

AIRLINE OPERATION IN NIGERIA AND BRITAIN AND DUTIES OF CIVIL AVIATION AUTHORITY

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Abstract

Provisions of the regulation of Air Operations are published in several documents. For an airline operation to be established, it is germane that the prospective airline operator must follow the rules and particularly the rules of the State in which the airline is to be established. He must comply with Aviation operation statutory requirements for airline operation and Civil Aviation Authority. The enterprise requires a lot of processes. The entrepreneur who wishes to establish an airline operation must do findings to know the best mechanism to be adopted toward establishing such and for its sustainability as a going concern. This article gives brief historical development of airline operations in Nigeria and Britain, the licensing process and the role of Civil Aviation Authority and operating permission, the routes specification, National control of the traffic market and the freedoms of the air were analysed. The objective of this Article is to set out the basic requirements and processes for an airline operation particularly in Nigeria. This Article shows that Nigerians and the Federal Government apparently did not follow and adopt

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maintenance principles which gave rise to the collapse of the federal government airline and some private individuals that established airline operations. This article adopted the doctrinal approach relying on primary and secondary sources of information. Comparing the two countries, Nigerian airline operation is work in progress and there is still need for future expansion.

Keywords: Civil Aviation, Airline Operation, Air Transport Licensing, Environmental Issues

1. Introduction

Every new investment often entails a daunting task irrespective of the nature of the project, business type and the size. The entrepreneur will be required to organize and oversee the management of the various units of the business while experts with appropriate skills and experience will be required to work within the business structure. Airline operation is one of the most highly regulated areas of commerce in Nigeria. Anywhere around the world, Airlines must obtain several permits and licenses to operate legally within the country's airspace. These permits and licenses are issued by the Civil Aviation Authority (CAA) and they are essential to ensure compliance with safety standards, operational regulations, and other requirements. In Nigeria it is the Nigerian Civil Aviation Authority (NCAA) that is responsible for this. Operating an aircraft for commercial purposes involves a web of regulations affecting the “operator” the “aircraft” and the “services” provided. In other words, establishing an airline involves a very big process. The potential and prospective operator will consider (a) what will

be required from a potential operator, security, safety, and maintenance (b) the type and quality of aircraft that will be used for the services and the service itself, the route it will be plying, the pilots, and air hostesses. The quality of service to be rendered including category of passengers or cargo the aircraft will engage in conveying will also have to be determined. Every commercial airline operation involves a preparatory extensive planning so that the period between conception and commencement of commercial operations is always time consuming. The first and unique consideration here is the time factor. The Paris Convention constitutes the first successful attempt at common regulation of international air navigation. The Convention laid the foundations of the air law¹. According to the draft principles that governed the convention, each nation has absolute sovereignty over the airspace overlying its territories and waters. A nation, therefore, has the right to deny entry and regulate flight (both foreign and domestic) into and through its airspace rules. Each nation should apply its airspace rules equally to its own and foreign aircraft operating within that airspace, and make rules such that its sovereignty and security are respected while affording as much freedom of passage as possible to its own and other signatories aircraft. Furthermore, Aircraft of contracting States are to be treated equally in the eyes of each nation's law and Aircraft must be registered to a State, and they possess the nationality of the State in which they are registered.

¹ The 1919 Paris Convention <https://applications.icao.int/1919.1...>

2. **Historical Development of Airline Operations**

Airline operation is not a recent practice. It had been mentioned before that every business venture grows in the long run if it is well managed. The same thing applies to airline operation. The Paris Peace Conference was an international meeting convened in January 1919 at Versailles just outside Paris². The Paris Convention of 1919 was the first international convention to address the political difficulties and intricacies involved in international aerial navigation. The convention was concluded under the auspices of the International Commission for Air Navigation. On 8 February 1919, the first public international airline³ service was operated between Paris and London by the French Farman Company using a Farman G. Goliat with 12 passengers' seats.⁴ In 1927, Imperial Airways in an attempt to link together the scattered parts of the British Empire opened up a line from Cairo to Basra in Iraq which required however, a number of intermediaries for refueling. These stopping places necessitated extra fortification and garrison to protect the passengers from the tough and hostile tribesmen of the area.⁵ The above mentioned events indicate a most amazing technical development, that must not be allowed to overshadow the parallel commercial evolution which has

² The Paris Peace Conference and the Treaty of Versailles <https://2001-2009.state.gov>< Accessed 23 January 2024.

³ Hereinafter, "airline" will be used to indicate a route served commercially and regularly by aircraft and airline to indicate company undertaking to perform air transport services for hire.

⁴ REUSS Jahrbuch der Luftfahrt 1954, Munchen

⁵ Champion, Famous Air Routes of the world, London, 1956

taken place. There was need to beef up security. The early commercial aviation after the First World War was helped along by adventurous people such as “Gypsy Fliers” or “Barn Stormier”. They moved around the country and displayed flying tricks using ancient wartime airplanes, selling rides to thrill-seeking and sight-seeing passengers. These flyers who were ambitious, made attempts to set up a permanent business at an established air field and came to be known as fixed-base operators. Those who engage in the offering of transportation services to nearby points, dignified their operation with the title of airline.⁶

The first airline to commence scheduled flight into Nigeria was in 1936 by Imperial Airways. This airline was succeeded by the British Overseas Airways Corporation (BOAC).⁷ The airline schedule took place after the Second World War. The operations were done with light aircraft. The need then arose for the establishment of the West African Airways Corporation (WAAC) with its services covering Ghana, Gambia, Nigeria and Sierra Leone. The United Kingdom Colonial Air Navigation Orders were applied as their legislative authority. Today, almost every country has its airline. So many individual private airline operators exist along with the government airline.

⁶ Cf Airways Aboard, University of Wisconsin Press, 1950, .6

⁷ British Airways Marks 75 years of flying to Nigeria. <https://www.vanguardngr.com/finance> Accessed 12 January 2024.

3. Requirements for Air Line Operation

Operating Body

An operator or operating body could be an individual or a corporate body. Such will have to obtain an Air Operator's Certificate (AOC). When this is obtained, many regulatory obligations has to be observed. As for Nigeria, there's Nigerian Airways which is the government airline while the individually owned airlines before 2005 include Okada Airline,⁸ Albarkan Airline Ltd,⁹ Air Peace Airline¹⁰ among others. Whilst the term "operator" generally referred to in many regulations can technically include an individual, partnership or body corporate (that is a company), it is the limited company that is almost exclusively chosen. Corporate structures are most appropriate for obvious reasons namely:

- (1) The complexity and sophistication of an airline operation;
- (2) The need to attract substantial investment;
- (3) The need to limit the risk of potentially large liabilities.

Every newly incorporated company for proposed airline operation in Nigeria must pass through the Corporate Affairs Commission in compliance with the requirements of the Company and Allied Matters Act (CAMA) 2020 (as amended). What is required at the early stage is the financial structure to provide for the investment. Thus, the finance

⁸ Operated by Chief Igbinedion.

⁹ Operated by Rtd General Buba Marwa.

¹⁰ Operated by Onyema.

structure for an air line operation is a statutory requirement. ‘Operation’ in the context of aviation can be used to describe a broad range of activities that include the flying of the aircraft, the control and/or monitoring of the airplane by the traffic management system and the conduct of various airport activities¹¹. It also includes operations with the planning activities even before the passengers and cargo are loaded, through the entire flight, until after the passengers have disembarked and the cargo has been unloaded.

Aircraft operations are being optimized today to improve environmental sustainability and safety. With global, technological advances, the eventual achievement of future goals for aviation environmental sustainability will become possible.

Planning

Any successful project requires detailed planning which involves time-consuming attention and high level of commitment. In establishing an airline, detailed planning which will involve great attention and long process commitment will be required. Many promoters of airline projects are surprised and frequently disillusioned by the time taken and details required not only to set up an airline operation but to comply with the regulatory requirements. Long process is involved in achieving success in a big and challenging project such as airline operation.

¹¹ Operational measures – ICAO <https://www.ICAO.int>>enviornmental-protection Accessed 12 January 2024

Furthermore, it is important to consider the financial implications in this project. Enormous amount will be expended on the airline project before it commences full business operations. Expert advice is essential to initial commitment, requirement of operational assets and facilities are all costly investment that require detailed consideration. A good number of projects have failed literally to take off because their initiations have been ill conceived. For a beginner therefore, it is essentially a task of prodding through established familiar procedures. It is important in establishing an airline to invest adequately on the feasibility studies. The essence of this is to avoid investing in an elephant project.

Aircraft

The Convention of Paris, 1919 defines “aircraft” as comprising all machines which can derive support in the atmosphere from reaction in the air.¹² Regulation affecting the operation of civil aircraft extends to diverse areas. Among those areas are:

- 1) The operative operator must obtain a certificate of airworthiness in respect of each aircraft;
- 2) Operators should also consider the regulation which deals with the administrative organization of aircraft existence. The system of registration here involves the registration of UK civil aircraft;
- 3) Other important area to the operators is the encumbrances that may affect their aircraft. Certain

¹² Annex A; the definitions are set out in the first edition of Shaw cross and Beaumont (1966)

authorities have rights to refrain and even sell aircraft for non-payment of certain charges or taxes.

The areas mentioned above are basic to the operator in his capacity as an airline manager, aircraft operator and seller of air transport services. It should be mentioned here that in defining the requirements for each certificate license or approval of the basics depends on the aircraft and their nationality as starting point.

Fitness

One essential issue that any prospective applicant must prove is that it is fit to be the holder of airline operation license for which he has applied for. This legislation is very common in most nations. The CAA must certify that a given aircraft in question is fit to go into operation. This primary requirement is generally considered as essential in protecting the interests of the travelers and that of the travelling public in terms of safety. It is upon this that the Ministry of Aviation in Nigeria had to suspend all types of the Executive Airline Services (EAS) Aircraft involved in the accident of May 4, 2002 in Kano.¹³ Also, aircrafts that are more than 22 years old are no longer to be registered for use in the country. The writers are of the opinion that for safety an aircraft should not be left in use after 15 years. The qualification of an applicant must cover two distinct areas to wit,

- (1) That the applicant is fit person to operate aircraft under the license; and

¹³ The Guardian, May 9, 2002, 1

- (2) The CAA must ensure that the applicant is financially suitable for an airline operation

Before licenses are granted, an applicant must normally have satisfied the financial fitness regulations of the application. For totally new applicant, this can take time perhaps several months or more. In view of this, time may delay the application. It is expected that the potential applicant must produce a detailed business plan with complete financial forecast for a minimum of the first two years of operation. For an established concern, a considerable amount of historical information is required in the form of audited account and recent management account.

Experience shows that in the case of a new airline operator, an applicant encounters delay in obtaining finance. It could encounter delays in a commitment to provide funds before licenses are granted. At the beginning, investors are very reluctant to commit funds in the floating of an airline.

Nationality

In view of the continued increase in the number of airlines, the expansion of airline services and the introduction of aircraft with every capacity, government is inclined to further regulate airlines competition as a defensive reflex.¹⁴

¹⁴ Example, ICAC Assembly, Buenos Aires, 1968, Doc. A16-WPI33-EC/58/7/68 p.57 "Exchange of Commercial Rights".

The nature of aviation operation poses questions of Nationality, jurisdiction and conflict of laws. This issue of Nationality must be addressed, defined and restricted going by the consideration of the Chicago Convention of 1944.¹⁵ In the United Kingdom, the 1982 Act¹⁶ dictates the definition of a United Kingdom National for licensing purposes. Government can regulate airline competition by allowing only limited number of foreign airlines to operate in their territory, by limiting the granting of routes to foreign carriers over existing routes restricting the number of passengers which may be carried on routes or route-segment, limiting the operation of all cargo services or the amount of freight to be carried, limiting the days and hours foreign carriers may operate over routes also operated by national carriers (to avoid duplication of services), restricting the operation of charter flights by foreign carriers, etc. Many foreign airlines are supported by their governments. In the United Kingdom, the Civil Aviation Authority must not grant an air transport license to any applicant unless it certifies that the person is a UK National.¹⁷ For a body corporate, it has to be incorporated under the law of any part of the United Kingdom or the law of a relevant overseas territory or an associated State controlled by United Kingdom Nationals. The CAA has no power to exceed this restriction. In Nigeria, the same thing is applicable.

¹⁵ Convention on International Civil Aviation Doc 73000 www.icao.int/publications/.../7300.org. Accessed 6 January 2023.

¹⁶ S 65(3)

¹⁷ Aircraft nationality and registration – uniting aviation <https://unitingaviation.com/news/safety> Accessed 10 February, 2023

The question of actual control may not merely be a matter of who owns most of the shares. The Civil Aviation Authority considers who owns the balance, how it is split, for instance, among different shareholders and what influences they may be able to exert¹⁸. On 4th May, 2022, the Nigerian Civil Aviation Authority (NCAA) with the Ministry of Aviation suspended all types of Executive Airline Services (EAS) aircraft BAC1-11.¹⁹ The actions of the CAA could come where it is no longer satisfied that the holder (having regard to various considerations) is fit or has adequate resources and where the CAA has reason to believe that the holder is not a national, it is the duty of the CAA to inform the Secretary of State accordingly and if he so directs, revokes the license.²⁰

The issue of nationality is one that is likely to be completely reviewed in relation to the position of the UK in the European Economic Community (EEC). It has always been open to the Secretary of State to consent to an application on who would otherwise be rejected purely on nationality ground. Due to the fact that Britain is a member of common market, the country is always sympathetic in its approach towards an application involving “EEC Nationals”. Since January 1993, joint approach has been adopted and it applies to any applicant for an air transport license in EEC. This development encourages European Investment and joint ventures in the agreement and increased growth towards creating a true European market and airlines.

¹⁸ Section 66 of the Act.

¹⁹ Ibid

²⁰ Ibid

Environmental Issues

One of the criteria to be considered by civil aviation authority is the environmental issues. A particular attention has to be paid to this with increasing awareness of noise. Moreover, there is the strong opposition to pollution caused by aircraft. Section 68(3) of the Civil Aviation Act, places a specific statutory duty on the CAA to have regard to the importance of minimizing any adverse effect on the environment and disturbance to the public from noise vibration, atmospheric pollution or any other case attributable to the use of aircraft for purpose of civil aviation.

The qualification mentioned above safeguards to some extent a basic conflict of interest between the operators of aircraft and the environmentalist. Aircrafts do make noise and can pollute the atmosphere and it is common with aircrafts. When an environmental problem within the statutory definition emerges, it is particularly significant because it could affect future applications for license to operate. A very good example of environmental issue affecting licensing decision is that of the London City Airport, which first opened in 1987.²¹ At the initial time, two operators were licensed to fly services from the airport. A stole port, situated in the middle of a built area in London's docklands. In view of the noise protestors, the CAA thought it fit to grant the licenses subject to a number of conditions to limit the impact of aircraft noise on the surrounding area. It is upon this that restrictions were

²¹ (PDF) Environmental issues for Aircraft Operations at airports <https://www.researchgate.net>...aircraft> Accessed 10 February, 2023.

placed on the type of aircraft to be used and the number as well as hours aircraft should move. The noise from the aircraft placed restrictions on people living nearer to the airport.

The Institute of Nigeria Aeronautical Engineers (INAE) has further advocated adherence to guidelines on ramp safety and generally a greater awareness of safety standards on the ramp in order to prevent hazards to air travel and reduce costs.

Liberation

This is yet another criterion for establishment of an airline. There is the expressed conclusion in the 1982 Act in the increasing competitive market that CAA has a duty basically to minimize restrictions that it may impose.²² The Act states that it shall be the duty of the CAA to perform its air transport licensing functions in the manner which it considers as best calculated to impose on the civil aviation transport industry of the UK and on the services it provides for uses of air transport services. This applies to most countries in the world. This includes the minimum restrictions consistent with the performance by the CAA of its various statutory duties.²³

²² S 68(4) of the CAA Act.

²³ These duties specified as those under Ss 4, 65 and 66. See also Carole Blackshoaw, *Aviation Law and Regulation – A framework for the Civil Aviation Industry*, (1992).

Bilateral Consideration

This is another important criterion to be considered by the CAA before permission can be granted to an applicant. To have considered the impact on the home market, it is the statutory duty of the civil aviation authority to consider the international implications. The CAA is to perform its air transport licensing function which it considers best calculated to ensure that British Airline's compete effectively with other airlines in international Routes. Importantly, the licensing of the second carrier on a route could prejudice an existing carrier and may be in the national interest. For instance, with the traditional type of bilateral agreement often based on single designation, the introduction of a second carrier by one country could cause problems. Firstly, the other country could refuse giving room to the designation of a second carrier to its bilateral partner. It might negotiate either to designate a second carrier itself if that would be possible, or accept the second carrier for its bilateral partner on the basis that the overall capacity in terms of flight or seat of that bilateral partner must not exceed that which it provides. The last option is that the existing home carrier plus the new home carrier must in effect share the capacity previously provided totally by the existing carrier who is going to strongly resist this option. Normally, a price must be paid for introducing any new carrier on an international route. This bilateral price is usually assessed by the civil aviation authority.

The Operating Permission

For operating permission to be granted, the potential airline operator must certify the permitting body with those criteria discussed above. There is an implicit condition of the mutual exchange of commercial rights in air transport agreement. Each contracting party will be granted the appropriate operating permission to start operation. Without this permission services cannot commence. This applies to both bilateral and multilateral agreements. However, a different technique has been adopted in the agreement with the Union of South Africa, Luxembourg, Finland, the Soviet Union and Poland. For Union of South Africa,²⁴ the operation is by the agreement itself granted expressly to the airline of the other party, the designation of which is also made in the agreement. In the agreement with the Soviet Union, although operating permission has not been mentioned, the airlines of the two contracting parties which are to operate the agreed services are again designed specifically in the agreement itself.

Transit Right

Due to the relatively wide acceptance of international air services, Transit Agreement 1944 which secured the first two freedoms of the air for scheduled international air services has been little occasion for special bilateral agreement on transit rights. The supplied agreement with Poland of 3 April 1959

²⁴ Operational Authorization – ICAO <https://www.icao.int/pages/operational-authorization> Accessed 14 February 2023. See also: IHPH Diedericks–Verschoor, *An Introduction to Air Law*, fifth edition, 1993; Shawcross and Beaumont on Air Law, Third Edition, Butterworths, 1966.

has been superseded by that of 2 July 1960. This followed the general pattern of post-Bermuda, UK, Bilateral agreement.²⁵ For transit and traffic rights for scheduled international air services, the Chicago Convention 1944, in its Article 6 expressly refrained from dealing with them. The United Kingdom did neither sign nor accept the five freedoms agreement which at present binds few States and are of little practical significances. However, it was among the first to accept the International Convention 1 March 1947 and the two freedoms agreement 31 May 1945.²⁶ It must be assured that the transit rights granted by two freedoms agreement are of little economic value. According to the Canadian representative the only bargaining power possessed by many countries in negotiating bilateral agreements is the possession of these two freedoms.

Routes Specification

Historically, routes of airlines in Nigeria dates back before independence of 1960.²⁷ The increased level of aviation activities within Africa led to the International Civil Aviation Organization (ICAO) in 1965, which recommended limited position control in Nigeria. This development led to the establishment of air routes connecting Kano and Lagos on one hand and Kano and Douala on the other hand. New additional routes especially within Nigeria were created with

²⁵ Ibid

²⁶ Ibid

²⁷ The Routes Analysis Based on flight Plan IOP science [https://iopscience.iop.org>article>pdf](https://iopscience.iop.org/article/>pdf) Accessed 15 February, 2022

the introduction of modern jets. The creation of routes to be operated by different airlines is the duty of the Nigerian Civil Aviation Authority. If in a route description the intermediate points and the points beyond have not been specified but it is simply stated that services may be operated on a route from A via intermediate points to B and from there to points beyond and vice versa, Some states hold that further agreements between the parties is necessary before the airline can actually serve intermediate points and points beyond at its choice. The granting of air routes is done by respective governments. This depends on the policies of the individual governments.

Air Transport Licensing

Air Transport Licensing is the backbone of any airline operation. This is not only applicable to airline. On land, no motor vehicle user can operate without a driving license. It is the license that legally authorizes an airline to operate. Statutory control of economic regulation starts from here. The Civil Aviation Authority is empowered to grant licenses to applicants who qualify in respect of air transport services on specific routes. It should be noted that route licensing system through its economic control is ultimately responsible for the success or failure of commercial air transport. Whether or not an operator is licensed on the routes it wants dictates whether or not it can supply these services and carry on in that business. It is upon this reason that one has to take into cognizance the importance of licenses. It is a very valuable asset and such is always defended aggressively against applicants for licenses on competing routes.

Application forms for the grant of license

The intending operator of an airline has to apply first with specific and appropriate forms. This application should be made on the appropriate form. The forms can be obtained at Civil Aviation Authority, 45 – 49 Kingsway, London, WC 2B 6TE for United Kingdom.²⁸ In Nigeria, the forms could be obtained from the Nigeria Civil Aviation Authority.²⁹ In Ghana, it can be obtained at Ghana Civil Aviation Authority Accra. In Ghana the procedure is that the intended person(s) should apply in person³⁰ and to obtain Air Service License in Ghana, the applicant has to contact the nearest Civil Aviation Office in Ghana. In addition

- (1) To obtain Air Service License in Ghana, the applicant has to contact the nearest Civil Aviation Office in Ghana,
- (2) The applicant shall submit a written application together with one passport size photograph and pay the prescribed fee and shall complete an application form to be provided by the authority.
- (3) The applicant has to make sure that he or she has all the required documents that are required for this process to be successful and they can be found under the “required Documents” section.
- (4) When all the condition have been met, and have been satisfactorily certified by the Authority’s

²⁸ Airline Licensing/Civil Aviation Authority <https://www.caaro.uk>>...> requirementsandguidance. Accessed 4 February 2022.

²⁹ Nigeria Air to get operating license on Monday <https://www.channelstv.com>>2022/06/06>nigeriaair Accessed 14 September 2022

³⁰ Ghana Aviation Authority <https://www.geaa.com.gh>>web

licensing office, the applicant will be advised to pay the prescribed fees found under the “fees” section.

- (5) After paying the prescribed fees, the applicant is issued an Air Service License within 120 days.

3. Airline Operations and the Functions of the Nigerian Civil Aviation Authority

Civil Aviation is the most regulated industry in the world³¹. One of the major characteristics of civil aviation is that it is international by nature³². There are certain rules and regulations that every operator of airline has to comply with whether the operator is operating domestically or internationally. The law relating to civil aviation is broad, always evolving and in addition the developments in other jurisdictions are usually taken into account.³³ In Nigeria, there are several agencies and bodies in the aviation industry who in collaboration with the international bodies do regulate the activities of the airline operators in order for them to carry out their operations successfully. Some of these bodies are Nigeria-Civil Aviation Authority (NCAA), Federal Airport Authority of Nigeria (FAAN), Nigeria Airspace Management Agency (NAMA), Nigerian Meteorological Agency (NMET), etc. it is penitent to note that these agencies and bodies in Nigeria Aviation Industry were established in compliance with the International Civil Aviation Organisation (ICAO)

³¹ Calistus E. Uwakwe, introduction to Aviation Law in Nigeria, Aviation Publishing and Consulting Co. Ltd (2006) Lagos. pg 1

³² Ibid

³³ Ibid

requirements. These requirements especially as they relate to NCCA are stipulated in Doc. 8335 being the manual of procedures for operations, inspection, certification and continued surveillance to the effect that one of the two prerequisites for the introduction of a regulatory system is “the establishment of an appropriate state body... with the necessary powers to ensure compliance with the regulations”.³⁴ The importance of NCCA in the Nigerian aviation industry cannot be overemphasized. This assertion is made manifest when a searchlight is beamed on the various Acts relating to NCCA. The first Civil Aviation Act was made in 1964. The Act was later repealed in 1990³⁵. Thereafter, Civil Aviation Act was enacted in 2006 and that gave rise to the establishment of Nigeria Civil Aviation Authority. The Civil Aviation Act of 2006 was amended to provide for the establishment of Aviation Act 2022. The principal objectives of the Civil Aviation Act 2022 is to provide for an effective legal and institutional framework for the regulation of civil aviation in Nigeria in conformity with the standards and practices as recommended by ICAO³⁶. In addition, it is to establish rules of operation and division of responsibilities in the aviation industry³⁷. The functions of NCAA are succinctly provided for in the Civil Aviation Act of 2022.

³⁴ Ibid page 28

³⁵ Civil Aviation Act, Chapter 51, LFN 1990.

³⁶ See Aviation Act 2022 Section I (a)

³⁷ Aviation Act 2022, Sections 8 and 9

Functions of Nigerian Civil Aviation Authority

The functions of NCAA are clearly provided for in the Civil Aviation Act of 2022. The main function of NCAA is the conduct of general safety oversight and economic regulations of the aviation industry.³⁸ Furthermore, it is the responsibility of NCAA to register aircrafts in Nigeria and to issue certificates of registration³⁹ to owners of airlines. To this end, no airline operator can operate if the NCAA has not interalia registered its aircrafts and issued certificate to it. As stated earlier, aviation industry is so regulated that it will be unthinkable for any airline to operate in Nigeria without first of all being registered and certificate issued to it by NCAA. On issues bordering on inspection, NCAA is mandated to inspect aerodromes, aircraft factories that are operating within Nigerian airspace⁴⁰. Furthermore, no one is allowed to engage in air navigation in whatever capacity unless NCAA determines that such a person has satisfied the requirements of the Act and regulations, relating to it⁴¹. Matters relating to issuance of rules and regulations aimed at ensuring air safety, security, safety of aircraft, property and persons and preventing an aircraft from exposing any person or property to danger also form part of the functions of NCAA⁴². It is also the function of NCAA to issue, revalidate, renew, extend and vary any certificate, license or any other relevant document

³⁸ Calistus E. Uwakwe, Page 27.

³⁹ Ibid, Section 8(1)(a)

⁴⁰ Ibid, Section 8(1)(d)

⁴¹ Ibid, Section 8(1)(h)

⁴² Section 8(1)(f)

needed by regulation.⁴³ All rules and regulations relating to aviation environmental protection are within the ambit of the functions of NCAA.⁴⁴ These rules and regulations on environmental protection that NCAA has been saddled with are similar to the ones being carried out by National Oil Spill Detection and Regulation Agency (NOSDRA) in the oil and gas sector.

From the foregoing, it could be seen that NCAA appears to have enough laws and regulations to effectively perform its statutory and regulatory role in the aviation industry. However, the airline operators have much in their hands to do in order to effectively comply with the rules and regulations required of them in the aviation sector.

The required documents in Nigeria are

The forms could be obtained from the Nigeria Civil Aviation Authority in Nigeria⁴⁵ and the required documents are:

- a) Application form
- b) Operations statistics (last one year)
- c) Audited account for the previous financial year
- d) Insurance including their liability
- e) Air operators certificate
- f) Business plan
- g) Certificate of incorporation

⁴³ Section 8(1)(h)

⁴⁴ Ibid, Section 8(1)(j)

⁴⁵ Nigeria Air to get operating license on Monday <https://www.channelstv.com/2022/06/06/nigeriaair> Accessed 14 September 2023

- h) Memorandum and Articles of Association
- i) Source funding
- j) Any other additional document to support the application
- k) All copies of attached documents should be certified by an advocate/commissioner for oaths.

To apply for an Air Transport License in Person, the applicant has to visit the office of the Director General of the Nigerian Civil Aviation Authority (NCAA). The applicant must submit a signed application letter addressed to the Director General of the NCCA within the six months before the air transport license is expected to be issued. The application letter must contain the following⁴⁶:

- 1) The applicants name and address
- 2) The types of air service to be provided
- 3) The applicant's proposed operational base
- 4) Details of proposed routes (where applicable)
- 5) The number and types of aircraft to be utilized
- 6) The times and frequency of services.
- 7) Four copies of the certified copies of:
 - (a) The certificate of incorporation of the company
 - (b) The Memorandum and Articles of Association
 - (c) The particulars of the directors of company (Form CAC 7).

⁴⁶ Application for air transport licenses – commentary <https://www.lexcology.com>>Nigeria Accessed 12 November 2023

- (d) The statement of share capital/return of allotment the company should have a minimum paid up share capital of ₦500

Applicant is required to submit one or two specific forms namely:

- a) The form which relate to the actual license applied for and the relevant form corresponding to the class and type of license required. For instance, Form 101(A) is for a Class 1(A or B) scheduled license. Section 3 of the Official Record series 1 lists the appropriate form for each particular license.
- b) The form has to be completed and submitted where it is a first application for a license. This form is essential to provide information about the applicant. For instance, in the case of a company, questions are asked in relation to share capital and shareholders; parents, subsidiary or associated companies, control, director; managers and staff. The original of the first and where appropriate, the second form should be sent together with four copies of each of the Civil Aviation Act (CAA),⁴⁷ accompanied by an application fee.

Section 65(1) of the Civil Aviation Act 1982, states that an application for the grant of an air transport license must be made in writing to the Civil Aviation Authority. This application may be specified in a notice published in the

⁴⁷ This application should be sent to the address stated above.

prescribed manner. The information required from an intending applicant includes:⁴⁸

- (a) particulars of applicant which could be the name, address and nationality;
- (b) Previous aircraft and operations. This provision will require the applicant to state whether he or it has any aircraft before. For a new entrant into the industry, this should be stated;
- (c) financial resources and arrangements;
- (d) aircraft and organization for proposed operation;
- (e) liability provisions (for instance, insurance, etc); and
- (f) Details of license applied for (constant need and demand for operations, class of license, tariffs, routes, aircraft, etc).

It should be noted that this application for the grant of an Air Travel Organizes License (ATOL) shall be made in writing to the Director General, Nigerian Civil Aviation Authority (NCCA).⁴⁹

4. The Role of Civil Aviation Authority (CAA) in Britain

The regulatory body for civil aviation is primarily that of the Civil Aviation Authority (CAA). This is more apparent than the area of economic regulation. It is the body responsible for granting, revoking, suspending or varying an air transport license. It has certain essential statutory obligations when

⁴⁸ Official Records, series 1, section 3, p.15, November 1990

⁴⁹ Guidelines and requirements for grant of air travel organizers... www.ncca.gov.ng/guidelines-and-... /.... Accessed 31 January 2023.

performing these vital functions. These duties are primarily laid down in the CAA Act of 1982⁵⁰ as follows:

- (a) The licensing of air transport is a function conferred on the CAA by or under the Act;
- (b) The Act states certain general objectives for the CAA in performing its duties. In particular, it is the duty of the CAA to perform the functions conferred;
 - i. To ensure that British Airlines provide air transport services which satisfy all substantial categories of public demand (so far as British airlines may reasonably be expected to provide such services) at the lowest charges consistent with a high standard of safety in operating the services and economic return to efficient operators on the volume of finances invested in providing the services and with securing the sound development of the civil air transport industry in the United Kingdom; and
 - ii. To further the reasonable interest of users of air transport services. The objectives above are very basic. The objective is to provide a wide range of air transport services while protecting the interests of both the airlines and their users.
- (c) Ensuring that a consumer enjoys the lowest charges consistent with high standard of safety;
- (d) For the airlines to ensure that the efficient operators enjoys economic return on its investment. Sections 3

⁵⁰ NCAA Regulations – Nigerian Civil Aviation Authority [ncaa.gov.ng/regulations/n-caa-reguations/....](http://ncaa.gov.ng/regulations/n-caa-reguations/) Accessed 31 January 2023

and 4 of the CAA Act of 1982, confer the basic function of air transport licensing and lay down the general objectives within the context of the airline industry.

It should be noted that the Act provides specific provisions for the carrying out of the air transport licensing function. In view of the exercise of its license function, the CAA must consider the following criteria before granting the license to a potential applicant.⁵¹

National Control of the Traffic Market

In view of the continued increase in the number of airlines, the expansion of their services and the introduction of modern aircrafts with every bigger capacity, government can control the Airline traffic market by introducing more regulatory measures including limiting the number of foreign airlines that operate in their territory. This limits the operation of all cargo services or the amount of freight to be carried limiting the days and hours foreign carriers may operate over routes also operated by National Carriers (to avoid duplication of services) restricting the operation of chartered flights by foreign carriers, etc.

⁵¹ International Development and Security-Resources... <https://bulk.resources.org/.../00052.DE.P> Accessed 20 January 2023

There are two key concepts for the granting of air routes and the determination of capacity in the US for example namely:⁵²

- (a) The value of the (US) market and access to it (the granting of the routes); and
- (b) The traffic to which a carrier has primary entitlement (Bermuda capacity) principle, the granting of traffic rights).

A market consists of traffic, any traffic, moving routes between cities in the homeland of the State entering into bilateral agreement.

The Freedoms of the Air

Before the Second World War, air services were essential without scheduled services. Any air transport company that wished to attract substantial amount of business did not only have to run to a schedule widely. Companies in charter or taxi services found little demand and such could operate relatively small aircraft. In view of this problem, those planning post-war international civil aviation paid relatively little attention to the non-scheduled sector but focused their thoughts on the scheduled sector of international air transport.

Going by the calculations of the operations, three crucial problems had to be solved in the regulation of scheduled international services. These problems are:

- 1) The freedom of the air⁵³;

⁵² Ibid

⁵³ Freedoms of the Air and International regulations/Hala <https://www.ifaida.org/uploads/2017/11/>free accessed 2023.

- 2) The capacity; and
- 3) Tariffs

In other words:

- (a) The first is to what extent should foreign airlines be permitted to enter a country and operate commercially;
- (b) On a route which a foreign airline has been granted permission to operate commercially, how much of the traffic along that route should it be allowed to carry; and
- (c) What are the fares and tariffs which the foreign airline should charge?

The Chicago Conference of 1944 observed that the privileges a State may grant to foreign commercial carriers to operate scheduled international air services to and from its territory were separated into five freedoms of the air. States can impose limitations on flights of foreign aircraft. This action of imposition of limitation stems from the principle embodied in the Paris convention. The covenant states that each has complete and exclusive sovereignty over the airspace above its national territory. This basic rule has been repeated and sanctioned in the Chicago Convention which states that each has complete and exclusive sovereignty over the airspace above its national territory. The possibility of allowing greater freedom of movement has however been made explicit in two agreements annexed to the convention which divides the

freedom of the air into five categories. These five freedoms are:

- (1) Right to fly, and carry traffic, non-stop in the territory of the grantor state;
- (2) Right to fly and carry traffic over the territory of the grantor state and to make one or more stops there for non-traffic purposes;
- (3) Right to fly into the territory of the grantor state and there discharge traffic coming from the flag state of carrier;
- (4) Right to fly into the territory of the grantor State and thereon traffic destined for the flags State of the carrier; and
- (5) Right to fly into the territory of grantor state for the purpose of taking on or discharging traffic destined for or coming from third states.

The first two freedoms are described in a transit agreement. They concern the freedom to fly over a country or to make a technical landing. They are also listed in the transport agreement together with three more freedoms. The third freedom enables the State to carry passenger and cargo from its own territory to a foreign State whereas the fourth concerns the transport of passengers and cargo from a foreign State to its own territory. The right to carry passengers and cargo between two foreign States is contained in the fifth freedom. It is the later freedom which causes most

complications in actual practice, so that many states have been reluctant to adhere to the transport agreement.⁵⁴

There are other three freedoms but they could be said to represent only minor variations of the first five. Every airline operator is expected to enjoy these freedoms so that they could operate without hindrances.

5. Some Factors constraining airline operations and viability in Nigeria include

Infrastructural challenges

Power is one of Nigeria's biggest infrastructural challenges. The cost of providing alternative sources (usually using diesel powered generators) in the face of public power shortages is prohibitive. The airport operators naturally pass these costs on as part of airport charges. Airlines will then pass these on to the final consumers thereby increasing air fare.

Maintenance and Operational costs

Airlines maintenance costs are mostly borne in foreign currency. The exchange rate of the Naira to the dollar keeps increasing exorbitantly and these increased airlines' operational costs significantly. Taxes are equally high, so is fuel cost.

⁵⁴ Bin Cheng, *The Law of International Air Transport* (1962) 21 and 407 . See also H A Wassengegh, *Aspect of Air Law and Civil Air Policy in the Seventies* (1970.)

Lack of airline competition

Competition is a natural result of many players in an industry. Lack of airline competition and the absence of regional airport hubs are some of the constraints identified in Africa's aviation. An economy of large scale production naturally drives down costs. However, as profit oriented actors, airlines will not venture into an industry where there is low propensity to fly.

Small size of carriers

Nigerian airlines are small, with fleet sizes as low as three for some airlines, the actual market is equally small. Although market potentials exist along several under-utilised air corridors, the smallness of airlines does not permit them to explore these potential routes. Small size of carriers also constrains capacity to offer frequencies and compete on regional and international routes. Nigeria's domestic airlines are therefore not strong players in the international and regional markets.

Conclusion

Having apparently exhaustively considered the legal requirement for the establishment of airline operations, it is very obvious that every potential operator will have to go through a lot of daunting tasks irrespective of the nature of the venture. The financial involvement is also enormous that an intending operator within the short run may back out from setting up an airline operations. However, the history of the airline operation shows that it started a long time ago. In

Nigeria, foreign operators constituted a monopoly but today the airline operation has grown greatly and collapsed due to many factors associated with establishment and management. For an operator to establish a venture of airline operation, all legal requirements have to be fulfilled. Presently, the airline venture has greatly developed and there is future for expansion.