

THE CIVIL AVIATION BILL, 2024

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THE CIVIL AVIATION BILL, 2024

A Bill for—

AN ACT of Parliament to provide for the control, regulation and orderly development of civil aviation in Kenya and for connected purposes

ENACTED by the Parliament of Kenya as follows—

PART I—PRELIMINARY

Short title.

1. This Act may be cited as the Civil Aviation Act, 2024.

Interpretation.

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

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

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

(i) being in the aircraft, or

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

(iii) direct exposure to jet blast,

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

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

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

(ii) would normally require major repair or replacement of the affected component, except for engine failure or damage, when the damage is limited to a single engine, including its cowlings or accessories, to propellers, wing tips, antennas, probes, vanes, tires, brakes, wheels, fairings, panels, landing gear doors, windscreens, the aircraft skin such as small dents or

puncture holes, or for minor damages to main rotor blades, tail rotor blades, landing gear, and those resulting from hail or bird strike including holes in the radome; or

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

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

- (a) unlawful seizure of aircraft in flight or on the ground;
- (b) hostage taking on board aircraft or on aerodromes;
- (c) forcible intrusion on board an aircraft, at an aerodrome or on the premises of an aeronautical facility;
- (d) introduction on board aircraft or at an airport of a weapon or hazardous device or material intended for criminal purposes;
- (e) communication of false information such as to jeopardize the safety of an aircraft in flight or on the ground, of passengers, crew, ground personnel or the general public, at an airport or on the premises of a civil aviation facility;
- (f) destroying or causing damage to air navigation facilities, or interfering with their operation, if any such act is likely to endanger the safety of aircraft in flight;
- (g) violence against a person on board an aircraft in flight, if that act is likely to endanger the safety of that aircraft;
- (h) causing destruction to an aircraft in service, or causing damage to an aircraft which renders it incapable of flight or which is likely to endanger its safety in flight;
- (i) unlawfully and intentionally using any device, substance or weapon, to—
- (i) perform an act of violence against a person at an airport serving civil aviation which causes or is likely to cause serious injury or death;
- (ii) destroy or seriously damage the facilities of an airport serving civil aviation or an aircraft not in service located at the airport or

disrupting the services of the airport, if that act endangers or is likely to endanger safety at that airport;

- (j) use of an aircraft in service for the purpose of causing death, serious bodily injury, or threats of bodily harm to passengers and crew or persons not on the aircraft but whose safety are of interest to passengers or crew on the aircraft or serious damage to property or the environment;

“aerial work” means an aircraft operation in which an aircraft is used for specialized, services including, but not limited to agriculture, construction, photography, surveying, observation and patrol, search and rescue and aerial advertisement, if flown for hire or reward is given or promised in respect of the flight or the purpose of the flight;

“aerodrome” means any defined area on land or on water, including any building, installation or equipment therein, used or intended to be used either wholly or in part for the arrival, departure and surface movement of aircraft;

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

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

“aircraft” means any machine that can derive support in the atmosphere from the reactions of the air, other than reactions of the air against the earth’s surface;

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

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

“air navigation services” means services provided to air traffic during all phases of operations, namely, approach, aerodrome and enroute which include—

- (a) air traffic management;
- (b) communication navigation and surveillance system;

- (c) meteorological services for air navigation;
- (d) search and rescue; and
- (e) aeronautical information services or aeronautical information management;

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

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

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

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

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

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

“aviation document” includes any licence, permit, certificate, approval, authorization including a medical certificate, or other document issued, under this Act as part of the Authority’s oversight function, to or in respect of any person, aircraft, aerodrome, aeronautical procedure, aeronautical product, or aviation related service;

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

“Board” means the Board of Directors of the Authority constituted under section 18 of this Act;

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

“cargo” means any property carried in an aircraft other than mail, stores and accompanied or mishandled baggage;

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

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

“civil aircraft” means aircraft other than State aircraft;

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

- (a) any amendment to the Convention which has entered into force under Article 94(a) of the Convention and has been ratified by Kenya;
- (b) any annex or amendment thereto accepted under Article 90 of the Convention; and
- (c) the international standards and recommended practices from time to time accepted and amended by the International Civil Aviation Organization pursuant to Article 37 of the Convention.

“chief investigator” means a person appointed by the Cabinet Secretary under section 48(2) to be responsible for investigations into an aircraft accident or a serious incident within the meaning of the Act;

“commercial transport” means the carriage of passengers, cargo or mail for hire or reward;

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

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

“convention” means the Convention on International Civil Aviation signed in Chicago in 1944 and any other international convention or protocol and any annex thereto relating to civil aviation to which Kenya is a signatory or has acceded, or to which Kenya is in any way party to, whether made, concluded, signed or acceded to before or after the commencement of this Act;

“crew member” means a person assigned by an operator to duty on an aircraft during a flight duty period;

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

“dangerous goods” means articles or substances which are capable of posing a hazard to health, safety, property or the environment and which are shown in the list of dangerous goods in the Technical Instructions or which are classified according to those Instructions;

“Director-General” means the Director-General of the Authority appointed under section 28;

“facilitation” includes a combination of measures and the use of human and material resources aimed at improving and optimizing the flow of aircraft, crew, passengers, cargo, baggage, mail, and stores through airports in compliance with both international and national regulations;

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

“flight information region” means an airspace of defined dimensions within which flight information service and alerting service are provided;

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

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

“Fund” means the Kenya Civil Aviation Authority Fund established by section 84;

“*Gazette*” means the Kenya Gazette published by authority of the national government, or a supplement to the Kenya Gazette;

“general aviation operation” means an aircraft operation other than a commercial air transport or aerial work;

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

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

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

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

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

“investigator-in-charge” means a person charged, on the basis of his or her qualifications and experience, with the responsibility for the organization, conduct and control of an investigation;

“Kenya aircraft” means any aircraft registered in Kenya;

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

“National Civil Aviation Security Programme” means an integrated set of Regulations and activities promulgated and performed by the State aimed at safeguarding civil aviation against acts of unlawful interference;

“obstacle” all fixed, whether temporary or permanent, and mobile objects or parts thereof—

- (a) are located on an area intended for surface movement of an aircraft;
- (b) extend above a defined surface intended to protect an aircraft in flight; or
- (c) stand outside those defined surfaces and that have been assessed as being a hazard to air navigation;

“operator” means a person, organization or enterprise engaged in or offering to engage in an aircraft operation;

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

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

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

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

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

- (a) notices to airmen;
- (b) aeronautical information publications;
- (c) notices to licensed aircraft maintenance engineers and to owners of civil aircraft;
- (d) civil aviation publications;
- (e) aeronautical information circulars;
- (f) manuals of procedures;
- (g) advisory circulars and orders;
- (h) technical standards;
- (i) any other official publication issued for the purpose of enabling any of the provisions of this Act or regulations to be complied with;

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

“regulatory fees” means monies levied and collected by the Authority when undertaking its regulatory mandate;

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

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

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

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

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

“safety recommendation” means a proposal of the Aircraft Accident Investigation Department based on information derived from an investigation or other sources such as safety studies, made with the intention of preventing accidents or incidents and which in no case has the purpose of creating a presumption of blame or liability for an accident or incident;

“safety sensitive person” means a person who may endanger aviation safety if that person performs his or her duties and functions improperly and includes flight crew, cabin crew, aircraft maintenance personnel, air traffic controllers and security screeners;

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

“security programme” means any measures and procedures by operators and service providers adopted to safeguard civil aviation against acts of unlawful interference;

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

“service provider” means an organization providing aviation products or services;

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

“State Safety Programme” means an integrated set of regulations and activities aimed at improving aviation safety;

“Tribunal” means the National Civil Aviation Administrative Review Tribunal established under section 71 of this Act;

“unmanned aircraft system” means an aircraft and its associated systems which are operated with no pilot on board;

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

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

(2) For purposes of this Act, reference to goods or articles shall be construed to include baggage, mail or animals.

Application of the Act.

3. (1) This this Act shall apply to—

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

(2) Despite the provisions of subsection (1), this Act shall not, except where expressly included or if the Cabinet Secretary so directs by order published in the *Gazette*, apply to state aircraft or to any class or classes of state aircraft.

(3) Without prejudice to subsection (1) and (2), all aircraft shall in the interest of aviation safety, be subject to the requirements of this Act in respect of rules of the air.

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

Establishment of Authority.

- 4.** (1) There is established an authority to be known as the Kenya Civil Aviation Authority.
- (2) The Authority shall be a body corporate with perpetual succession, and a common seal and shall in its corporate name, be capable of—
- (a) suing and being sued;
 - (b) taking, purchasing or otherwise acquiring, holding and disposing of movable and immovable property;
 - (c) borrowing money with the approval of the Cabinet Secretary and the Cabinet Secretary for the time being responsible for matters relating to finance;
 - (d) entering into contracts; and
 - (e) doing or performing all such other things or acts necessary for the proper discharge of its functions under this Act, which may be lawfully done or performed by a body corporate.
- (3) The Authority shall be the State agency responsible for the management of aviation safety and security in Kenya.

Headquarters.

- 5.** The Headquarters of the Authority shall be in Nairobi.

Object of the Authority.

- 6.** The object for which the Authority as established shall be to—
- (a) economically and efficiently plan, develop and manage civil aviation; and

- (b) regulate and operate a safe and secure civil aviation system in Kenya in accordance with the provisions of this Act.

Functions of the Authority.

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

- (a) the licensing of air services and service providers;
- (b) securing sound development of the civil aviation industry in Kenya;
- (c) the licensing and monitoring of personnel as defined in the regulations on personnel licensing;
- (e) the certification of air operators;
- (f) the certification of aircraft maintenance organisations;
- (g) establishment and maintenance of a system for the registration and the marking of civil aircraft;
- (h) the registration of civil aircraft;
- (i) the registration of rights and interests in aircraft;
- (j) issuance and renewal of certificates of airworthiness;
- (k) the establishment, co-ordination and maintenance of an aviation State Safety Programme;
- (l) carrying out investigations of incidents that are not classified as accidents or serious incidents;
- (m) the provision of technical support for the investigation of aircraft accidents and serious incidents;
- (n) the establishment within its administration for the development, implementation and maintenance of the National Air Transport Facilitation Programme;
- (o) oversight of the design, development and operations of aerodromes;
- (p) surveillance of certified, licensed, authorised and approved entities;
- (q) certification of air navigation service providers;
- (r) certification and licensing of regulated agents;

- (s) the regulation of activities relating to protection of the aviation environment;
- (t) approval, certification and licensing of aviation training organizations;
- (u) the regulation of activities relating to the operation of an unmanned aircraft system;
- (v) oversight of meteorological services for air navigation;
- (w) the establishment within its administration for the development, implementation and maintenance of the National Civil Aviation Security Programme;
- (x) the provision of technical services for the design, installation, and modification of communication, navigation and surveillance equipment used in the provision of air navigation services;
- (y) taking measures to minimize, to the extent possible, any disturbance to the public and any adverse effect on the environment from noise, vibration, atmospheric pollution or any other cause attributable to the use of aircraft for the purpose of civil aviation;
- (z) the safety, security, economic and technical regulation of civil aviation;
- (aa) dealing with incidents of unlawful interference with aviation security;
- (bb) implementing and enforcing the provisions of this Act, regulations and directives issued by the Authority;
- (cc) the production of accurate, timely, comprehensive and relevant air transport information for planning and decision making purposes;
- (dd) performing economic oversight of air services and service providers, protecting consumer rights in aviation and ensuring fair trading practices in air transport;
- (ee) the provision of air navigation services;
- (ff) the co-ordination and direction of aeronautical search and rescue services;
- (gg) ensuring the integrity of the systems, equipment and facilities of the Authority;

- (hh) the planning, development and formulation of the airspace master plan for the safe and efficient utilization of Kenyan airspace;
- (ii) the issuance and dissemination of the publications referred to in this Act;
- (jj) the establishment, management and operation of training institutions for the purposes of the Authority;
- (kk) giving effect to the Convention, treaties and other international agreements relating to civil aviation to which Kenya is party to;
- (ll) advising the government on matters concerning civil aviation; and
- (mm) the performance of such other functions as may, from time to time, be conferred on it by the Cabinet Secretary or by any other written law.

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

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

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

(5) In the discharge of its responsibility for aviation safety and security, the Authority shall co-ordinate its activities with other agencies of the government including the ministries responsible for matters relating to defence and internal security.

Powers of the Authority.

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

(2) Despite the generality of subsection (1), the Authority shall have power to—

- (a) determine, set out, levy and collect charges, dues or fees for any services performed by the Authority or for use by any person of the facilities provided by the Authority or for the grant, renewal or validation of a licence, permit or certificate subject to the approval of the Cabinet Secretary;
- (b) receive any gifts, grants, donations or endowments made to it or any other monies in respect of it and to make legitimate disbursement there from in accordance with the provisions of this Act;
- (c) invest any monies not immediately required for its purposes in the manner provided in this Act or any other written law;
- (d) enter into contracts, arrangements, agency, associations or partnerships with any person, government agency or authority, whether, within or outside Kenya, subject to any limitations that may be set out by the Cabinet Secretary; and
- (e) acquire, hire, hold, lease out, or dispose of all types of assets or property including land:

(3) Despite subsection (2), the Authority shall not sell, let or otherwise dispose of any buildings, land or other assets vested in it by virtue of section 14 except with the consent of and subject to any conditions that may be set out by the government.

Power to obtain information, documents and evidence.

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

- (a) to furnish the information in writing signed by the person served and in the case of a body corporate, signed by a competent officer of the body corporate;
- (b) to produce the document to the Authority; and
- (c) to appear before the Authority to give evidence.

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

Aviation personnel
licences and
certificates.

- (3) The Authority may require that any evidence referred to under this section be given in writing.
 - (4) A person summoned under subsection (1) shall be required to comply with the summon on grounds that noncompliance may compromise aviation safety and security.
 - (5) Where the Authority has reason to believe that a person is in possession or control of any information or document which may assist in the performance of its functions and that the person has refused or failed to supply such information or document, the Director-General may apply to the Tribunal for issuance of a warrant authorising a police officer to enter into any premises believed to contain or into which a document is kept or hidden and conduct search and make copies or take extracts of the documents.
- 10.** (1) Any person having the requisite qualifications may file with the Authority an application for an aviation personnel licence or certificate.
- (2) Where the Authority finds, after investigation, that the applicant possesses the proper qualifications for, and is physically able to perform, the duties pertaining to the aviation personnel licence or certificate sought, it shall issue the licence or certificate.
 - (3) The Authority may consider prior issuance of an aviation personnel licence or certificate by a foreign country that is a member of the International Civil Aviation Organization as satisfactory evidence, in whole or in part, that the applicant possesses the qualifications and physical ability to perform the duties pertaining to the aviation personnel licence or certificate sought.
 - (4) The licence or certificate may contain such terms and tests of physical fitness as the Authority may determine to be necessary to assure safety in civil aviation.
 - (5) The Authority may adopt rules to determine the categories and eligibility requirements of licences or certificates to be issued to aviation personnel including personnel in charge of training and inspection of crew members or personnel engaged in the maintenance of aircraft, aircraft engines, propellers and appliances.
 - (6) The Authority may issue a certificate of validation with respect to an aviation personnel licence or certificate issued by another State.

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

Aircraft in distress. **11.** (1) The Authority shall provide such measures of assistance to aircraft in distress within Kenya as it may consider practicable.

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

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

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

Search and rescue. **12.** (1) The Authority shall—

(a) establish search and rescue units which shall render such assistance as may be required by any aircraft missing or in distress within the territory of Kenya; and

(b) co-ordinate government agencies and other organizations to pool resources and manpower for the conduct of aircraft search and rescue services.

(2) In the event the aircraft missing or in distress is registered in another State, the Authority may permit the owner of the aircraft or the authorities of such other State to provide such measures of assistance as may be required under the circumstances, provided that the furnishing of any such assistance shall, at all time, be under the control of the Authority.

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

Protection of safety and security information. **13.** (1) Aviation safety and security information obtained, gathered voluntarily or otherwise given to the Authority under this Act or regulations made under it shall not be put to any inappropriate use.

(2) Despite subsection (1), the Authority shall not be precluded from sharing aviation safety and security information with other civil aviation authorities and

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international civil aviation agencies subject to the Data Protection Act protection and other appropriate safeguards.

Acquisition of land for purposes of the Authority.

14. (1) Where land is required by the Authority for its use, the Authority may either—

- (a) if such land is not public land, acquire the land through negotiation and agreement with the registered owner of the land;
- (b) if the Authority is unable to acquire the land by agreement pursuant to paragraph (a), it shall notify the Cabinet Secretary responsible for matters relating to lands that the land specified in the notice is required for the purposes of the Authority; or
- (c) if such land is public land, the Authority shall notify the Cabinet Secretary who shall inform the National Land Commission that the land specified in the notice is required for the purposes of the Authority or if the Authority is unable to acquire it by agreement in accordance with paragraph (a), it shall notify the Cabinet Secretary responsible for matters relating to lands that the land specified in the notice is required for the purposes of the Authority.

(2) When notice has been given under subsections (1)(b) and (c)—

- (a) if the land is public land, the National Land Commission may upon such terms and conditions as it may think fit, place such land at the disposal of the Authority to be utilized for the purposes of the Authority, or
- (b) if the land is not public land, any provision in any written law which empowers the National Land Commission to acquire or direct the acquisition of such land for any specific purpose shall be, deemed to include a power enabling the National Land Commission to acquire or direct the acquisition of such land for the purposes of the Authority.

(3) Where any compensation is payable to any person in respect of any land specified in the notice given under subsection (1)(c) acquired by the National Land Commission, and such land after being so acquired is placed at the disposal of the Authority in accordance with subsection (2)(a), the amount of compensation payable to that person, in accordance with the provisions of the law under which the land was acquired, shall be paid by the Authority in line with the relevant law dealing with compulsory acquisition of private land.

(4) The Authority may at any time, in consultation with the Board, convey, transfer or surrender any land surplus to both its existing and future requirements by a conveyance or a deed of surrender:

(5) Despite subsection (4), the land shall be surrendered to the government and shall be conveyed or transferred to another public institution and not a private person in line with the provisions of Article 62 of the Constitution.

(6) The provisions of subsection (4) shall apply to land vested in the Authority by any written law, including this Act, as well as land conveyed to it or otherwise placed at its disposal.

Transfer and acceptance of oversight functions pursuant to Article 83 *bis*.

- 15.** (1) The Authority may, by an agreement under Article 83 *bis* and in respect of an aircraft under lease, charter or interchange or such similar arrangement—
- (a) transfer all or part of its oversight functions and duties in respect of the aircraft to another contracting State; and
 - (b) accept oversight functions or duties of such aircraft from another contracting State.
- (2) The Authority shall recognize aviation licences, certificates and documents issued or rendered valid by a third party State under Article 83 *bis*.

Failure to comply with a summon or giving of misleading information.

- 16.** (1) A person who, without lawful excuse refuses or fails to comply with a summon, gives false or misleading information or evidence either voluntarily in any proceedings of the Authority or in purported compliance with a summon under this section, is liable to a penalty of—
- (a) two hundred thousand shillings, in the case of an individual; or
 - (b) five hundred thousand shillings for any other case.
- (2) A person who, after payment of a penalty under subsection (1), further fails to comply with a summon is liable to a penalty of variation or suspension of any of their aviation documents.
- (3) A person who gives false or misleading information or evidence in any proceeding of the Authority is liable to a penalty of—
- (a) two hundred thousand shillings in the case of an individual; or
 - (b) five hundred thousand shillings for any other case.

Reference to
Tribunal.

17. (1) Where a matter to be determined by the Authority under this Act involves a point of law, the Authority may, after giving notice to the concerned parties, refer the matter to the Tribunal for direction.

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

Composition of the
Board.

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

- (a) the Chairperson, who shall be appointed by the President;
- (b) the Principal Secretary of the Ministry responsible for matters relating to civil aviation or a representative appointed in writing;
- (c) the Principal Secretary to the National Treasury or a representative appointed in writing;
- (d) the Principal Secretary of the Ministry responsible for matters relating to internal security or a representative appointed in writing;
- (e) five other persons, not being public officers, appointed by the Cabinet Secretary through a competitive process and who shall be independent upon appointment and maintain such independence during their term of service on the Board, and of whom—
 - (i) two shall have demonstrable knowledge and experience in the field of civil aviation;
 - (ii) one shall have qualification and expertise in financial management or accounting and be a member in good standing of a professional body regulating the accountancy or the auditing profession, and in compliance with its requirements;
 - (iii) one shall have demonstrable knowledge and experience in aviation law or business; and
 - (iv) one shall have demonstrable knowledge and experience in management; and
- (f) the Director-General, who shall be an *ex officio* member of the Board;

(2) For the purposes of subsection (1), a Board member shall be considered independent if he or she—

- (a) is not in the service of the national government or county government or of any statutory body or institution owned or controlled by the national government or county government and who is not connected or does not have any other relationship, whether pecuniary or otherwise, with the Authority;

- (b) has not been employed by the Authority in an executive capacity within the last five years;
- (c) is not associated to an advisor or consultant to the Authority or a member of the Authority's senior management or a significant customer, operator or supplier of the Authority;
- (d) has no personal service contract with the Authority or a member of the Authority's senior management; or
- (e) is not a member of the immediate family of any person working for the Authority.

(3) The Chairperson shall as soon as a vacancy occurs in the membership of the Board, notify the Cabinet Secretary of such a vacancy and the Cabinet Secretary shall within three months of receipt of the notice, fill the vacancy pursuant to the provisions of this Act.

(4) Section 20 shall apply to a member appointed under subsection (3).

Qualifications for appointment as Chairperson or member.

19. (1) A person is qualified for appointment as Chairperson if the person—

- (a) is a citizen of Kenya;
- (b) meets the requirements of Chapter Six of the Constitution; and
- (c) has knowledge and experience in matters relating to administration or has such other qualifications and experience of proven ability in such other fields as the President may deem necessary.

(2) A person is qualified for appointment as a member of the Board if the person—

- (a) is a citizen of Kenya;
- (b) meets the requirements of Chapter Six of the Constitution; and
- (c) does not hold a position or have such interests that are likely to place him or her in a position of conflict of interest or impose undue influence on the Authority or its employees in discharging its functions under this Act or regulations made under it.

Term of office.

20. The members appointed under subsections 18(1)(a) and (f) shall serve for a period of three years and on such terms and conditions as may be specified in their instruments of appointment and may be eligible for re-appointment for a further single term of three years subject to satisfactory performance.

- Vacancy. **21.** A member of the Board shall cease to be a member of the Board if that member—
- (a) dies;
 - (b) resigns;
 - (c) is appointed or nominated to a political office; or
 - (d) is found to have contravened the provisions of Chapter Six of the Constitution.
- Termination of appointment of Directors. **22.** (1) The appointing authority may terminate the appointment of a member appointed under section 18(1)(a) and (f) if that person—
- (a) has been absent from three consecutive meetings of the Board without permission;
 - (b) is adjudged bankrupt or enters into a composition scheme or arrangement with his creditors;
 - (c) is convicted of an offence involving dishonesty or fraud;
 - (d) is convicted of a criminal offence and sentenced to imprisonment for a term exceeding six months;
 - (e) is incapacitated by prolonged physical or mental illness; or
 - (f) fails to comply with the provisions of this Act relating to disclosure of interest.
- (2) A member appointed under section 18(1)(a) or (f) may resign his or her office, in writing under his or her hand, to the appointing authority.
- Conflict of interest. **23.** (1) The Chairperson or a member of the Board, who has a direct or indirect personal interest in a matter being considered or to be considered by the Board, shall as soon as reasonably practicable after the relevant facts concerning the matter have come to their knowledge, disclose the nature of such interest.
- (2) A disclosure of interest made under subsection (1) shall be recorded in the minutes of the meeting and the Chairperson or a member shall not take part in the consideration or discussion on or vote during any deliberations on the matter.
- (3) A person who fails to make the requisite disclosure under this section commits an offence and shall on conviction, be liable to a fine not exceeding

one million shillings or to imprisonment of a term not exceeding two years or to both such fine and imprisonment.

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

Functions of the Board.

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

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

(3) Despite the generality of subsection (1) and (2), the Board shall—

(a) consider and advise the Cabinet Secretary—

(i) in relation to the establishment of air services;

(ii) on legislative proposals relating to civil aviation including legislation to give effect to the Chicago Convention, and other international conventions and instruments relating to civil aviation;

(iii) on measures for the promotion or support of any airline designated by the government for the purpose of any international air services agreement;

(iv) in relation to fares and freight rates and related matters ;

(v) in relation to the establishment, maintenance and development of air navigation facilities and services;

(vi) on such other matters affecting civil aviation as it considers desirable in the interest of civil aviation in Kenya;

(b) determine and set priorities for the general performance targets by the Authority;

(c) consider and determine the strategic plans and budgets of the Authority; and

- (d) ensure that measures for the development of civil aviation are initiated and implemented.

Powers of the Board.

25. (1) The Board shall have all the powers necessary for the proper performance of the functions of the Authority in accordance with the provisions of this Act and in particular.

(2) Despite the generality of subsection (1), the Board shall have power to—

- (a) control and oversee the administration of the assets of the Authority in such manner and for such purposes as best promote the purposes for which the Authority is established; and
- (b) determine the provisions to be made for capital and recurrent expenditure and for reserves of the Authority.

Meetings of the Board.

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

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

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

The common seal of the Authority.

27. (1) The common seal of the Authority shall be kept under the custody of the Corporation Secretary who shall account for its use to the Board.

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

Appointment of Director-General.

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

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

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

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

- (a) is a citizen of Kenya;
- (b) possesses management and technical qualifications with experience in the field of civil aviation of not less than ten years; and
- (c) meets the requirements of Chapter Six of the Constitution;

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

(6) The Cabinet Secretary may, in consultation with the Board, terminate the appointment of the Director-General if he or she—

- (a) has been absent from three consecutive meetings of the Board without the permission from the Chairperson;
- (b) is adjudged bankrupt or enters into a composition scheme or arrangement with his creditors;
- (c) is convicted of an offence involving dishonesty or fraud;
- (d) is convicted of a criminal offence and sentenced to imprisonment for a term exceeding six months;
- (e) is incapacitated by prolonged physical or mental illness;
- (f) is found to have contravened the provisions of Chapter Six of the Constitution; or
- (g) fails to comply with the provisions of this Act relating to disclosure of interest.

(7) The Director-General may, at any time, resign his or her office by notice, in writing, to the Cabinet Secretary.

Responsibilities and powers of the Director-General.

29. (1) The Director-General shall be responsible to the Board for the day to day management of the Authority and shall be responsible for the exercise of all powers and the discharge of all functions of the Authority and shall have control over the resources and activities of the Authority.

(2) The Director-General shall exercise such powers as are necessary for the performance of the functions of the Authority to enable the objectives,

implementation and applications of the regulations made under this Act and in particular, but despite the generality of the foregoing, the Director-General shall have power to—

- (a) inspect, board, or detain an aircraft if serious safety and security concerns are identified or recall an aircraft in flight and search such aircraft during routine inspections or where he or she has reasonable grounds to suspect that the aircraft is being used in contravention of this Act or any regulations made there under or that it contains any matter which may be used as evidence in respect of an offence under this Act or the regulations;
- (b) ensure that the provisions of this Act and any rules and regulations made there under are complied with to the extent necessary in the interest of aviation;
- (c) encourage and foster the safe and secure development of civil aviation in Kenya;
- (d) plan, develop and formulate safe, secure and efficient utilization of the Kenya airspace;
- (e) acquire, establish and improve air navigation facilities where necessary within the limits of available appropriation;
- (f) establish a school or schools for the purpose of offering instruction and training in matters related to the aviation industry;
- (g) establish and maintain a system for notification and reporting of accidents and incidents;
- (h) use, with their consent the available services, equipment and facilities of other agencies and to co-operate with those agencies in the establishment, and use of services, equipment and facilities of the Authority;
- (i) monitor the deployment and utilization of the movable and immovable property of the Authority;
- (j) prepare the budget, annual report and financial statements of the Authority;
- (k) implement, co-ordinate and supervise the defined activities related to the management of aviation safety aviation security and facilitation as the accountable executive of the State Safety Programme, the National Civil Aviation Security Programme and the National Air Transport Facilitation Programme;

- (l) assess and audit the performance standards of the State Safety Programme functions of other State aviation agencies identified by the Cabinet Secretary, to ensure that the State Safety Programme is performing effectively as required; and
 - (m) prepare and implement the strategic plan of the Authority.
- (3) Without limiting the powers of the Director-General as provided for under subsections (1) and (2) of this section, the Director-General—
- (a) shall perform the duties and exercise the powers of the Authority specified under sections 7 and 8 of this Act respectively;
 - (b) shall establish and implement a safety oversight system in the manner set out in the Second Schedule.
 - (c) shall search any aircraft for compliance with documents stipulated under the Convention;
 - (d) shall prohibit an aircraft from flying until an unsafe condition is rectified;
 - (e) shall prohibit a person from exercising the privileges of any aviation document;
 - (f) shall suspend, revoke or vary the privileges of any aviation document or any other authorisation issued by the Authority;
 - (g) shall impose operating restrictions and sanctions on the operators or holders of aviation documents in the event of non-compliances with certification, licensing and approval, requirements or unresolved safety and security deficiencies or concerns;
 - (h) shall determine the technical and financial capability of a prospective operator or service provider to conduct the proposed operations;
 - (i) shall, where he or she believes on reasonable grounds that an unsafe condition exists in any aircraft or aeronautical product and may, by notice in writing, issue an airworthiness directive in respect of aircraft or aeronautical products, as the case may be, of that design; and
 - (j) may prohibit a foreign registered aircraft from flying if a major defect or damage is found while within Kenya.

Inspection of aircraft, aerodromes, premises and documents.

30. (1) The Director-General shall inspect—

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

(2) In the performance of the functions under this section, the Director-General shall have unhindered access to aerodromes, premises of a holder of aviation document, any aircraft wherever it may be, any aviation facilities and installations, and to any records or related documents, information and explanation that may be required.

(3) A person who, without lawful excuse, denies the Director-General access contravenes this section is liable to a penalty of—

- (a) two hundred thousand shillings, in the case of an individual; or
- (b) five hundred thousand shillings for any other case.

Investigation and enforcement.

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

(2) A complaint may be—

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

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

(4) The Director-General shall, after investigations on a complaint filed by the person or initiated by him or her, and has established that there has been

violation of the provisions of this Act or its Regulations, require a person in default to take corrective action to comply with, and prevent further violation of the provisions of this Act and its Regulations.

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

(6) The trial of an offence under this Act with a term of imprisonment shall be by a court of competent jurisdiction.

(7) Despite the generality of the provisions of subsection (1), the Director-General may investigate a holder of an aviation document if he or she—

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

(8) If the Director-General is satisfied after such investigation that a person is violating any provisions of this Act, Regulations, Rules or Orders, as the case may be, he or she shall by order require that person to take such action consistent with the provision of this Act, Regulations, Rules or Orders as may be necessary in his or her opinion to prevent further violation of the provisions of this Act, Regulations, Rules or Orders.

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

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

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

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

- (a) confirm, set aside or vary the order or decision in question;
- (b) exercise any of the powers which could have been exercised by the Authority in the proceedings in connection with which the review is brought; or
- (c) make such other order as he or she may deem just and expedient.

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

Suspension or revocation of privileges of a licence.

32. Where the Director-General has reasonable grounds to believe that a violation of this Act, the regulations and any other rules made under the Act has occurred, he or she may in respect of the offending entity specified under section 30, make an order to detain, prohibit, suspend, revoke or vary the privileges of an aviation document issued by the Authority.

Delegation by the Director-General.

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

(2) Subject to any general or special direction given or condition attached by the Director-General, a person to whom any powers are delegated under this section may exercise those powers in the same manner and with the same effect as if they had been conferred on him or her directly by this section and not by delegation.

(3) Every person purporting to act pursuant to any delegation under this section shall be presumed to be acting within the terms of the delegation in the absence of proof to the contrary.

(4) Any delegation under this section may be made to a specified person or to persons of a specified class or may be made to the holder or holders for the time being of a specified public office or class of public officers.

(5) Every delegation under this section shall be revocable at will and no such delegation shall prevent the exercise of any power by the Director-General.

(6) Any such delegation shall, until revoked, continue in force according to its tenure, despite the fact that the Director-General by whom it was made may have ceased to hold office and shall continue to have effect as if made by the person for the time being holding office as Director-General.

Appointment of Corporation Secretary.

34. (1) There shall be a Corporation Secretary who shall be appointed by the Board on such terms and conditions as the Board may determine and who shall perform such duties as the Board may, from time to time, assign.

(2) In the performance of his or her duties under this Act, the Corporation Secretary shall be functionally responsible to the Board and administratively responsible to the Director-General.

Staff of the Authority.

35. (1) The Director-General may appoint such staff of the Authority as are necessary for the proper discharge of the functions of the Authority under this Act upon such procedures, terms and conditions of service as the Board may determine and review from time to time.

(2) The Board may review salaries, remuneration and wages of the staff of the Authority from time to time upon receipt of advice from the Salaries and Remuneration Commission.

Protection from personal liability.

36. (1) An action or thing done by a member of the Board or by any officer, employee or agent of the Authority shall not, if the action or thing is done in good faith for executing the functions, powers or duties of the Authority under this Act, render the member, officer, employee or agent or any person acting on their direction personally liable to any action, claim or demand whatsoever.

(2) The provisions of subsection (1) shall not relieve the Authority of the liability to pay compensation or damages to any person for any injury to the person, his or her property or any of the person's interests caused by the exercise of any power conferred by this Act or any other written law or by the failure, whether wholly or partially, of any works.

Principles of operation.

37. The Authority shall perform its functions in accordance with sound financial principles and shall ensure, as far as reasonably practicable, that expenditure of the Authority is properly charged to its revenue.

**PART III—SAFETY AND SECURITY OF AIRCRAFT
AND PERSONS ON BOARD**

Imperiling,
permitting or
interfering with the
safety and security
of aircraft and
persons on board.

- 38.** (1) A person shall not wilfully or negligently—
- (a) imperil the safety and security of an aircraft or any person on board, whether by interference with any crew of the aircraft or by tampering with the aircraft or its equipment, or by disorderly conduct or by any other means;
 - (b) cause or permit an aircraft to endanger any person or property; or
 - (c) interfere or tamper with an air navigation facility.
- (2) A person who contravenes the provisions of subsection (1) commits an offence and shall on conviction, be liable, to a fine not exceeding four million shillings or imprisonment for a term not exceeding two years or both.

Documents to be
carried on board.

- 39.** (1) A person shall not fly an aircraft within the airspace of Kenya or if the aircraft is registered in Kenya, engage in international air navigation unless the following documents are carried on board—
- (a) a certificate of registration;
 - (b) a valid certificate of airworthiness;
 - (c) a valid personnel licence or certificate of each flight crew member;
 - (d) the journey logbook;
 - (e) the aircraft radio licence;
 - (f) the passengers list or the cargo manifest, if carried;
 - (g) the flight manual;
 - (h) in case of a commercial flight, the air operator certificate; and
 - (i) any other document as prescribed by the Authority.

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

Prohibited, restricted or danger areas.

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

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

Being under the influence of psychoactive substances in aircraft or while on duty.

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

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

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

Requirement for drug and alcohol testing system.

42. (1) An organization with safety sensitive persons shall have an effective drug and alcohol testing system approved by the Authority.

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

Exemption by the Director-General.

43. (1) The Director-General may grant exemption or special authorisation on any civil aviation matter upon an application by a holder of an aviation document or any authorisation, as the case may be, on such terms and conditions as may be necessary, with respect to the application of any regulations made under this Act.

(2) Despite subsection (1), an exemption granted under this Act, shall be in the public interest and shall not compromise aviation safety and security standards.

(3) Without limiting the provisions of subsection (1), exemptions shall be issued in accordance with the procedure prescribed.

PART IV—POWERS AND RESPONSIBILITIES OF THE CABINET SECRETARY

Powers of the
Cabinet Secretary.

44. (1) The Cabinet Secretary shall for purposes of this Act, provide the policy framework within which the Authority shall operate.

(2) Despite the generality of subsection (1), the Cabinet Secretary may—

- (a) give directions of a general nature to the Board regarding the operations of the Authority;
- (b) approve alterations in the tariffs, rates, fees and any other charges levied for the services and facilities provided by the Authority;
- (c) approve any individual capital work for the purposes of the Authority, whose estimated cost exceeds prescribed limits set by the Cabinet Secretary, from time to time; and
- (d) from time to time and in writing, either generally or particularly, delegate to the Director-General any of the powers, exercisable by him or her under any written law.

(3) The powers delegated under subsection (2)(d) may be exercised by the Director-General in the same manner as if they had been conferred on him or her directly by this section but subject to any direction given or condition attached by the Cabinet Secretary.

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

(5) Any such delegation under this section shall, unless revoked, continue in force according to its tenure, after the Cabinet Secretary by whom it was made, ceases to hold office.

Responsibilities of
the Cabinet
Secretary.

45. The Cabinet Secretary shall be responsible for—

- (a) civil aviation policies;
- (b) the establishment and review of air services agreement in an open and transparent manner; and
- (c) submission of variations to international standards and recommended practices and any amendment or other international conventions and protocols, relating to civil aviation that Kenya is party to.

Inspection and assessment.

- 46.** (1) The Cabinet Secretary shall assess and audit the performance standards of the functions of the Authority to ensure that they meet prescribed international standards at such time intervals as he or she may consider desirable.
- (2) The Cabinet Secretary may appoint audit inspectors to carry out the assessment and audit referred to in subsection (1).
- (3) The audit inspectors appointed under subsection (2) shall have unhindered access to all records, information, facilities and installations and to any explanation that may be required in the course of their duties.
- (4) The Cabinet Secretary may, on the advice of any audit inspector, take appropriate action to ensure that noted safety and security deficiencies are corrected and appropriate standards are maintained.

PART V—INVESTIGATION OF AIRCRAFT ACCIDENT AND SERIOUS INCIDENT

Establishment of the Aircraft Accident Investigation Department.

- 47.** (1) There is established an Aircraft Accident Investigation Department domiciled in the ministry responsible for matters relating to aviation.
- (2) The Aircraft Accident Investigation Department shall have independence and unrestricted authority over the conduct of investigations of aircraft accidents and serious incidents.
- (3) The investigation of an aircraft accident or incident under this Act shall be for the purposes of prevention of aircraft accidents and incidents and not to apportion blame or liability.
- (4) The Aircraft Accident Investigation Department shall—
- (a) investigate aircraft accidents and serious incidents involving civil aircraft occurring in territory of Kenya;
 - (b) formulate policies and procedures relating to investigations of aircraft accidents and serious incidents;
 - (c) notify the following of aircraft accidents and serious incidents—
 - (i) State of registry;
 - (ii) State of operator;
 - (iii) State of design;
 - (iv) State of manufacture; or

- (v) the International Civil Aviation Organization, where the aircraft involved is of maximum mass of over 2250kgs or is a turbojet-powered aeroplane;
- (d) provide technical advice to the government on matters relating to aviation safety and aircraft accident and serious incident investigations;
- (e) participate in the activities of the State Safety Programme;
- (f) in coordination with the Authority, establish and maintain an accident and incident database to facilitate the effective analysis on actual and potential safety deficiencies and to determine any preventive actions required;
- (g) issue and disseminate aircraft accident and serious incident investigation reports;
- (h) ensure international and regional cooperation in aircraft accident and serious incident investigations;
- (i) coordinate with other national and international agencies on matters relating to aircraft accident and serious incident investigation;
- (j) establish and implement programs for the prevention of aircraft accidents and serious incidents; and
- (k) perform such other functions as may from time to time be conferred to it by the Cabinet Secretary or by any other written law.

(5) The Aircraft Accident Investigation Department may, by mutual consent and with the approval of the Cabinet Secretary, delegate either in whole or part the conduct of aircraft accident or serious incident investigation to another State or a regional accident and serious incident investigations organization.

Appointment of
aircraft accident
investigators.

48. (1) The Cabinet Secretary shall for the purposes of investigations under this Act and through a notice in the *Gazette*, appoint aircraft accident investigators.

(2) The Cabinet Secretary shall designate two persons appointed under subsection (1) to be a chief investigator and deputy chief investigator, respectively.

(3) A person appointed as an investigator under subsection (1) shall possess the relevant technical qualifications and experience in aviation.

(4) A person appointed as a chief investigator under subsection (1), shall—

- (a) formulate and implement policies and procedures to be followed in the conduct of aircraft accidents and serious incidents investigations;
- (b) institute investigations into the circumstances of aircraft accidents and serious incidents; and
- (c) conduct, where applicable, investigations as investigator-in-charge or designate an investigator-in-charge for each investigation.

(5) A person appointed as an investigator under this section, shall not be compelled to appear as a witness in any judicial, administrative or disciplinary proceedings related to apportioning blame or liability as part of aircraft accident or serious incident investigations conducted under this Act.

Accident and serious incident investigation procedure.

49. (1) Where the whole or any part of the investigation is carried out in Kenya, the chief investigator shall have—

- (a) unhampered access to and unrestricted control over the scene of the accident or serious incident, including the wreckage and any material relevant to the investigation;
- (b) the power to secure and preserve the scene of the accident;
- (c) free and unhampered access to and unrestricted control over all relevant materials and evidence, including flight recorders and Air Traffic Services records; and
- (d) unhindered access to carry out detailed examination of relevant material or evidence without delay.

(2) The investigator-in-charge shall on completion of the aircraft accident investigations, submit a final report of the findings to the Cabinet Secretary for publication in the *Gazette*.

(3) The report referred to under subsection (2) shall not be admissible as evidence in a court of law or used in any suit or action for damages arising out of any matter mentioned in such reports.

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

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

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

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

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

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

- (a) furnish the information in writing signed by the person served, and in the case of a body corporate, signed by a competent officer of the body corporate;
- (b) produce documents; and
- (c) give evidence.

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

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

(10) Any information, document or evidence provided under subsection (9), shall not be admissible.

(11) A person who, without lawful excuse, refuses or fails to comply with a summon under this section commits an offence and shall on conviction is liable to a fine of not less than—

- (a) two hundred thousand shillings in the case of an individual; or
- (b) five hundred thousand shillings in any other case.

(12) Where the chief investigator has reason to believe that a person is in possession or control of any information or document which may assist in the performance of an investigation and that person has refused or failed to supply such information or document, the chief investigator may apply to the Tribunal

for issuance of a warrant authorising a police officer to enter into any premises believed to contain or into which a document is kept or hidden and conduct search and make copies or take extracts of documents.

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

Non-disclosure.

50. (1) An investigator or any other person shall not circulate, publish or grant access to—

- (a) draft final report or any part of the report;
- (b) cockpit voice recordings, airborne image recordings, audio recordings and any transcripts intended for use of accident and serious incident;
- (c) records from interviews with persons by the Aircraft Accident Investigation Department in the course of the investigation;
- (d) communications between persons having been involved in the operation of the aircraft;
- (e) medical or private information regarding persons involved in the accident or serious incident;
- (f) recordings and transcripts of recordings from air traffic control units;
- (g) analysis of and opinions about information, including flight recorder information made by the Aircraft Accident Investigation Department and accredited representatives in relation to the accident or serious incident;
- (h) any documents obtained during an investigation of an accident or serious incident, without the express consent of the Aircraft Accident Investigation Department, unless such reports or documents have already been published; and
- (i) any other relevant record obtained or generated in the course of aircraft accident or serious incident investigation.

(2) For purposes of this section, “draft final report” means a draft investigation report that is shared by Aircraft Accident Investigation Department, in confidence to States and other organizations involved in the investigation, inviting their significant and substantiated comments on the report.

(3) Records and materials under this section shall not be made available for any other purpose other than accident or serious incident investigation, unless a court of competent jurisdiction or the Tribunal, in accordance with national laws, determines that their disclosure or use is in the public interest.

Protection of accident sites from unauthorized person.

51. (1) An investigator-in-charge shall, in coordination with the relevant agencies, secure the perimeter of an accident site.

(2) A person who without permission from the investigator-in-charge, enters the accident site or remains on the accident site while the perimeter is secured, commits an offence and shall on conviction be liable to fine not exceeding five hundred thousand shillings or imprisonment for a term not exceeding one year.

(3) Subsection (2) shall not apply where a person enters the accident site, or remains on the accident site to—

- (a) ensure the safety of persons, animals or property;
- (b) extricate deceased persons or animals from the accident site;
- (c) move an aircraft, or the wreckage of an aircraft or its part, to a safe place; or
- (d) protect the environment from significant damage or pollution.

PART VI—PROVISIONS RELATING TO PROHIBITIONS, OFFENCES AND EXEMPTIONS

Restriction of building in declared areas.

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

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

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

Obstacle and wildlife hazard management on or near aerodromes.

53. (1) A person shall, unless authorized by the Authority, not cause or permit the—

- (a) erection or growth of an obstacle on, around or in the vicinity of an aerodrome; or
- (b) development of facilities or engage in activities likely to attract wildlife on, around or vicinity of an aerodrome.

(2) If the Director-General considers that provisions for civil aviation safety and security or efficiency of air navigation ought to be made—

- (a) whether by lighting or otherwise for giving aircraft warning of the presence of any building, structure, tree or natural growth or formation on or in the vicinity of an aerodrome; or
- (b) by the removal of obstacles or reduction in height of any such obstruction or surface, he or she may by order, and subject to any conditions specified in the order, require or authorise either the owner or occupier of the land on which the obstacle is situated or any person acting on behalf of the Director-General to enter upon the land and carry out such work as is necessary to enable the warning to be given or the obstacle to be reduced in height.

(3) Where an owner fails to remove an obstacle as specified in subsection (2) within the time directed by the Authority, the Authority shall institute measures in conjunction with the appropriate government agencies to have the obstacle removed at the cost of the owner.

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

(5) The Director-General shall take into consideration any representations with respect to the proposed order under subsection (2) which may, within such period not being less than two months after the publication of the notice as may be specified in the order, be made to him or her by any person appearing to him or her to have an interest in any land which would be affected by the order, and at the end of that period the order may, subject to the provisions of this section, be made with such modifications, if any, of the original draft as the Director-General thinks proper.

(6) Every order made under subsection (2) shall provide that—

- (a) no work shall be executed on any land under the order until a period of at least fourteen days has elapsed from the date of publication; and

- (b) such compensation shall be paid to any person who had legally acquired the particular land or having an interest in land affected by the order for any loss or damage which that person may suffer in consequence of the order as may be agreed between that person and the Director-General, or, in default of agreement, as may be determined by an arbitrator having regard to the public interest.

(7) A person who —

- (a) wilfully interferes with any works or things which to the knowledge of that person are executed or placed in, on or over land under an order under subsection (2); or
- (b) wilfully obstructs a person in the exercise of any powers conferred by such order or;
- (c) wilfully disobeys or fails to comply with any order made under subsection (2),

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

(8) A person who is aggrieved by an action, order or condition set out by the Authority under the subsection (2) may lodge an appeal to the Tribunal.

Nuisance and liability for damage.

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

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

(3) Despite subsection (1), where such material loss or damage is caused in circumstances in which—

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

(b) a legal liability is created in some person other than the owner to pay damages in respect of such loss or damage, the owner shall be entitled to be indemnified by that other person against any claim in respect of such loss or damage.

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

Nuisance caused by aircraft and aerodromes.

55. (1) Regulations made under section 104 may provide for the conditions under which noise and vibration may be caused by aircraft and may provide that subsection (2) of this section shall apply to any aerodrome concerning which provision as to noise and vibration is so made.

(2) An action shall not lie in respect of nuisance by reason only of the noise and vibration caused by aircraft on an aerodrome to which this subsection applies by virtue of regulations made under section 104 so long as the provisions of any such regulations are complied with.

Flying from unmanned aerodrome.

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

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

Dangerous flying.

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

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

Use of weapons
against civil aircraft.

58. (1) A person shall not use any weapon against civil aircraft in flight and in case of interception of civil aircraft in flight, lives of persons on board and safety of aircraft shall not be endangered.

(2) Despite subsection (1), where an unauthorized civil aircraft is flown above the territory of Kenya, or if there are reasonable grounds to believe that the aircraft is being used for any purpose inconsistent with the provisions of this Act, or any convention to which Kenya is party to, the Authority may require the aircraft to—

- (a) land at any airport within Kenya; or
- (b) comply with any instruction given for the purpose of bringing to an end such violation, and for this purpose, Kenya may resort to an appropriate means consistent with relevant rules of international law, the provisions of this Act and the regulations made thereunder regarding interception of civil aircraft.

(3) Every aircraft irrespective of the State of registry shall comply with an order given in pursuant to this section and to the provisions of any regulations made thereunder.

(4) A person who contravenes the provisions of this section commits an offence and shall on conviction be liable to a fine not exceeding five million shillings or to a term not exceeding three years, or to both.

Aircraft piracy.

59. (1) A person shall not commit or attempt to commit aircraft piracy, either while the aircraft is in flight or not in flight within the jurisdiction of Kenya.

(2) A person who contravenes this section commits an offence and shall on conviction, be liable to a fine not exceeding five million shillings or to imprisonment for a term not exceeding three years, or to both.

Interference with air
navigation.

60. A person who intentionally and wilfully—

- (a) interferes or attempts to interfere with air navigation services within the territory of Kenya;
- (b) vandalizes navigation related equipment or system;
- (c) produces, causes to be produced, exhibits or attempts to exhibit within the territory of Kenya—
 - (i) any light, signal, or communication at such place or in such manner that is likely to be mistaken for a true light or signal

established pursuant to this Act or regulations made thereunder;
or

- (ii) a false light or signal in connection with an airport or other air navigation facility; or
 - (iii) such light, signal, or communication referred to under subparagraphs (i) and (ii) after due warning by the Director-General and continues to maintain any such misleading light, signal or communication;
- (d) removes, extinguishes, or interferes or attempts to remove, extinguish or interfere with the operation of any such true light, signal or communication,

commits an offence and shall on conviction be liable to a fine of two million shillings, or to a term of imprisonment not exceeding one year, or to both.

Dangerous goods.

61. A person who—

- (a) delivers or transports, attempts to deliver or transport, or causes to be delivered or transported, cargo, baggage, or other property to an air operator for commercial air transport;
- (b) offers or accepts, or attempts to offer or accept shipment of cargo, baggage or other property for civil air transport, whether originating or arriving in international flights to or from Kenya, or for flights within Kenya,

in contravention of the provisions of this section or Regulations, commits an offence and shall on conviction, be liable to a fine not exceeding five million shillings or to a term of imprisonment for a period not exceeding three years, or both.

False or misleading aircraft markings.

62. A person who displays or causes to be displayed on any aircraft any marks or impressions that are false or misleading as to the nationality or registration of the aircraft commits an offence and shall on conviction, be liable to a fine not exceeding one million shilling or to a term of imprisonment not exceeding six months, or to both.

Operations of unmanned aircraft systems.

63. (1) A person shall not fly or cause to be flown an aircraft capable of being flown without a pilot on board, over the territory of Kenya without authorization by the Authority and in accordance with the terms of such authorization.

(2) A person who contravenes the provisions of this section commits an offence and shall on conviction be liable to a fine not exceeding one million shillings or to a term of imprisonment not exceeding six months, or to both.

Radio transmitting apparatus.

64. A flight crew shall not, when operating an aircraft registered in Kenya, carry radio transmitting apparatus, unless such flight crew holds a valid licence to install and operate such apparatus issued by the Authority in accordance with regulations made under this Act.

Issuance and compliance with the rules of the air.

65. (1) The Authority shall issue rules of the air governing the manoeuvre of an aircraft in flight applicable within the territory of Kenya, provided that such rules shall to the extent possible, be consistent with those established, from time to time, under the Convention.

(2) A person shall not, within the territory of Kenya, fly or manoeuvre an aircraft registered in Kenya wherever it may be, or an aircraft registered in another country, except in accordance with the rules and regulations relating to the flight and manoeuvre of aircraft issued under this section.

(3) A pilot-in-command in charge of an aircraft commits an offence punishable under this Act or regulations made thereunder where he or she violates—

- (a) the Kenyan rules of the air when flying any aircraft over or in Kenyan airspace;
- (b) rules of the air of a foreign state when flying an aircraft registered in Kenya over or in the airspace of that state; or
- (c) such rules of the air as established under the Convention when flying an aircraft registered in Kenya over the airspace of the high seas.

(4) A person who contravenes the provisions of this section commits an offence and shall be liable to a penalty not exceeding two million shillings.

Reporting and record keeping violations.

66. (1) An air operator, approved training organisation, approved maintenance organization, aerodrome operator or any other person or organization involved in civil aviation activities who intentionally and wilfully fails or refuses to—

- (a) submit a report to the Director-General as required; or
- (b) maintain accounts, records, files or any other document pertaining to the activities of its respective civil aviation activities,

commits an offence and shall on conviction, be liable to a fine not less than one million shillings or to a term of imprisonment not exceeding six months, or to both.

Exemption from seizure of certain aircraft on patent claims.

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

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

(3) Despite subsection (2), this subsection shall not apply in relation to any spare parts or spare equipment, which are sold or distributed in Kenya or are, exported for sale or distribution.

(4) This section shall apply to—

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

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

Detention of aircraft.

68. The Cabinet Secretary may make regulations under this Act to provide for the detention of an aircraft to secure compliance.

Jurisdiction.

69. (1) An offence under this Act or Regulations made under this Act and an offence committed on board a Kenyan aircraft shall, for purposes of conferring jurisdiction, be deemed to have been committed in any place within Kenya irrespective of the place where the person is, may be tried in Kenya.

(2) An offence under this Act or Regulations made under this Act and committed on board a foreign registered aircraft flying in the territory of Kenya may, for purposes of conferring jurisdiction, be tried in Kenya.

Liability of Directors and

70. Where an offence under this Act is committed by a body corporate, every person who at the time of the commission of the offence was a Director, partner of the body corporate, or acting or purporting to act in management of its

officers of body
corporate.

affairs, shall be liable to a penalty prescribed for that offence, unless that person proves that—

- (a) the act or omission constituting the offence took place without his or her knowledge, consent or connivance; or
- (b) he or she exercised all such diligence to prevent the commission of the offence as he ought to have exercised having regard to the nature of his or her functions in that capacity and to all the circumstances.

PART VII—THE NATIONAL CIVIL AVIATION ADMINISTRATIVE REVIEW TRIBUNAL

Establishment of a
Tribunal.

71. (1) There is established the National Civil Aviation Administrative Review Tribunal.

(2) The Tribunal established under subsection (1) shall consist of—

- (a) a Chairperson;
- (b) a person representing the public interest; and
- (c) four other persons with management and technical experience of not less than ten years in the field of civil aviation,

appointed competitively by the Judicial Service Commission

(3) A person shall be qualified for appointment as the Chairperson of the Tribunal under subsection (2), if that person—

- (a) is a Kenyan citizen;
- (b) holds a degree in law from a university recognized in Kenya and is an advocate of the High Court of Kenya;
- (c) has not less than ten years' post-qualification experience; and
- (d) Meets the requirements of Chapter Six of the Constitution.

(4) A person shall be qualified for appointment as a member of the Tribunal under subsection (2), if that person—

- (e) is a Kenyan citizen;
- (f) holds a degree from a university recognized in Kenya; and

(g) Meets the requirements of Chapter Six of the Constitution.

(5) In nominating and appointing the chairperson and members of a Tribunal under this section, the Judicial Service Commission shall ensure that the appointment reflects the regional diversity of the people of Kenya.

6) The members of the Tribunal shall elect a vice-chairperson amongst themselves and the chairperson and the vice-chairperson shall be of the opposite gender.

(7) A person shall not be qualified for appointment as a Chairperson or a member of a Tribunal if the person –

- (a) is of unsound mind;
- (b) is an undischarged bankrupt;
- (c) is convicted of an offence and is sentenced to a term of imprisonment for a period of six months or more;
- (d) is an employee of a government agency whose decisions are a subject of appeal in the respective Tribunal; or
- (e) has been removed from any office for gross violation of the Constitution or any other written law

Tenure and vacation
of office.

72. (1) The Chairperson and members of the Tribunal, shall hold office for a term of five years and may be eligible for re-appointment for a single further term of five years.

(2) The Judicial Service Commission shall appoint members at different times to ensure continuity in the affairs of the Tribunal.

(3) A Chairperson or member of the Tribunal shall serve on full or part time basis as determined by the Judicial Service Commission

(4) A Chairperson or member of the Tribunal serving on a full time basis shall not hold any other public office.

(5) The office of the Chairperson or member of the Tribunal, shall become vacant—

- (a) at the expiration of the term of office;
- (b) if he or she accepts any office the holding of which, would give rise to the existence of a conflict of interest with his or her membership to the Tribunal;
- (c) if he or she is removed from membership of the Tribunal by the Judicial Service Commission, upon findings of an inquiry determining his or her failure to discharge the functions of his or her office whether arising

from infirmity of body or mind or from any other lawful cause or for misbehaviour;

- (d) if he or she resigns the office of member of the Tribunal;
- (e) upon death;
- (f) upon conviction for an offence and is sentenced to a term of imprisonment for a period of six months or more;
- (g) if in the case of a member is absent from three consecutive meetings of the Tribunal without permission of the Chairperson and in the case of the Chairperson, is absent from three consecutive meetings of the Tribunal without permission of the Chief Registrar; or
- (h) upon removal from office on any of the following grounds:
 - (i) gross violation of the Constitution or any other written law
 - (ii) gross misconduct or misbehaviour
 - (iii) inability to perform functions of the office arising out of physical or mental infirmity;
 - (iv) incompetence or neglect of duty; or
 - (v) bankruptcy.

(6) The Chairperson and members of the Tribunal shall be paid such allowances as may be approved by the Judicial Service Commission.

Secretary to
Tribunal.

73. The Tribunal shall have a Secretary who shall—

- (a) be appointed by the Judicial Service Commission;
- (b) hold office on the terms and conditions specified in the letter of appointment;
- (c) be responsible for the day to day affairs of the Tribunal and be answerable to the Tribunal in the performance of his or her functions; and
- (d) perform any other functions determined by the Tribunal.

Jurisdiction of the
Tribunal.

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

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

- (b) the imposition of any condition, limitation or restriction on a licence under this Act or regulations made under the Act;
- (c) any revocation, suspension or variation of a licence under this Act or regulations made thereunder;
- (d) any amount of money which is required to be paid as a fee under this Act or regulations made thereunder;
- (e) the imposition of any order or direction by the Authority under this Act or regulations;
- (f) consumer protection compliance and enforcement activities related to areas such as right violations, unfair and deceptive practices and unfair competition by air carriers and travel agents, deceptive airline advertising including fare, on-time performance, schedule, code sharing, and violations of rules concerning denied boarding compensation, ticket refunds, baggage liability requirements, flight delays and charter flights; or
- (g) any exercise of powers to make decisions, but not powers in respect of staff employment, granted to the Director-General or the Authority under this Act or regulations.

Proceedings of
Tribunal.

- 75.** (1) A party who is dissatisfied with a decision from the Authority may appeal to the Tribunal within thirty days of the decision.
- (2) The Tribunal shall sit at such times and in such places as it may determine and publish in the *Gazette*.
 - (3) The proceedings of the Tribunal shall be open to the public save where the Tribunal, for good cause, otherwise directs.
 - (4) Except as expressly provided in this Act or any regulations made thereunder, the Tribunal shall regulate its proceedings as it deems fit.
 - (5) A person who is party to the proceedings before the Tribunal may appear in person or be represented by an advocate of the High Court.

Powers of the
Tribunal.

- 76.** (1) The Tribunal shall have the power to—
- (a) summon witnesses, take evidence on oath or affirmation and order the production of documents; or
 - (b) summon expert evidence as may be necessary.

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

Award of Tribunal.

77. (1) The Tribunal may—

- (a) award damages;
- (b) confirm, set aside or vary the order or decision in question; or
- (c) make an order for the maintenance of the status quo of any matter or activity which is the subject of a complaint or appeal before it until the complaint or appeal is determined.

(2) The Tribunal shall have the power to award costs of any proceedings before it and may direct that the costs be taxed in accordance with any scale prescribed for suits in the High Court or to award a specific sum as costs.

(3) Where the Tribunal awards costs in an appeal, it shall, on application by the person to whom the cost is awarded, issue to him or her a certificate stating the amount of the costs.

(4) Every certificate issued under subsection (3) may be filed in the High Court by the person in whose favour the cost has been awarded and upon being so filed, shall be deemed to be a decree of the High Court and may be executed as such.

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(5) The Chief Justice may make rules governing the making of appeals and providing for the fees to be paid, the scale of costs of any such appeal, the procedure to be followed and the manner of notifying the parties and until such rules are made, and subject thereto, the provisions of the Civil Procedure Act shall apply.

(6) Upon any appeal to the Tribunal under this section, the status quo of any matter or activity, which is the subject of the appeal, shall be maintained until the appeal is determined.

(7) All summons, notices or other documents issued under the hand of the Chairperson of the Tribunal shall be deemed to be issued by the Tribunal.

Appointment of experts.

78. The Chairperson of the Tribunal, may in consultation with the members of the Tribunal, appoint in writing a person with special skills or knowledge on aviation issues which are the subject matter of any proceedings or inquiry before the Tribunal to act as expert in an advisory capacity in any case where

it appears to the Tribunal that such special skills or knowledge are required for proper determination of the matter.

Contempt of Tribunal.

79. A person who—

- (a) fails to attend the Tribunal after being summoned by the Tribunal to do so;
- (b) refuses to take oath or affirmation before the Tribunal, or being a public officer refuses to produce any article or document when lawfully required to do so by the Tribunal;
- (c) knowingly gives false evidence or information which he knows to be misleading before the Tribunal; or
- (d) at any sitting of the Tribunal—
 - (i) wilfully insults any member or officer of the Tribunal; or
 - (ii) wilfully interrupts the proceedings or commits any contempt of the Tribunal;
- (e) fails or neglects to comply with a decision order, direction or notice confirmed by the Tribunal, commits an offence under this Act and shall conviction, be liable to a fine not exceeding fifty thousand shillings or imprisonment to a term not exceeding three months, or to both.

Quorum.

80. (1) The quorum of a Tribunal shall be three members.

(2) The Chairperson shall preside at all sittings of the Tribunal at which the Chairperson shall be present and in the absence of the Chairperson, the Vice-Chairperson shall preside and in the absence of the Vice-Chairperson, the members shall nominate one of their own.

Disclosure of interest.

81. A member of the Tribunal who has a direct interest in any matter that is the subject of the proceedings before the Tribunal shall disclose, in writing, the nature of that interest and shall not participate in the deliberations of the Tribunal in respect of that matter.

Power to review own decision

82. A person who is aggrieved by a decision of the Tribunal for which no appeal has been preferred, may apply for a review of the decision to the Tribunal, and the Tribunal may make such order thereon as it thinks fit.

Appeal.

83. (1) A person aggrieved by a decision or order of the Tribunal under this Act, may, within thirty days of such decision or order, appeal against such decision or order to the High Court.

(2) A decision or order of the Tribunal shall be enforced forthwith except where an appeal has been lodged or commenced provided that the lodging or commencing of an appeal shall not on its own, operate as a stay.

(3) Upon the hearing of an appeal under this section, the High Court may—

- (a) confirm, set aside or vary the decision or order in question;
- (b) remit the proceedings to the Tribunal with such instructions for further consideration, report, proceedings or evidence as the Court may deem fit to give;
- (c) exercise any of the powers which could have been exercised by the Tribunal in the proceedings in connection with which the appeal is brought; or
- (d) make such other order as it may deem just, including an order as to costs of the appeal or of earlier proceedings in the matter before the Tribunal.

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

Protection from liability.

84. (1) The Chairperson or a member of the Tribunal shall not be liable to be sued in a civil court for an act done or omitted to be done or ordered to be done by them in the discharge of their duty as members of the Tribunal, whether or not within the limits of their jurisdiction.

(2) The protection from liability referred to under subsection (1), shall not apply unless the person acted in good faith and the act complained of, was undertaken within the jurisdiction of the Tribunal.

PART VIII—FINANCIAL PROVISIONS

Funds of the Authority.

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

- (a) any monies appropriated by Parliament for purposes of the Authority;
- (b) monies that may accrue to the Authority in the discharge of its functions;
- (c) the rates, charges, dues, or fees levied by the Authority under this Act;
- (d) interest on savings made by the Authority;

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- (e) a prescribed portion of the proceeds from the charge collected under the Air Passenger Service Charge Act;
- (f) such sums as may be payable to the Authority pursuant to this Act or any other written law, or pursuant to any gift or trust; and
- (g) all monies from any other source provided, donated or lent to the Authority.

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

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

(4) The government may provide appropriations to meet operating deficits and capital funding of the Authority.

Commercial ventures.

86. The Authority may, with a written approval of the Cabinet Secretary responsible for matters relating to finance—

- (a) subscribe to or purchase shares, debentures or other securities of a company;
- (b) form a company that would be a subsidiary of the Authority; and
- (c) enter into partnership with any body, organisation or enterprise whose objectives are compatible with the purposes for which the Authority has been established.

Annual estimates.

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

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

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

- (d) the proper maintenance, repair and replacement of the equipment and other movable property of the Authority;
- (e) the creation of such reserve funds to meet future or contingent liabilities in respect of retirement benefits, insurance or replacement of buildings or equipment or in respect of such other matters pertaining to the Authority as the Board may decide;
- (f) the provision of air navigation services; and
- (g) the provision of personnel training.

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

(4) An expenditure shall not be incurred for purposes of the Authority except in accordance with the annual estimates approved under subsection (3) or in pursuance of an authorisation of the Cabinet Secretary.

Strategic plan.

88. (1) The Authority shall prepare a five-year strategic plan which shall be reviewed once in five years.

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

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

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

Borrowing powers.

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

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(2) The Authority may in line with principles of public finance management as set out in the Constitution and the Public Finance Management Act, borrow money or obtain credit in Kenya or abroad for carrying out its functions with

the concurrence of and subject to such limitations as may be set out by the Cabinet Secretary responsible for matters relating to finance.

(3) Stock issued under subsection (1), and such monies borrowed or credit obtained under subsection (2), for the purposes of this section, and all interest and other charges payable in respect of such stock or credit, shall, unless the instrument or note evidencing or supporting such borrowing shall otherwise provide, be charged upon all the property, undertakings and revenue of the Authority by operation of this section and without further charge or instrument.

(4) Any stock issued by the former Authority which, by virtue of an order made under subsection (3) becomes the liability of the Authority and shall, subject to the terms of such order, be deemed to be the stock issued by the Authority and shall be held in the same right and on the same powers, privileges, provisions and charges as those in, or subject to which such stock was issued.

(5) Except as provided in this section, the Authority shall not give or execute any mortgage or charge over any of its property by way of security for borrowed money.

(6) For purposes of this section “former Authority” means the Kenya Civil Aviation Authority established under the repealed Civil Aviation Act, No. 21 of 2013;

Financial year. **90.** The financial year of the Authority shall be the period of twelve calendar months ending on the thirtieth June in each year.

Accounts and audit. **91.** (1) The Board shall cause to be kept all proper books and records of the income, expenditure, assets and liabilities of the Authority.

(2) Within a period of three months after the end of each financial year, the Board shall submit to the Auditor-General the accounts of the Authority together with—

- (a) a statement of income and expenditure during that year;
- (b) a statement of the assets and liabilities of the Authority as at the last day of the financial year;
- (c) statement of changes in net assets during the year;
- (d) statement of cash flow for the financial year;
- (e) statement of comparison of budget and actual amounts;
- (f) notes to the financial statements; and

(g) or any other prescribed documents.

(3) The accounts of the Authority shall be audited by the Auditor-General in accordance with the Constitution and the Public Audit Act.

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(4) Despite anything in this Act, the Auditor-General may submit to the Cabinet Secretary a special report on any matters incidental to his or her powers under this Act, and relevant sections of the Public Audit Act shall apply, with necessary changes, to any report made under this section.

(5) The Cabinet Secretary shall lay the audit report before the National Assembly as soon as reasonably practicable after the report is submitted to him or her.

Annual report by the Authority.

92. The Director-General shall, within six months after the end of each financial year prepare a report of the operations of the Authority during that year and shall submit such report to the Cabinet Secretary, through the Board, who shall cause it to be presented to the National Assembly together with the report of the Auditor-General and certified copies of the accounts referred to in section 91(2).

Charges and fees.

93. (1) The Authority shall determine, set out, levy and collect charges—

(a) for any services performed by the Authority;

(b) for use of the facilities provided by the Authority; or

(c) for the grant of a certificate, licence or permit based on the transparent principle of cost recovery, principles of public finance management as set out in the Constitution and the Public Finance Management Act and subject to the approval by the Cabinet Secretary.

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(2) The schedule of charges shall be published in an Aeronautical Information Circular.

(3) The schedule of charges shall come into force on a date specified in the schedule, which shall be at least thirty days following publication in the Aeronautical Information Circular.

(4) If any amount due and payable under this section is not paid by any party after demand by the Authority and remains unpaid beyond the time specified for its payment, the Authority may—

(a) deny or withdraw a service, certificate, licence, approval or authorisation; or

(b) seize the aircraft or other property of the debtor after giving reasonable notice of the intention to seize the aircraft or property of the owner or operator of the aircraft and the Authority shall detain the aircraft or property for ninety days until payment is made in full.

(5) The Authority may at the end of the detention period referred to in subsection (4)(b) dispose of the aircraft or property through auction.

Establishment of Fund.

94. (1) There is established the Kenya Civil Aviation Authority Fund.

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(2) The funds of the Authority shall be held in the Fund which shall be administered, on behalf of the Authority, by the Director-General subject to the Public Finance Management Act.

Sources of the Fund.

95. There shall be paid into the Fund—

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

Payments out of Fund.

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

PART IX—GENERAL PROVISIONS

Compounding of offences.

97. (1) An employee of the Authority authorised by name in that behalf by the Director-General, may compound an offence under this Act or Regulations that does not attract a term of imprisonment.

(2) A penalty levied for an offence under this Act or Regulations made under it, shall be paid to the Authority.

(3) Where an offence is compounded in accordance with the provisions of subsection (1) and any proceedings are brought against the offender for the same offence, it shall be a defence for such offender to prove to the satisfaction

of the court that the offence with which he or she is charged has been compounded under subsection (1).

Contracting out.

98. The Authority may contract out any of its services provided that such contracting out shall not be deemed to be a surrender of the Authority's regulatory functions which may compromise the civil aviation's safety and security standards.

Limitation of actions.

99. Where an action or other legal proceeding is commenced against the Authority for any act done pursuant to, or execution or intended in execution of this Act or any public duty or authority, or in respect of any alleged neglect or default in the execution of this Act, or of any such duty of authority, the action or legal proceedings shall not lie or be instituted unless it is commenced within three years next after the act, neglect, omission or default complained of or in the case of a continuing injury or damage, within six months next after its cessation.

Restriction in the execution against property of the Authority.

100. Despite anything to the contrary in any law—

(a) where any judgment or order has been obtained against the Authority, no execution or attachment or process of that nature shall be issued against the immovable property of the Authority or any of its vehicles, vessels, aircraft or its other operational equipment, machinery, fixtures or fittings, but the Director-General shall cause to be paid out of the revenue of the Authority such amount as may, by the judgment or order or decree, be awarded against the Authority to the person entitled thereto;

(b) no immovable or movable property of the Authority or any of its assets or any vessels, vehicles, aircraft or its equivalent, machinery, fixture or fittings, shall be seized or taken by any person having by law, power to attach or distrain property without the previous written permission of the Director-General.

Recovery of debts.

101. All debts owed to the Authority under this Act shall be recoverable summarily.

Service of notice on the Director-General.

102. Any notice, summons, warrant, process or any other document required or authorised under this Act or any other law to be served on the Authority or the Director-General may be served—

(a) by delivering the notice or document to the Director-General or to any authorised employee;

(b) by leaving it at the office of the Director-General; or

(c) by sending it by registered post to the Director-General.

Consultation with users or departments.

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

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

Regulations.

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

(2) Despite the generality of subsection (1), the Cabinet Secretary may make regulations—

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

(i) for commercial transport; and

(ii) for aerial work;

(b) operationalization of the fund;

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

(d) prohibiting the flying of any aircraft—

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

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

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

(e) providing for the manner and conditions of issue, validation, renewal, extension or variation of any licence required in regulations

and for the form, custody, production, cancellation, suspension, endorsement and surrender of such;

- (f) providing for regulations for unmanned aircraft systems;
- (g) providing for the conditions under which and in particular the aerodromes to or from which, aircraft entering or leaving Kenya may fly and the conditions under which aircraft may fly from one part of Kenya to another;
- (h) providing for the conditions under which passenger and cargo may be carried by air and under which aircraft may be used for other commercial, industrial or gainful purposes, and for prohibiting the carriage by air of goods of such classes as may be prescribed;
- (i) providing for regulations for air ambulance
- (j) minimizing or preventing interference with the use or effectiveness of apparatus used in connection with air navigation and air navigation services and prohibiting or regulating the use of such apparatus and the display of signs and lights liable to endanger aircraft;
- (k) generally securing the safety, efficiency, and regularity of air navigation and safety of aircraft and of persons and cargo carried in the aircraft and for preventing aircraft endangering other persons;
- (l) requiring persons engaged in or in connection with meteorology to supply meteorological information for the purpose of air navigation;
- (m) regulating the making of signals and other communications by or to aircraft and persons carried in the aircraft;
- (n) subject to any other written law, prescribing a civil air ensign for Kenya and regulating the use of any other ensign established for purposes connected with air navigation;
- (o) prohibiting aircraft from flying over such areas in Kenya as the Cabinet Secretary may by order published in the Gazette declare to be prohibited areas;
- (p) prescribing the fees to be paid in respect of the issue, validation, renewal, extension or variation of any license, or the undergoing of any examination or test required by regulations made under this Act or any other matters in respect of which it appears to the Cabinet Secretary to be expedient to charge fees;

- (q) prescribing charges or enabling some other authority to prescribe charges to be paid in respect of air navigation services, regulatory services and providing for the recovery of such charges;
- (r) providing for consumer protection and any other related matter;
- (s) exempting any aircraft or persons or classes of aircraft or persons from the provisions of any regulations made under this Act;
- (t) providing for the investigation in such manner as may be prescribed, including by means of a tribunal established for the purpose, of any accident arising out of or in the course of air navigation and occurring either in or over Kenya or occurring elsewhere to Kenya aircraft;
- (u) prohibiting access to or interference with aircraft to which an accident has occurred, and authorizing any person, so far as may be necessary for the purpose of an investigation, to have access to, remove, take measures for the preservation of, or otherwise deal with any such aircraft;
- (v) requiring any person who owns an aircraft or who carries on the business of operating aircraft for hire or reward to furnish to such authorities as may be prescribed such information relating to the aircraft and its use, the crew, the mail, the passengers and the cargo carried, as may be prescribed;
- (w) providing for the licensing, inspection and regulation of aerodromes, access to places where aircraft, have landed or may land, access to aircraft factories or maintenance establishments or places where aircraft parts and engines are maintained, for the purpose of inspecting work carried on in relation to aircraft or parts of the aircraft;
- (x) providing for regulation of aircraft noise, aircraft engine emissions, carbon offsetting and reduction schemes for international aviation and aircraft carbon emissions;
- (y) providing regulations for issuance of aircraft certificate of airworthiness;
- (z) providing for regulations for rules of the air.
- (aa) regulating the firing of rockets;
- (bb) prohibiting or regulating in the vicinity of any aerodrome the emission or causing of smoke, soot, ash, grit, dust and any other substance whatever which obscures or may obscure visibility;

- (cc) controlling and regulating the selling of charters, booking of accommodation and selling of tickets for persons or cargo on flights in any part of the world;
- (dd) controlling and regulating aviation training institutions;
- (ee) the classification and use of airspace and the control and use of air routes and provisions of search and rescue facilities;
- (ff) the design, construction, repair, overhaul, maintenance, operation and use of aircraft, maintenance and repair of facilities and related equipment;
- (gg) the control and operation of the aircraft within or directly above the aerodrome for the purpose of limiting or mitigating the effect of noise;
- (hh) regulating aviation security operations and providing for security audits and inspections, tests of aircraft, aerodromes, regulated agents, catering operators and any pre-flight and post flight passenger processing and security operators;
- (ii) providing for the regulation of the safe transport of dangerous goods by air; and
- (jj) providing for the establishment of air accident and incident prevention programs.

PART X—REPEAL, SAVINGS AND TRANSITIONAL PROVISIONS

Repeal of Act No.
21 of 2013.

105. (1) The Civil Aviation Act is repealed.

(2) For purposes of this Part, “repealed Act”, means the Civil Aviation Act.

Savings and
transitional
provisions.

106. (1) A regulation or directive issued under the repealed Act, shall, upon commencement of this Act, continue to be in force, as if they were made under this Act, unless repealed, revoked or expire in accordance with their terms.

(2) A certificate or license issued under the repealed Act shall continue to be in force, as a certificate or license issued under this Act until expiry or unless the certificate or license is suspended or cancelled.

(3) All assets and liabilities of the body established under the repealed Act, shall on the commencement of this Act, be transferred to and vest in the Authority.

(4) An officer or a member of the Authority or Tribunal, working for a body established under the repealed Act, shall on the commencement of this Act be deemed to be an officer or a member of the Authority or Tribunal.

(5) Administrative decisions made by the institutions under the repealed Act which are in force immediately before the commencement shall, on or after such day, have force as if they were decisions made by the Institutions under this Act.

(6) Any proceedings pending before, a tribunal or a court of competent jurisdiction immediately before the commencement to which the institutions under the repealed Act was a party shall be continued as if the proceedings were instituted under the provisions of this Act.

(7) Subject to subsection (8), the Cabinet Secretary may, by order published in the Gazette, transfer to the Authority any property or asset belonging to the government which appears to him or her to be necessary or useful to the Authority for the performance of its functions under this Act, which property or asset shall vest in the Authority by virtue of the order and without further assignment.

(8) An order under subsection (7) may contain such incidental, consequential or supplemental provisions as the Cabinet Secretary thinks necessary or expedient.

FIRST SCHEDULE
[section 26(3)]

PROVISIONS RELATING TO THE MEETINGS OF THE BOARD OF DIRECTORS

- Special meeting. **1.** The Chairperson may call a special meeting of the Board of Directors at any time, where he or she considers it expedient for the transaction of the business of the Board of Directors.
- Notice. **2.** Other than a special meeting, or unless three quarters of members agree, at least ten days' written notice of every meeting of the Board of Directors shall be given to every member of the Board of Directors by the Corporation Secretary.
- Quorum. **3.** The quorum at a meeting of the Board of the Directors shall be six members excluding the Director-General.
- Presiding over meetings. **4.** The Chairperson shall preside at the meetings of the Board of Directors and in his or her absence, a member of the Board of Directors elected by the members present from among their number, shall preside.
- Decisions of the Board. **5.** The matters of the Board of Directors shall be decided by consensus, and upon failure, by a majority of the members present and voting and in the event of equality of votes, the person presiding shall have a casting vote.
- Vacancy or defect in appointment. **6.** The proceedings of the Board of Directors shall not be invalidated for reason of a vacancy among members or a defect in the appointment or qualification of a member.
- Procedure of meetings. **7.** Subject to the provisions of this Schedule, the Board of Directors may determine its own procedure and the procedure of any Committee of the Board of Directors and for attendance of any other persons at the meetings and may make regulations in that respect.

SECOND SCHEDULE
[section 29(3)(b)]

ESTABLISHMENT OF A SAFETY OVERSIGHT SYSTEM

The Director-General shall establish a Safety Oversight system and the State Safety Programme in accordance with the following critical elements (C-E)—

Primary aviation legislation (CE-1).

1. (1) This Act is promulgated as the primary aviation law consistent with the requirements contained in the Convention on International Civil Aviation, to enable the oversight and management of civil aviation safety and the enforcement of regulations through the relevant authorities or agencies established for that purpose.

- (2) This Act provides personnel performing safety oversight functions access to the aircraft, operations, facilities, personnel and associated records, as applicable, of individuals and organizations performing an aviation activity.

Specific operating regulations (CE-2).

2. Under section 104 of this Act, there is provision for the promulgation of subsidiary regulations to address, at a minimum, Kenya's requirements for standardized operational procedures, products, services, equipment and infrastructures in conformity with the Annexes to the Convention on International Civil Aviation.

State system and functions (CE-3).

3. (1) In discharge of State obligations, the Authority and the Aircraft Accident Investigation Department are established to undertake oversight functions in accordance with sections 7 and 59 respectively.

- (2) The Authority and the Aircraft Accident Investigation Department shall ensure that there is as appropriate, sufficient and qualified personnel to discharge the functions and supported by adequate financial resources in line with section 85 of the Act for the management of safety.

- (3) The Authority and the Aircraft Accident Investigation Department shall have their stated safety functions and objectives to fulfil their safety management responsibility and ensure that personnel performing safety oversight functions are provided with guidance that addresses ethics, personal conduct and the avoidance of actual or perceived conflicts of interest in the performance of official duties.

Qualified technical personnel (CE-4).

4. The Authority and the Aircraft Accident Investigation Department shall establish minimum qualification requirements for the technical personnel performing safety-related functions and provide for appropriate initial and

recurrent training to maintain and enhance their competence at the desired level.

Technical guidance, tools and provision of safety-critical information (CE-5).

5. (1) The Authority and the Aircraft Accident Investigation Department shall provide appropriate facilities, comprehensive and up-to-date technical guidance material and procedures, safety-critical information, tools and equipment, and transportation means, as applicable, to the technical personnel to enable them to perform their safety oversight functions effectively and in accordance with established procedures in a standardized manner.

(2) The Authority and the Aircraft Accident Investigation Department shall provide technical guidance to the aviation industry on the implementation of relevant regulations.

Licensing, certification, authorization and approval obligations (CE-6).

6. The Authority shall implement documented processes and procedures to ensure that individuals and organizations performing an aviation activity meet the established requirements before they are allowed to exercise the privileges of a licence, certificate, authorization or approval to conduct the relevant aviation activity.

Surveillance obligations (CE-7).

7. The Authority shall implement documented surveillance processes, by defining and planning and the Aircraft Accident Investigation Department shall ensure that identified safety issues inspections, audits and monitoring activities on a continuous basis, to proactively assure that aviation licence, certificate, authorization and approval holders continue to meet the established requirements. This includes the surveillance of personnel designated by the Authority to perform safety oversight functions on its behalf.

Resolution of safety issues (CE-8).

8. (1) The Authority and the Aircraft Accident Investigation Department shall use a documented process to take appropriate actions, up to and including enforcement measures, to resolve identified safety issues.

(2) The Authority shall ensure that identified safety issues are resolved in a timely manner through a system which monitors and records progress, including actions taken by individuals and organizations performing an aviation activity in resolving such issues.

THIRD SCHEDULE

[section 31(9)]

INFRINGEMENT NOTICES

Purpose of the Schedule.

- 1.** (1) The purpose of this Schedule is to—
 - (a) create a system of infringement notices for offences under the Act and the regulations made thereunder as an alternative to prosecution; and
 - (b) accord the Authority an opportunity to resolve aviation safety issues and security concerns to deter and prevent recurrence.
- (2) This Schedule does not—
 - (a) affect the liability of a person to be prosecuted for an offence if an infringement notice is not issued to the person for the offence;
 - (b) prevent the issue of two or more infringement notices to a person for an offence;
 - (c) affect the liability of a person to be prosecuted for an offence if the person does not comply with an infringement notice for the offence; or
 - (d) limit or otherwise affect the penalty that may be imposed by a court on a person convicted of an offence.

Fine payable.

- 2.** The fine for an offence payable under an infringement notice issued to the person for the offence is one half of the minimum fine that a court could impose on the person for the offence.

Issue of infringement notices.

- 3.** (1) The Authority may issue infringement notice under this Act and regulations made thereunder from time to time.
 - (2) Where an authorised person has reason to believe that a person has committed an offence, the authorised person may issue a notice, called an infringement notice, to the person for the offence.
 - (3) An authorised person who knowingly improperly issues an infringement notice, or who issues an infringement notice for any purpose other than to ensure aviation security and safety, commits an offence and is liable, on conviction, to a fine not exceeding five hundred thousand shillings or to imprisonment for a term not exceeding one year, or both.

Contents of
infringement
notice.

- 4.** (1) An infringement notice shall—
- (a) bear a serial number;
 - (b) state the name of the authorised person who issued it;
 - (c) state its date of issue;
 - (d) state the full name, or the surname and initials, and the address, of the person to whom it is issued;
 - (e) give brief details of the offence of which it is issued, including—
 - (i) the date and time of the offence;
 - (ii) where the offence happened;
 - (iii) the provision of these Regulations contravened;
 - (f) state the penalty for the offence payable under the notice;
 - (g) state where and how that penalty can be paid, including, if the penalty can be paid by positing the payment, the place to which it should be posted;
 - (h) state that if the person to whom it is issued (the recipient) pays the penalty within twenty-eight days after the day on which the notice is served, or any longer time allowed in writing by an authorised person, then, unless the infringement notice is subsequently withdrawn and any penalty paid refunded—
 - (i) any liability of the recipient for the offence will be discharged;
 - (ii) the recipient will not be prosecuted in a court for the offence;
 - (ii) the recipient will not be taken to have been convicted of the offence;
 - (i) state the greatest penalty that a court could impose on the recipient for the offence;
 - (j) state that if the recipient is prosecuted in court and found guilty of the offence, the recipient may be convicted of the offence and ordered to pay a penalty and costs, and be subject to any other order that the court makes;

- (k) state how and to whom the recipient can apply to be allowed more time to pay the penalty; and
- (l) be signed by the authorised person who issued it.

(2) An infringement notice may contain any other information that the authorised person who issues it deems necessary.

Service of
infringement
notice.

5. (1) An infringement notice shall be served on the person to whom it is issued.

(2) An infringement notice may be served on individual by—

- (a) giving it to the individual;
- (b) leaving it at, or by sending it by post, telex, fax, email or similar facility to, the address of the place of residence or business of the individual last known to the authorised person who issues it;
- (c) by giving it, at the relevant place, to someone who—
 - (i) lives or is employed, or apparently lives or is employed, there; and
 - (ii) is, or the authorised person who issued it has reason to believe is, over eighteen years of age.

(3) An infringement notice may be served on a corporation—

- (a) by leaving it at, or by sending it by post, telex, fax, email or similar facility to the address of the head office, a registered office or a principal office of the corporation; or
- (b) by giving it, at an office mentioned in paragraph (a), to someone who is, or the authorised person who issued it has reason to believe is, an officer or employee of the corporation.

Time for
payment of
fine.

6. The fine stated in an infringement notice shall be paid—

- (a) within twenty-eight days after the day on which the notice is served on the person to whom it is issued;
- (b) if the person applied for a further period of time in which to pay the penalty, and that application is granted, within the further period allowed.

(c) if the person applies a further period of time in which to pay the penalty, and the application is refused, within seven days after the notice of the refusal is served on the person.

(d) if the person applies for the notice to be withdrawn, and the application is refused, within twenty-eight days after the notice of the refusal is served on the person.

Extension of
time to pay
fine.

7. (1) The person to whom an infringement notice is issued may apply, in writing, to the Authority for a further period of up to twenty-eight days in which to pay the fine stated in the notice.

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

(a) grant or refuse a further period not longer than the period sought; and

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

(3) Notice of the decision may be served on the recipient in any way in which the infringement notice could have been served on the recipient.

Effect of
payment of
fine.

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

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

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

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

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

Withdrawal of
infringement
notice.

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

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

(a) withdraw or refuse to withdraw the notice; and

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

(3) Where the Authority fails to approve the withdrawal of the notice within the period allowed by subsection (2), the Authority shall be deemed to have refused to approve the withdrawal of the notice.

(4) The Authority shall, before withdrawing or refusing to withdraw a notice, consider—

(a) whether the person has been convicted previously of an offence against these Regulations;

(b) the circumstances of the offences stated in the notice;

(c) whether the person has previously paid a penalty under an infringement notice issued to the person for an offence of the same type as the offence mentioned in the notice; and

(d) any other relevant matter.

(5) The Authority may withdraw an infringement notice without an application having been made.

Notice of withdrawal of infringement notice.

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

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

(a) shall include the following information—

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

(ii) the number of the infringement notice;

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

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

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

Refund of fine.

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

DRAFT II

MEMORANDUM OF REASONS AND OBJECTS

DRAFT II