



ENFORCEMENT POLICY

CIVIL AVIATION AUTHORITY OF MALAYSIA

FOREWORD

Central to the success of a country's aviation system is a safe aviation environment that enables the industry to develop and grow sustainably. As the sole technical aviation regulator in Malaysia, the main purpose of the Civil Aviation Authority of Malaysia (CAAM) is to protect the interests of the aviation community and the public and to ensure the growth and development of the industry. This is carried out by providing clear guidelines through this Enforcement Policy for the application of the regulatory enforcement powers, as prescribed in the Civil Aviation Act 1969 [Act 3].

As the aviation industry grows rapidly, CAAM's approach towards regulating and managing aviation safety must keep pace with the changing business and operating models and at the same time still ensure effective safety management at all levels. Therefore, in raising and maintaining standards, enforcement is instrumental to ensure compliance with the law and regulations. Enforcement activity is one component of CAAM's regulatory toolbox which is intended to encourage compliance with the aviation legislation, secure the behaviors that are encouraged, and deter and denounce non-compliance in the public interest.

This Enforcement Policy shall serve as a guide and provide details to those in the aviation industry and the relevant individuals, parties and entities in respect of compliance to the existing legislation and regulations. The main objective of this Enforcement Policy is to guide the aviation community in Malaysia in achieving an internationally recognized standard of aviation safety and recommended practices for the safety of air travel.

Moving forward, CAAM is committed to working closely with our external stakeholders to implement this Enforcement Policy and enhance safety management. We will continue to work with those we regulate to encourage and support compliance and CAAM strive to be visible and proactive in dealing with those who do not, or choose not to comply with the rules. We will use all of the enforcement tools available to us in a proportionate, transparent and consistent manner to ensure a return to compliance and prevent future non-compliance.

In addition to that, CAAM has the responsibility to regulate our civil aviation industry and be clear about when, why and how action has to be taken to ensure that the industry maintains a strict compliance to all regulations that protects public safety. Establishing a transparent and consistent approach to enforcement reinforces a fair organization which is what CAAM strive to be.



CAPTAIN CHESTER VOO

Chief Executive Officer
Civil Aviation Authority Malaysia

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INTERPRETATIONS

In this Enforcement Policy —

“Act 3” means Civil Aviation Act 1969;

“Authorized Officer” means CAAM authorized inspector from the relevant division

“CAAM” means Civil Aviation of Authority of Malaysia;

“CEO” means Chief Executive Officer;

“legal provisions” means the provisions in Civil Aviation 1969 [Act 3], regulations made under Act 3, notices, circulars, directives and information issued by the CEO;

“MCA” means Civil Aviation Regulations 2016; and

PART 1

General

1.1 Objectives

CAAM derives its responsibility to conduct the safety regulation of civil air operations in Malaysia. The objectives of the Enforcement Policy are to provide –

- 1.11 CAAM's Enforcement Policy;
- 1.12 Description of the roles and responsibilities of authorized officers;
- 1.13 Description of the enforcement tools available;
- 1.14 Description of the aids to enforcement; and
- 1.15 Guidelines and procedures for:
 - 1.1.5.1 appropriate use of enforcement tools;
 - 1.1.5.2 reporting and recording enforcement;
 - 1.1.5.3 collecting and handling evidence;
 - 1.1.5.4 investigation by officers;
 - 1.1.5.5 note taking and interviewing; and
 - 1.1.5.6 detaining aircraft.

1.2 Application

All authorized officer involved with the enforcement activities are to familiarize themselves with this Enforcement Policy.

PART 2

Responsibilities

2.1 Without limiting the scope of tasks which authorized officer may be asked to perform in relation to compliance or enforcement, the authorized officer shall:

- 2.1.1 gather or receive the information and evidence, which supports a recommendation for an action;
- 2.1.2 seek advice and input from the relevant Divisions;
- 2.1.3 assist the appropriate persons in the Division by providing information and advice, as necessary;
- 2.1.4 serve or arrange for the service of the non-compliance report to the person(s) affected;
- 2.1.5 give an opportunity to the affected person(s) to give his/her version in writing;
- 2.1.6 take any follow-up action that may be necessary (including the provision of technical and operational assistance) action or litigation; and
- 2.1.7 provide any other information or take any other action, as deemed necessary.

2.2 All Directors of Divisions shall:

- 2.2.1 ensure that their Divisions are organized, staffed and equipped to perform the assigned functions and duties;
- 2.2.2 lay down the administrative procedures for authorized officers in order to ensure their smooth and efficient functioning;
- 2.2.3 to seek advice from the Legal Advisor, if required, in relation to any legal issue;
- 2.2.4 liaise with the operators and service provider to ensure smooth and

- efficient execution of the safety oversight functions;
- 2.2.5 ensure that the enforcement activities conform to rules, regulations and procedures laid down by the CAAM;
 - 2.2.6 submit periodic report to the CEO the results of investigation / inspections;
 - 2.2.7 ensure that authorized officers carry out investigation and enforcement training in their respective fields regularly;
 - 2.2.8 ensure that authorized officers hold credentials, necessary authorizations and qualifications and provided with all necessary handbook, checklists and all the tools and amenities needed;
 - 2.2.9 liaise with the other Divisions in CAAM to provide each other with specialized advice on all arising matters; and
 - 2.2.10 provide advice on all matters relevant to their respective Divisions.

PART 3

Principles of Enforcement Policy

3.1 Principles of Enforcement Policy

In the process of ensuring enforcement, the officers shall invariably be guided by the following principles:

3.1.1 Natural Justice and Accountability

Enforcement decisions must be:

- 3.1.1.1 fair and follow due process of law;
- 3.1.1.2 transparent to those involved;
- 3.1.1.3 consistent between like circumstances; and
- 3.1.1.4 subject to appropriate internal and external review.

3.1.2 Impartiality

Enforcement decisions must not be influenced by:

- 3.1.2.1 personal conflict or agendas of the officers;
- 3.1.2.2 irrelevant considerations, such as gender, race, religion, political views or affiliation; and
- 3.1.2.3 personal, political or financial power of those involved.

3.1.3 Proportionality

Enforcement decisions must commensurate with the identified breach and the safety risk it give rise to, in particular:

- 3.1.3.1 CEO's first priority shall be to protect the safety of the members of the public including fare-paying passengers;
- 3.1.3.2 CEO shall take strong action against those who consistently and deliberately operate outside the existing law or approved procedures; and
- 3.1.3.3 CEO shall take action when dealing with licensed and certified personnel, who breach legal provisions, requirements, etc.

3.2 **Conflict of interest**

The authorized officer is required to take measures to prevent real, potential or perceived conflict of interest. If it becomes apparent that there could be a possible conflict of interest during an investigation, the authorized officer shall inform his supervisor with the request to be removed from the case.

PART 4

Power of authorized officer: Enforcement, inspection and investigation

4.1 Introduction

Authorized officer is a person appointed by the CEO under section 24LA of Act 3.

4.2 Powers of enforcement, inspection and investigation

Section 24LB of Act 3 provides that 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.

4.3 Power to require information

4.3.1 For the purpose of requiring information, the authorized officer has the power to make order requiring any person:

4.3.1.1 to give the authorized officer any such information;

4.3.1.2 to produce to the authorized officer any such documents, whether in a physical form or in electronic media;

4.3.1.3 to make copies of any such documents and to produce those copies to the authorized officer;

4.3.1.4 if the person is an individual, to appear before the authorized officer at a time and place specified in the

notice to give any evidence, either orally or in writing, and produce any such documents, whether in a physical form or in electronic media;

4.3.1.5 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 before the authorized officer at a time and place specified in the notice to give any such evidence, either orally or in writing, and produce any documents, whether in a physical form or in electronic media; or

4.3.1.6 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 before the authorized officer at a time and place specified in the notice to give any evidence, either orally or in writing, and produce any documents, whether in a physical form or in electronic media.

4.3.2 The order under paragraph 4.3.1 is made against any person if the authorized person has reasonable grounds to believe that person :

4.3.2.1 has any information or any document that is relevant to the performance of his functions and powers; or

4.3.2.2 is capable of giving any evidence which the authorized officer has reasonable grounds to believe that the evidence is relevant to his performance of functions and powers.

4.3.3 The person so ordered shall:

4.3.3.1 provide the required information or documents within such time as specified in the order or such extended time as the authorized officer may grant; and

- 4.3.3.2 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.

4.4 Power to conduct inspection

For the purpose of conducting inspection, the authorized officer has the power:

- 4.4.1 to have access to any aircraft, aerodrome, aeronautical product, aviation facility, security equipment, place or building;
- 4.4.2 to inspect any aircraft, aerodrome, aeronautical product, aviation facility, security equipment, place or building;
- 4.4.3 to conduct any test on any aircraft, aerodrome, aeronautical product, aviation facility or security equipment;
- 4.4.4 to inspect, make copies of or take extract from any book, minute book, register, certificate, license, permit, approval, authorization, permission or other document issued by the CAAM, aviation documents or any other documents required to be kept by the CAAM or necessary for the purpose of ascertaining compliance with this Act or any subsidiary legislation made under this Act; and
- 4.4.5 by notice in writing, require any person to produce to him such books, minute books, registers or other documents as are in the custody or under the control of that person.

4.5 Compliance order

- 4.5.1 Where the authorized officer is satisfied that a person has committed or is likely to commit an offence, he may make a compliance order require a person to refrain from conduct which is in contravention of Act 3 or any subsidiary legislation made under this Act or to take actions required to be taken in order to comply with Act 3 or any subsidiary legislation made under this Act.
- 4.5.2 The person so ordered shall comply with the said order.
- 4.5.3 A compliance order shall be made in writing specifying the grounds for its issuance.

PART 5

Detection

5.1 Introduction

5.1.1 Detection is the discovery of a possible contravention of legal provisions. It may result from activities such as inspections, surveillance programs, air traffic services monitoring of aircraft movements, regulatory audits, incident reports, complaints from the public or police reports.

5.1.2 When authorized officer is informed of, or observes a contravention or becoming aware of any immediate threat to aviation safety, he must take action. This is necessary in order to avoid or eliminate the threat, where ever he may be.

5.1.3 Sub regulation 204(1) of MCAR

For the purpose of conducting safety regulatory oversight to determine the compliance with MCAR, the Authorized Officer shall have the power to:

5.1.3.1 access and inspect at any aeronautical product, aircraft, aerodrome, aviation facility, place or building;

5.1.3.2 inspect, make copies of or take extracts from any book, manual, minute books, records or other documents required to be kept by the CEO;

5.1.3.3 take photographs of the premises, goods, baggage, package and any other property or material found thereon; and

5.1.3.4 conduct any test that considers necessary.

PART 6

Actions

6.1 Introduction

There are two (2) types of action that may be taken, either administrative action or legal proceedings or both.

6.2 Administrative Actions

The following describes the administrative action that may be taken:

6.2.1 Warning or caution

6.2.1.1 Subject to the result of the violation is not expected to have threat on the safety of the aircraft or its operation; warning may be issued in cases of minor contravention or first timer.

6.2.1.2 Format:

62121 a letter to the person / organization who committed the contravention;

62122 states the nature of violation or non-compliance and why such act or omission resulted in enforcement action; and

62123 copies to be send to the CEO and the relevant Director of Division.

6.2.1.3 The warning letter is issued following the discussion with at least the Director of Division in charge.

6.2.2 Suspension

6.2.2.1 Regulation 193 of MCAR provides that the CAAM may, suspend a certificate, license, permit, approval, authorization, permission or other document issued under such regulations.

6.2.2.2 Suspension is an action whereby a certificate is to be invalidated for a certain period of time. The procedures for suspension are as follows:

62221 Whereupon after a discussion with the relevant Director of Division, it is determined that a Inquiry is necessary, a temporary suspension of the certificate, license, permit, approval, authorization, permission or other document issued under MCAR for a certain period of time is necessary. This happens in the following situations:

62221.1 accident or incident that resulted in injury to people or damage to an aircraft; or

62221.2 a person / organization or operator fails to take action

despite repeated warnings by the CAAM of discrepancies or breach of requirements set by the CAAM.

- 62222 A decision as to whether a certificate, license, permit, approval, authorization, permission or other document issued under MCAR should continue to be suspended must be made following the Inquiry by the CAAM or a report of the in-house inquiry made under the order of the CEO. The objective of the inquiry is to determine whether there is any element of negligence on the part of license holder or non-compliance to any regulations or requirements by the person / organization or operator.
- 62223 The temporary suspension of a certificate, license, permit, approval, authorization, permission or other document issued under MCAR if it becomes necessary prior to an inquiry will be made by the relevant Director of Division.
- 62224 Whereupon as a result of the Inquiry as described in paragraph 6.2.2.2.1 a certificate, license, permit, approval, authorization, permission or other document issued under MCAR is to be suspended for a certain period of time, the suspension will be made by the CEO.

6.2.3 Variation

6.2.3.1 Regulation 193 of MCAR provides that the CAAM may, vary a certificate, license, permit, approval, authorization, permission or other document issued under such regulations.

6.2.3.2 Arising from an inquiry, it may be necessary to vary a certificate, license, permit, approval, authorization, permission or other document issued under MCAR. Such decision is made under the direction of the CAAM following the report of the Inquiry. The following are the various options available:

62321 Degradation of the certificate, license, permit, approval, authorization, permission or other document issued e.g. in the case of a Certificate of Airworthiness, from Transport category to Private category;

62322 Reduce the validity period of the certificate, license, permit, approval, authorization, permission or other document issued;

62323 Limit the operational capability of the aircraft;
or

62324 Reduce the approved maintenance capability of a maintenance organization.

6.2.3.3 Revocation

62331 Regulation 193 of MCAR provides that the CAAM may, revoke a certificate, license, permit, approval, authorization, permission

or other document issued under such regulations.

62332 Revocation is a process whereby a certificate is completely invalidated. This arises upon an inquiry.

62333 In cases of serious violation of legislation provisions, the appropriate certificate, license, permit, approval, authorization, permission or other document issued may be revoked by the CAAM.

62334 The CAAM may consult the Legal Advisor before making a decision to revoke the certificate, license, permit, approval, authorization, permission or other document issued.

6.2.3.4 A letter informing the nature of violation or omission, the decision to revoke the certificate and the need to return the certificate, license, permit, approval, authorization, permission or other document issued concerned for revocation by the CAAM must be sent to the person / organization or operator as soon as possible.