

CHAPTER 205

THE AIR TANZANIA CORPORATION (RE-ORGANISATION AND VESTING OF ASSETS AND LIABILITIES) ACT [PRINCIPAL LEGISLATION] ARRANGEMENT OF SECTIONS

Section Title

PART I PRELIMINARY PROVISIONS

1. Short title.
2. Commencement.
3. Interpretation.

PART II INCORPORATION OF AIR TANZANIA COMPANY LIMITED

4. Incorporation of Air Tanzania Company Ltd.
5. Objects.
6. Memorandum and Articles of Association.
7. Authorised capital.
8. Power to operate air transport services.
9. Accounts and audit.

PART III ESTABLISHMENT OF AIR TANZANIA HOLDING CORPORATION

10. Establishment of ATHCO.
11. Functions.
12. Tenure of office.
13. Management.
14. Accounts and performance records.
15. Remuneration.
16. Affixing of seal.
17. Meetings and quorum.
18. Sources of funds.

PART IV

TRANSFER SCHEMES

19. Minister's power to transfer property, rights and obligations.
20. Issuance of certificate in respect of contract or commitment.
21. Transfer orders.
22. Certificates.
23. Transfer of staff and their rights.
24. Outstanding remuneration.
25. Access to records of Corporation.
26. Protection of assets from execution or attachment.
27. Stamp duty and other taxes.
28. Regulations.

PART V

CONSEQUENTIAL REPEAL AND AMENDMENTS

29. Repeal and amendments.

CHAPTER 205

THE AIR TANZANIA CORPORATION (RE-ORGANISATION AND VESTING OF ASSETS AND LIABILITIES) ACT

An Act to provide for the Re-organisation of the Air Tanzania Corporation, to vest its assets and liabilities into designated entities and to provide for related matters.

[1st November, 2002 Except Part V]
[GN. No. 516 of 2002]

Act No.
16 of 2002

PART I PRELIMINARY PROVISIONS

Short title **1.** This Act may be cited as the Air Tanzania Corporation (Re-organisation and Vesting of Assets and Liabilities) Act.

Commencement **2.**—(1) This Act shall come into operation on such date as the Minister may, by notice published in the *Gazette*, appoint.
(2) The Minister may appoint different dates for the commencement of different Parts or provisions of this Act, including provisions relating to repeals.

Interpretation **3.** In this Act, unless the context otherwise requires—
“Air Tanzania Company Limited” means the Company incorporated pursuant to section 4(1);
“air transport services” means either or both the business of carriage of passengers and cargo between points within Tanzania and between points in Tanzania and other countries;
“ATC Order” means the Air Tanzania Corporation (Establishment) Order;
“chose in action” means a claim or debt upon which a recovery may be made in a law suit;

G.N. No.
45 of 1977

GN. No.
463 of 1998

Cap. 80

“Corporation” means the Air Tanzania Holding Corporation established by section 10(1);

“effective date” means the date on which the Company commences business;

“former Corporation” means Air Tanzania Corporation, Corporation specified by the Public Corporations (Specified Corporations Declaration) Order, 1997;

“Licensing Regulations” means in relation to section 4(4), the Tanzania Licensing of Air Services Regulations, made under section 42 and 72 of the Civil Aviation Act;

“Minister” means the Minister responsible for civil aviation;

“property” includes any chose in action but excludes any property not used by the Corporation to provide air transport services; and

“vesting date” means the date or dates on which the Minister has specified by order that assets, rights and liabilities be transferred from ATC and vest in the ATC Holding Corporation and Air Tanzania Company Limited, respectively:

Provided that, such order shall be issued prior to the date of completion of the share sale agreement between Air Tanzania Company Limited and the strategic investor.

PART II

INCORPORATION OF AIR TANZANIA COMPANY LIMITED

Incorporation
of Air Tanzania
Company Ltd

4.–(1) Subject to this Act, there shall be incorporated a Company to be known as Air Tanzania Company Limited; in its acronym ATCL.

(2) There shall be transferred from the former Corporation to the Company such property, rights and obligations as the Minister may determine.

(3) The Company shall have the powers to perform and exercise functions as are conferred under this Act, any other written laws and its Memorandum and Articles of Association.

(4) The airplanes used by the Company for air transport service shall bear the National Flag of the United Republic of Tanzania.

(5) The Minister shall, by notice in the *Gazette*, appoint the effective date.

Objects

5. The principal objects of the Company shall be stated in its Memorandum and Articles of Association which shall include the following:

- (a) to take over, by operation of this Act or otherwise, the air transport functions of the former Corporation and certain property, rights and obligations transferred to it;
- (b) to provide facilities and services relating or incidental to air transport services; and
- (c) to make provision for, or undertake the training of, aircraft pilots, aircraft engineers and other personnel necessary for the carrying out of any of the functions of the Company.

Memorandum
and Articles of
Association

6.-(1) There shall be included in the Memorandum and Articles of Association of the Company such other provisions, including borrowing powers as are necessary to enable the Company to perform its functions.

(2) This section shall not prevent or restrict the inclusion among the objects of the Company as stated in the Memorandum and Articles of Association objects and powers as are proper for or incidental or ancillary to the due attainment of its objects.

Authorised
capital

7.-(1) The whole of the issued share capital of the Company shall initially be held by the Treasury Registrar.

(2) Subject to the Memorandum and Articles of Association of the Company, any natural or legal person, whether resident in Tanzania or otherwise, shall be entitled to purchase and hold shares in the Company.

Power to operate
air transport
services

8. The Company shall have all necessary and ancillary powers to operate air transport services, and a cause of action shall not be effective to prevent or diminish the exercise of those powers.

Accounts and
audit

Cap. 212

9.—(1) The Board shall ensure that the Company maintains such performance and accounting records as are necessary for compliance with the requirement of the Companies Act.

(2) Not later than six months after the close of every financial year qualified accountants shall audit the accounts of the Company including the balance sheet and statement of income and expenditure relating to that financial year.

PART III ESTABLISHMENT OF AIR TANZANIA HOLDING CORPORATION

Establishment of
ATHCO

10.—(1) There is established a Corporation to be known as the Air Tanzania Holding Corporation; in its acronym ATHCO.

(2) The Corporation shall be a body corporate and shall-

- (a) have perpetual succession and a common seal;
- (b) in its corporate name be capable of suing and being sued; and
- (c) subject to this Act, be capable of purchasing and otherwise acquiring or alienating any movable or immovable property.

Functions

11.—(1) The functions of the Corporation shall be-

- (a) to take over property, rights and obligations of the former Corporation which are transferred to it;
- (b) to take over and continue to employ staff of the former Corporation who are transferred to it; and
- (c) to dispose of property, rights and obligations of the former Corporation which are transferred to it.

(2) The Corporation may perform its functions either by itself or through an agent or contractor employed by the

Corporation in that behalf on such terms and conditions as the Board of the Corporation may approve.

(3) The Corporation shall perform its functions in the most efficient, safe and economic manner and in accordance with the best commercial practices, having regard at all times to the fact that the Corporation's main objective is to dispose of property, rights and obligations with a view to winding up the business of the Corporation.

Tenure of office **12.**—(1) The Corporation shall be in existence for three years from the effective date unless, in the opinion of the Minister, there remains undisposed assets and undischarged liabilities of the former Corporation in which case he may grant the Corporation a new lease of life, which shall not exceed twelve months.

(2) For purposes of terminating the business of the Corporation in pursuance of subsection (1), the Minister shall make a dissolution order to be published in the *Gazette*.

Management **13.**—(1) The management of the Corporation is vested in the Board of Directors.

(2) The Board shall consist of the following members:

(a) a Chairman who shall be appointed by the President; and

(b) such other members being not less than three nor more than four who shall be appointed by the Minister.

(3) Subject to section 12, members of the Board shall hold office for such period not exceeding three years.

(4) Through a competitive process, the Board shall appoint the General Manager of the Corporation on such terms and conditions as it may determine.

(5) The Board may from time to time appoint on such terms and conditions as it thinks fit such officers and servants of the Corporation as may be necessary for winding up the business of the Corporation.

Accounts and
performance
records

14. The Board shall ensure that, proper accounts and performance records are kept in relation to the revenue and expenditure of the Corporation and shall ensure that within six months of the end of each accounting year of the Corporation, or such longer period as the Minister may allow in any particular case, a statement of account of the Corporation is prepared in accordance with the accepted accounting principles and audited by qualified accountants.

Remuneration

15.—(1) Subject to the approval of the Minister, the Chairman and other members of the Board shall be entitled to such allowances and at such rates as the Board may determine.

(2) All salaries, fees and other allowances payable to the Chairman, a member of the Board, the General Manager and other officers and servants of the Corporation, shall be borne by the Corporation.

Affixing of seal

16.—(1) The seal of the Corporation shall be affixed by the Chairman or General Manager and witnessed by the Corporation Secretary.

(2) All contracts, guarantees, agreements, bonds, authorities, mortgages, bills of exchange, promissory notes, bank drafts, letters of credit, securities and other instruments to which the Corporation is a party, shall be executed on behalf of the Corporation by—

- (a) the General Manager witnessed by the Corporation Secretary; and
- (b) such other person or persons as may be authorised by the Board in that behalf.

Meetings and
quorum

17.—(1) The quorum at any meeting of the Board shall be three members.

(2) The Board shall regulate its procedure for the meetings.

(3) The Board may act notwithstanding any vacancy in the membership and an act or proceedings of the Board shall not be invalid by reason only of some defect in the appointment of a member.

- Sources of funds **18.** Sources of funds for the Corporation shall consist of such sums of money as may be-
- (a) appropriated by the Parliament;
 - (b) realised from the proceeds of sale of the assets of the Company; and
 - (c) received by way of loan, grant or donation.

PART IV

TRANSFER SCHEMES

Minister's power to transfer property, rights and obligations

19.—(1) The Minister may, by order effective on the vesting date and on such terms specified in the order, transfer to the Corporation and the Company such assets, rights and liabilities or clauses thereof from the former Corporation.

(2) Subject to the provisions of subsection (1), upon such transfer, the property, rights and obligations specified in the order shall from that day stand transferred to the Company or the Corporation without further assurance.

(3) All property, rights and obligations transferred to the Company or the Corporation may be sued on, recovered or enforced by the Company or the Corporation and it shall be necessary for the Company or the Corporation to give notice to the person with respect of whose property, rights or obligations are so transferred.

(4) Where legal proceedings in relation to any property, right or obligation transferred under the provisions of this section to which the former Corporation is a party are pending on the vesting date such proceedings shall be continued with the substitution of the former Corporation for the Company or the Corporation, as the case may be.

(5) An order made pursuant to the provisions of this section shall become effective on the date it was made.

Issuance of certificate in respect of contract or commitment

20.—(1) The Minister may issue a certificate in respect of any contract or commitment or class of contract or commitment.

(2) The certificate shall state that, the rights and liabilities accruing from any contract or commitment referred to in any

order made or purported to be made under section 21 were or were not at the time the order was made rights or liabilities of the former Corporation and such rights or liabilities accordingly as the case may be, were or were not transferred to the Company or the Corporation.

(3) A certificate so issued shall be conclusive evidence of the facts so certified.

Transfer orders

21.—(1) In order to facilitate the transfer of property, rights and obligations from the former Corporation to the Company or the Corporation, the Minister may, by order effective on such date and on such terms as he may specify, transfer the property, rights and obligations specified in such order from the former Corporation to the Company or the Corporation.

(2) On the date of coming into force of an order under subsection (1), the property, rights and obligations that are the subject of the order shall be transferred and vested in accordance with the order.

(3) A transfer order may define the property, rights and obligations to be transferred by specifying the property, rights or obligations in question or by referring to all the property, rights and obligations comprised in the whole or any specified part of the undertaking of the former Corporation.

(4) The Company or the Corporation shall receive a title free of any encumbrance save as otherwise provided in the transfer order.

(5) For the avoidance of doubt, stamp duty or other tax shall not be chargeable on a transfer made under this section.

Certificates

22.—(1) For the avoidance of doubt, the Minister may issue a certificate in respect of any property or class of property certifying that the property referred to in an order was, at the time the order was made, the property of the former Corporation and the certificate shall be conclusive evidence of the certified facts.

(2) Every chose in action transferred in accordance with subsection (1) may be sued upon and recovered or enforced by

the Company or the Corporation and it shall not be necessary for the Company or the Corporation to give notice to the person who is bound by the chose in action of the transfer if effected.

Transfer of staff
and their rights

23.—(1) The Minister may, by order effective on the effective date, designate staff of the former Corporation to be transferred to the Company or the Corporation.

(2) This section shall not operate so as to prevent any employee of the former Corporation from resigning or being dismissed.

(3) The terms and conditions of employment of any employee transferred from the former Corporation to the Company or the Corporation shall not be less favourable than those enjoyed by that employee immediately prior to the date on which the transfer was made.

(4) The Minister may make an order specifying that as at the date of the order, certain employees be transferred from the former Corporation to the Company or the Corporation.

Outstanding
remuneration

24.—(1) The former Corporation shall pay all outstanding remunerations including previous contributions to its employees who have been transferred to the Corporation or the Company.

(2) The service of any employee transferred from the former Corporation to the Company or the Corporation shall be deemed to be continuous for the entire period from the date of the commencement of the employment with the former Corporation and where such employee was a member of any statutory voluntary pension or other superannuation benefits scheme, the Company or the Corporation as the case may be, shall contribute to such scheme accordingly.

(3) Where an employee of the former Corporation is not transferred to the Company or the Corporation his services with the former Corporation shall be terminated and where such employee is a member of any statutory, voluntary pension or other superannuation benefits scheme such employee shall

be paid terminal benefits in accordance with the laws and regulations governing such schemes immediately before such termination.

Access to records
of Corporation

25.—(1) The Company shall have access to all documents and records of the former Corporation and the Corporation and shall have the right to keep originals of documents and or records which are necessary for the running of the Company and be entitled to make copies of the same.

(2) The Corporation and the former Corporation and their staff shall co-operate with the Company by providing access to their records and documents and by providing further information as and when requested.

Protection of
assets from
execution or
attachment

26. Notwithstanding anything to the contrary in any other law-

(a) where any judgment or order has been obtained against the former Corporation, execution or attachment, or process in the nature thereof, shall not be issued against the Company or the Corporation or against any property of the Company or the Corporation; but the Chief Executive Officer of the Company or the Corporation shall cause to be paid out of the revenue of the Company or the Corporation such amounts as may, by the judgment or order, be awarded against the Company or the Corporation to the person who is entitled; and

(b) property of the Company or the Corporation shall not be seized or taken by any person having, by law, power to attach or distrain property without the previous written permission of the Chief Executive Officer of the Company or the Corporation.

Stamp duty and
other taxes

27. Stamp duty or other tax shall not be chargeable on any agreement, contract, conveyance, assignment, grant or other instrument of transfer giving effect to a delegation or sub delegation or in relation to a transfer of property, rights and obligations made under the provisions of this Act.

Regulations

28. The Minister may make regulations for the better carrying out of the functions of the Corporation and, without prejudice to the generality of the foregoing, he may make regulations with respect to the quorum, proceedings and meetings of the Board, and with respect to the powers of the management and the Board as to their respective limits of approving expenditure.

PART V

CONSEQUENTIAL REPEAL AND AMENDMENTS

Repeal and
amendments
GN No
45 of 1977
GN No
463 of 1986

29.—(1) [Repeals the Air Tanzania Corporation (Establishment) Order, 1977.]

(2) [Amends the Tanzania Licensing of Air Services Regulations, 1986.]

