

INTERIM GOVERNMENT OF THE REPUBLIC OF THE FIJI ISLANDS

CIVIL AVIATION (AMENDMENT) PROMULGATION 2008

(PROMULGATION NO. 7 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 ACT (CAP. 174) —

Short title and commencement

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

Section 2 Amended

2. Section 2 of the Civil Aviation Act (Cap.174) (“the Act”) is amended—

(a) by repealing the definition of “airport” and substituting ““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;” and

(b) by inserting the following definitions in their correct alphabetical order—

“building” means any structure with walls and a roof associated with air navigation or the operation of aircraft;

“inappropriate use” means the use of safety information for purposes different from the purpose for which it was collected, such as use of the information for disciplinary, civil, administrative and criminal proceedings against operational personnel, or disclosure of the information to the public;

“operator” means a person who exercises operational control over an aircraft;

“operational control” means the exercise, by an individual or an organisation, of authority over the initiation, continuation, diversion, termination or cancellation of a flight or series of flights in the interest of the safety of the aircraft and the regularity and efficiency of the flight(s);

“operational personnel” means personnel associated with the aviation related activity that is the subject of a safety investigation conducted under the provision of the Civil Aviation (Occurrence Reporting and Investigation) Regulations and qualifying for protection under Regulation 32 of those Regulations or personnel who are in a position to report safety information to a safety data collection and processing system. Such personnel include, but are not limited to, flight crews, air traffic controllers, aeronautical station operators, maintenance technicians, cabin crew, flight dispatchers and apron personnel;

“safety data collection and processing system” means a processing and reporting system, database, scheme for the exchange of information or recorded information, and includes

(a) record pertaining to accident or incident investigation, as described in Annex 13, Chapter 5;

(b) mandatory incident reporting system, as described in Annex 13, Chapter 8;

- (c) voluntary incident reporting system, as described in Annex 13, Chapter 8; and
- (d) self-disclosure reporting system, including automatic data capture system, as described in Annex 6 Part I Chapter 3, as well as manual data capture system;

“safety information” means information contained in a safety data collection or processing system established for the sole purpose of improving aviation safety, and qualified for protection under conditions specified in section 4A;

“safety investigation information” means information, including recorded information collected by equipment such as flight data recorders, cockpit voice recorders (whether audio, visual or both), air traffic service recording tapes of voice or data communications or of surveillance or similar displays collected during the conduct of a safety investigation into an occurrence conducted under the provision of the Civil Aviation (Occurrence Reporting and Investigation) Regulations;”.

Section 3 Amended

3. Section 3 of the Act is amended—

(a) in subsection (2), by—

(i) repealing paragraph (c) and substituting the following paragraph—

“(c) for the regulation of aerodromes and places where aircraft have landed and for access to buildings for the purpose of inspecting work carried on in them in relation to aircraft, aircraft parts, aircraft equipment or the operation of aircraft;”;

(ii) by renumbering paragraph “(r)”, “(s)” and “(t)” as “(p)”, “(q)” and “(r)”;

(iii) replacing the “.” with a “;” at the end of paragraph (t) which is now paragraph (r), and by adding the following paragraph—

“(s) for the certification of aviation service providers.”

(b) in subsection (4) by deleting “\$2,000” and substituting “\$10,000”.

Section 4 Amended and New section 4A Inserted

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

(a) by adding ‘or incidents’ to the heading;

(b) in subsection (1), by inserting in the second line ‘or incidents’ after ‘accidents’;

(c) in subsection (1), by adding at the end before the full stop, “or occurring to an aircraft not registered in Fiji but operated by an operator domiciled in Fiji”;

(d) in subsection (2)(a), by inserting ‘or incidents’ after ‘accidents’; and

(e) in subsection (2)(d), by replacing the “.” with “; and”, and by adding the following paragraph—

“(e) protecting accident or incident investigation reports, records or information in accordance with the requirements of Annex 13 to the Convention on International Civil Aviation.”.

(2) The Act is further amended by adding the following section after section 4—

“Protection of Information

4A.—(1) Any safety investigation information or any safety information is protected from inappropriate use to ensure its continued availability so that proper and timely preventative actions can be taken and aviation safety improved.

(2) Any safety investigation information or any safety information shall not be used in disciplinary, civil, administrative or criminal proceedings against operational personnel.

(3) Any safety investigation information or safety information shall not be disclosed to the public unless:

(a) the Attorney General considers that circumstances reasonably indicate or there is evidence that the occurrence was caused by an act considered, in accordance with the law, to be conducted with intent to cause damage, or conduct with knowledge that damage would probably result, or is equivalent to reckless conduct, gross negligence or wilful misconduct; or

(b) a review by the Attorney General determines that the release of the safety information or safety investigation information is necessary for the proper administration of justice, and that its release outweighs the adverse domestic and international impact such release may have on the future availability of such information.

(4) Criteria to be considered by the Attorney General for the disclosure of any safety information or any safety investigation information include but are not limited to—

- (a) any disclosure of the information is necessary to correct conditions that compromise safety and or necessary to change policies, regulations or standards;
- (b) any disclosure of the information does not inhibit its future availability in order to improve safety;
- (c) any disclosure of relevant personal information included in the information complies with applicable privacy laws; and
- (d) any disclosure of the information is made in a de-identified, summarised or aggregate form.”

Section 5 Amended

5. Section 5 of the Act is amended in subsection (1) by inserting “or operator” after “owner”.

New sections 7A and 7B Inserted

6. Section 7 of the Act is amended by adding after section 7 the following sections—

“Air Traffic Service

7A.—(1) The Minister may make regulations to provide for air traffic services, and in particular to regulate the following—

- (a) air traffic control services;
- (b) flight information services;
- (c) alerting services;
- (d) air traffic service requirements for communications and information;
- (e) air traffic services standards notified by the Authority;
- (f) International Civil Aviation Organisation Annexes, Documents, standards and guidelines.

(2) Regulations made under this section may prescribe penalties for a fine not exceeding \$10,000 or to imprisonment not exceeding 5 years or both such fine and imprisonment.

Rescue fire fighting service

7B.—(1) The Minister may make regulations to provide for rescue fire fighting services and in particular to provide for the following—

- (a) aerodrome emergency plan;
- (b) protection that is provided and available;
- (c) equipment available for personnel;
- (d) communication systems available;
- (e) rescue fire fighting service standards notified by the Authority;
- (f) International Civil Aviation Organisation Annexes;

(2) Regulations made under this section may prescribe penalties for a fine not exceeding \$10,000 or to imprisonment not exceeding 5 years or both such fine and imprisonment.”.

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

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