

CIVIL AVIATION AUTHORITY OF MALAYSIA BILL 2016

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i n t i t u l e d

An Act to establish and incorporate the Civil Aviation Authority of Malaysia, to provide for its functions and powers, and for matters connected therewith.

[]

ENACTED by the Parliament of Malaysia as follows:

PART I

PRELIMINARY

Short title and commencement

1. (1) This Act may be cited as the Civil Aviation Authority of Malaysia Act 2016.

(2) This Act comes into operation on a date to be appointed by the Minister by notification in the *Gazette*.

Interpretation

2. In this Act, unless the context otherwise requires—

“aerodrome” has the meaning assigned to it in the Civil Aviation Act 1969 [*Act 3*];

“aircraft” means a machine that can derive support in the atmosphere from the reactions of the air, other than the reactions of the air against the surface of the earth;

“cargo” has the meaning assigned to it in the Civil Aviation Act 1969;

“Chief Executive Officer” means the Chief Executive Officer of the Authority appointed under subsection 21(1);

“Fund” means the Civil Aviation Authority of Malaysia Fund established under section 26;

“airport” has the meaning assigned to in the Civil Aviation Act 1969;

“Minister” means the Minister charged with the responsibility for transport;

“Chairman” means the Chairman of the Authority appointed under subsection 5(1);

“Authority” means the Civil Aviation Authority of Malaysia established under section 3.

PART II

THE AUTHORITY

Establishment of the Authority

3. (1) A body corporate by the name of “Civil Aviation Authority of Malaysia” is established.

(2) The Authority shall have perpetual succession and a common seal.

(3) The Authority may sue and be sued in its corporate name.

(4) Subject to and for the purposes of this Act, the Authority may, upon such terms as the Authority thinks fit—

- (a) enter into contracts;
- (b) acquire, purchase, take, lease, hold, sell and enjoy any movable and immovable property of every description or any interest in such property vested in the Authority; and
- (c) convey, assign, surrender, yield up, charge, mortgage, demise, reassign, transfer or otherwise dispose of, or deal with, any movable or immovable property or any interest in such property vested in the Authority.

Common seal

4. (1) The Authority shall have a common seal which shall bear such device as the Authority shall approve and such seal may be broken, changed, altered or made anew as the Authority thinks fit.

(2) Until a seal is provided by the Authority, a stamp bearing the words “Civil Aviation Authority of Malaysia” may be used and shall be deemed to be the common seal of the Authority.

(3) The common seal of the Authority shall be kept in the custody of the Chairman or such other person as may be authorized by the Authority, and shall be authenticated by the Chairman or by such other person authorized by the Chairman in writing.

(4) All deeds, documents and other instruments purporting to be sealed with the common seal of the Authority and authenticated in accordance with subsection (3) shall, until the contrary is proved, be deemed to have been validly executed.

(5) Any deed, document and other instrument which, if executed by a person not being a body corporate, is not required to be under seal may in like manner be executed by a member of the Authority or employee of the Authority authorized in that behalf.

(6) The common seal of the Authority shall be officially and judicially noticed.

Membership of the Authority

5. (1) The Authority shall consist of the following members:

- (a) a Chairman who shall be appointed by the Minister;
- (b) one representative of the Ministry of Transport;
- (c) one representative of the Ministry of Finance;
- (d) not less than four but not more than six other members who shall be appointed by the Minister; and
- (e) the Chief Executive Officer who is an *ex-officio* member.

(2) The members appointed under paragraphs (1)(a) and (d) shall be fit and proper persons from among persons who, in the opinion of the Minister, have experience or shown capacity and professionalism in matters relating to civil aviation, administration or law or any other matters relevant to the functions of the Authority.

(3) In determining whether a person is a fit and proper person for the purposes of subsection (2), the Minister shall have regard to—

- (a) the probity, competence and soundness of judgment of the person in fulfilling his responsibilities as a member of the Authority; and
- (b) the diligence with which the person is likely to fulfill his responsibilities as a member of the Authority.

(4) No person shall be a member of the Authority if he—

- (a) currently holds office or employment in or relating to aviation;
- (b) is involved in any business or other activity carried on for the purpose of gain in or relating to aviation; or
- (c) is or becomes involved in any activity which may interfere with his independence in discharging his duties.

(5) Paragraph (4)(a) does not apply to the member specified under paragraph (1)(b).

(6) Any member of the Authority, other than members specified under paragraphs (1)(b) and (c), shall not, while being a member of the Authority, hold any other office or employment, whether remunerated or not without the prior written approval of the Minister.

(7) The Minister shall appoint a deputy chairman of the Authority from among the members appointed under paragraph (1)(d) if—

- (a) the office of the Chairman is vacant;
- (b) the Chairman is absent from duty or from Malaysia; or
- (c) the Chairman is, for any other reason, unable to perform the duties of his office.

Alternate members

6. (1) The Minister shall, in relation to each member appointed under paragraphs 5(1)(b) and (c), appoint a person to be an alternate member to attend, as an alternate to such member, meetings of the Authority when such member is unable to attend for any reason.

(2) An alternate member who attends the meetings of the Authority shall, for all purposes, be deemed to be a member of the Authority.

(3) An alternate member shall, unless he sooner resigns his office or his appointment is sooner revoked, cease to be an alternate member when the member in respect of whom he is an alternate member ceases to be a member of the Authority.

Tenure of office

7. (1) Subject to such conditions as may be specified in his instrument of appointment, a member of the Authority appointed under paragraph 5(1)(a) or (d) shall, unless he sooner resigns or vacates his office or his appointment is sooner revoked, hold office for a term not exceeding three years and is eligible for reappointment for a maximum period of one consecutive term.

(2) Where any member ceases to be a member of the Authority following the expiry of his reappointment under subsection (1) he shall not be reappointed as the member of the Authority within three years from the expiry of his reappointment under subsection (1).

Remuneration and allowances

8. (1) The Chairman shall be paid such remuneration and allowances as the Minister may determine.

(2) All other members of the Authority except the Chief Executive Officer shall be paid allowances at such rates as the Minister may determine.

Revocation of appointment and resignation

9. (1) The Minister may revoke the appointment of any member of the Authority appointed under paragraph 5(1)(a) or (d).

(2) A member of the Authority appointed under paragraph 5(1)(a) or (d) may, at any time, resign his office by giving a written notice of not less than fourteen days to the Minister.

Vacation of office

10. The office of a member of the Authority is vacated if—

(a) he dies;

(b) there has been proved against him, or he has been convicted on, a charge in respect of—

(i) an offence involving fraud, dishonesty or moral turpitude;

(ii) an offence under section 12 of this Act or any law relating to corruption; or

(iii) any other offence punishable with imprisonment (in itself only or in addition to or in lieu of a fine) for more than two years;

- (c) his conduct, whether in connection with his duties as a member of the Authority or otherwise, has been such as to bring discredit to the Authority;
- (d) he becomes a bankrupt;
- (e) he is of unsound mind or is otherwise incapable of discharging his duties;
- (f) in the case of the Chairman or a deputy chairman, he absents himself from three consecutive meetings of the Authority without leave in writing of the Minister;
- (g) in the case of a member of the Authority appointed under paragraph 5(1)(d), he absents himself from three consecutive meetings of the Authority without leave in writing of the Chairman; or
- (h) his appointment is revoked by the Minister under subsection 9(1).

Committees

11. (1) The Authority may establish any committee as it considers necessary or expedient to assist it in the performance of its functions.

(2) The Authority may elect any of its members to be the chairman of a committee.

(3) The Authority may appoint any person to be a member of a committee.

(4) A member of a committee shall hold office on such terms and conditions as may be specified in his letter of appointment and is eligible for reappointment.

(5) The Authority may revoke the appointment of any member of a committee.

(6) A member of a committee may, at any time, resign by giving a written notice of not less than fourteen days to the Authority and the chairman of the committee.

(7) The Authority may, at any time, discontinue or alter the constitution of a committee.

(8) A committee shall be subject to, and act in accordance with any direction given by the chairman of the committee and the Authority.

Disclosure of interest

12. (1) A member of the Authority or a committee who has or acquires a direct or indirect interest by himself, through a member of his family or his associate in relation to any matter under discussion by the Authority or committee shall disclose to the Authority or committee, as the case may be, the fact of his interest and the nature and extent of that interest.

(2) A disclosure under subsection (1) shall be recorded in the minutes of the meeting of the Authority or committee, as the case may be, in which the matter is discussed and, after the disclosure, the member—

(a) shall not be present or take part in any discussion or decision of the Authority or committee, as the case may be, about the matter; and

(b) shall be disregarded for the purpose of constituting a quorum of the Authority or committee, as the case may be,

when the matter is discussed or decided upon.

(3) A member of the Authority or a committee who fails to disclose his interest as provided under subsection (1) commits an offence and shall, on conviction, be liable to a fine not exceeding five hundred thousand ringgit or to imprisonment for a term not exceeding five years or to both.

(4) No act or proceedings of the Authority or a committee shall be invalidated on the ground that any member of the Authority or committee has contravened this section.

(5) For the purpose of this section—

“a member of his family”, in relation to a member of the Authority or a committee, includes—

- (a) his spouse;
- (b) his parent including a parent of his spouse;
- (c) his child including an adopted child or stepchild;
- (d) his brother or sister including a brother or sister of his spouse; and
- (e) a spouse of his child, brother or sister; and

“associate”, in relation to a member of the Authority or a committee, means—

- (a) a person who is a nominee or an employee of the member;
- (b) a firm of which the member or any nominee of his is a partner;
- (c) a partner of the member;
- (d) a trustee of a trust under which the member or a member of his family is a beneficiary; or
- (e) any corporation within the meaning of the Companies Act 1965 [*Act 125*], of which or in which the member or any nominee of his or a member of the member’s family is a director or has a substantial shareholding.

Schedule

13. The provisions of the Schedule shall apply to the members of the Authority and the members of a committee appointed under section 11.

Code of conduct

14. (1) The Authority shall, subject to the approval by the Minister, prescribe a code of conduct to be observed by the members of the Authority and the members of a committee to the extent and in such manner as it considers appropriate.

(2) The members of the Authority and the members of a committee shall comply with the provisions prescribed in the code of conduct.

(3) If it comes to the knowledge of any person that there is a breach of the code of conduct, the person shall refer the matter to the Disciplinary Panel.

(4) Any person who contravenes subsection (3) commits an offence and shall, on conviction, be liable to a fine not exceeding one hundred thousand ringgit or to imprisonment for a term not exceeding three years or to both.

Disciplinary Panel and disciplinary proceedings

15. (1) The Disciplinary Panel shall consist of the following persons:

- (a) in the case of disciplinary proceedings against any member of the Authority, three persons to be appointed by the Minister; or
- (b) in the case of disciplinary proceedings against any member of a committee, three persons to be appointed by the Chairman.

(2) The appointment of the members of the Disciplinary Panel shall be on an *ad hoc* basis.

(3) Upon receipt of the matter under subsection 14(3), the Disciplinary Panel shall—

- (a) inform the member of the Authority or a committee in writing of the acts of the alleged breach of the code of conduct; and

- (b) give the member of the Authority or the committee an opportunity to make a written representation within a period of thirty days from the date he is informed of the alleged breach of the code of conduct.

(4) If, after considering the member of the Authority's or the committee's representation, if any, the Disciplinary Panel finds that—

- (a) there is no merit in the matter, the Disciplinary Panel shall dismiss the matter and notify the Authority and the member of the Authority or the committee of its decision; or
- (b) there is merit in the matter, invite the member of the Authority or the committee to appear before the Disciplinary Panel to be heard.

(5) If, after due consideration of the representation made by the member of the Authority or the committee who appears before the Disciplinary Panel pursuant to paragraph (4)(b), the Disciplinary Panel is satisfied that—

- (a) the breach is proven, the Disciplinary Panel may recommend to the Minister or the Authority, as the case may be, that the member of the Authority or the committee be removed from being a member; or
- (b) the breach is not proven, the Disciplinary Panel shall dismiss the matter.

(6) After receiving the recommendation of the Disciplinary Panel under paragraph (5)(a), the Minister or the Authority, as the case may be, shall revoke the appointment of the member of the Authority or the committee and impose a financial penalty of not less than ten thousand ringgit and not more than five hundred thousand ringgit.

PART III

FUNCTIONS AND POWERS OF THE AUTHORITY

Functions of the Authority

- 16.** (1) The functions of the Authority are—
- (a) to ensure that the provisions of this Act, the Civil Aviation Act 1969 and any subsidiary legislation made under the Civil Aviation Act 1969 are administered, enforced, given effect to, carried out and complied with;
 - (b) to regulate the safety and security of the civil aviation including the establishment of standards and their enforcement;
 - (c) to safeguard civil aviation against any acts of unlawful interference;
 - (d) to exercise safety regulatory oversight of the civil aviation in Malaysia and outside Malaysia;
 - (e) to regulate the operation of aerodrome and the provision of aerodrome services and facilities in Malaysia;
 - (f) to provide air navigation services within the Kuala Lumpur and Kota Kinabalu Flight Information Regions and such other area as the Minister may authorize;
 - (g) to provide or co-ordinate search and rescue services to aircraft in distress within the Kuala Lumpur and Kota Kinabalu Search and Rescue Regions and such other area as the Minister may authorize;
 - (h) to co-operate with any authority in charge of investigation of aircraft accident and serious incident;
 - (i) to encourage, promote, facilitate and assist in the development and improvement of civil aviation capabilities, skills and services in Malaysia;
 - (j) to provide technical and consultancy services relating to civil aviation;

- (k) to represent the Government internationally in respect of matters relating to civil aviation;
- (l) to discharge or facilitate the discharge of international obligations of the Government in respect of civil aviation;
- (m) to promote education and training in respect of any matter relating to civil aviation;
- (n) to advise the Government on all matters relating to civil aviation;
- (o) to encourage the understanding of civil aviation policies and programmes;
- (p) to encourage research and development on any matter relating to civil aviation;
- (q) to encourage the development of airways, aerodrome and air navigation facilities for civil aviation;
- (r) to carry out such other functions and duties as are conferred or imposed on the Authority under this Act, the Civil Aviation Act 1969 and any subsidiary legislation made under the Civil Aviation Act 1969; and
- (s) to perform any other functions that are incidental or consequential to any of its functions under this Act.

(2) The Authority in performing its functions shall have regard to any international agreement to which Malaysia is a party and shall not act contrary to the international obligation or the interest of Malaysia.

(3) For the purposes of this section—

- (a) “controlled area” has the meaning assigned to it in the Civil Aviation Act 1969;

(b) “aerodrome services and facilities” means the services and facilities provided—

(i) to enable the landing and taking off of aircraft such as the provisions of the following services and facilities within such areas:

(A) runways, taxiways, parking aprons and parking stands for aircraft facilities;

(B) aerodrome visual aids and non-visual aids facilities;

(C) maintenance and repair of runways, taxiways, parking aprons for aircraft, aerodrome visual aids and aerodrome non-visual aids;

(D) rescue and fire fighting services;

(E) apron control services;

(F) hazard and environmental management services; and

(G) supervisory and security services;

(ii) to enable within certain areas of an airport the servicing and maintenance of aircraft and the handling of cargo carried or to be carried by aircraft such as the provisions of the following services and facilities within such areas:

(A) hangars facilities;

(B) maintenance and refueling of aircraft and waste disposal services;

(C) storing and processing of cargo facilities; and

(D) security, customs and quarantine services for cargo;

- (iii) in relation to aircraft passengers in an airport such as the provisions of the following services and facilities:
 - (A) aerobridges, passenger thoroughfares and seating areas facilities;
 - (B) flight information and public address systems facilities;
 - (C) flight catering services and facilities;
 - (D) services and facilities for the operation of customs, immigration, and quarantine checks and control;
 - (E) services and facilities for the operation of security and police services; and
 - (F) services and facilities provided in a passenger terminal to enable the check-in and screening of passengers, including services for baggage handling and screening; and
 - (iv) at or from an airport for such purposes in connection with or incidental to the operation of the airport;
- (c) “air navigation services” means services provided to air traffic during all phases of operations and includes—
- (i) air traffic control service for arrival or departure of controlled flights, for controlled flights in controlled areas or for traffic within any manoeuvring area and other aerodrome traffic or any other air traffic control services;
 - (ii) air traffic advisory services provided within advisory airspace to ensure separation, in so far as practical, between aircraft which are operating on flight plans in accordance with instrument flight rules;

- (iii) flight information services;
 - (iv) alerting services provided to notify appropriate organisations regarding aircraft in need of search and rescue aid, and to assist such organisations as may be required;
 - (v) communications, navigation and surveillance services;
 - (vi) meteorological services for air navigation;
 - (vii) search and rescue services;
 - (viii) aeronautical information services for the provision of aeronautical information and data necessary for the safety, regularity and efficiency of air navigation;
 - (ix) cartography services for air navigation; and
 - (x) procedure for air navigation services;
- (d) “Kuala Lumpur and Kota Kinabalu Flight Information Regions” means the airspace within which air navigation services are provided by the Authority in accordance with the International Civil Aviation Organization Regional Supplementary Procedure; and
- (e) “Kuala Lumpur and Kota Kinabalu Search and Rescue Regions” means the search and rescue regions as may be determined by the Chief Executive Officer.

Powers of the Authority

17. (1) The Authority shall have the power to do all things necessary or expedient for or in connection with the performance of its functions.

(2) Without prejudice to the generality of subsection (1), the powers of the Authority shall include the power—

- (a) to carry out all activities which appears to the Authority to be requisite, advantageous or convenient for or in connection with the performance of its functions;

- (b) to co-operate or act in association with any government agency, authorities, any company or corporation, or any body or person whether local or foreign for the purposes of exercising its functions and powers under this Act;
- (c) to require the furnishing of information by the stakeholder in the civil aviation industry to assist the Authority in the performance of its functions;
- (d) to utilize all the property of the Authority, movable and immovable, in such manner as the Authority thinks expedient including the raising of loans by mortgaging such property;
- (e) to publish and disseminate information about matters relevant to the functions of the Authority;
- (f) to appoint or engage such agents, experts or consultants as it deems fit to assist the Authority in the performance of its functions;
- (g) to grant loans, scholarships and advances to employees of the Authority;
- (h) to impose fees, costs, or any other charges as it thinks fit in relation to any activity or services rendered by the Authority, or usage of the property or facilities of the Authority and to collect and receive money in respect thereof; and
- (i) to do anything incidental to any of its functions under this Act.

Direction by Minister

18. (1) The Authority shall be responsible to the Minister.

(2) The Minister may give to the Authority directions of a general character consistent with the provisions of civil aviation laws relating to the performance of the functions and powers of the Authority and the Authority shall give effect to such direction.

Delegation of powers

19. (1) The Authority may, in writing, delegate its powers which relate to administrative matters to—

(a) any member of the Authority; or

(b) a committee established under section 11.

(2) Any member of the Authority or committee delegated with such powers under subsection (1) shall be bound to observe and have regard to all conditions and restrictions imposed by the Authority and all requirements, procedures and matters specified by the Authority.

(3) Any power delegated under this section shall be exercised in the name and on behalf of the Authority.

(4) A delegation under this section shall not preclude the Authority itself from exercising at any time any of the delegated powers.

Validity of acts and proceedings

20. No acts done or proceedings taken under this Act shall be questioned on the ground of—

(a) any vacancy in the membership of or any defect in the constitution of the Authority; or

(b) any omission, defect or irregularity not affecting the merits of the case.

PART IV**EMPLOYEES OF THE AUTHORITY****Chief Executive Officer**

21. (1) The Minister may, upon the recommendation of the Authority, appoint any person who in the opinion of the Minister has skills or expertise in civil aviation matters to serve as the Chief Executive Officer on such conditions as the Minister thinks fit.

(2) The Chief Executive Officer—

- (a) shall be known by such other designation as the Authority may determine;
- (b) shall be an employee of the Authority; and
- (c) shall be responsible for the overall administration and management of the functions and the day-to-day affairs of the Authority.

(3) The Chief Executive Officer shall have general control of the employees of the Authority.

(4) The Chief Executive Officer shall perform such further duties as the Authority may from time to time direct.

(5) In discharging his duties, the Chief Executive Officer shall act under the general authority and direction of the Authority which shall be consistent with this Act.

Temporary exercise of functions of the Chief Executive Officer

22. The Authority may appoint any employee of the Authority to act as the Chief Executive Officer during any period when—

- (a) the office of the Chief Executive Officer is vacant;
- (b) the Chief Executive Officer is absent from duty or from Malaysia; or
- (c) the Chief Executive Officer is, for any other reason, unable to perform the duties of his office.

Appointment of employees

23. The Authority may, upon the recommendation of the Chief Executive Officer, appoint and employ such number of employees as the Authority thinks desirable and necessary and upon such terms as it considers appropriate.

Conditions of service, discipline and surcharge

24. (1) The Authority may determine the conditions of service of its employees.

(2) The Statutory Bodies (Discipline and Surcharge) Act 2000 [Act 605] shall apply to the employees of the Authority.

Payment of retirement benefits, etc.

25. The Authority may make arrangements for the payment to its employees and their dependants such retirement benefits, gratuities and other allowances as the Authority may determine.

PART V

FINANCIAL PROVISIONS

Civil Aviation Authority of Malaysia Fund

26. (1) A fund to be known as the “Civil Aviation Authority of Malaysia Fund” is established and shall be administered and controlled by the Authority.

(2) The Fund shall consist of—

- (a) such sums as may be provided from time to time by the Parliament for the purposes of this Act;
- (b) all or any part of fees, costs, financial penalties and other charges imposed by or payable to the Authority under this Act, the Civil Aviation Act 1969 and any subsidiary legislation made under the Civil Aviation Act 1969;
- (c) all monies derived from the sale, disposal, lease or hire of, or any other dealings with, any property, mortgages, charges or debentures vested in or acquired by the Authority;
- (d) any monies borrowed by the Authority under section 31;

- (e) such sums as may be paid to the Authority from time to time for loans made by the Authority;
- (f) all monies derived as income from capital-guaranteed investment by the Authority; and
- (g) all other monies and property lawfully received by the Authority, including interest.

Expenditure to be charged on the Fund

27. The Fund shall be expended for the following purposes:

- (a) paying any expenditure lawfully incurred by the Authority;
- (b) paying the remuneration, allowances, reimbursement and other expenses of the members of the Authority, members of the committees and employees of the Authority, including the granting of loans and advances, superannuation allowances, retirement benefits and gratuities;
- (c) paying any other expenses, fees, costs, expenditure, grants or payments lawfully incurred or accepted by the Authority in the performance of its functions or the exercise of its powers, including legal fees and costs;
- (d) purchasing or hiring equipment, machinery and any other materials, acquiring land and other assets, erecting buildings and carrying out any other works and undertakings in the performance of its functions or the exercise of its powers;
- (e) repaying moneys borrowed under section 31 and the interest due on such moneys; and
- (f) generally, paying or expending any expenses for carrying into effect the provisions of this Act, the Civil Aviation Act 1969 and any subsidiary legislation made under the Civil Aviation Act 1969.

Conservation of the Fund

28. It shall be the duty of the Authority to conserve the Fund by so performing its functions and exercising its powers under this Act as to secure that the total revenues of the Authority are sufficient to meet all sums properly chargeable to its revenue account for every financial year, including depreciation and interest on capital.

Expenditure and preparation of estimates

29. (1) The Chief Executive Officer shall, not later than one month before the commencement of each financial year, in a meeting of the Authority, lay before the Authority an estimate of the expenditure of the Authority (including capital expenditure) for the ensuing year in such detail and form as the Authority may determine.

(2) A copy of the estimates referred to in subsection (1) shall be sent to each member of the Authority not less than fourteen days before the estimates are laid.

Bank accounts

30. The Authority shall open and maintain an account or accounts with such financial institutions in Malaysia as the Authority thinks fit, and every such account shall be operated upon in such manner as may be authorized by the Authority for such purpose from time to time.

Power to borrow

31. (1) The Authority may, from time to time, borrow in such form and on such terms as may be approved by the Minister, with the concurrence of the Minister of Finance, any money required by the Authority for meeting any of its obligations or discharging any of its functions or exercising its powers under this Act, the Civil Aviation Act 1969 or any subsidiary legislation made under the Civil Aviation Act 1969.

(2) The Authority shall ensure the power to borrow exercised under subsection (1) shall not prejudice the independency of the Authority in performing its functions and exercising its powers under this Act, the Civil Aviation Act 1969 and any subsidiary legislation made under the Civil Aviation Act 1969.

Investment

32. (1) The moneys of the Fund, insofar as they are not required to be expended by the Authority under this Act, may be placed in such capital-guaranteed investments as the Minister may, with the concurrence of the Minister of Finance, approve.

(2) The Authority shall ensure the investment under subsection (1) shall not prejudice the independency of the Authority in performing its functions and exercising its powers under this Act, the Civil Aviation Act 1969 and any subsidiary legislation made under the Civil Aviation Act 1969.

Financial procedure

33. The authority shall determine its own financial procedure and may adopt with such modifications as it deems fit any regulations, rules, policies, circulars and directives made or issued by the Government on financial procedure.

Financial year

34. The financial year of the Authority shall begin on 1 January and end on 31 December of each year.

Accounts and annual reports

35. (1) The Authority shall cause proper accounts of the Fund and proper reports of its activities to be kept and shall, as soon as practicable after the end of each financial year, cause to be prepared for that financial year—

- (a) a statement of accounts of the Authority which shall include a balance sheet and an account of income and expenditure; and

(b) a statement of its activities.

(2) The Authority shall cause the statement of accounts to be audited by any independent auditor appointed by the Authority.

(3) The Authority shall as soon as possible send a copy of the statement of accounts certified by the auditors, a copy of the reports of its activities and a copy of the auditors' report to the Minister who shall cause such statement and report to be laid before both Houses of Parliament.

(4) The Statutory Bodies (Accounts and Annual Reports) Act 1980 [*Act 240*] shall apply to the Authority.

Power to establish companies

36. The Authority may, with the approval of the Minister and the concurrence of the Minister of Finance, establish companies under the Companies Act 2016 to carry out and have the charge on or engage in any project, scheme or enterprise which has been planned or undertaken by the Authority in the performance of its functions or the exercise of its powers under this Act.

PART VI

GENERAL

Public servant

37. All members of the Authority and any of its committees, and employees or agents of the Authority while discharging their duties or performing their functions or exercising their powers under this Act, the Civil Aviation Act 1969 or any subsidiary legislation made under the Civil Aviation Act 1969 as such members, employees or agents shall be deemed to be public servants within the meaning of the Penal Code [*Act 574*].

Public Authorities Protection Act 1948

38. The Public Authorities Protection Act 1948 [*Act 198*] shall apply to any action, suit, prosecution or proceedings against the Authority, any member of the Authority, any member of a committee and any employee or agent of the Authority in respect of any act, neglect or default done or committed by him in good faith or any omission omitted by him in good faith in such capacity.

Protection from personal liability

39. No member of the Authority, member of a committee, employee or agent of the Authority shall incur any personal liability for any loss or damage caused by any act or omission in the management conduct of the affairs of the Authority or the performance of its functions or exercise of its powers under this Act, the Civil Aviation Act 1969 or any subsidiary legislation made under the Civil Aviation Act 1969 unless such loss or damage is occasioned by an intentionally wrongful act or omission on his part.

Protection against suit and legal proceedings

40. (1) No action, suit, prosecution or other proceedings shall lie or be brought, instituted or maintained in any court or before any other authority against—

(a) the Authority;

(b) any member, committee, employee, agent of the Authority;
or

(c) any other person lawfully acting on behalf of, or in compliance with instructions of the Authority,

for or on account of, or in respect of, any act done or statement made or omitted to be done or made, or purporting to be done or made or omitted to be done or made, in pursuance or in execution of, or intended pursuance of or execution of, this Act, the Civil

Aviation Act 1969 or any subsidiary legislation made under the Civil Aviation Act 1969, or any notice, circular, requirement, directive or information or other thing issued under this Act, the Civil Aviation Act 1969 or any subsidiary legislation made under the Civil Aviation Act 1969, if such act or statement was done or made, or was omitted to be done or made, in good faith.

(2) Subsection (1) shall be in addition to, and not in derogation of, the Public Authorities Protection Act 1948, and for the purposes of that Act, every person mentioned in subsection (1) shall be deemed to be a public officer or a person appointed or employed in the performance of a public duty.

Representation in civil proceedings

41. Notwithstanding any other written law —

- (a) in any civil proceedings by or against the Authority;
- (b) in any civil proceedings against any employee of the Authority in relation to the performance of his functions under this Act, the Civil Aviation Act 1969 or any subsidiary legislation made under the Civil Aviation Act 1969; or
- (c) in any other civil proceedings in which the Authority is required or permitted by the court to be represented, or to be heard, or is otherwise entitled to be represented or to be heard,

any person authorized by the Authority for that purpose may, on behalf of the Authority or the said employee, institute such proceedings or appear in such proceedings and may make all appearances and applications and do all acts in respect of the proceedings on behalf of the Authority or employee.

Obligation of secrecy

42. (1) Except for any of the purposes of this Act or for the purposes of any civil or criminal proceedings under any written law or where otherwise authorized by the Authority—

(a) no member of the Authority or any of its committees or any employee or agent of the Authority or any person attending any meeting of the Authority or any of its committees, whether during or after his tenure of office or employment, shall disclose any information obtained by him in the course of his duties and which is not published in pursuance of this Act, the Civil Aviation Act 1969 or any subsidiary legislation made under the Civil Aviation Act 1969; and

(b) no other person who has by any means access to any information or document relating to the affairs of the Authority shall disclose such information or document.

(2) Any person who contravenes subsection (1) commits an offence and shall, on conviction, be liable to a fine not exceeding one million ringgit or to imprisonment for a term not exceeding five years or to both.

Power to amend Schedule

43. The Minister may, upon the recommendation of the Authority, amend the Schedule by order published in the *Gazette*.

Things done in anticipation of the enactment of this Act

44. All acts and things done by any person or authority on behalf of the Authority in preparation for or in anticipation of the enactment of this Act and any expenditure incurred in relation thereto shall be deemed to have been authorized under this Act, provided that the acts and things done are consistent with the general intention and purposes of this Act; and all rights and obligations acquired or incurred as a result of the doing of those acts or things including any expenditure incurred in relation thereto shall, upon the coming into operation of this Act, be deemed to be the rights and obligations of the Authority.

PART VII

VESTING PROVISION

Vesting provision

45. (1) Subject to this Act, the Minister may, from time to time, by order published in the *Gazette*, appoint a vesting date and on such date all properties, rights, interests, obligations and liabilities of the Government specified by the Minister in such order shall, by virtue of this Act, be transferred to and vested in the Authority without any conveyance, assignment or transfer.

(2) Every property, right, interest, obligation and liability transferred to and vested in the Authority by virtue of subsection (1) shall be so transferred to and vested in the Authority for the like title, estate or interest and on the like tenure as the property, right, interest, obligation and liability were vested or held immediately before the vesting date.

(3) Every chose in action vested in the Authority by virtue of subsection (1) may, on and after the vesting date, be sued on, recovered or enforced by the Authority in its own name and it shall not be necessary for the Authority or the Government to give notice—

(a) to the person bound by the chose in action of; or

(b) to the person whose right, interest, obligation or liability is affected by,

the vesting effected under subsection (1).

(4) Any pending legal proceedings by or against the Government which relates to any property, right, interest, obligation and liability transferred to and vested in the Authority by virtue of subsection (1) may, on and after the vesting date, be continued by or against the Authority.

(5) In the case of rights, interests, obligations and liabilities arising under any loan which are vested in the Authority on the vesting date, the Authority may enter into such agreements or arrangements over such rights, interests, obligations and liabilities with the Government or any other person.

(6) Where by virtue of subsection (1), any property is transferred to and vested in the Authority, the provisions of Part Thirty of the National Land Code 1965 [*Act 56 of 1965*] shall, for the purpose of effecting the registration of such vesting, apply to the Authority.

(7) On and after the vesting date, any agreement, deed or other arrangement relating to any property, right, interest, obligation and liability transferred to and vested in the Authority under subsection (1) to which the Government was a party immediately before the vesting date, whether in writing or not, and whether or not of such a nature that property, right, interest, obligation and liability under the agreement, deed or other arrangement, as the case may be, could be assigned by the Government, shall have effect as if the Authority had been a party to such agreement, deed or other arrangement.

(8) In this section, “vesting date” means the date appointed by the Minister under subsection (1).

SCHEDULE

[Section 13]

THE AUTHORITY

Meetings of the Authority

1. (1) The Authority is to hold as many meetings as are necessary for the efficient performance of its functions and such meetings are to be held at such times and places as Chairman may determine.

(2) The Authority shall ensure that there shall be not less than one meeting in every month.

(3) At any meeting of the Authority, five members shall form a quorum.

(4) The Chairman shall preside at a meeting of the Authority.

(5) Notwithstanding subparagraph (4), if for any reason the Chairman is unable to attend a meeting of the Authority, any of the member of the Authority or deputy chairman shall exercise the powers of the Chairman during the absence of the Chairman.

(6) In the event that both the Chairman and deputy chairman are unable to attend a meeting of the Authority, the remaining members of the Authority shall elect from among themselves a person to preside over the meeting and the person elected shall have all the powers of the Chairman for the purpose of and for the duration of that meeting.

(7) If on any question to be determined by the Authority, there is an equality of votes, the Chairman shall have a casting vote in addition to his deliberative vote.

(8) Every member present at a meeting of the Authority, except the Chief Executive Officer, shall be entitled to one vote.

Invitation to others to attend meetings

2. (1) The Authority may invite any person to attend any meeting or discussion of the Authority for the purpose of advising it on any matter under discussion but any person so attending shall have no right to vote at the meeting or discussion.

(2) Any person invited to attend any meeting or discussion of the Authority under subparagraph (1) may be paid such allowances and other expenses as may be determined by the Authority.

Resolutions without meetings

3. (1) A resolution is taken to have been passed at a meeting if—

- (a) all members of the Authority have been informed of the proposed resolution, or reasonable efforts have been made to inform all members of the Authority of the proposed resolution; and
- (b) without meeting, all of the members of the Authority indicate agreement with the resolution in accordance with the method determined by the Authority under subparagraph (2).

(2) Subparagraph (1) applies only if the Authority—

- (a) decides that the subparagraph applies; and
- (b) decides the method by which members of the Authority are to indicate agreement with the resolutions.

Minutes

4. (1) The Authority shall cause minutes of all its meetings to be maintained and kept in a proper form.

(2) The minutes of meetings of the Authority, if duly signed, shall in any legal proceedings be admissible as *prima facie* evidence of the facts stated in the minutes without further proof.

(3) Every meeting of the Authority in respect of the proceedings of which minutes have been made in accordance with subparagraphs (1) and (2) shall be deemed to have been duly convened and held and all members at the meeting to have been duly qualified to act.

Procedure

5. Subject to this Act, the Authority may regulate its own procedure.

Member of the Authority to devote time to business of the Authority

6. Every member of the Authority shall devote such time to the business of the Authority as may be necessary to discharge his duties effectively.

THE COMMITTEE

Meetings

1. (1) The committee is to hold as many meetings as are necessary for the efficient performance of its functions and such meetings are to be held at such times and places as the chairman of the committee may determine.

(2) The chairman of the committee shall preside at a meeting of the committee.

Invitation to others to attend meetings

2. (1) The committee may invite any other person to attend any meeting or discussion for the purpose of advising it on any matter under discussion, but that person shall not be entitled to vote at the meeting.

(2) Any person invited to attend any meeting or discussion under subparagraph (1) may be paid such allowances and other expenses as the Authority may determine.

Minutes

3. (1) Every committee shall cause minutes of all their meetings to be maintained and kept in a proper form.

(2) A committee shall cause copies of the minutes of all its meetings to be signed and submitted to the Authority as soon as practicable.

(3) Any minutes made of meetings of the committee shall, if duly signed, be admissible in evidence in all legal proceedings without further proof.

(4) Every meeting of the committee in respect of the proceedings of which minutes have been made in accordance with subparagraphs (1) and (2) shall be deemed to have been duly convened and held and all members thereat to have been duly qualified to act.

Procedure

4. Subject to this Act, the committee may regulate its own procedure.

EXPLANATORY STATEMENT

The Civil Aviation Authority of Malaysia Act 2016 (“the proposed Act”) seeks to establish a statutory body by the name of “Civil Aviation Authority of Malaysia” (“the Authority”) of which the primary function is to regulate the safety and security of civil aviation.

Now the functions of the Authority as specified in the proposed Act are carried out by the Department of Civil Aviation (“DCA”) which is a government department. Therefore this Act is proposed to incorporate DCA to be a statutory body by the name of Civil Aviation Authority Malaysia. This is in line with the requirement of the International Civil Aviation Organization (“ICAO”) which has called upon the contracting states to the Chicago Convention to establish an autonomous civil aviation authority to ensure efficient management of the safety and security of the civil aviation.

With the establishment of this Authority as a statutory body, the Authority will have greater flexibility to attract and retain qualified technical personnel in matters relating to civil aviation to ensure that the national and international obligations of Malaysia in matters relating to civil aviation can be carried out, and the universal safety and security standards and requirements in civil aviation are implemented, complied with and well-maintained.

PART I

2. Part I of the proposed Act deals with preliminary matters.

3. *Clause 1* contains the short title of the proposed Act and empowers the Minister to appoint the date of coming into operation of the proposed Act.

4. *Clause 2* contains the definitions of certain words and expressions used in the proposed Act.

PART II

5. Part II of the proposed Act contains provisions relating to the establishment of the Authority.

6. *Clause 3* seeks to provide for the establishment of the Authority as a body corporate with perpetual succession and a common seal.

7. *Clause 4* seeks to provide for the common seal of the Authority and the manner in which the seal shall be used and kept.

8. *Clause 5* seeks to provide for the appointment of the members of the Authority including the appointment of a deputy chairman, and the criteria for membership of the Authority.

9. *Clause 6* deals with the appointment of alternate members to the Authority.

10. *Clause 7* deals with the tenure of office of the members of the Authority appointed under paragraphs 5(1)(a) and (d) of the proposed Act.

11. *Clause 8* provides for the payment of remuneration and allowances to the members of the Authority.

12. *Clause 9* contains the provisions on the revocation of appointment and resignation of members of the Authority appointed under paragraphs 5(1)(a) and (d) of the proposed Act.

13. *Clause 10* sets out the circumstances in which the office of a member of the Authority becomes vacant.

14. *Clause 11* contains the provisions relating to the establishment of a committee by the Authority as the Authority considers necessary to assist it in the performance of its functions. This *clause* also contains provisions on the appointment and revocation of appointment of the members of the committee, the allowances paid to the members of the committee and that the committee shall be subject to, and act in accordance with, any directions given by the chairman of the committee and the Authority.

15. *Clause 12* contains provision requiring a member of the Authority or any committee to disclose his interest in any matter under discussion by the Authority or committee. Non-disclosure is an offence and is subject to penalty.

16. *Clause 13* provides for the application of the provisions of the Schedule to the members of the Authority and any committee established by the Authority.

17. *Clause 14* seeks to provide for the code of conduct which is to be observed by the members of the Authority and the members any committee established by the Authority.

18. *Clause 15* seeks to provide for a disciplinary panel that shall carry out disciplinary proceedings in the event of any breach of the code of conduct.

PART III

19. Part III of the proposed Act deals with the functions and powers of the Authority.

20. *Clauses 16* and *17* set out the functions and powers of the Authority.

21. *Clause 18* seeks to allow the Minister to give to the Authority directions of a general character consistent with the provision of the civil aviation law relating to the performance of the functions and the exercise of the powers of the Authority and the Authority shall give effect to such direction.

22. *Clause 19* allows the Authority to delegate its powers which relates to administrative matters to a member of the Authority or to a committee established by the Authority.

23. *Clause 20* seeks to provide that no acts done or proceedings taken under the proposed Act shall be questioned on the ground of any vacancy in the membership of, or any defect in the constitution of, the Authority, or any omission, defect or irregularity not affecting the merits of the case.

PART IV

24. Part IV of the proposed Act deals with functions of the Chief Executive Officer, and employees of the Authority.

25. *Clause 21* contains provisions relating to the appointment of the Chief Executive Officer and his functions and duties. This *clause* also provides that the Chief Executive Officer shall act under the general authority and direction of the Authority.

26. *Clause 22* empowers the Authority to appoint any of its employees to act as the Chief Executive Officer during any period when the office of the Chief Executive Officer is vacant or when the Chief Executive Officer is absent from duty or from Malaysia or when the Chief Executive Officer is unable to perform his duties.

27. *Clause 23* empowers the Authority to appoint and employ such number of employees as the Authority thinks desirable and necessary.

28. *Clause 24* allows the Commission to determine the conditions of service of its employees.

29. *Clause 25* seeks to allow the Authority to make arrangement for the payment of retirement benefit, gratuities and other allowances to the employees of the Authority and their dependants.

PART V

30. Part V of the proposed Act deals with the financial provisions.

31. *Clause 26* seeks to provide for the establishment of the Civil Aviation Authority of Malaysia Fund (“the Fund”).

32. *Clause 27* seeks to provide for the expenditure that may be charged on the Fund.

33. *Clause 28* places a duty on the Authority to conserve the Fund.

34. *Clause 29* places a duty on the Chief Executive Officer to prepare and lay before the Authority an estimate of expenditure of the Authority.

35. *Clause 30* seeks to require the Authority to open and maintain an account or accounts with such financial institutions as it thinks fit.

36. *Clause 31* empowers the Authority from time to time to borrow any money required by the Authority for meeting any of its obligations or discharging any of its functions or exercising any of its powers.

37. *Clause 32* allows the Authority to invest the moneys of the Fund with the approval of the Minister and the concurrence of the Minister of Finance.

38. *Clause 33* allows the Authority to determine its own financial procedure.

39. *Clause 34* seeks to provide for the financial year of the Authority which shall begin on 1 January and end on 31 December of each year.

40. *Clause 35* requires the Authority to keep proper accounts of the Fund and proper reports of its activities. The Authority is required to send a copy of its statement of accounts, a copy of the reports of its activities and a copy of the auditor’s report to the Minister who shall then cause them to be laid before both Houses of Parliament. This *clause* also provides that the Statutory Bodies (Accounts and Annual Reports) Act 1980 [*Act 240*] shall apply to the Authority.

41. *Clause 36* seeks to allow the Authority, with the approval of the Minister and the concurrence of the Minister of Finance, to establish companies.

PART VI

42. Part VI of the proposed Act provides for general provisions.
43. *Clause 37* seeks to provide that all members of the Authority and a committee and employees and agents of the Authority are deemed to be public servants within the meaning of the Penal Code [*Act 574*].
44. *Clause 38* seeks to provide that the Public Authorities Protection Act 1948 [*Act 198*] shall apply to any action, suit, proceedings or prosecution against the Authority or against a member of the Authority, or a committee or employees or agents of the Authority.
45. *Clause 39* seeks to provide for the protection of the Authority, member of a committee, employee or agent of the Authority from any personal liability for any loss or damage caused by any act or omission in the management conduct of the affairs of the Authority or the performance of its functions or exercise of its powers under the proposed Act, the Civil Aviation Act 1969 or any subsidiary legislation made under the Civil Aviation Act 1969 unless such loss or damage is occasioned by an intentionally wrongful act or omission on his part.
46. *Clause 40* seeks to provide for additional protection to the Authority, any member of the Authority, or a committee or employees or agents of the Authority lawfully acting on behalf of the Authority in respect of any act, neglect, default or omission done or omitted by it or him in good faith in execution of the all laws relating to civil aviation.
47. *Clause 41* seeks to provide for the representation in civil proceedings by or against the Authority.
48. *Clause 42* requires any member of the Authority or a committee, or any employee or agent of the Authority, or any person attending any meeting of the Authority or of a committee, or any other person, who has, by any means, access to any information or document relating to the affairs of the Authority to maintain secrecy. A person who contravenes this *clause* commits an offence.
49. *Clause 43* seeks to empower the Minister to amend the Schedule to the proposed Act by an order published in the *Gazette* upon recommendation of the Authority.
50. *Clause 44* provides for the validity of acts and things done in anticipation of the enactment of the proposed Act.

PART VII

51. Part VII of the proposed Act deals with vesting provision.

52. *Clause 45* contains provisions relating to the vesting in the Authority of all properties, rights, interests, obligations and liabilities of the Government specified by the Minister in the order published in the *Gazette* without any conveyance, assignment or transfer.

FINANCIAL IMPLICATIONS

This Bill will involve the Government in extra financial expenditure the amount of which cannot at present be ascertained.

[PN(U2) 3037]