

Latest amendments to Malaysian Aviation Commission Act 2015

April 18 2018 | Contributed by [SKRINE](#)

[Introduction](#)
[Amendments](#)
[Comment](#)

Introduction

The Malaysian Aviation Commission (MAVCOM) Act 2015 enables MAVCOM to serve as the economic regulator for civil aviation in Malaysia, with the goal of promoting a commercially viable, consumer-oriented and resilient civil aviation industry which supports the nation's economic growth.

The act came into force on March 1 2015 and the first amendment, the MAVCOM Amendment Act 2018, came into force on February 9 2018.

Amendments were made to Sections 2, 18, 36, 65, 66, 69 and 98 and Section 98A was added. This update highlights only the amendments that affect service providers and consumers.

Amendments

Section 2

The definition of 'air traffic right' under the MAVCOM Act 2015 has been substituted with the following:

"(a) In relation to domestic routes the right of an airline licensed by the Commission to provide air services on scheduled journeys within Malaysia, and includes the points to be served, the type of aircraft to be used and the capacity to be provided; or

(b) In relation to international routes, the right of an airline licensed by the Commission and designated, nominated or otherwise authorized by the Government to provide air services on scheduled journeys from, to or over a country under an air services agreement, and includes the points to be served, the route on which the air services are to be provided, the type of aircraft to be used and the capacity to be provided."

The definition of 'air traffic right' was revised due to the amendment to Section 66(1) of the MAVCOM Act 2015. (1) The amendment to Section 66(1) grants MAVCOM the power to allocate air traffic rights for both domestic and international routes. However, under the MAVCOM Act 2015, the provision for air traffic rights does not expressly mention the commission's power to allocate air traffic rights for domestic routes. Therefore, the amendment to the definition seeks to harmonise the legal provisions and existing functions of MAVCOM. (2) Aviation service providers should be aware that they must deal with MAVCOM and no other body in regard to the allocation of air traffic rights for domestic or international routes.

Section 18

Section 18(2) of the MAVCOM Act 2015 was amended by inserting the following after Paragraph (f): "(fa) to impose and collect charges on passengers at airports in Malaysia for regulatory services

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rendered by the Commission pursuant to this Act."

This amendment expands MAVCOM's powers. Pursuant to this, airlines will charge RM1 for all passengers (local and foreign) departing from Malaysian airports as soon as the MAVCOM Amendment Act comes into force. The MAVCOM regulatory charge will be imposed at a maximum rate of RM1, which includes goods and services tax⁽³⁾ for services rendered (eg, complaint handling and management).⁽⁴⁾ This charge will be collected by airlines, as it is included in the price of airline tickets and will fund the regulatory body's operational costs.

Malaysia seems to be following countries such as Singapore, which charges an aviation levy fee of S\$6.10 (RM18.91), and Hong Kong, which charges HK\$120 (RM65.83) per passenger.⁽⁵⁾ Based on these precedents, consumers should have a clear justification for the extra RM1 charge when purchasing airline tickets.

Section 65

The newly inserted Section 65(4) imposes financial penalties for non-compliance with any guidelines issued by MAVCOM in relation to competition matters (Part VII (Competition) of the MAVCOM Act 2015).⁽⁶⁾ The guidelines issued and published by MAVCOM are:

- the Guidelines on Aviation Service Market Definition;
- the Guidelines on Anti-competitive Agreements; and
- the Guidelines on Abuse of Dominant Position.⁽⁷⁾

Non-compliance of the abovementioned guidelines will invoke financial penalties:

- not exceeding RM1 million, where the offender is an individual; or
- not exceeding 5% of the body corporate's annual turnover from the preceding financial year, where the offender is a body corporate.⁽⁸⁾

In so doing, MAVCOM hopes to ensure healthy competition among aviation service providers, while protecting consumers' rights.⁽⁹⁾

Section 69

Section 69 governs the consumer code prescribed by MAVCOM, which includes requirements on minimum policies and practices. The amendment to Section 69(1) inserts the following paragraph after Paragraph (d): "(da) the determination of fees or charges imposed on consumers by providers of aviation services."⁽¹⁰⁾

This empowers MAVCOM to regulate unfair and arbitrary fees and charges imposed by aviation service providers in order to safeguard consumer interest.⁽¹¹⁾

Section 98A

The newly added Section 98A grants MAVCOM the authority to issue guidelines, circulars, directives, practice notes and notices to regulate economic matters relating to the civil aviation industry and impose any condition or restriction as it sees fit.⁽¹²⁾ This section was introduced to deal with the rapid development of the aviation industry in Malaysia. The additional provision allows easier execution of good practices, which should be adhered to quickly.⁽¹³⁾

Section 98A(3) allows MAVCOM to impose financial penalties on a person or a body corporate for non-compliance. Non-compliance will invoke financial penalties:

- not exceeding RM1 million, where the offender is an individual; or
- not exceeding 5% of the body corporate's annual turnover from the preceding financial year, where the offender is a body corporate.

Thus far, MAVCOM has published no such guidelines.

Comment

These amendments will help MAVCOM to achieve its goal of:

- bringing awareness and protecting the rights and interests of consumers; and
- implementing its regulatory powers for the purposes of developing the aviation industry in Malaysia.

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Endnotes

- (1) See Explanatory Statement 3 of the Malaysian Aviation Commission (Amendment) Bill 2017.
- (2) See Page 38 of the Malaysian Hansard, 5th term, 3rd meeting, October 23 2017.
- (3) A statement made by Deputy Transport Minister Datuk Ab Aziz Kaprawi during the Dewan Rakyat, which was published in the Malaysian Reserve on February 13 2018. The article can be accessed [here](#).
- (4) Malaysian Hansard, 5th term, 3rd meeting, October 23 2017.
- (5) See Page 39 of Malaysian Hansard, 5th term, 3rd meeting, October 23 2017.
- (6) See Explanatory Statement 5 of the Malaysian Aviation Commission (Amendment) Bill 2017.
- (7) The guidelines are accessible on MAVCOM's [website](#).
- (8) The act was amended to include Section 65(4), which lists the financial penalties, and Section 65(5), which defines 'financial year' and 'annual turnover'.
- (9) See Page 44 of Malaysian Hansard, 5th term, 3rd meeting, October 23 2017.
- (10) See Section 7 of the MAVCOM Amendment Act 2018.
- (11) See Explanatory Statement 7 of the MAVCOM Amendment Bill 2018. Also see the statement made by Deputy Transport Minister Datuk Ab Aziz Kaprawi during the Dewan Rakyat, which was published in the Malaysian Reserve on February 13 2018. The article can be accessed [here](#).
- (12) See Section 9 of the MAVCOM Amendment Act 2018.
- (13) Malaysian Hansard, 5th term, 3rd meeting, October 23 2017.

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