



**EAST AFRICAN COMMUNITY CIVIL AVIATION SAFETY AND  
SECURITY OVERSIGHT AGENCY**

**THE FIRST EAST AFRICA AVIATION LAW SEMINAR**

***DYNAMICS, EMERGING LEGAL AND REGULATORY ISSUES IN  
AVIATION INDUSTRY – AFRICAN PERSPECTIVE***

**THE ROLE OF EAST AFRICAN COMMUNITY CIVIL AVIATION  
SAFETY AND SECURITY OVERSIGHT AGENCY – CASSOA**

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## 1.0 INTRODUCTION

1.1 This paper provides an overview of the developments in the civil aviation regulatory regime and the aviation industry sub-sector in the East African Community taking into account the integration development in the Community. It particularly provides an overview on the role of CASSOA in the regional aviation system.

1.2 The overview reviews the aviation system and 'size' of the industry in the region, provides an overview on the EAC integration and the establishment of CASSOA its mandate, governance and how it operates. Lastly the paper reviews some emerging issues and the challenges towards building an effective oversight system in the region.

1.3 East African Community and the Partner States Governments and in particular the civil aviation administrations are working on creating environment for the aviation industry to develop in a safe, secure and efficient meeting international standards. It is only under such condition that the industry can be competitive both within and out of the region. Effective competition will provide the necessary competitive and affordable prices for the services and also expand the flight network within the EAC region.

## 2.0 AIR TRANSPORT IN EAST AFRICA<sup>1</sup>

2.1 The air transport industry is a key element in the region tourism industry, which accounts for a significant percentage of the Partner States GDP and has influence in all the Partner States' economies. Echoing the world growth, the industry has consistently grown at a rate higher (approximately twice) than the average GDP growth. As the EAC moves towards marketing the region as a single tourist destination, the aviation industry has a special place in marketing our region and also transporting the tourists into and within the region. The aviation industry in the East African Community also plays a critical role in the regional integration as well an important element in the implementation of the common market.

2.2 The current size of our industry indicate that with appropriate policies, effective application of sound safety and security regulatory system in the common expanded market, aviation stands to grow into a safe, secure and efficient industry not only to support the economic activities but itself to be a business of significant contribution to employment and technological advances. The aviation administration in the region is managed by autonomous authorities in all the five Partner States. In two of the Partner States, Kenya and Tanzania, each has two administrations, one responsible for regulatory and air navigation services and the other responsible for airports management and development. In each of the other three Partner States only one administration is responsible for regulatory, air navigation services provision and aerodrome management. The autonomous administrations have increased efficiency and effectiveness in administering and regulating the industry in their respective territories.

2.3 The sub-region has a total of 1326 aircraft of different sizes and make on the five Civil Aircraft Registers. The majority of these aircraft are used for commercial operations supporting a total of around 116 commercial air operators holding air operators certificate (AOC). The aircraft and operators are supported by 67 approved maintenance organisations located within the region (excluding foreign approved maintenance organisations approved by the authorities to support specific maintenance which cannot be handled locally).

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<sup>1</sup> The statistics quoted in this part are as per the end of November 2011 and are changing rapidly in particular for aircraft on the five Registers and the air strips.

The region has around 5196 licensed and certificated technical personnel covering active pilots, air traffic controllers, aircraft maintenance engineers, cabin crew, flight dispatchers and aviation security screeners. The region also has a sizable private category component of the total aircraft fleet, with a small but growing number of the non-type certificated aircraft used mainly in recreational activities as light sport aviation. The region is also witnessing growth in usage of rotor-craft particularly by politicians during political campaigns and this require to be specifically regulated to ensure safety for both users and the public in general.

2.4 The region has 27 international (class A) and region (Class B) airports supporting the international arrivals and gateway to outside the region as well as intra-region travel. Significant and of importance for connecting the region even to very remote areas is the network of airstrips and small airports which amount to above 1000 with the majority of them in Tanzania and Kenya. This network plays a significant and vital support to the tourism industry, wildlife conservation, emergency services as well as general administration.

2.5 The above industry size and the generated aviation activities are supervised by the civil aviation regulatory system of around 102 technical personnel in the field of flight safety standards (personnel licensing, flight operations and airworthiness), air navigation services (communication, navigation and surveillance, air traffic management), aerodromes and aviation security. As per the skills audit conducted by the Agency in June 2011 these technical personnel are not only enough in numbers, but the majority do not have the relevant skills and experience related to the aviation activities they regulate.

### **3.0 THE EAST AFRICAN COMMUNITY AND THE ESTABLISHMENT OF CASSOA**

#### **3.1 Establishment of EAC and Brief Progress on Integration**

3.1.1 The Treaty for establishment of East African Community was signed on 30<sup>th</sup> November 1999 and came into force on 7<sup>th</sup> July 2000 upon ratification by all the three founder partners, Kenya, Tanzania and Uganda. Burundi and Rwanda became members of the Community on 1<sup>st</sup> July 2007 upon signing of the Treaty of Accession.

3.1.2 The objectives of the Community as reflected in Article 5 of the Treaty are to develop policies and programmes aimed at widening and deepening co-operation among the Partner States in all sectors for the mutual benefits of the Partners. The Article also identifies how this cooperation shall be achieved through the establishment of a Customs Union, a Common Market, *subsequently* a Monetary Union and *ultimately* a Political Federation. Each of the identified phases which form the pillars of our integration are at various stages of implementation. The Customs Union entered its 7<sup>th</sup> year on 1<sup>st</sup> January 2011 and the Community is now moving towards attaining a single Customs Territory and a road map towards a fully fledged Customs union. The Common Market Protocol was signed on 30<sup>th</sup> November 2010 and came into force on 1<sup>st</sup> July 2011 following ratification by all the five Partner States of Burundi, Kenya, Rwanda, Tanzania and Uganda.

Implementation of the Common Market is progressive guided by the Annexes to the Protocol and in accordance with the relevant laws of the Community and those of the Partner States. Protocol for the Establishment of a Monetary Union is currently under negotiation and according to the report submitted to the Summit in November 2011, the negotiations are planned to be completed by October 2012. Political integration is 'works in progress.' During the 13<sup>th</sup> Summit of the Heads of State held in Bujumbura on 30<sup>th</sup> November 2011, a Study Report by the Team of Experts on addressing fears, concerns and challenges on the EAC political federation was considered.

3.1.3 In effectively implementing each of the integration phases and stages, new or strengthen existing institutions is a necessity in order to achieve the intended objectives. Under Article 8(4) of the Treaty, Community organs, institutions and laws shall take precedence over similar national ones on matters pertaining to the implementation of the Treaty. Consequently, under Article 8(5) of the Treaty, the Partner States *are required to undertake to make the necessary legal instruments to confer precedence Community Organs, institutions and laws over similar national ones.* Article 16 of the Treaty, the regulations, directives and decisions of the Council are binding on the Partner States, on all organs and institutions of the Community except the Summit, the Court and the Assembly within their jurisdiction.

## 3.2 Establishment of CASSOA

3.2.1 Article 92 of the EAC establishing Treaty (Civil Aviation and Civil Air Transport) outlines a comprehensive system of cooperation among the Partner States in civil aviation and air transport including harmonising policies in civil aviation to promote development of *safe, reliable ...civil aviation*, harmonising civil aviation rules and regulations, taking common measures for control and protection of the airspace of the Community, establishing an UFIR (ACC), adopting common aircraft standards and technical specification for aircraft to be operated in the Community among others.

3.2.2 An effective oversight system is tenet for developing a safe and secure aviation system that can confidently provide the services and access markets both within and outside the region. In order to develop an effective oversight system, eight critical elements need to be addressed and put in place. These elements are primary aviation legislation; specific operating regulations; state civil aviation system and safety oversight functions; technical personnel qualification and training; technical guidance, tools and provision of safety critical information; licensing, certification, authorization and/or approval obligations; surveillance obligations; and the resolution of safety concerns.

3.2.3 The establishment of CASSOA as a regional specialised institution of the Community, is intended to establish a mechanism for collaboratively implementing the above eight critical elements in the region so as to achieve a sustainable and effective safety and security oversight system. The Protocol for establishment of the Agency was signed during the Council of Ministers meeting on 18<sup>th</sup> April 2007 and key staff appointed. The Summit of the Heads of State on 18<sup>th</sup> June 2007 established the Agency as a specialised institution of the community responsible for the development of a safe and secure civil aviation in the region<sup>2</sup>.

3.2.4 The major functions in line with the mandate specified in the Protocol, includes ensuring that the regional aviation industry operates in a harmonised safety and security regulatory system which complies with the international standards issued under the Convention on International Civil Aviation – “the Chicago Convention”. To facilitate the implementation of the harmonised regulatory system the Agency also develops technical guidance materials to guide both the industry and the oversight personnel in the civil aviation administrations in the implementation of provisions of the Regulations. Further, the Agency is required to assist the Partner States in the oversight functions to strengthen and establish an effective oversight system.

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<sup>2</sup> This is in line with Article 9(2) of the Treaty which states – ‘the institution of the Community shall be such bodies, departments and services as may be established by the Summit’

### 3.3 CASSOA Institutional Framework, Governance and how it Operates

3.3.1 The Agency within the regional civil aviation system is responsible for promoting safe and secure civil aviation in the region, forms a forum for planning and implementing common measures for developing safe and orderly civil aviation and assist Partner States in meeting their oversight obligations. The Partner States Civil Aviation Authorities retains the responsibility for oversight function of aviation activities within their territories including certificating/ licensing/approval and enforcement.

3.3.2 The Board is an organ of the Agency and it is its governing body. The membership of the Board as per the Protocol includes the heads of civil aviation from the Partner States, one aviation expert from each Partner States nominated by the respective Minister responsible for aviation and the Executive Director. The chairperson of the Board under annual rotational system, however, must be one of the heads of civil aviation<sup>3</sup>. During enacting the CASSOA Act by the East African Legislative Assembly (EALA), one additional member nominated by the East African Business Council (EABC) was added<sup>4</sup>.

3.3.3 Under Article 12 of the CASSOA Protocol, the Board is empowered to establish Technical Committees for specific areas of the Agency functions. As per Article 7(8)(d) and (e) of the Protocol, one of such specific area is the formulation of regulations and development of technical guidance materials. Therefore the Board has established a Technical Committee – Regulatory which handles among other technical matters these particular areas of responsibility. Memberships to this Committee are the Directors responsible for safety/security oversight (the head of regulation directorate in the Partner States' CAA). The Board has also established a Technical Committee – Finance and Administration to deal with all financial and administrative matters. Memberships to this Committee are senior officials of the CAAs responsible in the areas of finance and administration.

3.3.4 Further to the Technical Committees, the Board also established technical working groups, convened from time to time by the Agency to deal with specific areas of speciality by developing necessary documentations required in the area. Memberships of these working groups are constituted by experts in the specific area from the civil aviation authorities or industry as it may be determined by a Partner State.

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<sup>3</sup> See Article 7(1) up to (4)

<sup>4</sup> The Bill was passed by the Legislative Assembly but it is still under Assent process by the Heads of State

## **4.0 CIVIL AVIATION SAFETY AND SECURITY REGULATORY DEVELOPMENTS**

4.1 Among the functions of the CASSOA Board as specified in the Protocol establishing CASSOA is to formulate civil aviation safety and security regulations for approval by the Partner States and the Agency and approve civil aviation safety and security guidance materials and procedures for use by the Partner States and the Agency<sup>5</sup>. The two functions can only be considered by the Board upon recommendation by the Technical Committee.

4.2 The Agency has already harmonised the safety and security civil aviation regulations covering all the ICAO 18 Annexes, except for some provisions in the Annex 9 dealing with facilitation of passengers which do not fall under the current mandate of the Agency. The Civil Aviation Regulations so far formulated and harmonised and promulgated by the Partner States include Civil Aviation (Personnel Licensing) Regulations; Civil Aviation (Airworthiness) Regulations; Civil Aviation (Operation of Aircraft) Regulations; Civil Aviation (AMO) Regulations; Civil Aviation (ATO) Regulations; Civil Aviation (Aircraft Registration and marking) Regulations; Civil Aviation (Instruments and Equipment) Regulations; Civil Aviation (Aerial Work) Regulations; Civil Aviation (Operator Certification And Administration) Regulations; Civil Aviation (Commercial Air Transport Operations By Foreign Air Operator) Regulations; Civil Aviation (Rules of the Air and Air Traffic Control) Regulations; Civil Aviation (Parachute Operations) Regulations; Civil Aviation (Security) Regulations; Civil Aviation (Aerodrome and Ground Aid) Regulations; Civil Aviation (Accident and Incident Investigation) Regulations.

4.3 Issuance of the harmonised civil aviation Regulations in the region and their respective technical guidance materials makes East African Community the first sub-region in Africa for its air operators and related service providers to be subjected to uniform requirements including the certification and provision of operating authorisation. This is a positive environment created to motivate investors in this sub-sector within the region as they are assured of uniform application which meets the international requirements.

## **5.0 FITTING CASSOA STRATEGIC PLAN INTO THE REGIONAL OBJECTIVE AND SUPPORTING THE INDUSTRY DYNAMICS**

5.1 Within the current mandate of CASSOA and within the third and fourth EAC Development Strategies<sup>6</sup>, the Agency has a five year strategic plan and an organisation development plan. The plans are premised on the need to provide for the systematic development of CASSOA into a strong regional institution with a mandate to champion implementation of safety and security related regional (EAC) and international standards (ICAO SARPs) against the back drop of increasing regional economic integration and implementation of the Yamoussoukro Decision (YD) liberalisation programmes within the region.

5.2 The Plans primarily provides guidance over the five year period to CASSOA and other stakeholders including the EAC and Partner States on:

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<sup>5</sup> See Article 7(8)(d) and (e) respectively

<sup>6</sup> Both the Third and Fourth EAC Development Strategy (2006 to 2010 and 2011/12 to 2015/16 respectively) with the theme of Deepening and Accelerating Integration under civil aviation the main development objective is to maximise benefits of a safe, secure and efficient air transport system in the region. One of the strategic interventions in the third Development Strategy was to establish and operationalise the East African civil aviation safety and security oversight organisation. In the Fourth EAC Development Strategy identifies some of the challenges related to CASSOA as its limited mandate and lack of sustainable funding mechanism. Strategic interventions to be implemented are those identified in the Agency Strategic Plan key strategic objectives of rationalising CASSOA mandate, building and effective oversight system and minimising aircraft accident/incident rates.

- 5.2.1 how to achieve greater harmony in tackling aviation safety and security challenges in the region;
- 5.2.2 how to program and reap maximum benefits from a pool of resources that the region can marshal to tackle the aviation safety and security challenges; and
- 5.2.3 develop synergies based on Partner States' individual strengths in the aviation sector.

5.3 The Agency mission is *to ensure that civil aviation safety and security standards are harmonised and implemented consistently in all partner states by developing effective oversight systems*. The vision is to develop the Agency into a model regional organisation in civil aviation safety and security oversight.

5.4 The Agency main Goal/Broad Objective as defined in the Five Year Strategic Plan is stated as *“Contribute to the development of a sustainable, safe, secure and efficient civil aviation sub-sector in the region in line with the EAC objectives”*. To achieve this three main Key Strategic Objectives are being implemented:

5.4.1 To rationalise the mandate of CASSOA in line with the dynamics in the aviation industry and the enhanced economic integration in the region in which the review of the Agency mandate and funding mechanism are being looked at.

5.4.2 To build an effective and sustainable civil aviation oversight system in the region: under this the eight critical elements for building an effective oversight system are being pursued regionally and at Partner States level.

5.4.3 To minimise aircraft incident and accident rates in the region: under this strategic objective, the Agency and Partner States are implementing the States safety Programmes and Safety management system (SMS). To support this initiative the Agency is developing regional integrated reporting systems to collect, collate, analyse, maintain and share safety data/information. An IT system is being developed for supporting the regional safety data/information some of which will be available to the public through a web based system.<sup>7</sup>

## **6.0 EMERGING AVIATION SAFETY/SECURITY LEGAL AND REGULATORY ISSUES AND THEIR CHALLENGES**

6.1 In this part of the paper, only a few issues related to legal and regulatory challenges are discussed. In particular it looks at the operation of the regional organisation in the current setting, the implementation of the safety management system and the implementation of ICAO SARPs related to surveillance of foreign operators which has an impact in operations of the operators in the region into foreign markets.

### **6.1.1 CASSOA Operations in the Current Setting**

6.1.2 The role of CASSOA and indeed the East African Community in the development of civil aviation regulations is to formulate or amend the formulated and published regulations. Despite that the region has succeeded greatly to make the aviation industry operate on harmonised and standardised requirements, noticeable challenge has been encountered for its sustainability.

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<sup>7</sup> The system is being developed with the support of the European Aviation Safety Agency but using IT developers from the region and to start will gather regional aircraft registers, licensed/certificated personnel, organisations (approved maintenance organisations, air operators certificate holders, certificated/licensed airports), surveillance/inspections, examination results.

In many cases when the Agency formulates or amends the harmonised regulations and submits them to the Partner States for approval and promulgation it takes unnecessary long before they are issued or issued at variant times. This defeats the advantage the industry has in subjecting them to harmonised requirements in the region but also makes it difficult for our region regulatory system to match the dynamic amendments to the ICAO SARPs.

6.1.3 During the 9<sup>th</sup> Sectoral Council responsible for Transport, Communication and Meteorology (TCM) took note of the delayed process of promulgating the Regulations in the Partner States and recommend a review in the publication of these technical regulations in future to be able to be in line with the dynamic nature of the amendments to the ICAO SARPs which is the basis of the harmonised Regulations.

6.1.4 Sustainable funding of the Agency is also seen as a challenge. CASSOA funding is based on Article 15 of the Protocol in which is mainly contributions by Partner States through their respective Civil Aviation Authorities, resources mobilised by the Community, grants and revenue from activities of the Agency. In principle and due to its current mandate the main source is contributions from the CAAs. All the CAAs in the region are autonomous and do not receive any funding support from their respective central governments. They fund themselves from the activities generated from the aviation activities/ services they oversee/provide. The current mechanism is that the CAAs contribute equally to fund the Agency annual budget<sup>8</sup>. This is not only impracticable but also cannot fund fully and sustainably the region organisation operations.

6.1.5 The Board has proposed a funding mechanism within the Article 15 of the Protocol. The CAA will still be responsible for contribution to the CASSOA funding (as per Article 15(1)(a) of the Protocol with a formulae based on a charge to embarking passenger at the airport within the region<sup>9</sup>. Article 15(2) of the Protocol empowers the Council to determine a formula for contribution. It states 'where estimates of expenditure require to be funded in whole or in part by contributions from Partner States the Council shall determine the formula for contribution to be made by Partner States to the approved Budget'. The Board proposal therefore is recommending a formula which provides a mechanism of contribution to provide the Agency with sustainable funding and equitably contributed from the aviation activities and user.

## 6.2 *Safety management*

6.2.1 Safety management is an approach whereby the service providers (operators, airport management, air navigation service provider etc) in line with the State safety programme in order to achieve an acceptable level of safety (ALoS) in civil aviation identifies safety hazards; ensures the implementation of remedial action necessary to maintain agreed safety performance; provides for continuous monitoring and regular assessment of the safety performance; and aims at a continuous improvement of the overall performance of the safety management system.

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<sup>8</sup> It is based on Article 132(4) of the Treaty Establishing EAC which specifies equal contribution by Partner States to fund the Community budget. However this provision does not apply to an institution like CASSOA – self accounting institution as referred to in Article 132(1) of the Treaty. This is why the lawyers were able to insert Article 15(2) in the CASSOA Protocol (which otherwise would be contravening the Treaty provisions)

<sup>9</sup> Based on the projected budget requirement in the five year planning period and the projects passenger traffic, it was determined that USD 0.70 would suffice to fund the Agency. The rates will be subject to review periodically based on the changes in traffic levels and budgetary requirements.



6.2.2 The principle as opposed to the regulatory compliance and punitive approach currently embodied in our regulatory system is that safety management is performance based and non-punitive approach. The two are still required to complement each other in managing safety. The challenge is to strike the balance. Currently ICAO has SSP/SMS standards in Annex 6 (Operation of Aircraft), Annex 11 (Air Traffic Services) and Annex 14 (Aerodromes). However in accordance with the ICAO Assembly Resolution, ICAO is in the process of developing a new Annex for SSP/SMS.

6.2.3 The requirement for implementation of safety management is that State(s) develop the State Safety Programme (SSP) and establish ALoS to be achieved. SSP is described by ICAO as *an integrated set of regulations and activities aimed at improving safety*. The Agency with the support of ICAO ESAF is developing a regional plan and framework for the implementation of SSP/SMS in the region.

6.2.4 To implement SSP/SMS it has been identified that changes are required to the Partner States legislative framework (Civil Aviation Acts) and specific regulations in compliance with international standards that define how the State will conduct the management of safety in the State. CASSOA has already recommended changes required in the respective Partner States Civil Aviation Acts and developed a draft set of regulations for the SSP/SMS which is under consideration. The Civil Aviation Acts are required to include under the functions of the Authority establishment and implementation of SSP and ALoS. The Acts should also empower the Minister to promulgate Regulations for implementation and oversight of SMS.

### **6.3 Surveillance of Foreign Operators – the EU Approach**

6.3.1 Annex 6 Operation of Aircraft Part I (International Commercial Air Transport – Aeroplanes) and Part III (International Operations – Helicopter), Section II, respectively paragraph 4.2.2.2 and 2.2.2.2 require States to establish a programme with procedures for the surveillance of operations in their territory by a foreign operator and for taking appropriate action when necessary to preserve safety. Guidance on the surveillance of such operators can also be found in the Manual of Procedures for Operations Inspection, Certification and Continued Surveillance (Doc 8335).

6.3.2 To implement these standards, the European Commission (who provides mainly our traditional aviation market), is in the process of making an implementing rule which empowers the European Aviation Safety Agency (EASA) to authorise all third country operators before they start operating into the EU markets. For the operators already operating into the EU, a transition period will be given to allow continue operations until the EASA is able to examine their applications and issue the necessary authorisations. It should be noted that the authorisation process will also affect the unscheduled commercial air transport operations. These are also required to submit their planned operation and/or a copy of their applications for entry permission sent to the Member States into which they intend to operate.

6.3.3 Implementation of this process in the EU will have an impact on our airlines operating or intending to operate into that market. Although we provided our common position on the proposed rule, however it is not possible to stop its implementation. Therefore the Agency Board has also directed amendment of our regulations to implement the Annex standards for foreign operators operating into the EAC market to require authorisation as per the standard requirements, recommended the authorisation be done at a regional level by CASSOA and directed CASSOA to develop a program with procedures for surveillance of operation of Third Country Operators (TCO) in the EAC Partner States. However, implementation of this move will require amendment not only to the applicable civil aviation regulations but also the civil aviation legislations (Partner States Civil Aviation Acts as well as CASSOA Act and/or Protocol).

## 7.0 CONCLUSION

7.1 The East African Community and the Partner States main responsibility is to create conducive environment for the aviation sub-sector to operate in with the objective of making it a safe, secure, efficient and competitive meeting the international standards. These are being done by harmonising the regulations, developing and enhancing the oversight capacity, progressively liberalising the market access through the amendments of the applicable BASAs.

7.2 The regional aviation fleet size, number of service providers and supporting services and the network of airport and airstrips may be able to support the air transportation to a certain level of satisfaction if properly utilised by taking deliberate policy measures to ensure effective utilisations.

7.3 An effective Safety (security) oversight system is not only tenet to enhanced safety/security but also a necessity for doing business in air transport. The regional approach is the effective way to build an effective and sustainable oversight system. Establishment of CASSOA is part of the bigger picture of implementing EAC objectives on regional integration.

