

INTERIM GOVERNMENT OF THE REPUBLIC OF THE FIJI ISLANDS
 CIVIL AVIATION AUTHORITY (AMENDMENT) PROMULGATION 2008
 (PROMULGATION NO. 6 OF 2008)

IN EXERCISE of the powers conferred upon the Interim Government, and upon the exercise of my own deliberate judgement as President of the Republic of the Fiji Islands as to what is best and good for the people of Fiji, and by the executive authority of the State in accordance with section 85 of the Constitution and such other powers as may appertain, and with the advice of Cabinet, I, Josefa Iloilovatu Uluivuda, make this Promulgation

TO AMEND THE CIVIL AVIATION AUTHORITY ACT (CAP. 174A)

Short Title and commencement

1. This Promulgation may be cited as the Civil Aviation Authority (Amendments) Promulgation 2008, and comes into force on a date appointed by the Minister, by notice in the *Gazette*.

Section 2 Amended and New Section 2A Inserted

2.—(1) Section 2 of the Civil Aviation Authority Act (Cap. 174A) (“the Act”) is amended—
 (a) by repealing the definitions of “airport”; and
 (b) by inserting the following definition in their correct alphabetical order—

““aerodrome” means a defined area on land or water (including any buildings, installations and equipment) intended to be used either wholly or in part for the arrival, departure and surface movement of aircraft and “airport” has a corresponding meaning;

“authorised person” means a person authorised by the Authority under section 17(1)(b);”

(2) Section 2 of the Act is further amended by adding the following section—

“Application

2A.—(1) This Act applies to all civil aircraft operations in the Fiji Islands.

(2) This Act bind all Fiji aviation document holders operating in or outside of the Fiji Islands and all foreign aviation document holders operating in the Fiji Islands.”

Section 5 Amended

3. Section 5 of the Act is amended in subsection (1) by deleting "2 months" and substituting "3 months".

Section 12 Amended and Sections 12A, 12B, 12C, 12D, 12E and 12F Inserted

- 4.—(1) Section 12 of the principal Act is amended—

- (a) by replacing the existing heading with "*Officers and Employees*"; and
- (b) by deleting all references to "servant" or "servants" and substituting "employee" or "employees" respectively.

- (2) The Act is further amended by adding the following section after Section—

"Authorised persons

12A.—(1) An authorised person may exercise the Authority's powers or functions under this Act or any other written law, as specified in writing by the Authority.

(2) An authorised person may, at all reasonable times and for the purposes of discharging his or her power and function under this Act—

- (a) enter any aerodrome, aircraft, building or facility associated with the operation of aircraft, including access to the flight deck of an aircraft unless the pilot-in-command can demonstrate that the granting of such access may endanger the safety of the aircraft;
- (b) conduct such examination and inquiry including the examination of any facility associated with the operation of aircraft, building, aerodrome, aircraft or matter, as he or she considers necessary to ascertain whether there is compliance with this Act;
- (c) take or remove samples of material as may be required for analysis or evidence;
- (d) take possession of any facility, aircraft or matter for further examination, testing or for use as evidence;
- (e) take photographs, measurements, make sketches or recording using cameras, radios, audio and visual recording devices;
- (f) require the production of, examination, and take copies of extracts of, any document or part of any document;
- (g) exercise such other powers as may be conferred on him or her by the Regulations or as may be necessary for the performance of his or her functions under this Act; or
- (h) issue improvement and infringement notices under section 15.

(3) As soon as reasonably practicable after concluding an investigation, inspection or examination, an authorised person shall—

- (a) give to the operator concerned information, preferably in the form of a draft report or draft findings, resulting from such investigations, inspections or examinations; and
- (b) also explain any step that the authorised person proposes to take as a result of that investigation, inspection or examination or any actions that the authorised person requires the operator to take and the expected timeframe for those actions.

(4) No person shall be required to answer a question or give information tending to incriminate himself or herself.

Offences in relation to investigations.

12B. A person who—

- (a) obstructs an authorised person in the exercise of his or her powers under this Act or Regulations or induces or attempts to induce another person to do so;
- (b) conceals the location or existence of another person or any matter from an authorised person;
- (c) without lawful excuse, refuses or fails to furnish information within the time specified in the notice, to an authorised person; or

- (d) in any other way, hinders, impedes or opposes an authorised person in the performance of the Authority's functions or an authorised person from exercising his or her powers under this Act and its regulations,

commits an offence and is liable on conviction—

- (i) for an operator, to a fine not exceeding \$10,000; and
- (ii) in any other case, to a fine not exceeding \$2,000.

Improvement notices

12C.—(1) If an authorised person is of the opinion that a person, operator or aerodrome operator—

- (a) is contravening this Act and its regulations; or
- (b) has contravened this Act and its regulations in circumstances that make it likely that the contravention will continue or be repeated,

the authorised person may issue to that person, operator or aerodrome operator an improvement notice requiring the person, operator or aerodrome operator to remedy the contravention or the matters or the activities giving rise to the contravention.

(2) An improvement notice shall—

- (a) state that the authorised person is of the opinion that the person or operator —
 - (i) is contravening this Act and its regulations; or
 - (ii) has contravened this Act and its regulation in circumstances that make it likely that the contravention will continue or be repeated;
- (b) state the reasons for that opinion;
- (c) specify the provision of this Act and its regulations in respect of which that opinion is held; and
- (d) specify the day before which the person is required to remedy the contravention or the matters or activities giving rise to the contravention.

(3) If a person fails to comply with any improvement notice issued to the person, the authorised person may issue an infringement notice to such person.

Infringement notices

12D.—(1) An authorised person may serve an infringement notice on a person if it appears to the authorised person that the person has not complied with—

- (a) the improvement Notice; or
- (b) any provision of this Act and its regulations.

(2) An infringement notice is a notice to the effect that, if the person served does not wish to have the matter dealt with by a court, the person may pay, within the time and to the person specified in the notice, the prescribed fixed penalty.

(3) If the person to whom the infringement notice pays the full amount of the prescribed fixed penalty for the alleged offence, the person is not liable to any further proceedings for the alleged offence.

(4) Payment under this section is not to be regarded as an admission of liability for the purpose of, nor should it in any way affect or prejudice, any civil claim, action or proceedings arising out of the same occurrence.

(5) The amount of a penalty prescribed under this section for an offence shall not exceed the prescribed fixed penalty.

Service of notices

12E. For the purposes of section 12C and section 12D, a notice may be served on a person by—

- (a) delivering it personally to the person;

- (b) leaving it at the person's usual or last known place of residence or business with some other person, apparently resident or employed there and who is apparently in charge or in a position of authority; or
- (c) posting it in a registered letter addressed to the person at the person's usual or last known place of residence or business.

Appeal against Authority decisions

12F. Any person who is aggrieved by the Authority's decision on the refusal, withdrawal, revocation, variation or suspension of an aviation document may appeal to the Chief Executive for the review of the Authority's decision."

Section 14 Amended

5. Section 14 of the Act is amended in subsection (3) by replacing the "fullstop" with the "semicolon" at the end of paragraph (g), and by adding after paragraph (g) the following paragraphs—

- "(h) the prosecution of any offence committed under the provisions of this Act and its Regulations, other than an offence under Part II of the Civil Aviation (Security) Act 1994;
- (i) doing any other thing which the Authority deems necessary for the enforcement of aviation safety."

Section 17 Amended and Sections 17A, 17B and 17C Inserted

6.—(1) Section 17 of the Act is amended in subsection (1)—

(a) by repealing paragraph (b) and substituting the following paragraph—

"(b) to authorise in writing suitably qualified persons to be authorised persons to carry out any work or to perform any act in furtherance of its powers or to perform its functions or powers;"

(b) by re-numbering subparagraph "(i)" as "(f)";

(c) by inserting the following paragraph—

"(g) to issue improvement and infringement notices and collect infringement fines;" and

(d) by re-numbering subparagraph "(j)" as "(h)".

(2) The Act is further amended by adding the following sections after Section 17—

New Sections 17A, 17B, 17C Inserted

"Power to require information"

17A.—(1) The Authority may, by notice in writing—

(a) require any person to produce to it, at a time and place specified in the notice, any document which is specified or described in the notice and which is in that person's custody or under his or her control; or

(b) require any person or organisation—

(i) to keep the records specified or described in the notice; and

(ii) provide to the Authority copies of such records and any other estimate, return or other information specified or described in the notice including information pertaining to occurrences classified for mandatory reporting.

(2) The Authority must specify the time, the manner and the form in which any such estimate, return or information is to be provided.

(3) No person may be compelled—

(a) to produce any document which the person can not be compelled to produce in civil proceedings before a court; or

(b) in complying with any requirement for the furnishing of information, to give any information which the person can not be compelled to give in evidence in such proceedings.

(4) A person who refuses or, without reasonable excuse, fails to do anything duly required of him by a notice under subsection (1) commits an offence and is liable on conviction to a fine not exceeding \$5,000 or to imprisonment for a term not exceeding 12 months.

(5) A person who—

- (a) intentionally alters, suppresses or destroys any document which the person has been required by a notice under subsection (1) to produce; or
- (b) in furnishing any estimate, return or other information required under any such notice, makes any statement which the person knows to be false in a material particular, or recklessly makes any statement which is false in material or particular,

commits an offence and is liable on conviction to a fine not exceeding \$5,000 or to imprisonment for a term not exceeding 12 months.

(6) If a person defaults in complying with a notice under subsection (1), the court may, on the application of the Authority, order the person make good the default, including an order for the costs or expenses of and incidental to the application which must be borne by the person in default or by any officer of a body corporate or other association who is responsible for the default.

Confidentiality

17B.—(1) A person who is or has been a member, officer, employee or agent of the Authority or a member of a committee or who is or has been invited to a meeting of the Authority or of a committee must not disclose any information relating to the affairs of the Authority or of any other person which has been obtained by or in the performance of duties or the exercise of functions under this Act unless—

- (a) the disclosure is necessary for the performance of those duties or the exercise of those functions;
- (b) the disclosure is required under any written law; or
- (c) the disclosure is necessary for the performance of the Authority's functions under this Act.

(2) A person who receives any information relating to the affairs of the Authority must not use the information for his, her, or any other person's financial gain.

(3) A person who contravenes subsection (1) or (2) commits an offence and is liable on conviction to a fine not exceeding \$5,000 or to imprisonment for a term not exceeding 2 years.

Prosecutions of offences under this Act or other civil aviation laws

17C. An authorised person may appear in the Magistrate's Courts and conduct the prosecution of any offence committed under the provisions of this Act or any other written laws relating to civil aviation."

Section 25 Amended

7. Section 25 of the Act is amended by deleting, "end on 30 June in each year" and substituting with, "be determined by the Authority."

Section 26 Amended

8. Section 26 of the Act in subsection (1) is amended by deleting "on or before 30 April in every year" and substituting "at least 2 months prior to the end of the current financial year".

Section 29 Amended

9. Section 29 of the Act is amended by—

- (a) re-numbering paragraph "(c)" as "(a)";
- (b) by adding after paragraph (a) the following paragraph—

“(b) the regulatory fee for oversight of safety and security payable to the Authority”; and

- (c) by renumbering paragraph (e) as paragraph "(c)".

Given under my hand this 22nd day of April 2008.

J. I. ULUIVUDA
President of the
Republic of Fiji Islands
