

TEMPLARS LEGISLATIVE WATCH: Aviation Sector Bills

In what has been a series of legislative activities within the nation's aviation sector, the President recently ratified the Montreal and the Beijing Protocols. The instruments were ratified by President Buhari on November 22, 2019. According to the International Civil Aviation Organisation (ICAO), the Montreal Protocol amends the Convention on the Suppression of Unlawful Acts Against Safety of Civil Aviation (The Montreal Convention of 1971) while the Beijing Protocol supplements the Convention for the Suppression of Unlawful Seizure of Aircraft, done at The Hague on 16 December 1970 (The Hague Convention, 1970) by expanding the scope of The Hague Convention to cover different forms of aircraft hijackings, including activities carried out through modern technological means.

Prior to this, the executive arm of government had forwarded four (4) Aviation Bills that were considered for First Reading at the Senate of the Federal Republic of Nigeria (the "Senate") on the 21st November, 2019. The bills are the Federal Airports Authority of Nigeria Act (Repeal and Re-enactment) Bill 2019, Nigerian College of Aviation Technology Act (Amendment) Bill 2019, Nigerian Airspace Management Agency (Establishment, etc.) Bill 2019 and the Civil Aviation Bill 2019.

Salient provisions of the respective bills are summarized as follows:

[SB. 196] FEDERAL AIRPORTS AUTHORITY OF NIGERIA ACT (REPEAL AND RE-ENACTMENT) BILL 2019

1.1. This Bill seeks to repeal the Federal Airports Authority of Nigeria Act¹ and to enact the

Federal Airports Authority of Nigeria Act 2019, to provide for the effective management of airports in Nigeria. Under the Bill, the Federal Airports Authority of Nigeria (the "FAAN") retains its responsibility of providing effective management, necessary services and facilities for the safe, secure, orderly, expeditious and

¹ Cap F5 Laws of the Federation of Nigeria 2010

economic operation of airports and air transport in Nigeria.²

- 1.2. The Bill also provides that subject to the prior approval of FAAN, no person is permitted to commence construction or reconstruction of an aerodrome in Nigeria. Any person who fails to obtain the approval of FAAN before commencing construction or reconstruction of an aerodrome, commits an offence and will be liable to a fine not exceeding N5,000,000.00 (Five Million Naira) circa \$16,200 in the case of a corporate body or N2,000,000.00 (Two Million Naira) circa \$6,500 in the case of an individual.³
- 1.3. The Bill confers powers on FAAN to appoint, contract, liaise or co-operate with experts, including specialized agencies, resource persons, academic and technical institutes, advisory committees etc., in order to assist it in carrying out its functions and duties.⁴
- 1.4. In addition, the Bill provides that a fund must be maintained by FAAN, where monies appropriated to FAAN by the National Assembly, Federal Government and in respect of services provided or rendered by it will be deposited. Any person who collects and fails to remit monies into the fund managed by FAAN commits an offence and will be liable on conviction, to imprisonment for a term of 2 (Two) years or to a fine of N2,000,000.00 (Two Million Naira) circa \$6,500 or to both fine and imprisonment and must also refund the monies owed.⁵
- 1.5. For other offences committed under the Bill, a person in the case of an individual, will be liable to a fine of not less than N500, 000.00 (Five Hundred Thousand Naira) circa \$1,600 or to a term of 6 (Six) months imprisonment or to both and in the case of a body corporate, they will be liable to a fine of not less than N2, 000,000.00 (Two Million Naira) circa \$6,500.



[SB. 195] CIVIL AVIATION BILL, 2019

- 1.1 This Bill seeks to repeal the Civil Aviation Act, 2006 and to enact the Civil Aviation Act, 2019 (the ‘Act’) for the regulation of civil aviation in Nigeria and other purposes connected therewith. The aim is to provide an effective legal and institutional framework for the regulation of civil aviation in Nigeria to conform with the standards and recommended practices set by the International Civil Aviation Organization (ICAO), establish rules of operation and divisions of responsibility within the Nigerian civil aviation system in order to promote aviation safety; ensure that Nigeria’s obligations under international aviation agreements is implemented; and consolidate the laws relating to civil aviation in Nigeria.
- 1.2 The Bill when passed will be applicable to all persons holding licenses that have been issued or validated by the Nigeria Civil Aviation Authority (the ‘Authority’); including every person, aircraft, air operator, aerodrome, aeronautical product, air service, and aviation related service, in Nigeria; every Nigerian registered aircraft whether within or outside Nigeria; and every foreign registered aircraft operating in Nigeria, into and out of Nigeria⁶
- 1.3 The Nigeria Civil Aviation Authority⁷ (the “NCAA”) retains its responsibility of registration, inspection, safety and issuance of a license to the owner of a certificate of registration.⁸ It is also conferred with the powers to appoint, contract, liaise or co-operate with experts, including specialized agencies, academic and technical institutes, advisory committees, etc., in order to assist it in carrying out any of its functions or duties.⁹
- 1.4 Also, the NCAA is exempted from paying tenement rates and income tax or any other tax that are in force. Any existing provision of the law relating to the taxation of the income of

² Section 6(1) Federal Airports Authority of Nigeria Act (Repeal and Re-enactment) Bill 2019

³ Section 6(2)(3) Federal Airports Authority of Nigeria Act (Repeal and Re-enactment) Bill 2019

⁴ Section 14 Federal Airports Authority of Nigeria Act (Repeal and Re-enactment) Bill 2019

⁵ Section 16 Federal Airports Authority of Nigeria Act (Repeal and Re-enactment) Bill 2019

⁶ Section 2(1) Civil Aviation Bill, 2019

⁷ Section 4 Civil Aviation Bill, 2019

⁸ Section 8 Civil Aviation Bill, 2019

⁹ Section 15 Civil Aviation Bill, 2019

any company or contribution to any trust fund is not applicable to the NCAA.¹⁰

- 1.5 The Bill provides that in time of war, whether actual or imminent, the Minister may cancel or suspend any licenses, permits, certificates or other authorizations issued under the Act in the interest of Justice.¹¹
- 1.6 The office of the Director-General is authorized to grant exemptions from any of the requirements set forth in this Act or in the regulations made pursuant to this Act, where the Director-General considers that granting such exemptions will not compromise safety and security and is in the public interest.¹²
- 1.7 An airline operator is not permitted to operate air transport service to, from and within Nigeria unless he has a security programme approved by the Authority, subsequently, every breach of the provisions of the approved airline security programme will attract a fine of not less than N200,000.00 circa \$650 or as stipulated by the relevant regulation whichever is higher¹³

[SB. 193] NIGERIAN AIRSPACE MANAGEMENT AGENCY (ESTABLISHMENT, ETC.) BILL, 2019

- 1.1 This Bill seeks to repeal the Nigerian Airspace Management Agency act,¹⁴ and to enact the Nigerian Airspace Management Agency Act 2019 (the Act), for the purposes of providing effective air navigation services in Nigeria, ensuring safety and regularity of air navigation in Nigeria and to any other place which Nigeria has responsibility of providing air navigation services.
- 1.2 Under the Bill, the functions of the Nigerian Airspace Management Agency (NAMA) comprise of the provision of air traffic services in Nigeria and any other place where Nigeria has a responsibility for providing Air Navigation Services; conduct of investigation into any air traffic incident with a view to determining the cause and take necessary measures to prevent recurrence; ensure innovative airspace design

development and utilization to meet air traffic capacity within the Nigerian airspace in order to improve flight efficiency and reduce flight time; and the provision and management on commercial basis, air traffic and air navigation services to private and state owned airports.¹⁵

- 1.3 The requirement for the office of the Managing Director has been enlarged to include a person who has been qualified in air navigation services for a period of not less than 15 years, 5 of which must be in the senior management cadre in an air navigation services provider environment.
- 1.4 The Bill provides that a person, entity or group of persons must not obstruct or hinder the provision of civil air navigation services to a flight.¹⁶ Any person or group of persons who contravenes this provision commits an offence and on conviction will be liable¹⁷ - in the case of an individual, to a fine of not less than N200,000.00 circa \$650 or a term of 6 months imprisonment or to both;¹⁸ and in the case of an entity, body corporate or group of persons, a fine of not less than N500,000,00 circa \$1,620.¹⁹



[SB. 193] NIGERIAN COLLEGE OF AVIATION TECHNOLOGY ACT (AMENDMENT) BILL 2019

- 1.1. This Bill seeks to repeal the Nigerian College of Aviation Technology Act²⁰ and to enact the Nigerian College of Aviation Technology (Amendment) Act 2019, to provide for the organization, control and operation of training programs related to the aviation sector and for other related matters. It also seeks to provide the skills that would be required for aircraft manufacturing, distribution, installation, maintenance and operation of technical

¹⁰ Section 22 Civil Aviation Bill, 2019

¹¹ Section 28 Civil Aviation Bill, 2019

¹² Section 41 Civil Aviation Bill, 2019

¹³ Section 43 Civil Aviation Bill, 2019

¹⁴ CAP N90, Laws of the Federation of Nigeria, 2010

¹⁵ Section 8(1) Nigerian Airspace Management Agency (Establishment, Etc.) Bill, 2019

¹⁶ Section 46(1) Nigerian Airspace Management Agency (Establishment, Etc.) Bill, 2019

¹⁷ Section 46(2) Nigerian Airspace Management Agency (Establishment, Etc.) Bill, 2019

¹⁸ Section 46(2)(a) Nigerian Airspace Management Agency (Establishment, Etc.) Bill, 2019

¹⁹ Section 46((2)(b) Nigerian Airspace Management Agency (Establishment, Etc.) Bill, 2019

²⁰ Cap N96 Laws of the Federation of Nigeria 2010

equipment's to increase the margin of operational safety of civil aircraft services.²¹

1.2. Under the Bill, the Nigerian College of Aviation Technology (the "College") located in Zaria is required to provide full-time courses of instruction and training in civil aviation, standard or specially designed for use in flight training or in airport operation and management.²² The College retains its powers to hold or acquire property, whether movable or immovable but restricts the power to mortgage, charge or dispose any property held by the College. This requires the prior written consent of the Minister of Aviation or an approving Authority as specified in the Financial Regulations of the Federal Government.²³

1.3. In addition, the Bill establishes an Academic Board for the College, which will be responsible

for the direction and management of academic matters of the College including the regulation of admission of students, the award of certificates, diplomas, degrees, scholarships, prizes and any other academic distinction.²⁴

These Bills have passed first reading and still must undergo second reading, committee stage, third reading before passage at the Senate. Thereafter, the Bills will be forwarded to the House of Representatives (the "HoR") for concurrence which will be followed by harmonisation of the Bills. After this stage, the harmonised Bills will be forwarded to the President for assent. Given that these are Executive Bills seeking amendment of laws governing critical aviation agencies, we envisage that they will be given accelerated consideration and may become law before the end of Q2 2020.

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²¹ Section 2(1) Nigerian College of Aviation Technology Act (Amendment) Bill 2019

²² Section 2(1) Nigerian College of Aviation Technology Act (Amendment) Bill 2019

²³ Section 2(3) Nigerian College of Aviation Technology Act (Amendment) Bill 2019

²⁴ Section 8(1)(3) Nigerian College of Aviation Technology Act (Amendment) Bill 2019