

No. S 63

**CONSTITUTION OF BRUNEI DARUSSALAM
(Order under Article 83(3))**

CIVIL AVIATION ORDER, 2006

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**CONSTITUTION OF BRUNEI DARUSSALAM
(Order under Article 83(3))**

CIVIL AVIATION ORDER, 2006

In exercise of the power conferred by Clause (3) of Article 83 of the Constitution of Brunei Darussalam, His Majesty the Sultan and Yang Di-Pertuan hereby makes the following Order —

PART I

PRELIMINARY

Citation.

1. (1) This Order may be cited as the Civil Aviation Order, 2006.

Long title.

2. The long title of this Order is "An Order to establish a regulatory framework for monitoring, enhancing and promotion the safety of civil aviation in accordance with the principles of the Convention on International Civil Aviation drawn up at Chicago, any Protocols amending it and the Standards and Recommended Practices adopted under the Convention and published by International Civil Aviation Organization as Annexes thereto".

Interpretation.

3. In this Order, unless the context requires —

"accident" means any unusual and unexpected situation or occurrence involving an aircraft in flight, or persons or property aboard such an aircraft, which results in serious personal injury, death or serious property damage, or which results in structural damage to or failure of the aircraft;

"aerodrome" means a defined area on land or water to be used wholly or in part, for the take off, landing or movement of aircraft, and includes buildings installations and equipment in the area defined by the Minister, as well as, for the purposes of this Order, in the vicinity of that area;

"aerodrome authorities" means a person or enterprise owning or managing a duly licenced aerodrome;

"aeroplane" means an engine-driven fixed-wing aircraft heavier than air that is supported in flight by the dynamic reaction of the air against its wings;

"air carrier" means an enterprise, being a citizen, engaged, directly or indirectly, in the carriage by air of persons, property and postal items or any of them for remuneration or hire;

"aircraft" means a machine that can derive support in the atmosphere from the reactions of the air, other than the reactions of the air against the earth's surface;

"aircraft operator" means a person, organisation or enterprise engaged in or offering to engage in an aircraft operation;

"air navigation service" includes flight information service, alerting service, air traffic advisory service, air traffic control service, area control service, approach control service or aerodrome control service;

"air operator's certificate" means a certificate issued under Part VI;

"air service" means the undertaking made by an air carrier or air transport enterprise to carry persons, property and postal items or any of them for remuneration or hire;

"air transport enterprise" means an enterprise engaged in or offering to engage in scheduled or non-scheduled public transport by air;

"appliances" means instruments, equipment, apparatus, parts, appurtenances or accessories, of whatever description, which are used, or are capable of being or intended to be used, in the navigation, operation or control of aircraft in flight (including parachutes and including communication equipment and any other mechanism installed in or attached to aircraft during flight), and which are not a part or parts of aircraft, aircraft engines or propellers;

"authorised person" means a person acting for or on behalf of the Director in respect of all or any of the powers conferred on to him under regulations;

"certificate of airworthiness" means a required document for the operation of air services in Brunei Darussalam, the requirements for which are provided in Parts III and IV;

"charges" means, in relation to an aerodrome authority, those charges which that authority makes for the use of a licensed aerodrome, which is managed by the Department;

"Chicago Convention" means the Convention on International Civil Aviation drawn up at Chicago and signed by the United Kingdom on behalf of Brunei Darussalam on the 7th. December, 1994 and adopted by Brunei Darussalam

in 1984, and includes any amendments and additions thereto as may be adhered to by Brunei Darussalam;

"citizen" means an individual who is a citizen of Brunei Darussalam, a person to whom a Residence Permit has been granted under regulations made under the Immigration Act (Chapter 17) or a body corporate incorporated or registered in Brunei Darussalam under the Companies Act (Chapter 39);

"civil aviation personnel" means any individual who carries out a civil aviation function, including but not limited to flight crew, aircraft maintenance workers, air traffic controllers and employees of an air carrier or airport;

"commander" means the pilot-in-command responsible for the safe operation of an aircraft and the safety of its occupants while the aircraft is in flight;

"Contracting State" means any state which is party to the Chicago Convention by virtue of the signature of that state's representative to the Convention and to the subsequent ratification by that state;

"contract of carriage" means the embodiment of the contractual relationship, in writing or otherwise agreed, establishing the consent of the air carrier or air transport enterprise to offer and perform an air transport service or air service, and the consent of the other party to that contract to accept such offer and performance;

"crew member" means the aircraft commander and other persons who are licensed to participate in the operation of the aircraft during flight;

"Department" means the Department of Civil Aviation;

"Director" means the Director of the Department, appointed under section 7;

"documents of carriage" means, with respect to the transport of passengers and luggage, the properly completed passenger ticket, baggage tags and luggage coupons; and, with respect to the transport of cargo, the air waybill or any other means which would preserve a record of the information containing an indication of the places of departure and destination, or in case place of departure and destination are within Brunei Darussalam and one or more scheduled stopping places are in a foreign state, an indication of at least one such stopping place;

"foreign air carrier" means an enterprise, not being carried on by a citizen, engaged, directly or indirectly, in the carriage by air of persons, property and postal items for remuneration or hire;

"foreign aircraft" means an aircraft which is registered in a country or territory other than Brunei Darussalam;

"International Civil Aviation Organization" means the International Civil Aviation Organization established under the Chicago Convention;

"incident" means any situation or occurrence, other than an accident, involving an aircraft in flight, or persons and property aboard such an aircraft, which presents a menace or danger to the safety of that aircraft, to persons or property aboard, to other aircraft or to any other persons or property, whether or not such menace or danger results in damage or injury;

"in flight" means —

(a) in the case of a piloted aircraft, from the moment when, after the crew has embarked in order to take off, it first moves under its own power until the moment when it next comes to rest after landing;

(b) in the case of a pilotless aircraft (including a glider), from the moment when it first moves for the purpose of taking off until the moment when it next comes to rest after landing;

(c) in the case of an airship or free balloon, from the moment when it becomes detached from the surface until the moment when it becomes attached thereto or comes to rest;

"international air service" means an air service between a place in Brunei Darussalam and a place outside thereof;

"landing area" means any locality, including an airport and an intermediate landing field, which is used or intended to be used, for the landing and take-off of aircraft, whether or not facilities are provided for the shelter, servicing or repair of aircraft, or for receiving or discharging passengers or cargo;

"Minister" means the Minister for Communications;

"navigable airspace" means airspace above the minimum altitudes of flight, including airspace needed to insure safety in the take-off and landing of aircraft;

"operating crew" means the aircraft commander and other licensed persons who are both on duty and charged with duties essential to the operation of the aircraft while it is in flight;

"operating licence" means a required document for the operation of air services in Brunei Darussalam, the requirements for which are provided in regulations;

"operation of aircraft" means the use of aircraft for the purpose of air navigation, including the navigation of aircraft;

"operator of aircraft" means any person who causes, authorises, engages in or offers to engage in the operation of aircraft, whether with or without the right of legal control, in the capacity of owner, lessee or otherwise, of the aircraft;

"owner" means, in relation to an aircraft or aerodrome, the person in whose name the aircraft or aerodrome is registered, and includes any person who is or has been acting as agent in Brunei Darussalam for a foreign owner, and any person by whom the aircraft or aerodrome is hired at the time;

"pilot-in-command" means the commander of an aircraft;

"regulations" means any regulations made under this Order, or under the Air Navigation Act (Chapter 113) (repealed by this Order) and preserved by subsection (3) of section 55;

"restricted area" means any portion of an aerodrome on which, and in the case of a building or an area of an aerodrome on and around which, there are notices posted by the aerodrome authorities prohibiting entry;

"Rules of the Air Regulations" means the regulations of that citation made by the Minister under this Order;

"Standards and Recommended Practices" means the Standards and Recommended Practices as adopted from time to time by International Civil Aviation Organization pursuant to Article 37 of the Chicago Convention and published in the Annexes to that Convention;

"State aircraft" means an aircraft used exclusively in the service of any government or of any political sub-division thereof, including a municipal government, but not including any government-owned aircraft engaged in carrying persons or property for commercial purposes; and for the purposes of this definition, "used exclusively in the service of" means to an aircraft which is owned and operated by a governmental entity for other than commercial purposes or which is exclusively leased by such governmental entity for not less than 90 continuous days;

"state of the aircraft operator" means the state in which the operator of an aircraft has his principal place of business or, if he has no such place of business, his permanent residence;

"Warsaw-Hague Convention" means the Convention for Unification of Certain Rules Relating to International Carriage by Air done at Warsaw on the 12th. October, 1929, as amended by the Protocol to that Convention done at The Hague on the 28th. September, 1955.

Application.

4. (1) This Order applies to all matters related to civil aviation, including but not limited to —

(a) the operation of civil aircraft registered in Brunei Darussalam;

(b) foreign civil aircraft operating to or from, or in transit over, Brunei Darussalam;

(c) the licensing of personnel of all such aircraft, and

(d) the qualification of air carriers operating air services related to Brunei Darussalam, unless specifically exempted therefrom pursuant to section 54.

(2) The Order does not apply to Brunei Darussalam and foreign State aircraft.

PART II

ORGANISATION AND ADMINISTRATION OF CIVIL AVIATION

Functions of Minister.

5. (1) The Minister has the general duty of organising, carrying out and encouraging measures for —

(a) the sound and economic development of civil aviation;

(b) the promotion of safety and efficiency in civil aviation and air navigation;

(c) the establishment and maintenance of aerodromes, taking into account environmental factors;

(d) the fulfilment of international obligations in the field of international civil aviation, including those with respect to the Chicago Convention, as well as the Annexes thereto and the corresponding amendments and additions thereto, in addition to the Standards and

Recommended Practices including the filing of differences pursuant to Article 38 thereof;

(e) the conclusion of bilateral or multilateral agreements;

(f) the fulfilment of the above-mentioned duties and all others necessary to the proper functioning of civil aviation in Brunei Darussalam, either personally or through delegation or the transfer of the duty to the Director or any other authorised person;

(g) the acquisition by the Government under the Land Acquisition Act (Chapter 41) of land and interests in and rights to and over land for the purposes of the furtherance of civil aviation; and

(h) with the approval of His Majesty the Sultan and Yang Di-Pertuan, the making of regulations —

- (i) providing for the registration of aircraft in Brunei Darussalam;
- (ii) prohibiting aircraft from flying unless a certificate of airworthiness issued or validated under regulations is in force, and except upon compliance with such conditions as to maintenance or repair as may be specified in regulations or otherwise;
- (iii) 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;
- (iv) 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;
- (v) providing for the conditions under which, and in particular the airports to or from which, aircraft entering or leaving Brunei Darussalam may fly, and as to the conditions under which aircraft may fly from one part of Brunei Darussalam to another;

- (vi) 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;
- (vii) 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, and the display of signs and lights liable to endanger aircraft;
- (viii) minimising or preventing interference from electrical apparatus in the vicinity of aeronautical telecommunications and radio navigational ground installations;
- (ix) 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 sub-paragraph;
- (x) providing for Rules of the Air;
- (xi) providing for the maximum flight duty hours of air crew;
- (xii) requiring persons engaged in, or employed in or in connection with air navigation to supply meteorological information for the purposes of air navigation;
- (xiii) regulating the making of signals and other communications by or to aircraft and persons carried therein;
- (xiv) prohibiting or restricting any aircraft from flying over such areas in Brunei Darussalam or in the vicinity of an offshore installation as may be specified by notification;
- (xv) 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;

- (xvi) regulating the charges that may be made for the use of Government airports or airport licences under regulations, and for the services provided at such airports;
- (xvii) requiring the payment 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;
- (xviii) 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 which it appears to the Minister to be expedient to charge fees;
- (xix) exempting from any provisions of any regulations any aircraft or person or classes of aircraft or persons;
- (xx) prescribing anything required to be prescribed and generally to carry out the provisions of this Order.

(2) Any regulations made under subsection (1) may authorise the Director to make and issue orders or directions with respect to such matters, as they may prescribe.

Department of Civil Aviation.

6. (1) There shall be for the purposes of this Order a department of the Government called the Department of Civil Aviation, which shall be charged with the administration of this Order and with such other functions as may be conferred on it.

(2) The Department shall be headed by the Director.

Functions of Director.

7. The Director shall be appointed by His Majesty the Sultan and Yang Di-Pertuan and shall —

(a) perform the functions conferred on him by this Order; including, but not limited to, those with respect to ensuring the observance of this order and the safety of air navigation, the registration of aircraft, the licensing of air transport, the provision of air navigation services, the operation of aerodromes, the safety of air traffic and aircraft including airworthiness, the control of air traffic, the certification of operators of

aircraft and the licensing of air crew, maintenance and air traffic personnel and aerodromes;

(b) provide advice to the Minister on all matters affecting civil aviation and assistance and information on matters relating to the safe and proper functioning of civil aviation in and relating to Brunei Darussalam;

(c) perform such other functions as may be conferred on him by Order,

and in the performance of his functions, the Director shall consider all relevant factors, including environmental factors and the disturbance of the public from any cause attributable to the use of aircraft in civil aviation.

PART III

AIRCRAFT

Registration and nationality marks.

8. (1) There shall be a register of Brunei Darussalam aircraft. The Director shall be the authority for the registration of aircraft, pursuant to the provisions of this Part. The register shall be open to the public and shall include details of the registration of the aircraft as provided in this Part, and any other information that may be appropriate to inscribe in order to adapt the registry to the needs of the aviation industry, including such information as any attachments, rights, claims or judgments directed at or attached to such aircraft.

(2) No aircraft shall be flown in Brunei Darussalam unless it —

(a) is registered in the register of Brunei Darussalam aircraft or in another Contracting State or in another country or territory in relation to which there is an agreement in force between Brunei Darussalam and that other country or territory which makes provision for the flight over, into, from and via Brunei Darussalam of aircraft registered in that country or territory;

(b) bears the prescribed nationality symbols and registration marks;

(c) possesses a valid certificate of airworthiness;

(d) is equipped with flight instruments and communications equipment; and

(e) is piloted by a duly licensed crew.

(3) The Director may exempt certain aircraft from any of these requirements in writing in special circumstances for a limited time, stating the reasons for the exemption.

Nationality of aircraft.

9. (1) Aircraft registered in the register of Brunei Darussalam aircraft shall have Brunei Darussalam nationality. While bearing Brunei Darussalam nationality, an aircraft shall not be eligible for registration in another country or territory.

(2) Aircraft on the register of another country or territory may not be simultaneously registered in Brunei Darussalam.

Registration procedures.

10. (1) Any citizen may register an aircraft in the register of Brunei Darussalam aircraft, subject to regulations.

(2) The Director has the power to issue, suspend, refuse or terminate the registration of an aircraft in Brunei Darussalam and shall determine the standards and procedures for the registration of such an aircraft, including rules on marking and painting Brunei Darussalam's symbols of nationality and marks of registration.

(3) All powers of the Director in regard to the issue, suspension, refusal or termination of registration, as well as any other power conferred by this Order, shall be executed expeditiously.

Certificates of airworthiness.

11. (1) Every aircraft navigating within the airspace of Brunei Darussalam shall require a certificate of airworthiness issued or recognised as valid by Brunei Darussalam, or issued or recognised as valid by the country or territory of registry of that aircraft.

(2) A certificate of airworthiness issued or recognised as valid by another country or territory shall be recognised as valid by Brunei Darussalam if the requirements under which such certificate was issued or recognised as valid by such other country or territory are equal to or exceed those minimum standards for airworthiness set out in the Standards and Recommended Practices.

(3) The Director shall have the power to issue, suspend, modify or revoke a certificate of airworthiness for an aircraft registered in Brunei Darussalam, and

shall determine the standards, criteria, and procedures under which such power will be exercised.

Flight instruments and communications equipment.

12. (1) Aircraft operating within the airspace of Brunei Darussalam shall be equipped with radio transmitting apparatus, licensed and installed in accordance with at least the Standards and Recommended Practices and the laws of the country and territory of registration of the aircraft and operated in accordance with rules made by the Director under this Order.

(2) The Director shall determine the standards of installation, maintenance and operation of flight instruments and communications apparatus on all aircraft registered in Brunei Darussalam.

(3) Aircraft operating in classes of airspace where no communication equipment is needed are exempted from the provisions of subsections (1) and (2).

Documents carried aboard aircraft.

13. (1) Each aircraft registered in Brunei Darussalam shall carry the documents, or copies thereof, aboard the aircraft as prescribed by regulations.

(2) Documents carried aboard foreign aircraft shall conform with the requirements established by the International Civil Aviation Organization as well as the country or territory of registration of the aircraft, provided that the Director has the right to require production and examination of such documents.

Rights in aircraft and detention of aircraft.

14. (1) No aircraft engaged in the operation of public air transportation in Brunei Darussalam shall be detained within Brunei Darussalam for the purposes of recovering private claims except under, and in accordance with, an order of a court of Brunei Darussalam, or of a foreign court registered in Brunei Darussalam.

(2) For the purposes of subsection (1), private claims are claims arising out of relations between the operator of an aircraft, including the registered owner of the aircraft, and a private person, which includes a public person or entity acting in a private capacity.

(3) Provisions in regard to the mortgaging of aircraft, detention and sale of aircraft for unpaid airport charges, intellectual property rights and other rights in aircraft may be made in regulations.

(4) Aircraft shall be regarded as movable property for purposes of the laws of Brunei Darussalam. However, the transfer of ownership must be in writing and shall not be valid as far as third parties are concerned until it has been registered in the register of aircraft.

(5) An aircraft may only be mortgaged under the laws of Brunei Darussalam if it is duly registered in the register of aircraft mortgages. All mortgages must be recorded in that register and shall take effect from the date of entry in that register.

PART IV

PERSONNEL

Licences and certificates.

15. (1) No member of an operating crew of an aircraft operating in the airspace of Brunei Darussalam shall participate in the operation of such aircraft unless he possesses a valid licence or certificate of competency recognised as valid by Brunei Darussalam, including a licence or certificate issued or rendered valid by the country or territory of registry of the aircraft.

(2) A licence or certificate of competency issued or rendered valid by another country or territory shall be recognised as valid by Brunei Darussalam if the requirements under which it was issued or rendered valid by such other country or territory comply with or surpass the Standards and Recommended Practices.

(3) In addition to the operating crew, the Director may lay down standards regulating the levels of competency for other flight crew members and other civil aviation personnel.

(4) Any person engaging in the operation of an aircraft or in any act for which a licence or certificate is required under this Order, or which is beyond the scope of any such licence or certificate, is guilty of an offence.

Aircraft commander.

16. (1) Every aircraft operator shall, for each flight segment of an aircraft, designate a suitably qualified member of the operating crew as commander of the aircraft and, where appropriate, another qualified member of the operating crew as assistant commander who shall, when necessary, assume command.

(2) The aircraft commander shall be solely responsible for the safe operation of the aircraft in flight and the safeguarding of the aircraft and persons and property aboard the aircraft. He shall at all times observe the Rules of the Air

Regulations, appropriate directions of air traffic controllers, obtain all relevant meteorological information available to him, and fulfill all other requirements which may be imposed by this Order.

(3) The aircraft commander shall be the supreme decision-making authority aboard the aircraft and shall have all the necessary powers to take such steps and perform such actions as he may consider reasonably necessary to carry out his duties and responsibilities. The aircraft commander has the authority necessary to —

(a) restrain persons on board who may be a threat to safety;

(b) protect the safety of persons and property on board;

(c) maintain good order and discipline on board;

(d) disembark persons who may be a threat to safety;

(e) search persons or baggage on an aircraft and take possession of items which could be used in connection with any offence, as determined under the provisions of this Order.

(4) The Director may impose such additional duties and responsibilities upon the aircraft commander as may be required in the interests of safety or security.

Crew.

17. (1) An aircraft registered in Brunei Darussalam shall carry a flight crew adequate in number and description to ensure the safety of the aircraft and of at least the number and description specified in the certificate of airworthiness issued or recognised as valid under the regulations or, if no certificate of airworthiness is required under the regulations to be in force, in the certificate of airworthiness (if any) last in force under the regulations, in respect of that aircraft.

(2) The Director shall set standards for conditions of duty of flight crew members, including but not limited to maximum duty hours and required rest periods.

(3) No flight shall be granted permission to operate unless the crew complement is in strict adherence with the standards established for the type of flight proposed and unless every member of the crew satisfies the standards regarding the conditions of duty.

(4) The Director shall establish the minimum medical standards which must be satisfied both by crew members and air traffic controllers, which shall comply with or surpass the Standards and Recommended Practices.

PART V

AIRCRAFT OPERATIONS

Rules of the Air.

18. (1) The Director shall, with the approval of His Majesty the Sultan and Yang Di-Pertuan, makes Rules of the Air Regulations governing the operation of aircraft in flight applicable within Brunei Darussalam, provided that such Regulations shall be in compliance with Annex 2 to the Chicago Convention and with the Standards and Recommended Practices.

(2) The provisions of regulations relating to registration and marking of aircraft, logbooks and personnel licensing shall not apply to foreign aircraft and personnel when flying over Brunei Darussalam, provided that the certificates, licences and logbooks issued by the responsible authority of the country or territory in which the aircraft is registered are carried and produced for inspection as and when required by an authorised person.

(3) The Director shall establish the conditions for the issue of an air operator's certificate which, pursuant to terms of the Rules of the Air Regulations, provides the terms under which an aircraft may be operated in Brunei Darussalam.

(4) No foreign State aircraft shall fly over or land in Brunei Darussalam, except after receiving a written invitation or diplomatic clearance from the Minister of Foreign Affairs.

(5) Every State aircraft flying in civil airspace and at civil aerodromes shall adhere to the Rules of the Air Regulations.

Air navigation services.

19. (1) The Director may establish the procedure for the maintenance of air navigation services in Brunei Darussalam to ensure the safety of aircraft navigating in its airspace.

(2) In determining standards for personnel and facilities related to air navigation, the Director shall conform to at least the Standards and Recommended Practices.

(3) Personnel working in air traffic control shall be subject to the provisions of subsection (4) of section 17.

Air space classifications, establishment of airways and prohibited or restricted areas.

20. (1) The Director shall publish an airspace classification for the airspace of Brunei Darussalam in accordance with the Standards and Recommended Practices.

(2) The Director may establish airways through which civil aircraft operating in the airspace of Brunei Darussalam must proceed.

(3) The commander of an aircraft navigating in the airspace of Brunei Darussalam shall comply with the rules and regulations applying to the class of airspace he is flying in.

(4) The Director may designate prohibited and restricted areas.

(5) No aircraft shall be flown over an area where there are flight restrictions, the particulars of which have been published, except in accordance with the conditions of the restrictions.

(6) Any aircraft deviating from an established airway or entering a restricted or prohibited area shall be considered as an unauthorised operation.

(7) The commander of an aircraft involved in such an unauthorised operation shall take immediate corrective measures to resume an authorised course and shall strictly comply with any special instructions of the competent authorities, including any instruction to land at a designated location.

Prohibited activities.

21. (1) Subject to and in accordance with the provisions of this Order and of any subsidiary legislation made thereunder, the following activities are prohibited —

(a) carrying aboard an aircraft explosives, weapons, ammunition, poisons, flammable substances, radioactive or highly magnetic materials, oxidising substances, corrosives, substances having a strong odour and other goods considered dangerous;

(b) except for that equipment authorised to be aboard the aircraft, using radio transmitting apparatus in an aircraft;

(c) firing a gun or launching a rocket into the airspace;

(d) launching an unmanned aircraft; and

(e) using any machine, equipment or device (including a kite, radio-controlled model or other similar equipment) within any area designated by the Minister, or in any manner which may affect or interfere with the safety of civil aircraft or with civil aviation radio communications.

(2) The Director may prohibit such other activity as is necessary in the interests of safety or which is otherwise required by the public interest.

(3) The Director may authorise exemptions from the prohibitions in relation to the activities regulated by this section. If exemptions are granted, the exempted activities must be conducted in accordance with the terms, limitations and conditions set out in the authorisation of the Director.

Search and rescue.

22. (1) The Director shall publish rules governing the provision of search and rescue units which shall render such assistance as may be required to any aircraft missing or in distress within the territory of Brunei Darussalam. In carrying out its duties in this respect, the Director shall co-ordinate as necessary with aerodromes, local government, police, armed forces and other concerned organisations.

(2) In the event that the aircraft missing or in distress is registered in another country or territory, the Director may permit the owner of the aircraft or the authorities of such other country or territory to provide such measures of assistance as may be required under the circumstances, provided that the furnishing of any such assistance shall, at all times, be under the control of the Director.

(3) The Director may also consider requests by other countries or territories or international organisations to render search and rescue assistance to aircraft missing or in distress in the territory of an adjacent country or territory or over the high seas.

Accident and incident investigation.

23. Subject to regulations relating to the investigation of accidents —

(a) the Director shall promptly conduct an objective and impartial inquiry into the circumstances of any aircraft incident or accident occurring in Brunei Darussalam and shall have the power to appoint such persons and adopt such procedures as he considers necessary for this task;

(b) the sole purpose of the investigation of an accident or incident shall be to determine the circumstances and causes of the incident or accident with a view to the prevention of incidents or accidents in the future and not to establish or apportion blame or liability;

(c) the Director may invite foreign persons to assist in the conduct of the investigation, so far as this is compatible with the proper conduct of the investigation.

Powers of Minister in cases of military necessity or public safety.

24. (1) The Minister may, if it appears to him necessary in the interests of defence, public safety or public order —

(a) by order published in the *Gazette*, declare Brunei Darussalam or any part of it to be a restricted or prohibited area for the purposes of this section;

(b) by order published in the *Gazette*, issue orders in respect of any restricted or prohibited area or part thereof;

(c) by order, regulate, restrict or prohibit the navigation of any aircraft;

(d) appoint any person to carry out and effect any of such orders.

(2) The person appointed under paragraph (d) of subsection (1) shall take all steps which may be reasonably required to secure compliance with such orders.

(3) No claim for damages or compensation shall lie against any person appointed under paragraph (d) of subsection (1) arising out of any steps *bona fide* taken by him under subsection (2).

(4) Any person who fails to comply with an order made under subsection (1), or who obstructs any person charged with the duty of carrying out and giving effect to that order, is guilty of an offence.

PART VI

AIR TRANSPORT

Operating licence.

25. (1) Notwithstanding any international agreement, no air transport enterprise shall apply for an operating licence pursuant to any regulations relating to the licensing of commercial flying, before an air operator's certificate is issued.

(2) Without prejudice to any international agreement to which Brunei Darussalam is a party, no air transport enterprise shall be granted an operating licence unless it has its principal place of business in Brunei Darussalam, and is owned and controlled by Brunei Darussalam or by a citizen.

(3) The Director shall establish criteria and the procedure for obtaining an operating licence.

Air operator's certificate.

26. The grant of a licence shall be dependent upon the possession of an air operator's certificate specifying the activities covered by the licence and complying with the criteria and conditions established in this Order.

Criteria for issue of certificate.

27. (1) In regard to domestic air carriers, the Director shall consider fitness, qualifications, insurance and responsibility, as well as the public interest (among other criteria), in making his decision to grant an air operator's certificate.

(2) In regard to foreign air carriers, in addition to the criteria mentioned in subsection (1), the Director shall consider the terms of any existing international agreement or temporary operating permit between Brunei Darussalam and the foreign country or territory concerned.

(3) As a condition for the issue of the operating licence required by subsection (1) of section 25, the Director may require both domestic and foreign carriers to submit for approval their security programmes, in the interests of maintaining the safety and security of civil aviation.

Conditions for issue of certificate.

28. (1) The Director may include such terms, conditions and limitations to a certificate as he considers necessary in the public interest.

(2) An air transport enterprise which is granted a certificate with such terms, conditions or limitations may request from the Director the reasons for their inclusion.

(3) The Director shall respond to any request made under subsection (2) within 40 days.

Amendment, suspension and revocation of certificate.

29. The Director may, after prior notice to the air transport enterprise, amend, suspend or revoke a certificate if he considers it necessary in the public interest, stating the reasons therefor.

Tariffs.

30. (1) Any air transport enterprise engaging in scheduled commercial air transport must have an approved and effective tariff covering the transportation to be provided.

(2) Such tariff shall be in such detail as required by the Director, except that in the case of international air transport, they shall be in accordance with international standards and agreements.

Filing, approval and suspension of tariffs.

31. (1) Unless exempted by regulations or by exemption, tariffs shall be filed by the air transport enterprise and approved by the Director at least 25 days prior to implementation.

(2) Approval or refusal shall be in writing, but if not so expressed to the enterprise within 40 days, approval shall be implied.

(3) The Director may suspend a tariff if he consider it to be unfair, discriminatory or otherwise contrary to the public interest.

PART VII

AERODROMES

Control of airports and buildings.

32. The Minister may establish and maintain or cause to be maintained airports, and in connection therewith, roads, approaches, apparatus, equipment, buildings and other accommodation.

Designation of aerodromes.

33. The Director may provide for different classifications of aerodromes and may designate certain aerodromes to be used as international airports by air carriers operating international air services.

Landing at designated aerodromes.

34. Unless otherwise provided by regulations or by any exemption, all civil aircraft must operate to or from a designated aerodrome or place for landing and take-off.

Mandatory licensing of aerodromes.

35. No aerodrome may be operated until it has been issued with a licence by the Director, and no aerodrome may operate except in accordance with the terms and conditions of such licence.

Criteria for issue of licence.

36. (1) In determining whether to issue such a licence, the Director shall have regard to the requirements of safety, security, environmental, factors and the disturbance of the public from any cause attributable to the use of aircraft, around the aerodrome, and these requirements shall be implemented by regulations to be made by the Minister, with the approval of His Majesty the Sultan and Yang Di-Pertuan.

(2) The Director shall have the power to modify, suspend or revoke any licence.

Regulations for management etc. of airports.

37. The Minister may, with the approval of His Majesty the Sultan and Yang Di-Pertuan, make regulations for the management, control and supervision of airports in Brunei Darussalam, and such regulations may provide for —

(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 in any part of any airport;

(c) the detention or destruction of animals trespassing on any airport;

(d) the charges to be paid for the use of airports and for the services provided thereat.

Powers of Director regarding management of aerodromes.

38. (1) The Director shall not discontinue the use of any aerodrome managed by the Department, except with the consent of the Minister.

(2) The Director shall provide at aerodromes such facilities as are considered necessary or desirable for the proper function and development of air transport, and for the promotion of efficiency, economy and safety of operation.

(3) The Director may appoint any person to manage on behalf of the Department any aerodrome managed by the Department, and any reference in this Order to an aerodrome managed by the Department includes a reference to an aerodrome managed by a person appointed in pursuance of this subsection.

Removal of dangerous obstructions.

39. The Director may 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.

Restrictions of the use of land.

40. For the purpose of ensuring the safety of aircraft flying in accordance with normal aviation practice, the Minister may, with the approval of His Majesty the Sultan and Yang Di-Pertuan, make regulations restricting the use of land in the vicinity of airports and making provision for the prohibition and restriction of —

- (a) the erection of buildings, structures or other things in any specified area;
- (b) the planting of, or the limitation of the height of, any trees in any specified area;
- (c) the sowing or growing of any plant or crop in any specified area;
- (d) the bringing of any vessel or vehicle into any specified area, or the anchoring or motoring of any vessel or vehicle therein.

Display of lights.

41. The Minister may, with the approval of His Majesty the Sultan and Yang Di-Pertuan, 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 300 feet in height above ground level;

(d) generally for the purpose of ensuring the safety of aircraft.

Provision of aids.

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

PART VIII

LIABILITY AND INSURANCE

Applicability of Warsaw-Hague Convention.

43. (1) Subject to the provisions of this Order, the provisions of the Warsaw-Hague Convention shall have the force of law in Brunei Darussalam and shall govern the rights and liabilities of carriers, passengers, consignors, consignees and other persons in relation to any carriage by air to which that Convention applies.

(2) Any recovery of damages from a carrier as a result of liability imposed on it by the applicability of the Warsaw-Hague Convention shall be an exclusive remedy and shall be in lieu of any other legal remedy which, but for that Convention, would be available.

(3) Any sum in special drawing rights mentioned in Article 22 of the Warsaw-Hague Convention shall, for the purposes of an action against the carrier, be converted into the currency of Brunei Darussalam in accordance with terms established by the Minister of Finance.

(4) In the event of the death of a passenger, the carrier's liability shall be enforceable for the benefit of such members of the passenger's family as sustained loss or damage by reason of his death.

(5) An action to enforce the liability may be brought by the representative of the passenger or by any person for whose benefit the liability is enforceable but only one action shall be brought before the court in Brunei Darussalam in respect of the death of any one passenger and every such action by whomsoever brought shall be for the benefit of all such persons.

(6) The amount which may be recovered in any such action shall not exceed the actual and the prospective loss resulting from such death to the members of the passenger's family.

(7) In this section, the expression "members of the passenger's family" includes, but is not limited to a wife, husband, child and parent, and those members of the family who had been financially dependent on the passenger.

Non-international carriage.

44. Section 43 and the provisions of the Warsaw-Hague Convention also applies to carriage by air, not being international carriage as defined by Article I of that Convention, subject however to such exceptions, adaptations and modifications as may be made by the Minister.

Liability of aircraft operators to third parties.

45. (1) Any operator of an aircraft in flight shall be liable for damages caused by that aircraft or the operation thereof, or caused by any person or object aboard that aircraft or attached to that aircraft, or a person or object falling from that aircraft, which results in the death of or personal injury to, or damage to any property of, a third party.

(2) Where the aircraft concerned has been *bona fide* demised, let or hired out for any period to any other person by the owner thereof, and no pilot, commander, navigator or operative member of the crew of the aircraft is in the employment of the owner, this Order shall have effect as if references to the operator were substituted by references to the person to whom that aircraft has been so demised, let or hired out.

Contributory negligence.

46. Any liability imposed pursuant to the provisions of this Order may be reduced or eliminated if the party so liable proves that the damages incurred were caused or contributed to by the negligence of the injured party.

Minimum insurance requirements.

47. (1) Every aircraft operator, and every air transport enterprise to which an operating licence has been issued under section 25, shall secure and maintain in force an insurance policy, in such minimum amounts as may be determined by the Minister of Finance, covering the various liabilities set out in this Order, in the applicable international conventions or in other agreements governing liability.

(2) The failure to secure or maintain in force such insurance in such minimum amounts as may be determined shall, in addition to any other civil or criminal penalty which may be imposed, constitute a basis for the grounding of aircraft or the revocation or suspension of the licence for public transportation.

Rules in public interest.

48. The Minister may, with the approval of His Majesty the Sultan and Yang Di-Pertuan, make such regulations in respect of liability under this Part, not inconsistent with the provisions of this Order, as he considers necessary in the public interest.

PART IX

SECURITY OF CIVIL AVIATION

Jurisdiction over offences and other acts committed on board aircraft.

49. Notwithstanding the provisions of any other written law, Brunei Darussalam shall have jurisdiction —

(a) over any offence or other act committed against or on board any aircraft registered in Brunei Darussalam, wherever such aircraft may be located;

(b) over any offence or other act committed against or on board any aircraft in Brunei Darussalam;

(c) over any offence or other act committed on board any aircraft which lands in Brunei Darussalam with the alleged offender still on board;

(d) over any offence or other act committed on board an aircraft which is leased without crew to a lessee who has his principal place of business or, if the lessee has no such place of business, his permanent residence, in Brunei Darussalam;

(e) over any offence or other act prescribed as an offence by any law relating to the hijacking and protection of aircraft or relating to offences committed on board aircraft where the alleged offender is present in Brunei Darussalam and has not been extradited pursuant to the Hague Convention or the Montreal Convention to any other State mentioned in Article 4, paragraph 1 of the Hague Convention or Article 5, paragraph 1 of the Montreal Convention.

Security at airports.

50. (1) The Minister shall establish and maintain a National Civil Aviation Security Programme for Brunei Darussalam, designed to enhance the safety and security of civil aviation in Brunei Darussalam.

(2) The Minister shall specify which areas of the aerodrome are restricted areas, into which persons who enter without the requisite permission shall be guilty of an offence.

(3) Personnel charged with maintaining the security of an aerodrome in Brunei Darussalam are authorised to complete all necessary security measures for the protection of civil aviation, including the pre-boarding screening of passengers and baggage.

(4) Notwithstanding the provisions of any other written law, the Commissioner of Police shall be responsible for protecting the security of aerodromes and has the power to detain as he sees fit any person who has been required to disembark for safety or security reasons.

PART X

GENERAL

Offences and penal provisions.

51. (1) Any person who contravenes or fails to comply with any provision of this Order is guilty of an offence and liable on conviction to a fine not exceeding \$50,000, imprisonment for a term not exceeding 5 years or both.

(2) An offence under this Order and an offence committed on an aircraft registered in Brunei Darussalam shall, for purposes in relation to the jurisdiction of a court to try the offence, be deemed to have been committed in any place where the accused happens to be, provided that if such offence is committed in Brunei Darussalam, it may be tried by any court having jurisdiction where it was committed.

(3) If a person failing to comply with the provisions of this Order is the holder of a licence or certificate, the court convicting him may, in addition to any penalty which may be imposed, cancel, suspend for a specified period or order the endorsement of such licence or certificate or, if he is not the holder of a licence or certificate, declare him to be disqualified from holding a licence or certificate under this Order, for such period as it considers appropriate.

(4) This section shall apply equally to the owner and operator of an aircraft, unless such owner or operator proves that the contravention, offence or failure in question occurred without his order, permission or command, and that he could not have prevented it.

(5) The penalties provided under this Order shall be in addition to and not in substitution for any penalties imposed by any other written law relating to the

import or export of goods, and to persons entering or leaving Brunei Darussalam by aircraft.

(6) Where an offence under this Order which has been committed by a body corporate is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of, a director, manager, secretary or any similar officer of the body corporate, or any person who was purporting to act in any such capacity, he, as well as the body corporate, shall be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

Reporting requirements.

52. (1) In addition to any other reporting requirements which may be imposed by regulations, all civil aviation personnel shall report —

(a) any suspected violation of this Order by any person, whether in a governmental or personal capacity;

(b) any incident or act which affects or which may affect the safety of civil aviation;

(c) any aircraft accident,

at such times and in such form as the Director shall require.

(2) Any report submitted pursuant to subsection (1) shall be promptly investigated and a determination made as to what further action may be required.

Indemnity of public officers.

53. A public officer acting in the performance of his duty shall not be liable for —

(a) loss or damage caused by the death of or injury to any person while conveyed in an aircraft owned, operated or chartered by the Government or while entering or mounting or being in such aircraft for the purpose of being conveyed in it or while being in or alighting from it after having been conveyed in it, if that person was so conveyed or to be conveyed otherwise than in the performance of his duty as a public officer; or

(b) loss of or damage to goods conveyed in such aircraft.

Exemptions.

54. (1) Notwithstanding any other provision of this Order, the Minister shall have the power to exempt any person from the operation of this Order or of any provision thereof, if he is satisfied that the public interest or considerations of international comity and reciprocity require such exemption.

(2) The Minister may attach such terms, conditions and limitations to any exemption as he considers necessary or expedient.

(3) Any exemption of any person from the operation of this Order or of any provision thereof shall be in writing, stating the reasons therefor.

Repeal of Chapter 113 and savings.

55. (1) Subject to subsection (2), the Air Navigation Act (Chapter 113) is repealed.

(2) Any Order in Council specified in the Schedule to that Act immediately before the date of commencement of this Order, to the extent that it was on that date in force in Brunei Darussalam and so far as it is not inconsistent with this Order, shall continue in force in Brunei Darussalam, but the Minister may, at any time and with the approval of His Majesty the Sultan and Yang Di-Pertuan, amend any such Order in Council in its application to Brunei Darussalam.

(3) Any subsidiary legislation or appointment made, and any thing done, under that Act and in force immediately before the date of commencement of this Order and so far as it is not inconsistent with this Order, shall continue in force as if made or done under this Order, but the Minister may, at any time and with the approval of His Majesty the Sultan and Yang Di-Pertuan, amend, repeal or revoke any such subsidiary legislation, appointment or thing.

Made this 22nd. day of Rabiulakhir, 1427 Hijriah corresponding to the 20th. day of May, 2006 at Our Istana Nurul Iman, Bandar Seri Begawan, Brunei Darussalam.

HIS MAJESTY
THE SULTAN AND YANG DI-PERTUAN
BRUNEI DARUSSALAM