

G.R.F. DALLEY & PARTNERS

NIGERIA:

CIVIL AVIATION ACT 2006

- SIGNIFICANT CHANGES

By Presidential assent the new Civil Aviation Act (hereinafter referred to as the “the new Act”) was duly signed into Law by the President of the Federal Republic of Nigeria, Chief Olusegun Obasanjo, on the 14th of November 2006.

By virtue of section 77 of the new Act the Carriage by Air Order of 1953 (Warsaw Convention 1929), Civil Aviation Act Cap 51 Laws of the Federation of Nigeria 1990 as amended in 1999 and the Nigerian Civil Aviation Authority (Establishment) Act No. 49 1999, have been repealed. However all regulations, bye-laws and subsidiary legislation shall remain in force until replaced under the new Act.

This Article provides an overview of the new Act and highlights the significant changes provided for under the new Act.

WHY THE NEW ACT? :

Over the past few years there has been an overwhelming number of fatal air accidents. In 2005 there were four air crashes, in focus were the Bellview and Sosoliso air accidents of late 2005 which led to the death of 225 (two hundred and twenty five) passengers.

In order to prevent the current trend of fatalities and secure safety in the future of the Civil Aviation Industry the new Act is aimed at ensuring the following:

- Consistency of all Nigerian Civil Aviation laws and regulations with international standards
- Political and Financial Autonomy of the Nigerian Civil Aviation Authority;

Upon achieving this it is expected that adequate safety standards will be guaranteed.

IMPLEMENTATION PROCESS:

The implementation process is yet to be determined by the Minister of Aviation who confirms that he shall come up with a regulatory framework by which Airline operators will be guided, in respect of the new Act. However it is important to note that all regulations are yet to be repealed pending the invocation of new regulations.

THE NEW ACT:

Some key areas which the new Act covers are as follows:

Control and supervision of Civil Aviation: In accordance with the new wave of government policy the new Act enshrines in the introductory clause the responsibility of ensuring the provision of efficient and safe services by air carriers and other aviation service providers and ensuring the implementation of Nigeria's obligations to international agreements.

The Civil Aviation Authority: The new Act adopts with a number of significant changes the Civil Aviation (Establishment) Act of 1999.

The Act essentially makes provisions for the establishment and regular duties of the Governing Board, functions of the Authority, staff of the Authority, its remuneration, scope of duties, as well as the financial provisions and funds/expenditure of the Authority.

There remains a 5% air ticket contract, charter and cargo sales charge to be collected by the airlines, subject to review by the Authority from time to time. There are, however, some key changes in the financial provisions of the Authority which provides for the retention of 58% of funds from the air ticket and cargo sales charge. With this it is hoped that the Authority would enjoy greater financial independence from government.

Incidentally other agencies are to benefit from the air ticket and cargo sales fund as follows:

Nigerian Airspace Management Agency	23%
Nigerian Meteorological Agency	9%
Nigerian College of Aviation Technology	7%
Accident Investigation Bureau	3%

The Power to request information: In pursuit of its functions the Authority has unfettered powers to source unrestricted information from airline operators. The new Act grants additional powers of search on all premises including the aircraft and other apparatus, to the Director General of the Authority or persons duly authorised by him.

Power to acquire land: As under the previous Civil Aviation (Establishment) Act of 1999 the Authority, with the support of the Minister for Aviation, may acquire any land in the Country subject to provisions of the Land Use Act (principle legislation on Nigerian Land Law).

Limitation of suits against the Authority: The new Act extends to 1 year the period of limitation within which an action may be brought against any officer or employee of the

Authority. However, the requirement of pre-action notice of one clear month remains unchanged.

Indemnification of Officers: Under the new Act Indemnification of officers, in the lawful discharge of their duties, by the Authority is restricted solely to civil proceeding and no longer relates to criminal proceedings. It is important to note that the Establishment Act makes no use of the phrase “lawful discharge of their duties”, nonetheless it is resolved that the change is a reflection of the current anti-graft stance against public officers.

Directions of the Minister: The new Act permits the Minister for Aviation, after due consultation and in accordance with the Act, to give directions in the interest of national security or national/international obligations. This provision is no doubt intended to fast track the implementation of international treaties and conventions.

Investigation of Accidents: Section 29 provides for the establishment of an independent and autonomous Accident Investigation Bureau as opposed to a government controlled body. The Bureau is charged with the responsibility of the investigation of any accident or incident arising out of or in the course of air navigation occurring in or over Nigeria or to Nigerian aircraft elsewhere.

Power to regulate air navigation: The new Act contains in section 30 the usual provisions relating to the codification of the Convention on International Civil Aviation concluded in Chicago on the 7th day of December 1944 which include the power to make regulations for the registration, licensing, maintenance and repair, prohibition of aircrafts and aerodromes, securing the safety and efficiency and minimizing and/or preventing interference with the use of air navigation equipment, e.t.c., in Nigeria.

In addition, the new Act restates the provisions contained within part III of the Civil Aviation (Establishment) Act of 1999 wherein the Authority is conferred with extensive powers of oversight relating to, the approval and maintenance of aircrafts and aerodromes, overall safety and air navigation, all personnel, passengers and cargo. In addition the Authority is empowered to monitor and determine the needs of commercial operators by way of requesting a register of financial records, tariffs, rates and charges, e.t.c.

The Authority as expected may also engage and coordinate full search and rescue missions.

The new Act re-emphasises the principle of public interest and the doctrine of anti-competition.

A new introduction is the imposition on the Authority to specify fees and charges in respect of licenses, permits and other documents. The Authority must also prescribe the minimum insurance cover and the extent of cover to be undertaken by the operators.

An important introduction is the Authority, awarded to the Director General, to delegate his powers to departmental directors with regards to investigation of accidents, regulation of air navigation, and functions of the Authority. Undoubtedly this is intended to facilitate more efficient and timely response, by the Authority.

Interestingly for the first time the new Act regulates the design, construction and modification of aircrafts and the use of aircrafts for aerial adverts. Further the new Act now adopts section 20 of the 2005 Civil Aviation (Security) Regulations by providing regulations regarding the security control and screening of passengers and baggage.

More importantly the new Act provides that, in formulating fresh regulation in respect of air navigation, it shall be required to consult stakeholders in the aviation industry.

Functions of the Authority: Surprising, the new Act regurgitates under this heading the same set of regulations pertaining to air navigation above. However the additional requirements are the establishment of a register of title of interest in aircrafts registered, in Nigeria and the collation of a data bank of aviation and aircraft accidents. This is no doubt a reaction to the recent spate of air accidents.

Control of air transport undertaking: This is a combination of provisions from the Civil Aviation (Air Transport) (Licensing) Regulations and the old Act. The usual requirements for the grant of licenses, permits etc in respect of all aircrafts apply. The applicant, if an individual, must be a fit Nigerian and in the case of a body corporate must be registered under Nigerian Law. The new Act now requires the experience and financial capabilities of the applicants to be taken into consideration.

Again the new Act stresses its anti-competition and National interest stance by stating that it shall be the duty of the Authority, in assessing the grant of a new license, to have regard to the effect on existing Nigerian air transport services.

Carriers Liability: For the first time in the history of Nigerian Civil Aviation the new Act adopts and codifies the Convention for the Unification of Certain Rules relating to international and non-international Carriage by Air, respectively, signed at Montreal on the 28th of May 1999, as set out in schedules II and III respectively of the Act and as amended.

The new Act makes a special provision, which mandates carriers to make advance payments for the sum of at least \$ 30,000.00 (Thirty Thousand Dollars) in the event of “aircraft accidents resulting in death or injury to passengers” within 30 (thirty) days of the event. The Act in a proviso under this section clarifies that the advance payment shall not constitute recognition of liability and may be offset against sums eventually paid as damages by the carrier.

In addition the new Act permits the formulation of compensation schemes, in the event of grievance, by carriers to airline passengers and operators of allied services to the Aviation industry, however this is subject to consultation with carriers and other stake holders.

Hijacking and interference: The new Act has adopted and codified the Convention for the Suppression of the unlawful Seizure of Aircrafts dated 16th December 1970 and set out in Schedule I of the Act. The offence of hijacking carries punishment of life imprisonment and a minimum fine of =N= 10,000,000.00 (Ten Million Naira).

The new Act builds upon the old by specifying in addition instances upon which individuals may be liable for imprisonment for 5 years and a minimum fine of =N= 2,000,000.00 (Two Million Naira) for endangering the safety, destroying or damaging an aircraft. There are

similar provisions with regards the destruction and damage of aerodromes and airport facilities and equipment.

It is without doubt that the above provisions are simply in reaction to the recent developments in World terrorism activities.

Bilateral Exchanges of Safety Oversight Responsibilities: The Authority may now, pursuant to Bilateral Agreements with Aeronautical Authorities of other countries, exchange certain functions and duties relating to rules of the air, certificates of airworthiness and Licenses relating to Personnel, with respect to registered aircraft.

Aviation Safeguards: In its bid to prevent antitrust activities the Act prohibits a number of practices including but not limited to under charging of fares and rates and generally any practice that may have negative economic effects on other airline. In essence the anti-trust clause seeks to promote fair competition. This is in line with current international trends in the Aviation Industry

Regulation of Allied Services: The sale, distribution and provision of allied services are now subject to grants, by the Authority, of licenses, permits or authorisation.

Jurisdiction: The Act clearly states that the Federal High Court of Nigeria shall exercise the Jurisdiction to try all the offences committed under the Act and to hear all other matters relating to the Nigerian Civil Aviation Authority and all its obligations under law.

Application of certain Conventions: By virtue of Section 73 of the new Act The Convention on the International Recognition of Rights in Aircraft (Geneva Convention) 1948 and the provisions of the Convention on International Interest in Mobile Equipment on matters specific to aircraft equipment 2001 (the Cape Town Convention and Protocol) are now part of Nigerian Law.

Insurance: In a new development all operators apart from air carriers and including but not limited to aerodrome operators, aviation fuel suppliers, ground handling service providers, meteorological service providers, air traffic control service providers, aircraft maintenance service providers e.t.c. are mandated to maintain adequate cover not only for their personal risk but also for cover towards third parties. Failure to comply carries heavy penalties including loss of certification, fines and prison terms.