

A BILL

i n t i t u l e d

An Act to amend the Civil Aviation Authority of Malaysia Act 2017.

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ENACTED by the Parliament of Malaysia as follows:

Short title and commencement

1. (1) This Act may be cited as the Civil Aviation Authority of Malaysia (Amendment) Act 2024.

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

General amendment

2. The Civil Aviation Authority of Malaysia Act 2017 [*Act 788*], which is referred to as the “principal Act” in this Act, is amended by substituting for the words “any subsidiary legislation made under the Civil Aviation Act 1969” wherever appearing the words “any subsidiary legislation made under this Act and the Civil Aviation Act 1969”.

Amendment of section 2**3. Section 2 of the principal Act is amended—**

(a) by inserting after the definition of “aerodrome” the following definition:

‘ “prescribed” means prescribed by regulations made under this Act;

“air traffic right” means—

(a) in relation to domestic routes, the right of an airline licensed by the Authority 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 Authority 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 Authority under section 11 or 36ZL;’;

(b) by inserting after the definition of “Minister” the following definitions:

‘ “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 the airlines solely considering their commercial interest;

“licensee” means a person licensed under this Act;

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

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

“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 of any of the ground handling services in Malaysia 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;
- (d) any other service determined by the Authority 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;’;

- (d) in the definition of “Authority”, by substituting for the full stop at the end of the definition a semicolon; and
- (e) by inserting after the definition of “Authority” the following definition:

‘ “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.’.

Amendment of section 5

4. Section 5 of the principal Act is amended—

(a) in subsection (1)—

- (i) by inserting after paragraph (c) the following paragraph:

“(ca) one representative of the Ministry of Economy;”;

- (ii) in paragraph (d), by substituting for the words “not less than four but not more than six other members” the words “not less than six but not more than eight other members”;

- (b) in subsection (2), by inserting after the words “civil aviation,” the words “economics, finance, business,”;
- (c) in subsection (4), by substituting for the words “No person shall” the words “Except with a written exemption by the Minister, no person shall”; and
- (d) in subsection (6), by substituting for the words “paragraphs 1(b) and (c)” the words “paragraphs 1(b), (c) and (ca)”.

Amendment of section 6

5. Subsection 6(1) of the principal Act is amended by substituting for the words “paragraphs 5(1)(b) and (c)” the words “paragraphs 5(1)(b), (c) and (ca)”.

New section 10A

6. The principal Act is amended by inserting after section 10 the following section:

“Effect of cessation of membership

10A. Where any person ceases to be a member of the Authority—

- (a) another person shall be appointed in his place in accordance with the provisions applying under this Act; and
- (b) he shall not, except with written approval of the Minister, 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.”.

Substitution of section 13

7. The principal Act is amended by substituting for section 13 the following section:

“Procedure at meetings

13. Procedure at meetings for members of the Authority and members of the committee appointed under section 11 shall be as specified in the First Schedule.”.

Amendment of section 14

8. Subsection 14(1) of the principal Act is amended by substituting for the word “prescribe” the word “determine”.

Amendment of section 16

9. Subsection 16(1) of the principal Act is amended by inserting after paragraph (q) the following paragraphs:

“(qa) to regulate economic matters relating to the civil aviation industry including—

- (i) to improve connectivity, 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;

(*qb*) 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;

(*qc*) 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;

(*qd*) to provide a mechanism for dispute resolution between the providers of aviation services;

(*qe*) to administer, allocate and manage air traffic rights;

(*qf*) to monitor slot allocation for airlines or other aircraft operators;

- (*qg*) to administer and manage public service obligations;
- (*qh*) 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;”.

Amendment of section 17

10. Subsection 17(2) of the principal Act is amended by inserting after paragraph (*g*) the following paragraphs:

- “(ga) to impose and collect charges on passengers at airports in Malaysia for regulatory services rendered by the Authority pursuant to this Act;
- (*gb*) to impose and collect fees or any charges prescribed;
- (*gc*) to formulate and implement human resource development and funding and co-operation programmes for the proper and effective performance of its functions;”.

Amendment of section 18

11. Subsection 18(2) of the principal Act is amended by substituting for the words “of a general character consistent with the provisions of civil aviation laws” the words “consistent with the provisions of this Act and the Civil Aviation Act 1969”.

Amendment of section 19

12. Section 19 of the principal Act is amended—

- (*a*) in the shoulder note, by substituting for the words “**Delegation of powers**” the words “**Delegation of functions and powers**”;
- (*b*) in subsection (1), by substituting for the words “delegate its powers which relate to administrative matters” the words “delegate its functions and powers relating to administrative and operational matters”;

- (c) in subsection (2), by substituting for the words “such powers” the words “such functions or powers”;
- (d) in subsection (3), by substituting for the words “Any power” the words “Any function or power”; and
- (e) in subsection (4), by substituting for the words “any of the delegated powers” the words “any of the delegated functions or powers”.

Amendment of section 21

13. Section 21 of the principal Act is amended by inserting after subsection (3) the following subsections:

“(3A) The Chief Executive Officer shall ensure that airlines carry out the public service obligations programmes.

(3B) The Chief Executive Officer shall 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.”.

Amendment of section 26

14. Section 26 of the principal Act is amended by inserting after subsection (2) the following subsection:

“(3) All monies referred to in paragraph (2)(b) which are in excess of the financial requirements of the Authority for the performance of its functions may be paid into the Federal Consolidated Fund.”.

New Parts VA, VB, VC, VD, VE, VF and VG

15. The principal Act is amended by inserting after Part V the following parts:

“PART VA

LICENSING AND CHARGES

Air service licence

36A. (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 Authority.

(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 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 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

36B. (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 Authority.

(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 contravenes 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

36c. (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 Authority.

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

(3) 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 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

36d. (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 Authority.

(2) Any person who contravenes 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

36E. (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 prescribed.

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

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

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

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

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

Power to impose conditions

36F. (1) Subject to this Act, the Authority may attach to a licence or permit issued under this Part such conditions as the Authority thinks fit, and in particular, any condition which the Authority considers desirable for public interest, in the interest of safety, security and facilitation, or in order to prevent uneconomic competition.

(2) The Authority 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

36G. A licence or permit granted or issued under this Part shall be valid for such period as may be prescribed.

Renewal of licence or permit

36H. (1) Subject to subsections (2) and (3), the Authority may, on an application by a licensee or permit holder, renew such person's licence or permit on such conditions as the Authority 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 Authority thinks reasonable, the Authority 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 Authority.

Suspension or revocation of licence or permit

36i. (1) The Authority 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 provisions of this Act or subsidiary legislation under this Act, or any 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 the Authority 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 Authority shall not revoke or suspend a licence or permit unless the Authority 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 shall 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 granted or 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 Authority, 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 granted or issued under this Part to the Authority 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 the revocation of the licence or permit return the licence or permit, as the case may be, to the Authority; or

(b) has been suspended, the licence or permit shall have no effect during the period of suspension.

Surrender of licence or permit

36J. (1) A licensee or permit holder may surrender his licence or permit by submitting to the Authority 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 Authority receives the notice under subsection (1) or on such other date as may be determined by the Authority.

(3) The surrender of the licence or permit under subsection (1) shall be irrevocable unless the Authority 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 Authority pursuant to the surrender of the licence or permit; and
 - (b) forward the licence or permit to the Authority on the effective date of the surrender of the licence or permit.

Transfer or assignment of licence or permit

36K. (1) Subject to subsection (3), a licence or permit granted or 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 36I(1)(c), the Authority may, in the event of the liquidation of a licensee or a permit holder, or where a receiver or manager is appointed in relation to the business of such licensee or permit holder, or where for any reason the Authority is satisfied that it would be unjust not to do so, authorize the transfer of such licence or permit.

Aviation services charges

36L. (1) The Authority shall regulate charges for aviation services.

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

- (a) set charges, including maximum charges, for aviation services including passenger service charges, landing fees and parking fees, third

party ground handling charges and other charges for aviation services at such intervals as the Authority thinks fit, or establish the method for determination of such charges;

(b) carry out reviews of charges set or method established as referred to in paragraph (a); and

(c) following such reviews, revise any charges set or method established under paragraph (a) as the Authority thinks fit.

(3) For the purposes of paragraphs (2)(a) and (c), the Authority 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 Authority;

(e) the interest of consumers and investors;

(f) the return on assets for the licensee or permit holder;
and

(g) any other factors as the Authority considers relevant.

(4) The charges set and the method for determination of the charges by the Authority under this section shall be published in the *Gazette*.

PART VB

COMPETITION

Division 1

*Interpretation and application***Interpretation**

36M. 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;

“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

36N. (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 purpose of offering aviation services as part of an economic activity.

Prohibited agreement

360. (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 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

36p. Notwithstanding section 36o, an enterprise which is a party to an agreement may relieve its liability for the infringement of the prohibition under section 36o 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

36q. (1) An enterprise may apply to the Authority for an exemption in respect of a particular agreement from the prohibition under section 36o.

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

(3) The Authority may, by an order published in the *Gazette*, grant the exemption if, in the opinion of the Authority, the agreement is one to which section 36p applies.

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

(5) The individual exemption granted by the Authority may be—

- (a) subject to any condition or obligation as the Authority considers it appropriate to impose; and
- (b) for a limited duration as specified in the order.

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

(7) If the Authority is satisfied that—

- (a) there has been a material change of circumstances from the time when the Authority granted the individual exemption; or
- (b) an obligation has been breached,

the Authority may, by an 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.

(8) If the Authority is satisfied that—

- (a) the information on which the Authority based its decision to grant an individual exemption is false or misleading in a material particulars; or
- (b) any condition has been breached,

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

(9) Any action taken by the Authority under subsection (7) shall have effect from the date the order is made.

(10) An individual exemption which is cancelled—

(a) by virtue of paragraph (8)(a) shall be void *ab initio*;
or

(b) by virtue of paragraph (8)(b) shall have effect from the date the condition is breached.

Block exemption

36R. (1) If agreements which fall within a particular category of agreements are, in the opinion of the Authority, likely to be agreements to which section 36P applies, the Authority 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 exempted from the prohibition under section 36O.

(4) The Authority 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 Authority 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 Authority may, by notice in writing, cancel the block exemption in respect of the agreement;

(c) if the Authority considers that a particular agreement is not one to which section 36P applies, the Authority may, by notice in writing, cancel the block exemption in respect of the agreement from such date as the Authority 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 Authority shall, before granting a block exemption—
- (a) publish details of the Authority’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

36s. (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 Authority 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

36r. (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 (hereinafter referred to as “the first enterprise”) of the assets including goodwill, or a substantial part of the assets, of another enterprise (hereinafter referred to as “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 the person or the enterprise—

- (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 from the control.

(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 of voting rights by the enterprise 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 the 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 Authority determines and specifies in respect of that case.

Notification of anticipated merger

36u. (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 Authority of the anticipated merger; and

(b) apply to the Authority for a decision.

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

(3) Subject to sections 36Y and 36ZB, on an application under this section, the Authority may make a decision as to—

- (a) whether the prohibition in section 36T 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 36Y(2); or
 - (iii) because an undertaking has been accepted pursuant to section 36ZB.

(4) Subject to subsection (5), where the Authority makes a decision that an anticipated merger, if carried into effect, will not infringe the prohibition in section 36T, the Authority may, if it thinks fit, state that the decision shall be valid only for the period the Authority specifies in the decision.

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

(6) Where an application for an anticipated merger to be considered has been made to the Authority in accordance with subsection (1) and the anticipated merger is carried into effect before the Authority makes a decision under subsection (3) in respect of the application, the application relating to the anticipated merger—

- (a) may be treated by the Authority as if it were an application for the resulting merger to be considered made in accordance with section 36v; and

(b) the Authority may make a decision under section 36v in respect of the resulting merger.

(7) For the purposes of subsection (6), the Authority may make a decision under subparagraph 36v(3)(b)(ii) notwithstanding the exemption was granted by the Minister under subsection 36v(2) in respect of the anticipated merger.

(8) Notwithstanding subsection (6), the Authority may refuse to make any decision in respect of a merger referred to in subsection (6) and require any party involved in the merger to apply to the Authority for the merger to be considered under subsection 36v(1).

(9) In this section, “an anticipated merger of the relevant type” means an anticipated merger of the type described by guidelines made under paragraph 36ZF(2)(c).

Notification of merger

36v. (1) A party involved in a merger which applies for the merger to be considered under this section shall—

(a) notify the Authority of the merger; and

(b) apply to the Authority for a decision.

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

(3) Subject to sections 36Y and 36ZB, on an application under this section, the Authority may make a decision as to—

(a) whether the prohibition in section 36T has been infringed; and

(b) if it has not been infringed, whether it is—

(i) because of the effect of an exclusion;

(ii) because the merger is exempted by the Minister from the application of the prohibition under subsection 36Y(2); or

(iii) because an undertaking has been accepted pursuant to section 36ZB.

(4) A reference in any provision of this Act to an application or a notification under section 36v shall include a reference to an application or a notification under section 36U that the Authority treats as an application or a notification under section 36v pursuant to subsection 36U(5).

Division 5

Decision by the Authority

Interim measures

36w. (1) This section applies if the Authority has commenced but not completed an investigation under section 36zx.

(2) If the Authority has reasonable grounds to believe that any prohibition under this Part has been infringed or is likely to be infringed and the Authority 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 Authority 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 Authority shall, before giving a direction under subsection (2)—

(a) serve a notice to the person to whom the Authority proposes to give the direction; and

(b) give that person an opportunity to make written representation 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 Authority proposes to give and its reasons for giving the direction.

(6) The Authority 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 Authority upon completion of the investigation under section 36zx; or

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

whichever is earlier.

Finding of non-infringement

36x. Where the Authority has made a decision that there is no infringement of a prohibition under Part VB, the Authority shall, without delay, give notice of the decision to any person who is affected by the decision stating the facts on which the Authority bases the decision and the reason for making the decision.

Finding of infringement

36y. (1) If the Authority decides that there is an infringement of a prohibition under this Part, the Authority—

- (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 Authority 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 Authority 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 Authority shall prepare and publish reasons for each decision it makes under this section.

Leniency regime

36z. (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 36o(2); and
- (b) provided information or other form of co-operation to the Authority 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 Authority;
- (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 Authority considers appropriate to have regard to.

Enforcement of direction or decision

36zA. (1) The Authority may bring proceedings before the High Court against any person who fails to comply with a direction given by the Authority under section 36w or a decision under section 36y.

(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 direction or decision including 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 beginning 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

36zB. (1) The Authority may, subject to the conditions that the Authority may impose, accept from an enterprise an undertaking to do or refrain from doing anything as the Authority considers appropriate.

(2) If the Authority accepts an undertaking under subsection (1), the Authority 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 Authority under this section shall be a document available for inspection by the public in a manner determined by the Authority.

(4) The provisions of any undertaking accepted by the Authority under this section shall be enforceable by the Authority as though those provisions had been set out in a decision given to the enterprise providing that undertaking pursuant to section 36Y.

Division 6

General

Appeals to High Court

36zc. (1) Any person or body aggrieved by any decision of the Authority under this Part 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.

Aviation service market review

36ZD. (1) The Authority 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 Authority shall publish a report of its findings and recommendations.

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

Right of private action

36ZE. (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 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

36ZF. (1) The Authority 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 Authority 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 Authority under section 36U; and
- (d) the procedures to be followed by any party making an application under section 36U or 36V.

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

(4) The Authority 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 purposes 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 the Federal Government or the State Government.

PART VC

AIR TRAFFIC RIGHT AND SLOT ALLOCATION

Air traffic right

36zg. (1) The Authority 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 Authority 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 Authority 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 of the proposed air traffic right allocation on consumers, the civil aviation industry and the public interest;
- (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 providing air transport services; and
- (e) consider any other factors as may be determined by the Authority.

Slot allocation

36ZH. (1) The Authority shall have the powers to do any or all of the following:

- (a) supervise and monitor the slot allocation by any person nominated by the Authority;
- (b) issue directions relating to the slot allocation to the person nominated by the Authority;
- (c) 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 VD**PUBLIC SERVICE OBLIGATIONS****Public service obligations**

36ZI. (1) The Authority 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, the Authority shall—

- (a) identify the criteria to be applied for the designation of public service obligation routes;
- (b) evaluate the amounts required 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 of public service obligations by airlines; and
- (e) require the relevant airlines to comply with all applicable agreements and laws in the carrying out of public service obligations.

PART VE

CONSUMER PROTECTION

Consumer code

36ZJ. (1) The Authority shall, subject to the approval of the Minister, determine a consumer code 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;

(e) the determination of fees or charges imposed on consumers by providers of aviation services; and

(f) any other matters of concern to consumers.

(2) In the preparation of the consumer code under subsection (1) and any subsequent amendment to the consumer code, the Authority 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 Authority shall publish the consumer code determined under subsection (1) in the *Gazette*.

(5) The Authority 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

36ZK. A complaint pertaining to any aviation service may be lodged by any consumer to the Authority.

Determination of consumer complaints

36ZL. (1) Upon receipt of a complaint under section 36ZK, the Authority may appoint any one of its members or establish a committee to hear and determine the complaint.

(2) The committee established under subsection (1) may regulate its own procedure.

(3) 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.

(4) 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

36ZM. Any unpaid financial penalty under section 36ZJ or costs imposed under section 36ZL may be sued for and recovered as a civil debt due to the Authority 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

36ZN. (1) A decision given by the Authority 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 Authority 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 Authority may, if the Authority 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 VF

DISPUTE RESOLUTION

Disputes

36zo. (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], the parties shall resolve the dispute through mediation within a period of thirty days or such longer period as the Authority may approve which shall not exceed sixty days.

Authority to decide on disputes

36zP. If the parties to the dispute fail to resolve the dispute through mediation within the time specified under subsection 36zo(2), the Authority shall commence to decide on the dispute.

Decisions to be in writing

36zQ. (1) The terms and conditions of any resolution of a dispute by the Authority shall be in writing and shall contain reasons for such decision.

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

Registration of decisions

36zR. (1) The Authority 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

36zs. (1) A decision given by the Authority, 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 VG

INVESTIGATION AND ENFORCEMENT

Authorized officer

36zt. (1) The Authority may in writing authorize any officer of the Authority 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 Authority.

Powers of enforcement, inspection and investigation

36zu. 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 of the powers.

Power to require information

36zv. (1) The authorized officer may make an order under subsection (2) against any person if he has reasonable grounds to believe that the 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 Authority any such documents, whether in a physical form or in electronic medium;
 - (c) to make copies of any such documents and to produce those copies to the Authority;
 - (d) if the person is an individual, to appear at a private hearing before the Authority at a time and place specified in the notice to give any evidence, either orally or in writing, and to produce any documents, whether in a physical form or in electronic medium;
 - (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 Authority at a time and place specified in the notice to give any evidence, either orally or in writing, and to produce any documents, whether in a physical form or in electronic medium; 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 Authority at a time and place specified in the notice to give any evidence, either orally or in writing, and to produce any documents, whether in a physical form or in electronic medium.
- (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 Authority 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 Authority 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

36zw. (1) For the purpose of ascertaining compliance with this Act or breach of code of conduct under section 14 or consumer code under section 36zj, the authorized officer 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 Authority or necessary for the purpose of ascertaining compliance with this Act.

(2) For the purposes of this section, the authorized officer may by notice in writing require any person to produce to him such book, minute book, register or other documents which are in the custody or under the control of that person.

(3) Any person who—

(a) fails to produce any book, minute book, register or other documents as required by the authorized officer under this section; or

(b) obstructs, intimidates, distracts, harasses or hinders the authorized officer 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

36zx. 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 14 or consumer code under section 36zj.

Giving false or misleading information, evidence or document

36zy. A person who fails to disclose or omits to give any relevant information, 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 Authority, 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

36zz. (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 under 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

36ZAA. (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

36ZAB. (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 Authority;
- (b) co-operating with, or offering or agreeing to co-operate with, the Authority in connection with any investigation by the Authority.

(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.”.

New sections 42A, 42B, 42C and 42D

16. The principal Act is amended by inserting after section 42 the following sections:

“Civil aviation industry audit

42A. (1) The Authority 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 Authority shall, as soon as possible, send a copy of the auditors’ report to the Minister and the Minister shall cause the report to be laid before both Houses of Parliament.

Returns, reports, accounts and information

42B. (1) The Authority shall furnish to the Minister, and any public authority as may be specified by the Minister, such returns, reports, accounts and information in respect of its activities and finances as the Minister may from time to time require or direct.

(2) The Authority 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 Authority 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 Authority and any other matter as the Minister may from time to time specify.

Conduct of prosecution

42c. No prosecution for any offence under this Act shall be instituted except with the consent in writing of the Public Prosecutor.

Offences by body corporate

42D. (1) Where a person convicted in respect of any offence under this Act is a body corporate, the body corporate shall only be punished with the fine provided for such offence.

(2) Where an offence against this Act or any regulations made under this Act 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 its 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, the 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.”.

Amendment of section 43

17. Section 43 of the principal Act is amended by substituting for the words “amend the Schedule” the words “amend any of the Schedules”.

New sections 43A and 43B

18. The principal Act is amended by inserting after section 43 the following sections:

“Power to make regulations

43A. (1) The Minister 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 licence and permit under this Act, including the eligibility of persons applying for licences and permit, licence and permit fee, the duration of the licence and permit, the forms of licence and permit, the standard conditions of the licence and permit, application fee, annual fee, renewal fee 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 matters pertaining to the public service obligation;
- (e) prescribing matters pertaining to dispute resolution;
- (f) prescribing matters pertaining to competition in the civil aviation industry;
- (g) prescribing matters pertaining to ground handling services;
- (h) prescribing the fees and charges payable to the Authority 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 Authority under this Act by any aircraft, flight or person or classes of aircrafts, flights, or persons on such terms and conditions as the Authority thinks fit;
- (i) providing for the regulation of all or any of the activities of the Authority and generally the performance of the functions, the exercise of the powers and the discharge of the duties of the Authority under this Act; and

- (j) 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.

43B. (1) For the purposes of this Act or the subsidiary legislation made under this Act, the Authority 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 Authority 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 Authority 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 Authority 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 Authority may revoke, vary, revise or amend the whole or any part of the guideline, circular, directive, practice note or notice issued under this section.

(5) For the purposes 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 the Federal Government or the State Government.”.

Amendment of Schedule

19. The Schedule to the principal Act is amended—

(a) by substituting for the title “SCHEDULE” the title “FIRST SCHEDULE”; and

(b) in paragraph 1—

(i) in subparagraph (3), by substituting for the words “five members” the words “seven members”;

(ii) by inserting after subparagraph (8) the following subparagraphs:

“(9) Any member of the Authority 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 audiovisual communications.

(10) 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 Chairman shall have approved the holding of or participation in such meeting by means of instantaneous telecommunication device;

- (b) all the members of the Authority shall have received notice of such meeting and the means by which the meeting will be conducted;
- (c) each of the members of the Authority 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 Authority shall acknowledge his presence for the purpose of the meeting to all of the other members taking part.”.

New Second and Third Schedules

20. The principal Act is amended by inserting after the renamed First Schedule the following schedules:

“SECOND SCHEDULE

[Subsection 36C(1)]

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;
 - (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, and 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 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 in respect of 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 fuel, oil and other fluids.
13. Any other services as may be determined by the Authority from time to time.

THIRD SCHEDULE

[Subsection 36N(3)]

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 VB would obstruct the performance, in law or in fact, the particular tasks assigned to that enterprise.”.

EXPLANATORY STATEMENT

This Bill seeks to amend the Civil Aviation Authority of Malaysia Act 2017 (“Act 788”) among others, to transfer all functions of the Malaysian Aviation Commission in relation to the regulation of economic and commercial affairs in connection with the civil aviation industry in Malaysia to the Civil Aviation Authority of Malaysia due to the dissolution of the Malaysia Aviation Commission. With this amendment, the Civil Aviation Authority of Malaysia shall become the sole regulatory body pertaining to civil aviation industry in Malaysia.

2. *Clause 1* contains the short title and the provision on the commencement of the proposed Act.
3. *Clause 2* seeks to provide for general amendments by substituting for the words “any subsidiary legislation made under the Civil Aviation Act 1969” wherever appearing the words “any subsidiary legislation made under this Act and the Civil Aviation Act 1969”.

4. *Clause 3* seeks to amend section 2 of Act 788 to insert new definitions into Act 788.

5. *Clause 4* seeks to amend section 5 of Act 788.

Subclause (a) seeks to amend subsection 5(1) of Act 788 to increase the number of members of the Authority appointed by the Minister of Transport from a minimum of four members but not more than six members to a minimum of six members but not more than eight members. The proposed new insertion also seeks to include a representative from the Ministry of Economy as a member of the Authority.

Subclause (b) seeks to amend subsection 5(2) of Act 788 to provide additional qualification of the members of the Authority appointed by the Minister in relation to experience or capacity and professionalism pertaining to economy, finance and business.

Subclause (c) seeks to amend subsection 5(4) of Act 788 to empower the Minister to give exemption in writing to any person to be appointed as a member of the Authority.

6. *Clause 6* seeks to introduce a new section 10A into Act 788 to provide for the effect of cessation of a membership of the Authority. A person who has ceased to be a member of the Authority is prohibited from entering into any contract of service or carrying out or be involved in any business or other activity relating to aviation services for the purpose of gain within two years from the cessation of his membership except with written approval of the Minister.

7. *Clause 7* seeks to substitute section 13 of Act 788 to provide for the procedure at meetings as specified in the First Schedule for members of the Authority and members of committees appointed under section 11.

8. *Clause 8* seeks to amend subsection 14(1) of Act 788 to provide that the code of conduct of the members of the Authority and members of the committee appointed under section 11 of Act 788 shall be determined by the Authority.

9. *Clause 9* seeks to amend subsection 16(1) of Act 788 to introduce new functions of the Authority in connection with the economic matters.

10. *Clause 10* seeks to amend subsection 17(2) of Act 788 to introduce new powers of the Authority which are the powers of the Malaysian Aviation Commission that is to be dissolved.

11. *Clause 11* seeks to amend subsection 18(2) of Act 788 to provide that the directions of the Minister shall be consistent with Act 788 and the Civil Aviation Act 1969 and the Authority shall give effect to such directions.

12. *Clause 12* seeks to amend section 19 of Act 788 to provide that the Authority may delegate its functions and powers relating to operational matters in addition to the existing powers of delegation relating to administrative matters.

13. *Clause 13* seeks to amend section 21 of Act 788 to introduce new functions of the Chief Executive Officer which includes the function to ensure that airlines carry out the public service obligations programmes.

14. *Clause 14* seeks to amend section 26 of Act 788 to provide that any monies in the Fund that are in excess of the financial requirements of the Authority for the performance of its functions may be paid into the Federal Consolidated Fund.

15. *Clause 15* seeks to introduce new parts VA, VB, VC, VD, VE, VF and VG into Act 788.

The proposed new part VA contains the provision on licensing and charges.

The proposed new section 36A provides for the requirement to have an air service licence granted by the Authority 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 and the penalty for non-compliance to such requirement.

The proposed new section 36B provides for the requirement to have an air service permit granted by the Authority 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 and the penalty for non-compliance to such requirement.

The proposed new section 36C provides for the requirement of a ground handling licence granted by the Authority to undertake any ground handling services in Malaysia and the penalty for non-compliance to such requirement.

The proposed new section 36D provides that a person shall obtain an operator's licence to operate an aerodrome for take-off and landing of any aircraft engaged in the carriage of passengers, mail or cargo for hire or reward and the penalty for non-compliance to such requirement.

The proposed new section 36E provides for the requirement for making an application for a licence or permit.

The proposed new section 36F empowers the Authority to impose any conditions to the licence or permit as it thinks fit and to add, cancel or vary such conditions imposed to the licence or permit.

The proposed new section 36G provides that a licence or permit shall be valid for such duration as prescribed.

The proposed new section 36H provides for the renewal of licence or permit.

The proposed new section 36I provides for the circumstances where the Authority may revoke or suspend a licence or permit. The proposed new section 36I further provides that the licence or permit shall be deemed to be revoked if the licensee or permit holder ceases to hold a valid air operator certificate, and the revocation shall take effect from the date the licensee or permit holder ceases to hold a valid air operator certificate.

The proposed new section 36j provides that a licensee or permit holder may surrender its licence or permit by submitting a written notice of the surrender to the Authority. The surrender will only take effect six months after the Authority receives the notice of surrender or on such other date as may be determined by the Authority. In surrendering the licence or permit, the licensee or permit holder shall take all such measures and provide all such assistance to the Authority as required pursuant to the surrender. The licensee or permit holder shall also forward the licence or permit to the Authority on the effective date of the surrender.

The proposed new section 36k prohibits the transfer or assignment of a licence or permit except in specified circumstances.

The proposed new section 36l empowers the Authority to regulate charges. The Authority has the power to set charges including maximum charges or establish the method for determining the charges having regard to specified factors, to carry out reviews of the charges it set or method established and subsequently revise the charges set or method established as it thinks fit.

The proposed new Part VB deals with competition in any commercial activity, agreement or merger affecting aviation services.

The proposed new section 36m contains the definition of certain expressions used in the proposed new Part VB.

The proposed new section 36n provides for the application of proposed new Part VB to any commercial activity, agreement or merger affecting aviation services within and outside Malaysia. The proposed new Part VB shall apply outside Malaysia if any commercial activity, agreement or merger transacted outside Malaysia has an effect on competition in any aviation market in Malaysia.

The proposed new section 36o seeks to prohibit agreements which have the object or effect of significantly preventing, restricting or distorting competition in the aviation service market.

The proposed new section 36p provides that an enterprise which is a party to any particular agreement is allowed to relieve its liability from the prohibition under the proposed new section 36o if the criteria set out in the proposed new section 36p are satisfied. The same criteria are also used in determining the grant of individual and block exemption. In order to relieve its liability, an enterprise is required to show that the benefits derived from an agreement outweigh any anti-competitive effects.

The proposed new section 36q empowers the Authority to grant an individual exemption with respect to a particular agreement from the prohibition under the proposed new section 36o.

The proposed new section 36r empowers the Authority to grant a block exemption to certain categories of agreement from the prohibition under the proposed new section 36o which satisfy the requirements specified under the proposed new section 36p.

The proposed new section 36s provides for the prohibition of an enterprise from engaging in any conduct in aviation service market which amount to an abuse of a dominant position.

The proposed new section 36t provides for the prohibition of mergers which resulted or is expected to result in a substantial lessening of competition in any aviation service market. The proposed new section 36t also provides for the circumstances which amounts to mergers.

The proposed new section 36u provides for the notification of an anticipated merger to the Authority and application for a decision by the Authority as to whether the anticipated merger will infringe the prohibition under the proposed new section 36t.

The proposed new section 36v provides for the notification of a merger to the Authority and application for a decision by the Authority as to whether or not the merger has infringed the prohibition under the proposed new section 36t.

The proposed new section 36w empowers the Authority, pending completion of an investigation, to impose interim measures which it considers necessary to prevent serious and irreparable damage to a particular person or category of persons or to protect the public interest.

The proposed new section 36x provides for the notification by the Authority of its decision of non-infringement of a prohibition under the proposed new Part VB to any person affected by the decision.

The proposed new section 36y provides for the powers that may be exercised by the Authority upon a finding of an infringement of a prohibition under the proposed new Part VB.

The proposed new section 36z provides for a leniency regime to an enterprise which has admitted its involvement in an infringement of any prohibitions under the proposed new subsection 36o(2) and has provided information or other form of co-operation with the Authority to significantly assist in an investigation of finding of an infringement.

The proposed new section 36za provides that where a person fails to comply with a direction or decision of the Authority under the proposed new section 36w or the proposed new section 36y, the Authority may bring proceedings before the High Court against the person to seek an order requiring the person to comply with the direction or decision.

The proposed new section 36zb empowers the Authority to accept an undertaking from an enterprise in relation to an infringement to do or refrain from doing anything as the Authority considers appropriate.

The proposed new section 36zc seeks to provides for a person aggrieved by the decision of the Authority under the proposed new Part VB to appeal against such decision to the High Court within three months from the date the decision was communicated to him.

The proposed new section 36ZD empowers the Authority to conduct an aviation service market review to determine whether any feature or combination of features of the market prevents, restricts or distorts competition.

The proposed new section 36ZE provides that a person who suffers loss or damage as a result of an infringement of any prohibition under new Part VB of the proposed Act has the right of action for relief in civil proceedings against any enterprise which is a party to such infringement.

The proposed new section 36ZF empowers the Authority to issue guidelines for the better carrying out of the provisions of the proposed new Part VB.

The proposed new Part VC deals with the power of the Authority to administer, allocate and manage air traffic right and slot allocation.

The proposed new section 36ZG provides for the functions of the Authority to administer, allocate and manage air traffic right for both domestic and international routes. In performing its functions, the Authority may impose financial penalty, suspend or revoke air traffic right to airlines, consider the effect of air traffic right allocation on consumers, civil aviation industry and the public interest, the benefits of allocation of air traffic right, competition between airlines and any other factors.

The proposed new section 36ZH provides for the powers of the Authority relating to slot allocation.

The proposed new Part VD deals with the functions of the Authority to administer and manage public service obligations.

The proposed new section 36ZI provides that the Authority shall advise the Minister with regard to the policy for public service obligations.

The proposed new Part VE deals with consumer protection.

The proposed new section 36ZJ provides for the powers of the Authority to determine a consumer code, subject to the approval of the Minister, to be complied with by the provider of aviation services and to impose financial penalties for non-compliance of the consumer code.

The proposed new section 36ZK provides that complaints relating to aviation services by any consumer may be lodged to the Authority.

The proposed new section 36ZL provides for the appointment of any one of the members of the Authority or the establishment of a committee to hear and determine any consumer complaints received by the Authority.

The proposed new section 36ZM provides for the recovery of unpaid financial penalty under the proposed new section 36ZJ or the costs imposed under the proposed new section 36ZL as a civil debt due to the Authority.

The proposed new section 36ZN provides that the decisions given by the Authority may be enforced as a judgment of High Court upon application to the High Court.

The proposed new Part VF deals with resolution of disputes.

The proposed new section 36ZO to 36ZS provide that disputes between two or more aviation service providers about matters under Act 788 shall first be resolved through mediation. However, if the parties fail to resolve a dispute through mediation, the Authority shall decide on the dispute. The Authority shall register its decision on the dispute and the decision may be enforced as a judgment of the High Court.

The proposed new Part VG deals with the investigation and enforcement powers of the Authority.

The proposed new section 36ZT provides that the Authority may authorize any of its officers to exercise the powers of enforcement under Act 788.

The proposed new section 36ZU provides that the authorized officer shall have all the powers of a police officer under the Criminal Procedure Code [Act 593], except the power to arrest without warrant, in relation to enforcement, inspection and investigation.

The proposed new section 36ZV provides that the authorized officer may order a person to give or produce any information or documents that is relevant, or evidence which the authorized officer has reasonable grounds to believe is relevant, for the purpose of carrying out his functions and powers under Act 788.

The proposed new section 36ZW provides that the authorized officer shall have the power to access any place or building and inspect, make copies or take extracts from any book, minute book, register or other documents for the purpose of ascertaining compliance with Act 788.

The proposed new section 36ZX provides that the authorized officer shall have the power to conduct an investigation where he suspects that there has been a commission, conspiracy to commit, or an attempt to commit an offence, breach or infringement of prohibition under Act 788, the code of conduct under section 14 of Act 788 or consumer code under the proposed new section 36ZJ.

The proposed new section 36ZY seeks to make it an offence to give or provide false or misleading information, evidence or document to the Authority.

The proposed new section 36ZZ enables the authorized officer to make a compliance order against a person who has committed or is likely to commit an offence or has infringed or likely to infringe a prohibition under Act 788.

The proposed new section 36ZAA provides for the offence of disclosing to any other person information or other matter which is likely to prejudice an investigation or proposed investigation under Act 788.

The proposed new section 36ZAB provides for the prohibition of any person from coercing or attempting to coerce any other person to refrain from making a complaint to the Authority or co-operating with the Authority in connection with an investigation.

16. *Clause 16* seeks to introduce new sections 42A, 42B, 42C and 42D into Act 788.

The proposed new section 42A empowers the Authority to carry out or appoint an auditor to carry out an audit on any aspect of the civil aviation industry. The Authority is obligated to send a copy of the auditors' report to the Minister to be laid before both Houses of Parliament.

The proposed new section 42B imposes a duty on the Authority to furnish returns, reports, accounts and information in respect of its activities and finances to the Minister and any public authority as may be specified by the Minister.

The proposed new section 42C provides that the prosecution for an offence under Act 788 shall be instituted with the written consent of Public Prosecutor.

The proposed new section 42D provides for the effect of an offence committed under Act 788 involving body corporate.

17. *Clause 17* seeks to amend section 43 of Act 788 to empower the Minister to amend any Schedule to Act 788.

18. *Clause 18* seeks to introduce new sections 43A and 43B into Act 788.

The proposed new section 43A empowers the Minister to make regulations under Act 788.

The proposed new section 43B empowers the Authority to issue guideline, circular, directive, practice note or notice to regulate economic matters relating to civil aviation industry.

19. *Clause 19* seeks to amend the Schedule to Act 788 to add the quorum for meeting of the Authority and to allow the members of the Authority to hold or join meeting by electronic method.

20. *Clause 20* seeks to introduce new Second Schedule and Third Schedule into Act 788.

The new Second Schedule deals with the list of ground handling services.

The new Third Schedule deals with the excluded commercial activities, agreements and mergers.

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

FINANCIAL IMPLICATIONS

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