



**Malaysian
Aviation Commission**
Suruhanjaya Penerbangan Malaysia

Guidelines on Fit and Proper Person - Consultation Paper

22 February 2019



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1.0 INTRODUCTION

The Malaysian Aviation Commission (hereafter referred to as “MAVCOM”) was established on 1 March 2016 under the Malaysian Aviation Commission Act 2015 [Act 771] to regulate the economic aspect of the civil aviation industry in Malaysia. MAVCOM is mandated, amongst others, to issue licences and permits to aviation service providers.

Section 39(1) of Act 771 states that an applicant for a licence or permit under Act 771 shall submit an application in the form and manner together with such documents and information as may be determined by MAVCOM. Pursuant to section 98A of Act 771, MAVCOM has the power to issue guidelines to regulate economic matters relating to the civil aviation industry and may impose any condition or restriction as MAVCOM thinks fit. Therefore, MAVCOM intends to publish the Guidelines on Fit and Proper Person (“**Guidelines**”) as a guide for aviation service providers to determine the fitness and propriety of a person in a company providing aviation services and to inform aviation service providers of the criteria and factors that the Commission will consider in carrying out a fit and proper person assessment.

We invite your feedback and views on the proposed contents of the Guidelines on Fit and Proper Person by 21 March 2019. Comments received may be considered and incorporated in the Guidelines.



2.0 CONTENTS OF THE GUIDELINES

The Guidelines aim to set out the Commission’s approach to the fit and proper assessment of key responsible persons in an aviation service company. The Guidelines are intended to assist licence and permit applicants and holders to assess whether key responsible persons in an aviation service company are fit and proper to provide effective and strategic leadership.

MAVCOM requires that members of the board, the senior management and any other key person of an aviation service company are competent and have the necessary qualities and qualifications suited to hold a position that can ensure that aviation service companies remain viable in the larger context of the aviation industry. The Guidelines shall apply to key responsible persons in an aviation service company applying for a licence or permit and to key responsible persons in aviation service companies that already hold a licence or permit.

The fit and proper assessment carried out by MAVCOM is only in pursuant to Act 771 and is separate from any form of assessment that may be conducted by the Civil Aviation Authority of Malaysia, other regulatory authorities, professional bodies, or the government.

The Guidelines shall apply to key responsible persons within a company providing aviation services where such company is an applicant of a licence or permit under sections 39 and 42 of Act 771 or a licensee or permit holder under sections 35, 36, 37 or 38 of Act 771. MAVCOM may also carry out the fit and proper person assessment on a licence or permit holder from time-to-time, at any point throughout the duration of a licence or permit.

Key responsible persons of an aviation service company are identified as the following:

- (a) board of directors;
- (b) senior management which consists of a core group of individuals who are primarily responsible for the day-to-day management and decision-making in an aviation service company. The senior management is responsible for establishing a management structure that promotes accountability and overseeing managers and other employees in carrying out their functions in specific areas and activities consistent with the policies and procedures set by the board of directors;
- (c) any other person who has the power to make or cause to be made, decisions in respect of the business or administration of the aviation service company and to give effect to such decisions or cause them to be given effect to; and
- (d) any other key person as may be determined by the Commission.



When a fit and proper person assessment is carried out by MAVCOM, the onus is on the key responsible persons in the aviation service company to prove that they are fit and proper according to MAVCOM's standards laid out in the Guidelines.

MAVCOM aims to assess the fitness and propriety of a person in the following areas:

- (a) Probity, reputation and integrity;
- (b) Competency and capability; and
- (c) Financial integrity.

Probity, Reputation and Integrity

In determining whether a key responsible person is of good character, MAVCOM will assess a person's character and personal attributes such as their—

- (a) integrity, honesty, diligence;
- (b) independence and fairness in decision-making; and
- (c) propensity or willingness to disregard the law.

MAVCOM will require certain specific information from a key responsible person, which may include, among others, whether the person has been convicted of an offence, or whether the key responsible person has contravened any law or standards set by regulatory authorities in any jurisdiction or has been subject to investigations or civil or criminal proceedings in any jurisdiction. MAVCOM may also require information on any business or relationship which may be a conflict of interest to the exercise of the person's judgment.

Beyond the above, MAVCOM would also assess the key responsible person's character through their behaviour, such as whether they have been dismissed from employment or faced disciplinary action due to negligence, incompetence, fraud or mismanagement. MAVCOM may also assess whether the key responsible person has shown lack of willingness to cooperate with regulatory authorities.



Competency and capability

In assessing a person's competency and capability, a person would need to demonstrate that he has the appropriate competence and possesses capability with the relevant knowledge and experience. MAVCOM will assess a person's ability to understand the technical requirements of the business, the inherent risks and the management process to undertake and fulfil his obligations and responsibilities that are associated with his role and position, effectively.

In particular, MAVCOM will assess whether the key responsible person has demonstrated the ability and commitment to effectively undertake the responsibilities of the position. MAVCOM will determine this through the qualifications, training and skills of the person. MAVCOM would also consider whether the person has been diagnosed as mentally ill.

While MAVCOM will consider relevant qualifications and certifications, MAVCOM may not determine this as conclusive and would assess the competency and capability of a person holistically through considering the person's past working experience. MAVCOM may also consider evidence of the person's history and past behaviour as indication of their character.

Financial integrity

In assessing a person's financial integrity, MAVCOM will determine whether a person is able to demonstrate his solvency and the prudent control over his own financial affairs which serves as an indication of a person's capacity to the safety and soundness of the business and protection of the interests of other stakeholders.

In particular, MAVCOM will consider whether a person has been subject to a judgment debt that has not been satisfied or whether there are indicators that a person would not be able to meet his debts. However, a person's limited financial means would not affect a person's ability to satisfy the financial integrity criteria.



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3.0 FEEDBACK

MAVCOM welcomes any feedback on the Guidelines. All feedback and views must be in writing and must be delivered **before 5.00 p.m. on 21 March 2019** via one of the following options:

(i) by email to fp@mavcom.my

(ii) by post addressed to:

Malaysian Aviation Commission
Level 19, Menara 1 Sentrum
201, Jalan Tun Sambanthan
50470 Kuala Lumpur
Malaysia
Attention: Ms. Noor Syahira Surya Noordin

(iii) by hand to the above address.

MAVCOM reserves the right not to consider any feedback or views received after the stipulated time and date.