SPECIAL ISSUE

Kenya Gazette Supplement No. 93 (National Assembly Bills No. 18)

REPUBLIC OF KENYA

KENYA GAZETTE SUPPLEMENT

NATIONAL ASSEMBLY BILLS, 2020

NAIROBI, 15th June, 2020

CONTENT

Bill for Introduction into the National Assembly—

PAGE

The National Aviation Management Bill, 2020 633

PRINTED AND PUBLISHED BY THE GOVERNMENT PRINTER, NAIROBI

THE NATIONAL AVIATION MANAGEMENT BILL, 2020

ARRANGEMENT OF CLAUSES

Clause

PART I—PRELIMINARY

1—Short title.

2—Interpretation.

3—Objects and purpose of this Act

4—Guiding principles.

PART II—ESTABLISHMENT OF THE NATIONAL CIVIL AVIATION COUNCIL

5—Establishment and functions of the National Civil Aviation Council.

PART III—THE ESTABLISHMENT OF THE KENYA AVIATION CORPORATION

6—Establishment of the Kenya Aviation Corporation

7—Functions and powers of the Corporation.

PART IV—MANAGEMENT OF THE CORPORATION

8—Board of Directors.

9—Functions and powers of the Board.

10—Qualifications for appointment as the Chairperson.

11—Qualifications for appointment as a Board member.

12—Chief Executive Officer of the Corporation.

13—Qualifications for appointment as the Chief Executive Officer.

14—Tenure of the Chief Executive Officer.

15—Removal of the Chief Executive Officer.

16—Remuneration of members of the Board.

17—Conduct of the meetings of the Board.

18—Conflict and disclosure of interest.

19—Removal of a Board member and vacation from office.

20—Committees of the Board.

21—Corporation Secretary.

22—Common seal and execution of contracts by the Corporation.

PART V— ESTABLISHMENT OF THE OPERATING ENTITIES

23—Kenya Airways.

24—Functions of Kenya Airways.

25—Share capital of Kenya Airways.

26—Establishment of the Kenya Airports Authority.

27—Functions of the Kenya Airports Authority.

28—Share capital of the Kenya Airports Authority.

29—Establishment of Aviation Investment Corporation.

30—Powers and functions of the Aviation Investment Corporation.

31—Share capital of the Aviation Investment Corporation.

32—Powers of Operating Entity.

33—Establishment of additional operating entities.

34—General provisions in relation to the share capital of the Operating Entities.

35—Increase in share capital.

36—Liability.

37—Application of the Companies Act to the Operating Entities and filing of returns.

38—Stakeholder consultation by the Operating Entities in setting user charges.

PART VI—MANAGEMENT OF THE OPERATING ENTITIES

39—Appointment of Managing Director.

40—Qualifications of a Managing Director.

41—Functions of a Managing Director.

42—Remuneration of the Managing Directors.

43—Tenure of office of a Managing Director.

44—Grounds for removal of a Managing Director.

45—Common seal of an Operating Entity.

PART VII—OPERATING ENTITY SUBSIDIARIES

46—Director(s) of the Operating Entity Subsidiaries..

47—Managing Directors of the Operating Entity Subsidiaries.

48—Articles of Association.

PART VIII—TRANSFER OF UNDERTAKINGS TO THE OPERATING ENTITIES

49—Transfer of Undertakings.

50—Vesting Orders to be published by the Cabinet Secretary.

51—Details to be set out in a Vesting Order.

52—Effect of Vesting Order.

53—Review of the terms of service of employees of the Operating Entities.

54—Updating of records.

55—Regulations governing transfer of functions.

PART IX— THE ESTABLISHMENT AND MANAGEMENT OF THE FUND

56—Establishment and management of the Fund.

57—Principles of operation.

58—Sources of money into the Fund.

59—Payments out of the Fund.

PART X—FINANCIAL PROVISIONS

60—Budget and annual estimates.

61—Borrowing powers.

62—Books of account, records and audit.

63—Annual report.

PART XI—OFFENCES RELATING TO AERODROMES

64—Major offences.

65—Minor offences.

66—False returns.

67—Employee endangering safety.

68—Employee demanding improper amount.

69—Arrest of an employee.

70—Power of authorized employee.

71—General penalty.

PART XII—MISCELLANEOUS PROVISIONS

72—Powers of the Cabinet Secretary to make Regulations.

73—Repeal of No. 3 of 1991.

74—Other consequential amendments.

FIRST SCHEDULE: THE CONDUCT OF BUSINESS AND AFFAIRS OF THE BOARD

SECOND SCHEDULE: WRITTEN LAWS TO BE AMENDED

THE NATIONAL AVIATION MANAGEMENT BILL, 2020

A Bill for

AN ACT of Parliament to provide for the establishment of the National Aviation Council, Kenya Aviation Corporation and its Operating Entities; to provide for their powers, functions and management and for connected purposes.

ENACTED by Parliament of Kenya, as follows—

PART I—PRELIMINARY

Short title and commencement.

1. This Act may be cited as the National Aviation Management Act, 2020 and shall come into operation on such date as the Cabinet Secretary may, by notice in the *Gazette*, appoint and different dates may be appointed for different provisions.

Interpretation.

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

No. 21 of 2013.

"Aerodrome" has the meaning assigned to it under section 2(1) of the Civil Aviation Act, 2013;

"Auditor–General" means the Auditor-General appointed in accordance with Article 229 of the Constitution;

"Board" means the Board of the Directors established under section 8;

"Cabinet Secretary" means the Cabinet Secretary for the time being responsible for matters relating to transport;

"Chairperson" means the chairperson of the Board appointed under section 8(1)(a);

"Chief Executive Officer" means the chief executive officer of the Corporation appointed under section 12;

"Corporation" means the Kenya Aviation Corporation established under section 6;

"Corporation Secretary" means the corporation secretary appointed under section 21(1);

"Council" means the National Civil Aviation Council established under section 5(1);

"equity interest" means the shares, convertible debt instruments, shareholder loans, shareholder debt instruments,

rights to invest, voting rights, equity or other forms of ownership interests or rights (of any class);

"Financial Year" means the period of twelve months ending on the 30th day of June in every year;

"former Kenya Airports Authority" means the Kenya Airports Authority established under section 3 of the Kenya Airports Authority Act (now repealed); No. 3 of 1991.

"Fund" means the Aviation Corporation Fund established under section 56 of this Act;

"Group" means the Corporation and Operating entities;

"Kenya Airways" means Kenya Airways established under section 23(1);

"Kenya Airways PLC" means the company registered under registration number C.28/2005 under the Companies Act, 2015; No. 17 of 2015.

"Kenya Airports Authority" means the Kenya Airports Authority established under section 26 (1);

"Kenya Civil Aviation Authority" means the Authority established under section 4 of the Civil Aviation Act, 2013; No.21 of 2013.

"Managing Director" means the managing director appointed under section 39;

"Operating Entities" means Kenya Airways, the Kenya Airports Authority, the Aviation Investment Corporation, any other entity established or acquired by the Corporation under the provisions of this Act;

"Operating Entity Subsidiaries" means the entities whose equity interests are wholly owned by any Operating Entity;

"Transferring Entities" means Kenya Airways PLC and the former Kenya Airports Authority;

"user charges" means fees, rates, levies and other charges as specified by the Cabinet Secretary and levied under this Act;

"Vesting Date" in relation to any Operating Entity, means the day appointed in the relevant Vesting Order; and

"Vesting Order" means a vesting order made or issued under section 50.

Objects and purpose of this Act.

3. The object and purpose of this Act is to provide for—

(a) the establishment of the Corporation;

(b) the establishment of the Operating Entities;

(c) the operations, powers, functions and responsibilities of the Corporation and the Operating Entities;

(d) the transfer and consolidation of the undertakings of the Transferring Entities in the Operating Entities; and

(e) the efficient management, financing and operation of the Group.

Guiding principles.

4. In the performance of the functions and exercise of powers under this Act, every person shall, be guided by the following principles —

(a) effectiveness and efficiency in the delivery of services and operations of the Group;

(b) growth and long term sustainability of the Group;

(c) improving the competitiveness of the Kenyan aviation sector;

(d) pooling and efficient use of resources relating to the Group;

(e) efficient management and allocation of funds relating to the Group;

(f) promotion of increased employment opportunities in the Kenyan aviation sector; and

(g) development of the Group and the Kenyan aviation sector through provision of financial and technical support by the Government.

PART II—ESTABLISHMENT OF THE NATIONAL CIVIL AVIATION COUNCIL

Establishment of the Council.

5. (1) There is established a council to be known as the National Civil Aviation Council which shall comprise of —

(a) the President, who shall be the Chairperson;

(b) the Cabinet Secretary responsible for matters relating to transport;

(c) the Cabinet Secretary responsible for matters relating to internal security;

(d) the Cabinet Secretary responsible for matters relating to the National Treasury;

(e) Attorney-General; and

(f) the Kenya Air force Commander.

(2) The Council shall—

(a) integrate policies relating to aviation sector and the other sectors of the economy to enable all the national organs and the sectors of the economy requiring access and support of the civil aviation sector to cooperate and work with the sector to ensure the effective performance of its mandate; and

(b) assess and appraise, the objectives, commitment and the risks to the country in respect of actual and potential civil aviation capabilities.

(3) The Council shall determine its own procedure and the procedure for any committee of the Council and for attendance of any other persons at the meetings and shall appoint its secretary.

PART III—THE ESTABLISHMENT OF THE KENYA AVIATION CORPORATION

Establishment of the Corporation.

6. (1) There is hereby established a corporation to be known as the Kenya Aviation Corporation.

(2) The Corporation shall be a body corporate with perpetual succession and a common seal and shall be capable in its own name of—

(a) suing and being sued;

(b) taking, purchasing and disposing of movable and immovable property;

(c) holding shares in any company or other body;

(d) borrowing and lending money;

(e) entering into contracts; and

(f) 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.

Functions and powers of the Corporation.

7. (1) The functions of the Corporation shall be—

(a) to hold the shares in the Operating Entities;

(b) to oversee and where applicable manage the operations of the Group including establishing centralised functions to be shared by the Group;

(c) to promote the development of the Kenyan aviation sector and the Group;

(d) to advise the Government on matters relating to the development of the Kenyan aviation sector; and

(e) to perform such other functions or duties as may from time to time be conferred on it by the Cabinet Secretary or by any other written law.

(2) The Corporation shall have all the powers necessary for the proper performance of its functions under this Act.

PART IV—MANAGEMENT OF THE CORPORATION

Board of the Directors.

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

(a) the Chairperson appointed by the President;

(b) Attorney-General or their representative;

(c) the Cabinet Secretary for the time being responsible for matters relating to the National Treasury and Planning their representative;

(d) the Principal Secretary of the Ministry for the time being responsible for matters relating to Transport or their representative;

(e) the Chief Executive Officer;

(f) the Managing Directors of Kenya Airways and the Kenya Airports Authority; and

(g) four independent non–executive Board members appointed by the Cabinet Secretary.

(2) The Chairperson and the Independent Non–Executive Board Members shall hold office for a period of

three years and shall be eligible for re-appointment for one further term of three years.

(3) Not more than two–thirds of the members of the Board shall be of the same gender.

(4) Subject to the provisions of this Act, the tenure of the Chairperson and the Independent Non Executive Board Members shall be structured so that not more than one third of the Board (or, if their number is not three or a multiple of three, then the number nearest one-third) shall retire from office at any one time.

(5) In constituting the first Board, the Cabinet Secretary shall ensure that the tenures of the first Chairperson and the first Independent Non-Executive Board Members are structured in a manner that achieves the objective in sub-section (4).

Functions and powers of the Board.

9. The functions and the powers of the Board shall be —

(a) to exercise oversight over the management of the Group;

(b) to control and oversee the assets of the Group;

(c) to implement the Government's strategy in relation to the national aviation sector;

(d) to develop and oversee strategy for the Group;

(e) to administer the Fund including determining the provisions to be made for capital expenditure, recurrent expenditure and reserves from the Fund;

(f) to approve strategic plans and budgets prepared by the Corporation and the Operating Entities;

(g) to give directions to the Chief Executive Officer;

(h) to establish a framework, policies and procedures in relation to risk management for the Group;

(i) to prescribe conditions or restrictions in relation to the powers and functions of the Operating Entities provided that such prescription is not inconsistent with the provisions of this Act;

(j) to prescribe conditions or restrictions to the powers and functions of Chief Executive Officer and the

Managing Directors provided that such prescription is not inconsistent with the provisions of this Act;

(k) to consider and approve any variations in salaries, wages or other terms and conditions of service of employees of the Group in accordance with this Act;

(l) to establish policies and operating procedures for the Group;

(m) to approve the user charges;

(n) to advise the Cabinet Secretary on the development of the Kenyan aviation sector; and

(o) to have such other powers as may be necessary for the performance of its functions under this Act.

Qualifications for appointment as the Chairperson.

10. A person shall be qualified for appointment as the Chairperson if that person—

(a) holds at least a bachelors degree in aviation, business administration, finance, audit, law, engineering or other related field;

(b) has knowledge and experience of at least ten years in business, aviation, engineering or other related field;

(c) is not a public officer; and

(d) meets the requirements of Chapter Six of the Constitution.

Qualifications for appointment as a Board member.

11. A person shall be qualified for appointment as an Independent Non–Executive Board member if that person—

(a) holds at least a bachelors degree in business, aviation, engineering or other related field;

(b) has knowledge and experience in aviation, business administration, finance, audit, law, engineering or other related field;

(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 in the performance of his or her obligations under this Act;

(d) is not a public officer; and

(e) meets the requirements of Chapter Six of the Constitution.

12. (1) There shall be a Chief Executive Officer of the Corporation who shall be appointed by the Board subject to the approval by the Cabinet Secretary.

Chief Executive Officer of the Corporation.

(2) Subject to this Act, the executive control and management of the Corporation shall be vested in the Chief Executive Officer.

(3) In the exercise of his or her functions under this Act, the Chief Executive Officer shall, subject to the direction of the Board—

(a) execute the strategy of the Group as prescribed by the Board;

(b) exercise oversight over the management and operations of the Operating Entities including issuing directions to the Managing Directors;

(c) oversee the budgeting, financial administration and performance
of the Operating Entities in accordance with the conditions or restrictions prescribed by the Board from time to time;

(d) provide strategic advice to the Board;

(e) ensure the Board's policies and guidelines are communicated to the Operating Entities;

(f) ensure compliance by the Corporation with applicable laws and regulations;

(g) delegate responsibilities and supervise the work of the executives and employees of the Corporation; and

(h) establish committees comprising of the Managing Directors or executives of the Operating Entities to deal with various operational matters.

13. A person shall be qualified for appointment as the Chief Executive Officer, if that person—

Qualifications for appointment as the Chief Executive Officer.

(a) holds at least a masters degree in business, aviation, engineering or other related field;

(b) has knowledge and experience of at least ten years in business, aviation, engineering or other related field; and

(c) meets the requirements of Chapter Six of the Constitution.

Tenure of the Chief Executive Officer.

14. (1) A Chief Executive Officer shall hold office for a period of four years and shall be eligible for re–appointment for one further term of four years subject to satisfactory performance.

(2) The Chief Executive Officer shall be paid such remuneration, fees or allowances for expenses as may be determined by the Board and approved by the Cabinet Secretary to the National Treasury.

Removal of the Chief Executive Officer.

15. The Board may remove a Chief Executive Officer from office before expiry of the Chief Executive Officer's term where the Chief Executive Officer—

(a) is in breach of the terms of his or her appointment; or

(b) fails to meet his or her performance targets.

Remuneration of members of the Board.

16. The Corporation shall pay to the Board Members such remuneration, fees or allowances for expenses as may be determined by the Board subject to the approval by the Cabinet Secretary.

Conduct of the meetings of the Board.

17. The conduct of business in the meetings of the Board shall be in accordance with the First Schedule.

Conflict and disclosure of interest.

18. (1) A Board member shall avoid any situation in which such member would have a direct or indirect interest that conflicts, or may conflict, with the interests of the Corporation.

(2) If any Board member is directly or indirectly interested in any contract, proposed contract or any other matter and is present at a Board meeting during the discussion of such contract, proposed contract or other matter, the Board member shall as soon as practicable after the commencement of such meeting, disclose this fact, and shall not take part in the consideration or discussion of, or vote on, any question with respect to the contract, proposed contract or such other matter, or be counted in the quorum of the meeting during the consideration of that matter.

(3) A member of the Board who fails to disclose interest in a matter in accordance with subsection (2) shall cease to be a member of the Board.

(4) The Board may from time to time, develop and implement guidelines and directives relating to conflicts of interest involving Board members.

Removal of a Board member and vacation from office.

19. (1) The office of a member of the Board shall become vacant if that member—

(a) dies;

(b) is adjudged bankrupt or enters into a composition scheme or arrangement with his creditors;

(c) is convicted of a criminal offence involving corruption, fraud or dishonesty;

(d) is convicted of a criminal offence and sentenced to imprisonment for a term exceeding six months;

(e) is removed or disqualified from office in accordance with
the provisions of this Act;

(f) resigns; or

(g) assumes a political office.

(2) The Board shall notify the appointing authority as soon as a vacancy occurs in the membership of the Board pursuant to sub-section (1).

(3) Notwithstanding the provisions of subsection (1), the appointing authority may terminate the appointment of a member of the Board if —

(a) such member has been absent from three consecutive meetings of the Board without the permission of the Board;

(b) such member is found to have acted in a manner prejudicial to the aims and objectives of this Act;

(c) such member fails to comply with the provisions of this Act relating to conflict of interest; or

(d) is otherwise unable or unfit to continue serving as a member
of the Board.

Committees of the Board.

20. The Board may establish committees and delegate specific functions to such committees as may be necessary for the proper performance of its functions under this Act.

Corporation Secretary.

21. (1) There shall be a Corporation Secretary appointed by the Board and who shall be a member of the Institute of Certified Secretaries in good standing.

(2) The Corporation Secretary shall be responsible for arranging the business of the Board and Board committee meetings, keeping and maintaining records of the proceedings of the Board, and shall perform such other duties as the Board may direct.

(3) In the performance of his or her duties under this Act, the Corporation Secretary shall report to the Chief Executive Officer.

(4) The Board may in the absence of the Corporation Secretary appoint any member of staff of the Corporation to temporarily perform the functions of the Corporation Secretary.

(5) Any functions delegated under subsection (4) may be so delegated subject to such conditions or restrictions as the Board may either generally or specifically determine.

Common seal and execution of contracts by the Corporation.

22. (1) There shall be a common seal of the Corporation to be kept in the custody of the Corporation Secretary or such other person as the Board may direct and may not be used except by order of the Board.

(2) The seal of the Corporation shall be authenticated by the signature of the Chief Executive Officer or the Corporation Secretary and any other member of the Board.

(3) Every document purporting to be an instrument issued by the Corporation and to be sealed with the seal of the Corporation authenticated in the manner provided by subsection (1) and (2) shall be deemed to be such an instrument and shall be received in evidence without further proof.

(4) Any contract or instrument which would not be required to be under seal may be entered into or executed on behalf of the Corporation by any person generally or specially authorized by the Board for that purpose.

PART V—ESTABLISHMENT OF THE OPERATING ENTITIES

Kenya Airways.

23. (1) There is established an entity to be known as Kenya Airways.

(2) Kenya Airways shall be a body corporate with limited liability, perpetual succession, a common seal and shall be capable in its own name of—

(a) suing and being sued;

(b) taking, purchasing and disposing of movable and immovable property subject to the provisions of this Act;

(c) holding shares in any company or other body; and

(d) entering into contracts.

(3) On the Vesting Date, the Registrar of Companies shall enter Kenya Airways into the register of companies and issue Kenya Airways with a certificate of registration noting its status as a state owned entity established under this Act.

Functions of Kenya Airways.

24. (1) The functions of Kenya Airways shall be—

(a) to carry on business as carriers of air passengers, cargo, mail and goods in Kenya and elsewhere;

(b) to provide other transport related services and to undertake other businesses related to air transport and ancillary businesses;

(c) to acquire, sell, hire and lease aircrafts and aircraft equipment;

(d) to hold shares in any company or other body or to establish or acquire any company or other body;

(e) to borrow and lend money in the ordinary course of its business subject to the limits prescribed by the National Treasury from time to time; and

(f) to carry out such other functions as may be necessary for the performance of its functions under this Act or as may be assigned by the Board.

(2) Kenya Airways shall have all the powers necessary for the proper performance of its functions under this Act as may be assigned by the Board.

Share capital of Kenya Airways.

25. The initial share capital of Kenya Airways shall be seven billion four hundred and eighty two million three hundred and forty five thousand, one hundred and seventy four (7,482,345,174) shillings divided into seventy four

million, eight hundred and twenty three thousand, four hundred and fifty two (74,823,452) ordinary shares as may be varied from time to time in accordance with the provisions of the Companies Act, 2015. No.17 of 2015.

26. (1) There is established an authority to be known as the Kenya Airports Authority. Establishment of the Kenya Airports Authority.

(2) The Kenya Airports Authority shall be the successor to the former Kenya Airports Authority.

(3) The Kenya Airports Authority shall be a body corporate with limited liability, perpetual succession, a common seal and shall be capable in its own name of—

(a) suing and being sued;

(b) taking, purchasing and disposing of movable and immovable property subject to the provisions of this Act;

(c) holding shares in any company or other body; and

(d) entering into contracts.

(4) On the Vesting Date as may be declared by the Cabinet Secretary under the relevant Vesting Order issued pursuant to section 50, the Registrar of Companies shall enter Kenya Airports Authority into the register of companies and issue Kenya Airports Authority with a certificate of registration noting its status as a state owned entity established under this Act.

27. (1) Kenya Airports Authority shall have the following powers and functions— Functions of the Kenya Airports Authority.

(a) to own, operate and maintain Aerodromes;

(b) to construct, operate and maintain Aerodromes and other related facilities;

(c) to provide such other amenities or facilities for passengers
and other persons making use of the services or the facilities provided by the Kenya Airports Authority as may be necessary or desirable;

(d) to construct, operate or maintain aerodromes on an agency basis on the request of any Government department;

(e) to prohibit, control or regulate the use by any person of the services performed or the facilities provided by the Kenya Airports Authority;

(f) to prohibit, control or regulate the presence of any person, aircraft or goods within the facilities provided by the Kenya Airports Authority;

(g) to collect aeronautical charges, levies, fees, rents and other charges levied on users of the facilities provided by the Kenya Airports Authority under this Act;

(h) to hold shares in any company or other body or to establish or acquire any company or other body;

(i) to borrow and lend money in the ordinary course of its business subject to the limits prescribed by the National Treasury from time to time;

(j) to move or cause to be removed any obstruction, materials, structures or buildings which are likely to attract birds that may be hazardous to aircraft operations;

(k) construct any other necessary or desirable works required for the purpose of the Authority;

(l) control the construction and use of aerodromes;

(m) acquire, construct, manufacture, maintain or repair any works, plants or apparatus necessary and desirable for purposes of the Authority;

(n) sell, let or otherwise dispose of any property, moveable or immovable which in its opinion is not necessary for the purpose of the Authority:

Provided that the Authority shall not sell, or otherwise dispose of any building or land vested in it except with the consent of and subject to any conditions imposed by the Government;

(o) provide houses and accommodation for employees;

(p) to enter upon any land and —

(i) cut down or remove any tree or other obstruction, not being a building; or

(ii) execute such other works as may be necessary to prevent the occurrence of any accident or to repair any damage caused as a result of any accident;

(iii) alter the position of any pipe, electric, telephone or telegraphic wire; and

(q) such other powers as may be necessary for the performance of its functions under this Act.

(2) In relation to any tree or other obstruction cut down or removed under subsection (1)(k)(i), if such tree or other obstructions came into existence subsequent to the construction of any aerodromes or to the service being provided thereafter, no compensation shall be payable in respect of such entry or the cutting down or removal of such tree or other obstruction.

(3) Where any person erects any building which in any way interferes with the operation of any service provided by the Kenya Airports Authority under this Act, the Kenya Airports Authority may, unless such person has previously obtained the approval of the Managing Director to the erection of such building, or has modified it to the satisfaction of the Managing Director, apply to the High Court for an order for the demolition or modification of such building.

Share capital of the Kenya Airports Authority.

28. The initial share capital of the Kenya Airports Authority shall be sixty-six billion (66,000,000,000) shillings divided into sixty-six million (66,000,000) ordinary shares as may be varied from time to time in accordance with the provisions of the Companies Act, 2015.

No.17 of 2015.

Establishment of the Aviation Investment Corporation.

29. (1) There is hereby established an entity to be known as the Aviation Investment Corporation.

(2) The Aviation Investment Corporation shall be a body corporate with limited liability, perpetual succession, a common seal and shall be capable in its own name of —

(a) suing and being sued;

(b) taking, purchasing and disposing of movable and immovable property subject to the provisions of this Act;

(c) holding shares in any company or other body; and

(d) entering into contracts.

(3) The Registrar of Companies shall enter into the register of companies the Aviation Investment Corporation

and issue the Aviation Investment Corporation with a certificate of registration noting its status as a state owned entity established under this Act.

Powers and functions of the Aviation Investment Corporation.

30. The Aviation Investment Corporation shall have broad powers—

(a) to carry on businesses in relation to aviation activities and any other business related to or ancillary to the aviation sector as may be determined by the Board and to undertake all necessary activities necessary to construct, operate and manage such businesses;

(b) to carry on businesses in relation to aviation training schools, maintenance and repair organisation, aircraft handling, flight catering, aviation medical services, tour and holiday management services and any other business related to or ancillary to the aviation sector as may be determined by the Board and to undertake all necessary activities necessary to construct, operate and manage such businesses;

(c) to undertake any activities within a special economic zone or an export processing zone in accordance with applicable law; and

(d) to engage in any other activities that may be necessary for the performance of its functions under this Act and as may be assigned by the Board from time to time.

Share capital of the Aviation Investment Corporation.

No. 17 of 2015.

31. The initial share capital of the Aviation Investment Corporation shall be one million (1,000,000) shillings divided into fifty thousand (50,000) ordinary shares as may be varied from time to time in accordance with the provisions of the Companies Act, 2015.

Powers of the Operating Entity.

32. Each Operating Entity shall have all powers as may be necessary for the performance of its functions under this Act subject to any conditions or restrictions as may be prescribed by the Board from time to time:

Provided that such conditions or restrictions are not inconsistent with the provisions of this Act.

Establishment of additional operating entities.

33. The Board may from time to time propose legislative amendments to the Cabinet Secretary for the establishment of additional operating entities.

General provisions in relation to the share capital of the Operating Entities.

34. The share capital of each Operating Entity shall at all times be held by the Corporation and may not be transferrable other than by authority of the Cabinet Secretary to the National Treasury upon approval by the National Assembly.

Increase in share capital.

35. The Cabinet Secretary with the approval of the Cabinet Secretary to the National Treasury may from time to time increase the share capital of any Operating Entity to such extent as may be expedient by the creation and issue of ordinary and preference shares.

Liability.

36. (1) The Corporation's liability in relation to any Operating Entity shall be limited to the shares held by it.

(2) Nothing in this Act or any act of the Corporation or its officers pursuant to this Act shall be deemed to constitute any of the Corporation, the Fund, the Board or the officers of the Corporation as an agent, guarantor or obligor of any Operating Entity or any Operating Entity Subsidiary or their liabilities.

Application of the Companies Act to the Operating Entities and filing of returns.

37. (1) Except for the provisions applying to state owned entities under the Companies Act, 2015, none of the other provisions of the Companies Act, 2015, or any amendment thereof, or of any other law relating to companies, shall apply to the Corporation or the Operating Entities.

(2) Every Operating Entity with a share capital must file an annual return with the Registrar of Companies in the prescribed form within the prescribed period after the end of the anniversary of the date of its establishment, including in that return a confirmation of the amount of its share capital, the holders of such share capital and any other prescribed information.

(3) Every Operating Entity with a share capital must file a return with the Registrar of Companies in the prescribed form for state owned entities (within the meaning of the Companies Act) within the prescribed period therefor notifying the Registrar of any change in the share capital or registered ownership of such share capital and other prescribed information.

38. Prior to the determination of the user charges, the relevant Group Entity, shall publicise the proposed user charges and shall take into consideration the views of the users of its services or facilities and other relevant stakeholders prior to publication by the Cabinet Secretary in the *Gazette*.

Stakeholder consultation by the Operating Entities in setting user charges.

PART VI—MANAGEMENT OF THE OPERATING ENTITIES

39. (1) The Board shall in respect of each Operating Entity appoint a Managing Director responsible for the day to day management and operations of such Operating Entity.

Appointment of Managing Director.

(2) The Managing Director shall have control over all personnel and other activities of the Operating Entity and shall report to the Chief Executive Officer.

40. A person shall be qualified for appointment as a Managing Director if that person—

Qualifications of a Managing Director.

(a) holds at least a masters degree from a university recognised in Kenya or its equivalent in a relevant field;

(b) has at least ten years work experience in the relevant industry;

(c) has proven business management or other professional experience; and

(d) meets the requirements of Chapter Six of the Constitution.

41. Subject to any controls or restrictions prescribed by the Board from time to time, a Managing Director shall perform the following functions in relation to the relevant Operating Entity—

Functions of a Managing Director.

(a) carry out the day to day management of the Operating Entity;

(b) develop and recommend to the Chief Executive Officer the strategy and business plans of the Operating Entity;

(c) prepare annual reports, annual budgets and other financial reports in respect of the Operating Entity;

(d) execute the Operating Entity's business strategy as communicated by the Board;

(e) ensure compliance by the Operating Entity with the applicable laws and regulations;

(f) monitor and manage the deployment and utilisation of the funds, property and affairs of the of the Operating Entity;

(g) ensure the Operating Entity's compliance with licensing
and regulatory approvals;

(h) delegate responsibilities and supervise the work of the employees of the Operating Entity; and

(i) appoint such personnel as may be necessary for the efficient working of the Operating Entity, as directed by the Board.

Remuneration of the Managing Directors.

42. A Managing Director shall be paid such remuneration, fees or allowances for expenses as may be determined by the Board and approved by the Cabinet Secretary to the National Treasury.

Tenure of office of a Managing Director.

43. A Managing Director shall hold office for a period of five years and shall be eligible for re–appointment for one further term of five years subject to satisfactory performance.

Grounds for removal of a Managing Director.

44. (1) The office of a Managing Director shall become vacant if the Managing Director—

(a) dies;

(b) is adjudged bankrupt or enters into a composition scheme or arrangement with his creditors;

(c) is convicted of a criminal offence involving corruption, fraud or dishonesty;

(d) is convicted of a criminal offence and sentenced to imprisonment for a term exceeding six months;

(e) resigns by giving a notice in writing to the Board;

(f) assumes a political office; or

(g) is otherwise unable or unfit to continue serving as a Managing Director.

(2) The Board may remove a Managing Director from office before expiry of the Managing Director's term where the Managing Director—

(a) is in breach of the terms of their appointment;

(b) fails to meet performance targets.

Common seal of an Operating Entity.

45. (1) There shall be a common seal of each Operating Entity to be kept in the custody of the Managing Director or such other person as the Managing Director may direct.

(2) The common seal may not be used except by order of the Board.

(3) The seal of each Operating Entity shall be authenticated by the signature of the relevant Managing Director.

(4) Every document purporting to be an instrument issued by an Operating Entity and to be sealed with the seal of the Operating Entity authenticated in the manner provided by subsection (1) and (3) shall be deemed to be such an instrument and shall be received in evidence without further proof.

(5) Any contract or instrument which would not be required to be under seal may be entered into or executed on behalf of an Operating Entity by any person generally or specially authorized by the Managing Director for that purpose.

PART VII—OPERATING ENTITY SUBSIDIARIES

Director(s) of the Operating Entity Subsidiaries.

46. Each Operating Entity shall, to the extent permitted by any written law, appoint such persons nominated by the Corporation to act as director(s) of its Operating Entity Subsidiary.

Managing directors of the Operating Entity Subsidiaries.

47. (1) The Board shall appoint such persons as are nominated by the Chief Executive Officer to act as managing director(s) of each of its Operating Entity Subsidiaries and shall carry out such functions as may be determined by the relevant Operating Entity Subsidiary's board.

(2) In the exercise of the respective functions of the Operating Entity Subsidiaries under this Act and under their respective constitutional documents, the managing director(s) of the Operating Entity Subsidiaries shall report to the relevant Operating Entity's Managing Director and shall, subject to the direction of the relevant Managing Director—

(a) execute the strategy of the relevant subsidiary as prescribed by the relevant subsidiary board;

(b) exercise oversight over the management and operations of the relevant subsidiary including issuing directions to the management team of the relevant subsidiary;

(c) oversee the budgeting, financial administration and performance
of the relevant subsidiary in accordance with the conditions or restrictions prescribed by the relevant board from time to time;

(d) identify opportunities for economies of scale within the relevant subsidiary and coordinate the management of shared services between the Operating Entities;

(e) provide strategic advice to the relevant board;

(f) ensure the relevant board's policies and guidelines are communicated to the relevant subsidiaries;

(g) ensure compliance by the relevant subsidiary with applicable laws and regulations;

(h) delegate responsibilities and supervise the work of the executives and employees of the relevant subsidiary;

(i) establish committees to deal with various operational matters; and

(j) appoint such personnel as may be necessary for the efficient working of the relevant subsidiary as directed by the relevant board.

Articles of Association.

48. Immediately upon the Vesting Date in respect of Kenya Airways, the Articles of Association of the Operating Entity Subsidiaries of Kenya Airways shall be amended to give effect to the provisions of this Act and to ensure that the governance and management structures of the Operating Entity Subsidiaries of Kenya Airways are, to the extent permitted by any written law, consistent with the governance and management structures of the Group.

PART VIII—TRANSFER OF UNDERTAKINGS TO THE OPERATING ENTITIES

Transfer of Undertakings.

49. Subject to section 50, this Act shall without further instrument, notice, or act transfer the undertakings (including

all their businesses, assets, liabilities and contracts) of the Transferring Entities to the Operating Entities as follows—

(a) transfer of the entire undertaking of the former Kenya Airports Authority to the Kenya Airports Authority; and

(b) transfer of the entire undertaking of Kenya Airways PLC, including the equity interests held by Kenya Airways PLC in its subsidiaries, to Kenya Airways.

Vesting Orders to be published by the Cabinet Secretary.

50. The Cabinet Secretary shall, with the approval of the Cabinet Secretary to the National Treasury, immediately upon the Government acquiring one hundred percent of the equity interest in Kenya Airways PLC, by notice in the Gazette, issue one or more Vesting Orders effecting the creation of the Operating Entities established under this Act and transferring the relevant undertaking to the relevant Operating Entity as contemplated under section 48.

Details to be set out in a Vesting Order.

51. A Vesting Order shall set out—

(a) the Transferring Entity and the Operating Entity to which the Vesting Order relates;

(b) the relevant Vesting Date; and

(c) a list of the contracts, assets, liabilities, functions, powers, rights, obligations and undertakings of the relevant Transferring Entity to be transferred to the relevant Operating Entity under the Vesting Order by virtue of this Act.

Effect of Vesting Order.

52. On the relevant Vesting Date—

(a) every contract (whether governed by Kenyan law or otherwise), asset and other instrument made by or on behalf of the relevant Transferring Entity listed in the relevant Vesting Order, shall by virtue of this section and without further assignment, notice or act be transferred to the relevant Operating Entity as if made by or on behalf of the relevant Operating Entity with the other party or parties thereto and as if references therein to the relevant Transferring Entity or any employee or authority thereof were references to the relevant Operating Entity:

Provided that such transfer shall be effective whether or not such contract, asset or instrument is assignable in law or in contract by either party and notwithstanding any formalities required to be completed or performed by any party;

(b) any outstanding liability of the relevant Transferring Entity listed in the Vesting Order shall become a liability of the relevant Operating Entity by virtue of this section and without further assignment or novation;

(c) the functions, powers, rights, obligations and undertakings of the relevant Transferring Entity shall be transferred to the relevant Operating Entity by virtue of this section and without further assignment;

(d) any legal proceedings pending by or against the relevant Transferring Entity in respect of any property, liabilities or contracts which become property, liabilities or contracts of the relevant Operating Entity shall be deemed to continue or be continued by or against the relevant Operating Entity;

(e) any judgment, order or award obtained by or against any of the Transferring Entities shall be enforceable by or against the relevant Operating Entity;

(f) all existing licences, authorisations, permits, exemptions or other approvals issued to, available to, binding upon or held by the relevant Transferring Entity, and the benefit of all tax losses available to a Transferring Entity as at the Vesting Date, shall be deemed to have been issued to, be available to, be binding upon, be held by and be of full force and effect in every respect in favour of the relevant Operating Entity; and

(g) the employment terms of service of the relevant Transferring Entity listed in the relevant Vesting Order shall on the Vesting Date be transferred to the relevant Operating Entity and an employee of a Transferring Entity whose terms of service are listed in the Vesting Order shall become an employee of the relevant Operating Entity on the

same or improved terms and conditions of service and subject to any subsisting notice of dismissal, resignation or variation and such employment with the relevant Transferring Entity and the Operating Entity shall be deemed to be a single continuing employment.

Review of the terms of service of employees of the Operating Entities.

53. Notwithstanding anything in this Act or in any other law, the Board may, in accordance with applicable law, review and amend the salaries, wages or other terms and conditions of service of employees of the Group as may be necessary to ensure parity and compliance with the Constitution and other laws relating to employment in Kenya.

Updating of records.

54. Every public officer having the power or duty to effect or amend any entry in a register relating to property, or to issue or amend any certificate or other document affecting or evidencing title to property, shall, without payment of fee or other charge and upon request made by or on behalf of a Group Entity do all such things as are by law necessary to give full effect to all the transfers contemplated under this Act.

Regulations governing transfer of functions.

55. The Cabinet Secretary may issue such administrative guidelines and Regulations to be followed in enabling the transfers contemplated under this Act.

PART IX—THE ESTABLISHMENT AND MANAGEMENT OF THE FUND

Establishment and management of the Fund.

56. (1) There is established a fund to be known as the Kenya Aviation Corporation Fund which shall be administered by the Board.

(2) The Chief Executive Officer shall manage the day to day operations of the Fund as may be determined by the Board including the disbursement of approved budgetary allocations to the Operating Entities.

(3) The Corporation shall with the approval of the National Treasury open and operate bank accounts in respect of the Fund in both domestic and foreign currencies in banks approved by the Board.

(4) Each Operating Entity shall, with the approval of the National Treasury, open and operate their own bank accounts in both domestic and foreign currencies in banks approved by the Board.

Principles of operation.

57. The Corporation shall perform its functions in accordance with sound financial principles and shall ensure, as far as reasonably practicable, that its expenditure is properly chargeable to its revenue.

Sources of money into the Fund.

58. (1) There shall be paid into the Fund—

(a) apportioned proceeds from the passenger service charge as provided for under the Air Passengers Service Charge Act; Cap. 475.

(b) such monies as may be appropriated by Parliament for the purposes of the Fund;

(c) grants and loans from the Government;

(d) grants, donations and loans from any other person or body;

(e) surplus income accruing to the Operating Entities in the discharge of their functions at the end of the Financial Year;

(f) interest on savings accruing on moneys held in the Fund; and

(g) monies from any other lawful source.

(2) The Board may invest any part of the Fund not immediately required for use by the Operating Entities as the Board may deem fit as approved by the National Treasury.

(3) All receipts, savings and accruals to the Fund and the balance of the Fund at the end of each Financial Year shall be retained in the Fund for the following purposes —

(a) payment of operating and capital expenses of the Corporation and the Operating Entities;

(b) payment of liabilities of the Corporation and the Operating Entities;

(c) payment of any other amounts as may be provided for under the Operating Entities budgets or approved by the Board from time to time;

(d) payments to the Government as may be determined by the Board.

Payments out of the Fund.

59. Payments may be paid out of the Fund monies for the expenditure of the Operating Entities as may be necessary to execute their functions and operations under this Act and as may be appropriated by the Board from time to time.

PART X—FINANCIAL PROVISIONS

Budget and annual estimates.

60. (1) Every Group Entity shall prepare and submit to the Board for approval, not later than sixty days before the beginning of every Financial Year, estimates of the relevant entity's revenue and expenditure for the following Financial Year accompanied by proposals for funding of all projects to be undertaken by the relevant Group Entity, or the implementation of which will continue during the Financial Year to which those estimates relate.

(2) No annual estimates and proposal for expenditure shall be implemented until approved by the Board but a Group Entity may, however, make a supplementary requisition of funds to the Board for expenditure not initially provided for in its annual budget estimate.

Borrowing powers.

61. (1) The Corporation may borrow funds in Kenya or elsewhere and issue any security, mortgage or charge on any property of the Corporation on such terms as may be approved by the Cabinet Secretary to the National Treasury.

(2) The Operating Entities may borrow money in Kenya or elsewhere subject to such limitations and conditions as may be imposed by the Board and the Cabinet Secretary to the National Treasury from time to time.

(3) The Operating Entities shall not give or execute any mortgage or charge over any of their property by way of security for borrowed money except with the prior approval of the Cabinet Secretary to the National Treasury.

Books of account, records and audit.

62. (1) The Corporation and each Operating Entity, including any Operating Entity Subsidiaries, shall keep or cause to be kept proper books recording all the property, undertakings, funds, activities, contracts, transactions and any other business.

(2) It shall be the duty of the Managing Directors of the Operating Entities and the Chief Executive Officer to ensure that proper accounts and other records are kept in respect of the revenue and expenditure of the Operating Entities, including any Operating Entity Subsidiaries, and the Corporation respectively.

(3) The annual accounts of the Operating Entities, including any Operating Entity Subsidiaries, and the Corporation shall be audited by the Auditor-General.

(4) The Board shall, within three months after the end of each Financial Year, cause to be prepared and submitted to the Auditor-General the following records in respect of the Corporation and the Operating Entities, including Operating Entity Subsidiaries—

(a) a balance sheet showing in detail the assets and liabilities at the end of the Financial Year;

(b) the trading and profit and loss accounts or statements of income; and

(c) other statements or accounts as may be necessary to fully disclose the undertakings, assets, liabilities, trading profits or loss and discharge of the functions of the Corporation and Operating Entities.

(5) On receipt of the accounts specified under subsection (4) of this section, the Auditor-General shall cause the records to be examined and audited and shall, within a period of seven months, or such longer period as the Cabinet Secretary may, after the end of the Financial Year to which the accounts relate, certify in respect of each account the result of the examination and audit and shall within that period prepare and submit to the Cabinet Secretary a report upon the examination and audit of all the accounts together with the certified copies of the accounts.

(6) The Cabinet Secretary shall, within fourteen days of receipt by him or her of a report under subsection (4), lay it before the National Assembly.

Annual report.

63. The Board shall, within ninety days of the end of each Financial Year prepare a report of the operation of the Corporation during that year and shall transmit such report to the Cabinet Secretary who shall cause it to be presented to the National Assembly together with the report of the Auditor-General.

PART XI—OFFENCES RELATING TO AERODROMES

Major offences.

64. Any person who unlawfully —

(a) does any act which obstructs or is likely to obstruct the working of any equipment or vehicle of the Kenya Airports Authority used in the operation of an aerodrome and which endangers or is likely to endanger the life of any person therein;

(b) damages or in any way interferes with any aerodrome facility or other property of the Kenya Airports Authority in such a manner as to endanger the life of any person;

(c) discharges any firearm on the property of the Kenya Airports Authority; or

(d) does any act which obstructs or is likely to obstruct the operation of aircraft on any aerodrome or the use of any runway, taxiway, apron or landing strip therein,

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

Minor offences.

65. Any person who —

(a) not being specifically authorised in that behalf or an employee or agent of the Kenya Airports Authority or passenger —

(i) is found during the hours of darkness on any premises occupied by the Kenya Airports Authority;

(ii) is found in any area designated by the Kenya Airports Authority as dangerous by the erection of a notice to that effect;

(iii) refuses to leave premises occupied by the Kenya Airports Authority or any aircraft or vehicle thereof, after being lawfully ordered to do so by an employee or a police officer; or

(b) being on any premises occupied by the Kenya Airports Authority—

(i) refuses when called upon by an employee or police officer to give his name and address or gives a false name or address with intent to avoid prosecution;

(ii) is in a state of intoxication or behaves in a violent or offensive manner to the annoyance of any other person;

(iii) commits any act or otherwise does anything which may cause injury to any person on

such premises or upon such aircraft or vehicle;

(iv) commits any nuisance or act of indecency or uses profane, obscene, indecent or abusive language;

(v) without lawful excuse contravenes any lawful direction given by any employees of the Kenya Airports Authority;

(vi) except with the express permission of the Managing Director of the Kenya Airports Authority, hawks, sells or exposes for sale any article or goods or applies for or solicits custom of any manner or description; or

(vii) smokes in any part of such premises, aircraft, vehicle bearing a notice that smoking is not permitted; or

(c) writes, draws or affixes any profane, obscene, indecent, or abusive words, matter, or representative character upon any premises occupied by the Kenya Airports Authority or upon any aircraft or vehicle of the Kenya Airports Authority;

(d) defaces the writing on any board or any notice authorized to be maintained upon any premises occupied by the Kenya Airports Authority or upon any aircraft or vehicle of the Kenya Airports Authority;

(e) damages, or without lawful excuse interferes with any property of the Kenya Airports Authority;

(f) without lawful excuse does any act which obstructs or is likely to obstruct the free movement of vehicles on any aerodromes or the use of any road, parking area or related facility;

(g) without lawful excuse enters or alights from any vehicle of the Kenya Airports Authority while in motion or in a place other than a place appointed by the Kenya Airports Authority for passengers to enter or alight from a vehicle, or opens any outer door of any vehicle while it is in motion;

(h) being a driver or conductor of any vehicle, disobeys while upon premises occupied by the Kenya Airports Authority any reasonable direction given to him or her by a police officer or, not being an employee, disobeys any such direction given by an authorized employee;

(i) in the absence of a gate-keeper, omits to shut and fasten, if any form of fastener is provided, any gate on any aerodrome within premises belonging to the Kenya Airports Authority, as soon as such person or any animal, vehicle or other thing under his or her charge has passed through such gate;

(j) fails to deliver at the earliest possible opportunity to an authorised employee any property which there is reason to believe has been lost, forgotten or found on any premises occupied by the Kenya Airports Authority or any aircraft or vehicle of the Kenya Airports Authority;

(k) wilfully obstructs or impedes an employee in the discharge
of his duties;

(l) gives or offers to any employee any money or any thing of value for the purpose of avoiding payment of any sum due to under this Act to the Kenya Airports Authority;

(m) unlawfully removes any property of the Kenya Airports Authority; or

(n) being an employee of the Kenya Airports Authority, receives from any passenger or from any other person delivering goods to the Kenya Airports Authority for any of the purposes of the Kenya Airports Authority or from any person making use of the facilities provided by the Kenya Airports Authority, any amount of money, and who fails within a reasonable time, not exceeding half an hour, to issue a receipt in respect of such amount of money,

commits an offence and shall be liable upon conviction to a fine not exceeding five hundred thousand shillings or to imprisonment for a term not exceeding two years, or to both.

False returns.

66. Any person who makes, either knowingly or recklessly any statement which is false in any material particular in any return, claim or other document which is required or authorised to be made for the purpose of the Kenya Airports Authority under this Act commits an offence and shall be liable upon conviction to a fine not exceeding five hundred thousand shillings or to imprisonment for a term not exceeding six months, or to both.

Employee endangering safety.

67. Any employee who, while on duty endangers the safety of any person, aircraft or vehicle by —

(a) contravening any of the provisions of this Act;

(b) contravening any lawful order, direction or rule given to such employee or made in respect of his service;

(c) being under the influence of alcohol or drugs; or

(d) any rash or negligent act,

commits an offence and shall be liable upon conviction to a fine not exceeding fifty thousand shillings or to imprisonment for a term not exceeding three years , or to both.

Employee demanding improper amount.

68. Any employee who, with intent to defraud, demands, solicits or receives from any person making use of the facilities provided by the Kenya Airports Authority, any greater or lesser amount than he should demand or receive, or any other thing of value commits an offence and shall be liable upon conviction to a fine not exceeding one hundred thousand shillings or to imprisonment for a term not exceeding twelve months, or to both.

Arrest of an employee.

69. (1) Where the safe operation of any Aerodrome or any service ancillary thereto, would be endangered by the immediate arrest, whether with or without a warrant of any employee thereof, the police officer whose duty is to make such arrest shall—

(a) request the office in charge of such aerodrome to relive such employee from his duties as soon as practicable; and

(b) refrain from arresting such employee until he or she is so relieved and take all necessary steps to ensure that such employee does not escape.

(2) Where any request is made to the officer in charge of an aerodrome under this section, it shall be his or her duty to relieve the employee in respect of whom the request is made with the least possible delay.

Powers of authorized employee.

70. (1) Any person who commits any offence mentioned in sections 65, 66 and 68 may be arrested without warrant by any authorized employee or police officer and shall thereupon, with the least possible delay, be taken before a magistrate having jurisdiction to try him or her or to commit him or her for trial.

(2) Any person who commits any offence against this Act, other than an offence mentioned in subsection (1), may be arrested without warrant by an authorized employee or a police officer if—

(a) there is reason to believe that such person will abscond;

(b) he or she refuses on demand to give his or her name and address; or

(c) there is reason to believe that the name or address given by him or her is incorrect,

and shall thereupon, with the least possible delay, be taken before a magistrate having jurisdiction to try him or her or commit him or her for trial.

(3) Any person who commits any of the offences set out in section 66 may be required by any authorized employee or police officer to leave the premises occupied by the Kenya Airports Authority, as the case may be, in which such person is at the time of the commission of the offence and to remove any goods therefrom; and if such person fails to comply with such requirement he or her or such goods may be removed therefrom with force as may be reasonable necessary in the circumstances.

General penalty.

71. Except as otherwise provided by this Act, a person who is found guilty of committing an offence under this Act for which no other punishment is given, that person is liable on conviction to a term of imprisonment not exceeding six months or to a fine not exceeding one hundred thousand shillings, or to both.

PART XII—MISCELLANEOUS PROVISIONS

Powers of the Cabinet Secretary to make

72. The Cabinet Secretary may make Regulations, not inconsistent with this Act respecting any matter that is

necessary or convenient to be prescribed under this Act or for the carrying out or giving effect to this Act. Regulations.

73. The Kenya Airports Authority Act is repealed. Repeal of No. 3 of 1991.

74. The Acts identified in the Second Schedule are amended as indicated in the Second Schedule. Other consequential amendments.

FIRST SCHEDULE (s.17)

PROVISIONS RELATING TO THE CONDUCT OF BUSINESS AND AFFAIRS OF THE BOARD

1. The Board shall meet at least once in every three months to conduct the business of the Board.

2. The Chairperson may on his or her own motion, or upon request by a member, call a special meeting of the Board at any time, where he or she considers it expedient for the transaction of the business of the Board.

3. Other than a special meeting, or unless three quarters of members agree, at least fourteen days' written notice of every meeting of the Board shall be given to every member of the Board by the chief executive officer.

4. The quorum necessary for the transaction of business by the Board shall be seven provided that at least three Independent Non-Executive Board Members are present.

5. The Chairperson shall preside at the meetings of the Board and in the absence the chairperson, the members of the Board present shall elect from amongst themselves, a person to preside over the meeting of the Board.

6. The matters of the Board shall be decided 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.

7. The proceedings of the Board shall not be invalidated by reason of a vacancy among the members or a defect in the appointment or qualification of a member.

8. The Board shall cause minutes to be recorded and kept of all resolutions and proceedings at each Board meeting and of the Board Members present thereat by the Corporation Secretary.

9. The minutes of each meeting shall be confirmed by the Board at the next meeting of the Board and signed by the Chairperson or the person presiding at the meeting.

10. Subject to the provisions of this Schedule, the Board may determine its own procedure and the procedures of any committee of the Board and attendance of any other persons at the meetings and may make standing orders in respect thereof.

SECOND SCHEDULE (s.74)

WRITTEN LAWS TO BE AMENDED

Written law	*Provision*	*Amendment*
The State Corporation Act (Cap. 446)	s. 2	In the definition of "state corporation" add the following new item under paragraph (b) — "(viii) the Kenya Aviation Corporation and Operating Entities established under the National Aviation Management Act and the Operating Entity Subsidiaries".
The Public Procurement and Asset Disposal Act, 2015	s. 4	Add the following new subsections immediately after subsection (3) — (4) Notwithstanding the provisions of this Act, the Cabinet Secretary may, from time to time, with approval of Cabinet and the National Assembly, by notice, exempt a state organ or public entity from the application of this Act. (5) An exemption made under subsection (4) shall be based on procurement guidelines developed by that state organ or public entity and approved by the National Treasury.
The Companies Act, 2015	New	Insert the following new sections immediately after section 10— State owned entity. **10A**. For the purposes of this Act, an entity is a state owned entity if that entity being a body corporate — (a) is created pursuant to the provisions of an Act of Parliament(other than this Act) and registered under this Act; (b) has a share capital that is wholly owned by Government; (c) the liability of its members is limited pursuant to the provisions of its establishing Act of Parliament; and

(d) its certificate of registration states that it is a state owned entity.

Registration of a state owned entity.

10B. (1) The Registrar of Companies shall register a state owned entity under this Act and shall allocate to it a unique identifying number if he or she is provided with the following documents and information—

(a) a copy of the Act of Parliament establishing the state owned entity;

(b) a statement of capital and initial shareholding of the state owned entity stating—

(i) the total number of shares of the state owned entity to be taken on registration by the shareholder(s);

(ii) the aggregate nominal value of those shares;

(iii) for each class of shares—

(A) the particulars of the rights attached to the shares;

(B) the total number of shares of that class;

(C) the aggregate nominal value of shares of that class; and

(D) the amount to be paid up and the amount, if any, to be unpaid on each share, whether on account of the nominal value of the share or on form of a premium.

(c) the proposed location of the registered office of the state owned entity.

Issuance of certificate of registration.

10C. (1) On the registration of a state owned entity in accordance with section 10B, the Registrar shall issue the state owned entity with a certificate of registration stating—

(a) the name of the state owned entity and its unique identifying number;

(b) the date of the state owned entity's registration, being the date on which such state entity was created pursuant to the provisions of the relevant Act of Parliament;

(c) that the liability of the state owned entity is limited by its shares;

(d) that the state owned entity has been registered as such under this Act.

(2) The Registrar shall sign the certificate of registration and authenticate it with the Registrar's official seal.

(3) The certificate shall be conclusive evidence that the relevant requirements relating to registration have been complied with and that the state owned entity is duly registered under this Act.

Effect of registration of a state owned entity.

10D. From the date of registration of a state owned entity –

(a) the state owned entity shall do all of the things that a body corporate is capable of doing;

(b) the registered office of the state owned entity shall be as

stated in the documents submitted to the Registrar pursuant to section 10B(c);

(c) the status of the state owned entity shall be as stated in its certificate of registration; and

(d) the shareholders of the state owned entity shall become the holder of the shares specified in the statement of capital and initial shareholdings.

Nominal value of shares.

10E. Shares in a state owned entity shall each required to have a fixed nominal value and shall be denominated in shillings.

Alteration of share capital of a state owned entity.

10F. (1) A state owned entity may, by ordinary resolution of its shareholder(s), alter its share capital by increasing it through allotting new shares.

(2) A state owned entity may—

(a) subdivide its shares, or any of them, into shares of a smaller nominal amount than its existing shares; or

(b) consolidate and divide all or any of its share capital into shares of a larger nominal amount than its existing shares.

(2) When subdividing, consolidating or dividing its shares, a state owned entity shall ensure that the proportion between the amount paid and the amount ,if any, unpaid on each resulting share is the same as it was in the case of the share from which that share is derived.

(3) Within one month after allotting new shares, a state owned

entity shall lodge with the Registrar for registration a notice specifying the increased share capital together with a statement of capital stating –

(a) the total number of shares of the state owned entity to be taken on registration by the shareholders;

(b) the aggregate nominal value of those shares;

(c) for each class of shares—

(i) the particulars of the rights attached to the shares;

(ii) the total number of shares of that class;

(iii) the aggregate nominal value of shares of that class; and

(iv) the amount to be paid up and the amount, if any, to be unpaid on each share, whether on account of the nominal value of the share or in form of a premium.

Power of state owned entity to issue redeemable shares.

10G. A state owned entity may issue redeemable shares that are to be redeemed, or are liable to be redeemed, at the option of the shareholder(s) of the state owned entity.

Terms and manner of redemption.

10H. (1) The shareholder(s) of a state owned entity may determine the terms and conditions (including but not limited to payment for redeemable shares and financing of the redemption) and manner of redemption of shares pursuant to the provisions of the Act of Parliament

establishing the state owned entity or any regulations thereof.

(2) Within one month after a state owned entity has redeemed any redeemable shares, the state owned entity shall lodge with the Registrar for registration a notice specifying the shares that have been redeemed.

(3) The state owned entity shall attach to, or enclose with, the notice a statement of capital that indicates—

(a) the total number of shares of the state owned entity;

(b) the aggregate nominal value of those shares;

(c) for each class of shares—

(i) the particulars of the rights attached to the shares;

(ii) the total number of shares of that class;

(iii) the aggregate nominal value of shares of that class; and

(iv) the amount to be paid up and the amount, if any, to be unpaid on each share, whether on account of the nominal value of the share or in form of a premium.

Annual returns.

10I. (1) Every state owned entity shall submit to the Registrar successive annual returns each of which is made up to a date not later than the date that is from time to time the state owned entity's return date.

(2) A state owned entity's return date shall be the anniversary of the state owned entity's registration.

Contents of annual returns.

10J. (1) A state owned entity shall ensure that its annual return states the date to which it is made up and contains the following information—

(a) the registered address of the state owned entity;

(b) the principal business activities of the state owned entity; and

(c) a statement of capital and the name and address of the member(s) of the state owned entity.

(2) The state owned entity shall ensure that the statement of capital with respect to its share capital at the date to which the return is made indicates—

(a) the total number of shares of the state owned entity;

(b) the aggregate nominal value of those shares;

(c) for each class of shares—

(i) the particulars of the rights attached to the shares;

(ii) the total number of shares of that class;

(iii) the aggregate nominal value of shares of that class; and

(iv) the amount to be paid up and the amount, if any, to be unpaid on each share, whether on account of the nominal value of the share or in form of a premium.

Forms and fees.

10K. The Registrar shall prescribe the forms for use and fees payable with respect to the processes affecting a state owned entity.

Application of this Act to state owned entities.

10L. (1) Except as otherwise provided for under this Act in relation to state owned entities or the Act establishing a state owned entity, and for avoidance of doubt, none of the other provisions of this Act or the regulations under this Act, or any amendment thereof, or of any other law relating to companies, shall apply to state owned entities.

(2) Notwithstanding the provisions of subsection (1), the Attorney General, may, in consultation with the relevant Cabinet Secretary, and through a way of notice, have the powers to apply any provision of this Act or the regulations to this Act to any state owned entity (provided that such provision is not inconsistent with the provisions of the Act of Parliament establishing the state owned entity) with such modifications as he or she may think fit, and may withdraw or amend any such notice.

MEMORANDUM OF OBJECTS AND REASONS

The Bill aims at giving effect to the recommendations of the Parliamentary report (dated the 17th June, 2019) on the inquiry into the Kenya Airways' Privately Initiated Investment Proposal (PIIP) to Kenya Airports Authority prepared by the Departmental Committee on Transport, Public Works and Housing proposing, among other recommendations, the nationalisation of Kenya Airways. The Bill proposes for the establishment of the Kenya Aviation Corporation as a holding corporation and its Operating Entities including Operating Entity Subsidiaries.

PART I (Clauses 1-4) of the Bill provides for preliminaries and sets out the objects and purposes of the Bill.

PART II (Clause 5) of the Bill establishes the National Aviation Council and whose functions shall be—

(a) to integrate policies relating to aviation sector and the other sectors of the economy to enable all the national organs and the sectors of the economy requiring access and support of the civil aviation sector to cooperate and work with the sector to ensure the effective performance of its mandate; and

(b) to assess and appraise, the objectives, commitment and the risks to the country in respect of actual and potential civil aviation capabilities.

PART III (Clauses 6-7) of the Bill establishes the Kenya Aviation Corporation and provides for the functions and powers of the same including:

(a) holding the shares in the Operating Entities;

(b) managing, overseeing and where applicable managing the operations of the Group including establishing centralised functions to be shared by the Group;

(c) promoting the development of the Kenyan aviation sector; and

(d) advising the Government on matters relating to the development of the Kenyan aviation sector.

PART IV (Clauses 8-22) of the Bill provides for the management of the Corporation including the creation of the Board of Directors which shall be the governing body of the Corporation.

PART V (Clauses 23-38) of the Bill provides for the establishment of Operating Entities and their functions.

PART VI (Clauses 39-45) of the Bill contains provisions on the management of the Operating Entities including the appointment of Managing Directors and qualifications for their appointment.

PART VII (Clauses 46-48) of the Bill provides for the management of the Operating Entity Subsidiaries. The provisions require each Operating Entity to appoint persons nominated by the Corporation to act as director(s) of the Operating Entity Subsidiaries.

PART VIII (Clauses 49-53) of the Bill contains provisions on the transfer of undertakings to the Operating Entities. The undertakings includes all businesses, assets, liabilities and contracts.

PART IX (Clauses 54-55) of the Bill contains provisions establishing the Fund to be managed by the Chief Executive Officer of the Corporation.

Payments shall be paid out of the Fund for the purposes of expenditure of the Operating Entities as appropriated by the Board.

PART X (Clauses 56-63) of the Bill provides for financial provisions, reporting mechanism, and management of funds by the established entities.

PART XI (Clauses 64-71) of the Bill contains provisions for offences relating to aerodromes including any act which obstructs or is likely to obstruct the working of any equipment or vehicle of the Kenya Airports Authority used in the operation of an aerodrome and which endangers or is likely to endanger the life of any person therein.

PART XII (Clauses 72-74) of the Bill contains miscellaneous provisions relating *inter alia* the power of the Cabinet Secretary to make Regulations and the repeal of the Kenya Airports Authority Act.

The Schedules details the provisions relating to the conduct of business and the affairs of the Board and consequential amendments to various Acts of Parliament, including the State Corporations Act, Public Procurement and Asset Disposal Act, 2015 and the Companies Act, 2015.

Statement on the delegation of legislative powers and limitation of fundamental rights and freedoms

The Bill confers on the Cabinet Secretary the powers to make regulations under the Act for the purposes of operationalizing the Act in order to implement the objectives. The Bill does not limit any fundamental rights or freedoms.

Statement on how the Bill concerns county governments

The Bill does not affects the functions of County Governments as set out in the Fourth Schedule to the Constitution and is therefore not a Bill

concerning counties. Section 18(g) of Part 1 of the Fourth Schedule to Constitution provides that transport and communications, including and in particular civil aviation is function of the National Government.

Statement of the Bill as a money Bill within the meaning of Article 114 of the Constitution

The enactment of this Bill may occasion additional expenditure of public funds.

Dated the 8th June, 2020.

ADEN DUALE,
Leader of the Majority Party.