

REPUBLIC OF VANUATU

BILL FOR
THE CIVIL AVIATION ACT No.38 OF 1982

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REPUBLIC OF VANUATU

BILL FOR
THE CIVIL AVIATION ACT No. 38 OF 1982

To provide for the regulation and control of Civil Aviation in Vanuatu and matters related thereto.

BE IT ENACTED by the President and Parliament as follows :-

INTERPRETATION

1. In this Act, unless the context otherwise requires :-

"aircraft" means any machine used or designed for navigation of the air but does not include a machine designed to derive support in the atmosphere from reactions against the earth's surface of air expelled from the machine;

"airport" means any area of land or water designed, equipped, set apart or used for the landing or take-off of aircraft;

"Department" means the Department of Civil Aviation;

"Director" means the Director of Civil Aviation;

"Minister" means the Minister responsible for Civil Aviation.

PART 1 - REGULATION AND CONTROL OF CIVIL AVIATION

DUTIES OF THE MINISTER

2. It shall be the duty of the Minister :-

- (a) to supervise all matters connected with civil aviation;
- (b) to undertake and to cooperate with persons undertaking such projects, technical research, study or investigation as in his opinion will promote the development of civil aviation in Vanuatu;
- (c) to construct and maintain all government airports and facilities including all plant, machinery and buildings necessary for their efficient operation;
- (d) to control and manage aircraft and equipment necessary for the conduct of government's services;
- (e) to operate such services as the Government may approve;
- (f) to prescribe aerial routes;
- (g) to take such action as may be necessary to secure, by international agreement or otherwise, the rights of the Government in international air traffic;
- (h) to cooperate with the aviation authorities or staff of other governments or countries for any purposes pertaining to civil aviation;

- (i) to investigate, examine and report on the operation and development of commercial aviation within Vanuatu;
- (j) to consider and prepare such regulations as may be necessary for the control or operations of civil aviation in Vanuatu and for the control or operation of aircraft registered in Vanuatu.

POWER TO MAKE REGULATIONS

3. (1) The Minister may make regulations :-

- (a) providing for the registration of aircraft in Vanuatu;
- (b) prohibiting aircraft from flying unless certificates of airworthiness issued or validated under regulations are in force; and except upon compliance with such conditions as to maintenance or repair as may be specified in regulations or otherwise;
- (c) providing for the licensing, inspection and regulation of airports, for access to airports and places where aircraft have landed, for access to factories and hangars for the purpose of inspecting work therein carried on in relation to aircraft or parts thereof, or equipment carried thereon and for prohibiting or regulating the use of unlicensed airports;
- (d) prohibiting persons from engaging in, or being employed in or in connection with, air navigation in such capacities as may be specified in regulations except in accordance with provisions in that behalf, and for the licensing of those employed at airports licensed under regulations in the inspection or supervision of aircraft;
- (e) providing for the conditions under which, and in particular the airports to or from which, aircraft entering or leaving Vanuatu may fly, and as to the conditions under which aircraft may fly from one part of Vanuatu to another;
- (f) providing for the conditions under which passengers and goods may be carried by air and under which aircraft may be used for other commercial, industrial or gainful purposes, and for prohibiting the carriage by air, of goods of such classes as may be specified in the regulations;
- (g) minimising or preventing interference with the use or effectiveness of apparatus used in connection with air navigation, and for prohibiting or regulating the use of such apparatus as aforesaid and the display of signs and lights liable to endanger aircraft;
- (h) minimising or preventing interference from electrical apparatus in the vicinity of aeronautical telecommunications and radio navigational ground installations;
- (i) generally for securing the safety, efficiency and regularity of air navigation and the safety of aircraft and of persons and property carried thereon, for preventing aircraft endangering other persons and property and in particular, for the detention of aircraft for any of the purposes specified in this paragraph;

- (j) providing for the maximum hours of work and other working conditions for pilots, co-pilots, navigators, flight engineers and other persons employed by any person operating a commercial air service;
 - (k) requiring persons engaged in, or employed in or in connection with, air navigation to supply meteorological information for the purposes of air navigation;
 - (l) regulating the making of signals and other communications by or to aircraft and persons carried therein;
 - (m) regulating the use of the civil air ensign established in Vanuatu;
 - (n) prohibiting aircraft from flying over such areas in Vanuatu as may be specified by notification;
 - (o) providing for the manner and conditions of the issue, validation, renewal, extension or variation of any certificate, licence or other document required by regulations, including the examination and tests to be undergone, and as to the form, custody, production, cancellation, suspension, endorsement and surrender of any such document;
 - (p) regulating the charges that may be made for the use of Government airports or airports licenses under regulations, and for services provided at such airports;
 - (q) requiring the payment to the Minister of charges, of such amounts and in such currencies as may be prescribed in the regulations, in respect of navigation, communications and air traffic control services;
 - (r) prescribing the fees to be paid in respect of the issue, validation, renewal, extension or variation of any certificate, licence or other document or the undergoing of any examination or test required by, or in pursuance of regulations, or in respect of any other matter in respect of which it appears to the Minister to be expedient to charge fees;
 - (s) exempting from any provisions of any regulations any aircraft or persons or classes of aircraft or persons.
- (2) Any regulations made under this section may make different provisions with respect to different classes of aircraft, airports, persons or property and with respect to different parts of Vanuatu but shall so far as practicable, be so framed as not to discriminate in like circumstances between aircraft registered in Vanuatu by one air transport undertaking and aircraft operated by another such undertaking.
- (3) Any regulations made under subsection (1) may authorize the Director to make and issue orders or directions with respect to such matters coming within this section as the regulations may prescribe.

- (4) In case of conflict between the provisions of any regulation made under subsection (1) paragraph (j) and the provisions of any other law or regulation relating to the maximum hours of work and other working conditions, the provisions of the former shall prevail.

INVESTIGATION OF ACCIDENTS

4. (1) The Minister may make regulations providing for the investigation of any alleged breach of any regulations, or of any accident arising out over Vanuatu or occurring elsewhere to aircraft registered in Vanuatu.
- (2) Regulations made under subsection (1) may contain provisions :-
- (a) requiring notice to be given of any such accident as aforesaid in such manner and by such persons as may be specified;
 - (b) prohibiting, pending investigation, access to or interference with aircraft to which an accident has occurred;
 - (c) authorizing any person, so far as may be necessary for the purpose of an investigation, to have access to, examine, remove, take measures for the preservation of, or otherwise deal with any such aircraft;
 - (d) authorizing or requiring the cancellation, suspension, endorsement or surrender of any licence or certificate granted under this Act, or the withdrawal or suspension of any validation conferred in Vanuatu of a licence granted by a duly competent authority elsewhere, where it appears on investigation that such action ought to be taken.

LICENCING OF AIR TRANSPORT

5. (1) The Minister may make regulations :-
- (a) to secure that aircraft shall not be used in Vanuatu by any person -
 - (i) for flying, while carrying passengers or goods for hire or reward, on such journeys or classes of journeys (whether beginning and ending at the same point or different points) as may be specified in the regulations; or
 - (ii) for such flying undertaken for the purpose of any trade or business as may be so specified,except under the authority of, and in accordance with any licence or permit granted to the said person by the licensing authority specified in the regulations;
 - (b) providing for the circumstances in which a licence under the regulations may or shall be granted;
 - (c) providing for appeals from the licensing authority by persons interested in the grant, refusal, revocation or suspension of a licence;

- (d) providing for the conditions which may be attached to such a licence, including fares and cargo rates to be charged by the holder;
 - (e) providing for the information to be furnished by an applicant for, or the holder of, such a licence to such authorities as may be prescribed, including details of the resources of the applicant and the financial arrangements made by him in respect of the business activities in which he is engaged and may be expected to be engaged.
- (2) Where the Director has reason to believe that an aircraft is intended to be used in contravention of any regulations made under subsection (1) he may give the person appearing to be in command of the aircraft a direction that he shall not permit the aircraft to take off until the Director has informed him the direction is cancelled.

INFORMATION AS TO AIR TRANSPORT

6. (1) The Minister may make regulations requiring any person who :-
- (a) carries on the business of carrying passengers or goods in aircraft for hire or reward; or
 - (b) is the holder of a licence in respect of an airport; or
 - (c) is the owner, or the pilot or other person in charge of any aircraft,
- to furnish to him in such form and at such times as may be specified therein, or by notice, information of such description as may be so specified concerning the operation, business management and financial accounts in respect of such aircraft or airport.
- (2) No financial information which has been furnished to the Minister in pursuance of any regulations shall be disclosed to any other person unless the person providing the information has consented in writing to such disclosure :
- Provided that nothing shall prohibit the disclosure of any such information to an officer of any Government department or a Minister.
- (3) Nothing in this section shall preclude the disclosure of any information for the purpose of any legal proceedings which may be taken by virtue of this section or of regulations made under this section, or for the purpose of any report of any such proceedings, save that a person who is in possession of any such information obtained by virtue of this section or of regulations made hereunder shall not be required by any court or arbitrator to disclose that information without the consent in writing of the person providing the information.

PART 2 - DEPARTMENT OF CIVIL AVIATION

ADMINISTRATION OF THE ACT

7. There shall continue to be for the purposes of this Act a department

of the government to be known as the Department of Civil Aviation which, under the control of the Director, shall be charged with the administration of this Act and with such other functions as may be lawfully conferred on it.

FUNCTIONS

8. The principal functions of the Department shall be :

- (a) to ensure the safety of air navigation;
- (b) to promote and encourage the orderly and economic development of civil aviation;
- (c) to ensure the observation of any regulations made under this Act;
- (d) to initiate and carry out surveys into any aspect of civil aviation;
- (e) to advise the Minister on all matters affecting civil aviation;
- (f) to perform such other functions as the Minister may from time to time impose.

PART 3 - LAND AND BUILDINGS FOR AVIATION PURPOSES

CONTROL OF AIRPORTS AND BUILDINGS

9. (1) The Minister may establish and maintain airports, and provide and maintain in connection therewith roads, approaches, apparatus, equipment and buildings and other accommodation.
- (2) The Minister may make regulations for the management, control and supervision of airports in Vanuatu and such regulations may provide for all or any of the following matters :-
- (a) the regulation and restriction of the admission of persons to airports;
 - (b) the regulation and restriction of the use of vehicles, ships and aircraft of any class or description on any part of any airport;
 - (c) the destruction of livestock (including horses, cattle, mules, donkeys, sheep, goats, pigs and dogs) trespassing on any airport;
 - (d) the charges to be paid for the use of airports and for the services provided thereat.
- (3) Any regulations made under this section may be general or may be restricted to any particular airport.

REMOVAL OF DANGEROUS OBSTRUCTIONS

- 10 (1) The Minister may, by Order, require the removal of any building, structure, erection, tree or other thing whatsoever on any land or water which may constitute a danger to aircraft flying in accordance with normal aviation practice.

- (2) The Minister may, by Order, authorise such persons as he may deem appropriate to remove or to alter to such extent as may be specified in the order, such building, structure, erection, tree or thing which is in contravention of an order made under subsection (1).
- (3) Any person suffering loss or damage in consequence of an order made under subsection (1) shall be paid compensation therefor and, in default of agreement, the amount of such compensation shall be fixed by the Supreme Court.
- (4) Where an order is issued in relation to a Government airport the compensation shall be paid by the Government, and where the order is issued in relation to any other airport the compensation shall be paid by the owner of that airport.
- (5) Notwithstanding the other provisions of this section no compensation shall be payable for any loss or damage suffered in consequence of an Order made under this section where the building, structure, erection, tree or thing has been erected or planted in contravention of any regulations made under section 11.

RESTRICTION ON THE USE OF LAND

- (1) For the purpose of ensuring the safety of aircraft flying in accordance with normal aviation practice the Minister may make regulations restricting the use of land in the vicinity of airports. Such regulations may provide for the prohibition and restriction of -
 - (a) the erection of buildings, structures or other things in any area specified;
 - (b) the planting of, or the limitation of the height of, any trees in any area specified;
 - (c) the sowing or growing of any plant or crop in any area specified;
 - (d) the bringing of vessels or vehicles into any area specified, or the anchoring or motoring of any vessel or vehicle therein.
- (2) Any owner or occupier of land who suffers loss or damage in consequence of any regulation made under subsection (1) shall be eligible for compensation if he submits a claim to the Minister in respect of a Government airport, or to the owner in the case of any other airport, within a period of six months after the publication of such regulations in the Gazette;

Provided that -

- (a) such loss or damage shall be assessed having regard only to circumstances in existence at the time of the publication of such regulations; and
- (b) the maximum amount of compensation payable under this subsection shall not exceed the amount by which the market value of such land is reduced as a result of making such regulations.

- (3) In the event of disagreement as to the amount of compensation which shall be paid in respect of a claim under the provisions of subsection (2) the amount shall be fixed by the Supreme Court.

DISPLAY OF LIGHTS

12. The Minister may make regulations -
- (a) restricting the display of lights within the area customarily used by aircraft within the vicinity of airports;
 - (b) requiring the display of lights, of an approved type, on buildings or structures within the area customarily used by aircraft within the vicinity of airports;
 - (c) requiring the display of lights, of an approved type, on any building or structure more than three hundred feet in height above ground level; and
 - (d) generally for the purpose of ensuring the safety of aircraft.

PROVISION OF AID

13. The Minister may establish and maintain apparatus for the provision of visual, radio or other assistance for the safety and navigation of aircraft and provide and maintain in connection therewith all appropriate equipment and buildings and other accommodation.

PART 4 - MISCELLANEOUS

OFFENCE

14. (1) Any person who :-
- (a) contravenes or fails to comply with the provisions of any regulation made under this Act;
 - (b) performs any duty or exercises any functions for which a licence or rating is required under any regulation made under this Act without holding the appropriate licence or rating;
 - (c) makes a false or deceptive statement in or in connection with any application for a licence, rating or certificate issued under any regulation made under this Act;
 - (d) makes, procures or assists in the making or procuring of any false or deceptive entry in any document, book or record made or kept under any regulation made under this Act;
 - (e) destroys, mutilates or alters any document, book or record made or kept under any regulation made under this Act;
 - (f) obstructs or hinders an investigation carried on under any regulation made under the provisions of section 6;

- (g) obstructs or impedes any authorized person acting in the performance or exercise of any duties, powers or functions conferred on him by any regulations made under this Act;
- (h) does or fails to do anything likely to imperil the safety of an aircraft or its passengers or crew,

shall be guilty of an offence and shall be liable on conviction to a fine not exceeding VT. 300.000 or to imprisonment for a term not exceeding two years or to both.

- (2) The owner, operator, hirer or pilot in command of an aircraft which flies in contravention of any regulation made under this Act shall be guilty of an offence and shall be liable on conviction to a fine not exceeding VT. 200.000 or to imprisonment for a term not exceeding one year or to both, unless he proves that the alleged contravention took place without his actual fault or privity.

JURISDICTION

- 15. When a person has violated any provision of this Act or of any regulation made thereunder with respect to the operation over the high seas or any territory not within Vanuatu of an aircraft registered in Vanuatu, the offence shall be within the competence of and may be charged, tried and punished by the court having jurisdiction in Vanuatu in respect of similar offences.

PROSECUTION WITHIN 12 MONTHS

- 16. A prosecution for any offence under this Act or any regulation made thereunder may be commenced at any time within twelve months from the time the offence is alleged to have been committed.

CERTIFICATE

- 17. In any proceeding under this Act or the regulations made thereunder, any certificate purporting to be signed by the Minister stating that a valid or subsisting licence, permit, certificate or other document of authorization under this Act or any regulation made thereunder has or has not been issued to a person named in the said certificate shall be evidence of the facts therein stated, without further proof thereof.

REPEALS

- 18. (1) The Joint Regulations and Acts set out in the Schedule are repealed.
- (2) Notwithstanding the provisions of subsection (1), the charges, fees or taxes in force immediately before the date of the commencement of this Act shall continue in force after that date until amended, repealed or replaced in pursuance of and in accordance with the provisions of this Act.

COMMENCEMENT

- 19. This Act shall come into operation on such date, as the Minister shall by order appoint.

SCHEDULE

LIST OF JOINT REGULATIONS AND ACTS REPEALED

(Section 18 of the Act)

1. J.R. No. 12 of 1948 for the provisional control of aircraft entering and leaving the New Hebrides or operating in the New Hebrides and of person and goods carried by air.
2. J.R. No. 2 of 1953 amending J.R. No. 12 of 1948 for the provisional control of aircraft.
3. J.R. No. 17 of 1961 amending J.R. No. 12 of 1948 for the provisional control of aircraft.
4. J.R. No. 1 of 1964 amending J.R. No. 12 of 1948 with respect to definition of "local aircraft".
5. J.R. No. 38 of 1964 amending J.R. No. 12 of 1948 for the provisional control of aircraft.
6. J.R. No. 19 of 1966 amending J.R. No. 12 of 1948 as amended by J.R. No. 1 of 1964.
7. J.R. No. 4 of 1971 to provide for the exercise of control over land adjacent to Government aerodromes for the purpose of securing the safety of aircraft.
8. J.R. No. 10 of 1971 amending J.R. No. 4 of 1971.
9. J.R. No. 15 of 1973 amending J.R. No. 12 of 1948 for the provisional control of aircraft.
10. J.R. No. 57 of 1973 imposing an Airport Departure Tax.
11. J.R. No. 1 of 1974 amending J.R. No. 57 of 1973.
12. J.R. No. 24 of 1974 relating to public access to aerodromes.
13. The Aircraft Control (Amendment) Act No: 7 of 1981.