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Act 307

AVIATION OFFENCES ACT 1984

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AVIATION OFFENCES ACT 1984

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LAWS OF MALAYSIA

Act 307

AVIATION OFFENCES ACT 1984

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SCHEDULE

LAWS OF MALAYSIA**Act 307****AVIATION OFFENCES ACT 1984**

An Act to give effect to the Convention on Offences and Certain other Acts Committed on Board Aircraft signed at Tokyo on 14 September 1963, the Convention for the Suppression of Unlawful Seizure of Aircraft signed at The Hague on 16 December 1970, the Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation signed at Montreal on 23 September 1971, and the Protocol for the Suppression of Unlawful Acts of Violence at Airports Serving International Civil Aviation, concluded at Montreal on 24 February 1988 and for purposes connected therewith.

[3 June 1985, P.U. (B) 278/1985]

BE IT ENACTED by the 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 :

PART I**PRELIMINARY****Short title and commencement**

1. This Act may be cited as the Aviation Offences Act 1984 and shall come into force on such date as the Minister may, by notification in the *Gazette*, appoint.

Interpretation

2. (1) In this Act, unless the context otherwise requires—

“act of violence” means—

- (a) any act done in Malaysia which constitutes the offence as specified in the Schedule; and
- (b) any act done outside Malaysia which, if done in Malaysia, would constitute such an offence as is mentioned in paragraph (a);

“aircraft” means any aircraft, whether or not a Malaysian-controlled aircraft, other than—

- (a) a military aircraft; or
- (b) an aircraft which, not being military aircraft, is exclusively employed in the service of the Government;

“commander”, in relation to an aircraft, means the member of the crew designated as commander of that aircraft by the operator thereof or, failing such a person, the person who is for the time being the pilot in command of the aircraft;

“consular officer” means a consular officer of Malaysia and includes a consul general, consul, proconsul and consular agent of Malaysia;

“Convention country” means a country which has been declared by the Minister, by notification published in the *Gazette*, to have ratified or acceded to the Tokyo Convention, and has not been so declared to have denounced the Tokyo Convention;

“landing” includes alighting on water;

“Malaysian-controlled aircraft” means an aircraft—

- (a) which is for the time being registered in Malaysia; or

(b) which, being for the time being registered in some other country, is for the time being chartered by demise to a person who, or to persons each of whom, satisfies the following requirements, namely—

(i) that he is a person qualified to be the owner of a legal or beneficial interest in an aircraft registered in Malaysia; and

(ii) that he resides or has his principal place of business in Malaysia;

“military aircraft” means an aircraft of the naval, military or air forces of any country;

“military service” includes naval and air force services;

“operator”, in relation to any aircraft at any time, means the person who at that time has the management of that aircraft;

“pilot in command”, in relation to an aircraft, means a person who for the time being is in charge of the piloting of the aircraft without being under the direction of any other pilot in the aircraft;

“the Convention” means—

(a) in relation to Part III, the Convention for the Suppression of Unlawful Seizure of Aircraft signed at The Hague on 16 December 1970;

(b) in relation to Part IV, the Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation signed at Montreal on 23 September 1971;

“Tokyo Convention” means the Convention on Offences and Certain other Acts Committed on Board Aircraft signed at Tokyo on 14 September 1963;

“unlawfully”—

- (a) in relation to the commission of an act in Malaysia, means an offence that is constituted under any law in force in Malaysia; and
- (b) in relation to the commission of an act outside Malaysia, means the commission of the act that would have been an offence under any law in force in Malaysia had it been committed in Malaysia.

(2) For the purposes of Part II, the period during which an aircraft is in flight shall be deemed to include—

- (a) any period from the moment when power is applied for the purpose of the aircraft taking off on a flight until the moment when the landing run, if any, at the termination of that flight ends; and
- (b) for the purposes of section 5—
 - (i) any further period from the moment when all external doors, if any, of the aircraft are closed following embarkation for a flight until the moment when any such door is opened for disembarkation after that flight;
 - (ii) if the aircraft makes a forced landing, any period thereafter until the time when competent authorities of the country in which the forced landing takes place take over the responsibility for the aircraft and for the persons and property on board the aircraft being, if the forced landing takes place in Malaysia, the time when a police officer arrives at the place of landing, and any references in this Act to an aircraft in flight shall include a reference to an aircraft during any period when it is on the surface of the sea or land but not within the territorial limits of any country.

(3) For the purposes of Parts III and IV—

- (a) the period during which an aircraft is in flight shall be deemed to include any period from the moment when all its external doors are closed following embarkation until the moment when any such door is opened for disembarkation and, in the case of a forced landing, any period until the competent authorities take over responsibility for the aircraft and for persons and property on board; and
- (b) an aircraft shall be taken to be in service during the whole of the period which begins with the pre-flight preparation of the aircraft for a flight and ends twenty four hours after the aircraft lands having completed that flight, and that period shall in any event include the entire period during which the aircraft is in flight as specified in paragraph (a).

(4) In this Act, unless the context otherwise requires, any reference to a country or the territorial limits thereof shall be construed as including a reference to the territorial waters, if any, of that country.

PART II

PROVISIONS TO GIVE EFFECT TO THE CONVENTION ON OFFENCES AND CERTAIN OTHER ACTS COMMITTED ON BOARD AIRCRAFT SIGNED AT TOKYO ON 14 SEPTEMBER 1963

Application of criminal law to aircraft

3. (1) Any act or omission taking place on board a Malaysian-controlled aircraft while in flight elsewhere than in or over Malaysia which, if taking place in Malaysia, would constitute an offence under the law in force in Malaysia, constitutes that offence:

Provided that this subsection shall not apply to any act or omission which is expressly or impliedly authorized by or under that law when taking place outside Malaysia.

(2) No proceedings for any offence under the law in force in Malaysia committed on board an aircraft while in flight elsewhere than in or over Malaysia shall be instituted in Malaysia except by or with the consent of the Public Prosecutor.

(3) The provisions of subsection (2) shall not prevent the arrest, or the issue of a warrant for the arrest, of any person in respect of any offence, or the remanding in custody or on bail of any person charged with any offence.

(4) For the purpose of conferring jurisdiction, any offence under the law in force in Malaysia committed on board an aircraft in flight shall be deemed to have been committed in Malaysia.

Provisions as to extradition

4. For the purposes of the application of the ^{*}Extradition Act 1992 [Act 479] to crimes committed on board an aircraft in flight, any aircraft registered in a Convention country shall, at any time while that aircraft is in flight, be deemed to be within the jurisdiction of that country, whether or not it is for the time being also within the jurisdiction of any other country.

Powers of commander of aircraft

5. (1) The provisions of subsections (2), (3), (4) and (5) shall have effect for the purposes of any proceeding before any court in Malaysia.

(2) If the commander of an aircraft in flight, wherever that aircraft may be, has reasonable grounds to believe in respect of any person on board the aircraft—

^{*}NOTE—This Act has replaced the Extradition Ordinance 1958 [*Ord. 2 of 1958*] and the Commonwealth Fugitive Criminals Act 1967 [*Act 54 of 1967*]*—see* section 54 of Act 479.

(a) that the person in question has done or is about to do any act on the aircraft while it is in flight which jeopardizes or may jeopardize—

(i) the safety of the aircraft or of persons or property on board the aircraft; or

(ii) good order and discipline on board the aircraft; or

(b) that the person in question has done on the aircraft while in flight any act which in the opinion of the commanders is a serious offence under any law in force in the country in which the aircraft is registered, not being a law of a political nature or based on racial or religious discrimination,

then, subject to subsection (4), the commander may take with respect to that person such reasonable measures, including restraint of his person, as may be necessary—

(i) to protect the safety of the aircraft or of persons or property on board the aircraft;

(ii) to maintain good order and discipline on board the aircraft; or

(iii) to enable the commander to disembark or deliver that person in accordance with subsection (5),

and, for the purposes of paragraph (b), any Malaysian-controlled aircraft shall be deemed to be registered in Malaysia whether or not it is in fact so registered and whether or not it is in fact registered in some other country.

(3) Any member of the crew of an aircraft and any other person on board the aircraft may, at the request or with the authority of the commander of the aircraft, and any such member shall if so required by that commander, render assistance in restraining any person whom the commander is entitled under subsection (2) to restrain; and at any time when the aircraft is in flight any such member or other person

may, without obtaining the authority of the commander, take with respect to any person on board the aircraft any such measures as are mentioned in subsection (2) which he has reasonable grounds to believe are immediately necessary to protect the safety of the aircraft or of persons or property on board the aircraft.

(4) Any restraint imposed on any person on board an aircraft under the powers conferred by this section shall not be continued after the time when the aircraft first ceases to be in flight unless before or as soon as is reasonably practicable after that time the commander of the aircraft causes notification of the fact that a person on board the aircraft is under restraint and of the reasons therefor to be sent to an appropriate authority of the country in which the aircraft so ceases to be in flight, but subject to such notification, such restraint may be continued after that time—

(a) for any period, including the period of any further flight, between that time and the first occasion thereafter on which the commander is able with any requisite consent of the appropriate authorities to disembark or deliver the person under restraint in accordance with subsection (5); or

(b) if the person under restraint agrees to continue his journey under restraint on board that aircraft.

(5) The commander of an aircraft—

(a) if, in the case of any person on board the aircraft, he has reasonable grounds—

(i) to believe as mentioned in paragraph (2)(a); and

(ii) to believe that it is necessary so to do in order to protect the safety of the aircraft or of persons or property on board the aircraft or to maintain good order and discipline on board the aircraft,

may disembark that person in any country in which that aircraft may be; and

(b) if, in the case of any person on board the aircraft, he has reasonable grounds to believe as mentioned in paragraph (2)(b), may deliver that person—

(i) in Malaysia to a police officer or an immigration officer; or

(ii) in any other country which is a Convention country, to an officer having functions corresponding to the functions either of a police officer or of an immigration officer in Malaysia.

(6) The commander of an aircraft—

(a) if he disembarks any person in pursuance of paragraph (5)(a) in the case of a Malaysian-controlled aircraft, in any country or, in the case of any other aircraft, in Malaysia, shall report the fact of, and the reasons for, that disembarkation to an appropriate authority in the country of disembarkation; and

(b) if he intends to deliver any person in accordance with paragraph (5)(b) in Malaysia or, in the case of a Malaysian-controlled aircraft, in any other country which is a Convention country, shall before or as soon as reasonably practicable after landing give notification of his intention and of the reasons therefor, where the country in question is Malaysia, to a police officer or an immigration officer or, in the case of any other country which is a Convention country, to an officer having functions corresponding to the functions either of a police officer or of an immigration officer in Malaysia,

and any commander of an aircraft who without reasonable cause fails to comply with the requirements of this subsection commits an offence under this Act and shall be liable on conviction to a fine not exceeding one thousand ringgit.

Provisions as to evidence in connection with aircraft

6. (1) Where in any proceeding before a court in Malaysia for an offence committed on board an aircraft the testimony of any person is required and the court is satisfied that the person in question cannot be found in Malaysia, there shall be admissible in evidence before that court any deposition relating to the subject matter of that proceeding previously made on oath by that person—

(a) in Malaysia which was so made in the presence or absence of the person charged with the offence and before a Sessions Court Judge or Magistrate; or

(b) outside Malaysia which was so made in the presence or absence of the person charged with the offence and before a consular officer or a judicial officer of any foreign country.

(2) Any such deposition shall be authenticated by the signature of the Sessions Court Judge, Magistrate, consular officer or judicial officer before whom it was made who shall certify that the person charged with the offence was present or absent at the taking of the deposition.

(3) It shall not be necessary in any proceeding to prove the signature or official character of the person appearing so to have authenticated any such deposition or to have given such certificate, and such certificate shall, unless the contrary is proved, be sufficient evidence in any proceeding that the person charged with the offence was present or absent, as the case may be, at the making of the deposition.

(4) If a complaint is made to a consular officer that any offence has been committed on a Malaysian-controlled aircraft while in flight elsewhere than in or over Malaysia, that officer may inquire into the case upon oath.

(5) In this section—

- (a) the expression “deposition” includes any affidavit, affirmation or statement made upon oath; and
- (b) the expression “oath” includes an affirmation or declaration in the case of persons allowed by law to affirm or declare instead of swearing,

and nothing in this section shall prejudice the admission as evidence of any deposition which is admissible in evidence apart from this section.

PART III

PROVISIONS TO GIVE EFFECT TO THE CONVENTION
FOR THE SUPPRESSION OF UNLAWFUL SEIZURE OF
AIRCRAFT SIGNED AT THE HAGUE ON
16 DECEMBER 1970

Hijacking

7. (1) Subject to subsection (2), a person on board an aircraft in flight who unlawfully, by the use of force or by threats of any kind, seizes the aircraft or exercises control of it commits the offence of hijacking, whatever his nationality or citizenship, whatever the State of registration of the aircraft and whether the aircraft is in Malaysia or elsewhere.

(2) If the aircraft is used in military, customs or police service, subsection (1) shall not apply unless—

- (a) the person seizing or exercising control of the aircraft is a citizen of Malaysia;
- (b) his act is committed in or over Malaysia; or

- (c) the aircraft is used in the military, customs or police service of Malaysia.

Violence against passengers or crew

8. Any act of violence against the passengers or crew of any aircraft in flight done by any person in connection with the offence of hijacking committed or attempted by him on board such aircraft shall be deemed to have been committed in Malaysia and shall constitute an offence punishable under the law in force in Malaysia applicable thereto, wherever the act of violence was committed, whatever the State of registration of the aircraft and whatever the nationality or citizenship of the person committing the act.

PART IV

PROVISIONS TO GIVE EFFECT TO THE CONVENTION
FOR THE SUPPRESSION OF UNLAWFUL ACTS AGAINST
THE SAFETY OF CIVIL AVIATION SIGNED AT MONTREAL
ON 23 SEPTEMBER 1971 AND THE PROTOCOL FOR THE
SUPPRESSION OF UNLAWFUL ACTS OF VIOLENCE AT
AIRPORTS SERVING INTERNATIONAL CIVIL AVIATION,
CONCLUDED AT MONTREAL ON 24 FEBRUARY 1988

Destroying, damaging or endangering safety of aircraft

9. (1) Subject to subsection (4), any person who unlawfully and intentionally—

- (a) destroys an aircraft in service or so damages such aircraft as to render it incapable of flight or as to likely endanger its safety in flight; or
- (b) commits on board an aircraft in flight any act of violence which is likely to endanger the safety of the aircraft, commits an offence under this Act.

commits an offence under this Act.

(2) Subject to subsection (4), any person who unlawfully and intentionally places or causes to be placed on an aircraft in service any device or substance which is likely to destroy the aircraft or is likely so to damage it as to render it incapable of flight or as to be likely to endanger its safety in flight commits an offence under this Act; but nothing in this subsection shall be construed as limiting the circumstances in which the commission of any act—

(a) may constitute an offence under subsection (1); or

(b) may constitute attempting or conspiring to commit or abetting the commission of such offence.

(3) Except as provided by subsection (4), subsections (1) and (2) apply whether any such act therein mentioned is committed in Malaysia or elsewhere, whatever the State of registration of the aircraft or whatever the nationality or citizenship of the person committing the act.

(4) Subsections (1) and (2) do not apply to any act committed in relation to an aircraft used in military, customs or police service unless—

(a) the act is committed in or over Malaysia; or

(b) where the act is committed outside Malaysia, the person committing the act is a citizen of Malaysia.

Other acts endangering or likely to endanger the safety of aircraft

10. (1) Subject to subsections (5) and (6), any person who unlawfully and intentionally destroys or damages any property to which this section applies or interferes with the operation of such property, where the destruction, damage or interference is likely to endanger the safety of an aircraft in flight, commits an offence under this Act.

(2) Subsection (1) applies to any property used for the provision of air navigation facilities including any land, building or ship so used, and including any apparatus or equipment so used, whether it is on board an aircraft or elsewhere.

(3) Subject to subsections (4) and (5), any person who intentionally communicates any information which is false, misleading or deceptive in a material particular, where the communication of the information endangers the safety of an aircraft in flight or is likely to endanger the safety of an aircraft in flight, commits an offence under this Act.

(4) It shall be a defence for a person charged with an offence under subsection (3) to prove—

(a) that he believed, and had reasonable grounds for believing, that the information was true; or

(b) that, when he communicated the information, he was lawfully employed to perform duties which consisted of or included the communication of information and that he communicated the information in good faith in the performance of those duties.

(5) Subsections (1) and (3) do not apply to the commission of any act unless either the act is committed in Malaysia or, where the act is committed outside Malaysia—

(a) the person committing the act is a citizen of Malaysia;

(b) the commission of the act endangers or is likely to endanger the safety in flight of a civil aircraft registered in Malaysia or chartered by demise to a lessee whose principal place of business or, if he has no place of business, whose permanent residence is in Malaysia;

(c) the act is committed on board a civil aircraft which is registered or so chartered; or

- (d) the act is committed on board a civil aircraft which lands in Malaysia with the person who committed the act still on board.

(6) Subsection (1) does not apply to any act committed outside Malaysia and so committed in relation to property which is situated outside Malaysia and is not used for the provision of air navigation facilities in connection with international air navigation, unless the person committing the act is a citizen of Malaysia.

(7) In this section, “civil aircraft” means any aircraft other than an aircraft used in military, customs or police service.

Act of violence in relation to airport serving international civil aviation

10A. (1) Subject to subsection (3), a person commits an offence under this Act if he unlawfully and intentionally, using any device, substance or weapon—

- (a) commits an act of violence against a person at an airport serving international civil aviation that causes or is likely to cause serious injury or death; or
- (b) destroys or seriously damages any facility of an airport serving international civil aviation or aircraft not in service located at the airport or disrupts the services of the airport,

and such an act endangers or is likely to endanger safety at that airport.

(2) Except as provided by subsection (3), subsection (1) applies whether any of the acts mentioned in subsection (1) is committed in Malaysia or elsewhere, whatever the State of registration of the aircraft or whatever the nationality or citizenship of the person committing the act.

(3) Subsection (1) does not apply to any act committed in relation to an aircraft used in military, customs or police service unless—

(a) the act is committed in Malaysia; or

(b) where the act is committed outside Malaysia, the person committing the act is a citizen of Malaysia.

PART V

MISCELLANEOUS

Application

11. (1) Section 12 shall only apply to Part II.

(2) Sections 13 to 17 and the Schedule shall only apply to Parts III and IV.

Powers of Minister

12. (1) If the Minister is satisfied that the requirements of Article 18 of the Tokyo Convention have been satisfied, which Article makes provision as to the country which is to be treated as the country of registration of certain aircraft operated by joint air transport organizations or international operating agencies established by two or more Convention countries, the Minister may, by notification published in the *Gazette*, provide that, for the purposes of this Act, such aircraft as may be specified in the notification shall be treated as registered in such Convention country as may be so specified.

(2) The Minister may make such regulations as appear to him to be necessary for carrying out or giving effect to the provisions of the Tokyo Convention.

Abetting the commission of acts outside Malaysia

13. Any person in Malaysia who abets the commission elsewhere of any act which—

- (a) would, but for subsection 7(2), constitute the offence of hijacking;
- (b) would, but for subsection 9(4), be an offence under section 9;
- (c) would, but for subsection 10(5) or (6), be an offence under section 10; or
- (d) would, but for subsection 10A(3), be an offence under section 10A,

commits an offence under this Act.

Penalty

14. Any person who commits an offence under this Act shall be liable on conviction to imprisonment for life.

Consent for prosecution

15. (1) No prosecution shall be instituted under this Act without the written consent of the Public Prosecutor.

(2) Notwithstanding that consent has not been given in relation to the offence in accordance with the provisions of subsection (1)—

- (a) a person may be arrested for an offence under this Act;
- (b) a warrant for the arrest of any person in respect of any offence under this Act may be issued and executed;

(c) a person may be charged with an offence under this Act;
and

(d) a person charged with any offence under this Act may be
remanded in custody or granted bail,

but no further steps in the proceedings in relation to the offence shall
be taken until the Public Prosecutor's consent has been obtained.

Position relating to extradition where there is no arrangement

16. (1) Where there is no arrangement relating to extradition in force between Malaysia and a State which is a party to the Convention, the Convention may be regarded to have effect as if it were an arrangement relating to extradition between Malaysia and the State for purposes of the application of the *Extradition Act 1992, to such State.

(2) Where the *Extradition Act 1992 is applied pursuant to subsection (1), it shall have effect as if the only extradition crimes within the meaning of the Act were offences under this Act and attempts to commit such offences.

(3) For the purposes of the *Extradition Act 1992 any act, wherever committed which—

(a) is an offence under this Act or an attempt to commit such an offence, or would be such an offence or attempt but for subsection 7(2), 9(4) or 10(5) or (6); and

(b) is an offence against the law of any State in respect of which the *Extradition Act 1992 have already been made applicable,

shall be deemed to be an offence within the jurisdiction of that State.

*NOTE—This Act has replaced the Extradition Ordinance 1958 [*Ord. 2 of 1958*] and the Commonwealth Fugitive Criminals Act 1967 [*Act 54 of 1967*]*—see* section 54 of Act 479.

Amendment of Schedule

17. The Minister may amend the Schedule by order from time to time.

SCHEDULE

An act done in Malaysia which constitutes the offence of murder, attempted murder, culpable homicide not amounting to murder, voluntarily causing grievous hurt, voluntarily causing hurt by dangerous weapons or means, or an offence under—

- (a) section 3 or 4 of the Corrosive and Explosive Substances and Offensive Weapons Act 1958 [*Act 357*];
 - (b) subsection 32(1) or section 37 of the Arms Act 1960 [*Act 206*];
 - (c) section 6 or 7 of the Explosives Act 1957 [*Act 207*];
 - (d) section 3 of the Kidnapping Act 1961 [*Act 365*].
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LAWS OF MALAYSIA

Act 307

AVIATION OFFENCES ACT 1984

LIST OF AMENDMENTS

Amending law	Short title	In force from
Act A671	Subordinate Courts (Amendment) Act 1987	22-05-1987
Act A1253	Aviation Offences (Amendment) Act 2005	03-09-2005

LAWS OF MALAYSIA**Act 307****AVIATION OFFENCES ACT 1984****LIST OF SECTIONS AMENDED**

Section	Amending authority	In force from
Long title	Act A1253	03-09-2005
2	Act A1253	03-09-2005
6	Act A671	22-05-1987
Heading of Part IV	Act A1253	03-09-2005
10A	Act A1253	03-09-2005
13	Act A1253	03-09-2005
