



MINISTRY OF TRANSPORT
MALAYSIA

POLICY ON NON-SCHEDULED AIR SERVICES

1. PURPOSE

- 1.1 The purpose of this policy is to provide guidance on the principles, rules and application methods for the provision of non-scheduled air services in the Malaysian aviation sector.

2. BACKGROUND

- 2.1 Article 5 of the Chicago Convention 1944 (Convention) provides that all aircraft of a Contracting State engaged in passenger, cargo or mail air services for remuneration or hire other than international scheduled flight services have the privilege of taking on or discharging passengers, cargo or mail from/in another Contracting State.
- 2.2 However, Article 5 of the Convention also provides that it shall be the right of the Contracting State to establish such laws, regulations or conditions as it deems fit to regulate any embarkation or discharge activities by such aircraft to take on or discharge passengers, cargo or mail from/in the Contracting State.
- 2.3 In addition, Article 7 of the Convention provides that each Contracting State has the right to refuse permission to the aircraft of other Contracting States to take on passengers, cargo or mail from one point to another within the territory of that Contracting State (cabotage).
- 2.4 Accordingly, Malaysia's policy on non-scheduled air services is based on the principles set out under Article 5 of the Convention which empowers the Contracting States to prescribe any appropriate laws, regulations or conditions depending on their national interest to regulate non-scheduled air services activities.

3. DEFINITION

- 3.1 **Commercial air services** refer to air transport services available to the general public for the transportation of passengers, mail and/or freight for remuneration or hire, including air taxis and commercial business flights.
- 3.2 **Commercial air operator** refers to an operator that provides scheduled or non-scheduled air transport services to the public for the carriage of passengers, freight or mail for remuneration or hire. This category also includes small-scale operators, such as air taxis and commercial business operators, that provide commercial air transport services.
- 3.3 **Scheduled air services** refer to flights scheduled and performed for remuneration according to a published timetable, or so regular or frequent as to constitute a recognizably systematic series, which are open to direct booking by members of the public; and extra section flights occasioned by overflow traffic from scheduled flights.
- 3.4 **Non-scheduled air services** refer to commercial air transport services performed as other than scheduled services.
- 3.4.1 Charter flights** refer to scheduled and non-scheduled operations using chartered aircrafts.
- 3.4.1.1 Inclusive Tour Charter (ITC)** refers to a charter whereby all or part of an aircraft is chartered for the carriage of passengers who have purchased an inclusive tour from a tour operator (i.e. a travel organizer who resells seats in conjunction with accommodation and/or other ground arrangements for a comprehensive price).
- 3.4.1.2 Non-Inclusive Tour Charter** refers to a charter other than ITC charter (e.g. for cargo, mail, special events, affinity groups, students, pilgrimage, repatriation and Meetings, Incentives, Conferences and Exhibitions (MICE) movement).
- 3.4.2 On demand flights**
- 3.4.2.1 Commercial business flights** refer to the commercial operation or use of aircraft by companies for the carriage of passenger or goods as an aid to the conduct of their business and the availability of the aircraft for whole aircraft charter, flown by a professional pilot(s) employed to fly the aircraft.

3.4.2.2 Non-commercial business flights cover corporate and owner operated business flights.

- (a) **Corporate business flights** refer to the non-commercial operation or use of aircraft by a company for the carriage of passengers or goods as an aid to the conduct of company business, flown by a professional pilot(s) employed to fly the aircraft.
- (b) **Owner operated business flights** refer to the non-commercial operation or use of aircraft by an individual for the carriage of passengers or goods as an aid to the conduct of his/her business.

3.4.2.3 Air taxi revenue flights refer to on-demand, non-scheduled flights on short notice for the carriage by air of passengers, freight or mail, or any combination thereof, for remuneration that are usually performed with smaller aircraft including helicopters (typically no more than 30 seats). This definition includes any positioning flights required for the provision of the service.

3.4.3 Other non-scheduled flights

3.4.3.1 State aircraft refer to aircraft used in military, customs and police services.

4. ELIGIBILITY

4.1 Commercial air operators that wish to provide non-scheduled air services to carry passengers, cargo or mail from/to Malaysia must meet the following eligibility criteria:

- (a) local air operators which have obtained a valid Air Operator's Certificate (AOC) or foreign air operators which have obtained a valid Foreign Air Operator's Certificate (FAOC) issued by the Civil Aviation Authority of Malaysia (CAAM); and
- (b) local air operators which have obtained a valid Air Service Permit (ASP) or Air Service Licence (ASL) issued by the Malaysian Aviation Commission (MAVCOM).

5. CONDITIONS

5.1 General Conditions

5.1.1 Non-scheduled air services shall not compete with existing scheduled services by offering air services that resemble the characteristics of scheduled services as follows:

- (a) have a regular and periodic itinerary such as a scheduled service;
- (b) sell flight tickets without a tour package (except for commercial business flights);
- (c) sell flight tickets online via own website or through third party websites; and
- (d) sell flight tickets/cargo space without a charter agreement (except for commercial business flights).

5.1.2 Multileg charter is allowed without the exercise of cabotage rights (except for commercial business flights).

5.1.3 Scheduled charter flight operations are limited to a maximum of three (3) months per year but extendable based on discretion and a case-to-case-basis.

5.1.4 For commercial business flights, permission is only granted to flight operations using aircraft with a seating capacity not exceeding 20 passengers only. For aircraft with seat capacity above 20 seats, approval would be on a case-to-case basis.

5.1.5 For air taxi, permission is only granted to flight operations using aircraft with a seating capacity not exceeding 30 passengers only.

5.1.6 Air operators must use the services of ground handlers that have been licenced by MAVCOM for operations at all airports in Malaysia.

5.2 Specific Conditions for Foreign Air Operators

5.2.1 Uplift of passengers (whether Malaysian or non-Malaysian citizens) or cargo from Malaysia is:

- (a) not allowed for foreign air operators providing charter flight services. This means that foreign air operators are only allowed to carry passengers/cargo which have been declared in the passenger/cargo manifest only (without additional passengers/cargo from Malaysia);
- (b) allowed for foreign air operators providing commercial business flights; and
- (c) to be considered on a case-by-case basis for other non-scheduled and on demand flights.

5.2.2 Flights on domestic routes (cabotage):

- (a) not allowed for foreign air operators providing charter flight services;
- (b) allowed for foreign air operators providing commercial business flights and air taxi; and
- (c) to be considered on a case-by-case basis for other non-scheduled and on demand flights.

5.3 Exception

5.3.1 The implementation of this non-scheduled air services policy for foreign air operators is on a reciprocal basis with the foreign countries involved. Therefore, any exception to the conditions as in paragraph 5.1 or 5.2 for foreign air operators can be considered on a case-by-case basis and needs to be approved by the Ministry of Transport.

6. PENALTIES

6.1 In the event that any air operator in its conduct of providing non-scheduled air services fails to adhere to any of the conditions specified in paragraphs 4 and 5 above, the following actions will be taken:

- (a) revocation of any non-scheduled air services approvals that have been granted;
- (b) fines in accordance with the Malaysian Aviation Commission Act 2015 [Act 771]; and/or
- (c) the air operator shall be blacklisted.

7. HOW TO APPLY

- 7.1 All operators are required to register with the AeroFile system (<https://www.mavcom.my/en/industry/aerofile-registration/>).
- 7.2 All operators shall apply via the AeroFile system at least seven (7) working days before the date of the proposed flight and by attaching the following supporting documents:
- (a) a copy of the AOC which has been issued by, or recognised by CAAM;
 - (b) a Letter of Commitment to state that the air transportation company shall not embark or disembark additional passengers or cargo other than those stated in the passenger/cargo manifest **unless** a prior agreement between the Government of Malaysia and the foreign government has been obtained to do so;
 - (c) a copy of the charter agreement;
 - (d) a copy of the passenger/cargo manifest;
 - (e) a copy of the aircraft's insurance;
 - (f) a copy of the aircraft's leasing agreement (if applicable).
- 7.3 In addition, the appointed air transportation company shall ensure that it does not have any outstanding dues for Air Navigation Facility Charges (ANFC) with the Civil Aviation Authority of Malaysia (CAAM), Passenger Service Charges (PSC) with the airport operator and Regulatory Services Charges (RSC) with the Malaysian Aviation Commission (MAVCOM). Should there be any outstanding dues, the applicant must settle all charges before its application can be processed.
- 7.4 Applications shall be processed after the operator fulfils all conditions as stipulated in paragraphs 4, 5 and 7.1 to 7.3 above.

8. APPLICATION

- 8.1 This policy applies to the provision of all non-scheduled air services by Malaysian and foreign air operators.
- 8.2 This policy shall not be applicable to state aircraft.

9. EFFECTIVE DATE

9.1 This policy is effective from 1 July 2022.

This policy may be updated, as necessary, to accommodate the dynamic nature of the non-scheduled air services in the Malaysian aviation sector.