current schedule for instructional charges;
- (g) The total number of students under instruction, according to the class of pilot licence for which instruction is being given;

- (h) The total number of pilot licences, per class, gained during the month;
- (i) The total number of pilot licences, per class, held by students or members of the club; and,
- (j) The total number of students or members.

NINTH SCHEDULE

(rr.54 & 55)

INFORMATION TO BE DISCLOSED FOR FRANCHISES

The franchisor and franchisee shall provide the following information in the disclosure document.

- (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 franchisees;
- (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, date, certification or document the authority may request.

Dated the 4th July, 2018.

JAMES MACHARIA,
*Cabinet Secretary, Ministry of Transport,
Infrastructure, Housing and Urban Development.*