



REPUBLIC OF KENYA
MINISTRY OF ROADS AND TRANSPORT

REGULATORY IMPACT ASSESSMENT
for the Civil Aviation (Aircraft Nationality and Registration Marks) Regulations, 2024

This Regulatory Impact Assessment (RIA) has been prepared by the Cabinet Secretary, Ministry of Roads and Transport pursuant to sections 6 and 7 of the Statutory Instruments Act, Cap. 2A

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1.0 Chapter One – Introduction

1.1 Regulatory Authority and the Legal Mandate

The Civil Aviation Act

The Kenya Civil Aviation Authority (KCAA) is established under the Kenya Civil Aviation Act, Cap. 394 (the Act). The object and purpose for which the Authority was established is to economically and efficiently plan, develop and manage civil aviation, regulate and operate a safe civil aviation system in Kenya in accordance with the provisions of the Act. It also has the primary functions to regulate and oversight aviation safety and security; economic regulation of air services and development of civil aviation; provision of air navigation services; and training of aviation personnel as guided under the provisions of the Convention on International Civil Aviation, related ICAO Standards and Recommended Practices (SARPs), the Act, and the Civil Aviation Regulations.

Section 4 of the Act provides that the provisions of the Act and regulations made thereunder unless expressly excluded apply to: aerodromes used for civil aviation in Kenya; air services established or operating in Kenya; any aircraft registered by the Authority; any foreign aircraft within the Kenya territory; aviation personnel and training schools certified by the Authority; enterprises operating in Kenya in the design, manufacture, maintenance, repair and modification of aircraft and aircraft parts or components; and air navigation facilities and services in Kenya.

Section 82 provides for the power of the Cabinet Secretary responsible for aviation matters to make regulations to give effect to the Act and for regulating air navigation, air transport, air accident investigation and carrying out and giving effect to any convention on aviation ratified by Kenya. The draft Civil Aviation (Nationality and Registration Marks) Regulations, 2024 have been developed under the Act.

Section 82(1) of the Act empowers the Cabinet Secretary responsible for transport to make regulations to give effect to and for the better carrying out of the objects and purposes of the Act, and to provide generally for regulating air navigation, air transport, air accident investigation and carrying out and giving effect to any convention.

Further, section 82(2) of the Act is more specific and provides that the Cabinet Secretary may make regulations for, among others:

- (a) regulating, by establishing licensing authorities and a system of licensing and otherwise, the use of aircraft (i) for commercial transport; and (ii) for aerial work;
- (b) prohibiting the flying of any aircraft — (i) unless there is in force in respect of such aircraft a certificate of airworthiness or permit to fly issued or recognized in accordance with regulations made under this Act; and (ii) except upon compliance with such conditions as to maintenance and repair as may be prescribed or specified in the certificate or permit;

- (c) requiring the flight crew, and persons, performing prescribed functions in relation to the operation or maintenance of aircraft, air navigation services, design and construction of aircraft to be the holders of licences of specified kinds;
- (d) providing for the manner and conditions of issue, validation, renewal, extension or variation of any licence required in regulations and for the form, custody, production, cancellation, suspension, endorsement and surrender of such;
- (e) prescribing the fees to be paid in respect of the issue, validation, renewal, extension or variation of any license, or the undergoing of any examination or test required by regulations made under this Act or any other matters in respect of which it appears to the Cabinet Secretary to be expedient to charge fees;
- (f) exempting any aircraft or persons or classes of aircraft or persons from the provisions of any regulations made under this Act;
- (g) providing for the investigation in such manner as may be prescribed, including by means of a tribunal established for the purpose, of any accident arising out of or in the course of air navigation and occurring either in or over Kenya or occurring elsewhere to Kenya aircraft;
- (h) requiring any person who owns an aircraft or who carries on the business of operating aircraft for hire or reward to furnish to such authorities as may be prescribed such information relating to the aircraft and the use thereof, the crew, the mail, the passengers and the cargo carried, as may be prescribed;
- (i) providing for the licensing, inspection and regulation of aerodromes, access to places where aircraft, have landed or may land, access to aircraft factories or maintenance establishments or places where aircraft parts and engines are maintained, for the purpose of inspecting work therein carried on in relation to aircraft or parts thereof.
- (j) the design, construction, repair, overhaul, maintenance, operation and use of aircraft, maintenance and repair of facilities and related equipment; and
- (k) the control and operation of the aircraft within or directly above the aerodrome for the purpose of limiting or mitigating the effect of noise.

1.2 Statutory Instruments Act, Cap. 2A

KCAA now undertakes public and stakeholder consultations and presents this Regulatory Impact Assessment (RIA) in partial fulfilment of the requirements of the Statutory Instruments Act, Cap. 2A (SIA) which is the legal framework governing the conduct of RIA in Kenya.

The object of the Act is to provide a comprehensive regime for the making, scrutiny, publication and operation of statutory instruments by:

- (a) requiring regulation-making authorities to undertake appropriate consultation before making statutory instruments;
- (b) requiring high standards in the drafting of statutory instruments to promote their legal effectiveness, clarity and intelligibility to anticipated users;
- (c) improving public access to statutory instruments;
- (d) establishing improved mechanisms for parliamentary scrutiny of Statutory Instruments; and
- (e) establishing mechanisms to ensure that statutory instruments are periodically reviewed and, if they no longer have a continuing purpose, repealed.

The Act also makes provision for the making of regulatory impact statements under section 6 as well as contents of the regulatory impact statement under section 7.

Sections 6 and 7 require that if a proposed statutory instrument is likely to impose significant costs on the community or a part of the community, the Regulation-Making Authority (RMA) shall, prior to making the statutory instrument, prepare a regulatory impact statement about the instrument. SIA further sets out certain key elements that must be contained in the RIA namely:

- (a) a statement of the objectives of the proposed legislation and the reasons for them;
- (b) a statement explaining the effect of the proposed legislation including in the case of a proposed legislation which is to amend an existing statutory instrument the effect on the operation of the existing statutory instrument;
- (c) a statement of other practicable means of achieving those objectives, including other regulatory as well as non-regulatory options;
- (d) an assessment of the costs and benefits of the proposed statutory rule and of any other practicable means of achieving the same objectives;
- (e) the reasons why the other means are not appropriate;
- (f) any other matters specified by the guidelines; and
- (g) a draft copy of the proposed statutory rule. Section 5 of SIA requires an RMA to conduct public consultations drawing on the knowledge of persons having expertise in fields relevant to the proposed statutory instrument and ensuring that persons likely to be affected by the proposed statutory instrument are given an adequate opportunity to comment on its proposed content.

1.3 What is a Regulatory Impact Assessment (RIA)?

RIA is a systemic approach of critically assessing the positive and negative effects of proposed or existing regulations and non-regulatory alternatives. It is an analytical report to assist decision makers to arrive at an informed policy decision.

As an aid to decision making, RIA includes an evaluation of possible alternative regulatory and non-regulatory approaches with the overall aim of ensuring that the final selected regulatory option provides the greatest net public benefit.

Typically, the structure of a RIA should contain the following elements:

- (a) title of the proposal; the objective and intended effect of the regulatory policy;
- (b) an evaluation of the policy problem;
- (c) consideration of alternative options;
- (d) assessment of all their impacts distribution;
- (e) results of public consultation;
- (f) compliance strategies; and
- (g) processes for monitoring and evaluation.

RIA promotes evidence-based policymaking as new regulations typically lead to numerous impacts that are often difficult to foresee. From a societal viewpoint, RIA confirms whether a proposed regulation is welfare enhancing, in that, the benefits will surpass costs.

RIA therefore has an overall objective of not only improving understanding of the real-world impact of regulatory action, including both the benefits and the costs of action, but also integrating multiple policy objectives, improving transparency and consultation; and enhancing governmental authority.

1.4 International Legislation

Kenya, by virtue of Article 2(5) and (6) of the Constitution has ratified and become part of the international participants in the aviation space. The International Civil Aviation Authority (ICAO) was established as a specialized United Nations (UN) agency under the Convention of International Civil Aviation (Chicago Convention) which helps 193 countries to cooperate and share their skies to their mutual benefit. To achieve this, ICAO has provided for the establishment of international Standards and Recommended Practices (SARPs) the uniform application of which is necessary in order to achieve the highest practicable degree of uniformity in regulations, standards, procedures and organization in relation to aircraft, personnel, airways and auxiliary services in all matters in which such uniformity will facilitate and improve air navigation.

The draft Civil Aviation (Nationality and Registration Marks) Regulations, 2024 correspond to the SARPs issued by ICAO as Annex 7 to the Convention on international civil aviation. Kenya as a contracting State has an obligation under Article 37 to the Convention on International Civil Aviation to domesticate the SARPs into legally enforceable legislative material.

These regulations are therefore issued in fulfilment of Kenya's international obligations as an ICAO contracting state and to ensure the safety, security, regularity and economic viability of global air transport system.

1.5 Regional Legislative Initiatives

Regionally, Kenya is a member of the African Civil Aviation Commission (AFCAC) which is a specialized body of the African Union (AU) whose mandate is to create a safe, secure, efficient, and sustainable civil aviation industry across Africa that propels development through furthering connectivity.

Further, under the East African Community, Kenya is a member of Civil Aviation Safety and Security Oversight Agency (CASSOA) which is established under Article 92 of the EAC Treaty which in summary states that the Partner States shall undertake to make air transport services safe, efficient and profitable; adopt common policies for the development of civil air transport in the region; harmonize civil aviation rules and regulations and coordinate measures and co-operate in the maintenance of high security.

Under commitments under these regional arrangements and the aspiration to ensure that the regional air transport industry is appropriately managed, Kenya is obliged to issue these regulations to fulfil the regional obligations to a safe, secure and economically viable air transport system.

2.0 Chapter Two – Purpose and Objects of the Civil Aviation (Aircraft Nationality and Registration Marks) Regulations, 2024

2.1 Scope

These proposed Civil Aviation (Aircraft Nationality and Registration Marks) Regulations, 2024 shall be applicable to civil aircraft registered in Kenya but shall not apply to meteorological pilot balloons used exclusively for meteorological purposes or unmanned free balloons without a payload, except as otherwise expressly provided.

2.2 Objective

The Civil Aviation (Aircraft Nationality and Registration Marks) Regulations, 2024 are designed to provide legal framework for establishing a system for registering and uniquely identifying aircraft through nationality and registration marks registration while ensuring accountability and compliance with international standards and conventions.

2.3 Specific objectives

The proposed Regulations aim to enumerate provisions and requirements for the establishment and maintenance of a system for the registration and the marking of civil aircraft.

The structure of the proposed Civil Aviation (Airworthiness) Regulation, 2024 is as follows:

2.3.1 Preliminary Provisions

- 2.1.1.1 Citation.
- 2.1.1.2 Interpretation.

2.3.2 Aircraft Registration Requirements

- 2.3.2.1 General provisions.
- 2.3.2.2 Eligibility for registration.
- 2.3.2.3 Classification of Aircraft
- 2.3.2.4 Eligibility for registration
- 2.3.2.5 Application for Registration of aircraft
- 2.3.2.6 Registration of aircraft.
- 2.3.2.7 Certificate of registration
- 2.3.2.8 Change of registration or ownership particulars
- 2.3.2.9 De-registration of an aircraft.

2.3.3 Nationality and Registration Marks

- 2.3.3.1 Marking and manner of affixation.

- 2.3.3.2 Display of marks.
- 2.3.3.3 Location of marks.
- 2.3.3.4 Measurement of marks.
- 2.3.3.5 Types of characters for nationality and registration marks.
- 2.3.3.6 Deviations for size and location of marks.
- 2.3.3.7 Removal of marks.
- 2.3.3.8 Identification plate required.

2.3.4 General Provisions

- 2.3.4.1 Inspection of certificate of registration.
- 2.3.4.2 Change of name.
- 2.3.4.3 Change of address.
- 2.3.4.4 Replacement of certificate.
- 2.3.4.5 Certificate suspension and revocations.
- 2.3.4.6 Use and retention of certificates and records.
- 2.3.4.7 Reports of violation.
- 2.3.4.8 Enforcement of directions.
- 2.3.4.9 Aeronautical user fees.
- 2.3.4.10 Application of regulations to Government and visiting forces, etc.

2.3.5 Miscellaneous Provisions

- 2.3.5.1 Extra-territorial application of Regulations.
- 2.3.5.2 Contravention of Regulations.
- 2.3.5.3 Appeals to the Tribunal.
- 2.3.5.4 Offences.
- 2.3.5.5 Revocation.
- 2.3.5.6 Transitional Provision.

2.3.6 SCHEDULES

2.4 A Structure of the Proposed Civil Aviation (Aircraft Nationality and Registration Marks) Regulations 2024:

The structure aims to evaluate the clarity, consistency, comprehensibility, and comprehensiveness of the proposed regulations in relation to the identified issue. It is essential that the rules are easily understood by those who may be impacted. To achieve this, the Authority has implemented measures to enhance the clarity of both the text and structure of the proposed regulations.

The structure of the proposed Civil Aviation (Aircraft Nationality and Registration Marks) Regulation is as follows:

Part I Preliminary Provisions
Part II Aircraft Registration Requirements
Part III Nationality and Registration Marks.
Part IV General Provisions.
Part V Miscellaneous Provisions

SCHEDULES

First Schedule - Classification of Aircraft
Second Schedule - Certificate of Registration
Third Schedule - Certificate of Deregistration
Fourth Schedule - Penalties

3.0 Chapter Three – Background and Context

3.1 Policy Background

Sustainable Development Goals (SDGs), also known as the Global Goals, were adopted by the United Nations in 2015 as a universal call to action to end poverty, protect the planet, and ensure that by 2030 all people enjoy peace and prosperity.

Goal 9 of the SDGs advocates for building resilient infrastructure, promoting inclusive and sustainable industrialization and fostering innovation. Kenya intends to provide access to safe, affordable, accessible and sustainable transport systems for all, improving road safety, notably by expanding public transport by 2030.

Kenya Vision 2030 is a nationwide multi-sectorial document that outlines the main policies, legal and institutional reforms as well as programs and projects that the Government plans to implement.

The Vision 2030 aspires for a country firmly interconnected through a network of roads, railways, ports, air, water and sanitation facilities, and telecommunications. The expansion, modernization and management of the aviation sector continue to enhance air transport safety, security, and connectivity across the country and beyond. Civil aviation is a critical catalyst for global and national development. Air transport in Kenya has continued to grow and has contributed to job creation and increased interaction and trade with other countries.

Bottom-Up Economic Transformation Agenda (BETA): The Bottom-Up Economic Transformation Agenda 2022-2027 is the manifesto of the Kenya Kwanza administration that is being implemented from 2022 to 2027. It is built on six main pillars, to be being implemented through five (5) MTP IV sectors that include infrastructure. One of the aims under infrastructure sector is to enhance transport connectivity and the provisions of the regulations are meant to institutionalize a civil aviation regulatory and oversight framework that promotes a sustainable safe and secure air transport system in Kenya.

Kenya Aviation Policy: The Policy aims to foster the growth of aviation business in Kenya to support job creation by positioning Kenya as a recognized regional leader in aviation; maximize the contribution of the aviation sector to Kenya's economic growth and development; and enhance Kenya's connectivity at a national and international level by ensuring safe, secure and competitive access which is responsive to the needs of businesses, tourism and the population. The Policy covers the entire aviation sector in Kenya including key air transport challenges related to regulatory framework, safety, security, environmental aspects, economic regulation, institutional framework, air transport market and stakeholders, air transport infrastructure including planning, development, operation, and management, air transport personnel, and air transport statistics.

Kenya Airspace Master Plan: The Plan outlines the evolution and associated investments to be made by the Kenya Civil Aviation Authority (KCAA) in Air Navigation Services (ANS) over the next 15 years. The objectives of the Plan include global and regional consistency,

legal/regulatory considerations, and stakeholder expectations. The plan covers operational evolutions, technical improvements, and human resources development.

National Aviation Safety Plan (NASP): The Plan is aligned with the International Civil Aviation Organization's (ICAO) Global Aviation Safety Plan (GASP), the NASP outlines objectives, strategic priorities, and safety actions to be taken over three years (2023 to 2025). The Plan includes key elements such as identification of national safety issues, setting aviation safety goals and targets, implementing safety enhancement initiatives (SEIs), and collaborating with industry stakeholders and agencies responsible for safety oversight. The NASP complements Kenya's State Safety Programme (SSP) Document.

3.2 Constitutional and Legal Background

The Constitution: The Constitution recognizes civil aviation as one of the functions under the National Government in the Fourth Schedule.

Chapter 4 of the Constitution provides for the Bill of Rights with Article 46 providing for consumer protection where it applies to goods and services offered by public entities or private persons. Aviation consumers have rights for services of reasonable quality; information necessary for them to get full benefit from the services; and protection of their economic interests.

Chapter 6 of the Constitution provides for leadership and integrity of State officers. Employees of the Authority are public officers and are bound by the various principles provided for in the Constitution. The regulations have largely provided for standardized ways of provision of quality services, information to be used by its consumers for protection of their economic interest, data protection issues, access to information while maintaining technical infrastructure within the aviation sector.

Article 94(6) of the Constitution gives Parliament the power to delegate its legislative authority to a State organ, State officer or person to make provision having the force of law in Kenya.

Civil Aviation Act: The Act was enacted to provide for the control, regulation and orderly development of civil aviation in Kenya; and for connected purposes.

Section 4 of the Act provides that the provisions of the Act and regulations made thereunder unless expressly excluded shall apply to: aerodromes used for civil aviation in Kenya; air services established or operating in Kenya; any aircraft registered by the Authority; any foreign aircraft within the Kenya territory; aviation personnel and training schools certified by the Authority; enterprises operating in Kenya in the design, manufacture, maintenance, repair and modification of aircraft and aircraft parts or components; and air navigation facilities and services in Kenya. Section 82 provides for the Regulations that can be made by the Cabinet Secretary responsible for aviation matters to give effect to the Act and for regulating air navigation, air transport, air accident investigation and carrying out and giving effect to any convention on aviation ratified by Kenya.

3.3 Domestic Context

KCAA is established under the Civil Aviation Act with the object and purpose for which the Authority as established shall be, to economically and efficiently plan, develop and manage civil aviation, regulate and operate a safe civil aviation system in Kenya in accordance with the provisions of the Act. Further, the Act requires that the Cabinet Secretary shall make regulations to give effect to and for the better carrying out of the objects and purposes of the Act, to provide generally for regulating air navigation, air transport, air accident investigation and carrying out and giving effect to any convention on aviation.

The Civil Aviation (Aircraft Nationality and Registration Marks) Regulations, 2024 enable KCAA to effectively discharge its mandate by establishing operational standards that ensure that the aviation system in Kenya is aligned to the standards established internationally and applicable globally. The Regulations therefore fulfil the obligations set out in the Civil Aviation Act and in support of the mandate of KCAA.

3.4 International Context

The Convention on International Civil Aviation, which, Kenya has ratified, established the International Civil Aviation Organization (ICAO) with a mandate to support, coordinate and help countries to diplomatically and technically realize a uniquely rapid and dependable network of global air mobility, connecting families, cultures, and businesses all over the world, and promoting sustainable growth and socio-economic prosperity wherever aircraft fly.

As a global forum of States for international civil aviation, ICAO develops policies and standards, undertakes compliance audits, performs studies and analyses, helps and builds aviation capacity through many other activities and the cooperation of its Member States and stakeholders.

Article 37 of the Convention on International Civil Aviation provides for the adoption of international standards and procedures requiring each contracting State undertaking to collaborate in securing the highest practicable degree of uniformity in regulations, standards, procedures, and organization in relation to aircraft, personnel, airways and auxiliary services in all matters in which such uniformity will facilitate and improve air navigation.

The International Civil Aviation Organization adopts and amends international standards and recommended practices and procedures dealing with various aspects of air navigation and such other matters concerned with the safety, regularity, and efficiency of air navigation as may from time to time appear appropriate.

Further, Article 12 of the Convention requires that each contracting State undertakes to adopt measures to ensure that every aircraft flying over or manoeuvring within its territory complies with the rules and regulation and that every aircraft carrying its nationality mark, wherever such aircraft may be, shall comply with the rules and regulations relating to the flight and manoeuvre of aircraft there in force. Each contracting State undertakes to keep its own regulations in these respects uniform, to the greatest possible extent, with those established from time to time under

the Convention. Over the high seas, the rules in force shall be those established under the Convention. Each contracting State undertakes to ensure the prosecution of all persons violating the regulations applicable.

Internationally, each of the 193 contracting States has, in compliance with their national commitments and obligations under the Convention, promulgated, national civil aviation regulations with the objective of governing the aviation industry in their jurisdiction.

Article 12 of the Convention relating to scheduled air services provides that no scheduled international air service may be operated over or into the territory of a contracting State, except with the special permission or other authorization of that State, and in accordance with the terms of such permission or authorization.

The lack of an appropriate set of regulations in one contracting state jeopardizes the safety, security and economic status of international air navigation. The Civil Aviation (Aircraft Nationality and Registration Marks) Regulations, 2024 are therefore proposed to ensure fulfilment of State obligation and alignment of the Kenyan aviation system with international requirements. They also allow Kenya to effectively explore the potential economic and geopolitical benefits of participating in international air navigation.

4.0 Chapter Four – Evaluation of the Problem

4.1 Currency of the Civil Aviation (Aircraft Nationality and Registration Marks) Regulations

Kenya is a signatory to the ICAO Chicago Convention and is obliged to adopt the amendments of the ICAO SARPs. ICAO continues to update the Standards and Recommended Practices. ICAO Annex 7 which is the basis of development of the Civil Aviation (Aircraft Nationality and Registration) Regulations, 2024 is currently at Edition 06th of July 2012.

The Civil Aviation (Aircraft Nationality and Registration Marks) Regulation, 2018 were not in compliance with the evolving International Civil Aviation Organization (ICAO) Standards leading to significant challenges for compliance and operational safety within the aviation maintenance sector. It has also failed to reflect the advancements in technology, safety protocols, and industry best practices.

4.2 Sustainability of Civil Aviation System

4.2.1 International Obligation

The Civil Aviation (Aircraft Nationality and Registration) Regulations, 2018 present several issues concerning international obligations, particularly with respect to compliance with global standards and international treaties such as:

1. Lack of Alignment with ICAO Standards

Non-compliance can hinder a nation's ability to participate in international aviation agreements and operations, potentially limiting access to international airspace and routes.

2. Inconsistent Registration Procedures

The regulations contain outdated or inconsistent registration procedures that do not reflect current best practices. This has led to difficulties in verifying the nationality of aircraft, resulting in confusion and potential legal disputes over jurisdiction and liability in international operations.

3. Limited Recognition of Foreign Registrations

This has created barriers for foreign operators seeking to operate in the country, potentially leading to diplomatic tensions and reduced competition in the aviation market.

4. Failure to Address Environmental Standards

The regulations have not incorporated current environmental standards and obligations, particularly those set by international agreements on climate change and aviation emissions.

4.2.2 Aviation Safety

The Civil Aviation (Nationality and Registration Marks) Regulations, 2018 do not mandate rigorous maintenance of aircraft registration records which has led to incomplete or inaccurate information being available to international regulators. This can compromise safety and accountability, making it challenging to trace aircraft ownership and operational history, which is crucial for compliance with international obligations.

4.2.3 Operational rights to other jurisdictions

The sustainability of the civil aviation system is increasingly critical in relation to operational rights in other jurisdictions, particularly as countries implement varying environmental regulations and sustainability commitments. The existing Civil Aviation (Aircraft Nationality and Registration Marks) Regulations, 2018 do not adequately address the need for harmonization with international sustainability standards, which poses challenges for Aircraft seeking to operate across borders.

This may result in non-compliance with international environmental obligations, leading to penalties and restrictions on air operations in certain jurisdictions.

4.2.4 Reduction of Cost of Doing Business

The sustainability of the civil aviation system is increasingly linked to the cost of doing business, particularly as organizations strive to implement environmentally responsible practices while maintaining economic viability. The current Civil Aviation (Aircraft Nationality and Registration Marks) Regulations, 2018 lack provisions that encourage sustainable practices which can lead to higher operational costs due to inefficiencies and outdated processes. The current Regulations lack clear provisions for deregistration and transfer of ownership which has created complications in international transactions and agreements. The delays or challenges in deregistration can impede the ability of operators to sell or lease aircraft internationally, affecting market dynamics and financial transactions.

5.0 Chapter Five – Stakeholder Consultation

5.1 Legal requirements relating to public participation and consultation

The need to amend the Civil Aviation (Aircraft Nationality and Registration Marks) Regulations, 2018 was necessitated by a series of ICAO State Letters informing the State of amendments to Annex 7 that would become effective on specified dates. Kenya, as a contracting State, was therefore required to bring its regulations into uniformity with the adopted and amended SARPS.

Public participation plays a crucial role in democratic governance by ensuring transparency, inclusivity, and accountability in decision-making processes. The Constitution places emphasis on public participation as a fundamental principle of governance. Article 10 of the Constitution outlines the national values and principles of governance, including public participation, which is crucial for achieving accountability, transparency, and public involvement in decision-making processes.

In addition, Article 118 of the Constitution provides the right to public participation in legislative and other processes of the State. This ensures that the public has an opportunity to participate in matters that affect them directly.

The requirement for public participation applies to regulation making too. As such, before the draft regulations would be forwarded for promulgation, a series of stakeholder/public engagement was conducted.

5.2 The Process of Public Consultation

The first of a series of stakeholder meetings covering a set of eleven (11) civil aviation regulations was physically held at the Ole Sereni Hotel in Nairobi on 30th April 2019. The second stakeholders meeting was held hybrid (both physically at Four Points by Sheraton Hotel and virtually) between 14th – 18th June 2021. The third public engagement was a physical meeting with stakeholders held at the Emara Ole Sereni Hotel between 14th and 15th February 2022.

In each of the engagements, comments and input from stakeholders was taken and incorporated into the regulations as appropriate and the outcome presented in the succeeding engagement forum. To conclude stakeholder engagement, KCAA organized for a final regulations validation workshop at the Panari Hotel in Nairobi between 6th and 8th May 2024 to allow stakeholders to confirm that the Authority had considered and incorporated their comments and input in the final drafts of the regulations. This was the final activity that paved way for the review of the regulations to proceed to the next stage.

5.3 Public Notice and Awareness

Each stakeholders engagement fora was advertised at least twenty-one (21) days before the date of the engagement in a major local daily in accordance with applicable requirements for stakeholder engagement. Additionally, formal notice of the same was posted on the KCAA official website. All sets of regulations to be discussed during the public participation fora were well spelt out in the adverts. An online registration form was provided on the website in addition

to a form to collect stakeholder comments which was uploaded alongside the regulations on the KCAA website www.kcaa.or.ke.

5.4 Public participation forum

The physical stakeholder engagement was conducted at the Ole Sereni Hotel in Nairobi on 30th April 2019 and attended by 102 participants. The hybrid stakeholder engagement held between 14th and 18th June 2021 attracted a total attendance of 718 aviation stakeholders and members of the public. The stakeholder engagement reports, local daily newspaper adverts, copies of signed or digital attendance lists as applicable, Matrices containing input from stakeholders and how the same were incorporated in the regulations form annexures to this report.

5.5 Analysis and Feedback

The Authority received many memoranda from the industry and general public using the forms provided to collect stakeholder feedback. Some memoranda were delivered physically, in writing or by email. Memoranda received before stakeholder meetings were analysed, the Authority's response documented in a matrix and the same presented during the physical or virtual stakeholder engagement sessions.

Each comment was analysed feedback given to every input received from stakeholders initially on the floor of the physical or virtual engagement during question and-answer sessions which came immediately after presentations of the regulation, or in writing where stakeholder input and comments were received in writing or after the engagement sessions.

For stakeholder input and comments requiring substantial analysis and amendment to draft regulations, the stakeholders were invited to shed more light on their comments and requests through physical or virtual meetings, in writing or email. Their input was then discussed and analysed together with the drafters of the regulations and where consensus was reached, the regulations were either redrafted to incorporate their input or retained in cases where taking the stakeholder comments would contravene ICAO standards or international standards and practices.

The Authority kept in touch with stakeholders at all stages of the development of the regulations ensuring that they were fully involved and part of the process.

5.6 Credibility and Integrity of the Process

To ensure that the process of public participation was credible and pass the integrity test, KCAA:

- (a) did not engage in conduct involving dishonesty, fraud, deceit, misrepresentation or discrimination and avoided relationships or actions which could be legitimately interpreted as a conflict of interest; and
- (b) took into consideration the social and economic status, religious beliefs, ethnicity, and other social diversities of those engaging in public participation.

Any complaint arising from the public participation process was to be referred to the Director-General and resolved as appropriate including provision of additional time and contact to address any stakeholders concerns. However, no complaint was received.

6.0 Chapter Six – Cost Benefit Analysis

6.1 Costs and Benefits Generally

The proposed amendments to the Civil Aviation (Aircraft Nationality and Registration Marks) Regulations of 2018 aim to enhance the sustainability, safety, and operational efficiency of Kenya's civil aviation system. This analysis outlines the projected costs and benefits associated with these amendments to justify their implementation.

The table below summarizes the problems promulgation of new regulations is supposed to treat, the proposed amendments as well as the attached benefits and costs.

Table 01.

PROBLEM	PROPOSED REFORM	BENEFITS	COST
1.Outdated Civil Aviation (Aircraft Nationality and Registration) Regulations	Amendment to align with international standards set by the International Civil Aviation Organization (ICAO) i.e. Annex 7	Improved alignment with international standards enhances national carriers' ability to secure operational rights in other jurisdictions, leading to increased revenue from international flights.	Nil
2. Lack of the ability to participate in international aviation agreements and operations, potentially limiting access to international airspace and routes.	Amendment to align with international standards set by the International Civil Aviation Organization (ICAO) i.e. Annex 7 and other international protocols which may promote access to the other airspaces	Acceptability to other international jurisdiction and enhance business	Nil
3. lack of integration of sustainability requirements into operational protocols with	integration of sustainability requirements into operational protocols with regards to Registration of	Registration of aircraft that meet the environmental sustainability requirements which in the long run will	Nil

regards to Registration of Aircraft.	Aircraft.	effectively reduce carbon emission.	
4. Lack of a requirement for certificate of De-registration and its format	Introduced new Sub regulation to meet requirements of Annex 7	Ensure compliance with International Civil Aviation Organization (ICAO) standards, enhancing Kenya's reputation in the global aviation market.	Nil

6.2 Consideration of Alternatives to the Civil Aviation (Aircraft Nationality and Registration Marks) Regulations 2024

Table 02

Option	Impact
Option One: Maintenance of the Status Quo	Maintaining the status quo means that no regulations are developed, thus the challenges of currency and keeping up with the international obligations and requirements will not be addressed.
Option Two: Administrative measures	Issuance of directives and circulars to the various entities and hoping that they will be implemented. Administrative measures do not have the force of law and may be challenged in a court of law. These include Advisory Circular and Aeronautical Information Circular.
Option Three: Promulgating the Civil Aviation (Nationality and Registration Marks) Regulations 2024	The promulgation of the civil aviation (Aircraft Nationality and Registration) Regulations 2024 will ensure that Kenya aligns with international standards and there is legal framework for Establishing a system for Registering and uniquely identifying aircraft through nationality and registration marks registration while Ensuring accountability and compliance with international standards and conventions.

6.3 Impact Analysis of the Options

Table 03

Aviation Sector	Option one: Maintenance of the Status Quo	Option two: Administrative measures	Option three: Promulgating the Civil Aviation (Nationality and Registration Marks) Regulations 2024
Aircraft Owners and or Operators	- Without promulgating of these Regulations, there may be inconsistencies in how aircraft are deregistered and may pose challenge in aligning with other jurisdictions and international requirements. - Regulatory confusion may arise where the airlines and operators face confusion regarding compliance requirements, leading to potential legal and operational issues. - Without clear regulations on deregistration, it poses a challenge in determining liability in cases of accidents or incidents, complicating insurance claims and legal proceedings. - Regulatory bodies	- Administrative documents may lack the same legal standing as formal regulations, leading to uncertainty in enforcement and compliance. - Without the framework of formal Regulations, there may be variations in how administrative documents are interpreted and applied across different organizations. - Organizations may find it challenging to comply with administrative documents if they lack the rigor and specificity that formal regulations provide. - Relying on administrative documents may lead to a fragmented approach to	Air operators will need to modify their operational practices to align with the new Civil Aviation (Nationality and Registration Marks) requirements. This includes planning for deregistration of aircraft.

Aviation Sector	Option one: Maintenance of the Status Quo	Option two: Administrative measures	Option three: Promulgating the Civil Aviation (Nationality and Registration Marks) Regulations 2024
	may struggle to enforce existing aviation laws without updated frameworks, leading to potential non-compliance issues.	regulation, with varying practices that hinder safety and efficiency across the aviation sector. 5. Stakeholders may resist adopting administrative documents that lack the authority and clarity of formal regulations, resulting in a lack of commitment to compliance.	
The State	1. The inability to implement the revised Regulations can stifle the growth of the aviation sector, affecting economic development and regional connectivity. 2. Without promulgating of these Regulations, there may be inconsistencies in how aircraft are deregistered and may pose challenge in aligning with other jurisdictions and	1. Relying on administrative documents can lead to a fragmented regulatory framework. 2. Stakeholders may be less likely to adhere to administrative guidelines that lack the authority of formal regulations, reducing the effectiveness of the intended safety measures.	1. The State will align its national regulations with ICAO and other international standards and protocols. 2. Increased revenue due to enhanced accountability: As compliance with international standards becomes more stringent, the State will bear greater responsibility for ensuring that all aviation stakeholders adhere to the new regulations. This could lead to heightened scrutiny from

Aviation Sector	Option one: Maintenance of the Status Quo	Option two: Administrative measures	Option three: Promulgating the Civil Aviation (Nationality and Registration Marks) Regulations 2024
	international requirements.		international bodies regarding aviation safety. 3. Potential economic impact: Improved airworthiness
The Authority	1. The Authority may lose credibility and trust among stakeholders, including airlines, maintenance organizations, and the public, if it fails to implement timely regulations. 2. The Authority may struggle to effectively oversee safety practices, leading to potential increases in accidents and incidents within the aviation sector. 3. A lack of robust regulations can deter investment in the aviation sector, stunting growth and economic development in the country and the region. 4. The Authority may	1. Administrative documents typically do not carry the same legal weight as formal regulations, making enforcement difficult and leading to uncertainty among stakeholders about compliance requirements. 2. Without formal Regulations, there may be inconsistencies in how the documents are interpreted and applied to registration and deregistration resulting in variable maintenance practices. 3. The process of developing administrative documents may not involve comprehensive	1. Promulgation of these Regulations will establish and enhance safety standards. 2. These Regulations will carry legal weight, allowing the Authority to enforce compliance in registration and deregistration of aircraft. 3. The amended Regulations promote uniformity across the aviation sector, ensuring the same standards are applied. 4. These Regulations will enhance confidence among stakeholders, including airlines, operators. 5. Through the amended

Aviation Sector	Option one: Maintenance of the Status Quo	Option two: Administrative measures	Option three: Promulgating the Civil Aviation (Nationality and Registration Marks) Regulations 2024
	face increased legal challenges and liabilities if accidents occur due to outdated or inadequate maintenance regulations. 5. Without clear regulations, training programs for maintenance personnel may become stagnant, affecting the skill development necessary for a competent workforce. 6. The Authority may experience challenges in coordinating with other national and international regulatory bodies, complicating collaborative efforts to enhance aviation safety and security.	consultations with all relevant stakeholders, potentially missing important input from industry experts and operators. 4. Administrative documents can sometimes lack the specificity and clarity needed to guide organizations effectively, leading to confusion about maintenance standards and practices. 5. It may be challenging to hold organizations accountable for non-compliance if the guidelines are not formally codified into regulations, which can lead to a lack of adherence to safety standards. 6. Relying on administrative documents can lead to a fragmented regulatory framework, where	regulations, the Authority will guide the aviation industry for compliance and enable growth of the aviation sector and the broader economy.

Aviation Sector	Option one: Maintenance of the Status Quo	Option two: Administrative measures	Option three: Promulgating the Civil Aviation (Nationality and Registration Marks) Regulations 2024
		different organizations may adopt varying practices that compromise overall safety and operational efficiency. 7. Stakeholders may be less likely to adhere to administrative guidelines that lack the authority	

6.4 Preferred Option

Based on the above analysis, it is clear that the third option of promulgating the Civil Aviation (Aircraft Nationality and Registration Marks) Regulations, 2024 is the preferred option. The benefits and impact of promulgating the Civil Aviation (Aircraft Nationality and Registration Marks) Regulations, 2024 by far outweigh any estimated cost of its implementation. The other two options have little or no impact in addressing the problems outlined above.

7.0 Chapter Seven – Compliance and Implementation

As different aspects of the proposed Regulations are evaluated and analysed, it is important to determine how compliance and implementation of the actual provisions will be achieved. It is the duty of the Regulator to assess the adequacy of the institutional framework and other incentives through which the Regulations will take effect, and design responsive implementation strategies that make the best use of them.

In an ideal situation, an institution responsible for enforcement of the Regulations should have the capacity of co-ordination of institutional frameworks from a whole-of-government perspective, independent and sufficient authority, political support at a high political level, and integration into a broad concept of reform.

KCAA has put in place a plan as outlined in the Strategic Plan 2023/24-2027/2028 to strengthen its institutional capacity to enable it enforce full compliance with the proposed Regulations once they are published.

8.0 Chapter Eight – Conclusions & Recommendations

8.1 Conclusions

8.1.1 Based on the above analysis, the following conclusions are drawn in respect of the draft Civil Aviation (Aircraft Nationality and Registration Marks) Regulations, 2024:

8.1.2 Regulations making mandate: Article 94 (6) of the Constitution gives parliament the power to delegate its legislative authority to a State organ, State officer or person to make provision having the force of law in Kenya. Subsequently, Section 82 of the Civil Aviation Act empowers the Cabinet Secretary in Consultation to give effect to and for the better carrying out of the objects and purposes of this Act, to provide generally for regulating air navigation, air transport, air accident investigation and carrying out and giving effect to any convention.

8.1.2.1 Provisions of the Statutory Instruments Act: Section 5 requires that a regulation making authority to conduct public consultations and drawing on the knowledge of persons having expertise in fields relevant to the proposed statutory instrument; and to ensure that persons likely to be affected by the proposed statutory instrument had an adequate opportunity to comment on its proposed content. Sections 6 and 7 require that a RIA be prepared where a statutory instrument is likely to impose significant costs on the community. This RIA thus contains certain the following key elements:

- (a) a statement of the objectives of the proposed legislation and the reasons.
- (b) a statement explaining the effect of the proposed legislation.
- (c) a statement of other practicable means of achieving those objectives, including other regulatory as well as non-regulatory options.
- (d) an assessment of the costs and benefits of the proposed statutory rule and of any other practicable means of achieving the same objectives; and
- (e) the reasons why the other means are not appropriate.

8.1.2.2 The RIA structure and content requirements established in the Statutory Instruments Act requirements have been fully met. Additionally, public consultation requirements in respect of the Civil Aviation (Aircraft Nationality and Registration Marks) Regulations, 2024 have been fully adhered to.

8.1.2.3 Other legal frameworks: The draft Civil Aviation (Aircraft Nationality and Registration Marks) Regulations, 2024 propose to

publish regulations in harmony with other civil aviation regulations to effectively govern the civil aviation system in Kenya.

8.1.2.4 The draft Civil Aviation (Aircraft Nationality and Registration Marks) Regulations, 2024 as drafted are clear, consistent, comprehensible and comprehensive enough to cover all matters and meet the established drafting standards.

8.2 Recommendations

8.2.1 In view of the above conclusions, it is recommended that the draft Civil Aviation (Aircraft Nationality and Registration Marks) Regulations, 2024 be adopted.

9. Annexures

- 9.1 The Draft Civil Aviation (Aircraft Nationality and Registration Marks) Regulations, 2024
- 9.2 Matrix of Comments received from Stakeholder Consultations