

A BILL

i n t i t u l e d

An Act to amend the Civil Aviation Act 1969.

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ENACTED by the Parliament of Malaysia as follows:

Short title and commencement

1. (1) This Act may be cited as the Civil Aviation (Amendment) Act 2016.

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

General amendment

2. The Civil Aviation Act 1969 [Act 3], which is referred to as the “principal Act” in this Act, is amended—

(a) by substituting for the words “Department of Civil Aviation” wherever appearing the word “Authority”; and

(b) by substituting for the words “Director General” wherever appearing except in section 2 in the definition of “Director General” and section 24H the word “Authority”.

Amendment of section 2

3. Section 2 of the principal Act is amended—

- (a) by deleting the definition of “Director General”;
- (b) by inserting after the definition of “Chicago Convention” the following definition:

‘ “Chief Executive Officer” means the Chief Executive Officer of the Authority;’; and

- (c) by inserting after the definition of “airport” the following definition:

‘ “Authority” means the Civil Aviation Authority of Malaysia established under the Civil Aviation Authority of Malaysia Act 2016 [Act];’.

Amendment of Part IA

4. Part IA of the principal Act is amended by substituting for the heading “DUTIES AND FUNCTIONS OF THE DIRECTOR GENERAL OF CIVIL AVIATION MALAYSIA” the heading “DELEGATION OF POWERS, DUTIES AND FUNCTIONS OF THE AUTHORITY”.

Deletion of sections 2A and 2B

5. The principal Act is amended by deleting sections 2A and 2B.

Amendment of section 2c

6. Section 2c of the principal Act is amended—

- (a) in subsection (1), by substituting for the words “on him by this Act” the words “on the Authority by this Act and the Civil Aviation Authority of Malaysia Act 2016”; and
- (b) in subsection (4), in the English language text, by substituting for the word “himself” the word “itself”.

Deletion of section 2b

7. The principal Act is amended by deleting section 2D.

Amendment of section 3

8. Section 3 of the principal Act is amended—

(a) in subsection (2)—

(i) by inserting after paragraph (a) the following paragraph:

“(aa) regulating security of the civil aviation including the establishment of national security programme or any other security programme;”;

(ii) by substituting for paragraph (p) the following paragraph:

“(p) exempting any aircraft, flight or person or classes of aircrafts, flights or persons from any provision of any subsidiary legislation made under this Act, the person by whom the exemption may be made and the terms and conditions for the exemption;”;

(iii) by substituting for paragraph (q) the following paragraph:

“(q) the investigation of aircraft accident, incident or serious incident either occurring in Malaysia or occurring to Malaysian aircraft;”;

(iv) by substituting for the words “; and” at the end of paragraph (s) a semicolon;

(v) by substituting for the full stop at the end of paragraph (t) the words “; and”; and

(vi) by inserting after paragraph (t) the following paragraph:

“(u) prescribing all other matters as are expedient or necessary to be prescribed for giving effect to this Act and the Civil Aviation Authority of Malaysia Act 2016.”;

(b) by substituting for subsection (2A) the following subsection:

“(2A) Any regulations made under this section may prescribe any act in contravention of the regulations to be an offence and may prescribe penalties of a fine not exceeding one million ringgit or imprisonment for a term not exceeding ten years or both for such offence.”; and

(c) by deleting subsection (4).

Amendment of section 4

9. Subsection 4(1) of the principal Act is amended by substituting for the words “one hundred thousand ringgit” the words “five hundred thousand ringgit”.

Amendment of section 6

10. Section 6 of the principal Act is amended—

(a) in subsection (1), by substituting for the words “ten thousand ringgit” the words “one hundred thousand ringgit”; and

(b) in subsection (2), by substituting for the words “ten thousand ringgit” the words “one hundred thousand ringgit”.

Deletion of Part IIIA

11. The principal Act is amended by deleting Part IIIA.

Amendment of section 7

12. Subsection 7(6) of the principal Act is amended by substituting for the words “fifty thousand ringgit” the words “one hundred thousand ringgit”.

Amendment of section 16

13. Section 16 of the principal Act is amended—

(a) in subsection (1), by substituting for the words “three years or to a fine not exceeding fifty thousand ringgit” the words “five years or to a fine not exceeding one hundred thousand ringgit”; and

(b) in subsection (2)—

(i) in paragraph (a), by substituting for the words “fifty thousand ringgit or to imprisonment for a term not exceeding three years” the words “one hundred thousand ringgit or to imprisonment for a term not exceeding five years”; and

(ii) in paragraph (b), by substituting for the words “one hundred thousand ringgit” the words “two hundred thousand ringgit”.

Amendment of section 24A

14. Paragraph 24A(2)(b) of the principal Act is amended by deleting the words “under paragraph 2B(a)”.

Amendment of section 24E

15. Subsection 24E(1) of the principal Act is amended by deleting the words “under paragraph 2B(a)”.

Amendment of section 24H

16. Section 24H of the principal Act is amended by substituting for the words “Director General” the words “Chief Executive Officer or authorized officer”.

Amendment of section 24j

17. Subsection 24j(1) of the principal Act is amended by substituting for the words “he shall submit” the words “the Authority shall submit”.

Amendment of section 24k

18. Section 24k of the principal Act is amended—

(a) in subsection (1)—

(i) by inserting after the word “Minister” the words “on such terms and for such time as the Minister thinks necessary”;

(ii) by substituting for paragraph (a) the following paragraph:

“(a) order—

(i) the company granted with a licence under section 24A to cease to provide any services within an aerodrome or otherwise;

(ii) the person licensed by the Malaysian Aviation Commission under section 37 of the Malaysian Aviation Commission Act 2015 to cease to provide ground handling services; or

(iii) the person licensed by the Malaysian Aviation Commission under section 38 of the Malaysian Aviation Commission Act 2015 to cease to operate an aerodrome; or”; and

(iii) in paragraph (b), by substituting for the word “airport” the word “aerodrome”; and

(b) by substituting for subsection (3) the following subsections:

“(3) The Minister shall, as soon as practicable and in such manner as the Minister thinks fit, after exercising his powers under paragraph (1)(a)—

(a) direct the Authority to take temporary possession of aerodrome or any part of aerodrome; and

(b) direct the Authority or any other person—

(i) to provide any services within an aerodrome or otherwise;

(ii) to operate an aerodrome; or

(iii) to provide ground handling services.

(4) For the purposes of subsection (3), the person referred to in paragraph (1)(a)—

(a) shall hand over the control or possession of—

(i) any services within an aerodrome or otherwise;

(ii) operation of an aerodrome; or

(iii) ground handling services; and

(b) shall take all such measures and provide all such assistance,

to any officer authorized by the Authority for that purpose or any other person referred to under paragraph (3)(b).

(5) A decision, order or direction of the Minister in the exercise of his powers under this section shall be final and shall not be challenged, appealed against, reviewed, quashed or questioned in any court.

(6) Any person who fails to comply with the order or direction of the Minister under subsections (1) or (3) or any person who contravenes subsection (4) 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.

(7) The Federal Government, the Authority and its employees and agents shall not be liable for any action for breach of contract or for any loss or damage occasioned by any order or direction of the Minister under subsection (1) or (3) or the requirement under subsection (4).

(8) The persons referred to in paragraph (1)(a) and their employees and agents shall not be liable for any action for breach of contract or for any loss or damage occasioned by any order or direction of the Minister under subsections (1) or (3) except where the order or direction of the Minister under subsection (1) or (3) was caused by—

- (a) the negligence or wilful act of the person referred to in paragraph (1)(a) and their employees or agents; or
- (b) a breach by the person referred to in paragraph (1)(a) of the terms and conditions of his licence or the provisions of this Act or any subsidiary legislation made under this Act.”.

Substitution of section 24_{LA}

19. The principal Act is amended by substituting for section 24_{LA} the following section:

“Authorized officer

24_{LA}. (1) The Authority may, in such manner as it thinks fit, publish the name of its employee who is appointed to carry out its functions under paragraph 16(1)(a), (b), (c), (d) or (e) of the Civil Aviation Authority of Malaysia Act 2016.

(2) The Authority may authorize any of its employee who is appointed to carry out its functions under paragraph 16(1)(a), (b), (c), (d) or (e) of the Civil Aviation Authority of Malaysia Act 2016 to exercise the power of enforcement and investigation under this Act.

(3) The Authority shall issue an authority card to its employee who is appointed to carry out its functions under paragraph 16(1)(a), (b), (c), (d) or (e) of the Civil Aviation Authority of Malaysia Act 2016.

(4) The employee of the Authority when acting against any person under this Act, the Civil Aviation Authority Act 2016 or any subsidiary legislation made under this Act shall, on demand, declare his office and produce his authority card.”.

Amendment of section 24LD

20. Section 24LD of the principal Act is amended—

(a) by substituting for subsection (1) the following subsection:

“(1) For the purpose of ascertaining compliance with this Act or any subsidiary legislation made under this Act, an authorized officer—

- (a) shall have access to any aircraft, aerodrome, aeronautical product, aviation facility, security equipment, place or building;
- (b) may inspect any aircraft, aerodrome, aeronautical product, aviation facility, security equipment, place or building;
- (c) may conduct any test on any aircraft, aerodrome, aeronautical product, aviation facility or security equipment;
- (d) may inspect, make copies of or take extract from any book, minute book, register, certificate, licence, permit, approval, authorisation, permission or other document issued by the Authority, aviation documents or other documents

required to be kept by the Authority or necessary for the purpose of ascertaining compliance with this Act or any subsidiary legislation made under this Act; and

(e) may, by notice in writing, require any person to produce to him any books, minute books, registers or other documents in the custody or control of that person.” and

(b) by substituting for subsection (2) the following subsection:

“(2) For the purposes of subsection (1), the authorized officer may use any equipment, articles or devices belonging to the Authority.”.

Amendment of section 24LE

21. Section 24LE of the principal Act is amended by inserting after the words “this Act” the words “or any subsidiary legislation made under this Act”.

Amendment of section 24LG

22. Section 24LG of the principal Act is amended by inserting after the words “this Act” wherever appearing the words “or any subsidiary legislation made under this Act”.

New section 24LI

23. The principal Act is amended by inserting after section 24LH the following section:

“Refusal to give access, assault, etc.

24LI. Any person who—

(a) refuses to give access to any aircraft, aerodrome, aeronautical product, security equipment, aviation facility, place or building to any authorized officer; or

- (b) assaults, obstructs, hinders or delays any authorized officer,

in exercising his powers under this Act, commits an offence and shall, on conviction, be liable to a fine not exceeding two hundred thousand ringgit or to imprisonment for a term not exceeding two years or to both.”.

Amendment of section 24M

24. Section 24M of the principal Act is amended—

(a) by renumbering the existing section as subsection (1);

(b) by inserting after the renumbered subsection (1) the following subsections:

“(2) Where a person convicted in respect of any offence under this Act or any subsidiary legislation made under this Act is a body corporate, it shall only be punished with the fine provided for such offence.

(3) For the purposes of this section, “a director of a body corporate” includes—

(a) a person occupying or acting in the position of a director of the body corporate, by whatever name called, and whether or not validly appointed to occupy or duly authorized to act in the position;

(b) a person in accordance with whose directions or instructions the directors of the body corporate are accustomed to act; and

(c) if the body corporate is incorporated outside Malaysia—

(i) a member of the body corporate’s board;

(ii) a person occupying or acting in the position of a director of the body corporate’s board, by whatever name called, and whether or not validly appointed to occupy or duly authorized to act in the position; and

- (iii) a person in accordance with whose directions or instructions the members of the body corporate's board are accustomed to act.”.

New section 24MA

25. The principal Act is amended by inserting after section 24M the following section:

“Institution of prosecution

24MA. No prosecution for an offence under this Act, the Civil Aviation Authority of Malaysia Act 2016 or any subsidiary legislation made under this Act shall be instituted by the Authority except with the written consent of the Public Prosecutor.”.

Amendment of section 24N

26. Subsection 24N (4) of the principal Act is amended by substituting for the words “Federal Consolidated Fund” the words “Civil Aviation Authority of Malaysia Fund”.

Substitution of section 24o

27. The principal Act is amended by substituting for section 24o the following section:

“Issuance of notices, etc.

24o. (1) The Chief Executive Officer may issue any notice, circular, requirement, directive or information for the purposes of this Act or any subsidiary legislation made under this Act.

(2) Every notice, circular, requirement, directive or information issued under this Act or under any subsidiary legislation made under this Act shall be published by the Chief Executive Officer in such manner as in his opinion will ensure that the notice, circular, requirement, directive or information is brought to the attention of the person who has to comply with the notice, circular, requirement, directive or information.

(3) The Chief Executive Officer may, subject to such terms and conditions as he thinks fit and after he is satisfied that the safety and security of the civil aviation is not jeopardized, exempt any aircraft, flight or person or classes of aircrafts, flights or persons from all or any provisions of any notice, circular, requirement, directive or information issued by him under this Act or any subsidiary legislation made under this Act.

(4) Any person who contravenes any notice, circular, requirement, directive or information issued by the Chief Executive Officer 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.”.

New sections 24p and 24q

28. The principal Act is amended by inserting after section 24o the following sections:

“Safety directive

24p. (1) The Chief Executive Officer may issue any safety directive relating to any aspect of safety or security in civil aviation, including—

- (a) the safety of any aircraft operation in Malaysia and the operation of Malaysian aircraft outside Malaysia;
- (b) the inspection, overhaul, repair, replacement, modification or maintenance of aircraft or aircraft components;
- (c) any matter relating to persons issued with any licence, certificate, permit, approval, authorisation, permission or other document issued under this Act or under any subsidiary legislation made under this Act; or
- (d) the operation and management of an aerodrome.

(2) Every safety directive issued under this Act shall be published by the Chief Executive Officer in such manner as in his opinion will ensure that the safety directive is brought to the attention of the person who has to comply with the safety directive.

(3) Any person who contravenes any safety directive 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.

Safety regulatory oversight

24Q. (1) The Chief Executive Officer or any authorized officer may, at any time, conduct safety regulatory oversight to determine the compliance with this Act or any subsidiary legislations made under this Act.

(2) Notwithstanding any other written law, the Chief Executive Officer or any authorized officer conducting safety regulatory oversight shall have the power to—

- (a) access and inspect any aircraft, aerodrome, aeronautical product, security equipment, aviation facility, place or building;
- (b) inspect, make copies of or take extract from any book, minute book, register, certificate, licence, permit, approval, authorisation, permission or other document issued by the Authority, aviation documents or other documents required to be kept by the Authority or necessary for the purpose of ascertaining compliance with this Act or any subsidiary legislation made under this Act;
- (c) take photographs of the premises, goods, baggage, package and any other property or material found thereon;
or
- (d) conduct any test that the Chief Executive Officer or any authorized officer considers necessary.

(3) Any expenses incurred by reason of anything done during, or incidental to any safety regulatory oversight under this Act or any subsidiary legislations made under this Act shall be paid by and recoverable from a certificate holder, licensee, permit holder or any person who has been given approval, authorisation or permission.

(4) Any person who refuses to comply with any request, demand or order made by the Chief Executive Officer or any authorized officer acting or purporting to act under this section, commits an offence and shall, on conviction be liable to a fine not exceeding two hundred thousand or to imprisonment for a term not exceeding five years or to both.”.

Transitional provision

29. On the coming into operation of this Act, the moneys standing to the credit of the Civil Aviation Fund shall be transferred into the Civil Aviation Authority of Malaysia Fund established under the Civil Aviation Authority of Malaysia Act 2016.

EXPLANATORY STATEMENT

This Bill seeks to amend the Civil Aviation Act 1969 (“Act 3”). The amendments are mainly consequential upon the establishment of the Civil Aviation Authority of Malaysia (“the Authority”) under the Civil Aviation Authority of Malaysia Act 2016 [Act XXX]. Following the establishment of the Authority, all the duties and functions of the Director General of Civil Aviation Malaysia under Act 3 are now conferred to the Authority. Further, the amendments to Act 3 are proposed to increase the penalty for certain offences under Act 3, and to further strengthen the provisions of Act 3 by introducing the power to conduct safety regulatory oversight and the power to issue safety directive, as required by the International Civil Aviation Organization.

2. *Clause 1* contains the short title and the provision on the commencement of the proposed Act.
3. *Clause 2* seeks to substitute the words “Director General” with the word “Authority” and the words “Department of Civil Aviation” with the word “Authority” wherever appearing in Act 3 consequential to the establishment of the Civil Aviation Authority of Malaysia.
4. *Clause 3* seeks to amend section 2 of Act 3 to delete the definition of “Director General”, and to introduce the new definitions of “Chief Executive Officer” and “Authority”.
5. *Clause 4* seeks to substitute the heading of Part IA of Act 3 following the deletion of sections to 2A, 2B and 2D.
6. *Clause 5* seeks to delete sections 2A and 2B of Act 3 since the duties and functions of the Director General of Civil Aviation Malaysia are now conferred to the Authority. The functions and powers of the Authority are now provided under the Civil Aviation Authority of Malaysia Act 2016.

7. *Clause 6* seeks to amend section 2C of Act 3 consequential to the substitution of the words “Director General” with the word “Authority” in that section.
8. *Clause 7* seeks to delete section 2D of Act 3 since the matter relating to the authority card is now provided under section 24LA.
9. *Clause 8* seeks to amend section 3 of Act 3 to empower the Minister to make regulations relating to security in civil aviation, the investigation of aircraft accident, incident or serious incident, the exemptions that may be made and all other matters which are expedient or necessary for giving effect to Act 3 and the Civil Aviation Authority of Malaysia Act 2016. This *clause* also seeks to substitute subsection 3(2A) of Act 3 to provide that any regulations made under this section may prescribe any act in contravention of the regulations to be an offence and the maximum penalties to the offence.
10. *Clauses 9* and *10* seek to amend sections 4 and 6 of Act 3 respectively by increasing the penalty for the offences of dangerous flying and trespassing at licensed or Government aerodromes.
11. *Clause 11* seeks to delete Part IIIA of Act 3 following the establishment of the Civil Aviation Authority of Malaysia Fund under the Civil Aviation Authority of Malaysia Act 2016.
12. *Clauses 12* and *13* seek to amend sections 7 and 16 of Act 3 respectively by increasing the penalty for the offences of interfering with any works or things which are executed or placed in, on or over any land in pursuance of an order made under section 7, and for failure to comply with any order or notice made under section 9 or 10 of Act 3.
13. *Clauses 14* and *15* seek to amend sections 24A and 24E of Act 3 respectively following the deletion of section 2B of Act 3.
14. *Clause 16* seeks to amend section 24H of Act 3 to empower the Chief Executive Officer or authorized officer to exercise the inspectorial power.
15. *Clause 18* seeks to amend section 24K of Act 3 to clarify the action to be taken if an emergency occurs and to provide for matters if such action is taken. The new paragraph 24K(1)(a) of Act 3 empowers the Yang di-Pertuan Agong, during the occurrence of any industrial unrest, strike, lock-out or any other event which gives rise to an emergency, to authorize the Minister to order the company granted with a licence under section 24A of Act 3 to cease to provide any services within an aerodrome or otherwise, and to order the person licensed by the Malaysian Aviation Commission to cease to operate an aerodrome and to cease to provide any ground handling services. The new subsection 24K(3) of Act 3 empowers the Minister to give direction pursuant to the order made under subsection 24K(1). A person who fails to comply with the order or direction commits an offence. The Federal Government, the Authority and its employees and agents shall not be liable for any action for breach of contract or for any loss or damage occasioned by any order or direction of the Minister under this section.

16. *Clause 19* seeks to substitute section 24^{LA} of Act 3 to empower the Authority to publish the name of its employee who is appointed to perform its functions under paragraph 16(1)(a), (b), (c), (d) or (e) of the Civil Aviation Authority of Malaysia Act 2016. Those employees may be authorized by the Authority to exercise the power of enforcement and investigation under Act 3.

17. *Clause 20* seeks to amend section 24^{LD} of Act 3 to expand the power of the authorized officer to conduct inspection. An authorized officer shall have power to access, inspect and conduct test on any aircraft, aerodrome, aeronautical product, aviation facility and security equipment.

18. *Clause 21* seeks to amend section 24^{LE} of Act 3 to clarify that the authorized officer shall have the power to conduct investigation in relation to the offences under Act 3 as well as the offences under any subsidiary legislation made under Act 3.

19. *Clause 22* seeks to amend section 24^{LG} of Act 3 to clarify that the authorized officer shall have the power to make a compliance order if he is satisfied that a person has committed an offence under Act 3 or any subsidiary legislation made under Act 3.

20. *Clause 23* seeks to introduce new section 24^{LI} into Act 3 to provide that any person who refuses to give access to any aircraft, aerodrome, aeronautical product, security equipment, aviation facility, place or building to any authorized officer, or assaults, obstructs, hinders or delays any authorized officer while he is exercising his power, commits an offence under Act 3.

21. *Clause 24* seeks to amend section 24^M of Act 3 to further clarify who is a director in relation to a body corporate and to provide that if a body corporate is convicted for an offence under Act 3 or under any subsidiary made under Act 3, the body corporate shall only be punished with the fine provided for the offence.

22. *Clause 25* seeks to introduce new section 24^{MA} into Act 3 to provide that no prosecution for an offence under Act 3, the Civil Aviation Authority of Malaysia Act 2016 or any subsidiary legislation made under Act 3 shall be instituted by the Authority except with the written consent of the Public Prosecutor.

23. *Clause 27* seeks to substitute section 24^O of Act 3 to empower the Chief Executive Officer to issue notices, circulars, requirements, directives or information and to increase the penalties for non-compliance of such notices, circulars, requirements, directives or information.

24. *Clause 28* seeks to introduce new sections 24^P and 24^Q into Act 3. New section 24^P empowers the Chief Executive Officer to issue safety directive relating to any aspect of safety or security in civil aviation. New section 24^Q seeks to empower the Chief Executive Officer or any authorized officer to conduct safety regulatory oversight.

25. *Clause 29* seeks to provide for the transfer of money standing to the credit of the Civil Aviation Fund into the Civil Aviation Authority of Malaysia Fund when the proposed Act comes into operation.

26. Other amendments not specifically dealt with in this Statement are minor or consequential in nature.

FINANCIAL IMPLICATION

This Bill will not involve the Government in any extra financial expenditure.

[PN(U2)3040]