

A BILL

*intituled*

An Act to amend the Civil Aviation Act 1969.

[ ]

BE IT ENACTED by the Duli Yang Maha Mulia Seri Paduka Baginda Yang di-Pertuan Agong with the advice and consent of the Dewan Negara and Dewan Rakyat in Parliament assembled, and by the authority of the same, as follows:

1. This Act may be cited as the Civil Aviation (Amendment) Act 1991 and shall come into force on such date as the Minister may, by notification in the *Gazette*, appoint.

Short title  
and com-  
mencement.

2. Section 2 (1) of the Civil Aviation Act 1969, which in this Act is referred to as the "principal Act", is amended—

Amendment  
of section 2.  
Act 3.

(a) by inserting after the interpretation of "aerodrome" the following new interpretation of "airport":

' "airport" includes land and buildings comprised in an aerodrome;';

(b) by inserting after the interpretation of "damage or loss" the following new interpretation of "Director General":

' "Director General" means the Director General of Civil Aviation, Malaysia;'; and

(c) by inserting after the interpretation of "land" the following new interpretation of "licensed company":

' "licensed company" means the company to which a licence is issued by the Minister under section 24A(1);'.

New Part IA. 3. The principal Act is amended by inserting immediately after section 2 the following new Part IA:

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PART IA

DUTIES AND FUNCTIONS OF THE DIRECTOR  
GENERAL OF CIVIL AVIATION MALAYSIA

The  
Director  
General  
of Civil  
Aviation,  
Malaysia.

2A. The Director General of Civil Aviation, Malaysia shall perform the duties and functions assigned to him under this Act.

Duties and  
functions  
of the  
Director  
General.

2B. (1) It shall be the duty and function of the Director General—

- (a) to exercise regulatory functions in respect of civil aviation and airport and aviation services including the establishment of standards and their enforcement;
- (b) to represent the Government in respect of civil aviation matters and to do all things necessary for this purpose;
- (c) to ensure the safe and orderly growth of civil aviation throughout Malaysia;
- (d) to encourage the development of airways, airport and air navigation facilities for civil aviation;
- (e) to promote the provision of efficient airport and aviation services by the licensed company; and
- (f) to promote the interests of users of airport and aviation services in Malaysia in respect of the prices charged for, and the quality and variety of, services provided by the licensed company."

4. The principal Act is amended by inserting in section 3(2)— Amendment of section 3.

(a) immediately after paragraph (d) the following new paragraph (dd);

"(dd) the licensing, inspection and regulation of aerodromes, for access to aerodromes and places where aircrafts have landed and for prohibiting or regulating the use of unlicensed aerodromes;" and

(b) immediately after paragraph (n) the following new paragraph (nn):

"(nn) prescribing the charges and fees for services provided at an airport and providing for the recovery of such charges and fees;".

5. The principal Act is amended by inserting immediately after section 5 the following new section 5A: New section 5A.

"Minister may authorise a company under licence to establish etc., an aerodrome 5A. The Minister may authorise any company under a licence to establish, maintain and operate an aerodrome subject to such terms and conditions as may be prescribed."

6. Section 6 of the principal Act is amended by deleting subsection (4). Deletion of section 6 (4).

7. Section 6B of the principal Act is amended— Amendment of section 6B.

(a) by deleting the interpretation of "Director General"; and

(b) by inserting after the interpretation of "Development Fund" the following new interpretation of "transfer date":

' "transfer date" means the date on which any designated property in a designated airport, which the Government of Malaysia was entitled to, is transferred to a company by virtue of the Airport and Aviation Services (Operating Company) Act 1991.'

Act

Amendment  
of section 6D.

8. Section 60 of the principal Act is amended—

- (a) by inserting immediately after the words "all receipts in respect" in subsection (1) (c) the words "of any licence issued or"; and
- (b) by substituting for the words "before the appointed date" in subsection (1) (c) (ii) the words "to the civil aviation authority after the transfer date".

Deletion of  
section 18.

9. The principal Act is amended by deleting section 18.

Substitution  
of Part VIII A.

10. The principal Act is amended by substituting for Part VIII A the following new Part VIII A:

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#### PART VIII A

##### LICENCE TO PROVIDE AIRPORT AND AVIATION SERVICES IN AN AIRPORT

Power of  
Minister to  
grant a  
licence to  
provide  
airport and  
aviation  
services in  
an airport.

24A. (1) The Minister may grant a licence to a company nominated by the Government of Malaysia under this section to carry out any function of the Department of Civil Aviation, or to provide any services, within an airport; and references in this Act to the licensed company are references to the company so nominated and licensed under this section.

(2) Without prejudice to the generality of subsection (1), every licence issued under this section shall set out the following matters:

- (a) the function to be carried out or the services to be provided by the company; and references in this Act to any airport and aviation services shall be references to the services so provided by the company;
- (b) the compliance by the company of performance standards established by the Director General under paragraph 2B(1)(a);
- (c) the airport or airports to be operated by the company; and references in this Act to any

designated airport are references to an airport operated by the company;

- (d) the duration of the licence;
- (e) the annual fee payable by the company;
- (f) the particular duties of the company in respect of services provided by it; and
- (g) such other matters or conditions as the Minister thinks fit.

(3) The issue of a licence to a company under subsection (1) shall not impose any liability on the Government of Malaysia for any loss or damage occasioned by any act, omission or default of such company.

Power of licensed company to collect charges and fees.

24B. Notwithstanding any provision of this Act or the Financial Procedure Act 1957, all charges and fees prescribed under regulations made pursuant to paragraphs 3 (2) (n) and (nn) of this Act for the landing, parking and housing of aircrafts and the provision of any services in an airport shall, in the case of a designated airport, be collected by the licensed company and form part of the revenue of the company.

Submission of memorandum for any change in existing charges and fees.

24c. (1) The licensed company may submit to the Minister a memorandum containing proposals for any change in the existing charges and fees prescribed under regulations made under paragraphs 3 (2) (n) and (nn) for the approval of the Minister.

(2) The Minister shall consider the memorandum within six months of its submission.

(3) Where the Minister approves the memorandum, he may subject his approval to such modifications as he deems fit to the proposals in the memorandum.

(4) Where the Minister rejects the memorandum, the licensed company may, where there is a change in circumstances relating to the proposals in the memorandum, apply to the Minister for a review:

Provided that such application shall be made before the expiration of thirty days from the date of notice of rejection of the memorandum.

(5) The Minister shall consider the application within three months of its submission.

Minister to make regulations in respect of change in charges and fees.

24D. Where the Minister approves the memorandum, with or without any modifications, he shall as soon as practicable make regulations under paragraphs 3 (2) (n) and (nn) in respect of the change in the existing charges and fees.

General duties of licensed company.

24E. (1) It is the duty of the licensed company to ensure that the services provided by it meet the performance standards established by the Director General under paragraph 2B (1) (a).

(2) The licensed company shall have due regard to the efficiency, economy and safety of operation in respect of the services provided by it.

General penalty.

24F. If the licensed company contravenes or fails to comply with any condition of the licence or any of the provisions of this Act or any of the regulations made thereunder for which no penalty is expressly provided, it shall be guilty of an offence and shall on conviction be liable to a fine not exceeding fifty thousand ringgit or to imprisonment for a term not exceeding five years or to both.

Offence committed by a body corporate.

24G. Where an offence under this Act or under any of the regulations made thereunder is committed by a body corporate (whether or not the body corporate has been prosecuted), every

director, secretary or manager of the body corporate shall be deemed to be guilty of the offence unless he proves that the offence was committed without his consent or connivance and that he had exercised all 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 of the case.

Inspectorial  
power of  
Director  
General.

24H. The Director General may for the purposes of this Act or any of the regulations made thereunder enter upon any of the premises occupied by the licensed company to inspect and examine the state of such premises or any building or facility therein.

Suspension  
or revoca-  
tion of  
licence on  
breach of  
condition  
of licence.

24I. (1) Where the Director General is satisfied that the licensed company is contravening, or has contravened and is likely again to contravene, any of the conditions of its licence, the Director General may give notice in writing to the licensed company requiring it to comply with that condition within the period prescribed in the notice.

(2) If on the expiry of the period prescribed in such notice the licensed company fails to comply with the condition mentioned therein, the Director General shall submit to the Minister a report of such failure by the licensed company and the report shall be in such form as the Director General considers appropriate.

(3) Where, after considering the report from the Director General, the Minister is satisfied that the contraventions were, or the apprehended contraventions are, of a serious nature or affected or likely to affect the public interest or safety and that the licensed company has refused to take or has not taken all such steps as appear necessary to the Minister for the purpose of securing

compliance with the condition in question, the Minister may give to the licensed company notice stating that he proposes to suspend or revoke, as the case may be, its licence and such notice shall also set out or specify—

- (a) the condition of the licence which the company has contravened and the acts or omissions which constitute such contravention; and
- (b) the period (not being less than thirty days from the date of the notice) within which the licensed company may make representations with respect to the proposed suspension or revocation, as the case may be.

(4) After the expiry of the period specified in the notice and considering any representations made by the licensed company, the Minister shall decide whether to proceed with the proposed action or to take no further action.

(5) A notice shall be given by the Minister to the licensed company of his decision and the decision shall take effect from the date on which the said notice is served on the company.

(6) The decision of the Minister under this section shall be final and conclusive.

Suspension  
or  
revocation  
of licence  
on breach  
of this  
Act or  
regulations  
thereunder.

24J. (1) Where the Director General is satisfied that the licensed company has breached or failed to comply with any provision of this Act or any of the regulations made thereunder, he shall submit to the Minister a report of such breach or non-compliance by the licensed company.

(2) Where, after considering the report from the Director General, the Minister is satisfied that the breach or non-compliance was of a serious nature or affected or likely to affect the public interest or safety, he shall give notice to the licensed company stating that he proposes to

suspend or revoke, as the case may be, its licence and such notice shall also set out or specify—

- (a) the provision of this Act or the regulations made thereunder which the company has contravened and the acts or omissions which constitute such contravention; and
- (b) the period (not being less than thirty days from the date of the notice) within which the licensed company may make representations with respect to the proposed suspension or revocation, as the case may be.

(3) After the expiry of the period specified in the notice and considering any representations made by the licensed company, the Minister shall decide whether to proceed with the proposed action or to take no further action.

(4) A notice shall be given by the Minister to the licensed company of his decision and the decision shall take effect from the date on which the said notice is served on the company.

(5) The decision of the Minister under this section shall be final and conclusive.

Special  
power in  
emergency.

24K. (1) The Yang di-Pertuan Agong may, on the occurrence of any industrial unrest, strike, lock-out or any other event which gives rise to an emergency or in the interest of public safety, authorise the Minister to—

- (a) suspend the licence of the licensed company, take temporary possession of any designated airport and operate any airport and aviation services therein through the Department of Civil Aviation, Malaysia, or in such manner as the Minister thinks fit; or
- (b) withdraw either partially or totally the use of any airport from any person or class of persons or from the public at large.

(2) If any doubt arises as to the existence of an emergency or whether any act done under subsection (1) was in the interest of public safety, a certificate signed by the Yang di-Pertuan Agong and exhibited at such places as the Minister deems fit shall be conclusive proof on the point.

(3) Where the Government takes possession of any designated airport under paragraph (a) of subsection (1), adequate compensation shall be paid.

Use,  
occupation,  
etc., of  
lands in  
Malacca  
and Penang  
under  
Article  
166(3).

24L. Where any lands in Malacca or Penang are occupied, used, controlled and managed by the Federal Government under Clause (3) of Article 166 of the Constitution, the State Authority, if so requested by the Minister, may upon application in writing by the licensed company—

- (a) permit the whole or a part of such land to be occupied, used, controlled and managed by the licensed company on such terms and conditions as may be agreed between the Federal Government, the State Authority, and the licensed company; or
- (b) alienate such land to the licensed company on such terms and conditions as may be specified by the State Authority under and in accordance with the National Land Code, and agreed upon by the Federal Government."

Deletion of  
section 27A.

11. The principal Act is amended by deleting section 27A.

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#### EXPLANATORY STATEMENT

This Bill seeks to amend the Civil Aviation Act 1969 (hereinafter referred to as "the Act").

2. *Clause 1* provides for the short title and commencement.

3. *Clause 2* seeks to introduce new definitions of "airport", "Director General" and "licensed company".

4. *Clause 3* seeks to introduce a new Part 1A. The proposed section 2A contained in the new Part IA provides for the Director General of Civil Aviation, Malaysia, to perform the duties and functions assigned to him under this Act. With the privatisation of airport and aviation services, it is to be expected that the Director General would have to perform certain functions, in particular, the exercise of regulatory functions in respect of the provision of airport and aviation services including the establishment of standards and their enforcement. Thus the proposed section 2B of the new Part IA sets out the duties and functions of the Director General.

5. *Clause 4* seeks to introduce two new paragraphs (*dd*) and (*nn*) to section 3 (2). The new paragraph (*dd*) provides for the licensing, inspection and regulation of aerodromes, for access to aerodromes and places where aircrafts have landed and for prohibiting or regulating the use of unlicensed aerodromes. The new paragraph (*nn*) empowers the Minister to make regulations prescribing the charges and fees for services provided in a designated airport and providing for the recovery of such charges and fees.

6. *Clause 5* seeks to introduce a new section 5A to empower the Minister to authorise any company under a licence to establish, maintain and operate an aerodrome. At present such a power is only implied in the Act.

7. *Clause 9* seeks to delete section 18 which is redundant as the interpretation of an "aerodrome" given in the Act would include a Government aerodrome.

8. *Clause 10* seeks to substitute Part VIIIA with a new Part VIIA containing section 24A to section 24M.

The new section 24A empowers the Minister to grant a licence to a company nominated by the Government of Malaysia to provide any services in a designated airport. In granting the licence, the Minister is required to set out the duration of the licence, the annual fee payable by the licensed company, the particular duties of the licensed company and such other terms and conditions as he thinks fit.

The new section 24B (1) seeks to empower the licensed company to collect charges and fees prescribed by the Minister under regulations made under section 3 (2) (*n*) and (*nn*).

The new section 24C provides that the licensed company may submit to the Minister a memorandum containing proposals for any change in the existing charges and fees prescribed under paragraphs 3 (2) (*n*) and (*nn*) and the procedures for such application and approval.

The new section 24D requires the Minister, where he approves the memorandum under subsection 24c (3), to make regulations in respect of the change in the existing charges and fees.

Section 24E seeks to spell out the general duties of the licensed company.

Section 24F provides for the general penalty for any offence committed by the licensed company under the Act or the regulations made thereunder where no express penalty has been provided. The punishment is a fine not exceeding fifty thousand ringgit or imprisonment for a term not exceeding five years or both such fine and imprisonment.

Section 24G seeks to provide for offences committed by a body corporate including its director, secretary or manager.

Section 24H seeks to give the power of inspection to the Director General of Civil Aviation to enable him to examine any of the premises, building or facility of the licensed company.

Section 24I empowers the Minister to suspend or revoke the licence issued to the licensed company upon the contravention of any of the conditions of the licence. Subsection (3) of section 24i gives the licensed company the opportunity to make representations with respect to the proposed suspension or revocation and subsection (6) provides for the decision of the Minister to be final and conclusive.

Section 24J, empowers the Minister to suspend or revoke the licence issued to the licensed company upon the breach of any provision of the Act or any regulations made thereunder, if the Minister is satisfied that the breach or non-compliance was of a serious nature. Subsection (2) of section 24J gives the licenced company the opportunity to make representations with respect to the proposed suspension or revocation and subsection (5) provides for the decision of the Minister to be final and conclusive.

Section 24K gives special powers to the Yang di-Pertuan Agong in any public emergency or in the interest of public safety to authorise the Minister to suspend the licence of the licensed company and to take temporary possession of any designated airport and provide any airport and aviation services through the Department of Civil Aviation or in any manner as the Minister thinks fit or to withdraw the use of any airport from members of the public.

Section 24L relates to land in Malacca and Penang governed by Article 166 (3) of the Constitution. It provides that the State Authority may upon the request of the Minister and upon the application of the licensed company either permit the occupation, use, control and management by the licensed company of such land or alienate the land to the company, on such terms and conditions as may be agreed

between the Federal Government, the State Authority, and the licensed company.

9. *Clause 11* seeks to delete section 27A which arises from the introduction of section 24K.

10. Other proposed amendments to the Act which have not been specifically referred to are consequential or minor in nature.

*FINANCIAL IMPLICATIONS*

This Bill will not involve the Government in any extra financial expenditure. [PN. (U<sup>2</sup>) 1504.]



