

**International
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Contributing Editors:

Alan D. Meneghetti
Ipeco Holdings Limited

Philip Perrotta
K&L Gates LLP

glg Global Legal Group

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1 General

1.1 Please list and briefly describe the principal legislation and regulatory bodies which apply to and/or regulate aviation in your jurisdiction.

The Constitution of the Federal Republic of Nigeria 1999 (as amended) (“Constitution”) places aviation matters within the exclusive jurisdiction of the National Assembly. The principal legislation governing the aviation industry is the Civil Aviation Act which was recently re-enacted by the National Assembly of Nigeria, to the Civil Aviation Act 2022 (“CAA 2022”). The CAA 2022 repealed the CAA 2006 which was in use prior to the enactment of the CAA 2022.

The CAA 2022 recognises that the Federal Ministry of Transportation is responsible for the formulation of policies and strategies for the industry. In addition, the CAA 2022 retained the Nigerian Civil Aviation Authority (“NCAA”), which was originally established by Decree 49 of 1999, as the regulator for technical and safety issues in the industry. The NCAA is empowered under the CAA 2022 to make regulations on various issues, including aircraft registration, air navigation services, airworthiness standards, aviation safety and security, commercial air transport, personnel licensing, aerodrome and airspace standards, and the provision of allied aviation services-Section 8 CAA 2022.

The Nigeria Civil Aviation Regulations 2023 (“NCARs 2023”) was introduced recently as a fourth amendment to the NCARs since its initial promulgation in November 2006.

The CAA 2022 did not retain the Accident Investigation Bureau (“AIB”) initially provided for under Part viii and contained under Section 29 of the repealed CAA 2006. The CAA 2022, however, retains that contributions would be made to the AIB from 5% of airfare, contract, charter & cargo fares and charges. The AIB has now been re-established and renamed the National Safety Investigation Bureau (“NSIB”) under Section 3 of the National Safety Investigation Bureau Act 2022 (“NSIB Act”). Unlike the AIB which could only investigate accidents and incidents arising out of or during air navigation in or over Nigeria, or occurring to Nigerian-registered aircraft elsewhere, and/or where the interest of Nigeria is involved, the NSIB has a broader scope and can additionally investigate accidents and incidents in the maritime, rail, and road industries.

Other legislation includes:

- The Federal Airport Authority of Nigeria Act 2022 (“FAAN Act”), which creates the Federal Airport Authority of Nigeria (“FAAN”) that is responsible for the development, provision and maintenance of airports and associated services.
- The Nigerian Airspace Management Agency (Establishment) Act 2022 (“NAMA Act”), which establishes the Nigerian Airspace Management Agency (“NAMA”) that is responsible for air traffic services, airspace management, aeronautical telecommunications, etc. The Act repeals the Nigerian Airspace Management Agency Act, 1999 (Cap N90, Laws of the Federation of Nigeria, 2004).

1.2 What are the steps which air carriers need to take in order to obtain an operating licence?

A written application must be made to the Director General of the NCAA and signed by the authorised representative of the applicant for either an Air Transport Licence (“ATL”) or Airline Operating Permit (“AOP”), with the required documentation and information specified in the NCARs 2023 on or before a date not less than six months prior to the expected date of utilisation.

1.3 What are the principal pieces of legislation in your jurisdiction which govern air safety, and who administers air safety?

The CAA 2022 and the NCARs 2023 govern air safety in Nigeria, which is administered by the NCAA. Part 20 of the NCARs 2023 addresses the safety management requirements in conformity with the standards and recommended practices of the International Civil Aviation Organisation (“ICAO”).

The NAMA Act is the regulatory framework that guides the provision of air navigation services in Nigeria and any other place where Nigeria has the responsibility of providing air navigation services. The NAMA Act is administered by the Nigeria Airspace Management Agency (“NAMA”). Part of the functions of NAMA is “generally secure the safety, efficiency, and regularity of air navigation in Nigeria”.

Nigeria also subscribes to the standards and recommended practices of the Banjul Accord Group Aviation Safety Oversight Organisation for regional safety.

1.4 Is air safety regulated separately for commercial, cargo and private carriers?

No. Air safety for commercial, cargo and private carriers is not regulated separately. Parts 8 and 20 of the NCARs 2023 respectively stipulate the regulatory requirements for operation and safety management of aircraft in Nigeria, based upon the requirements of ICAO Annexes 2, 6 and 19.

1.5 Are air charters regulated separately for commercial, cargo and private carriers?

No. Air charters in Nigeria are regulated by the relevant provisions of the CAA 2022 and the NCARs 2023.

1.6 As regards international air carriers operating in your jurisdiction, are there any particular limitations to be aware of, in particular when compared with 'domestic' or local operators? By way of example only, restrictions and taxes which apply to international but not domestic carriers.

Generally, no. The Foreign Carriers' Operating Permit issued to international carriers depends on the terms of their Air Services Agreements.

1.7 Are airports state or privately owned?

Airports are licensed by the NCAA and owned by state entities as well as private parties. In Nigeria, most of the airports are owned by the Federal Government of Nigeria ("FGN") and operated by the FAAN.

Several sub-national state governments have built and now operate airports licensed by the NCAA.

1.8 Do the airports impose requirements on carriers flying to and from the airports in your jurisdiction?

Yes, principally safety and security requirements. The carriers also must meet commercial terms. Generally, carriers flying to and from FAAN-managed airports are required to pay for various services including slots, landing fees, parking fees, passenger service charges and fuel charges.

For carriers flying to and from international airports, they are also expected to meet the formalities incident to customs, immigration, public health, animal and plant quarantines.

1.9 What legislative and/or regulatory regime applies to air accidents? For example, are there any particular rules, regulations, systems and procedures in place which need to be adhered to?

Yes. The CAA 2022, the NSIB Act, and the Civil Aviation (Investigation of Air Accidents and Incidents) Regulations 2016 regulate air accidents in Nigeria, and prescribe the investigative powers and procedures for investigation, as well as for reporting of accidents and incidents.

1.10 Have there been any recent cases of note or other notable developments in your jurisdiction involving air operators and/or airports?

The National Assembly has passed and the President of the Federal Republic of Nigeria has assented to the new Civil Aviation Act which has now been published in the Federal Republic of Nigeria Official Gazette as the CAA 2022. The CAA 2022 repealed the CAA 2006.

The CAA 2022 has introduced some innovations into the aviation industry, some of which include:

- a consolidation of all the laws regarding the regulation of civil aviation in Nigeria making the NCAA the sole regulator of the industry;
- an emphasis on the independence of the NCAA from any other body or institution except as provided by the Act;
- enlarging the functions and powers of the NCAA in the regulation of civil aviation in Nigeria;
- making the failure to remit 5% of airfare, contract, charter, and cargo fares by an air operator within the stipulated time, an offence punishable with a fine or imprisonment or both; and
- mandating the NCAA to establish a State Safety Programme ("SSP") to promote aviation safety. Under the SSP, the NCAA is required to ensure that airline operators and aviation service providers implement a Safety Management System ("SMS").

Some other notable developments in the Nigerian aviation sector include:

- a. the redesignation of the AIB as the NSIB under the NSIB Act;
- b. the formulation of a national civil aviation policy; and
- c. proposed concession of some of the airports.

The Nigerian Airspace Management Agency Act 1999, Cap. N90, LFN 2004 was repealed and re-enacted as the NAMA Act. The NAMA Act establishes NAMA which is responsible for air traffic services, airspace management, aeronautical telecommunications, etc.

The NCARs 2023 amended certain provisions in the NCARs 2015 and makes provisions for Remotely Piloted Aircraft, Environmental Protection Regulations solely on Carbon Offsetting and Reduction Scheme for International Aviation ("CORSIA").

The NSIB Act was enacted to provide an effective legal and institutional framework for the prevention, regulation and administration in safety investigation of transportation occurrences in Nigeria.

The Federal Airport Authority Act, Cap. F5, LFN 2004 was repealed and re-enacted as the FAAN Act.

1.11 Are there any specifically environment-related obligations or risks for aircraft owners, airlines, financiers, or airports in your jurisdiction, and to what extent is your jurisdiction a participant in (a) the EU Emissions Trading System (EU ETS) or a national equivalent, and (b) ICAO's Carbon Offsetting and Reduction Scheme for International Aviation (CORSIA)?

Part 16 of the NCARs 2023 contains the environmental protection obligations applicable to air carriers in Nigeria. This part of the NCARs 2023 is applicable to aircrafts registered and operating in Nigeria and prescribes: (a) noise standards for the issuance of the noise certificate; (b) fuel venting standards for the issuance of the fuel venting certificate; and (c) emission standards for the issuance of the emission certificate. The

certificates issued pursuant to this Part by the NCAA shall be granted or validated by the NCAA when satisfactory evidence is shown that the aircraft complies with requirements that are at least equal to the applicable requirements specified by the following: (a) Nigeria is not a participant in the EU Emissions Trading Systems and does not have a national equivalent; and (b) Nigeria is a voluntary participant in ICAO's CORSIA.

2 Aircraft Trading, Finance and Leasing

2.1 Does registration of ownership in the aircraft register constitute proof of ownership?

The NCAA is an owner/operator registry. Registration of an aircraft at the registry does not serve as conclusive/sole proof of ownership.

2.2 Is there a register of aircraft mortgages and charges? Broadly speaking, what are the rules around the operation of this register?

There is currently no formal separate register of aircraft mortgages and charges. The CAA 2022 and Part 4 of the NCARs 2023, however, stipulate that the NCAA should provide a legal interest in aircraft registry showing proprietary rights, interests, liens and other dealings of legal interest for every aircraft registered in Nigeria. In practice, mortgages, charges or other encumbrances are recorded in the aircraft file at the civil aviation aircraft registry.

Individuals may access the register of legal interests by applying in writing to the NCAA and paying the prescribed search fees.

2.3 Are there any particular regulatory requirements which a lessor or a financier needs to be aware of as regards aircraft operation?

Yes. Paragraph 8.3.1.10 of the NCARs 2023 provides that the lessor of an aircraft must transfer the maintenance records of the aircraft in a manner acceptable to the NCAA at the time of the lease. It is advisable that the lessor or financier retains in its possession/control the original certificates of registration and airworthiness, as these documents are required to be produced in order to be cancelled before deregistration.

Lessors or financiers also need to be aware that, as owners, they are liable for damages, injuries or losses arising from the activities and operations of the aircraft without proof of negligence.

2.4 As a matter of local law, is there any concept of title annexation, whereby ownership or security interests in a single engine are at risk of automatic transfer or other prejudice when installed 'on-wing' on an aircraft owned by another party? If so, what are the conditions to such title annexation and can owners and financiers of engines take pre-emptive steps to mitigate the risks?

There is no law on title annexation in Nigeria. Nigeria is a party to both the Cape Town and Geneva Conventions, and it recognises the interest and rights created in respect of aircraft and engines.

2.5 What (if any) are the tax implications in your jurisdiction for aircraft trading as regards a) value-added tax (VAT) and/or goods and services tax (GST), and b) documentary taxes such as stamp duty; and (to the extent applicable) do exemptions exist as regards non-domestic purchasers and sellers of aircraft and/or particular aircraft types or operations?

Value-Added Tax ("VAT") – the Federal Inland Revenue Service, in Information Circular No: 9701, provides for the exemption of aircraft, aircraft spare parts and ancillary equipment from payment of VAT.

Also, interest earned by a lessor on a finance lease is a return on investment and is thus not liable to a charge of VAT.

- **Capital Gains Tax ("CGT")** – CGT is a tax imposed on capital gains arising from the sale or disposal of chargeable assets at a rate of 10 per cent. Sale of an aircraft would attract CGT. It should be noted, however, that where the sale of aircraft is done with such frequency as to be classified as a source of income rather than the disposal of an asset, then income tax rather than CGT may apply in that instance.
- **Stamp Duty** – stamp duty is payable on documentation and instruments including sale and lease agreements. For example, the rate of the duty payable on a lease agreement depends on the term of the lease. For a lease with a term of one to seven years, the applicable stamp duty is 0.78 per cent; although in some cases, the Commissioner for stamp duty has assessed stamp duty at 1.5 per cent.
- **Withholding Tax ("WHT")** – income on a property (rent, hire or lease payments or rights (royalties)) situated in Nigeria is liable to tax, notwithstanding the place of payment. Where rent is to be paid to an individual or company, WHT at a rate of 10 per cent is applicable. It applies also to lease and loan payments. Grossing up is not unlawful.

2.6 Is your jurisdiction a signatory to the main international Conventions (Montreal, Geneva and Cape Town)?

Yes. Nigeria is a signatory to the Montreal Convention, the Geneva Convention and the Cape Town Convention. In addition, it is a signatory to the Yamoussoukro Decision, the SAATM and the AfCFTA.

2.7 How are the Conventions applied in your jurisdiction?

The Conventions are ratified and domesticated as Nigerian law, which ensures their applicability and enforceability in Nigeria.

2.8 Does your jurisdiction make use of any taxation benefits which enhance aircraft trading and leasing (either in-bound or out-bound leasing), for example access to an extensive network of Double Tax Treaties or similar, or favourable tax treatment on the disposal of aircraft?

Yes. Nigeria has Double Taxation Treaties ("DTT") which apply to aviation business on the basis of reciprocity. Where a country has a DTT with Nigeria, it reduces the WHT payable by a company incorporated in such country from 10 per cent to 7.5 per cent. Countries that have entered into a DTT with Nigeria include Belgium, Canada, China, France, Kenya, Pakistan, Romania, Sweden and the United Kingdom.

2.9 To what extent is there a risk from the perspective of an owner or financier that a lessee of aircraft or other aviation assets in your jurisdiction may acquire an economic interest in the aircraft merely by payment of rent and thereby potentially frustrate any rights to possession or legal ownership or security?

A lessee of aircraft or other aviation assets will only acquire an economic interest in the aircraft or other asset in the manner specified under the lease agreement and after all regulatory preconditions have been fulfilled. As a general principle, the parties are bound by their contracts. The NCAA, other regulators, and the court will generally give effect to such agreements. Operators/lessees have only been able to legitimately prevent a proposed export or repossession where the operator has been able to establish to the satisfaction of the court or the regulators that there has been no default or breach of the underlying agreement. The mere payment of rent shall not create or grant economic rights in the aircraft.

3 Litigation and Dispute Resolution

3.1 What rights of detention are available in relation to aircraft and unpaid debts?

Section 78 (3) of the CAA 2022 empowers the NCAA to ground any aircraft and take all steps reasonably necessary to ensure compliance with the CAA and any regulations, guidelines or rules made pursuant to the Act.

In addition, the NCAA has the power to detain an aircraft involved in a violation for which a civil penalty has been imposed on its owner or operator.

3.2 Is there a regime of self-help available to a lessor or a financier of an aircraft if it needs to reacquire possession of the aircraft or enforce any of its rights under the lease/finance agreement?

Self-help is available and permitted in Nigeria, provided it is consistent with agreed contractual terms and the parties obey all applicable laws and regulations relating to deregistration and export of the aircraft. A special declaration was made pursuant to Article 54(2) of the Cape Town Convention and associated protocol which came into force in Nigeria on 14 November 2006, to the effect that any remedies available to a creditor under any relevant provision under the Cape Town Convention that do not require application to the court may be exercised without court action and without leave of court.

A court order is not necessarily required before a creditor can exercise their right of repossession or sale of an aircraft in the event of default, provided it is specifically indicated in the agreement. It is, however, advisable to involve the NCAA, the police and other enforcement agencies.

3.3 Which courts are appropriate for aviation disputes? Does this depend on the value of the dispute? For example, is there a distinction in your jurisdiction regarding the courts in which civil and criminal cases are brought?

By the combined reading of Section 251(k) of the Constitution and Section 86 of the CAA 2022, the Federal High Court ("FHC") has the exclusive jurisdiction to hear civil and criminal suits on aviation disputes – except where the matter in dispute is a labour matter, in which case the National Industrial Court is the court with jurisdiction to hear the suit.

3.4 What service requirements apply for the service of court proceedings, and do these differ for domestic airlines/parties and non-domestic airlines/parties?

The guidelines for the service of court processes are provided for in the Federal High Court (Civil Procedure) Rules 2019 ("FHCR") and the Sheriff and Civil Processes Act ("SCPA").

For domestic airlines/parties, by virtue of Order 6 Rules 2 and 8 of the FHCR, service is effected when the process is served personally on the principal officers or by leaving it at the office of the company. Where personal service cannot be conveniently effected, Order 6 Rule 5 of the FHCR provides for substituted service through various means including publication in the FGN Gazette, delivery at the last place of business and delivery to an agent of the airline.

Service on non-domestic airlines/parties can be effected in the same manner as above. However, where such airline is outside the jurisdiction and does not have an office within the country, Order 6 Rule 14 of the FHCR provides that leave of court must be obtained. Such leave is obtained by way of an application to the FHC supported by an affidavit disclosing that the plaintiff has a good cause of action, the country in which the defendant can be located, and the grounds upon which the application is made. Also, Section 97 of the SCPA provides that where a writ of summons is to be served outside the jurisdiction, it must be endorsed, on the face of it, with a notice to that effect.

3.5 What types of remedy are available from the courts or arbitral tribunals in your jurisdiction, both on i) an interim basis, and ii) a final basis?

Generally, all civil remedies are available to the parties in a court or arbitration. With respect to arbitration, parties may contractually agree to exclude interim reliefs from the jurisdiction of the tribunal.

On an interim basis, the remedies available include interim injunctions, prohibitory injunctions and interlocutory injunctions; whereas on a final basis, the remedies are damages, specific performance, perpetual injunctions, etc.

3.6 Are there any rights of appeal to the courts from the decision of a court or arbitral tribunal and, if so, in what circumstances do these rights arise?

Rights of appeal from the decision of a court are governed by the Constitution and the Rules of Court. Section 251(1) and (2) of the Constitution provides that appeal from a decision of the FHC is either as of right or with leave of court. Appeal as of right exists in the following circumstances:

- a final decision of the FHC;
- where the ground of appeal involves questions of law alone;
- where the decision is on the interpretation or application of the Constitution; or
- where the breach of fundamental human rights is being or likely to be contravened.

Generally, in all other circumstances except the above-mentioned, appeals are permitted only with the leave of court. Section 241(2) of the Constitution specifically states that where parties enter into consent judgment, or a judgment is made as to costs only by the FHC, an appeal must be with the leave of court. However, in the case of the FHC granting unconditional leave to defend an action, Section 241(2) of the Constitution provides that a party cannot appeal against a decision of the FHC granting unconditional leave to defend an action.

Awards from arbitral tribunals are not appealable. The remedy available to the losing party is to make an application to court to set aside the award on one or more of the statutory specified grounds, which includes misconduct of the arbitrator and improper procurement of the award.

3.7 What rights exist generally in law in relation to unforeseen events which might enable a party to an agreement to suspend or even terminate contractual obligations (in particular payment) to its contract counterparties due to *force majeure* or frustration or any similar doctrine or concept?

Force majeure clauses are strictly interpreted in accordance with the terms of the agreement. The effect of a successful plea of *force majeure* is dependent on the rights specified under the agreement. Depending on the terms, a party may be entitled to cancel or be excused from either part or complete performance of the agreement. However, where there is no *force majeure* clause in an agreement, or where the agreement becomes impossible by reason of an unspecified act, a party can rely on the doctrine of frustration to discharge its obligation under such agreement.

4 Commercial and Regulatory

4.1 How does your jurisdiction approach and regulate joint ventures between airline competitors?

The NCAA, as the regulator of the aviation industry, is notified of any business combination between airlines. Part 18 of the NCARs 2023 provides that the NCAA should be notified where there are mergers, takeovers, joint ventures or other acquisitions of control in the aviation industry, including interlocking directorships, whether of a horizontal, vertical or conglomerate nature, when:

- i. at least one of the joint venture companies is established in Nigeria;
- ii. the resultant market share in the aviation industry or any substantial part of it, relating to any product or service, is likely to create market power; and
- iii. at least one of the joint venture companies derives income in or from Nigeria arising from the sale and rendering of services in the civil aviation industry, or there exists use of the firm's assets in a manner that yields interest, royalties and dividends.

Furthermore, upon the receipt of a notification, the NCAA will conduct an investigation into the proposed arrangement. Depending on the outcome of the investigation, the NCAA may prohibit the proposed business combination where it substantially increases the “ability to exercise market power either by giving the ability to a company or group of companies acting jointly to profitably maintain prices above competitive levels for a significant period of time or by any other anti-competitive means”.

No company shall effect a merger until the expiration of the 60-day waiting period from the date of the issuance of the receipt of the notification, unless the NCAA shortens the said period of time not exceeding 30 days with the consent of the company concerned.

The Federal Competition and Consumer Protection Commission Act (“FCCPA”) also has provisions that regulate joint ventures.

It is noteworthy that, where there is a conflict between the powers of the NCAA and those of the Federal Competition and Consumer Protection Commission (“FCCPC”) with regard to consumer protection, the powers of the FCCPC will take precedence. The FCCPC is an agency established by the FCCPA to administer and enforce the provisions of the FCCPA and any other law with respect to competition and protection of consumers.

4.2 How do the competition authorities in your jurisdiction determine the ‘relevant market’ for the purposes of mergers and acquisitions?

“Relevant market” is defined under the interpretation within Part 18 of the NCARs 2023 at Paragraph 18.2.1.1 as “the area of effective competition within which an airline or service provider operates and includes geographic area, route, substitutability, close competitors and such other factors that may affect consumer choice”.

4.3 Does your jurisdiction have a notification system whereby parties to an agreement can obtain regulatory clearance/anti-trust immunity from regulatory agencies?

Yes, it does. Part 18 of the NCARs 2023 at Paragraph 18.23.1.1 provides that the NCAA “can grant conditional leniency, concessions and immunity for cooperation to persons who offer significant assistance in detecting and proving unfair methods of competition and anti-competitive conduct”.

Also, parties can obtain regulatory clearance from the FCCPC in respect of any anti-competitive agreement among undertakings which ordinarily would be unlawful. To authorise such an agreement, the FCCPC must be satisfied that:

- the agreement improves the production or distribution of goods, services or the promotion of technical or economic progress and customers will be permitted a fair share of the resulting benefit;
- in relation to the undertakings concerned, the agreement only imposes restrictions that are indispensable to the attainment of the objectives above; and
- the possibility to eliminate competition in a substantial part of the goods or services concerned is not given to the undertakings by the agreement.

4.4 How does your jurisdiction approach mergers, acquisition mergers and full-function joint ventures?

Please refer to our response to question 4.1.

It should be noted that merger control provisions for both public and private companies that used to be within the regulatory purview of the NCAA is now under the regulatory powers of the FCCPC.

4.5 Please provide details of the procedure, including time frames for clearance and any costs of notifications.

Part 18 of the NCARs 2023 at paragraph 18.20.1.2 provides for a 60-day waiting period from the date of receipt of the notification by the NCAA. This timeframe may, however, be shortened or extended by the NCAA for a period not exceeding 30 days.

4.6 Are there any sector-specific rules which govern the aviation sector in relation to financial support for air operators and airports, including (without limitation) state aid?

Yes. The CBN provides for a Power and Airline Intervention Fund (“PAIF”) for the refinancing of existing leases and loans for airline projects undertaken by airlines incorporated and operating in Nigeria.

4.7 Are state subsidies available in respect of particular routes? What criteria apply to obtaining these subsidies?

We are not aware of state subsidies for particular routes.

4.8 What are the main regulatory instruments governing the acquisition, retention and use of passenger data, and what rights do passengers have in respect of their data which is held by airlines and airports?

There is no primary designated regulation governing the acquisition of passenger data in Nigeria. However, the Nigeria Data Protection Act 2023 (“the NDPA”) which was recently passed into law governs transactions involving the exchange of personal data.

The NDPA defines personal data as “any information relating to an individual, who can be identified or is identifiable...”. Therefore, passengers as natural persons have the following rights to:

- any information relating to the processing of their data in a concise, transparent, intelligible and easily accessible form in writing or orally where requested by the passenger; and
- request the deletion of any personal data that is either no longer necessary, has been unlawfully processed or for which consent has been withdrawn.

Also, the NCAA mandates operators in Part 17 of the NCARs 2023 to develop security programmes which provide for the safety of passengers, crew and their property. In addition, Part 20 of the NCARs 2023 provides for mandatory as well as non-punitive voluntary incident reporting on data collection by carriers. The NCARs 2023 also indicate the need for balance between the protection of safety information in order to improve aviation safety, and the need for the proper administration of justice.

4.9 In the event of a data loss by a carrier, what obligations are there on the airline which has lost the data and are there any applicable sanctions?

Please refer to our response to question 4.8.

4.10 What are the mechanisms available for the protection of intellectual property (e.g. trademarks) and other assets and data of a proprietary nature?

Nigeria is a signatory to the Agreement on Trade-Related Aspects of Intellectual Property Rights (“TRIPS”). Various domestic statutes also exist to protect Intellectual Property Rights (“IPRs”) including the Trade Mark Act and the Patents and Design Act, and the Copyrights Act which protect trademarks, patents, and copyrights, respectively. Each statute also provides for the procedure for registration and protection of IPRs, mechanisms and procedure for filings, and also the action that can be taken against an alleged or actual infringement.

4.11 Is there any legislation governing the denial of boarding rights and/or cancelled flights?

Yes, the CAA 2022, Part 19 of the NCARs 2023, and the Montreal Conventions as domesticated in Nigeria, govern denial of boarding rights and cancelled flights.

4.12 What powers do the relevant authorities have in relation to the late arrival and departure of flights?

The NCAA prescribes the obligations of carriers to passengers under Part 19 of the NCARs 2023 for delays in domestic and international flights. For domestic flights, carriers are expected to inform passengers of the reason(s) for the delay within 30 minutes after the scheduled time of departure. In addition, depending on the length of delay, they are required to provide some form of compensation including refreshments, telephone calls, reimbursement and hotel accommodation.

Similarly, for international flights, when an operating air carrier reasonably expects a flight to be delayed beyond its scheduled time of departure, it shall provide compensation to the passengers.

In addition, the Montreal Convention domesticated in Nigeria by virtue of the CAA 2022 provides for monetary compensation for delays.

4.13 Are the airport authorities governed by particular legislation? If so, what obligations, broadly speaking, are imposed on the airport authorities?

The FAAN is the statutory manager of Federal airports, and is governed by the FAAN Act. The FAAN Act imposes the following obligations on the FAAN:

- a. to develop, provide and maintain at airports and within the Nigerian airspace all necessary services and facilities for the safe, orderly, expeditious and economic operation of air transport;
- b. to provide adequate conditions under which passengers and goods may be carried by air and under which aircraft may be used for other gainful purposes and for prohibiting the carriage by air of goods of such classes as may be prescribed;
- c. to prohibit the installation of any structure which, by virtue of its high position, is considered to endanger the safety of air navigation;
- d. to charge for services provided by the Authority at airports; and
- e. to provide accommodation and other facilities for the effective handling of passengers and freight.

4.14 To what extent does general consumer protection legislation apply to the relationship between the airport operator and the passenger?

The FCCPA is the main legislation for consumer protection in Nigeria. Under the FCCPA, consumers/passengers have the right to enforce their rights or resolve any dispute in respect of services provided by airport operators either by engaging such airport operator, or the relevant industry sector regulator, or the FCCPC.

Furthermore, the FCCPA specifies various rights of consumers including timely performance of services, disclosure of prices and the display of information accurately and plainly.

Whilst general consumer protection powers are exercised by the FCCPC as the airport operators are regulated and licensed by the NCAA, they also must comply with the NCAA consumer protection standards.

4.15 What global distribution suppliers (GDSs) operate in your jurisdiction?

Sabre Travel Network, Travelport, Amadeus Nigeria, Galileo, Worldspan, and Apollo are the global distribution suppliers (“GDSs”) operating in Nigeria.

4.16 Are there any ownership requirements pertaining to GDSs operating in your jurisdiction?

There are no specific ownership requirements for GDSs operating in Nigeria, other than registration as a Nigerian company with the Corporate Affairs Commission (“CAC”). GDSs can, therefore, be fully owned by foreign shareholders provided they meet the minimum capital requirement of N10 million.

4.17 Is vertical integration permitted between air operators and airports (and, if so, under what conditions)?

Please refer to the response provided to question 4.1.

4.18 Are there any nationality requirements for entities applying for an Air Operator’s Certificate in your jurisdiction or operators of aircraft generally into and out of your jurisdiction?

There are nationality requirements for applicants for an Air Operator’s Certificate (“AOC”). Paragraph 9.1.1.6 of the NCARs 2023 specifies that the NCAA may issue an AOC if, after investigation, it finds that the applicant:

- is a citizen of Nigeria;

- has its principal place of business and its registered office, if any, located in Nigeria;
- meets the applicable regulations and standards for the holder of an AOC;
- is properly and adequately equipped for safe operations in commercial air transport and maintenance of the aircraft; and
- holds the economic authority issued by Nigeria under the provisions of this Regulation.

5 In Future

5.1 In your opinion, which pending legislative or regulatory changes (if any), or potential developments affecting the aviation industry more generally in your jurisdiction, are likely to feature or be worthy of attention in the next two years or so?

We are not aware of any pending legislative or regulatory changes that may be worthy of attention in the next two years because all the principal aviation legislations in Nigeria, i.e, the CAA 2022, FAAN Act, NAMA Act, NiMET Act, and the NCARS have all been amended. We do not envisage that there will be further amendments to these legislations in the next two years. However, the issue of the establishment of a national carrier, Nigeria Air, which has been suspended by the government and which is currently a subject of litigation before the Nigerian Courts will continue to draw attention in the next two years.



Lawrence Fubara Anga, SAN, is one of the Founding Partners of the Firm and the head of the Firm's aviation, maritime and financial services practice groups. Qualified to practise law in Nigeria, Ghana and England & Wales, he has a strong multi-disciplinary background in law, economics, management and fiscal policy.

He has attended and facilitated several aviation-related courses and seminars around the world, including the annual IATA aviation legal seminars and the ABA aerospace law forum. Fubara is the founder and president of the Nigerian Aviation Law Society and the pioneer chairman for the aviation section of the Nigerian Bar Association's Section on Business Law.

He has been involved in advising and representing clients on various high-profile legal transactions and disputes including aircraft finance, passenger liability, aviation advisory, and shipping matters. He has been recognised by *Who's Who Legal* as a 2022 Global Leader in Aviation Contentious, Aviation Finance and Aviation Regulatory. He is also ranked as a National Leader in Banking, Energy, Natural Resources, Mining, Transport Aviation, and Transport Shipping & Maritime.

AELEX

4th Floor, Marble House
1 Kingsway Road
Falomo, Ikoyi
Lagos
Nigeria

Tel: +234 1 279 3365

Email: lfanga@aelex.com

LinkedIn: www.linkedin.com/in/lawrence-fubara-anga-64439717



Rafiq Anammah, MCI Arb, is a Senior Associate with the firm's Transportation practice group. He advises on aviation finance, leasing, and compliance with Nigerian aviation law. He also represents major international airlines in passenger, baggage and cargo-related claims before Nigeria's superior courts of record.

He is currently the Vice-Chairman, Aviation Committee of the Section on Business Law of the Nigerian Bar Association.

He was recognised in 2021 and 2022 as a "Rising Star" in the Transportation Sector by *The Legal 500*.

AELEX

2nd Floor, Right Wing UPDC Building
26 Aba Road
Port Harcourt, Rivers State
Nigeria

Tel: +234 903 315 0806

Email: ranammah@aelex.com

LinkedIn: www.linkedin.com/in/rafiq-anammah-mciarb-chmc-b409289a



Linda Osuagwu is an Associate in AELEX's Dispute Resolution and Transportation practice groups. Linda is a consummate lawyer and she has acquired extensive experience in her practice areas being part of the firm's various teams handling key transactions.

She provides legal advisory to clients on diverse issues of law in the transportation industry and represents clients at various courts for aviation and maritime related claims. She was part of the team that recently reviewed and advised a major airline on the implication of its proposed dollarization policy on air ticketing and proffered recommendations in view of the anti-competition laws in Nigeria.

Linda is a member of the International Bar Association (IBA), the Nigerian Bar Association-Section on Business Law (SBL).

AELEX

4th Floor, Marble House
1 Kingsway Road
Falomo, Ikoyi
Lagos
Nigeria

Tel: +234 1 279 3365

Email: losuagwu@aelex.com

LinkedIn: www.linkedin.com/in/linda-osuagwu-54a677131

AELEX is a full-service commercial and dispute resolution law firm with its head office in Lagos and other offices in Port Harcourt and Abuja, Nigeria and in Accra, Ghana. AELEX has nine partners, two international counsel and over 60 lawyers operating from its various offices. Lawyers in the Firm are admitted to practice in several jurisdictions including Nigeria, New York, Ghana, and England & Wales.

AELEX has significant experience in advising on aero-political, regulatory, competition and privatisation and aviation finance & lease matters. We act for airlines in respect of passenger, cargo and baggage claims and insurance disputes. Our experience includes: representing export credit agency lenders in a USD 4 million aircraft acquisition transaction involving

the sale, lease, mortgage and registration of an aircraft, advising on a tax-efficient structure for the transaction; and assisting a US airline in establishing operations in Nigeria and Ghana.

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