AIRLINE INDUSTRY: OVERVIEW OF POLICY AND REGULATORY FRAMEWORK

Aviation is a complex industry: It is divisible into 2 major parts or divisions. Military and Civil, our concern here is with civil aviation. All over the globe, aviation has become a major means of transportation and communication. Due to its strategic importance in the movement of goods and services, Nigeria has placed substantial premium on the development of civil aviation. But after 83 years of being associated with the flying industry Nigeria has not fared as commendably as other countries with the same or similar pedigree have done.

Government evolved a new aviation policy in December 2001 and in the document, Government expressed the primary objective of the industry as being:

"To provide safe efficient, reliable, dynamic, customer-focussed and market driven air transport services which could make the country a leading hub in Africa and a major participant in global aviation and at the same time make significant contribution to Nigeria's gross domestic product. (GDP)

Policy thrust of government is clear; it is to provide an enabling environment for growth of the industry and safe operation of aircraft and other attendant services. Government will also encourage accessibility of air transport to every part of the country. The following therefore are the major policy thrust of Government.

- Creation of an enabling environment to encourage dynamic growth.
- Enhancement of safety oversight through improved safety regulation.
- Improved Airport and Aviation security management.
- Improved Airspace management.
- Manpower development.
• Infrastructural development, increased participation of the private sector and revival of the national carrier through restructuring and privatization.

• Development of Lagos into hub for passenger and cargo transportation in Nigeria and eradicating corruption, touting and other vices in the aviation system.

• Legislation, policy formulation and regulatory framework—Airports Operations and Management. Facilitation.

• Airport security and safety—Ground handling and Environmental protection.

• Airspace management and meteorology.

• Accident investigation and prevention.

• Air Transport Licensing.

• Economic Regulation of Airports and Air navigation.

• International operations and liberalisation.

• Airline Industry and ownership structure.

• Participation in International organisations.

• Consumer protection

• Insurance

• Aviation charges

• Human resources management
LEGISLATION AND REGULATORY FRAMEWORK

Although one of the major policy thrust of government is to ensure that all laws and regulations concerning civil aviation in Nigeria was consistent with international laws and regulations and that harmonious relationships exist between the Ministry of Aviation and its agencies. There was a lull between the publication of the aviation policy and the enactment of a comprehensive legislation and whether it was the spate of serious air accidents that led to this, as some suggest, one cannot be sure but the Civil Aviation (Repeal and Re-enactment) Act became law in November 2006. Section 1 is important in that it places control for the formulation of policies and strategies inter alia for the promotion and encouragement of civil aviation in Nigeria in the Minister of Aviation. For ease of reference section 1 is reproduced herebelow.³

"PART I- CONTROL OF AIR NAVIGATION

1. The Minister shall be charged with the responsibility for the formulation of policies and strategies for the promotion and encouragement of civil aviation in Nigeria and the fostering of sound economic policies that assure the provision of efficient and safe services by air carriers and other aviation and allied service providers as well as greater access to air transport in a sustainable manner and to assist with ensuring that Nigeria's obligations under international agreements are implemented and adhered to."

Part II of the Act establishes the Nigerian Civil Aviation Authority⁴ while Section 30 sets out the powers of the authority which are quite expansive. It is not necessary to dissect the entire aviation legislation as that is not our principal area of concentration but suffice to say that the conceptualisation of a superlative aviation system is not the complete answer to the failings of the aviation industry, the flaws lie in our endemic corruption and other vices inherent in the system. The truth is that policies and legislations will not improve the flaws in the system but a complete change in human attitude. Take for instance, since the policy came into effect recruitment /appointment of positions of chief executives and principal officers of technical departments of parastatal under the Ministry of Aviation shall possess the requisite aviation professional qualifications, cognate experience and skills commensurate with these positions. But how have the appointments gone? All one can say is that there have been complaints from staff of some of the parastatals that more qualified people have been have been by passed due to political and /or other considerations.
FUNDING

The trend is now firmly established all over the world of governments withdrawing subsidies from the funding of aviation services. While Nigeria too desires this goal but the level of infrastructural development has not reached the stage or maturity for Government withdrawal of subsidies. For instance compared with some of the world's mega airports such as Heathrow UK, JFK New York, Changi-Singapore, Delhi International Airport-India, etc Nigeria's airport infrastructure are behind average standards. Thus Government investments cannot completely cease but the way out can be in concessioning such projects to the private sector to Build-Operate and Transfer. An example that worked is the MM2 Lagos.

AIRPORT OPERATION AND MANAGEMENT

The statutory powers to develop and maintain airports in Nigeria including the provision of security, fire cover and facilities among others are vested in the Federal Airport Authority of Nigeria FAAN The functions of the Federal Airports Authority of Nigeria are as contained in Part II of the Federal Airports Authority of Nigeria Act of 1996 as amended in 1999 as follows:

- To develop, provide and maintain at airports and within the Nigeria Air Space all necessary services and facilities for the safe, orderly, expeditious and economic operation of air transport;
- 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 such classes as may be proscribed;
- To charge for services provided by the Authority at airports;
- To provide accommodation and other facilities for the effective handling of passengers and freight;
- To develop and provide facilities for surface transport within airports;
- To carry out at airports (either by itself or by an agent or in partnership with any other person) such economic activities as are relevant to air transportation;
- To carry out at Airports (either by itself, its agents or in Partnership with any other person) such other commercial activities which are not relevant to air transport but which in the opinion of the Authority may be conveniently carried out without prejudice to the functions specified in this sub-section;
- To provide adequate facilities and personnel for effective security at all Airports; and generally to create conditions for the development in the
most economic and efficient manner of air transport and the services connected with it.

Five airports are now designated as International airports; they are Murtala Mohammed International Airport Lagos, Port Harcourt Int. Airport PH, Nnamdi International Airport Abuja, Mallam Aminu Kano Int. Airport Kano and Margaret Ekpo Int. Airport Calabar. All over the world, airports are managed by commercial outfits and not civil servants, it us understood that plans are afoot to convert FAAN to a Pic so that the vagaries of corporate practices can permeate the organisation in keeping with international best practices.

GROUND HANDLING

Government policy envisages a competitive and privatised ground handling system in Nigeria. The term 'Ground Handling'\(^5\) covers a complex series of processes that are required to separate an aircraft from its load (passengers, baggage, cargo and mail) on arrival and combine it with its load prior to departure. It includes all operational activities that happen between the time a pilot puts off the aircraft engines on arrival and putting them back on for departures. The market here is a duopoly with just 2 players competing for ground handling and cargo business: They are Sky power Aviation handling Company Ltd (SAHCOL) which is 100% owned by the Federal government of Nigeria and Nigerian Aviation Handling Company (NAHCO) Records put SAHCOL as handling 45 international flights per week and 422 flights per week on domestic operations while NAHCO handles 106 international flights per week and 368 local flights.

Services offered by the ground handling companies include:

- Cabin Services
- Ramp Services
- Passenger Services
- Cargo Handling
- Cargo Warehousing
According to Ogeah\(^6\), the aviation industry is highly capital intensive with huge investment in equipment and other infrastructure requiring huge capital layout not only in equipment but in manpower. Ground handling business deals with complex operations. Heavy equipments are required to perform the task of a turn around of an aircraft; the availability of the required equipment by the handling company will enhance maximum efficiency. This line of business is for long term players as cost of set-up and equipments are very high and the returns are low.

**AIR NAVIGATION SERVICES**

The Nigerian Airspace Management Agency shall coordinate aeronautical search and rescue activities in Nigeria. The agency shall ensure safe, orderly and expeditious flow of air traffic within the Nigerian airspace. According to Adeyegbe\(^7\) Strategies to achieve this objective include funds for the implementation of the new CNS/ATM system shall be provided by Government and from other sources and time limit for the closure of airspace as specified in the air traffic control manual shall be adhered to. This aviation parastatal is responsible for the provision of seamless Air Traffic Management Services for the local and International airline operations. It is led by a Managing Director and supported by five Directors. Act No 48 established NAMA on 26 May 1999, as a body corporate with perpetual succession and common seal. The Agency operates under Nigerian laws, rules and regulations based on the framework established by the Chicago Convention, which regulates international civil aviation. The major civil aviation organisations with which the Agency has a relationship are the International Civil Aviation Organisation, (ICAO) the Ministry of Aviation, (FMA) Nigerian Civil Aviation Authority, (NCAA) Federal Airport Authority of Nigeria, (FAAN) Nigerian Meteorological Agency, (NIMET) and the Nigerian College of Aviation Technology, (NCAT) Zaria as well as the Federal Ministry of Communication who assigns radio frequencies.
AREONAUTICAL SEARCH AND RESCUE

NAMA the airspace management agency is to coordinate all aeronautical search and rescue in Nigeria. This NAMA acts in direct conjunction with the National Emergency Management Agency. Strategy includes making a part of NEMA's allocation available to NAMA for search and rescue operations and (ii) NAMA shall requisition necessary equipment in times of search and rescue operations based on the memorandum of understanding between NEMA and NAMA. Quere- Does recent experience with reports of lost aircraft prove the efficacy of the policy or the agency? The answer lies not in the clarity of the policy but in the attitude of the operators.

ACCIDENT INVESTIGATION AND PREVENTION

This bureau (APIB) is responsible for the investigation of air accidents and the publication of investigation reports. Policy guidelines stipulate inter alia that APIB shall be a financially independent bureau under the Federal Ministry of Aviation and shall operate as an agency to guarantee expediting its response and movement of its staff to accident sites (if they can find them) (ii) recruit experienced professionals into the APIB and (iii) ensure that accident reports shall be made available at affordable prices within 30 days.

AIR TRANSPORT LICENSING

The thrust of government policy here is to discourage speculative investors who apply for Air transport Licence without a genuine intention to operate airline business. The entry qualifications are now stricter. Thus the Hon. Minister shall continue to grant and renew Air Transport License (ATL) Airline Operating Permit (AOP) and Air Travellers Operating Permit (ATOL). The latter is meant for non commercial flights based on the recommendations of the NCAA. Part of the strategies include (i) All applicants seeking the grant of ATL and AOP shall simultaneously pursue the grant of an Air operators certificate (AOC) issued by NCAA (ii) format of ATL and AOP shall reflect liberalisation policy of government. Consequently, aircraft type and routes will no longer be specified on the ATL and AOP but shall be reflected on the AOC and (iii) An ATL holder wishing to commence scheduled services shall have at least 2 aircraft in its fleet.

ACCIDENT AND BAGGAGE LOSS CLAIMS

It is settled that insurance liability regime for hull passenger, crew, baggage, third party and war risk liability shall be in conformity with international standards. In pursuance of this policy, Adeyegbe confirms that (1) Nigerian
airlines wishing to go on international operations shall adopt the liability limits set at the Montreal Convention of 1999 as follows: (a) Compensation in the case of death or injury of passengers: 100,000 Special Drawing Rights SDR for each passenger, (b) Damage caused by delay 4150 SDR for each passenger, (c) Destruction, loss, damage or delay of baggage 1000 SDR per passenger and (d) Destruction, loss or delay of cargo 17 SDR per kg. On the domestic route, compensation in the case of death or injury of passengers $100,000:00 per person, (b) Destruction loss or delay of baggage $1,000:00 and (c) Destruction, loss, damage or delay of cargo- $20 per kilo.

**SETTING UP AN AIRLINE BUSINESS IN NIGERIA**

As earlier indicated, air transport is a strategic global network, responsible for moving millions of people and large tons of cargo over vast distances within a short period of time, therefore not withstanding some of the obvious constraints in this line of business, such as rising cost of aviation fuel, weak dollar, global unrest etc it is still an investors paradise particularly for the long term investor. Current records show that aircrafts move over N 1.6 billion passengers worldwide, thus by 2010, this number could exceed 2.3 billion. About 28 million people worldwide work either directly or indirectly with the aviation industry and this ranges from aircraft manufacturers, airlines staff, pilots, ground handling staff, airport staff, duty free and franchises at airports all over the world. Other players include caterers, security men etc. 40% of the worlds trade of goods by value is carried by air.\(^9\)

**AIRLINE BUSINESS AND FINANCE**

To appreciate the enormity of the challenges attached to owning an airline business and operating from or in Nigeria, it is preferable to commence with the constraints associated with the industry so that the would-be entrepreneur can as it is said be 'caveat emptor'.

A proposed investor ought to know that the aviation industry is highly capital intensive with huge investment in aircraft, spare parts and other infrastructure requiring massive capital outlay. This capital expenditure is not limited to equipment alone but to the training of requisite manpower such as pilots, engineers, cabin attendants, store-keepers etc. It ought to be noted according to Osuji\(^{10}\) esq that the aviation industry suffers from inadequate funding and that availability of funding for the industry is hampered by factors including legal, regulatory, political and economic factors. The weakness in the system is worsened by the inability of the operators to take full advantage of the various
financing options available. It is said that there is a link between the level of funding and the level of safety in the aviation industry. It is at this point relevant to capture the comments of one of the new entrants into the airline business and to capture his comments on the constraints affecting a new entrant into the industry. Chief Executive of Overland Airways Captain Edward Boyo had this to say:

"The first challenge is putting up the proper financing plan with the limited capital availability and the high-risk perception of the aviation industry. The local banks are very nervous when it comes to funding aviation or airline related venture. We in overland airways discovered that our initial traffic was disproportional to the capital requirement and could not guarantee short-term profit. If you are taking that initiative to develop a route, you might find yourself retreating at that point in time. That is not the proper thing to do. Rather, you should go back to the mining analysis. You should ask yourself, based on the total value embedded in that route; will the end justify the means? If your answer is yes, then match that with the financing structure. That allows you survive in the early stages in prospecting so that by the time you come to the management phase of that route, you are stable."

Guidelines and Requirements for the Grant/Renewal of Airline Operating Permit (AOP)

1. General

i. Applicant seeking the grant of an Airline Operating Permit is required simultaneously, the grant of an Air Operator's Certificate (AOC) issued by the Nigerian Civil Aviation Authority, NCCA.

ii. Application in respect of a Permit shall be made in writing to the Honourable Minister of Aviation.

iii. The application shall be signed by the person applying for it and if made by a corporate body, shall be signed by a person duly authored by such body.
iv. Application for Permit must reach the Honourable Minister, Federal Ministry of Aviation on or before a date not less than six (6) months to the desired commencement date of operations.

v. Application for AOC shall be made in writing to the Director General, Nigerian Civil Authority, NCCA.

2. Requirements

i. The Application letter for the grant of a permit must contain the following particulars:

   a. Name and Address of applicant.
   b. The type of services to be provided; and
   c. Proposed operational base of applicant.

ii. The following supporting documents must also be submitted to the Ministry before processing of the application can begin.

   (a) Four (4) copies of the Certificate of Incorporation of the company.

   (b) Four (4) copies of the memorandum and articles of Association of the company with minimum share capital of N20, 000, 000 (Twenty Million Naira).

   (c) Four (4) copies of the current Tax Clearance Certificate of the company and of each of the Director (Originals should also be submitted for sighting);

   (d) Four (4) copies of detailed Business Plan of the operation indicating among other things, its operational base, cash flow analysis, maximum charter rates for passengers or cargo flight, the ability of applicant to provide satisfactory services in respect of safety, continuity, and reliability of operation, source of finance etc.

   (e) Publication of notice of the application in both the Daily Times and New Nigerian newspapers.
(f) Evidence of financial capability to undertake the proposed business.

(g) Insurance Policy and arrangement being put in place in accordance with the provision of the national Civil Aviation Policy.

(h) Duly completed application forms (to be obtained from NCAA);

(i) Duly completed History Statement (PHS) forms, two (2) passport size photographs in respect of each of the Directors of the company (forms are available at NCAA at the cost of N200 per form);

(j) Receipt of payment of N250,000.00 non-refundable processing fees. (Bank Draft made payable to the Nigerian Civil Aviation Authority)

iii. The Ministry will during the course of processing forward these documents to NCAA for technical evaluation and appropriate recommendation.

iv. The Ministry shall also seek:

(a) Security clearance from the Presidency; and

(b) Publication of notice of application in the official Government Gazette.

3. Validity Permit

i. The validity of a Permit shall be three (3) years.

ii. Subsequent upon receipt of Permit, a utilization fee of N50,000.00 shall be paid to the Nigerian Civil Aviation Authority annually.

Renewal of Airline Operating Permit Requirement

i. Application for renewal of a Permit shall be made in writing to the Honourable Minister of Aviation. The application shall thereafter be
forwarded from the Ministry to the NCAA for evaluation and appropriate recommendation.

ii. Receipt of Payment of N100,000.00 processing fees.

iii. Security Clearance from the Presidency (to be obtained by the Ministry in the course of processing)

iv. Evidence of utilization of Permit vides Certificate of:-
   a. Registration of Aircraft
   b. Airworthiness of Aircraft.
   c. Insurance.
   d. Air Operator's Certificate (AOC)
   e. Evidence of submission of monthly statistical returns of operations to the Nigerian Civil Aviation Authority and regular and up to date payment of Aviation Charges.

Provided there is a satisfactory report on the airline the Permit may be renewed for a further period of three (3) years.

6. Additional Information

i. On receipt of an application, the Honourable Minister of Aviation and/or the Director General of NCAA may request for additional information from the applicant as my be deemed necessary

ii. The Honourable Minister may refuse to grant the Permit if the Applicant has not demonstrated enough ability to meet the financial requirements for the issue of Air Operating Certificate (AOC) by the NCAA.

iii. Permit not utilized at the expiration of its validity period shall not be renewed.

**Guidelines and Requirements for the Designation of Nigerian Licensed Airlines on International Routes**
Any airline to be designated must fulfil the following criteria in addition to the preliminary requirements earlier fulfilled by the airline.

(a) The airline must be issued an Air Transport License (ATL) for international operations by the Honourable Minister of Aviation after due compliance with the following requirements.

(i) Payment of application processing fee of N5 million for short and medium haul (West Coast and African routes) and N10 million for long haul (Intercontinental) route.

(ii) Business Plan on the proposed operations of the airline.

(iii) Arrangements at proposed destination to support the intended operations.

(iv) Paid-up share capital commensurate with the scope operations. For short and medium haul routes (West Coast, African Region) N500 million, while Intercontinental routes shall be N1 billion. A month moratorium period from the date of approval (i.e. 21st April, 2004) is given during which the respective minimum capitalization should be attained.

(v) Insurance policy for the haul, passenger, cargo, third party and war risk in line with the Montreal Convention of 1999.

(vi) Organizational exposition detailing airline ownership and control, airline management structure and details of the airline operations including engineering, marketing, sales and promotions, flights operations, flight planning and scheduling, arrangement for aircraft fuelling, handling, receipt and dispatch, catering and customer services.

(vii) Evidence of computer reservations system subscription to SITA and other product distribution and/or support systems.

(viii) Evidence of ownership structure or operational control of aircraft.

(ix) Evidence of LATA membership.

(x) Details of experience in international schedule operations.
(b) An airline that has been issued with an Air Transport License (ATL) for international operation by the Honourable Minister shall seek from the Nigerian Civil Aviation Authority (NCAA) the variation of its Air Operator's Certificate (AOC) to cover routes and aircraft types to be operated.

(c) An airline that has obtained an Air Transport License (ATL) for International routes with its AOC varied will have its designation process finalized by the Ministry through the exchange of diplomatic notes.

(d) Any airline scheduled for designation by Government and is unable to obtain an Air Transport License (ATL) for international operations.

**AVIATION FINANCING IN NIGERIA**

Every entrepreneur desirous of going into airline business must acquaint himself fully with certain information. These include:

- Research critically into the airline industry as it is peculiar with Nigeria particularly, government red-tapism/bureaucracy, inconsistent government policies, unfavourable investment climate, perceived risks, high cost of doing business, high interest rate and unstable political climate.

- The investor must familiarise himself with import requirements and procedures in Nigeria as his entire investment could easily collapse or disappear as a result of exchange rate differentials, in particular investors should know about completion and processing of Form 'M', imported goods meeting with specification and standards various agencies, pre-shipment inspection and clean report of inspection.

- That even on a worldwide level, aviation business has a large appetite for capital, more so as most aviation business is designated in US dollars, which has a tendency for instability.
• Again it must be noted that an airline business runs on aviation fuel and the vagaries of that sector can make or mar an investor. As at today a barrel of crude oil sells for $120 USD.

• The business is characterised by low profit margins, exposure to penalties and fines, cash flow volatility and low return on asset and equity.

FINANCING OPTIONS

Outright Purchase
Aircraft and equipment may be acquired by outright purchase, but this is a rarity in the aviation industry\textsuperscript{14} when this occurs it is for the purchase of an old aircraft.

Instalmental Payment
This kind of payment is an outright purchase based on a conditional sale transaction. It differs from hire purchase because in the latter the buyer has an option to purchase while in the former he has a binding obligation to pay. In law, property in the goods will only pass upon final payment of final instalment.

Borrowing and Equity Contribution
Where the investment is locally propelled, funding may be received from Banks and other financial institutions; they may borrow from Government, its agencies, private individuals and international lending organisations. This may be a loan on soft terms or an outright investment.

Leasing

Finance Lease
In this type of lease arrangement, the ownership and title to the aircraft are vested in and retained by the lessor while the risks associated with and the benefits accruing from the aircraft are substantially transferred to the lessee during the lease period.

Operating lease
This is described as a hiring contract,\textsuperscript{15} under an operating lease, the lessee is merely granted the use of the aircraft in consideration of periodic payments of
rentals. During the lease the lessor not only retains the ownership and title to the aircraft but also bears the economic risk, reward and the residual value risk. An operating lease may be a dry or wet lease; the distinction between the two is that the lessor in the wet lease leases the aircraft and its crew to the lessor. The lessee pays the agreed rentals and is also responsible for fuel cost, over flight clearances, landing and other charges. Meanwhile the lessor operates the aircraft and conducts the flights in accordance with the lessee's instruction.

There are other types of leases such as a syndicated lease, hybrid cases of a sale and leaseback, lease purchase, leveraged lease, bill of sale, charge, sharing options, cooperation and alliance, cross border transaction etc.

**CONCLUSION**

Airline business is not for the faint hearted or the lily livered, it is for the sound astute investor, as indicated above, its terrain or environment is a shifting quicksand that will readily consume the unwary. But it is a profitable business for the cautious and astute businessman. It is not feasible to dwell on air transport safety and insurance issues at length here. That could be considered for future discourse. As for samples of contract forms with regard to the various leases, it has been omitted as the writer takes the view that each contract must be viewed in the light of its peculiarities thus the usual forms and precedents such as Atkins, Kelly's etc will suffice.

**J B Daudu**

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28th April 2008

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1 Being a Continuing legal education presentation organised by Law-Quest Limited as Alpha Juris Workshop at Rock view Hotel Wuse on April 30 2008 Adeyegbe-Annual Aviation Law and Business Digest- New Aviation Policy-A commentary

3 Civil Aviation Act 2006

4 See section 2 of the Act

5 Chike Ogeah-Aviation Finance in Nigeria Paper delivered at the Section of Business Law March 2008

6 Op-cit page 10

7 Adeyegbe Op cit-page 9

8 Op-cit page 10

9 Ogeah-op cit page 3 and 4

10 AVIATION FINANCING IN NIGERIA -Being a contribution by the author to the Book -The Challenges of Nigerian Commercial Law Essays in honour of Hon. Justice Umaru Abdullahi

11 Route, Prospect and Initiative- Being a contribution by Captain Boyo to the Annual Aviation Law and Business digest

12 Chapter 14-80 years of Aviation in Nigeria edited by Debe Uwadiae 2005
13 Chapter 15—80 years of Aviation in Nigeria edited by Debe Uwadiae 2005

14 Onyeka Osuji Op cit Page 261
15 Onyeka Osuji Op cit Page 263