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THE AIR PASSENGER SERVICE CHARGE ACT

CHAPTER 475

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CHAPTER 475

AIR PASSENGER SERVICE CHARGE ACT

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CHAPTER 475

AIR PASSENGER SERVICE CHARGE ACT

[Date of assent: 18th November, 1970.]

[Date of commencement: 20th November, 1970.]

An Act of Parliament to impose a service charge on passengers departing by air from an airport within Kenya and for connected purposes

[Act No. 21 of 1970, Act No. 10 of 1972, Act No. 8 of 1973, Act No. 12 of 1977, Act No. 13 of 1979, Act No. 8 of 1983, Act No. 13 of 1984, Act No. 10 of 1988, Act No. 4 of 1993, Act No. 6 of 1994, Act No. 5 of 1998, Act No. 4 of 1999, Act No. 9 of 2000, Legal Notice 102 of 2001, Act No. 4 of 2004, Act No. 8 of 2009, Legal Notice 28 of 2012, Act No. 18 of 2014, Act No. 25 of 2015, Legal Notice 98 of 2016, Act No. 10 of 2018.]

1. Short title

This Act may be cited as the Air Passenger Service Charge Act.

2. Interpretation

In this Act, unless the context otherwise requires—

"airline" means any undertaking whose business includes the carriage by air of passengers for hire or reward;

"airport" means an airport gazetted by the Commissioner under section 9 of the Customs and Excise Act (Cap. 472);

"charge" means the passenger service charge imposed under section 3;

"chartered air flight" means a non-scheduled air flight which has been chartered by a person or a group of persons for use by the charterer or charterers between two or more places;

"collection agent" means an officer, servant or agent of an airline;

"Commissioner" means—

- (a) the Commissioner-General appointed under the Kenya Revenue Authority Act (Cap. 469); or
- (b) with respect to powers or functions that have been delegated under section 11(4) of the Kenya Revenue Authority Act (Cap. 469) by the Commissioner-General to another Commissioner, that other Commissioner;

"external journey" means a journey by an aircraft commencing at an airport and terminating at a destination outside Kenya, whether or not there is to be a break in such journey within Kenya;

"internal journey" means a journey by an aircraft commencing at an airport and terminating at a destination within Kenya;

"Kenya Revenue Authority" means the Authority by that name established under section 3 of the Kenya Revenue Authority Act (Cap. 469);

"passenger" means any person who is about to board an aircraft which is owned, operated or managed by an airline, but does not include a member of the crew of that aircraft, or of another aircraft owned, operated or managed by the same airline, when on duty;

"specified currency" means any convertible currency;

"ticket" means a ticket purchased from a collection agent, by a person who intends to undertake an external or internal journey.

[Act No. 8 of 1973, s. 2, Act No. 10 of 1988, s. 38, Act No. 4 of 1993, s. 62, Act No. 5 of 1998, s. 45, Act No. 4 of 2004, s. 71, Act No. 8 of 2009, s. 42.]

3. Imposition of passenger service charge

(1) Subject to this Act, there shall be paid by every person who purchases a ticket for an external or internal journey an air passenger service charge of—

- (a) fifty United States dollars or the equivalent in specified currency or in Kenya shillings for an external journey: and
- (b) six hundred shillings for an internal journey.

(2) The Cabinet Secretary may, by notice in the *Gazette*, from time to time vary the charges specified in this section.

(3) All proceeds of the charge imposed under this section shall be apportioned between the Kenya Airports Authority, the Kenya Civil Aviation Authority and the Tourism Promotion Fund in such manner as the Cabinet Secretary may, by notice in the *Gazette*, specify.

[Act No. 10 of 1972, Act No. 8 of 1973, Act No. 6 of 1977, Act No. 13 of 1979, Act No. 8 of 1983, Act No. 13 of 1984, Act No. 10 of 1988, Act No. 4 of 1993, s. 62, Act No. 6 of 1994, s. 70, Act No. 5 of 1998, s. 46, Act No. 4 of 1999, s. 68A, L.N. 102/2001, L.N. 28/2012, Act No. 18 of 2014, Sch., Act No. 25 of 2015, Sch., L.N. 98/2016, r. 2, Act No. 10 of 2018, s. 60.]

4. Exemptions

(1) There shall be exempt from liability to pay the charge—

- (a) any child under the age of two years;
- (b) any passenger embarking at an airport at which he is in transit.

(2) A passenger who pays the charge on the occasion of his embarkation on an aircraft which returns to the airport of embarkation without first landing at some other place, shall be exempt from the charge on his embarking to resume his journey on the same or any other aircraft.

(3) For the purposes of subsection (1) of this section, a passenger is in transit at an airport if—

- (a) he disembarks at such airport from one aircraft and re-embarks there on the same or another aircraft; and
- (b) between so disembarking and re-embarking he does not leave the airport except in circumstances where the Commissioner is satisfied are beyond his control.

(4) The Cabinet Secretary may, by notice in the *Gazette*, exempt any class of persons from liability to pay the charge.

[Act No. 10 of 1988, s. 38, Act No. 9 of 2000, s. 89.]

4A. Administration by the Commissioner of Customs and Excise

Subject to the control of the Cabinet Secretary, the Commissioner shall be responsible for the administration of this Act, including the appointment of collection agents and the collection and accounting for revenues arising from the charge.

[Act No. 4 of 1993, Act No. 4 of 2004, s. 72.]

5. Collection and payment of charge

(1) A collection agent shall collect the charge upon the sale to any person who intends to undertake a journey in an aircraft owned, operated or managed by, or on charter to the airline of which he is an agent.

(2) Where an airline fails to ensure that any person travelling on an aircraft owned, operated or managed by, or on charter to the airline, pays the charge to which he is liable, the airline shall be liable to pay the amount of the charge to the Commissioner.

(3) All amounts collected by way of the charge and all amounts for which an airline is liable under subsection (2), shall be remitted by the collection agent or the airline, as the case may be, to the Commissioner within twenty-five days from the end of the month in which the charge becomes payable.

(4) Notwithstanding subsection (2) any chartered air flight which does not have its office or an agent in Kenya, shall pay the charge to the officer granting customs clearance outward before such clearance is granted.

(5) Any amount which is to be remitted to the Commissioner under subsection (3) shall, if not so remitted, be a civil debt recoverable summarily by the Commissioner.

[Act No. 10 of 1988, s. 38, Act No. 5 of 1998, s. 47, Act No. 8 of 2009, s. 43.]

5A. Collection of charges from agents

(1) The Commissioner may, by written notice addressed to any person (in this section called "the agent") appoint him to be the agent of another person (in this section called "the principal") for the purposes of collecting charges from the principal where the Commissioner is satisfied that the agent—

- (a) owes or is about to pay money to the principal;
- (b) holds money for or on account of the principal;
- (c) holds money on account of some other person for payment to the principal;
- (d) has authority from some other person to pay money to the principal.

(2) The Commissioner shall, in the notice issued under subsection (1), specify the amount of the charges to be collected by the agent, which amount shall not exceed the amount held or owing by the agent for or to the principal.

(3) The Commissioner may, by notice in writing, require any person to furnish the Commissioner, within a reasonable time not being less than thirty days from the date of service of the notice, with a return showing details of any moneys which may be held by that person for or on account of a person from whom charges are due.

(4) An agent who claims to be, or to have become, unable to comply with the notice for any reason shall, as soon as may be practicable, notify the Commissioner accordingly in writing stating the reasons for his inability, and the Commissioner may accept and cancel, amend or reject the notification as he may think fit.

(5) Notwithstanding subsection (4), an agent shall be presumed to be holding sufficient money for the payment of the charges specified in the notice unless his notification under subsection (4) is accepted or amended, and in any proceedings for the collection of those charges he shall be estopped from asserting the lack of those moneys.

(6) Where an agent fails to remit any amount of charges specified in the notice, within thirty days of the date of service of the notice on him or the date on which any

moneys came into his hands for, or become due by him to, his principal, whichever is the later, and he has not complied with subsection (4) then the provisions of this Act relating to the collection and recovery of charges shall apply as if they were charges due and payable by him from the date when such charges should have been paid to the Commissioner.

(7) An agent who has made payment of charges under this section shall for all purposes be deemed to have acted therein with the authority of his principal and of all other persons concerned, and shall be indemnified in respect of that payment against any proceedings civil or criminal and all process, judicial or extrajudicial, notwithstanding any provisions to the contrary in any written law, contract or agreement.

(8) A person who in giving a notification under subsection (4), wilfully makes any false or misleading statement, or wilfully conceals any material fact, shall be guilty of an offence and liable to a fine not exceeding two hundred thousand shillings or to imprisonment for a term of not more than three years or to both.

[Act No. 10 of 1988, s. 38, Act No. 4 of 2004, s. 73.]

5B. Recovery of levies by distress

(1) If any charges payable under this Act remain unpaid after the time they were required to be paid, the Commissioner may authorize distress to be levied upon the goods, chattels and effects of the person who should have paid the charges wherever those goods, chattels and effects may be found.

(2) The following provisions of the Customs and Excise Act (Cap. 472) shall apply, with necessary modifications, with respect to distress authorised under subsection (1)—

- (a) section 225(2), (3) and (4); and
- (b) the Sixth Schedule.

[Act No. 4 of 2004, s. 73.]

6. Failure to remit charge

(1) A collection agent who fails to remit the charge to the Commissioner within the prescribed period shall be guilty of an offence and liable to a fine not exceeding one hundred thousand shillings.

(2) A person who fails to remit the charge under subsection (1) shall, notwithstanding the penalty prescribed under that subsection, be liable to remit the outstanding charge together with a penalty of three percent of the outstanding charge for each month or part thereof during which the charge remains unpaid.

[Act No. 8 of 1973, s. 4, Act No. 10 of 1988, s. 38, Act No. 5 of 1998, s. 48.]

6A. Charge to be paid into the Kenya Airports Authority Fund

The Commissioner shall pay the charge collected by him under this Act into the Kenya Airports Authority Fund established under the Kenya Airports Authority Act (Cap. 395), after deducting the expenses of the Kenya Revenue Authority for the collection of the charge.

[Act No. 10 of 1988, s. 38, Act No. 8 of 2009, s. 44.]

7.

[Repealed by Act No. 5 of 1998, s. 49.]

8. Inspection of records

Any person authorized in writing in that behalf by the Commissioner may, on production of his authority if so required, enter upon any premises owned, occupied or for the time being used by an airline or a collection agent, and may require the collection agent to produce for his inspection all books, documents or records relating to the sale of tickets and records relating to the embarkation of passengers, and may make copies thereof or of extracts therefrom.

[Act No. 5 of 1998, s. 50.]

9. Obstruction

Any person who obstructs any other person in the exercise of the powers conferred by section 8 of this Act upon such other person shall be guilty of an offence and liable to a fine not exceeding ten thousand shillings or to imprisonment for a period not exceeding twelve months, or to both such fine and imprisonment.

[Act No. 5 of 1998, s. 51.]

10. Regulations

The Cabinet Secretary may make regulations for the better carrying into effect of the provisions of this Act, and, without prejudice to the generality of such power, for the rendering of returns by airlines or collection agents.
