

GOVERNMENT NOTICE NO. published on.....

THE CIVIL AVIATION ACT
(CAP. 80 R.E. 2006)

RULES

(Made under Section 60(2)(f))

THE CIVIL AVIATION (PROCEDURES FOR COMPLAINTS HANDLING) RULES,
2009

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PART I
PRELIMINARY PROVISIONS

Citation

1. These Rules may be cited as the Civil Aviation (Procedures for Complaints Handling) Rules, 2009.

Application

2.- (1) These Rules shall apply to Tanzania Mainland. They shall apply to Tanzania Zanzibar as well except for section 15, 16 and 21.

(2) These Rules shall govern all complaints filed with the Authority for specific violations of laws, rules, regulations and policies implemented by the Authority, including but not limited to the Act.

(3) Without prejudice to paragraph (2) the Authority shall have powers to investigate and determine any complaint in accordance with provisions of Part XIII of the Act.

Interpretation

3. In these Rules, except where the context requires otherwise-
“the Act” means the Civil Aviation Act (Cap. 80 R.E. 2006);
“Authority” means the Tanzania Civil Aviation Authority;
“Board” means the Board of Directors of the Authority referred to in section 27 of the Act;

“Committee” means a Committee of the Authority constituted under section 41 of the Act;

“Complaint” means a concise statement of the ultimate facts of the matter or act complained of, in respect of the supply, possible supply or purported supply of regulated goods and services and thus invoking the regulatory power or jurisdiction of the Authority, and specifying the relief sought; it includes problems with services or infringement of consumer rights;

“Complainant” means the person who has filed a complaint to the Authority pursuant to these Rules;

“the Council” means the Tanzania Civil Aviation Authority Consumer Consultative Council;

“Consumer” means any end user of regulated services from any regulated supplier pursuant to standard terms and conditions;

“Director-General” means the Director-General of the Authority appointed under section 33 of the Act;

“Public Register” means the Public Register of the Authority, kept by the Authority pursuant to section 44 of the Act;

“Proceedings” means any complaint, inquiry or other proceedings of any nature that the Authority may hold in the discharge of its regulatory functions under the Act;

“regulated goods” means any equipment produced, supplied or offered for supply or for use in a regulated sector and includes goods the Authority declares under section 59 of the Act;

“Regulated sector” means air transport services, aeronautical airport services and air navigation services;

“regulated services” means any service supplied or offered for supply in a regulated sector and includes provision of services, operations or any other service which the Authority declares to be such services under section 59 of the Act; and

“regulated supplier” means any person engaging in activities in or in connection with regulated service and includes service provider, operator, licensee or any person whom the Authority declares under section 59 of the Act to be such supplier.

“Respondent” means any regulated supplier either natural or juridical, against whom a complaint is filed, alleged as the perpetrator of such act or omission;

“Tribunal” means the Fair Competition Tribunal established by the Fair Competition Act;

“Unit” means a unit established under rule 5 of these rules.

(2) Subject to the requirements of due process, the technicalities of law and procedure and the rules obtaining in the courts of law shall not strictly apply to these Rules.

(3) These Rules shall be liberally construed in the public interest to secure the most just, expeditious, and efficient determination on the merits of every proceeding before the Authority.

(4) Where procedures are not provided for in these Rules, the Authority may do whatever is necessary and permitted by law to enable it to effectively and completely adjudicate on the matter before it.

(5) In these Rules, unless the context otherwise requires, a reference to a rule is to a rule of these Rules.

(6) Words or expressions occurring in these Rules and not defined herein above shall bear the same meaning as in the Act.

PART II THE CONSUMER COMPLAINTS UNIT

Establishment of the Unit

4.- (1) There is hereby established in the Authority a dedicated unit to be known as the Consumer Complaints Unit.

(2) The Unit shall act as a link between the Authority and the Council.

Functions of the Unit

5.- (1) Functions of the Unit shall be to:

- (a) receive, through the Director-General, and follow up on complaints from consumers submitted to the Authority;
- (b) investigate all complaints;
- (c) attempt to resolve complaints amicably; and
- (d) present findings and recommendations for action to the Committee in the event that a complaint cannot be resolved.

(2) The Unit shall ensure that complaints are treated in a uniform manner.

PART III COMPLAINTS HANDLING BY A REGULATED SUPPLIER

Role of a regulated supplier

6. A regulated supplier shall ensure that he -

- (a) provides safe, reliable and efficient regulated services to consumers;
- (b) does not make false or misleading representation with respect to the price and other aspect of regulated goods or regulated services;
- (c) plans and operates his system in a manner that provides his consumers with satisfactory standards of service as set forth in his licenses and any document supplemental to his licenses;
- (d) establishes, publishes and makes available on request, procedures, approved by the Authority, to handle consumer complaints;
- (e) addresses consumer complaints and follows consistently the procedures in paragraph (d).

Complaints to be submitted to the regulated supplier

7. Where a consumer or his representative has a complaint against a regulated supplier, he shall first submit it to the regulated supplier complained of according to that regulated supplier's established procedure to handle consumer complaints.

Monitoring reports from a regulated supplier

8.- (1) For the purpose of enabling the Authority to assess how well the regulated supplier meets his obligation in rule 6, the regulated supplier shall record and retain quarterly monitoring reports that shows the numbers and type of consumer complaints it has received and their disposition.

(2) The monitoring reports shall be sufficiently detailed to enable the Authority identify areas where amendments to standards of service should be considered or whether further actions should be invoked.

(3) If a regulated supplier has not performed adequately, the Authority may impose new obligations to ensure that performance is improved. ~~and may impose fines for failure to meet the required standards.~~

(4) Such records shall be readily available to the Authority or authorised person where required to provide them.

PART IV COMPLAINTS HANDLING BY THE AUTHORITY

Filing of complaint

9.- (1) This rule shall apply to any complaint against a supplier of regulated goods or services in relation to any matter connected with the supply, possible supply or purported supply of the goods or services.

(2) Where a consumer or his representative is satisfied that a relevant regulated supplier has not correctly responded to a complaint or the solution is to his dissatisfaction, he may file a complaint to the Authority.

(3) Every complaint to the Authority shall be made in writing on a form as shown in the Schedule and which can also be accessible through Authority's website.

(4) The complaint form shall be filled in triplicate and a copy shall be retained by the complainant after filing with the Authority.

Procedure at the Unit

10.- (1) Where a complaint is referred to or otherwise comes to the attention of the Authority and it appears to the Authority that-

- (a) the complainant has an interest in the matter to which the complaint relates; and
- (b) the complaint is not frivolous or vexatious; the Unit shall investigate the matter.

(2) Where it appears to the Unit at any time during or after the

investigation that the respondent has not considered the complaint or has not considered it adequately, the Unit may refer the complaint to the respondent with a request that the respondent should consider or reconsider the complaint.

(3) Not later than seven days after the complaint has been referred to the respondent, the Unit shall notify the complainant that a request has been sent to the respondent.

(4) Where it appears to the Unit at any time during or after the investigation that the respondent has considered the complaint adequately, the Unit shall try to resolve the same amicably.

(5) Subject to the provisions of these Rules, if a complaint is not resolved to the satisfaction of a complainant within sixty days after the Unit first became obliged to investigate it, the complainant may, by way of a writing signed by him, request the Unit to refer the complaint to the Committee for decision or the Unit, by its own motion, shall present its findings and recommendations to the Committee for action.

(6) The referral described in paragraph (2) shall be effected by:

(a) personal delivery to the respondent or his representative and the same shall acknowledge receipt by signing and returning one copy of the notice to the Authority; or

(b) registered mail with return receipt; or

(c) publication, where the Authority has determined that:

(i) there are reasons to believe that the respondent is keeping out of way for the purpose of avoiding the notification; or

(ii) for any other reason the notice cannot be served in the ordinary way; and

(iii) there is a proof that efforts to serve the respondent were taken and that such efforts have failed due to (i) and (ii).

(7) The Unit may make representations to the respondent on behalf of the complainant or to the complainant on behalf of the respondent as it sees fit.

Procedure at the
Committee

11.- (1) After the complaint is referred to the Committee as provided for in rule 10 the complainant and the respondent shall be parties to the reference.

(2) Not later than twenty-one days after the referral described in paragraph (1), the respondent shall present to the Committee a reply to the complaint which may include a counterclaim or claim for set-off.

(3) The respondent must raise in his reply all matters which show the complaint not to be maintainable or that the transaction is either void or voidable in point of law, and all such grounds of defence as, if not raised would be likely to take the opposite party by surprise or would raise issues of fact not arising out of the complaint, as, for instance, fraud, limitation, release, payment, performance or facts showing illegality.

(4) It shall not be sufficient for a respondent in his reply to deny generally the grounds alleged by the complainant, but he must deal specifically with each allegation of fact of which he does not admit the truth, except damages.

(5) Where the respondent denies an allegation of fact in the complaint, he must not do so evasively, but answer the point of substance.

(6) Every allegation of fact in the complaint, if not denied specifically or by necessary implication or stated to be not admitted in the reply by the respondent, shall be taken to be admitted:

Provided that the Committee may in its discretion require any fact so admitted to be proved otherwise than by such admission.

(7) In the event the respondent fails to present a reply, it shall be deemed that the respondent has waived its right to appear and participate in the proceeding and the Committee shall proceed with the proceedings in his *absentia*, provided that, he may be allowed to participate in the proceedings upon showing sufficient cause for failure to make such a reply.

Amendments of
complaints or replies

12. A complainant and a respondent may, upon adducing sufficient cause, be allowed to amend a complaint or a reply, respectively, provided the other party is afforded an opportunity to make a reply thereto within a reasonable period of time prior to the hearing and counting of days will start as a fresh complaint.

Hearing by the
Committee

13.- (1) During the hearing the Committee may:

- (a) take evidence under oath or affirmation;
- (b) require any person to produce any information deemed relevant; and
- (c) require the attendance of any person to give evidence and produce any document that may be in his custody.

(2) For the purpose of these Rules, “hearing” means all processes required for the Authority’s determination, including:

- (a) any attempt to resolve the complaint amicably;
- (b) oral and written submissions made by the parties;
- (c) adducing of evidence by the parties; and
- (d) the discovery of documents.

(3) The proceedings at the Committee shall be *quasi-conciliatory* in nature, provided that where no conciliation is possible, the Committee shall make a decision thereof or present its findings and recommendations to the Board as it sees fit.

Procedure at the Board

14.- (1) Upon receipt of findings and recommendations of the Committee the Board shall, in each case, make a ruling to be carried out by the Committee and, may make one or more of the following orders:

- (a) requiring a party to supply regulated goods or services for specified periods;
- (b) requiring a party to supply regulated goods or services for specified terms and conditions;
- (c) requiring a party to pay the costs of another party or of a person appearing at the hearing or producing documents;
- (d) dismissing a complaint;
- (e) imposing fines;
- (f) for specific performance;
- (g) for refund;
- (h) appointing trustees;
- (i) setting up an escrow account; and
- (j) for such other relief as may be deemed necessary.

(2) If there is no application for review or appeal of the decision by the Board or the Committee to the Tribunal, the Authority will place the decision on the Public Register and close the complaint procedure. .

(3) The Authority may make public the information mentioned in sub rule (2) as appropriate.

PART V APPEALS

Right of Appeal

15. Where a party is not satisfied with an award of the Board he may appeal to the Tribunal.

Grounds for Appeal to the Tribunal

16.- (1) Grounds of appeal to the Tribunal shall be as follows:

- (a) the award was not reasonably open to the Authority based on the evidence;
- (b) there was an error in law;
- (c) the procedures or other statutory requirements applicable to the Authority were not complied with and the non-compliance materially affected the award; and

(d) the Authority did not have power to make the award.

(2) The Tribunal may make such orders as to the payment of any person's costs of the appeal as it deems appropriate and any person aggrieved by the decision of the Tribunal may appeal to the Court of Appeal.

PART VI THE REVIEW PANEL

Establishment of the Panel

17. There is hereby established in the Authority a panel to be known as the Review Panel.

Composition of the Panel

18.- (1) The Panel shall at all times consists of -

- (a) two persons who have experience in law for at least ten years;
- (b) two persons who are graduates of a recognized university, each having at least ten years of experience in one or more of the fields of aeronautics, economics, finance, engineering or management.

(2) The members of the Panel shall be appointed for a term not exceeding five years on such terms and conditions, as the Authority shall deem fit, and any vacancy on the Panel shall be filled as soon as is reasonably practical after the vacancy occurs.

PART IX COMPLAINTS AGAINST DECISIONS OF THE AUTHORITY

Decision made under delegated power

19.- (1) Any person aggrieved by any decision made on behalf of the Authority under delegated power by –

- (a) a Committee of the Authority; or
- (b) one or more Members of the Board or employees of the Authority, may, within fourteen days after receipt of the record of the decision apply to the Authority for it to review the decision in question.

(2) Upon receipt of an application under paragraph (1), the Authority shall appoint an Internal Review Committee which shall consist of -

- (a) two members of the Review Panel, one of whom shall be a lawyer and another shall be qualified in the field of the subject of the application;
- (b) one member of the Board who did not participate in the decision which is the subject of the application.

(3) The Internal Review Committee shall deliver or send by registered post a copy of the application for review and a written invitation to make submissions on the application to the following persons -

- (a) the Minister;
- (b) all persons who make submissions to the Authority in relation to the decision under review or who have otherwise indicated to the Authority an interest in the decision;
- (c) the Consumer Consultative Council; and
- (d) any other persons whom the Committee considers should receive notice of the application.

(4) The Internal Review Committee shall allow not less than twenty one days for submissions to be made in relation to the application for review.

(5) Subject to this section, the Internal Review Committee shall determine its own procedure and shall not be bound by the strictly rules of evidence.

(6) The Internal Review Committee may take such steps, including exercising the powers of the Authority to obtain information, documents and evidence under section 38 of the Act, as it deems necessary to inform itself of matters relevant to the applications for review

(7) Within three weeks after receipt of the submission under paragraph (4), the Internal Review Committee shall consider the application together with any submissions received, prepare a recommendation and submit to the Board for its decision.

(8) The Internal Review Committee may recommend to the Board to -

- (a) dismiss the application;
- (b) set aside the original decision and make a different decision;
- (c) vary the decision; or
- (d) set aside the decision and delegate the matter to a Committee or one or more members or officers of the Authority for a fresh decision without directions as to ways in which that decision will be made.

(9) The Board shall make a determination on the recommendation by the Internal Review Committee by a vote of the majority of its Members and may either confirm, vary or dismiss the decision subject of review.

Decision of the
Committee to be
placed on the Public
Register

20.- (1) A decision by the Committee, a member or members or employees of the Authority shall, if there is no application for its review be placed on the Public Register.

(2) Where there is an application for review of a decision of the Committee or of a member or employees of the Authority, that decision shall not be placed on the Public Register until the application for review or the appeal to the Tribunal, as the case may be, is determined.

Appeal to the
Tribunal

21.- (1) Any person aggrieved by any other decision made in connection to the purposes of this Act may appeal to the Tribunal.

(2) Subject to the provisions of the paragraph (1), the grounds of appeal shall be on the following, that -

- (a) the decision made was not based on evidence produced;
- (b) there was an error in law;
- (c) the procedures and other statutory requirements applicable to the Authority were not complied with and the non-compliance materially affected the determination;
- (d) the Authority did not have power to make the determination.

(3) Notwithstanding the provisions of sections 47 and 48 of the Act, the decision of the Tribunal shall be final.

PART VIII MISCELLANEOUS

Penalties

22. Any person who contravenes any of the provisions of these Rules commits an offence and shall be liable to a fine not exceeding Tanzanian Shillings five hundred thousands.

Compensation may be
recovered

23.- (1) Any person, who suffers loss or damage as a result of an offence against these Rules, may recover by compensation for such loss or damage from the person who committed that offence whether or not that person has been convicted of an offence.

(2) A claim under sub rule (1) shall be made by way of a complaint provided for under rule 9.

(3) The right to compensation shall be extinguished if an action is not brought within a period of two years, reckoned from the date of the loss or damage is suffered or after the person becomes aware of the offence, whichever is the latter.

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SCHEDULE
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TANZANIA CIVIL AVIATION AUTHORITY

THE CIVIL AVIATION (PROCEDURES FOR COMPLAINTS HANDLING) RULES, 2008

Made under r. 9(3)

COMPLAINT FORM

For Authority's Use Only	
Complaint No.....of.....	
_____ vs. _____	
Complainant	Respondent

- USE CAPITAL LETTERS TO PRINT
- USE A SEPARATE SHEET IF NECESSARY

A: PARTICULARS

EITHER

Physical Person:

Name of Complainant (surname, first name): _____ Sex: _____

Address: _____

Profession: _____

Nationality: _____

Date of birth: _____

OR

Legal Person:

Name of Complainant: _____

Status (e.g. limited liability company/body corporate/association etc) _____

Physical Address: _____

Who is representing: _____

Name of the person signing the complaint and his status: _____

Name of the respondent: _____

Address: _____

Occupation: _____

B: NATURE/FACTS OF THE COMPLAINT
(State the complete description of the complaint precisely and concisely; include copies of all relevant documents)

If known, the reference to specific laws, regulation, concession contracts, licences, codes or norms which were supposedly infringed.

C: EVIDENCE THAT THE COMPLAINANT HAS SUBMITTED THE COMPLAINT TO THE REGULATED SUPPLIER AND THAT AVENUES WHICH COULD SOLVE THE PROBLEM WERE EXHAUSTED ACCORDING TO THE REGULATED SUPPLIER'S PROCEDURES

D: DESCRIPTION OF THE RESPONSE OR REMEDY WHICH THE REGULATED SUPPLIER IN QUESTION HAS MADE OR OFFERED

E: DESCRIPTION OF THE REMEDY OR REMEDIES DESIRED

F: I hereby declare that all the facts and information given in the application are correct to the best of my knowledge.

Presented for filing this _____ day of _____ year _____

SIGNATURE OF THE COMPLAINT(S)

For Registrar's Use Only

Date Received: _____ File No. _____

Date Resolved:

Dar es Salaam,
....., 2009

MARGARET T. MUNYAGI
Director General