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MOT&I/C/AT/028/29 VOL. III(88) 10th June 2020

Mr. Michael Sialai, EBS
 Clerk of the National Assembly
 Parliamentary Buildings
 NAIROBI

① DLSP 16/6/20

Dear *Michael,*

BILATERAL AIR SERVICES AGREEMENT (BASA) BETWEEN KENYA AND UNITED STATES OF AMERICA

We refer to Section 52 of the Civil Aviation Act (No. 21 of 2013) and Section 8 of the Treaty Making and Ratification Act.

In this connection, as required an Explanatory Memorandum on the Air Transport Agreement signed between Kenya and United States of America on 20th February 2020 in Washington DC USA during a State visit by H. E. the President of the Republic of Kenya which amended Article 2 (Grant Rights) of the Air Transport Agreement signed in Washington DC on 8th June 2008 for the purpose of making it more liberal to enhance trade between the two States is forwarded herewith.

Yours *Sincerely,*

Solomon Kitungu

**Solomon Kitungu
 PRINCIPAL SECRETARY**

Encl.

② Head, Table *THS*
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MINISTRY OF TRANSPORT, INFRASTRUCTURE, HOUSING, URBAN DEVELOPMENT AND PUBLIC WORKS

EXPLANATORY MEMORANDUM ON RATIFICATION OF THE AGREEMENT AMENDING THE AIR TRANSPORT AGREEMENT ENTERED INTO BETWEEN KENYA AND THE UNITED STATES OF AMERICA DONE DURING THE INTERNATIONAL CIVIL AVIATION ORGANIZATION (ICAO) AIR SERVICES NEGOTIATION EVENT IN 2019 (ICAN 2019) IN JORDAN

Name of the statutory instrument: Agreement amending the Air Transport Agreement entered into between Kenya and the United States of America during the International Civil Aviation Organization (ICAO) Air Services Negotiation Event (ICAN 2019) held in Aqaba, Jordan on 4th December 2019.

Name of the Parent Act : The Civil Aviation Act (No. 21 of 2013)
Enacted Pursuant to : Section 52 of the Civil Aviation Act (No. 21 of 2013).

Name of the Ministry : Ministry of Transport, Infrastructure, Housing, Urban Development and Public Works.

Approved on : 19th March 2020

1. Purpose of the Statutory Instrument

The purpose of the instrument is to approve Air Services Agreements between Kenya and various Countries to enable Kenyan air operators such as Kenya Airways provide scheduled air services and expand their existing route network. In addition, the Agreements allow foreign carriers to access the Kenyan market.

2. Legislative Context

The Agreements are negotiated in line with the Integrated National Transport Policy which indicates that Kenya is keen to liberalize new and existing Agreements on the basis of the Yamoussoukro Decision for Countries within Africa and on the basis of fair and equal opportunity and reciprocity for other Countries.

The Agreements are based on a standard template issued by the International Civil Aviation Organization (ICAO) and contain standard Articles on Grant of Rights; Designation; Authorization; Application of National Laws; Recognition of Certificates and Licenses; Aviation Safety and Security; Customs Duties and other Charges; amongst others.

In order to operationalize an Agreement it is the practice for the delegations representing the concerned States to sign a Memorandum of Understanding (MoU) that gives force to the Agreement as it awaits the formal signing by the Cabinet Secretaries or Ministers in charge of Civil Aviation. In other instances the Agreements contain clauses that require the signing of the Agreement prior to entry into force.

3. Policy Background

The Ministry of Transport, Infrastructure, Housing, Urban Development and Public Works negotiates and reviews Bilateral Air Services Agreements between Kenya and various Countries to enable Kenyan air operators provide scheduled air services and expand their existing route network. In addition, the Agreements allow foreign carriers to access the Kenyan market. These Agreements are negotiated by a team comprising of representatives from the Ministry of Foreign Affairs, Office of the Attorney General and Department of Justice, Kenya Civil Aviation Authority, Kenya Airports Authority and Kenya Airways.

The Agreement amending the Air Transport Agreement between Kenya and the United States of America was signed on 20th February 2020 in Washington DC, USA during a State Visit by H. E. the President of the Republic of Kenya.

4. Consultation Outcome

The Agreement provides amendments to Article 2 (Grant of Rights) of the Air Transport Agreement signed in Washington DC on 8th June 2008 for purposes of making it more liberal to enhance trade between the two countries.

The Agreement allows for all-cargo service airlines to set up base in the other State and was principally amended to allow Federal Express Corporation (Fedex) a freight forwarder to start operations with a view to establishing a base in Kenya, thus creating jobs.

5. Impact

The amendment to the Air Transport Agreement is to enhance bilateral aviation relationship and expand all-cargo international air transport opportunities in order to facilitate increased and more efficient commerce and trade between Kenya and the USA.

6. Monitoring and review

The Ministry of Transport, Infrastructure, Housing, Urban Development and Public Works and the Kenya Civil Aviation Authority to monitor and review the implementation of the Bilateral Air Services Agreements.

7. Contact

Nicholas Bodo, Ag. Director Air Transport, Ministry of Transport, Infrastructure, Housing, Urban Development and Public Works, Telephone No. 2729200.



Solomon Kitungu
PRINCIPAL SECRETARY