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Commissioners for Oaths & Notaries Public



# **AVIATION LAW- PART 1**

## **{Frequently Asked Questions}**

## 1. What is the legal framework governing aviation in Kenya?

- Civil Aviation Act (CAA), 2013 as amended by the Civil Aviation (Amendment) Act, 2016 - available at <https://www.kenyalaw.org/8181/exist/kenyalex/index.xql>  
It provides for the control, regulation and orderly development of civil aviation in Kenya.
- Kenya Airports Authority Act -available at <https://www.kenyalaw.org/8181/exist/kenyalex/index.xql>  
It establishes the Kenya Airports Authority and provides for its powers and functions.
- Under Article 2 (5) of the Constitution, the general rules of international law form part of the law of Kenya.
- Article 2 (6) of the Constitution provides that any treaty or convention ratified by Kenya also forms part of the law of Kenya. This means that the various treaties and conventions ratified by Kenya with relation to aviation form part of Kenya's aviation legal framework.

Examples of such Conventions include:

- Convention on International Civil Aviation (Chicago Convention), 1944 which codifies certain principles and arrangements in order that international civil aviation may be developed in a safe and orderly manner and that international air transport services may be established on the basis of equality of opportunity and operated soundly and economically; and
- Warsaw Convention as amended by The Hague Protocol as localized by the Carriage by Air Act 1993 which among other things provides for the liability for death or injury of passengers, loss of or damage to cargo and damage caused by delay that occurs during carriage by air.  
(both Conventions are available at <http://www.kenyalaw.org/treaties/>)

## 2. Which body regulates aviation in Kenya?

- The Kenya Civil Aviation Authority (KCAA) established under the CAA. Some of its functions as listed in Section 7 of the CAA include:
  - a. Regulation of civil aviation in Kenya;
  - b. Regulates air safety;
  - c. Licensing of air services;

- d. Provision of air navigation services;
- e. Certification of aircraft operators;
- f. Co-ordination and direction of search and rescue services;
- g. Dealing with incidents of unlawful interference with aviation security;
- h. Certification of aircraft operators;
- i. Enforcement of approved technical standards of aircrafts; and
- j. The registration of rights and interests in aircraft.  
(KCAA is available at <https://www.kcaa.or.ke> )

### 3. Which bodies serve the aviation sector under statutory mandate?

- The Kenya Airports Authority established under the KAA Act. Its functions and powers as provided for under Section 12 of the KAA Act include:

a). Providing a coordinated system of aerodromes and facilities relating thereto.

KAA is currently operating around 20 aerodromes (international airports, domestic airports and airstrips);

b). Administering, controlling and managing aerodromes;

c). Providing, developing and maintaining such services and facilities as are in its opinion necessary or desirable for the efficient operation of aerodromes;

d). Determine, impose and levy rates charges, dues or fees for any services performed by itself or for use by any person of the facilities provided by it;

e). Grant of a license, permit or certificate to any person subject to approval by the Minister.

(KAA is available at <https://www.kaa.go.ke/corporate/> )

- The National Civil Aviation Administrative Review Tribunal (NCAART) established under the CAA.

It has jurisdiction to hear and determine complaints or appeals arising from but not limited to:

a). Any refusal to grant a license, certificate or any other authorization by the KCAA or the transfer of a license under the CAA or its Regulations;

b). The imposition of any condition, limitation or restriction on a license under the CAA or its Regulations;

c). Any revocation, suspension or variation of a license under the Act or Regulations;

d). Any amount of money which is required to be paid as a fee under the Act or Regulations.

(NCAART available at <https://www.kenyalaw.org/kl/index.php?id=9440> )



- Kenya Plant Health Inspectorate Authority **KEPHIS** as established under the **KEPHIS** Act of 2012. KEPHIS undertakes inspection and grading of plants and plant produce during entry and exit at aerodromes. To learn more please see [www.kephis.org](http://www.kephis.org)
- Directorate of Immigration Services as established under the Kenya Citizenship and Immigration Act. The Directorate has the mandate to control entry and exit to and from the country at all points of entry/exit including aerodromes.
- Kenya Revenue Authority as established under the Kenya Revenue Authority Act which has the mandate to collect all revenue accruing to the government. This includes revenue from duties and taxes chargeable within aerodromes on incoming and outgoing goods. It is important to note that KRA also collects Air Passenger Service Charge under the Air Passenger Service Charge Act before depositing the same into Kenya Airports Authority Fund.

#### 4. Why is it called civil aviation?

- Civil aviation is the carriage of person, goods, conducting aerial work, offering commercial air services by way of air, using civil aircraft within a system of aerodromes and associated services but excluding operations carried out by state aircraft.
- In a sense, it is the exclusion of state (government registered, military etc) aircraft that makes it be considered civil aviation. This is in line with Article 3 of the Chicago Convention which excludes state aircraft from the convention and deems military aircraft to be state aircraft.

## 5. What process governs the operation of foreign air carriers into Kenya?

- Section 2 of the CAA defines a foreign aircraft as any aircraft not registered in Kenya and a foreign air carrier is defined as an air carrier, not being a Kenyan air operator engaged in commercial air transport operations within the borders or airspace of Kenya.
- The CAA applies to any foreign aircraft within the territory of Kenya. This is the reason that the Director General of the KCAA has the power to prohibit a foreign registered aircraft from flying if a major defect or damage is found whilst within Kenya (See section 20 (3) (j) of the CAA).

## 6. Why do most aircraft in Kenya have the registration numbers starting with 5Y?

- In accordance with the Chicago Convention, all civil aircraft must be registered with a civil aviation authority using procedures set by each country. The Chicago Convention sets out the country-specific prefixes used in registration marks. 5Y is the country-specific prefix set out by the Chicago Convention for Kenya.
- The prefix set out by the Chicago Convention indicate the aircraft's country of registration, and functions much like an automobile license plate. Thereafter, the national aviation authority of a country (in this case for Kenya being the KCAA), allocates a unique alphanumeric string to identify the aircraft.

It is for the reason stated above that Regulation 11 (1) of the Civil Aviation (Aircraft Nationality & Registration Marks) (available at <https://kcaa.or.ke/legislation-%26-publications/aviation-regulations>) states that “an owner of an aircraft registered in Kenya shall display marks on that owner’s aircraft the nationality mark “5Y” followed by the registration of the aircraft consisting of three Roman Capital letters assigned by the Authority with a hyphen placed between the nationality mark and the registration mark”.



## 7. Which other regional and international bodies are involved in aviation?

ICAO - The International Civil Aviation Organization (ICAO) is an international organization of the United Nations to which member states have ascribed to by virtue of their ratification of the Chicago Convention. It serves as a platform to consolidate the policy and standards of these member countries and stakeholders considering the trans-national nature of aviation to ensure that all parties are on the same page.

**8.** It should be noted that the role of ICAO is only advisory and facilitative to ensure this streamlining of the policies in the various countries. Contrary to popular belief, ICAO is not a regulatory body and does not have powers to issue sanctions against any offender of a country's aviation laws. (available at <https://www.icao.int/Pages/default.aspx>).

**9.** IATA - The International Air Transport Association (IATA) is an international organization for airline companies and related stakeholders in the air transport sector. It coordinates between different airline companies and airports on issues relating to flights, bookings and other practicalities of the industry to ensure worldwide coherence in the air transport industry for example the flight paths.

**10.** While ICAO works to maintain international standards in aviation, IATA's focus is in the non-governmental trade organization between airlines, airports and even travel agents. (available at <https://www.iata.org> ).

**11. UFTAA** - The Universal Federation of Travel Agents Association is the world-wide international forum for tour operators, travel and tourism agencies. Its main objective is the promotion, development and expansion of the travel and tourism industry across the Globe. (available at <https://www.tourismnotes.com>).

**12. KATA** - Kenya Association of Travel Agents (KATA) is the local body representing travel agents and agencies in Kenya. It is a member of UFTAA. (available at <https://www.katakenya.org>).

**13. EASA** - The East African School of Aviation is the regional training institute for ICAO and approved by KCAA. The school was founded in 1954 when it was only offering training for telegraphic and teleprinter operators. Since then, it has been expanded to train all major specialized areas of civil aviation except for pilot training. (available at <https://www.easa.ac.ke>).

**14. AFCAC** - African Civil Aviation Commission is a specialized agency of the African Union (AU) which was established in 1969 through a constructive conference by the International Civil Aviation Organization (ICAO) and the African Union (AU), Organization of African Unity (OAU) at the time. It became fully established and operational on 11th May 1978. It coordinates civil aviation matters in Africa and cooperates with ICAO and all other relevant organizations and bodies. (available at <https://www.af-cac.org/en/>).

**15. CASSOA** - Civil Aviation Safety and Security Oversight Agency is an Agency established on 18th April 2007 upon approval by the East African Community Council of Ministers. It was established by two legal instruments, the protocol establishing the Civil Aviation Safety and Security Oversight Agency, and the Civil Aviation Safety and Security Oversight Agency Act. Its main objective is to promote safe, secure and efficient use of Civil Aviation within and outside partner states. (available at <https://www.cassoa.org> ).

**16.** What are the various Regulations under the Civil Aviation Act and what does each Regulation address?

There are about twenty-seven Kenya Civil Aviation Regulations (KCARs) under the Civil Aviation Act No. 21 of 2013, as follows: (For ease of reference, these regulations are available at <https://www.kcaa.or.ke/legislation-%26-publications/aviation-regulations-or-http://www.kenyalaw.org:8181/exist/kenyalex/sublegview.xql?subleg=No.%2021%20of%202013> ).

It is important to note that KCAA has been involved in a process of updating the KCARs and has had several stakeholder forums. At the time of publication of this series, the draft 2022 Regulations had not been enacted and were still in draft form. The latest draft of the draft KCARs can be found here: <https://www.kcaa.or.ke/legislation-%26-publications/draft-kcars>.

**a. The Civil Aviation (Rules of the Air) Regulations, 2018**

These Regulations provide for the rules to be adhered to while flying an aircraft, and compliance with those rules.

**b. The Civil Aviation (Unmanned Aircraft Systems) Regulations, 2020**

These Regulations provide for the licensing of Remote Piloted Aircrafts (RPA) and Remote Pilot in Command (RPIC), categorize the operations and registration of Unmanned Aircraft Systems (UAS), provide for the general requirements for operations of UAS, security obligations for UAS operators, and the penalties imposed on persons who contravene the provisions of these Regulations. Unmanned Aircraft Systems include drones.

**c. The Civil Aviation (Security) Regulations, 2020**

These Regulations provide for security programs and committees, preventative security measures, management of response to acts of unlawful interference, offences and penalties for contravening the provisions of the regulations, and enforcement of the regulations.

d). **The Civil Aviation (Licensing of Air Services) Regulations, 2018**

These Regulations provide for licensing of internal & international air services, general provisions relating to licenses, franchising of air services, appeals from decisions of KCAA, and offences and penalties in case of breach of the regulations.

e). **The Civil Aviation (Meteorology Services for Air Navigation) Regulations, 2018**

These Regulations provide for the provision of meteorology services for air navigation providers, how to prepare manual operations, aerodrome warnings, wind shear warnings & alert aeronautical climatological information, service for operators & flight crew members, and requirements for and use of communications.

f). **Civil Aviation (Operation of Aircraft-General Aviation- Aeroplanes) Regulations, 2018**

These Regulations provide for the General Aviation operations, flight operations, aeroplane communication, and navigation & surveillance equipment.

g). **Civil Aviation (Communication Systems) Regulations, 2018**

These Regulations provide for among other provisions, the general requirements for communication, aeronautical telecommunication network requirements, aeronautical mobile satellite (route) services, point to multipoint communications, aeronautical mobile service, speech circuits, and emergency locator transmitter for search and rescue for persons in distress.

h). **The Civil Aviation (Radio Navigation Aids) Regulations, 2018**

These Regulations provide for general requirements for communication, navigation and surveillance facilities, radio navigation aids, and requirements for the global navigation satellite system

i). **Civil Aviation (Air Traffic Services) Regulations, 2018**

These Regulations provide for air traffic control services, operational flight information service broadcasts, and alerting services.

j). **The Civil Aviation (Aeronautical Radio Frequency Spectrum Utilization) Regulations, 2018**

These Regulations provide for the general requirements for communication, navigation and surveillance facilities, how to deal with distress frequencies, search and rescue frequencies, and utilization of frequencies.

k). **The Civil Aviation (Communication Procedures) Regulations, 2017**

These Regulations provide for the general requirements for communication, general procedures for the international aeronautical telecommunication service, mobile services, radio navigation services, and broadcasting services.



l). **The Civil Aviation (Aeronautical Charts) Regulations, 2018**

These Regulations provide for the general specifications for aeronautical charts, various types of charts and information to be contained in every aeronautical chart.

m). **The Civil Aviation (Surveillance and Collision Avoidance Systems) Regulations, 2018**

These Regulations provide for general requirements for surveillance and collision avoidance systems, airborne collision avoidance system, and technical requirements for airborne surveillance applications.

n). **The Civil Aviation (Aeronautical Information Services) Regulations, 2018**

These Regulations provide for the general provisions of an aeronautical information service, responsibilities and functions of Aeronautical Information Service (AIS) providers, aeronautical information management, telecommunication requirements, AIS data, and administrative and personnel requirements.

o). **The Civil Aviation (Instruments and Equipment) Regulations, 2018**

These Regulations provide for the general requirements for aeroplane equipment and instruments, flight data recorder, flight and navigational instruments, communication equipment, emergency, rescue and survival equipment, and miscellaneous systems and equipment.

p). **The Civil Aviation (Certification, Licensing and Registration of Aerodromes) Regulations, 2018**

These Regulations provide for the requirements for aerodrome certification, licensing of aerodromes, registration and operation of various categories of aerodromes, aerodrome manual, and offences & penalties for contravening the Regulations.

q). **The Civil Aviation (Operation of Aircraft for Commercial Air Transport) Regulations, 2018**

These Regulations provide for the general requirements for operation of aircraft for commercial air transport, aircraft maintenance, and duties, responsibilities & protection of flight crew members.

r). **The Civil Aviation (Aeronautical Search and Rescue) Regulations, 2018**

These Regulations provide for the aeronautical search and rescue organization, cooperation and coordination of aeronautical search and rescue services, preparatory measures, and operating procedures for aeronautical search and rescue.

s). **The Civil Aviation (Operation of Aircraft Helicopter) Regulations, 2018**

These Regulations provide for the general requirements for operating aircraft helicopters, qualifications of helicopter flight crew, flight operations officer/flight dispatcher manuals, logs and records, instructor and check personnel qualifications and training, and helicopter-general aviation.

t). **The Civil Aviation (Approved Maintenance Organization) Regulations, 2018**

These Regulations provide for the certification of Approved Maintenance Organizations, administration requirements for Approved Maintenance Organization personnel and training, and the rules of operation for Approved Maintenance Organizations.

u). **The Civil Aviation (Personnel Licensing) Regulations, 2018**

These Regulations provide for licensing, certification, ratings, authorizations, validation and conversion of foreign flight crew, military qualifications, and aviation medical standards and certification.

v). **The Civil Aviation (Aircraft Nationality and Registration Marks) Regulations, 2018**

These Regulations provide for the requirements for aircraft registration, including nationality and registration marks.

w). **Civil Aviation (Approved Training Organizations) Regulations, 2018**

These Regulations provide for the requirements for certification and location, and training for flight crew, licenses and ratings, training for licenses and ratings for licensed maintenance engineers, air traffic controllers and flight operation officers.

x). **The Civil Aviation (Air Operator Certification and Administration) Regulations, 2018**

These Regulations provide for the process of application, issuance, compliance with, validity and amendment of the Air operator certificate, flight operations management, maintenance requirements, security management, dangerous goods management, and offences and penalties for non-compliance.



y). **The Civil Aviation (Safety Management) Regulations, 2018**

These Regulations provide for State safety management responsibilities, safety management systems, safety data and collection, analysis, & protection of safety information.

z). **Civil Aviation (Airworthiness) Regulations, 2018**

These Regulations provide for aircraft and component original certification and supplemental type certificates, certificates of airworthiness, continued airworthiness of aircraft and aircraft components, aircraft maintenance and inspection, and aircraft noise certification maintenance records and entries.

aa). **The Civil Aviation (Aerodromes) Regulations, 2013**

These Regulations provide for the construction, licensing, and certification of aerodromes; obligations of aerodrome operators, aerodrome manual, wildlife hazard management, obstacle restrictions and removal, aeronautical ground lighting, aerodrome visual aids, aerodrome operational services, aerodrome maintenance, electrical systems, and information to be reported to aeronautical information services.



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