



CHAPTER 12

EXEMPTIONS FROM REGULATORY REQUIREMENTS

1.0 PURPOSE

This chapter is issued to define parameters on how the Authority's opinion is formed, and against what criteria, in granting exemptions from regulatory requirements and to ensure the exemption process is equitable to all those who come forward with a request, while simultaneously ensuring the best interests of the public are protected.

2.0 REFERENCE

2.1 Part 1.4 of the Nigerian Civil Aviation Regulations

2.2 Form AC-GEN012

3.0 GENERAL

3.1 This chapter contains:

- 3.1.1 Definitions and a general overview of the exemption process
- 3.1.2 Procedure for issuing an exemption
- 3.1.3 Roles and Responsibilities of parties involved in exemption process
- 3.1.4 Information about the preparation of the exemption document

4.0 DEFINITION AND ABBREVIATIONS

- (a) Exemption—An exemption entitles a person to act outside the normal regulatory requirements.
- (b) Public interest—The concept of public interest has no fixed meaning in law and its scope may be broadened or narrowed according to the circumstances. It is clear, however, that the simple protection of a “private interest” will not satisfy the public interest test. Consideration must be given to how the exemption will impact on other members or segments of the regulated community as well as on the public at large. (Please refer to Paragraph 5.0 for factors to consider in the determination of “public interest” during the decision- making process of whether to grant or deny an exemption request.)
- (c) Aviation Safety—Any exemption issued under Part 1.4 of the Nig. CARs must be such that it is not likely to reduce the level of aviation safety afforded by the regulation to which the exemption applies.



(d) The 2-fold test—The test for assessing the merits of an exemption request therefore is two-fold:

- a) Is it in the public interest?
- b) Is it not likely to affect aviation safety?

Each question stands on its own and must be addressed independently of the other by the applicant and the inspector handling the exemption. In other words, the results of the test must be that the exemption is in the public interest and is not likely to affect aviation safety.

In most cases, exemptions are issued only in exceptional circumstances and may be granted only after a thorough analysis is conducted on the impact the granting of the exemption may have on aviation safety. An equivalent level of safety is established through the development of terms and conditions that will provide alternate requirements or procedures to ensure any safety concerns are satisfied and safety is not compromised. In this regard, consideration should be given to any pending amendments to the regulation as well as the terms and conditions of previously issued exemptions.

(e) NCAA—means Nigeria Civil Aviation Authority

5.0 PROCEDURE FOR ISSUING EXEMPTIONS

5.1 Step 1: Applicant Exemption Request must be submitted at least 60days in advance of proposed effective date of the exemption in accordance with Nig. CARs Part 1.4

5.2 The applicant must make own case sufficiently compelling against the 2-fold test to justify the exemption request being granted.

1. Provide letter of Exemption Request.
2. Complete Exemption Request Form.
3. Make compelling case why the exemption should be granted.
4. Do this by addressing the 2 fold test and demonstrate by providing supporting argument on the following criteria:
 - a) How the exemption would be in the public interest and benefit the public as a whole; and



- b) How the exemption would not affect aviation safety.
5. Propose conditions to which the exemption would be subject that could mitigate any potential risk from being exempt from any regulatory requirement, and ensure that aviation safety would not be affected.
6. give detailed description of the alternative means by which the applicant will ensure a level of safety equivalent to that established by the Regulation in question.
7. provide a review and discussion of any known safety concerns with the requirement, including information about any relevant accidents or incidents of which the applicant is aware.
8. If the applicant seeks to operate under the proposed exemption outside of Nigerian airspace, the application must also indicate whether the exemption would contravene any provision of the Standards and Recommended Practices of the International Civil Aviation Organisation (ICAO).
9. Include fee in the amount required by Nig. CARs Schedule of Fees

5.3 Step 2: Exemption Request Technical Evaluation

The panel of Aviation Safety Inspectors (ASIs) must assess whether the applicant was able to successfully argue its case against the criteria set out in the 2 fold test.

1. Review exemption request material to ensure all necessary documentation has been provided. If not, await its provision before proceeding with the assessment.
2. Follow the process outlined in the Exemption Process (flow chart) and the Technical Evaluation paper.
3. Conduct the 2 fold test and assess whether the supporting argument provided by the applicant making the exemption request in fact demonstrates that the exemption, if granted, will:
 - a) be in the public interest and benefit the public as a whole; and
 - b) not affect aviation safety as contained in Nig. CARs Part.
4. Make a determination that after a technical evaluation that the applicant's proposal would provide a level of safety equivalent to that established by the Regulation;
 - (i) If it appears to the inspector(s) that a technical evaluation of the request would impose a significant burden on the Authority's technical resources, the inspector (s) may recommend a denial of



the exemption.

5. Make a determination, if the applicant seeks to operate under the exemption outside of Nigerian airspace, of whether a grant of the exemption would contravene the applicable ICAO Standards and Recommended Practices; and that the applicant must obtain approval from the foreign States to fly over or land within their territories under the exemption(s) granted.
6. Carry out an evaluation of comments received from interested parties concerning the proposed exemption.
7. Make a recommendation, based on the preceding elements, of whether the request should be granted or denied, and of any conditions or limitations that should be part of the exemption

5.4 Step 3: Exemption Disposition

Decide on the basis of the assessment findings completed in accordance with the 2-fold test whether or not to grant or refuse the exemption request.

- a) If the exemption request is refused, inform the applicant of the decision by letter and publish a detailed summary of the technical evaluation and decision to deny the request.
- b) If granted, finalize the conditions to which the exemption would be subject and proceed with the remainder of the exemption-granting process as described in more detail in the Exemption process (Figure 1: The Exemption Process flow chart). Note: A detailed summary of the technical evaluation and decision to grant the request must be published. The summary shall specify the duration of the exemption and any conditions or limitations to the exemption, including obtaining approval from the foreign States to fly over or land within their territories under the exemption(s) granted.
- c) If the request is for emergency relief, the application shall be published along with the Authority's decision as soon as possible after processing the application

5.5 Step 4: Legal Review of Exemption Document

- a) The Technical Evaluation Paper, Exemption Request Form, and draft exemption must first be signed off by the Lead Aviation Safety Inspector and the prior to the Legal Adviser review.
- b) Forward to Legal Adviser the Technical Evaluation Paper, attached Exemption Request Form, the draft exemption document, together with all of the supporting for review.



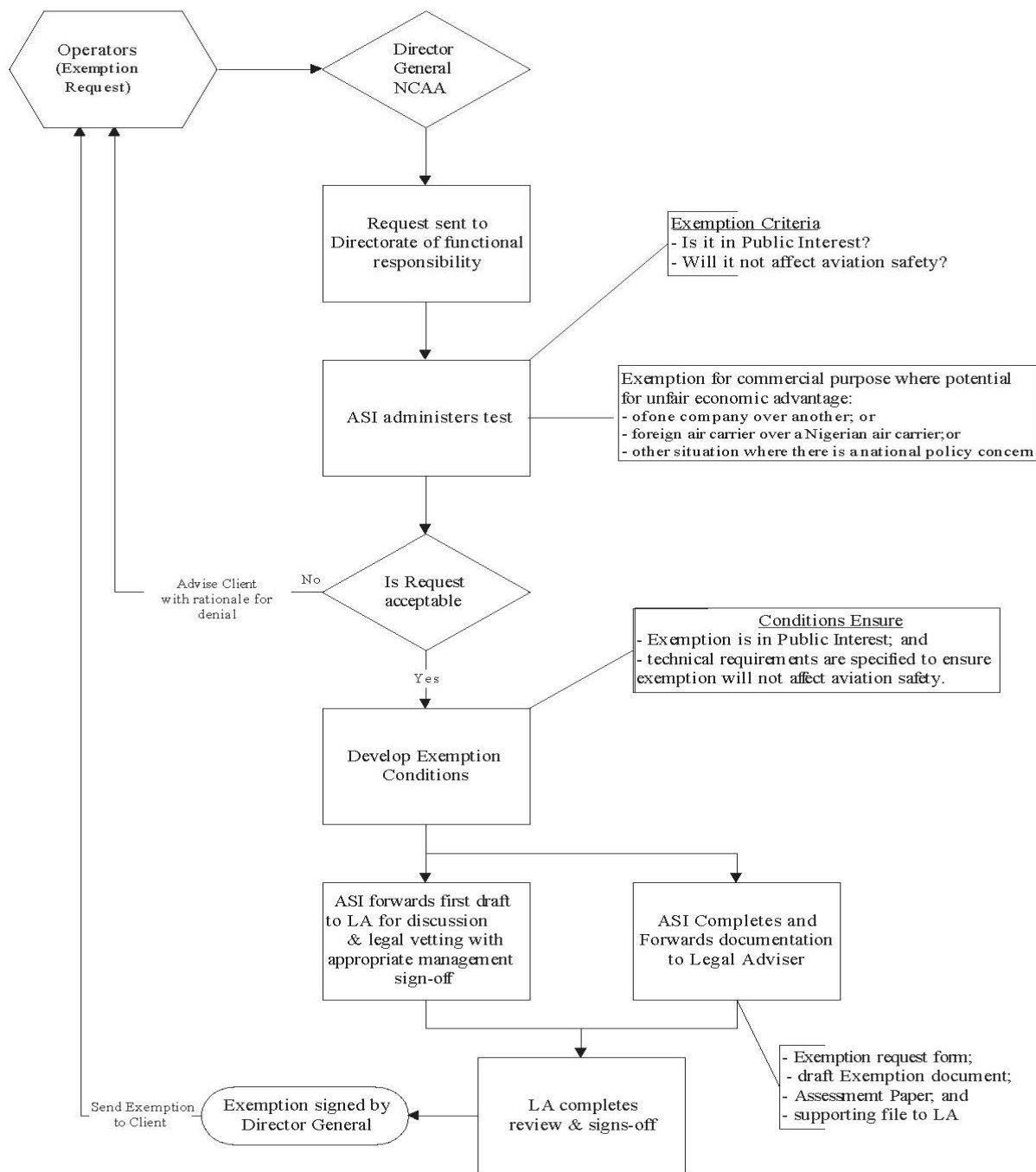
- c) Once the Legal Adviser has finalized the exemption document, the package is submitted for the Director General's signature, complete with memorandum from the functional Director to the Director General explaining the need for the exemption, Technical Evaluation Paper, and exemption document. All relevant Aviation Safety Inspectors (if appropriate) and the Legal Adviser must sign-off the documents before final signature by the Director General (N.B. the Legal Adviser signs off last before being forwarded by the functional Director to the Director General.)

5.6 Emergency Processing of Exemption Request

- a) Emergency processing of Exemption can only be granted in exceptional circumstances such as a major natural disaster, a large-scale emergency or an emergency to which a national emergency declaration relates, that requires the use of air transport or some other aviation activity in a way that is not reasonably possible in compliance with the regulations. NCAA can grant an exemption on its own initiative or on an application from Government or industry.
 - i. Example: The COVID-19 pandemic would have been an exceptional circumstance. In that case, airlines were granted relief on proficiency and recurrent training for their pilots due to unavailability/inaccessibility of Flight Simulation Training Devices (FSTD) as a result of restrictions imposed by States/Organisations; and allowed to use passenger configured airplanes for movement of cargo.
- b) An applicant who seeks emergency processing of an exemption request must submit the application which must contain supporting facts and reasons why the application was not timely filed, and the reason(s) it is an emergency. The responsible Director will urgently set up a panel of ASIs who will process the request and the panel of ASIs may deny an application if they find that the applicant has not justified the failure to apply in a timely fashion.



FIGURE 1 - THE EXEMPTION PROCESS (FLOW CHART)





6.0 ROLES AND RESPONSIBILITIES OF PARTIES INVOLVED IN EXEMPTION PROCESS.

- I. Applicant Making Exemption Request.
- II. Directorate of Functional Responsibility.
- III. Legal Adviser.

6.1 I. Applicant Making Exemption Request

1. Forward Letter of Request in compliance with Nig. CARs Part 1.4.3.2 to the Director General NCAA.
2. The Letter of Request should contain the following:
 - a) compelling arguments to support why the proposed exemption should be granted;
 - b) provide any information and documentation to support their argument that the exemption is:
 - i) in the public interest; and
 - ii) not likely to affect aviation safety.
3. Propose conditions that would mitigate any risk that could be created by virtue of the exemption to ensure that aviation safety will not be affected. Safety Risk Assessment must be attached.
4. Enclose fee payment made out to the NCAA in the amount specific in the Nig. CARs Schedule of fees.

6.2 II. Directorate of Functional Responsibility

1. The panel of ASIs set up by the Director must receive request & review that all necessary information has been provided.
2. Make a determination whether exemption is in the Public Interest.

Determination criteria:

- When an exemption request is for a commercial purpose that has potential for unfair economic advantage of one company over another, or a foreign air carrier over a Nigerian; or any other situation where social or economic policy issues of national concern may be implicated, if the exemption is granted.



3. The safety test should be performed first. Where the ASI believes that safety is clearly compromised, an exemption can be denied without determining if it is public interest.

N.B. Determining if in public interest is not expected for any issues that deal with individuals; i.e. personnel licences.

4. Forward to applicant making the request a letter of acknowledgment that their request has been received (and request further documentation, if required).
5. For planning purposes, coordinate the involvement of all relevant personnel (ASIs and Legal Adviser) in the process, as early as possible.
6. Conduct a technical assessment of the request and evaluate the arguments & evidence put forward by the applicant making the request, in accordance with the two-fold test and the safety risk assessment submitted by the applicant.
7. Step 1 – Start with the aviation safety test.
 - Question: Can an equivalent level of safety be maintained by the creation of conditions? If yes, draft conditions.

Step 2 - Conduct public interest test.

- Question: How is the granting of the exemption in the public interest?
 - Question: What factors should be considered in coming to this determination?
 - a) Identify the factors to consider
8. Document the decision-making process and assessment findings that resulted from the process outlined in points (6) and (7) above.
 9. Complete the Assessment Paper and record the justification to grant or deny the exemption. Indicate the summary status of this request.
 10. Determine the validity period or expiry date according to one of the following:
 - a) General Rule - Specific expiry date up to 18 months
 - b) Rule applicable for a regulatory amendment in progress
 - c) Rule applicable for Aircraft Certification



a) General Rule - Specific expiry date up to 18 months

The period extending from the date of signature to the specific expiry date set out in line a) under the Validity heading must not extend beyond 18 months.

For the expiry date, the date and the time, in that order, must be indicated clearly. The date is expressed “date, month, year”, (for example 25 June, 2017). The time is expressed in hours and minutes separated by a colon. Note that “00:01” is used for the beginning of the day and “23:59” is used for the

end of the day. Refrain from using “00:00” or “24:00” which could lead to ambiguity.

b) Rule applicable for a regulatory amendment in progress

6.4 Conditions for the rule to be applicable:

The Legal Adviser may consider recommending the issue of an exemption for which the validity period extends beyond the 18-month general rule when the following conditions have been met:

- i) a notice of proposed amendment (NPA) has been fully consulted at Civil Aviation Regulation Committee and is about to or has proceeded for legal drafting;
- ii) the proposed regulatory amendment will result in, upon coming into effect, an alleviation to the current Nig. CARs requirements;
- iii) the exemption will provide, upon coming into effect, an alleviation from the current Nig. CARs requirements;
- iv) the file contains an assessment paper or applicant’s Risk Assessment and a draft exemption that meet the criteria for supporting documents set out below;
- v) the responsible ASI has established a follow-up procedure to formally cancel the exemption if the NPA is withdrawn prior to its publication, and
- vi) the responsible ASI has established a follow-up procedure to formally cancel the exemption upon publication of the amendment.

6.5 Withdrawal of the NPA prior to its publication

Where the NPA is withdrawn prior to its final publication/Gazetting, the responsible ASI has to initiate the procedure to formally cancel the exemption.



Criteria for supporting documents

The supporting documents for an exemption issued where a regulatory amendment is in progress must meet the following criteria:

- i) the assessment paper must include a specific reference to the NPA number of the regulatory amendment and the NPA's status within the Regulations Committee consultation process
- ii) the assessment paper must provide a justification for an expiry date beyond the 18-month general rule; and
- iii) the exemption must include a validity clause which indicates that the exemption is in effect until the date on which an amendment modifying the subject-matter of the provisions identified in the exemption comes into effect.

III. Legal Adviser

1. Review file to ensure all necessary documentation, and supporting information on record.
2. Review file to ensure all steps in the process have been conducted.
3. Review file to ensure that the two elements of the 2-fold test have been addressed, and that the results are documented on the file.
4. When the exemption proposal has been approved to proceed, consult with the lead ASI as required in order to produce an exemption document that will withstand legal scrutiny.
5. If any issues of discord arise in the process, place such information on the record, as well as the means by which the issues were reconciled.
6. Be available for consultation throughout the entire process and assist those who so request.

7.0 PREPARATION OF THE EXEMPTION DOCUMENT

An exemption cannot be used to compel a person to do something the regulations themselves do not require. If, in the course of granting a person relief from a regulation the exemption actually imposes more onerous conditions than the regulation itself, that person always has the choice to not take advantage of the exemption. In this case, the person is expected to comply fully with the existing regulations and standards. Note that if the beneficiary of



the exemption does not comply with its conditions, the exemption becomes null and void and the person must then comply fully with the regulations.

Enforcement proceedings cannot be instituted against an exemption, but only against a regulation. Part 1.4 of the Nig. CARs authorizes the Director General to grant exemptions from the regulations, but it does not permit him/her to use this instrument to create completely new regulations. The Director General can exercise the exemption-granting authority to provide relief from an existing regulation, and can impose whatever conditions are needed to meet his/her responsibilities in ensuring that aviation safety is not affected, and that the exemption is in the public interest. Although these conditions may look like new regulations or standards, they are not. The conditions are the means by which any potential risk to aviation safety by allowing the exemption from the regulation is mitigated.

Although it is understood that an exemption is not an appropriate instrument by which to regulate, in the circumstance where a specified population representing a particular segment of industry seeks voluntary compliance to standards that were omitted or need expansion due to technological development, an exemption may be appropriate for the interim period required until such time as amendment to the Nig. CARs and related standards complete the regulatory-change process.

7.1 Things To Remember.

1. An exemption cannot be dated retroactively and is effective only from the date on which it is signed by the Director General.
2. An exemption cannot be written against a provision that imposes a duty on the Director General.
3. Exemption fees made in accordance with Schedule of fees in the Nig. CARs can only be waived by the Director General himself/herself.
4. The applicant being exempt has the choice to follow either the exemption, or the regulation.
5. However, once the choice is made to follow the exemption, the applicant must comply with its conditions.
6. If the applicant chooses not to follow the exemption, the regulation applies.
7. Enforcement can only be exercised against the regulation, not the exemption.



8. When an exemption is required from a standard that is incorporated by reference into a regulation, the exemption must be written against the regulation to the extent of its relationship to the standard.
9. If an exemption is being issued pursuant to a leasing arrangement, the lease should become an Appendix to the exemption document.
10. Never make promises to the applicant making the exemption request that (a) it will be granted, and (b) it will be granted by a certain time limit. The issuance of an exemption is a privilege and cannot be guaranteed, and the time required for the process to be completed will depend on many factors over which you may have no control.
11. After the applicant making the exemption request provides to the Authority the exemption request form, together with all the necessary supporting documentation, subject to the complexity of the issues, allow for approximately six (6) weeks for the exemption request to be processed and the exemption document legally vetted.

Checklist of Questions to Ask

1. What functional areas of responsibility are raised by the issues identified in the letter of exemption request?
2. Who are the parties involved making the request for an exemption?
3. Who is the appropriate official who has the authority to issue the exemption?
4. Why is the exemption necessary? What is the regulation preventing the applicant making the request for an exemption from doing?
5. What specific regulatory provision and/or standard linked to what regulatory provision is the exemption being written against?
6. Has the correct regulatory provision been identified?
7. Is the regulatory provision against which the exemption is being written an "offence-creating" regulation; i.e. with such words present as: "no person shall", or "the air applicant shall", or does it impose a duty on the Director General?
8. Are there any conditions that must first be met before the exemption will even apply?



9. Has the test for assessing the merits of the exemption request under the circumstances of your particular case been applied?
 - i) How is the exemption in the public interest? Identify criteria.
 - ii) How is aviation safety not likely be affected? Identify criteria.
10. The results of the test for assessing the merits of the exemption request and the criteria identified to support the arguments made by the applicant making the request then become the conditions of the exemption.
11. What time period do you want the exemption to be in effect? Or until what event, or series of events occur? (The maximum time period is between 12 to 18 months.)
12. If an exemption is considered further to a decision by the Lead ASI to change the regulation or associated standard, have you instituted steps to generate an NPA to the pertinent regulation and standard?
13. Where the policy pertaining to the specific regulatory amendment is amended after the NPA has completed the Regulations Committee consultation process, has a follow-up procedure been set up to formally cancel the exemption?
14. Once the NPA comes into effect, has a follow-up procedure been set up to formally cancel the exemption?



7.2 DOCUMENT FORMAT

Introduction

Note that an exemption as a legal document must contain certain essential elements of both substance and form to ensure its legal validity. By virtue of the fact that the exemption removes an applicant from complying with the requirements of a particular regulation, the exemption then becomes the “new legal regime”. The document must stand on its own and withstand legal scrutiny should circumstances unfold that would place the exemption in the public eye, and/or necessitate its revocation by the Director General. The following general guidelines hopefully will give assistance in drafting. However, depending upon the facts of any given situation or the legal nature of the issue, the Legal Adviser may have to make adjustments to the ultimate wording of the document.

General Structure

The exemption must be a stand-alone document and written on an independent sheet of paper. It must not be incorporated into a letter or other correspondence, nor include any extraneous information such as ordinary business matters. The document must speak exclusively to the exemption, its purpose, to whom it applies, the conditions that must be met in order for the exemption to come into effect, and the terms under which it will remain valid, and its expiry date.

Headings

The exemption should provide information under the following general headings, as appropriate:

1. **Introductory Paragraph** should identify the source of power to exempt under either Nig. CARs Part 1.4 (exemption), or the specific provision number of the regulation (authorisation) on the part of a person or corporation (name and address), with description of what is required by the exempted regulation.
2. **Purpose.** Explain why the exemption is necessary, and how the current regulatory structure is preventing the party from doing what is desired.
3. **Application.** The document must clearly indicate to whom or to what entity the exemption applies. All identifying particulars are to be included here; such as aircraft identification by manufacturer, type, model serial number, registration marks, AOC number, etc. Also included under this heading would be any requirements that must first be satisfied before the exemption can take effect.



4. **Conditions:** The terms and conditions of any exemption will vary depending on the facts of the situation. The terms of the exemption are those criteria that were identified during the public interest test and aviation safety test, and can be included here. It must be clear that the exemption is in effect only if the conditions are satisfied throughout the validity period of the exemption.
5. **Validity:** The validity section defines the term of the exemption, as well as identifies grounds for cancellation setting out a chronology of potential triggering events which would allow for the revocation of the exemption by the Director General should circumstances require it.
6. **Cancellation:** There may be a number of circumstances which give rise to the need to legally revoke the exemption. This must not be overlooked for there can be legal consequences if the document does not expire. For example, if an already-issued exemption requires some form of “amendment”, the exemption already in existence would need to be cancelled before the revised exemption could be reissued, otherwise two exemptions would have the same legal force and effect creating potential confusion should there be conflicting conditions. In addition, this could create a problematic effect should the Director General wish to revoke the exemption for breach of conditions where two exemptions and two sets of conditions co-exist.

This problem can be avoided by either including a cancellation clause at the bottom of the amended and reissued exemption, or issuing a stand-alone exemption cancellation document.

7. **Aeronautical Information Publication (AIP)**

If the exemption affects a significant population of the aviation community of Nigeria the Authority shall also publish the summary in its aeronautical information publications and if not the section shall be noted Not Applicable.

8. **Signature of Delegated Authority**

The signature line must state the date, the delegated official who is signing the document on behalf of the Director General (if applicable), as well as the person’s title.



EXEMPTION DOCUMENT	
	FEDERAL REPUBLIC OF NIGERIA
NIGERIA CIVIL AVIATION AUTHORITY	
<p>This exemption is granted by virtue of the powers conferred on the Authority by the Civil Aviation Act and Nigeria Civil Aviation Regulations Part 1.4.</p>	
Details of Applicant Seeking Exemption	Name: Address:
Specific requirements of the regulations for which exemption is being sought	
Purpose of Exemption	
Entity(ies) to whom Exemption applies	
Conditions and Limitation of the Exemption	
Validity of the Exemption	
Cancellation of previous Exemption (If any)	
Aeronautical Information Publication (AIP). If the exemption affects a significant population of the aviation community of Nigeria (If applicable)	
Date of issue:	Name: Signature:
Exemption Document No:	Title: Director General of Civil Aviation



EXEMPTION REQUEST FORM

FORM: AC-GEN012

1. Name/Company of Applicant:		2. Address of Applicant:	
2a. Mailing Address (if different):			
2b. Telephone:		2c. Email:	
3. Agent of Service (if applicable):			
4. Nig. CARs Provision(s):			
5. Technical Guidance Provision(s):			
6. Description of the type of operations to be conducted under the proposed exemption <small>(Attach sheets if necessary)</small>			
7. The proposed duration of the exemption:			
8. Have you considered the Public Interest if Exemption is granted? Yes No			
9. If Yes, What factors were considered in the determination of Public Interest? <small>(Attach sheets if necessary)</small>			
10. Have you considered the effect on Aviation Safety if Exemption is granted? Yes No			
11. If Yes, What factors were considered to make sure Aviation Safety is not affected? <small>(Attach sheets if necessary)</small>			
12. Proposed Conditions by Applicant to mitigate risks if Exemption is granted: <small>(Attach sheets of safety risk assessment)</small>			
13. Name of Authorised Person		14. Signature and Date	
For Official Use Only			
1. Are Considerations by Applicant for Public Interest and Aviation Safety Satisfactory? Yes No			
2. Based on the above, is it recommended that the Exemption be approved? Yes No			
3. Name of Inspector:..... Signature & Date:.....			
4. Recommending Directorate:			
5. Name of Director:..... Signature & Date:.....			
6. Has the Legal review been carried out and found satisfactory? Yes No			
7. Legal Remarks:			
8. Legal Adviser:..... Signature & Date:.....			