



**G. ELIAS**

**Review of the Civil Aviation Act 2022:  
Spotlight on Key Changes and  
Innovations**

## Introduction

Ranked among the top five best-performing sectors in 2022, the Nigerian civil aviation sector recorded significant growth in the second quarter of 2022 by 22.45 *per cent* from the 4.98 *per cent* reported in the same quarter of 2021. However, despite these remarkable successes, the industry's growth fell below the 50.68 *per cent* increase reported in the first quarter of 2022.<sup>1</sup>

The provisions of the Civil Aviation Act, 2006 (the “**Repealed Act**”) have been repealed. A new Civil Aviation Act, 2022 (the “**Act**”) which aligns with the current realities in the ever-evolving business world has been enacted. These steps aim to revamp the Nigerian civil aviation sector by adequately addressing relevant safety and security concerns, improve the standard of airline operations to meet up with international standards, and enlarge the scope of authority of the Nigeria Civil Aviation Authority (the “**NCAA**”) to enable it to effectively discharge its duties.

Commencing on August 16, 2022, the Act specifically seeks to: (a) provide for an effective legal and institutional framework regulating civil aviation in Nigeria in conformity with the standards and recommended practices of the International Civil Aviation Organisation (“**ICAO**”); (b) establish rules of operation and a division of responsibility within the Nigerian civil aviation sector for the purpose of promoting aviation safety and security; (c) ensure the implementation of Nigeria's obligations under international aviation agreements; and (d) consolidate the laws relating to the regulation of civil aviation in Nigeria.<sup>2</sup>

In this article, we describe and review the core innovations and changes made to the Act and identify some shortcomings of the Act. We also provide practical suggestions to address these shortcomings as well as efficiently and effectively enforce the provisions of the Act. Our analysis will be undertaken under five sub-heads: (a) powers of the NCAA; (b) safety and security matters; (c) domestication of international conventions by reference; (d) monetary provisions; and (e) creation of new offences. On balance, the passing of the Act is a most welcome development, but the NCAA needs to make a raft of detailed regulations for the full promise of the Act to be realised.

## Analysis of Key Provisions of the Act

### 1. Powers of the NCAA

#### a. Conferment of Exclusive Regulatory Powers on the NCAA

The Act has now empowered the NCAA to act as the sole regulator of the civil aviation industry.<sup>3</sup> Thus, the regulatory functions vested in the Nigerian Airspace Management Agency (“**NAMA**”) and the Federal Airports Authority of Nigeria (“**FAAN**”) prior to the enactment of the Act appear to have been taken from them and vested solely in the NCAA. Hence, to the extent that the powers conferred on NAMA and FAAN under the extant Nigerian Airspace Management Act, 1999 (the “**NAMA Act**”) and the new Federal Airports Authority of Nigeria Act, 2022 (the “**FAAN Act 2022**”) respectively conflict with the regulatory and supervisory mandate of the NCAA as expressly provided under the Act, NAMA and FAAN can no longer exercise jurisdiction over those matters.<sup>4</sup>

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<sup>1</sup> Chief among these challenges is insecurity. Ojukwu Emmanuel ‘Nigeria's Top-Five Performing Sectors in Q2 2022’, <https://www.tekedia.com/nigerias-top-five-performing-sectors-in-q2-2022/>. Retrieved March 27, 2023.

<sup>2</sup> S. 1 of the Act.

<sup>3</sup> S. 8(3) of the Act. Note that under s. 30(1)(c) of the Repealed Act, the NCAA was empowered to make such regulation as it deems expedient generally for the purpose of regulating air navigation. S. 8(3) of the Act provides that “*notwithstanding anything contained in any other law, the NCAA shall be solely responsible for the regulation of civil aviation in Nigeria*” (Emphasis supplied).

<sup>4</sup>The FAAN Act 2022 effectively repealed the Federal Airports Authority of Nigeria Act Cap. F5, Laws of the Federation of Nigeria, 2004 (the “Old FAAN Act”). Even though the functions of FAAN under the FAAN Act 2022 are not significantly different from those under the old FAAN Act, the FAAN Act 2022 however appears to limit the overarching role of FAAN to the maintenance of airports in Nigeria. Unlike s. 7(1)(s) of the NAMA Act which deals with the power of NAMA to coordinate the implementation of search and rescue services (which conflicts with the powers of the NCAA under the Act), we do not think that there are real areas of conflict between the FAAN Act 2022 and the Act. We however understand that on January 19, 2022, the Nigerian Senate passed the Nigerian Airspace Management Agency Bill, 2022 to repeal the extant NAMA Act (the “**Bill**”). It is our hope that the critical point on overlap of statutory duties as discussed in this article is addressed in the Bill.

### b. Power to Search and Rescue

The Act has now conferred additional powers on the NCAA to: (a) expropriate property to be used in aeronautical search and rescue exercises in any emergency situation where necessary, (b) ensure coordinated aeronautical search and rescue operations within Nigeria, and (c) allow aircraft owners or authorities of the State of registry of the aircraft to provide required measures of assistance to aircraft in distress.<sup>5</sup> With this provision, the NCAA will be expected to put in place appropriate technological and operational infrastructure to effectively coordinate search and rescue operations. Unfortunately, the Act makes no detailed provisions as to how the NCAA may actualize this.

The Act is also silent on the payment of compensation to a person whose property is expropriated for search and rescue purposes. The likely effect of this without more is exposure of the NCAA to claims and litigations from aggrieved persons whose properties are expropriated without adequate compensation,<sup>6</sup> but this is not necessarily problematic. The Constitution of the Federal Republic of Nigeria 1999 (as amended) (the “**1999 Constitution**”)<sup>7</sup> provides that there must be adequate compensation paid. If the NCAA in practice develops regulations reflecting prevailing international practice on compensation in such contexts, the concerns of property owners are likely to be addressed and managed fairly and efficiently.

### c. Emergency Requiring Immediate Action

The NCAA is now empowered by the Act to make such orders, rules, regulations or directives as it deems necessary to resolve an emergency, where it is of the opinion that an emergency concerning safety and security in civil aviation exists. The emergency must demand immediate action, whether upon complaint by any person or on its own initiative.<sup>8</sup> The practical effect is that the Act enables the NCAA to make swift decisions according to the peculiarity of each set of circumstances. That is to say, the NCAA does not need to wait for any declaration, permission or approval by a Minister or another agency before taking decisions which affect national safety.

### d. Power to Prevent Flight

Although the NCAA has always assumed this power, the Repealed Act made no express provision for the prevention of flights under any circumstances. The Act now expressly permits the NCAA to direct an operator of or airman on a civil aircraft not to operate in any situation where (a) the aircraft may not be airworthy, (b) the airman may be unqualified or physically or mentally incapable for the flight, or (c) the flight would cause imminent danger to any person or property on the ground.<sup>9</sup> This provision is laudable as it is consistent with both the safety objective of the Act and international standards.

### e. Registration of Interest in Aircraft

The Repealed Act merely provides for the power of the NCAA to make regulations for the registration of aircraft in Nigeria. In contrast, the Act specifically provides for the registration of any interest in civil aircraft in Nigeria.<sup>10</sup> The Act mandates the NCAA to record in the national civil aircraft register any title to or interest in any civil aircraft or aircraft engine, propeller, or appliance registered in Nigeria.<sup>11</sup> This record-keeping provision will no doubt make for more efficiency and certainty in the regulation of civil aviation in Nigeria. Furthermore, we hope that this will be a mandatory obligation for the owners and operators of aircraft in Nigeria. If the national civil aircraft register is regularly updated, members of the public should have access to it particularly, to reliably verify whether there has been any

<sup>5</sup> S. 9(1)(g)-(i) of the Act.

<sup>6</sup> The United Kingdom’s Civil Aviation Act, 1982, for example, contains no express provision on expropriation of property for search and rescue purposes, but provides that material loss or damage caused to any person or property on land or water by, or by a person in, or an article, animal or person falling from, an aircraft is recoverable.

<sup>7</sup> S. 44.

<sup>8</sup> S. 31(7) of the Act.

<sup>9</sup> S. 49(1) of the Act.

<sup>10</sup> S. 59(1) of the Act.

<sup>11</sup> S. 60(1) of the Act. In relation to any registration of title to or interest in respect of an aircraft registered in Nigeria, the Act further provides that any document on title to or interest in a registered aircraft, engines or ancillary appliances but unregistered in the national civil aviation register shall not be valid unless contained in the register (s. 60(2) of the Act).



registration of title or interest in relation to an aircraft. This will be similar to what is done at the Corporate Affairs Commissions and the State land registries.

**f. Environmental Protection**

The Act empowers the NCAA to issue rules and regulations specifically on aviation environmental protection. This will help in tackling the challenge of toxic emissions from both local and international flights and ensuring safe, habitable, and unpolluted air. This provision is consistent with ICAO's emission reduction scheme.<sup>12</sup>

**2. Safety and Security Matters**

**a. Use of Passenger Information and Implementation of Passenger Security Framework**

With one exception, the Act prohibits the NCAA from using data relating to safety and security in relation to civil aviation matters other than for safety-related purposes. The exception is where, as may be determined by an "appropriate authority", the value of the disclosure or use of the information or data in any instance outweighs the adverse impact such disclosure or use may have on aviation safety and security.<sup>13</sup>

Furthermore, the NCAA is empowered to regulate the standards for the implementation of Advance Passenger Information ("API") and Passenger Name Record ("PNR") data exchange between departure and destination countries and for the protection of passenger information.<sup>14</sup> This will enhance the security of passengers onboard aircraft and the protection of their data, and assist in maintaining the delicate balance between facilitating cross-border movements and upholding border security. These provisions of the Act will need to be implemented in tandem with the provisions of the Nigerian Data Protection Regulation, 2019 and subsequent legislations (as may be relevant) on cross-border data transfer.

**b. Grant of Exemptions**

Under the Repealed Act, the NCAA had the power to grant certain exemptions to aircraft or persons or classes of aircraft or persons, particularly pertaining to conditions under which noise and vibration may be caused by aircraft in respect of aerodromes. The Act has, however, expanded the scope of these exemptions to cover not only aircraft or persons or classes of aircraft or persons. It is now made clear that such exemptions are to be granted where the NCAA considers that granting the same will not compromise safety and security and is in the public interest.<sup>15</sup> The Act empowers the NCAA to make regulations or issue directives or orders which will govern the applications for and approval of these exemptions.<sup>16</sup>

**c. Obligations to Develop Security Policies**

In consonance with its underlying objective of strengthening security in the Nigerian civil aviation sector, the Act empowers the NCAA to (x) develop aviation security policies and requirements,<sup>17</sup> (y)

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<sup>12</sup> This scheme is also known as Carbon Offsetting and Reduction Scheme for International Aviation (CORSIA). It is the first global market-based measure for any sector and represents a cooperative approach as against national or regional regulatory initiatives. It offers a harmonized way to reduce emissions from international aviation and minimize market distortion, while also respecting the special circumstances and respective capabilities of ICAO Member States. Nigeria is a member state of ICAO. See <https://www.icao.int/environmental-protection/CORSIA/Pages/default.aspx> last accessed January 26, 2023.

<sup>13</sup> S. 37(1) of the Act. Although the Act does not specifically state the appropriate authority in the context of this provision, the National Information Technology Development Agency is the principal authority for regulating data protection in Nigeria. See s. 6 of the National Information Technology Development Agency Act, 2007.

<sup>14</sup> S. 42(1)(d) of the Act.

<sup>15</sup> S. 41(1) of the Act.

<sup>16</sup> S. 41(2) of the Act. The Act contains wider provisions concerning the grant of exemptions.

<sup>17</sup> The Act requires that these security policies be consistent with the provisions of Annex 17 to the Chicago Convention. Annex 17 makes provisions for the safeguarding of international civil aviation against acts of unlawful interference. It further defines 'acts of unlawful interference' as acts or attempted acts such as to jeopardize the safety of civil aviation and air transport, and these include (a) unlawful seizure of aircraft in flight, (b) unlawful seizure of aircraft on the ground, (c) hostage-taking on board aircraft or on aerodromes, (d) forcible intrusion on board an aircraft, at an airport or on the premises of an aeronautical facility, (e) introduction on board an aircraft or at an airport of a weapon or hazardous device or material intended for criminal purposes, and (f) communication of false information such as to jeopardize the safety of an aircraft in flight or on the ground, of passengers, crew, ground personnel or the general public.

issue orders, circulars or directives to require the implementation of immediate security measures, and (z) provide oversight for the implementation of aviation security policies and requirements.<sup>18</sup>

#### **d. Incident Reporting, Investigation and Enforcement**

The NCAA is mandated to make rules and regulations for the notification and reporting of incidents involving aircraft and aerodromes.<sup>19</sup> Unlike under the Repealed Act, the Act empowers the NCAA to investigate any complaint or occurrence in respect of aviation safety and security (including accidents and incidents investigation), after due notice is given to the persons concerned. The Act authorizes the NCAA to implement mandatory punitive and voluntary non-punitive incident and accident reporting systems, and to protect the identity of any person or organization who offers information towards the performance of its functions under the Act.<sup>20</sup> The purpose of this provision is to ensure an integrated and concerted approach among information providers when there are emergencies (including during accidents and incidents).

In ensuring the safety of volunteer informants or witnesses willing to provide useful information to the NCAA in the investigation or prosecution of an offence under the Act, the NCAA is required to take all reasonable measures to protect the identity of such persons and treat such information provided as confidential.<sup>21</sup>

#### **e. Right of Access for Inspection**

Under the Repealed Act, this right of access for the purpose of inspection by the NCAA was limited to civil aviation personnel, aircraft, and aviation facilities and organizations for the purpose of determining the issuance or grant of a certificate of registration or approval. By the Act, the NCAA is now granted free, unrestricted, unobstructed and unlimited access to all civil aviation personnel, documents, aircraft, aerodromes, and aviation facilities, for the purpose of: (i) inspecting aircraft, aircraft manufacturers and maintenance facilities; (ii) exercising its powers and carrying out its functions; and (iii) inspecting any facilities or documents on security procedure.

The NCAA is also granted free, unrestricted, unhindered, unobstructed and unlimited access to (a) require aircraft or aerodrome operators, and occupiers of land outside an aerodrome used for business operations purposes connected with the aerodrome, to provide information relevant to any audit, inspection, survey, test or investigation,<sup>22</sup> and (b) relevant security documentation and records connected with air transportation and to interview any person for the purpose of assessing the security standards or their implementation.<sup>23</sup>

### **3. Domestication of International Conventions by Reference**

Pursuant to the provisions of the 1999 Constitution<sup>24</sup> and in addition to the conventions already domesticated under the Repealed Act<sup>25</sup>, the Act domesticated by reference four (4) additional international conventions<sup>26</sup> which, although ratified prior to the coming into force of the Act, were undomesticated.<sup>27</sup> The domestication of these conventions is commendable as the provisions of these conventions which contain international best practices in regulating the civil aviation sector are now enforceable in Nigeria. Airline operators and users are now mandated to comply with them.

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<sup>18</sup> S. 42(3) of the Act.

<sup>19</sup> See generally, s. 46 of the Act.

<sup>20</sup> S. 46(5) of the Act.

<sup>21</sup> S. 90(1) of the Act.

<sup>22</sup> S. 48(3) of the Act.

<sup>23</sup> S. 48(4) of the Act.

<sup>24</sup> S. 12.

<sup>25</sup> Convention on the International Recognition of Rights in Aircraft (Geneva Convention), 1948 and Convention on International Interests in Mobile Equipment 2001 and the Protocol to the Convention on International Interests in Mobile Equipment on Matters Specific to Aircraft Equipment (Cape Town Convention), 2001.

<sup>26</sup> Convention on Offences and Certain Other Acts Committed On Board Aircraft (Tokyo Convention), 1963; Convention for the Suppression of Unlawful Seizure of Aircraft (Hague Convention), 1970; Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation (Montreal), 1971; and Convention on the Marking of Plastic Explosives for the Purpose of Detection (Montreal Convention), 1991.

<sup>27</sup> S. 50 of the Act.

#### 4. Monetary Provisions

##### a. Security Surcharge

The security surcharge is an amount levied on passengers' airline tickets to cater for increased security measures at airports. This security surcharge as may be determined by the NCAA applies to international flights emanating from Nigeria, and all such funds accruing from this surcharge must be paid to the NCAA. The funds are to be maintained in a separate account and applied solely for the improvement of aviation security in Nigeria.<sup>28</sup> The Act is, however, silent on how remittances are expected to be made, whether directly by the passengers or indirectly by the airline. It is advisable that the NCAA should release a regulation or any circular expressly stipulating the amount to be charged as security and other surcharges to avoid arbitrariness and lay out a procedure for making such remittances.

##### b. Advance Payment and Automatic Review of Compensation Rates

In the event of an accident resulting in the death of or injury to passengers, the airline operator or carrier is liable under both the Repealed Act and the Act to make advance payments of Naira equivalent of at least US\$30,000 to the natural person entitled to claim compensation. The payments need to be made no later than thirty (30) days from the date of such an accident.<sup>29</sup> In addition, the Act further provides that this amount is to be reviewed automatically upon receipt of the ICAO five-yearly review of this limit notification.<sup>30</sup> The Act however does not make provision for default of payment by the relevant airline operator or carrier and how such default will be addressed. The Act, like the Repealed Act, is also silent on the "level of injury" (whether bodily, proprietary or both) which must be suffered to entitle a passenger or his successors to this compensation. This uncertainty may lead to lawsuits being brought against the airline operator for determination of entitlement to this compensation.

##### c. Remittance of 5% Air Ticket, Contract, Charter, and Cargo Sales Charge

The Repealed Act authorized airlines to collect and remit to the NCAA five percent (5%) of airfare, contract, charter and cargo sale charge.<sup>31</sup> In contrast, the Act mandates the remittance of this five percent (5%) charge directly to the NCAA. The Act also expressly provides that these charges apply to all international and domestic air transportation originating in Nigeria irrespective of the place of sale or issuance of the air ticket or execution of the carriage contract.<sup>32</sup> We believe that the purport of this provision is to place the NCAA in full charge of the collection of the charges, particularly in the teeth of the prevailing non-remittance culture embraced by some airlines.<sup>33</sup> The Act provides that the NCAA may still delegate this responsibility to the airlines and make regulations to regulate the manner and time in which these remittances will be made.<sup>34</sup> In our opinion, it is more effective for the NCAA to delegate this collection and remittance to the various airline operators rather than insist on direct remittances which will be an extra burden on the passengers. It would also be easier to regulate and control the remittances from the airlines than from the individual passengers.

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<sup>28</sup> S. 51(2) and (3) of the Act.

<sup>29</sup> S. 48(3) of the Repealed Act and s. 55(3) of the Act. It is also not clear what is meant by bodily injury and as such, this provision is vague and broad. This open discretion may lead to arbitrariness.

<sup>30</sup> S. 55(4) of the Act.

<sup>31</sup> S.12(1) of the Repealed Act.

<sup>32</sup> S. 23(1) of the Act

<sup>33</sup> Faith Abeka 'NCAA to Sanction Airlines Over Non-Remittance of Ticket Sales Charge', ICIR (December 27, 2022) <https://www.icirnigeria.org/ncaa-to-sanction-airlines-oer-non-remittance-of-ticket-sales-charges/> Retrieved March 27, 2023.

<sup>34</sup> S. 23(3) of the Act. The Act further prescribes a fine of ₦5,000,000 or imprisonment for a term of two (2) years or both to the directors of airlines who fail to remit or pay to the NCAA within the time specified in the regulations made pursuant to the Act. It is unclear how the NCAA intends to monitor compliance with this provision. The regulations made pursuant to this provision should put strict disclosure obligations on airlines. The NCAA may also request for access to search the books of any airline operator upon reasonable suspicion of non-compliance with the provisions of this section.

## 5. Creation of New Offences

New categories of offences have been created under the Act. For instance, the Act has made it an offence for any person who, against instruction of the pilot-in-command or a flight crew member or cabin crew, uses or operates any equipment or device including mobile telephones that may interfere with the aircraft radio frequency or other navigational equipment on board aircraft. The penalty for this offence is imprisonment for at least two months or ₦200,000 (Two Hundred Thousand Naira) fine or both.<sup>35</sup> Also, it is an offence falsely to display on any aircraft any marks that are misleading as to nationality or registration of the aircraft. This offence attracts penalty of imprisonment for at least one year or ₦1,000,000 (One Million Naira) fine or both.<sup>36</sup>

## Commentaries and Conclusion

The Act presents a robust, overhauling, and ambitious legislative framework needed for an essential sector like the aviation industry which requires strict regulation. The Act equally re-establishes the NCAA as an independent and exclusive regulatory body charged with the responsibility to revolutionize the aviation industry. Generally, the Act aims to address safety and security concerns characterizing the aviation sector by the introduction of innovative provisions on safety and security measures as well as remittances to support security infrastructure. Indeed, the Act promises to revamp the civil aviation industry and give it a facelift towards ensuring that Nigeria complies with international best practice in its aviation sector.

There are various issues bedeviling the civil aviation industry in Nigeria. These range from the planned exit from Nigeria of some foreign airlines due to trapped funds, to the issue of outstanding debts to be paid to the NCAA by some airlines, and the financial mismanagement among some airlines resulting in their inability to meet their financial obligations and to conduct safe flight operations. The Act is expected to address some of these issues and give Nigeria a more efficient and productive aviation industry. It is also expected that compliance with its provisions will restore confidence of international actors and investors in the sector.

In order to achieve these lofty objectives, there is a need to roll out machinery for the implementation and enforcement of some of the provisions of the Act. For instance, we need detailed regulations (a) in the implementation of the API and PNR standards in Nigeria, (b) making provisions for penalty for default in making advance payments in the event of aircraft accidents by way of regulations, and (c) for implementing and enforcing a one-size-fits-all or common approach for remitting to the NCAA 5% of the charge on air ticket, charter and cargo sales. The NCAA should therefore enact a regulation to address the lacunae in the Act already identified in this article.

On the issue of remittance of 5% charges on ticket sales, the NCAA currently operates a voluntary tripartite agreement which mandates airlines to ensure the remittance of charges into the NCAA's account by the bank maintaining the accounts into which the ticket sales charge is paid. This development is highly commendable. It is to be hoped that airlines that have not been compliant will do so. Another option is to leverage payment gateways offered by fintech companies to ensure that the 5% charge will be automatically deducted and remitted to the NCAA where payments are made through any of the prescribed fintech platforms.

The Act is barely ten (10) months' old as of the time this piece was written. The Act is replete with loads of reformative provisions capable of improving the Nigerian civil aviation sector. It remains to be seen how the NCAA intends to execute its new mandates and leverage its powers to rebirth a vibrant, profitable and well-regulated aviation sector.

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<sup>35</sup> S. 85(3) of the Act.

<sup>36</sup> S. 80 of the Act.

## Authors



**Oluwafunmilayo Mayowa**  
**Senior Associate**  
funmi.mayowa@gelias.com



**Taiye Adegoke**  
**Associate**  
taiye.adegoke@gelias.com



**Victor Ayo-Odewale**  
**Associate**  
victor.ayo-odewale@gelias.com

## LOCATIONS

**LAGOS OFFICE**  
6 Broad Street  
Lagos, Nigeria

**ABUJA OFFICE**  
2nd Floor, Abia House,  
Plot 979, First Avenue,  
Central Business District  
F.C.T, Abuja.

T: +234 (1) 460 7890  
E: gelias@gelias.com

T: +234 (1) 888 8881

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