



# LAWS OF MALAYSIA

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**Act 771**

## **MALAYSIAN AVIATION COMMISSION ACT 2015**

*As at 1 August 2018*

**MALAYSIAN AVIATION COMMISSION ACT 2015**

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# LAWS OF MALAYSIA

## Act 771

### MALAYSIAN AVIATION COMMISSION ACT 2015

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# LAWS OF MALAYSIA

## Act 771

### MALAYSIAN AVIATION COMMISSION ACT 2015

An Act to establish the Malaysian Aviation Commission to regulate economic matters relating to the civil aviation industry and to provide for its functions and powers and related matters.

[1 March 2016, P.U. (B) 88/2016]

**ENACTED** by the Parliament of Malaysia as follows:

#### PART I

#### PRELIMINARY

##### **Short title and commencement**

1. (1) This Act may be cited as the Malaysian Aviation Commission Act 2015.

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

##### **Interpretation**

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

“aerodrome” means any area of land or water, including any airport, airstrip (including water airstrip), heliport, building, installation and equipment, for the use wholly or partly for the arrival, departure or movement of aircraft;

“air traffic right” means—

- (a) in relation to domestic routes, the right of an airline licensed by the Commission to provide air services on scheduled journeys within Malaysia, and includes the points to be served, the type of aircraft to be used and the capacity to be provided; or
- (b) in relation to international routes, the right of an airline licensed by the Commission and designated, nominated or otherwise authorized by the Government to provide air services on scheduled journeys from, to or over a country under an air services agreement, and includes the points to be served, the route on which the air services are to be provided, the type of aircraft to be used and the capacity to be provided;

“committee” means any committee established by the Commission under section 12 or 71;

“Director General of Civil Aviation” means the Director General of Civil Aviation Malaysia referred to in the Civil Aviation Act 1969 [Act 3];

“Fund” means the Aviation Commission Fund established under section 25;

“Public Service Fund” means the Public Service Fund established under section 27;

“airport” means the aggregate of the lands comprised within an aerodrome including buildings, aircraft hangars, storage, facilities, roads and car parks used or intended to be used in whole or in part for the purposes of or in connection with the operation of such aerodrome;

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

“public service obligation” means the provision of service for the carriage by air or the use of any aircraft for the carriage of passengers, mail or cargo for hire or reward on a scheduled journey between aerodromes—

(a) where one or more aerodromes serve a region within Malaysia that is remote or sparsely populated or is faced with significant accessibility issues arising from its geographical peripherality or lack of adequate surface transport alternatives; or

(b) serving a route which is considered to be vital for the economic and social development of Malaysia or to be in the national interest,

which airlines would not assume if they were solely considering their commercial interest;

“licensee” means a person licensed under this Act;

“permit holder” means a person holding a permit under this Act;

“Executive Chairman” means the Executive Chairman of the Commission appointed under section 5;

“consumer” means a person who acquires or uses any aviation service for personal use and does not acquire or use the service primarily for the purpose of resupplying the service or providing any aviation service;

“scheduled journey” means one of a series of journeys which is undertaken between the same two places and which together amount to a systematic services;

“non-scheduled journey” means a journey that is not a scheduled journey;

“aviation service” means any of the following services:

- (a) the carriage of passengers, mail or cargo for hire or reward by air or by the use of any aircraft between two or more places, of which at least one place is in Malaysia;
- (b) the provision in Malaysia of any of the ground handling services as specified in the Second Schedule;
- (c) the operation of an aerodrome in Malaysia for the take-off and landing of any aircraft engaged in the carriage of passengers, mail or cargo for hire or reward; or
- (d) any other service determined by the Commission to be necessary or expedient for the carriage of passengers, mail or cargo referred to in paragraph (a),

whether or not such service is provided by a licensee, permit holder or otherwise;

“air transport service” means a commercial air service that is operated for the purpose of transporting persons, personal belongings, baggage, goods or cargo in an aircraft between two points;

“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;

“hire or reward” means any payment, consideration, gratuity or benefit, directly or indirectly charged, demanded, received or collected by any person for the use of an aircraft;

“Commission” means the Malaysian Aviation Commission established under section 3;

“appointed date” means the date of this Act comes into operation.

PART II

THE COMMISSION

**Establishment of the Commission**

**3.** (1) A body corporate to be known as the “Suruhanjaya Penerbangan Malaysia” or “Malaysian Aviation Commission” is established.

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

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

(4) Subject to and for the purposes of this Act, the Commission may, upon such terms as the Commission deems 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 Commission; and

(c) convey, assign, surrender, yield up, charge, mortgage, demise, reassign, transfer or otherwise dispose of, or deal with, any movable or immovable property and any interest in such property vested in the Commission.

**Common seal**

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

(2) Until a seal is provided by the Commission, a stamp bearing the words “Suruhanjaya Penerbangan Malaysia” or “Malaysian

Aviation Commission” may be used and shall be deemed to be the common seal of the Commission.

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

(4) All deeds, documents and other instruments purporting to be sealed with the common seal 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 Commission or an employee of the Commission authorized in that behalf.

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

### **Membership of the Commission**

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

- (a) the Executive Chairman who shall be appointed by the Prime Minister;
- (b) two representatives of the Federal Government consisting of—
  - (i) the Secretary General of the Ministry of Transport; and
  - (ii) the Director General of the Economic Planning Unit of the Prime Minister’s Department; and
- (c) not less than four but not more than six other members who shall be appointed by the Minister after



consultation with the Prime Minister, and who, in the opinion of the Minister, have experience or shown capacity and professionalism in matters relating to economics, finance, aviation, business, administration, law or any other matter relevant to the functions of the Commission.

(2) The Executive Chairman shall be a person who, in the opinion of the Prime Minister, has experience, shown capacity and professionalism in matters relating to economics, finance, aviation, business or administration relevant to the functions of the Commission.

(3) No person shall be a member of the Commission if he—

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

(4) Without prejudice to subsection (3), any member of the Commission, other than the members specified in paragraph 5(1)(b), shall not, while being a member of the Commission, hold any other office or employment, whether remunerated or not, without the prior written approval of the Prime Minister.

### **Alternate members**

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

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

(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 Commission.

### **Tenure of office**

7. Subject to such conditions as may be specified in his instrument of appointment, a member of the Commission, other than the members specified in paragraph 5(1)(b), 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 two consecutive terms.

### **Remuneration and allowances**

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

(2) All other members of the Commission shall be paid allowances at such rates as the Prime Minister may determine.

### **Revocation of appointment and resignation**

9. (1) The Prime Minister may, at any time, revoke the appointment of the Executive Chairman.

(2) The Minister may, at any time, revoke the appointment of any member of the Commission specified in paragraph 5(1)(c) after consultation with the Prime Minister.

(3) A member of the Commission, other than the members specified in paragraph 5(1)(b), may, at any time, resign his office by

giving notice in writing to the Prime Minister or the Minister, as the case may be.

### **Vacation of office**

**10.** (1) The office of a member of the Commission is vacated—

- (a) if he dies;
- (b) if 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 any law relating to corruption or under section 13; 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) if he becomes a bankrupt;
- (d) if he is of unsound mind or is otherwise incapable of discharging his duties;
- (e) in the case of the Executive Chairman, if he absents himself from three consecutive meetings of the Commission without leave of the Prime Minister;
- (f) in the case of a member of the Commission, other than the Executive Chairman and the members specified in paragraph 5(1)(b), if he absents himself from three consecutive meetings of the Commission without leave of the Executive Chairman;
- (g) if his resignation is accepted by the Prime Minister or Minister, as the case may be; or

- (h) if his appointment is revoked by the Prime Minister or Minister, as the case may be, pursuant to section 9 or by the Prime Minister pursuant to section 16.

### **Effect of cessation of membership**

**11.** Where any person ceases to be a member of the Commission—

- (a) another person shall be appointed in his place in accordance with the provisions applying; and
- (b) he shall not, within two years from the cessation of his membership, enter into any contract of service or carry out or be involved in any business or other activity carried on for the purpose of gain, in or relating to, aviation services.

### **Committees**

**12.** (1) The Commission may establish such committees as it considers necessary or expedient to assist it in the performance of its functions.

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

(3) The Commission may appoint any person to be a member of any committee established under subsection (1).

(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 Commission may, at any time, revoke the appointment of any member of a committee.

(6) A member of a committee may, at any time, resign by giving a notice in writing to the chairman of the committee and the Commission.

(7) A committee shall be subject to and act in accordance with any direction given to the committee by the Commission.

(8) The Commission may at any time discontinue or alter the constitution of a committee.

### **Disclosure of interest**

**13.** (1) Any member of the Commission 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 Commission or the committee shall disclose to the Commission, or the 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 Commission or the 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 Commission or the committee, as the case may be, about the matter; and
- (b) shall be disregarded for the purpose of constituting a quorum of the Commission or the committee, as the case may be,

when the matter is discussed or decided upon.

(3) A member of the Commission 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 Commission or a committee shall be invalidated on the ground that any member of the Commission or the committee has contravened this section.

(5) For the purpose of this section—

“a member of his family”, in relation to a member of the Commission 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 Commission 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 2016 [Act 777], of which or in

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\*NOTE—This Act has repealed the Companies Act 1965 [Act 125] w.e.f. 31 January 2017

which the member or any nominee of his or a member of the member's family is a director or has a substantial shareholding.

### **First Schedule**

**14.** The provisions of the First Schedule shall apply to the members of the Commission and the members of a committee appointed under section 12.

### **Code of conduct**

**15.** (1) The Commission shall prescribe a code of conduct to be observed by the members of the Commission and the members of a committee to the extent and in such manner as it considers appropriate.

(2) The members of the Commission 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 the Commission that there is an alleged breach of the code of conduct, the matter shall be referred to the Disciplinary Panel.

### **Disciplinary Panel and disciplinary proceedings**

**16.** (1) Upon receipt of the matter under subsection 15(3), the Disciplinary Panel shall—

- (a) inform the member of the Commission or the committee in writing of the acts of the alleged breach of the code of conduct; and
- (b) give the member of the Commission 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.

- (2) The Disciplinary Panel shall consist of the following persons:
  - (a) in the case of disciplinary proceedings against any member of the Commission, three persons to be appointed by the Prime Minister; or
  - (b) in the case of disciplinary proceedings against any member of the committee, three persons to be appointed by the Executive Chairman.
- (3) The appointment of the members of the Disciplinary Panel shall be on an *ad hoc* basis.
- (4) If, after considering the member of the Commission'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 Commission and the member of the Commission or the committee of its decision; or
  - (b) there is merit in the matter, invite the member of the Commission 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 Commission 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 Prime Minister or the Commission, as the case may be, that the member of the Commission 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 Prime Minister or the Commission, as the case may be, shall revoke the appointment of the member of the Commission 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 COMMISSION AND THE EXECUTIVE CHAIRMAN

#### **Functions of the Commission**

- 17.** (1) The Commission shall have the following functions:
- (a) to regulate economic matters relating to the civil aviation industry including—
    - (i) to improve connectivity, both globally and locally, so as to promote economic ties, integration and growth, and trade, investment and tourism;
    - (ii) to encourage effective competition within the civil aviation industry by promoting an economic environment which allows Malaysian carriers to maintain their ability to compete effectively in the civil aviation market in a sustainably profitable, efficient and fair manner;
    - (iii) to promote the efficient, economic and profitable operation of aerodromes and ground handling services;
    - (iv) to promote timely investments in the civil aviation industry to meet Malaysia's evolving demand and development needs; and

- (v) to maximise the economic value of any financial support granted by the Federal Government to the civil aviation industry and to seek and promote ways to reduce any such financial support over time;
- (b) to provide a mechanism for the protection of consumers including—
- (i) to promote an environment which allows consumers in relation to the civil aviation industry to have access in a transparent manner to choices of products and services of high quality and at fair prices;
  - (ii) to receive and disseminate information and views on matters of interest to consumers or services provided by licensees and permit holders;
  - (iii) to consult the industry, government and other consumer groups on matters of interest to consumers; and
  - (iv) to provide a mechanism for the resolution of consumer complaints;
- (c) to provide a mechanism for dispute resolution between the providers of aviation services;
- (d) to administer, allocate and manage air traffic rights;
- (e) to monitor slot allocation for airlines or other aircraft operators;
- (f) to administer and manage public service obligations;
- (g) to facilitate and co-ordinate matters of interest to the Malaysian civil aviation industry between the providers

of aviation services and government agencies, locally and internationally; and

(h) to perform any other functions that are incidental or consequential to any of its functions under this Act.

(2) Subject to this Act, the Commission shall be independent in the performance of its functions.

(3) The Commission 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.

### **Powers of the Commission**

**18.** (1) The Commission shall have the power to do all things necessary or expedient for or in connection with the performance of its functions under this Act.

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

- (a) to carry on all activities which appears to the Commission 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, any company or corporation, or any body or person, whether local or foreign;
- (c) to require the furnishing of information by the stakeholders in the civil aviation industry to assist the Commission in the performance of its functions;
- (d) to utilise all the property of the Commission, movable and immovable, in such manner as the Commission thinks expedient including the raising of loans by mortgaging such property;

- (e) to appoint such agents, experts or consultants as the Commission thinks fit for the purpose of performing its functions;
- (f) to impose fees, costs, or any other charges as the Commission thinks fit for services rendered by the Commission;
- (fa) to impose and collect charges on passengers at airports in Malaysia for regulatory services rendered by the Commission pursuant to this Act;
- (g) to formulate and implement human resource development and funding and co-operation programmes for the proper and effective performance of its functions;
- (h) to grant loans and scholarships to employees of the Commission for such purposes as may be approved by the Minister;
- (i) to publish and disseminate information about matters relevant to the functions of the Commission; and
- (j) to do anything incidental to any of its functions and powers.

#### **Commission to consult Director General of Civil Aviation**

**19.** The Commission shall consult the Director General of Civil Aviation on, or relating to, any technical, safety and security issues or other related issues.

#### **Delegation of the Commission's functions and powers**

**20.** (1) The Commission may, in writing, delegate its functions and powers which relate to operational matters only to—

- (a) a member of the Commission; or
- (b) a committee.

(2) The Commission may delegate to a member of the Commission or a committee, as the case may be, the authority to sanction expenditure from the Fund or the Public Service Fund or any other moneys vested in and under the control of the Commission up to such limit as the Commission shall specify.

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

(4) Any function or power delegated under this section shall be performed and exercised in the name and on behalf of the Commission.

(5) A delegation under this section shall not preclude the Commission itself from performing or exercising at any time any of the delegated functions or powers.

### **Functions of the Executive Chairman**

**21.** (1) The Executive Chairman shall have the following functions:

- (a) the overall administration and management of the functions and the day-to-day affairs of the Commission;
- (b) the administration and management of the Fund;
- (c) general control of the employees of the Commission;
- (d) to advise and provide recommendations from an economic perspective to—

- (i) the Minister on policies and plans on all matters relating to civil aviation and to develop strategies in line with such policies and plans; and
  - (ii) the relevant government agencies on all matters relating to civil aviation;
- (e) to ensure that airlines carry out the public service obligations programmes; and
- (f) to manage or arrange for the conduct of researches, assessments, studies and advisory services, to collate, analyse and publish information, statistics and factors influencing or relevant to the economic development of the civil aviation industry, and to disseminate such relevant information, statistics and factors to the relevant government agencies, licensees, the public and investors or potential investors investing in such industry.

(2) In exercising the functions under paragraphs (1)(b), (d) and (e), the Executive Chairman shall consult the Commission.

### **Temporary exercise of functions of the Executive Chairman**

**22.** The Prime Minister may appoint temporarily any member of the Commission to act as the Executive Chairman for the period—

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

PART IV

EMPLOYEES OF THE COMMISSION

**Appointment of employees of the Commission**

**23.** The Commission may, from time to time, employ such number of employees as the Commission thinks desirable and necessary and upon such terms as it considers appropriate.

**Conditions of service, conduct and discipline**

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

(2) The Commission shall have disciplinary authority over all its employees and shall exercise disciplinary control over the employees.

(3) The Commission may prescribe such regulations to provide for the conduct and discipline of its employees.

(4) The regulations prescribed under this section may include—

(a) provisions for the establishment of appropriate disciplinary committee and the procedures to be complied with;

(b) provisions for the establishment of a disciplinary appeal committee to hear appeals from the decision of a disciplinary committee and the procedures to be complied with; and

(c) provisions for—

(i) the interdiction with reduction in salary or other remuneration; or

(ii) the suspension without salary or other remuneration,

of an employee of the Commission during the pendency of the disciplinary proceedings.

(5) The regulations prescribed under this section may create such disciplinary offences and provide for such disciplinary punishments as the Commission may consider appropriate, and the punishments so provided may extend to dismissal and reduction in rank.

(6) The regulations prescribed under this section shall, in prescribing the procedure for disciplinary proceedings, provide for an opportunity for representations to be made by the employee of the Commission against whom the disciplinary proceedings are taken before a decision is arrived at by the disciplinary committee on such disciplinary charge laid against such person.

## PART V

### FINANCE

#### **Aviation Commission Fund**

**25.** (1) A fund to be known as the “Aviation Commission Fund” to be administered and controlled by the Commission is established.

(2) The Fund shall consist of—

- (a) such sums as may be provided by the Parliament for the purposes of this Act from time to time;
- (b) all or any part of fees, costs, financial penalties and other charges imposed by or payable to the Commission under this Act and its subsidiary legislation;
- (c) all moneys derived as income from capital-guaranteed investments by the Commission;
- (d) all moneys derived from the sale, disposal, lease or hire, or any other dealing with, any property, mortgages,



charges or debentures vested in or acquired by the Commission;

- (e) sums borrowed by the Commission under section 30;
- (f) such sums as may be paid to the Commission from time to time for loans made by the Commission; and
- (g) all other moneys lawfully received by the Commission, other than for the purposes of funding public service obligations.

(3) The moneys referred to in paragraph (2)(a) which are in excess of the financial requirements of the Commission for the performance of its functions may be paid into the Federal Consolidated Fund.

### **Expenditure to be charged on the Fund**

**26.** The Fund shall be expended for the purposes of—

- (a) paying any expenditure lawfully incurred by the Commission except for expenditure to be paid from the Public Service Fund under section 27;
- (b) paying for the remuneration, allowances and other expenses of the members of the Commission, members of the committees and employees of the Commission;
- (c) paying any other expenses, costs or expenditure in relation to the procurement of goods and services, including the engagement of consultants, legal fees and costs and other fees and costs properly incurred or accepted by the Commission in the performance of its functions or the exercise of its powers under this Act, but excluding expenditure to be paid from the Public Service Fund under section 27;
- (d) acquiring land and other assets, and erecting buildings, and carrying out any other undertakings in the

performance of its functions or the exercise of its powers under this Act;

- (e) repaying any moneys borrowed under section 30 and the interest due on the borrowed moneys; and
- (f) generally paying any expenses for carrying into effect the provisions of this Act.

### **Public Service Fund**

**27.** (1) A fund to be known as the “Public Service Fund” to be administered and controlled by the Commission is established.

(2) The Public Service Fund shall consist of—

- (a) such sums as may be provided by the Parliament for the purpose of funding public service obligations; and
- (b) all other moneys lawfully received by the Commission for the purpose of funding public service obligations.

(3) The Public Service Fund shall be expended for the purposes of paying any airlines performing public service obligations and any expenditure lawfully and directly incurred by the Commission in administering and managing the public service obligations.

### **Conservation of the Fund**

**28.** It shall be the duty of the Commission to conserve the Fund by so performing its functions and exercising its powers under this Act to secure that the total revenues of the Commission are sufficient to meet all sums properly chargeable to its revenue account, including depreciation and interest on capital, taking one year with another.

**Bank accounts**

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

**Power to borrow**

**30.** The Commission 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 Commission for meeting any of its obligations or discharging any of its functions or powers under this Act.

**Investment**

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

**Financial procedure**

**32.** Subject to this Act, the Commission shall determine its own financial procedure.

**Financial year**

**33.** The financial year of the Commission shall begin on 1 January and end on 31 December of each year.

**Accounts and reports**

**34.** (1) The Commission shall cause proper accounts of the Fund and the Public Service Fund and 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 Commission which shall include the balance sheet and account of income and expenditure; and
- (b) a report of its activities.

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

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

**PART VI****LICENSING AND CHARGES****Air service licence**

**35.** (1) No person shall undertake to carry by air or use any aircraft for the carriage of passengers, mail or cargo for hire or reward on a scheduled journey between two or more places of which at least one place is in Malaysia except under and in accordance with an air service licence granted by the Commission.

(2) Subsection (1) shall not apply to a person who is permitted to operate a scheduled journey to or from a place in Malaysia under the terms of any agreement or arrangement entered into by the Government.

(3) Any person who undertakes to carry by air or uses any aircraft for the carriage of passengers, mail or cargo for hire or reward in contravention of this section 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 ten years or to both; and in the case of a continuing offence, the offender, in addition to the penalty provided in this subsection, shall be liable to a fine not exceeding fifty thousand ringgit for every day during which the offence continues after conviction.

### **Air service permit**

**36.** (1) No person shall undertake to carry by air or use any aircraft for the carriage of passengers, mail or cargo for hire or reward on a non-scheduled journey between two or more places of which at least one place is in Malaysia except under and in accordance with an air service permit granted by the Commission.

(2) Subsection (1) shall not apply to a person who is permitted to operate a non-scheduled journey to or from a place in Malaysia under the terms of any agreement or arrangement entered into by the Government.

(3) Any person who undertakes to carry by air or uses any aircraft for the carriage of passengers, mail or cargo in contravention of this section commits an offence and shall, on conviction, be liable to a fine not exceeding one million ringgit; and in the case of a continuing offence, the offender, in addition to the penalty provided in this subsection, shall be liable to a fine not exceeding fifty thousand ringgit for every day during which the offence continues after conviction.

### **Ground handling licence**

**37.** (1) No person shall undertake any of the ground handling services in Malaysia as specified in the Second Schedule except under and in accordance with the licence granted by the Commission.

(2) No person shall engage any ground handling operator unless the operator is licensed under this Act.

(3) Any person who fails to comply with this section 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 three years or to both; and in the case of a continuing offence, the offender, in addition to the penalty provided in this subsection, shall be liable to a fine not exceeding fifty thousand ringgit for every day during which the offence continues after conviction.

### **Aerodrome operator licence**

**38.** (1) No person shall operate an aerodrome in Malaysia for the take-off and landing of any aircraft engaged in the carriage of passengers, mail or cargo for hire or reward except under and in accordance with a licence granted by the Commission.

(2) Any person who fails to comply with this section commits an offence and shall, on conviction, be liable to a fine not exceeding one million ringgit; and in the case of a continuing offence, the offender, in addition to the penalty provided in this subsection, shall be liable to a fine not exceeding fifty thousand ringgit for every day during which the offence continues after conviction.

### **Application for licence or permit**

**39.** (1) An applicant for a licence or permit under this Act shall submit an application in the form and manner together with such documents and information as may be determined by the Commission.

(2) The application shall be accompanied by such fees as may be prescribed by the Commission.

(3) After receipt of the application, documents, information and fee, the Commission shall consider the application having regard to such requirements as may be prescribed.

(4) Where the Commission is not satisfied that the applicant has fulfilled the requirements, the Commission shall afford the applicant an opportunity to amend, rectify or supplement his application within such time as may be determined by the Commission.

(5) The failure of the applicant to amend, rectify or supplement his application under subsection (4) to the satisfaction of the Commission shall render the application to be deemed withdrawn.

(6) Where the Commission is satisfied that the applicant has fulfilled the requirements, the Commission may issue such licence or permit, subject to the payment of the prescribed fee.

### **Power to impose conditions**

**40.** (1) Subject to this Act, the Commission may attach to a licence or permit issued under this Part such conditions as it may think fit, and in particular, any condition which the Commission considers desirable for public interest, in the interest of safety, security and facilitation, or in order to prevent uneconomic competition.

(2) The Commission may, at any time in its discretion, add, cancel or vary any of the conditions attached to a licence or permit under this section.

(3) A licensee or permit holder who fails to comply with any of the conditions attached to his licence or permit, as the case may be, 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.

### **Duration of licence or permit**

**41.** A licence or permit granted or issued under this Part shall be valid for such period as may be prescribed by the Commission.

**Renewal of licence or permit**

**42.** (1) Subject to subsections (2) and (3), the Commission may, on an application by a licensee or permit holder, renew such person's licence or permit on such conditions as the Commission thinks fit or refuse the application.

(2) An application for the renewal of a licence or permit under subsection (1) shall be made at least ninety days before the date of expiry of the existing licence or permit, as the case may be, and shall be accompanied by the prescribed renewal fee.

(3) If the applicant fails to comply with subsection (2) and offers no reason which the Commission thinks reasonable, the Commission may refuse to proceed with, hear or determine such application.

(4) Where no application for renewal of a licence or permit has been submitted, the licensee or permit holder shall within fourteen days from the date of expiry of the licence or permit, return the licence or permit, as the case may be, to the Commission.

**Suspension or revocation of licence or permit**

**43.** The Commission may, by written notice to a licensee or permit holder and without any compensation, revoke or suspend a licence or permit granted or issued under this Part—

- (a) if any of the provisions of this Act or any of the conditions of the licence or permit has not been complied with;
- (b) if the issuance of the licence or permit was induced by a false representation of fact by or on behalf of the applicant, licensee or permit holder;
- (c) in the event of the death, incapacity, bankruptcy or, in the case of a company, liquidation of the licensee or permit holder or, where a receiver or manager is appointed in



relation to the business of such licensee or permit holder;  
or

- (d) if it is satisfied that the licence or permit granted or issued under this Part has been or is intended to be used for an unlawful purpose or that the original purpose for which the licence or permit was granted or issued no longer exists.

(2) The Commission shall not revoke or suspend a licence or permit unless it is satisfied that, after giving the licensee or permit holder an opportunity of making any representation in writing he may wish to make, the licence or permit should be revoked or suspended.

(3) Notwithstanding subsection (1), in the event that an air service licensee or air service permit holder ceases to hold a valid air operator certificate, the air service licence or air service permit issued under this Part shall be deemed to be revoked with effect from the date the air service licensee or air service permit holder ceases to hold an air operator certificate.

(4) It shall be the duty of each air service licensee or air service permit holder to inform the Commission, not later than two days after the occurrence of the event specified in subsection (3), of the occurrence of that event and the effective date of that event and surrender the air service licence or air service permit issued under this Part to the Commission in accordance with subsection (5).

(5) Where a licence or permit—

- (a) has been revoked, the licence or permit shall have no effect from the date of revocation and the licensee or permit holder shall within fourteen days from the date of revocation of the licence or permit return the licence or permit, as the case may be, to the Commission; or
- (b) has been suspended, licence or permit shall have no effect during the period of suspension.

**Surrender of licence or permit**

**44.** (1) A licensee or permit holder may surrender his licence or permit by submitting to the Commission with a written notice of the surrender of the licence or permit, as the case may be, not less than six months prior to the proposed date of surrender.

(2) The surrender of the licence or permit shall take effect six months from the date the Commission receives the notice under subsection (1) or on such other date as may be specified by the Commission.

(3) The surrender of a licence or permit under subsection (1) shall be irrevocable unless the Commission by notice in writing to the licensee or permit holder allows the surrender to be withdrawn before the effective date of the surrender of the licence or permit.

(4) The licensee or permit holder shall—

- (a) take all such measures and provide all such assistance as may be required by the Commission pursuant to the surrender of the licence or permit; and
- (b) forward the licence or permit to the Commission on the effective date of the surrender of the licence or permit.

**Transfer or assignment of licence or permit**

**45.** (1) Subject to subsection (3), a licence or permit issued under this Part shall be personal to the licensee or permit holder and shall not be transferred or assigned.

(2) A licensee or permit holder 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 three years or to both.

(3) Notwithstanding paragraph 43(1)(c), the Commission may, in the event of the liquidation of a licensee or a permit holder, where a

receiver or manager is appointed in relation to the business of such licensee or permit holder, or where for any reason the Commission is satisfied that it would be unjust not to do so, authorize the transfer of such licence or permit.

### **Power to set charges**

**46.** (1) The Commission shall regulate charges for aviation services.

(2) In carrying out its function under subsection (1), the Commission shall have the power to—

- (a) set charges, including maximum charges, or establishing the method for determination of such charges for aviation services;
- (b) carry out reviews of passenger service charges, landing fees and parking fees, third party ground handling charges and other charges for aviation services at such intervals as the Commission thinks fit; and
- (c) following such reviews, revise any charges set or method established under paragraph (a) as the Commission thinks fit.

(3) For the purposes of paragraphs (2)(a) and (c), the Commission shall have regard to—

- (a) the costs of supplying the aviation services;
- (b) the need to promote competitive charges;
- (c) any relevant benchmarks including international benchmarks for prices, costs and return on assets in comparable industries;
- (d) the financial implications which may arise from the determination of the Commission;

- (e) the consumer and investor interests;
- (f) the return on assets for the licensees or permit holder; and
- (g) any other factors the Commission considers relevant.

(4) The Commission shall publish all the charges determined by the Commission in the *Gazette*.

## PART VII

### COMPETITION

#### Division 1

##### *Interpretation and application*

### **Interpretation**

**47.** In this Part, unless the context otherwise requires—

“concerted practice” means any form of coordination between enterprises which knowingly substitutes practical co-operation between them for the risks of competition and includes any practice which involves direct or indirect contact or communication between enterprises, the object or effect of which is either—

- (a) to influence the conduct of one or more enterprises in an aviation service market; or
- (b) to disclose the course of conduct which an enterprise has decided to adopt or is contemplating to adopt in an aviation service market, in circumstances where such disclosure would not have been made under normal conditions of competition;

“dominant position” means a situation in which one or more enterprises possess such significant power in an aviation service

market to adjust prices or outputs or trading terms, without effective constraint from competitors or potential competitors;

“aviation service market” means a market for aviation services in Malaysia or in any part of Malaysia;

“agreement” means any form of contract, arrangement or understanding, whether or not legally enforceable, between enterprises, and includes a horizontal agreement, a vertical agreement, an airline code sharing, alliance, partnership or joint venture agreement, a decision by an association and concerted practices;

“horizontal agreement” means an agreement between enterprises each of which operates at the same level in the production or distribution chain;

“vertical agreement” means an agreement between enterprises each of which operates at a different level in the production or distribution chain; and

“enterprise” means any individual, body corporate, unincorporated body of persons or any other entity carrying on commercial activities relating to aviation services, and for the purposes of this Act, a parent and subsidiary company shall be regarded as a single enterprise if, despite their separate legal entity, they form a single economic unit within which the subsidiaries do not enjoy real autonomy in determining their actions in the aviation service market.

### **Application of this Part**

**48.** (1) This Part applies to any commercial activity, agreement or merger affecting aviation services both within and, subject to subsection (2), outside Malaysia.

(2) In relation to the application of this Part outside Malaysia, this Part applies to any commercial activity, agreement or merger

transacted or executed outside Malaysia which has an effect on competition in any aviation service market in Malaysia.

(3) This Part shall not apply to any commercial activity, agreement or merger specified in the Third Schedule.

(4) For the purposes of this Part, “commercial activity” means any activity of a commercial nature but does not include—

- (a) any activity, directly or indirectly, in the exercise of governmental authority;
- (b) any activity conducted based on the principle of solidarity; and
- (c) any purchase of aviation services not for the purposes of offering aviation services as part of an economic activity.

#### Division 2

#### *Anti-competitive agreement*

#### **Prohibited agreement**

**49.** (1) An agreement between enterprises is prohibited insofar as the agreement has the object or effect of significantly preventing, restricting or distorting competition in any aviation service market.

(2) Without prejudice to the generality of subsection (1), a horizontal agreement between enterprises which has the object to—

- (a) fix, directly or indirectly, a purchase or selling price or any other trading conditions;
- (b) share the aviation service market or sources of supply;
- (c) limit or control—
  - (i) production;

- (ii) market outlets or market access;
  - (iii) technical or technological development; or
  - (iv) investment; or
- (d) perform an act of bid rigging,

in connection with aviation services, is deemed to have the object of significantly preventing, restricting, or distorting competition in any aviation service market.

(3) Any enterprise which is a party to an agreement which is prohibited under this section shall be liable for infringement of the prohibition.

### **Relief of liability**

**50.** Notwithstanding section 49, an enterprise which is a party to an agreement may relieve its liability for the infringement of the prohibition under section 49 based on the following reasons:

- (a) there are significant identifiable technological, efficiency or social benefits directly arising from the agreement;
- (b) the benefits could not reasonably have been provided by the parties to the agreement without the agreement having the effect of preventing, restricting or distorting competition;
- (c) the detrimental effect of the agreement on competition is proportionate to the benefits provided; and
- (d) the agreement does not allow the enterprise concerned to eliminate competition completely in respect of a substantial part of the aviation services.

**Individual exemption**

**51.** (1) An enterprise may apply to the Commission for an exemption with respect to a particular agreement from the prohibition under section 49.

(2) The Commission may, by order published in the *Gazette*, grant the exemption if, in the opinion of the Commission, the agreement is one to which section 50 applies.

(3) An exemption granted under this section is referred to as an “individual exemption”.

(4) The individual exemption granted by the Commission may be—

(a) subject to any condition or obligation as the Commission considers it appropriate to impose; and

(b) for a limited duration as specified in the order.

(5) An individual exemption may provide for the exemption to have effect from a date earlier than that on which the order is made.

(6) If the Commission is satisfied that—

(a) there has been a material change of circumstances from the time when the Commission granted the individual exemption; or

(b) an obligation has been breached,

the Commission may, by order published in the *Gazette*—

(i) cancel the individual exemption;

(ii) vary or remove any condition or obligation; or

(iii) impose additional condition or obligation.



- (7) If the Commission is satisfied that—
- (a) the information on which the Commission based its decision to grant an individual exemption is false or misleading in a material particular; or
  - (b) any condition has been breached,

the Commission may, by order published in the *Gazette*, cancel the individual exemption.

(8) Any action taken by the Commission under subsection (6) shall have effect from the date the order is made.

- (9) An individual exemption which is cancelled—
- (a) by virtue of paragraph (7)(a) shall be void *ab initio*; or
  - (b) by virtue of paragraph (7)(b) shall have effect from the date the condition is breached.

### **Block exemption**

**52.** (1) If agreements which fall within a particular category of agreements are, in the opinion of the Commission, likely to be agreements to which section 50 applies, the Commission may, by order published in the *Gazette*, grant an exemption to the particular category of agreements.

(2) An exemption granted under this section is referred to as a “block exemption”.

(3) An agreement which falls within a category specified in a block exemption is exempt from the prohibition under section 49.

(4) The Commission in granting the block exemption may impose any condition or obligation subject to which a block exemption shall have effect.

- (5) A block exemption may provide that—
- (a) if there is a breach of a condition imposed by the block exemption, the Commission may, by notice in writing, cancel the block exemption in respect of the agreement from the date of the breach;
  - (b) if there is a failure to comply with an obligation imposed by the block exemption, the Commission may, by notice in writing, cancel the block exemption in respect of the agreement;
  - (c) if the Commission considers that a particular agreement is not one to which section 50 applies, the Commission may, by notice in writing, cancel the block exemption in respect of the agreement from such date as the Commission may specify;
  - (d) the block exemption shall cease to have effect at the end of a period specified in the order; or
  - (e) the block exemption is to have effect from a date earlier than that on which the order is made.
- (6) The Commission shall, before granting a block exemption—
- (a) publish details of the Commission's proposed block exemption;
  - (b) give at least thirty days from the date of publication to allow any submission to be made by members of the public in relation to the proposed block exemption; and
  - (c) give due consideration to any submission made.

Division 3

*Abuse of dominant position*

**Abuse of dominant position is prohibited**

**53.** (1) An enterprise is prohibited from engaging, whether independently or collectively, in any conduct which amounts to an abuse of a dominant position in any aviation service market.

(2) The Commission may publish guidelines specifying the types of conduct which would or would not be prohibited under subsection (1).

(3) This section does not prohibit an enterprise in a dominant position from taking any step which has reasonable commercial justification or represents a reasonable commercial response to the market entry or market conduct of a competitor.

(4) The fact that the market share of any enterprise is above or below any particular level shall not in itself be regarded as conclusive as to whether that enterprise occupies, or does not occupy, a dominant position in that market.

Division 4

*Mergers*

**Mergers**

**54.** (1) Mergers that have resulted, or may be expected to result, in a substantial lessening of competition in any aviation service market are prohibited.

(2) For the purposes of this Division, a merger occurs if—

(a) two or more enterprises, previously independent of one another, merge;

- (b) one or more persons or enterprises acquire direct or indirect control of the whole or part of one or more enterprises;
- (c) the result of an acquisition by one enterprise (the first enterprise) of the assets (including goodwill), or a substantial part of the assets, of another enterprise (the second enterprise) is to place the first enterprise in a position to replace or substantially replace the second enterprise in the business or, as appropriate, the part concerned of the business in which that enterprise was engaged immediately before the acquisition; or
- (d) a joint venture is created to perform, on a lasting basis, all the functions of an autonomous economic entity.

(3) For the purposes of this Division, control, in relation to an enterprise, shall be regarded as existing if, by reason of rights, contracts or any other means, or any combination of rights, contracts or other means, decisive influence is capable of being exercised with regard to the activities of the enterprise and, in particular, by—

- (a) ownership of, or the right to use all or part of, the assets of the enterprise; or
- (b) rights or contracts which enable decisive influence to be exercised with regard to the composition, voting or decisions of the enterprise.

(4) For the purposes of this Division, control is acquired by any person or other enterprise if he or it—

- (a) becomes a holder of the rights or contracts, or entitled to use the other means, referred to in subsection (3); or
- (b) although not becoming such a holder or entitled to use those other means, acquires the power to exercise the rights derived therefrom.

(5) In determining whether influence of the kind referred to in subsection (3) is capable of being exercised, regard shall be had to all

the circumstances of the matter and not solely to the legal effect of any instrument, deed, transfer, assignment or other act done or made.

(6) For the purposes of this Division, a merger shall not be deemed to occur if—

- (a) the person acquiring control is a receiver or liquidator acting as such or is an underwriter acting as such
- (b) all of the enterprises involved in the merger are, directly or indirectly, under the control of the same enterprise;
- (c) control is acquired solely as a result of a testamentary disposition, intestacy or the right of survivorship under a joint tenancy; or
- (d) control is acquired by an enterprise the normal activities of which include the carrying out of transactions and dealings in securities for its own account or for the account of others, in the circumstances specified in subsection (7).

(7) The circumstances referred to in paragraph (6)(d) are as follows:

- (a) the control concerned is constituted by the enterprise's holding, on a temporary basis, through the securities acquired in another enterprise; and
- (b) any exercise by the enterprise of voting rights in respect of those securities, whilst that control subsists—
  - (i) is for the purpose of arranging for the disposal, within the specified period, of all or part of the other enterprise or its assets or securities; and
  - (ii) is not for the purpose of determining the manner in which any activity of the other enterprise, being an activity that could affect competition in an aviation service market, is carried on.

- (8) In subsection (7), “specified period” means—
- (a) the period of twelve months from the date on which control of the other enterprise was acquired; or
  - (b) if in a particular case the enterprise shows that it is not reasonably possible to effect the disposal concerned within the period referred to in paragraph (a), within such longer period as the Commission determines and specifies with respect to that case.

### **Notification of anticipated merger**

**55.** (1) A party to an anticipated merger of the relevant type which applies for the anticipated merger to be considered under this section may—

- (a) notify the Commission of the anticipated merger; and
- (b) apply to it for a decision

(2) Subject to sections 59 and 62, on an application under this section, the Commission may make a decision as to—

- (a) whether the prohibition in section 54 will be infringed by the anticipated merger, if carried into effect; and
- (b) if it will not be infringed, whether it is—
  - (i) because of the effect of an exclusion which will apply if the anticipated merger is carried into effect;
  - (ii) because the anticipated merger, if carried into effect, is exempted by the Minister from the application of the prohibition under subsection 59(2); or
  - (iii) because an undertaking has been accepted pursuant to section 62.

(3) Subject to subsection (4), where the Commission makes a decision that an anticipated merger, if carried into effect, will not infringe the prohibition in section 54, the Commission may, if it thinks fit, state that the decision shall be valid only for the period it specifies therein.

(4) Before the expiry of the period referred to in subsection (3), if any, an application may be made by all parties to the anticipated merger who applied to the Commission for a decision on the anticipated merger under this section for that period to be extended.

(5) Where an application for an anticipated merger to be considered has been made to the Commission in accordance with subsection (1) and the anticipated merger is carried into effect before the Commission makes a decision under subsection (2) in respect thereof, the application relating to the anticipated merger—

(a) may be treated by the Commission as if it were an application for the resulting merger to be considered made in accordance with section 56; and

(b) the Commission may make a decision under section 56 in respect of the resulting merger.

(6) For the purpose of subsection (5), the Commission may make a decision under subparagraph 56(2)(b)(ii) notwithstanding the exemption was granted by the Minister under subsection 59(2) in respect of the anticipated merger.

(7) Notwithstanding subsection (5), the Commission may refuse to make any decision in respect of a merger referred to therein and require any party involved in the merger to apply to the Commission for the merger to be considered under subsection 56(1).

(8) In this section, “an anticipated merger of the relevant type” means an anticipated merger of the type described by guidelines made under paragraph 65(2)(c).

**Notification of merger**

**56.** (1) A party involved in a merger which applies for the merger to be considered under this section shall—

- (a) notify the Commission of the merger; and
- (b) apply to it for a decision.

(2) Subject to sections 59 and 62, on an application under this section, the Commission may make a decision as to—

- (a) whether the prohibition in section 54 has been infringed; and
- (b) if it has not been infringed, whether that is—
  - (i) because of the effect of an exclusion;
  - (ii) because the merger is exempted from the prohibition under subsection 59(2); or
  - (iii) because an undertaking has been accepted pursuant to section 62.

(3) A reference in any provision of this Act to an application or a notification under section 56 shall include a reference to an application or a notification under section 55 that the Commission treats as an application or a notification under section 56 pursuant to subsection 55(5).

## Division 5

*Decision by the Commission***Interim measures**

**57.** (1) This section applies if the Commission has commenced but not completed an investigation under section 83.



(2) If the Commission has reasonable grounds to believe that any prohibition under this Part has been infringed or is likely to be infringed and the Commission considers that it is necessary for it to act under this section as a matter of urgency for the purpose of—

- (a) preventing serious and irreparable damage, economic or otherwise, to a particular person or category of persons; or
- (b) protecting the public interest,

the Commission may give such direction as it considers to be appropriate and proportionate for that purpose.

(3) A direction given under subsection (2) may include requiring or causing any person—

- (a) to suspend the effect of, and desist from acting in accordance with, any agreement which is suspected of infringing any prohibition under this Part;
- (b) to desist from any conduct which is suspected of infringing any prohibition under this Part; or
- (c) to do, or refrain from doing, any act, but which shall not require the payment of money.

(4) The Commission shall, before giving a direction under subsection (2)—

- (a) serve a notice to the person to whom the Commission proposes to give the direction; and
- (b) give that person an opportunity to make written representations within a period of at least seven days from the date of the notice.

(5) A notice under subsection (4) shall indicate the nature of the direction which the Commission proposes to give and its reasons for giving the direction.

(6) The Commission may at any time withdraw a direction given under subsection (2).

(7) Without prejudice to subsection (6), any direction given under subsection (2) shall cease to have effect—

(a) on the date of the decision by the Commission upon completion of the investigation under section 83; or

(b) twelve months from the date the direction was given,

whichever is earlier.

### **Finding of non-infringement**

**58.** Where the Commission has made a decision that there is no infringement of a prohibition under Part VII, the Commission shall, without delay, give notice of the decision to any person who is affected by the decision stating the facts on which the Commission bases the decision and the Commission's reason for making the decision.

### **Finding of an infringement**

**59.** (1) If the Commission determines that there is an infringement of a prohibition under this Part, the Commission—

(a) shall require that the infringement to be ceased immediately;

(b) may specify steps which are required to be taken by the infringing enterprise, which appear to the Commission to be appropriate for bringing the infringement to an end;

- (c) may impose a financial penalty which shall not exceed ten percent of the worldwide turnover of the enterprise over the period during which an infringement occurred; or
- (d) may give any other direction as it deems appropriate.

(2) The Commission shall, within fourteen days of making a decision under this Part, notify any person affected by the decision and the person may, within fourteen days of the date of the notice, apply to the Minister for the applicable commercial activity, agreement, merger or anticipated merger, as the case may be, to be exempted from the prohibition on the ground of any public interest consideration.

(3) The Minister may revoke the exemption granted under subsection (2) if the Minister has reasonable grounds for suspecting that the information on which he based his decision was incomplete, false or misleading in a material particular.

(4) The Commission shall prepare and publish reasons for each decision it makes under this section.

### **Leniency regime**

**60.** (1) There shall be a leniency regime, with a reduction of up to a maximum of one hundred percent of any penalties which would otherwise have been imposed, which may be available in the cases of any enterprise which has—

- (a) admitted its involvement in an infringement of any prohibition under subsection 49(2); and
- (b) provided information or other form of co-operation to the Commission which significantly assisted, or is likely to significantly assist, in the identification or investigation of any finding of an infringement of any prohibition by any other enterprises.

(2) A leniency regime may permit different percentages of reductions to be available to an enterprise depending on—

- (a) whether the enterprise was the first person to bring the suspected infringement to the attention of the Commission;
- (b) the stage in the investigation at which—
  - (i) an involvement in the infringement was admitted; or
  - (ii) any information or other co-operation was provided; or
- (c) any other circumstances which the Commission considers appropriate to have regard to.

### **Enforcement of direction or decision**

**61.** (1) The Commission may bring proceedings before the High Court against any person who fails to comply with a direction given by the Commission under section 57 or a decision under section 59.

(2) If the High Court finds that the person referred to in subsection (1) has failed to comply with the direction or decision, the High Court shall make an order requiring the person to comply with the direction or decision.

(3) For the purposes of subsection (2), where the High Court finds that the failure to comply with the decision includes a failure to pay a penalty within the specified period, the High Court shall, in addition to ordering that person to pay the penalty, order the person to pay interest at the normal judgment rate running from the day following that on which the payment was due.

(4) Any breach of an order of the High Court made pursuant to this section shall be punishable as a contempt of court.

### **Power to accept undertaking**

**62.** (1) The Commission may, subject to the conditions that the Commission may impose, accept from an enterprise an undertaking to do or refrain from doing anything as the Commission considers appropriate.

(2) If the Commission accepts an undertaking under subsection (1), the Commission shall, in relation to an infringement, close the investigation without making any finding of infringement and shall not impose a penalty on the enterprise.

(3) Any undertaking accepted by the Commission under this section shall be a document available for inspection by the public in a manner determined by the Commission.

(4) The provisions of any undertaking accepted by the Commission under this section shall be enforceable by the Commission as though those provisions had been set out in a decision given to the enterprise providing that undertaking pursuant to section 59.

#### Division 6

##### *General*

### **Aviation service market review**

**63.** (1) The Commission may, on its own initiative or upon the request of the Minister, conduct a review into any aviation service market in order to determine whether any feature or combination of features of the market prevents, restricts or distorts competition in the market.

(2) The aviation service market review includes a study into—

(a) the structure of the aviation service market concerned;

- (b) the conduct of enterprises in the aviation service market;
- (c) the conduct of suppliers and consumers to the enterprises in the aviation service market; or
- (d) any other relevant matters.

(3) Upon conclusion of the aviation service market review, the Commission shall publish a report of its findings and recommendations.

(4) The report of the Commission shall be made available to the public.

### **Right of private action**

**64.** (1) Any person who suffers loss or damage directly as a result of an infringement of any prohibition under this Part shall have a right of action for relief in civil proceedings in a court under this section against any enterprise which is or which has at the material time been a party to such infringement.

(2) The action may be brought by any person referred to in subsection (1) regardless of whether such person dealt directly or indirectly with the enterprise.

### **Power to issue guidelines**

**65.** (1) The Commission may issue and publish such guidelines as may be expedient or necessary for the better carrying out of the provisions of this Part.

(2) Without prejudice to the generality of subsection (1), the Commission may issue guidelines on—

- (a) the economic and legal analysis to be used in determining cases under this Part;

- (b) the principles to be used in determining any penalty or remedy imposed under this Part;
- (c) the types of anticipated mergers that are applicable for consideration by the Commission under section 55; and
- (d) the procedures to be followed by any party making an application under section 55 or 56.

(3) The Commission may revoke, vary, revise or amend the whole or any part of any guidelines issued under this section.

(4) The Commission may impose a financial penalty for any non-compliance of any guidelines issued under this section—

- (a) where such person is an individual, to an amount not exceeding one million ringgit; or
- (b) where such person is a body corporate, to an amount not exceeding five per cent of the body corporate's annual turnover from the preceding financial year.

(5) For the purpose of this section—

“financial year” means the period in respect of which any financial statement is made up whether that period is a year or not;

“annual turnover” means the aggregate of all sums received in the course of the business during financial year, as stated or otherwise shown in the accounts of the business, including grants from any Federal Government or State Government.

## PART VIII

## AIR TRAFFIC RIGHT AND SLOT ALLOCATION

**Air traffic right**

**66.** (1) The Commission shall be responsible to administer, allocate and manage air traffic right for both domestic and international routes.

(2) In carrying out its functions under subsection (1), the Commission may—

- (a) evaluate the performance of the airlines in providing air transport services and, in the event of a breach of any condition attached to the grant of air traffic right to an airline, the Commission may—
  - (i) impose financial penalties on the airline up to one million ringgit;
  - (ii) suspend the grant of air traffic right to the airline; or
  - (iii) revoke the grant of air traffic right to the airline;
- (b) consider the effect on consumers, the civil aviation industry and the public interest by the proposed air traffic right allocation;
- (c) consider the benefits of allocating air traffic right on the same route to two or more applicants;
- (d) consider the competition between the airlines in providing air transport services; and
- (e) consider any other factors as may be prescribed by the Commission.



**Slot allocation**

**67.** (1) The Commission shall have the powers to do any or all of the following:

- (a) supervise and monitor the slot allocation by any person;
- (b) issue directions to such person relating to the slot allocation;
- (c) prescribe regulations setting out the principles and procedures for slot allocation;
- (d) determine any dispute relating to slot allocation.

(2) Any aircraft operating at an aerodrome shall not intentionally—

- (a) operate air services at times significantly different from the allocated slots; or
- (b) use slots in a significantly different way from that indicated at the time of allocation, where such use causes prejudice to aerodrome or air traffic operations.

(3) For the purposes of this section, “slot allocation” means the allocation of time slots for the purpose of granting aircraft access to aerodrome facilities for landing and taking-off at specific dates and times.

PART IX

PUBLIC SERVICE OBLIGATIONS

**Public service obligations**

**68.** (1) The Commission shall advise the Minister with regard to the policy for public service obligations.

(2) In performing its function of administering and managing public service obligations under subsection (1), the Commission shall—

- (a) identify the criteria to be applied for the designation of public service obligation routes;
- (b) evaluate the amounts to be expended from the Public Service Fund in order to make a public service obligation route commercially viable to an airline;
- (c) administer programmes on public service obligations by airlines;
- (d) supervise, monitor and manage the performance by airlines of public service obligations;
- (e) make payment to the airlines for their performance of public service obligations from the Public Service Fund on such terms as the Commission may prescribe; and
- (f) require the relevant airlines to comply with all applicable agreements and laws in the carrying out of public service obligations.

## PART X

### CONSUMER PROTECTION

#### **Consumer code**

**69.** (1) The Commission may prescribe a consumer code to be published in the *Gazette* which may include requirements on minimum policies and practices for—

- (a) reasonably meeting consumer requirements;

- (b) the handling of consumer complaints and compensation of consumers in case of a breach of the consumer code;
- (c) raising consumer awareness including the provision of information to consumers regarding aviation services, charges and minimum service levels and standards of performance;
- (d) the protection of consumer information;
- (da) the determination of fees or charges imposed on consumers by providers of aviation services; and
- (e) any other matters of concern to consumers.

(2) In the preparation and any subsequent amendment of the consumer code under subsection (1), the Commission shall consult the stakeholders including airlines, aerodrome operators and other relevant bodies and organizations in the civil aviation industry.

(3) A person who provides any aviation service shall comply with the consumer code.

(4) The Commission may impose a financial penalty for any non-compliance an amount not exceeding two hundred thousand ringgit, and in the case of a second or subsequent non-compliance, an amount ten times of the financial penalty which was imposed for the first non-compliance.

### **Consumer complaint**

**70.** A complaint pertaining to any aviation service may be lodged by any consumer to the Commission.

**Determination of consumer complaints**

**71.** (1) Upon receipt of a complaint under section 70, the Commission may appoint any one of its members or establish a committee to hear and determine the complaint.

(2) In determining the complaint, the member or the committee may require for costs to be paid to the party in whose favour the decision is made.

(3) Any person who is found to have made a vexatious or frivolous complaint shall be subject to a financial penalty of two hundred ringgit.

**Recovery of unpaid financial penalty or costs**

**72.** Any unpaid financial penalty under section 69 or costs imposed under section 71 may be sued for and recovered as a civil debt due to the Commission and in addition, the High Court may order for a payment of a penalty for late payment up to an amount equivalent to twice the amount of the financial penalty or costs unpaid and costs of recovering the amount including any costs of legal proceedings.

**Enforcement of decisions on consumer complaint**

**73.** (1) A decision given by the Commission under this Part, upon application to the High Court to be registered as a judgment of the High Court, shall be enforced as such.

(2) In the case where a decision of the Commission is in favour of the consumer and the person against whom the decision was made fails to comply with the decision within thirty days from the date of decision, the Commission may, if the Commission thinks appropriate, bring the matter to the High Court on behalf of the consumer for an order requiring such person to comply with the decision.

PART XI

DISPUTE RESOLUTION

**Disputes**

**74.** (1) Any dispute between two or more providers of aviation services regarding any matter under this Act shall first be resolved through mediation.

(2) Notwithstanding any provision in the Mediation Act 2012 [Act 749] to the contrary, the parties shall resolve the dispute through mediation within a period of thirty days or such longer period as the Commission may approve which shall not exceed sixty days.

**Commission to decide on disputes**

**75.** If the parties to the dispute fail to resolve the dispute through mediation within the time specified under subsection 74(2), the Commission shall commence to decide on the dispute.

**Decisions to be in writing**

**76.** (1) The terms and conditions of any resolution of a dispute by the Commission shall be in writing and shall contain reasons for such decision.

(2) The Commission shall provide the parties to the dispute with a copy of its decision as soon as practicable.

**Registration of decisions**

**77.** (1) The Commission shall maintain a register of all decisions under this Part.

(2) The register shall contain—

- (a) the names of the parties to the dispute;
- (b) a general description of the matter pertaining to the decision and the decision; and
- (c) the date of the decision.

### **Enforcement of decisions**

**78.** (1) A decision given by the Commission, upon application to the High Court to be registered as a judgment of the High Court, shall be enforced as such.

(2) For the purposes of subsection (1), if the High Court finds that a person referred to in the decision has failed to comply with the decision, the High Court shall make an order requiring such person to comply with the decision.

## PART XII

### ENFORCEMENT AND INVESTIGATION

#### **Authorized officer**

**79.** (1) The Commission may in writing authorize any officer of the Commission to exercise the powers of enforcement under this Act.

(2) In exercising any of the powers of enforcement under this Act, an authorized officer shall on demand produce to the person against whom he is acting the authority issued to him by the Commission.

### **Powers of enforcement, inspection and investigation**

**80.** The authorized officer shall have all the powers of a police officer of whatever rank as provided for under the Criminal Procedure Code [Act 593], except the power to arrest without warrant, in relation to enforcement, inspection and investigation, and such powers shall be in addition to the powers provided for under this Act and not in derogation thereof.

### **Power to require information**

**81.** (1) The authorized officer may make an order under subsection (2) against any person if he has reasonable grounds to believe that that person—

- (a) has any information or any document that is relevant to the performance of functions and powers under this Act; or
- (b) is capable of giving any evidence which the authorized officer has reasonable grounds to believe that the evidence is relevant to the performance of functions and powers under this Act.

(2) The order under subsection (1) may require the person—

- (a) to give the authorized officer any such information;
- (b) to produce to the Commission any such documents, whether in a physical form or in electronic media;
- (c) to make copies of any such documents and to produce those copies to the Commission;
- (d) if the person is an individual, to appear, at a private hearing, before the Commission at a time and place specified in the notice to give any evidence, either orally or in writing, and produce any such documents, whether in a physical form or in electronic media;

- (e) if the person is a body corporate or a public body, to cause a competent officer of the body corporate or the public body to appear, at a private hearing, before the Commission at a time and place specified in the notice to give any such evidence, either orally or in writing, and produce any documents, whether in a physical form or in electronic media; or
      - (f) if the person is a partnership, to cause an individual who is a partner in the partnership or an employee of the partnership to appear, at a private hearing, before the Commission at a time and place specified in the notice to give any evidence, either orally or in writing, and produce any documents, whether in a physical form or in electronic media.
- (3) The person so ordered under subsection (1) shall—
  - (a) provide the required information or documents within such time as specified in the order or such extended time as the Commission may grant; and
  - (b) ensure that the information or documents provided are true, accurate and complete and shall provide a representation to that effect, including a representation that he is not aware of any other information or document which would make the information or document provided untrue or misleading.
- (4) A person who fails to comply with an order of the Commission under this section 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 three years or to both.



### **Power to conduct inspection**

**82.** (1) For the purpose of ascertaining compliance with this Act or breach of code of conduct under section 15 or consumer code under section 69, the Commission shall have access to any place or building and may inspect and make copies of or take extracts from any book, minute book, register or other documents required to be kept by the Commission or necessary for the purpose of ascertaining compliance with this Act.

(2) For the purposes of this section, the Commission may by notice in writing require any person to produce to him such books, minute books, registers or other documents as are in the custody or under the control of that person.

(3) Any person who—

- (a) fails to produce any books, minute books, registers or other documents as required by the Commission under this section; or
- (b) obstructs, intimidates, distracts, harasses or hinders the Commission while exercising any of the powers under this section,

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 three years or to both.

### **Power to investigate**

**83.** The authorized officer shall have the power to conduct an investigation where there is reason to suspect that—

- (a) an offence, breach or infringement of any prohibition has been or is being committed;
- (b) there was an attempt to commit an offence, breach or infringement of any prohibition; or

- (c) there was a conspiracy to commit an offence, breach or infringement of any prohibition,

in relation to this Act or breach of code of conduct under section 15 or consumer code under section 69.

### **Giving false or misleading information, evidence or document**

**84.** A person who fails to disclose or omits to give any relevant information or evidence or document, or provides any information, evidence or document that he knows or has reason to believe is false or misleading, in response to a direction issued by the Commission, 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 three years or to both.

### **Compliance order**

**85.** (1) Where the authorized officer is satisfied that a person has committed or is likely to commit an offence or has infringed or is likely to infringe a prohibition against this Act, he may make a compliance order under this section.

(2) Any person against whom a compliance order is made shall comply with the order.

(3) A compliance order may require a person to refrain from conduct which is in contravention of this Act or to take actions required to be taken in order to comply with this Act.

(4) A compliance order shall be made in writing specifying the grounds for its making.

### **Tipping off**

**86.** (1) Any person who—

- (a) knows or has reasonable grounds to suspect that an authorized officer is acting, or is proposing to act, in connection with an investigation which is being, or is about to be, conducted under or for the purposes of this Act and discloses to any other person information or any other matter which is likely to prejudice that investigation or proposed investigation; or
- (b) knows or has reasonable grounds to suspect that a disclosure has been made to an authorized officer under this Act and discloses to any other person information or any other matter which is likely to prejudice any investigation which might be conducted following the disclosure,

commits an offence and shall, on conviction, be liable to a fine not exceeding three million ringgit or to imprisonment for a term not exceeding five years or to both.

(2) Nothing in subsection (1) makes it an offence for an advocate and solicitor or his employee to disclose any information or other matter—

- (a) to his client or the client's representative in connection with the giving of advice to the client in the course and for the purpose of the professional employment of the advocate and solicitor; or
- (b) to any person in contemplation of, or in connection with and for the purpose of, any legal proceedings.

(3) Subsection (2) does not apply in relation to any information or other matter which is disclosed with a view to furthering any illegal purpose.

(4) In proceedings against a person for an offence under this section, it is a defence to prove that—

- (a) he did not know or suspect that the disclosure made under paragraph (1)(b) was likely to prejudice the investigation; or
- (b) he had lawful authority or reasonable excuse for making the disclosure.

### **Threat or reprisal prohibited**

**87.** (1) No person shall—

- (a) coerce or attempt to coerce any person to refrain from doing any act referred to in subsection (3); or
- (b) subject any person to any commercial or other disadvantage as a reprisal against the person for doing any act referred to in subsection (3).

(2) For the purposes of and without prejudice to the generality of paragraph (1)(b), the commercial or other disadvantage may include a threat of late payment of amounts properly due to the person, the unreasonable bringing or conduct of litigation against the person, the cancellation of orders with the person, or the diversion of business from, or refusal to trade with, the person.

(3) The acts referred to in subsection (1) are as follows:

- (a) making a complaint to the Commission; and
- (b) co-operating with, or offering or agreeing to co-operate with, the Commission in connection with any investigation by the Commission.

(4) Any person who contravenes this section 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; and for a second or subsequent offence, to a fine not exceeding two million ringgit or to imprisonment for a term not exceeding five years or to both.

PART XIII

GENERAL

**Appeals to the High Court**

**88.** (1) Any person or body aggrieved by any decision of the Commission under Part VII, may, at any time within the period of three months beginning from the date on which the decision was communicated to him, appeal to the High Court.

(2) Any such appeal shall be made in accordance with the provisions of any written law for the time being in force relating to civil procedure; and the High Court shall make such order as it considers just.

(3) In this section, “decision” includes any act, omission, refusal, direction or order.

**Civil aviation industry audit**

**89.** (1) The Commission may, at any time, carry out or appoint an auditor to carry out an audit on any aspect of the civil aviation industry including airport operations and related services.

(2) The Commission shall, as soon as possible, send a copy of the auditors’ report to the Minister and the Minister shall cause the same to be laid before both Houses of Parliament.

**Returns, reports, accounts and information**

**90.** (1) The Commission shall furnish to the Minister, and any public authority as may be specified by the Minister, such returns, reports, accounts and information with respect to its activities and finances as the Minister may, from time to time, require or direct.

(2) The Commission shall, as soon as practicable after the end of each financial year, cause to be made and transmitted to the Minister,

and, if so directed by the Minister, to any other public authority a report dealing with the activities of the Commission during the preceding financial year.

(3) The returns, reports, accounts and information shall be in such form and shall contain such information relating to the proceedings and policy of the Commission and any other matter as the Minister may, from time to time, specify.

### **Conduct of prosecution**

**91.** No prosecution for any offence under this Act shall be instituted except with the consent in writing of the Public Prosecutor.

### **Offences by bodies corporate**

**92.** (1) Where a person convicted in respect of any offence under this Act is a body corporate, it shall only be punished with the fine provided for such offence.

(2) Where an offence against this Act or any regulations made thereunder has been committed by a body corporate, any person who at the time of the commission of the offence was a director, a chief executive officer, an officer, an employee, a representative or the secretary of the body corporate or was purporting to act in such capacity or was in any manner or to any extent responsible for the management of any of the affairs of the body corporate or was assisting in such management—

- (a) may be charged severally or jointly in the same proceedings with the body corporate; and
- (b) shall be deemed to have committed that offence unless he proves that the offence was committed without his consent or connivance and that he exercised all such due diligence to prevent the commission of the offence as he ought to have exercised, having regard to the nature of

his functions in that capacity and to all the circumstances.

(3) Where a person who is an employee of a body corporate contravenes any provision of this Act, that body corporate shall be deemed to have contravened such provision.

(4) For the purposes of this section, “officer”, in relation to a director of a corporation, includes—

- (a) a person occupying or acting in the position of a director of the corporation, 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 corporation are accustomed to act; and
- (c) if the corporation is incorporated outside Malaysia—
  - (i) a member of the corporation’s board;
  - (ii) a person occupying or acting in the position of director of the corporation’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 corporation’s board are accustomed to act.

### **Public servants and public officers**

**93.** All members of the Commission and any of its committees, and employees or agents of the Commission, while discharging their duties under this Act as such members, employees or agents, shall be

deemed to be public servants within the meaning of the Penal Code [Act 574].

### **Obligation of secrecy**

**94.** (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 Commission—

- (a) no member of the Commission or any of its committees or any employee or agent of the Commission or any person attending any meeting of the Commission 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 or 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 Commission 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.

### **Representation in civil proceedings**

**95.** Notwithstanding the provisions of any other written law—

- (a) in any civil proceedings by or against the Commission;
- (b) in any civil proceedings against any employee in relation to the performance of his functions under this Act; or



- (c) in any other civil proceedings in which the Commission 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 Commission for that purpose may, on behalf of the Commission or the employee, institute such proceedings or appear in such proceedings and may make all appearances and applications and do all acts in respect of such proceedings on behalf of the Commission or employee.

### **Protection against suits and legal proceedings**

**96.** No action, suit, prosecution or other proceedings shall lie, or be brought, instituted or maintained in any court against—

(a) the Commission; or

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

in respect of any act, neglect or default done or committed by it or him in good faith or any omission omitted by it or him in good faith, in such capacity.

### **Public Authorities Protection Act 1948**

**97.** The Public Authorities Protection Act 1948 [*Act 198*] shall apply to any action, suit, prosecution or proceedings against the Commission or a member of the Commission, a member of a committee, and an employee or agent of the Commission 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.

**Power to make regulations**

**98.** (1) The Commission may make regulations as may be necessary or expedient for—

- (a) giving full effect to the provisions of this Act;
- (b) carrying out or achieving the objects and purposes of this Act; or
- (c) the further, better or convenient implementation of the provisions of this Act.

(2) Without prejudice to the generality of subsection (1), regulations may be made for—

- (a) prescribing all matters relating to the issuance of licences and permits under this Act, including the eligibility of persons applying for licences and permits, licence and permit fees, the duration of the licences and permits, the forms of licences and permits, the standard conditions of the licences and permits, application fees, annual fees, renewal fees and other processing charges;
- (b) prescribing matters pertaining to air traffic right allocation;
- (c) prescribing matters pertaining to slot allocation at the aerodromes;
- (d) prescribing the code of conduct for the members of the Commission and the members of a committee;
- (e) prescribing the conditions of service, conduct and discipline of the employees of the Commission;
- (f) prescribing matters pertaining to the public service obligation;

- (g) prescribing the consumer code and matters pertaining to consumer protection;
- (h) prescribing matters pertaining to dispute resolution;
- (i) prescribing matters pertaining to competition in the civil aviation industry;
- (j) prescribing matters pertaining to ground handling services;
- (k) prescribing the fees and charges payable to the Commission under this Act and the manner for collecting and disbursing such fees, which includes to exempt fully or partially the payment of any fees and charges payable to the Commission under this Act by any aircraft, flight or person or classes of aircrafts, flights, or persons on such terms and conditions as the Commission thinks fit;
- (l) providing for the regulation of all or any of the activities of the Commission and generally the performance of the functions, the exercise of the powers and the discharge of the duties of the Commission under this Act; and
- (m) providing for such other matters as are contemplated by, or necessary for giving full effect to, the provisions of this Act and for their due administration.

(3) 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 five hundred thousand ringgit or imprisonment for a term not exceeding five years or both for such offence.

**Power to issue guidelines, circulars, directives, etc.**

**98A.** (1) For the purposes of this Act or the subsidiary legislation made under this Act, the Commission may issue guideline, circular, directive, practice note or notice as it considers appropriate to regulate economic matters relating to the civil aviation industry and may impose any condition or restriction as the Commission thinks fit.

(2) Every guideline, circular, directive, practice note or notice issued under this Act or the subsidiary legislation made under this Act shall be published by the Commission in such manner as to ensure that the guideline, circular, directive, practice note or notice is brought to the attention of the person who has to comply with such guideline, circular, directive, practice note or notice.

(3) The Commission may impose a financial penalty for any non-compliance of any guideline, circular, directive, practice note or notice issued under this section—

- (a) where such person is an individual, to an amount not exceeding one million ringgit; or
- (b) where such person is a body corporate, to an amount not exceeding five per cent of the body corporate's annual turnover from the preceding financial year.

(4) The Commission may revoke, vary, revise or amend the whole or any part of any guideline, circular, directive, practice note or notice issued under this section.

(5) For the purpose of this section—

“financial year” means the period in respect of which any financial statement is made up whether that period is a year or not;

“annual turnover” means the aggregate of all sums received in the course of the business during financial year, as stated or otherwise shown in the accounts of the business, including grants from any Federal Government or State Government.

### **Power to amend Schedules**

**99.** The Minister may, upon the recommendation of the Commission, amend any Schedule by order published in the *Gazette*.

## PART XIV

### SAVINGS AND TRANSITIONAL

#### **Savings for licences and permits**

**100.** (1) Every person who, before the appointed date, held a valid licence or permit issued to him under the Civil Aviation Act 1969 or the Civil Aviation Regulations 1996, or any air traffic right allocated to him for domestic or international service by the Ministry of Transport, shall continue to be authorized under this Act until the expiry date of the licence, permit or right and subject to the terms and conditions attached to the licence, permit or right.

(2) Nothing in this section shall be construed to extend the term or duration of a licence, permit or right specified in subsection (1) beyond the date of its expiry.

(3) The Commission may alter the terms and conditions attached to the licence, permit or right authorized under subsection (1) for the purpose of bringing them into conformity with the policy of the Commission regarding the imposition of conditions on licensing and permit under this Act.

(4) The provisions of this Act relating to the cancellation of licences, permits or right shall apply to all persons deemed under subsection (1) to be authorized under this Act.

#### **Savings for Rural Air Services Agreement**

**101.** The Rural Air Services Agreement entered between the Government and MASwings Sdn. Bhd. subsisting before the

appointed date shall have full force and effect and shall on the appointed date be monitored by the Commission.

### **Continuance of pending applications, etc.**

**102.** (1) All applications, approvals or decisions, on appeal or otherwise, pertaining to matters under this Act, pending before the Minister or the Director General of Civil Aviation under the Civil Aviation Act 1969 or Civil Aviation Regulations 1996, shall on the appointed date be dealt with by the Commission under this Act.

(2) All instruments, certificates or documents pertaining to matters under this Act lodged with the Minister or the Director General of Civil Aviation under the Civil Aviation Act 1969 or Civil Aviation Regulations 1996 before the appointed date shall on the appointed date be lodged with the Commission.

### **Existing ground handling services**

**103.** (1) A person shall only be authorized to carry out the services and activities stipulated in any agreement and supplementary agreement in respect of ground handling services for a period of one year from the appointed date or such other periods as may be extended by the Commission if the person lodges a certified copy of the agreement and supplementary agreement with the Commission within six months from the appointed date or such other period as may be extended by the Commission.

(2) The authorization granted to the person authorized under subsection (1) shall lapse if they fail to register with the Commission within six months or any extended period mentioned in subsection (1) after the appointed date.

### **Existing agreements**

**104.** (1) A person shall be authorized to carry out the services and activities stipulated in an agreement in respect of public service

obligations and any operating or concession agreement until the expiry date of the agreement and subject to the terms and conditions attached to the agreements.

(2) Nothing in this section shall be construed to extend the term or duration of an agreement specified in subsection (1) beyond the date of its expiry.

### **Existing agreements**

**104.** All acts and things done on behalf of the Commission 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 Commission.

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#### FIRST SCHEDULE

[Section 14]

#### MEETINGS

### **The Commission**

**1.** (1) The Commission 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 Executive Chairman may determine.

(2) The Executive Chairman shall ensure that there shall be not less than three meetings of the Commission in a year.

(3) The Executive Chairman shall preside at a meeting of the Commission.

(4) A quorum may be formed at any meeting—

- (a) by the Executive Chairman and at least four other members of the Commission one of whom shall be a member specified in paragraph 5(1)(b); or
- (b) by the member of the Commission appointed under section 6 to temporarily act as the Executive Chairman and at least four other members of the Commission one of whom shall be a member specified in paragraph 5(1)(b).

(5) Every member present at a meeting of the Commission shall be entitled to one vote.

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

(7) Any member of the Commission may request for the holding of or participation in any meeting by means of instantaneous telecommunication device such as telephone, video conferencing or other electronic means of audio or audio-visual communications. The contemporaneous linking together by such instantaneous telecommunication device of a number of members sufficient to constitute a quorum, despite the fact that the members are not present together in one place at the time of the conference, shall constitute a duly convened and constituted meeting, provided that—

- (a) the Executive Chairman shall have approved the holding of or participation in such meeting by means of instantaneous telecommunication device;
- (b) all the members of the Commission shall have received notice of such meeting and the means by which the meeting will be conducted;
- (c) each of the members of the Commission taking part in the meeting by the instantaneous telecommunication device must be able to hear each of the other members taking part at the commencement and for the duration of the meeting; and
- (d) at the commencement of the meeting and prior to the voting on any resolution, each member of the Commission must acknowledge his presence for the purpose of the meeting to all of the other members taking part.

### **Invitation to others to attend meetings**

2. (1) The Commission may invite any other person to attend any meeting or discussion of the Commission 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 Commission under subparagraph (1) may be paid such allowances and other expenses as the Commission may determine.

### **Resolutions without meetings**

3. (1) A resolution is taken to have been passed at a meeting if—
  - (a) all members of the Commission have been informed of the proposed resolution, or reasonable efforts have been made to inform all members of the Commission of the proposed resolution; and
  - (b) without meeting, all of the members of the Commission indicate agreement with the resolution in accordance with the method determined by the Commission under subparagraph (2).
- (2) Subparagraph (1) applies only if the Commission—
  - (a) decides that the subparagraph applies; and
  - (b) decides the method by which members of the Commission are to indicate agreement with the resolutions.

### **Minutes**

4. (1) The Commission shall cause minutes of all their meetings to be maintained and kept in a proper form.
- (2) Any minutes made of meetings of the Commission shall, if duly signed, shall be admissible in evidence in all legal proceedings without further proof.
- (3) Every meeting of the Commission 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 thereof to have been duly qualified to act.

### **Procedure**

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

**Validity of acts and proceedings**

6. No act done or proceeding 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 Commission;
- (b) any omission, defect or irregularity not affecting the merits of the case.

**Member of Commission to devote time to business of the Commission**

7. Every member of the Commission shall devote such time to the business of the Commission 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.

(2) Any person invited to attend any meeting or discussion under subparagraph (1) may be paid such allowances and other expenses as the Commission 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 Commission 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 thereof to have been duly qualified to act.

### **Procedure**

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

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## SECOND SCHEDULE

[Section 37]

### LIST OF GROUND HANDLING SERVICES

1. *Ground administration and supervision, comprising—*
  - (a) representation and liaison services with local authorities or any other entity, disbursements on behalf of the airport user and provision of office space for its representatives;
  - (b) load control, messaging and telecommunications;
  - (c) handling, storage and administration of unit load devices;
  - (d) any other supervision services before, during or after the flight; and
  - (e) any other administrative service requested by the airport user.
2. *Passenger handling comprising* any kind of assistance to arriving, departing, transfer or transit passengers, including checking tickets and travel documents, registering baggage and carrying it to the sorting area.
3. *Freight and mail handling comprising—*
  - (a) for freight: handling of related documents, customs procedures and the implementation of any security procedure agreed between the parties or required in the circumstances;
  - (b) for mail: handling of related documents and implementation of any security procedure between the parties or required by the circumstances.

**4. Aircraft services, comprising—**

- (a) the external and internal cleaning of the aircraft, and the toilet and water services;
- (b) the cooling and heating of the cabin, the removal of snow and ice, the de-icing of the aircraft;
- (c) the rearrangement of the cabin with suitable cabin equipment, the storage of the equipment.

**5. Aircraft maintenance, comprising—**

- (a) routine services performed before flight;
- (b) non-routine services requested by the airport user;
- (c) the provision and administration of spare parts and suitable equipment;
- (d) the request for or reservation of a suitable parking and/or hangar space.

**6. Flight operations and crew administration, comprising—**

- (a) preparation of the flight at the departure airport or at any other point;
- (b) in flight assistance, including re-dispatching if needed;
- (c) post-flight activities;
- (d) crew administration.

**7. Surface transport comprising—**

- (a) the organization and execution of crew, passenger, baggage, freight and mail transport between different terminals of the same airport, but excluding the same transport between the aircraft and any other point within the perimeter of the same airport;
- (b) any special transport requested by the airport user.

**8. Catering services comprising—**

- (a) liaison with suppliers and administrative management;
- (b) storage of food and beverages and of the equipment needed for the preparation of food and beverages;

(c) cleaning of the equipment;

(d) preparation and delivery of equipment as well as of bar and food supplies.

**9.** *Baggage handling*, comprising handling baggage in the sorting area sorting it, preparing it for departure, loading it onto and unloading it from the devices designed to move it from the aircraft to the sorting area and vice versa, as well as transporting baggage from the sorting area to the reclaim area.

**10.** *Freight and mail handling* as regards the physical handling of freight and mail whether incoming, outgoing or being transferred, between the air terminal and the aircraft.

**11.** *Ramp handling comprising—*

(a) marshalling the aircraft on the ground at arrival and departure;

(b) assistance to aircraft parking and provision of suitable devices;

(c) communication between the aircraft and the air-side supplier of services;

(d) the loading and unloading of the aircraft, including the provision and operation of suitable means, as well as the transport of crew and passengers between the aircraft and the terminal, and baggage transport between the aircraft and the terminal;

(e) the provision and operation of appropriate units for engine starting;

(f) the moving of the aircraft at arrival and departure, as well as the provision and operation of suitable devices;

(g) the transport, loading on to and unloading from the aircraft of food and beverages.

**12.** *Fuel and oil handling, comprising—*

(a) the organization and execution of fueling and defueling operations, including the storage of fuel and the control of the quality and quantity of fuel deliveries;

(b) the replenishing of oil and other fluids.

**13.** Any other services as may be determined by the Commission from time to time.

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## THIRD SCHEDULE

## [Section 48]

## EXCLUDED COMMERCIAL ACTIVITIES, AGREEMENTS AND MERGERS

1. The administration and provision of public service obligations and the agreements entered into in respect of the public service obligations.
  2. Existing agreements entered into with the Government as amended from time to time.
  3. An agreement or conduct to the extent to which it is engaged in an order to comply with a legislative requirement.
  4. Collective bargaining activities or collective agreements in respect of employment terms and conditions and which are negotiated or concluded between parties which include both employers and employees or organizations established to represent the interests of employers or employees.
  5. An enterprise entrusted with the operation of services of general economic interest or having the character of a revenue-producing monopoly in so far as the prohibition under Division 2 of Part VII would obstruct the performance, in law or in fact, the particular tasks assigned to that enterprise.
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**LAWS OF MALAYSIA****Act 771****MALYSIAN AVIATION COMMISSION ACT 2015****LIST OF AMENDMENTS**

Amending law	Short title	In force from
Act A1559	Malaysian Aviation Commission (Amendment) Act 2018	09-02-2018

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**LAWS OF MALAYSIA****Act 771****MALAYSIAN AVIATION COMMISSION ACT 2015****LIST OF SECTIONS AMENDED**

Section	Amending authority	In force from
2	Act A1559	09-02-2018
18	Act A1559	09-02-2018
36	Act A1559	09-02-2018
65	Act A1559	09-02-2018
66	Act A1559	09-02-2018
69	Act A1559	09-02-2018
98	Act A1559	09-02-2018
98A	Act A1559	09-02-2018

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