



REPUBLIC OF MAURITIUS

DEPARTMENT OF CIVIL AVIATION

Sir Seewoosagur Ramgoolam International Airport, Plaine Magnien

**MAURITIUS CIVIL
AVIATION
REQUIREMENTS**

**ENFORCEMENT
MANUAL**

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DEPARTMENT OF CIVIL AVIATION
Enforcement Manual

FOREWORD

The Republic of Mauritius has an established Law Governing Civil Aviation as well as comprehensive aviation regulations for every aspect of the aviation industry. The goal of the Authority is to maintain the highest possible standards of safety. The role of the Authority is to ensure compliance with all regulatory requirements as enshrined in the Civil Aviation Act 1974 as amended, the various Civil Aviation Regulations issued under the Act and the various Requirements issued by the Authority under the provisions of the Civil Aviation Regulations 2007 as amended. The Civil Aviation Regulations 85 which gives power to the Authority to take legal decisions if considered necessary to ensure the implementation of the Civil Aviation regulations.

This Enforcement Manual describes the Authority, responsibilities, policies, guidelines, procedures, objectives, and legal aspects of the Authority's compliance and enforcement program. The policies and procedures described in this order explain how the Authority intends to carry out statutory and regulatory enforcement responsibilities.

All personnel, directly or indirectly concerned with regulatory enforcement activities should employ the applicable procedures contained in this manual. In this regard, the aviation industry is expected to strive to attain full compliance.

This enforcement manual has been issued by the Authority pursuant to the provisions of Regulation 135 of the Civil Aviation Regulations 2007 as amended.



I. POKHUN

Ag Director of Civil Aviation

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DEFINITIONS

“Accident”: an occurrence associated with the operation of an aircraft which takes place between the time any person boards the aircraft with the intention of flight until such time as all such persons have disembarked, in which –

- (a) a person suffers a fatal or serious injury; or
- (b) the aircraft sustains damage or structural failure; or
- (c) the aircraft is missing or is completely inaccessible;

“Appropriate authority”:

- (a) regarding flight over the high seas - the relevant authority of the State of Registry
- (b) regarding flight other than over the high seas – the relevant authority of the State having sovereignty over the territory being over-flown
- (c) in relation to an aircraft, the authority which is responsible for approval of design and issuance of a type certificate;
- (d) in relation to the content of a medical kit, the State of registry;
- (e) in relation to Mauritius, the Authority;

“Approved”: accepted by the appropriate authority as suitable for a particular purpose;

“Approved by the Authority”: approved by the Authority directly or in accordance with a procedure approved by the Authority;

“Authorized person”: any person authorized by the Authority either generally or in relation to a particular case or class of cases and reference to an authorized person includes references to the holder for the time being of an office designated by the Authority;

“Authority”: the Director of Civil Aviation established as per the Civil Aviation Regulations 2007;

“Commercial air transport operation”: an aircraft operation involving the transport of passengers, cargo or mail for remuneration or hire;

“Dangerous goods”: articles or substances which are capable of posing a risk to health, safety, property or the environment and which are shown in

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the list of dangerous goods in the Technical Instructions or which are classified according to those Instructions;

“Incident”: an occurrence, other than an accident, associated with the operation of an aircraft which affects or would affect the safety of operation;

“Inspection”: the examination of an aircraft or aircraft component to establish conformity with a standard approved by the Authority;

“Medical examiner”: a physician with training in aviation medicine and practical knowledge and experience of the aviation environment, who is designated by the Authority to conduct medical examinations of fitness of applicants for licences or ratings for which medical requirements are prescribed;

“Operator”: a person, organisation or enterprise, engaged in or offering to engage in an aircraft organization;

“Pilot-in-command”: the pilot designated by the operator, or in the case of general aviation, the owner, as being in command and charged with the safe conduct of a flight;

“Problematic use of substances”: the use of one or more psychoactive substances by aviation personnel in a way that;

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ABBREVIATIONS

AMO	Approved Maintenance Organisation
AOC	Air Operator Certificate
ATO	Approved Training Organisation
ATS	Air Traffic Services
DCA	Department of Civil Aviation
MCAR's	Mauritius Civil Aviation Requirements
SMS	Safety Management System
SSP	State Safety Programme

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Chapter 1

Enforcement Requirements

References

Mauritius Civil Aviation Act governing Civil Aviation

Mauritius Civil Aviation Regulations 2007, Regulations 85,137 and 138

DCA-Manual -Enforcement Procedures

DCA Inspector's Handbooks

1.1 Compliance and Contravention of Regulations

Aviation Enforcement is the process intended to ensure compliance with the Mauritius Law Governing Civil Aviation and the Mauritius Civil Aviation Regulations and MCAR's. This process is mandated to the Department of Civil Aviation Authority (DCA), as a part of its duty of regulatory oversight of the aviation industry in the State.

The Civil Aviation Regulations 2007 Regulation 137 states:

'Any person who without reasonable excuse fails to comply with any directive or direction given to him under these regulations shall commit an offence and shall on conviction, be liable to a fine and shall be deemed for the purposes of the Civil Aviation Regulations to have contravened that provision.'

1.2 Requirements to Report Contraventions

Regulations require that all persons involved in the aviation industry in Mauritius report contraventions to the Authority. DCA Safety Directive 01/2015 issued under the provisions of Regulation 135 of the Civil Aviation Regulations 2007 states:

'Any person who knows of a violation of the Civil Aviation Regulations, any amendment thereto, rule or order issued thereunder, shall report it to the Authority.'

The Authority will determine the nature and type of any additional investigation or enforcement action that need be taken.'

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1.3 Enforcement Action

The Civil Aviation 2007 Regulation 85 states generally state that:

Any person who contravenes any provision of the Civil Aviation Regulations of Mauritius may have his licence, certificate, approval, permit, authorization, permission, exemption or other document revoked or suspended

Furthermore any person who contravenes a provision of the Civil Aviation Regulations of Mauritius is guilty of an offence and shall on conviction be liable to a fine and/or penalty as specified in the applicable regulations.

In most contraventions, enforcement action will involve administrative action. Administrative action includes, but is not limited to, suspension, amendment or cancellation of a licence, certificate, permit, or privilege or any other document issued by the DCA. The Authority may also ground or detain aircraft and deny take-off clearance to a departing aircraft. The Authority may also revoke any approval to a Post holder or refuse to accept management positions. Examples of documents may include the following;

- (a) Air Operator Certificates
- (b) Operations Specification specific authorisation
- (c) Certificate of Registration (C of R)
- (d) Certificate of Airworthiness (C of A)
- (e) Licences and type ratings
- (f) Authorisation of personnel including post-holders, examiners and medical examiners
- (g) Approval of Organisation (e.g. AMO, ATO etc.)
- (h) Approval of facility (e.g. Simulator etc)

1.4 DCA Inspector Responsibility

It is the right and indeed the responsibility of the DCA and its Inspector staff to whom regulatory oversight has been delegated, to take action when deemed necessary, in order to prevent an unsafe situation from turning into a disaster. As a result of this statement, Inspectors are instructed to take action immediately upon detecting a real and present threat to aviation safety. An Inspector may use oral

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counselling when the alleged offender commits a minor, inadvertent violation, which does not have an immediate safety related impact.

1.5 Enforcement Objective

The overall mandate of Aviation Enforcement is to merely investigate contraventions and then to punish the perpetrators would actually not achieve the greater goal of Aviation Safety, which is the Authority's primary objective. Consequently there are other aspects to this segment of regulatory oversight, which must also be considered. Aside from regulatory investigations and field surveillance, which is the prime enforcement mandate of the Inspector, there is also the requirement for promotional and educational activities designed to maximise the industry's compliance with aviation legislation. The guiding principle of the enforcement process is that justice must be done and it must be seen to be done. As such it has to be timely, fair, consistent and without favour or prejudice. In addition it must be open so that the result of the process is an example to others and consequently has a deterrent component.

1.6 Enforcement Priorities

- (a) Education of the industry wherever possible;
- (b) Promotion of compliant attitudes within the industry;
- (c) Regulatory investigations and field surveillance, and;
- (d) Enforcement of the Law and Regulations.

1.7 Enforcement Action

Where there are grounds to believe that violations are being committed Inspectors shall conduct planned surveillance for the primary purpose of conducting regulatory investigations. In the absence of such grounds, field activities of Inspectors should focus on the educational and promotional aspects as opposed to the simple detection of violations. The aviation enforcement process includes the following segments, which are addressed in detail in this Chapter:

- (a) Inspection
- (b) Surveillance
- (c) Detection
- (d) Investigation

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- (e) Analysis of Legislative Provisions
- (f) Special Investigative Procedures
- (g) Deterrent Action
- (h) Administrative Action
- (i) Penalties

1.8 Appeal to Enforcement Action

An appeal under these requirements shall be made to the Authority within a reasonable time for reconsideration by the appeal Committee which shall be a body to which a person who is not satisfied with a decision taken by the Authority may appeal.

Any person or organisation has the right of appeal on any administrative or enforcement action taken against a certificate or licence held by that individual or organisation. The appeal must be in writing and should state the reason for appealing. On receipt of an appeal the Director of Civil Aviation will acknowledge the appeal and forward the appeal to the Appeal Committee. After finalising the appeal process any decision by the committee will be notified to the appellant including justification to the decision.

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Chapter 2

Enforcement Policy

2.1 DCA Enforcement Policy

Introduction

This enforcement policy is promulgated pursuant to the provisions of the regulation 135 of the Mauritius Civil Aviation Regulations 2007, the Inspectors Handbook, the Enforcement Manual and applicable MCAR's.

Principles and Scope

This enforcement policy is the culmination of a comprehensive review by the Mauritius Department of Civil Aviation of its capacity and regulations for evaluating safety activities by service providers.

The principles underlying this enforcement policy statement and associated enforcement procedures shall apply to all service providers who are subject to the Law Governing Civil Aviation and the Mauritius Civil Aviation Requirements.

Within the context of this guidance the term "service provider" refers to any organization providing aviation services. The term includes Approved Training Organizations that are exposed to safety risks during the provision of their services, Aircraft Operators, Approved Maintenance Organizations, organizations responsible for type design and/or manufacture of aircraft, Air Traffic Service providers and Certified Aerodromes, as applicable.

Remedial Measures

This Authority, through the inspectors responsible for the oversight of the service provider, will evaluate the corrective measures proposed by the service provider, and/or the systems currently in place to address the event underlying the contravention. If the corrective measures proposed are considered appropriate and likely to prevent recurrence and foster future compliance, the review of the violation will then be concluded with no enforcement action. In cases where either the corrective measures or the systems in place are considered inappropriate, the Authority will continue to interact with the service provider to find a satisfactory resolution that would prevent enforcement action. However, in cases where the service provider refuses to address the event and provide effective corrective measures, the Authority will consider taking enforcement action or other administrative action regarding the certificate.

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Enforcement Procedures

Breaches of civil aviation regulations may occur for many different reasons, from a genuine misunderstanding of the regulations, to disregard for aviation safety. The Authority has a range of enforcement procedures in order to effectively address safety obligations under the Law Governing Civil Aviation in light of different circumstances. These procedures may result in a variety of actions such as:

- (a) Counselling
- (b) Remedial training; or
- (c) Variation suspension and cancellation of authorizations

Impartiality of Enforcement Actions

Enforcement decisions must not be influenced by:

- (a) Personal conflict;
- (b) Considerations such as gender, race, religion, political views or affiliation; or
- (c) Personal, political or financial power of those involved

Proportionality of Responses

Enforcement decisions must be proportional to the identified breaches and the safety risks they underlie, based on two principles:

- (a) The Authority will take action against those who consistently and deliberately operate outside the scope of the Civil Aviation Regulations; and Mauritius Civil Aviation Requirements, and
- (b) The Authority will seek to educate and promote training or supervision of those who show commitment to resolving safety deficiencies.

Natural Justice and Accountability

Enforcement decisions must:

- (a) be fair and follow due process;

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- (b) be transparent to those involved;
- (c) take into account the circumstances of the case and the attitude/actions of the service provider when considering action;
- (d) be consistent actions/decisions for like/similar circumstances; and
- (e) be subject to appropriate internal and external review.

Exceptions

This policy is not applicable if there is evidence of a deliberate effort to conceal non-compliance.

This policy is not applicable if the service provider fails to provide confidence in its means of hazard identification and safety risk management.

This policy is not applicable if the service provider is a recurrent violator. A recurrent violator is a violator who, in the past one year {period} has had the same or closely related violations.

In such circumstances, the applicable penalties established in the Mauritius Civil Aviation Regulations will apply and the established enforcement procedures will be applicable.

2.2 Enforcement Procedures in an SMS Environment

2.2.1 General

Under the Mauritius State Safety Programme (SSP), the DCA is responsible for oversight of certificate holders operating in an SMS environment. Enforcement procedures provide guidance to those responsible for the oversight of service providers operating in an SMS environment, by advising on the appropriate response to acts or omissions to ensure that if enforcement action is taken it will be successful. Enforcement procedures play a supporting function in the process, and the final decision regarding any enforcement issue is the responsibility of the Director Aviation.

Each service provider will establish, maintain and adhere to an SMS that is commensurate with the size, nature and complexity of the operations authorized to be conducted under its operations certificate and to the hazards and safety risks related to these operations.

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In order to develop an enforcement policy that supports the implementation of SMS, the DCA inspectors will maintain an open communication with service providers.

When a service provider operating under an SMS unintentionally contravenes the provisions of the Mauritius Law Governing Civil Aviation or the Mauritius Civil Aviation regulations, specific review procedures will be used. These procedures will allow the Authority inspectors responsible for the oversight of the service provider the opportunity to engage in dialogue with the SMS-governed organization. The objective of this dialogue is to agree on proposed corrective measures and an action plan that adequately addresses the deficiencies that led to the contravention and to afford the service provider a reasonable time to implement them. This approach aims to nurture and sustain effective safety reporting, whereby service providers' employees can report safety deficiencies and hazards without fear of punitive action. A service provider can therefore, without apportioning blame, and without fear of enforcement action, analyze the event and the organizational or individual factors that may have led to it, in order to incorporate remedial measures that will best help prevent recurrence.

2.2.2 Enforcement Principles

The implementation of Safety Management Systems (SMS) requires that the Mauritius Department of Civil Aviation develop a flexible enforcement approach to this evolving safety framework while at the same time carrying out enforcement functions in an equitable, practical and consistent manner. A flexible enforcement approach in an SMS environment shall be based on two general principles.

The first general principle is the development enforcement procedures that allow service providers to deal with, and resolve, certain events involving safety deviations, internally, within the context of the service provider's SMS, and to the satisfaction of the Authority. Intentional contraventions of the Mauritius Civil Aviation Act and the Mauritius Civil Aviation Regulations and MCAR's will be investigated and may be subject to conventional enforcement action if appropriate.

The second general principle is that no information derived from safety data collection and processing systems (SDCPS) established under SMS shall be used as the basis for enforcement action.

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2.2.3 Applicability

These procedures apply to contraventions that may have been committed by persons or service providers conducting activities under an SMS.

These procedures are effective on promulgation of this policy. They will be used in conjunction with any other existing relevant procedures identified in the Mauritius Civil Aviation Regulations and MCAR's.

Where service providers have demonstrated their willingness to conduct their operations under an SMS, SMS enforcement procedures may be used with respect to contraventions by those service providers that, although they do not have an accepted SMS, have some essential core components of an SMS in place and are in the process of full implementation.

The Authority will not apply SMS enforcement procedures to service providers that, subsequent to the initiation of an investigation of a contravention, arbitrarily claim to be developing an SMS. These procedures will be used for service providers that have been diligently involved in the development of an SMS which would eventually meet the requirements of the SMS regulations, and are following a "phased approach" similar to the one outlined in the Authority Requirements for SMS - Guidance on Development of SMS.

Where service providers have not demonstrated they are operating in an SMS environment, the enforcement actions may apply without the advantages of the procedures explained above.

2.2.4 Procedures

For the purpose of determining whether an investigation should be conducted using SMS enforcement procedures, it will be necessary for aviation enforcement investigators to determine the SMS implementation status of the specific service provider. This determination would initially be made through communication between the investigators and the principal inspector who is responsible for oversight and certification of the service provider under investigation.

The principal inspector will ascertain if the service provider meets the above-mentioned criteria for SMS enforcement procedures. In order to facilitate initial assessment, the Authority may develop a list of service providers that have initiated the SMS development and

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implementation process. Making this list available to aviation enforcement will assist the investigators in making a decision regarding the use of the SMS enforcement procedures.

During the “phased approach” of the service provider’s SMS, the Authority will apply the SMS enforcement procedures to service providers that do not have a fully implemented SMS, provided that certain conditions are met.

The Authority will require, as a minimum, that the three following conditions be met before SMS enforcement procedures may be applied:

- (a) The service provider has an effective internal hazard reporting programme supported by upper management;
- (b) The service provider has a proactive event analysis process commensurate with the size and complexity of its operations and adequate for determining causal factors and developing corrective measures;
- (c) The information derived from the process referred to in paragraph 3, appropriately protected so as not to endanger SDCPS, is communicated, upon request, to the principal inspector assigned to the specific service provider.;

2.2.5 Initial report of violation

Aviation enforcement inspectors must conduct a preliminary analysis in all cases where a contravention is detected or where information about a possible contravention is received.

2.2.6 Preliminary analysis

The following questions should be considered based on the information received:

- (a) Are there reasonable grounds to believe that a person or organization conducting activities under an SMS may have committed a contravention?
- (b) Is the event of such a serious nature that enforcement action should be considered?
- (c) Is there any perishable evidence that should be secured for enforcement action?

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2.2.7 Providing effective support

When the three questions are answered in the affirmative, the inspector shall be notified. The information shall identify the event and the contravention.

When requested, aviation enforcement investigators will provide effective support to the Director of Civil Aviation by advising on the appropriate response to the contravention, in order to ensure that if enforcement action is taken, it will be successful. Support for the Director of Civil Aviation includes collecting and securing perishable evidence.

2.2.8 Initiating an enforcement investigation

An enforcement investigation shall be initiated only upon the request of the inspector, not the enforcement investigators.

2.2.9 Immunity

No information derived from an SDCPS established under an SMS will be used as the basis for enforcement action.

Note: *The SMS enforcement policy and associated procedures may also apply to foreign air operators who operate under SMS regulations, follow the requirements and guidance set forth by the International Civil Aviation Organization (ICAO) and meet the conditions outlined in this policy.*

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Chapter 3

Inspection Procedure

3.1 Inspector's Role

The primary function of the inspection staff is to determine the operational level of safety that the operator is capable of achieving and does in fact achieve in actual operations. To do so, the major part of the DCA inspector's work involves inspecting, assessing, reporting and making recommendations. Recommendations, as well as criticism, concerning operations observed are to be based on fact, not opinion, and are to be carefully and fully documented. Any deficiencies noted by DCA inspectors need to be immediately directed to the attention of the personnel involved. Should necessary corrective action not be accomplished within a reasonable time, as specified by the inspector, the matter should be reported to the Director of Civil Aviation for a decision regarding possible restrictions on operations or enforcement action against the operator.

DCA inspectors should maintain frequent contact with their assigned operators in order to assess the functioning of their organization and the performance of their staff during the conduct of operations, maintenance and training. In the course of these contacts with the operator's management and its operational and technical personnel, the DCA inspector should always promote compliance with the safety regulations and strive to establish and maintain harmonious relationships. The importance of the DCA inspector's good judgement, initiative, behaviour, attitude and sense of fairness, coupled with the necessary firmness in dealing with the operator's representatives, cannot be overstressed.

Consequent to the delegation of authority, an Inspector is required to inspect aerodromes, aircraft, buildings, equipment used to maintain aircraft, operators facilities, documents pertaining to aeronautical activities and any other thing or place, which would, in the opinion of the Inspector, facilitate the conduct of his delegated authority to conduct regulatory oversight and enforcement of the Law Governing Civil Aviation in Mauritius.

One of his major roles is therefore to investigate and report, as required, possible violations of the basic aviation of law or related safety operating regulations and rules detected as he performs his inspection duties.

When conducting routine inspections, Inspectors shall observe the following policies and procedures:

When conducting routine inspections, Inspectors shall observe the following policies and procedures:

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- (a) Inspectors shall not enter any aircraft or premises which are locked or where the owner/operator or his representative is not present;
- (b) An inspection should be conducted at a time that minimises the inconvenience to flight crew, owner/operator and the travelling public;
- (c) The Inspector shall identify himself using his DCA identification card and Inspector Credential Card;
- (d) The flight crew and/or owner/operator should be informed that an inspection is being conducted;
- (e) A document produced for the purpose of an inspection should not be kept longer than is necessary to determine its validity;
- (f) Where the validity of the document cannot be determined readily, a photocopy, photograph or other accurate record or facsimile should be made before returning the document;
- (g) Evidence may be seized with respect to a contravention discovered during the course of a routine inspection;
- (h) If an unsafe situation is discovered, the aircraft representative shall be informed and the Inspector shall decide whether or not immediate detention of the aircraft is required;
- (i) In the event of any obstruction to an inspection, the Inspector should politely inform the individual of the consequence of such obstruction. If the person persists, the inspection should be discontinued and charges should be laid under the provisions of the national law;
- (j) In the event of there being an immediate threat to aviation safety the Inspector shall take whatever steps necessary to prevent the threat from being carried out. If necessary the appropriate Authority or the Police should be requested to participate in the carrying out of such steps. The Inspector shall notify his immediate superior at the earliest opportunity of any such acts.
- (k) If it is proposed to investigate alleged infringements of civil aviation legislation the matter must be coordinated with the Authority's legal department.

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***Note:** Any wrong step taken in the course of an investigation can jeopardise the success of a prosecution.*

3.2 Preventing an Aircraft from flying

Under regulation 131 of the Mauritius Civil Aviation the Authority shall have powers to prevent a civil aircraft operator/owner or pilot from flying the aircraft when:

- (a) the aircraft is not airworthy due to a technical problem;
- (b) the pilot is not qualified, if he/she is physically or mentally incapable as ascertained by an authorized medical doctor;
- (c) flying such an aircraft would cause danger to persons or property on the ground.

Regulations provided for by the above mentioned law require the detention of an aircraft to secure compliance with the said law and related regulations.

The Authority and its designated inspectors have the right and duty to stop any flight from departing if the conditions for safe operation of the flight fail to meet the required standard. Inspectors may detain or ground any aircraft that they believe, on reasonable grounds, is unsafe or is likely to be operated in an unsafe manner, and take reasonable steps to ensure its continued detention. Once the grounds for detention or grounding of the aircraft have been removed, the aircraft must be released.

Consequently, any person wilfully obstructing or impeding the Inspector during an inspection contravenes the national law and may be proceeded against by the Authority with a recommendation to the appropriate Ministry for indictment of the alleged offender. The alleged offender would then be tried under the Mauritius Law.

In addition to this, the legislation empowers designated Inspectors to seize anything found in any place entered for the purpose of inspection if they believe on reasonable grounds the item seized will afford evidence with respect to a contravention. Items for seizure must have been provided voluntarily by a representative of the aircraft or must have been found by the Inspector without resorting to a search. Forced searches may only be conducted by or under the direction of the police.

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3.3 Authority to Inspect Foreign Registered Aircraft

The Mauritius Foreign Air Operator Certification Requirements (Commercial Air Transport Operation by Foreign Air Operator) Regulations requires that:

‘A foreign air operator shall not, while in Mauritius, hinder or obstruct any person authorized by the Authority from boarding a foreign registered aircraft operated for commercial air transport at any time without prior notice to inspect the documents and manuals required by these Regulations’.

In this respect, an Inspector authorised by the Authority will be permitted at any time, without prior notice, to board any aeroplane operated by a foreign commercial air operator within Mauritius, to inspect the documents and manuals required by the MCARs and to perform inspections to ensure compliance with the Regulations.

3.4 Serious and Minor Cases

Not all cases of infringement warrant prosecution, however, and rigid enforcement of such a policy would prevent almost any investigative action by inspectors in the field because the moment anyone is cautioned the flow of information usually dries up.

In this respect, the following procedure gives guidance to Supervisors and Inspectors on the approach to be taken for both serious and minor cases.

3.4.1 Serious Cases

When a serious case is suspected it is vital that no approach for information is made to the person concerned except by the Regulatory Enforcement Officer (e.g. Deputy Director (Regulatory)). Information given without the benefit of a formal caution (such would be the case if anyone else made the enquiry) is not acceptable as evidence. Enforcement Officers are fully trained in the appropriate procedures for obtaining evidence and action by anyone else will severely prejudice the chance of a satisfactory outcome. When an apparently serious case emerges, it should be referred without delay to the Director of Civil Aviation.

3.4.1 Minor Cases (i.e. those not requiring formal action).

Reports are often received which indicate a possible minor breach of the Civil Aviation Regulations or MCARs. If it is concluded that a case falls into this category, the Authority may send a letter to the person concerned asking for information. If the report is from a third party

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the person concerned should be invited to comment on the report, or on the “alleged incident”.

It would be unwise to indicate what provision of the Law Governing Civil Aviation or MCARs would have been contravened assuming the alleged facts were correct. If in doubt consult the State Law Office the legal advisor of the Department through the Director of Civil Aviation.

Inspectors should bear in mind that under certain circumstances Authority files may be subject to “discovery” or “disclosure” by the legal representative of the person. Therefore it is important to avoid a presumption of guilt in anything written about a person before conviction, even where the evidence is overwhelming. It is equally important to avoid writing anything pointing to prejudice against a person.

3.5 Seizure, Retention and Return of Evidence

Where any evidence is seized, the Inspector shall ensure that the following tasks are carried out:

- (a) The evidence is clearly marked in an identifiable manner;
- (b) The holder is given a receipt;
- (c) Reasonable care is taken to preserve and protect the evidence;
- (d) Continuity of possession is assured;
- (e) Where an aircraft log is seized, a photocopy of the seized log shall be made and certified by the Inspector as a true copy of the original. The photocopy shall be deemed to be a legal substitute of the original logbook since the original will have been returned to the rightful owner;
- (f) Any evidence seized shall be returned to the person from whom it was seized or who has lawful entitlement to it as soon as is practicable when continued retention is not required for the purpose of the investigation, hearing or other such proceeding. Evidence shall be returned within 90 days of seizure if it is not going to be used, if return is not contrary to the public interest and if there is no dispute as to whom it is lawfully entitled.

3.6 Detention or Grounding and Return of Aircraft

3.6.1 Procedure

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When Inspectors contemplate the detention or grounding of any aircraft they must, if possible, introduce themselves to the pilot or owner/operator and specify the unsafe condition or unsafe operation, which they believe exists or is likely to exist. They should tactfully try to obtain voluntary compliance in correcting the situation. If they are unsuccessful, they shall:

- (a) Again advise the pilot or owner/operator and specify the unsafe condition or unsafe operation and inform him of the consequence of failing to abide by the Inspector's advice (e.g. detention and/or enforcement action);
- (b) Where the pilot or owner/operator is absent or unavailable or indicates an unwillingness to comply with the Inspector's advice, attach to that part of the aircraft most likely to be seen by the flight crew a written detention/grounding notice specifying the unsafe condition or operation;
- (c) If necessary, restrain the movement of the aircraft by requesting Air Traffic Control to deny start-up clearance, by blocking it with vehicles, by attaching immovable objects to it, or in extreme cases and with the assistance of a licensed aircraft maintenance engineer by judicious and temporary disablement in the presence of the Airport Police.

Note: *Any such action shall be notified to the Director of Civil Aviation at the earliest opportunity and when possible before detention/grounding or restraining action is taken.*

3.6.2 Other Consideration

Whenever possible, an aircraft shall be detained or grounded without removing it from the custody and control of the owner/operator. This will permit the owner/operator to make repairs or otherwise remedy the unsafe situation. However, if no other measures have been or are likely to be effective in alleviating the unsafe condition or operation, the aircraft may be taken into the custody of the Authority with the approval of the Director of Civil Aviation.

In such cases all reasonable care shall be taken to protect the aircraft in the condition it was first acquired. The aircraft should be released if it will not be operated or if it will be rendered airworthy before operation, will not be operated in an unsafe manner and only after all fees, charges or monetary penalties resulting from the seizure of the aircraft have been paid.

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Chapter 4

Detection

4.1 Overview

Detection is the discovery of a possible contravention. It may result from activities such as inspections, surveillance programmes, ATS monitoring of aircraft movements, regulatory audits, accident investigations, or complaints from the public or police reports. When a DCA Inspector is apprised of, or observes a contravention, he must take action. At the very least he should complete a Contravention Report form and forward it without delay to the appropriate Supervisor for decision. Even when the matter does not normally require further action, as in an oral counselling, the Contravention Report provides the Authority with a record of contravention and of Inspector activity. The information will also be used to compile statistics and will provide an indication if a particular alleged offender has a habit of minor transgressions.

During regular surveillance activities such as audits and inspections most findings may be handled by issuing a Non Conformance Finding form – NCF. This form will require corrective action by the service provider to close the finding. See Appendix D for a sample NCF form.

4.2 Detection

In all cases where an inspector detects a contravention or where information about a possible contravention is received, the inspector should attempt to gather as much information as possible regarding the incident. This is necessary to preserve perishable evidence and to provide sufficient information about the contravention to enable a complete and comprehensive investigation. The initial violation process should simply provide answers to the questions: WHO, WHERE, WHEN, WHAT, and then move onto WHY and HOW during further investigation. The information should be recorded and passed to the management as soon as possible along with any notes or evidence such as photos, logs, tapes, etc.

4.3 Evidence

The purpose of the initial violation process is to gather information in a systematic and thorough manner when it is suspected that a regulation or provision has been violated by an act or omission that warrants further investigation. All inspectors are responsible for gathering pertinent information when they detect a violation of the regulations and for recording that information, preferably in the Contravention Report. This initial process of collecting information concerning a possible violation is often the only opportunity to preserve perishable evidence. The initial violation process should

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simply answer the questions: WHO, WHERE, WHEN, WHAT, and, depending on the circumstances, may be expanded as follows:

- (a) fill out the Contravention Report;
- (b) record all possible contraventions (even borderline offences);
- (c) record date, time and location of the contravention;
- (d) record the identification of the aircraft and the names, addresses and telephone numbers of all persons involved;
- (e) preserve perishable evidence and documents such as log books, load control sheets, damaged aircraft parts, engineering records, invoices, etc. Obtain weather reports, etc. if it is suspected they may not be available at a later time.
- (f) Give the unit manager of an ATS facility a written note requesting that information in the form of flight plans or ATS tapes be secured for later acquisition.
- (g) take photographs of all objects that cannot be secured or moved;
- (h) take notes on the events immediately preceding and following the contravention;
- (i) record the names, addresses and telephone numbers of all witnesses that were present or that may have information and note the information each could provide whether there is duplication or not. (The reason for this is twofold: to freeze evidence so that it cannot be changed later and to enable witnesses to refresh their memory at a later date);
- (j) approach any person you suspect of committing a contravention and seek their account of the occurrence;
- (k) contact the supervisor for assistance or direction as required.

4.4 Contraventions of Dangerous Goods Regulations

Within the DCA, all inspectors are responsible for promoting compliance with and detecting contraventions of the Transportation of Dangerous Goods Regulations. Because of the possible hazards

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involved in the transport of dangerous goods, all inspectors, upon detection or receipt of a reported violation, shall apprise the management of the situation. Inspectors should have a basic familiarization of how to identify dangerous goods and must not place themselves in positions that might jeopardize their safety.

4.5 Inspectors Flying as Paying Passengers

If Inspectors, whilst flying as paying passengers on an aircraft, detect a contravention which, in their judgement must be brought to the attention of the flight crew, (i.e. a major disregard of the civil aviation legal provisions or an immediate threat to aviation safety) they shall contact the pilot in command of the aircraft.

***Note:** Due to cockpit security concerns, the Inspector should show his identification to the Senior Cabin Crew Member (Purser) and state the reason for seeking to speak to the Pilot in command.*

If the contravention was not an immediate threat to aviation safety, the Inspector may wait until arrival at the destination. If there is an immediate threat to aviation safety, such as an imminent departure with ice, snow or frost adhering to the lifting surfaces of the aircraft, the Inspector shall as soon as possible identify himself to a crew member and demand that the departure be discontinued until such time as the immediate threat to aviation safety has been mitigated.

A report of such action and a Contravention Report shall be provided to the Director of Civil Aviation as soon as possible after the event. It shall contain sufficient information to allow follow-up action to be taken. If the Inspector encounters the above mentioned detection on a foreign aircraft and in foreign airspace or at a foreign aerodrome, he shall certainly be obliged to deal with an immediate threat to aviation safety as described above.

4.6 Inspector's Liability and Off-Duty Actions

The Inspector is held harmless and is protected by the Authority from liability for any actions he may conduct in the course of his assigned duty. It is recognised that the actions of Authority Inspectors may have at times financial or other repercussions to the aviation industry.

An Authority Inspector is not relieved of his obligation to act in his capacity and is indeed required to act concerning any contravention to a legal provision of which he becomes aware. He is obliged to act immediately upon becoming aware of any immediate threat to aviation safety, in order to mitigate such threat, wherever he may be.

***Note:** Inspector's powers must never be abused.*

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Chapter 5

Contravention Report

5.1 General

A Contravention or Violation Report shall be made in all cases where an Inspector detects a contravention or when he has been apprised of such a contravention by another source. The Contravention Report provides a useful tool to guide the collection of information in the conduct of a Preliminary Investigation. All particulars should be entered in the Contravention Report and a decision should be recorded. The decision to investigate or orally counsel is at the discretion of the Inspector. There are a number of options available to the Authority in the handling of a Contravention Report. If the contravention is serious, the Inspector must refer the Contravention Report to the appropriate supervisor for further action.

The supervisor will then determine if a comprehensive investigation is warranted and will assign an Inspector to the case. In the case of a serious contravention the Inspector who first detected the contravention shall conduct the Preliminary Investigation without delay. This is necessary to preserve any perishable evidence and to gather data and proof to facilitate a comprehensive investigation if required.

The Preliminary Investigation should include as many of the following facts as possible:

- (a) The act or omission constituting the contravention and the relevant provisions of the Act, Regulations, Directives or Requirements;
- (b) The identification of the aircraft, the names of the people involved and the names and contact details of any possible witnesses;
- (c) The time, date and location of the contravention;
- (d) The events preceding and following the contravention including whether an oral counselling has been given.
- (e) Other pertinent information such as weather reports and a list of all perishable evidence, which has been secured.

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5.2 Oral Counselling

Oral counselling provides the alleged offender with immediate counselling on the necessity for regulatory compliance. It is an option for the Inspector when the contravention is minor and inadvertent or is a safety related violation where there is no direct flight safety hazard and the imposition of a sanction is not considered appropriate. Inspectors should assess all aspects of the contravention and the attitude of the alleged offender to determine whether oral counselling would secure future compliance.

Oral counselling would be most appropriate in cases of ignorance or misinterpretation of the legislative provisions, provided aviation safety was not jeopardized, i.e. a minor contravention having little or no impact on safety or where there was no wilful intent. When oral counselling is determined to be the best course of action, the appropriate box on the Contravention Report shall be checked after counselling the alleged offender. This type of action does not become part of any enforcement record for the alleged offender. However, the details of the completed form shall be entered into enforcement database to maintain a statistical record.

If the alleged offender is an employee of a Mauritius based operator; a copy of the form shall be placed upon the operator's file. If the Inspector has doubts as to the effectiveness of an oral counselling he shall conduct a preliminary investigation and proceed with the notification to the appropriate supervisor as mentioned previously.

5.3 No further action

Once a Preliminary Investigation has commenced only the Director of Civil Aviation may direct that No Further Action be taken. This must be stated on the Contravention Report.

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Chapter 6

Investigation

6.1 Introduction

An investigation is a systematic search for documentation of the facts relevant to an event from which a decision to take appropriate action can be made. It is the most significant phase of the regulatory enforcement process since subsequent action that may affect both individual rights and public safety will depend on its thoroughness and adequacy. Consequently it is important that DCA Inspectors know their investigative powers and know what constitutes proper evidence. All Inspectors are responsible for conducting preliminary investigations when they detect a violation of the regulations and for recording the information on a Contravention Report.

On completion, the Contravention Report shall be forwarded to the respective Supervisor who will assign an Inspector to the case. Both the reporting Inspector and the assigned Inspector (where a different Inspector has been assigned to the case) shall continue to co-ordinate their work as necessary until the conclusion of the case. Investigators must be prepared to conduct thorough investigations from the initial complaint through the investigation, to the case report conclusion and resultant recommendation. It must be stressed that no investigation is complete without the alleged offender being contacted, preferably by the investigating Inspector. He may supply valuable evidence. Under no circumstance shall the alleged offender first find out that there is a case against him when he receives the notice of sanction.

6.2 Preliminary Investigation

The purpose of the preliminary investigation is to preserve perishable evidence and to determine whether or not the alleged contravention warrants further investigation. The preliminary investigation is carried out as follows:

- (a) Fill out the Contravention Report as completely as possible;
- (b) Record the date, time and location of the contravention;
- (c) Record the identification of the aircraft and the names of all persons involved including witnesses that were present or that may have information relevant to the case;
- (d) Preserve perishable evidence and documents such as log books, load control sheets, damaged aircraft parts

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engineering records, invoices, etc. Take photographs of all objects that cannot be secured or moved;

- (e) Record all possible contraventions, even those that may only be partially applicable, and attach copies of the relevant sections of the contravened provisions;
- (f) Take careful notes on the events immediately preceding and following the contravention and whether or not an oral warning was given;
- (g) Obtain weather reports, ATS tapes, flight plans, or any other documents pertaining to the alleged offence;
- (h) Interview all witnesses on hand and record their statements on the witness statement form. Attempt to get signed statements if possible. Do this with all witnesses separately and in private, regardless if they all say the same thing or not. The reason is to freeze the evidence so that it cannot be changed later and so it can be used by the witness to refresh his memory at a future time. Where a written statement is not possible request permission to tape the conversation and later have a transcript made;
- (i) Approach any person you suspect of having committed an offence and attempt to obtain a signed statement;
- (j) Keep an accurate set of notes with appropriate times and dates, setting out in chronological order what you did;
- (k) Obtain help from officials of the appropriate Authorities or the police if necessary;
- (l) Hand over the entire package to the applicable supervisor with your recommendation for follow-up action. Be prepared to justify your recommendation and to testify as witness in any subsequent legal action.

6.3 No Investigation conducted

Sometimes it is evident from the original complaint or the Contravention Report that the case does not warrant a comprehensive investigation because it is a low priority safety item, insufficient evidence, insufficient resources or other consideration. Nevertheless, the relevant information should be recorded in the enforcement database for possible future reference. In this case a note explaining the reason for not investigating further should be attached.

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6.4 Defences

6.4.1 General

If, early in an investigation, facts are uncovered which point to the likelihood that an alleged offender could successfully argue that his actions were justified, the investigator may opt to terminate the investigation with a recommendation for no further action. In certain cases where wrongful conduct can be proven or is admitted, the alleged offender may be able to raise a defence based upon necessity or due diligence.

Where the defence of necessity is proven, the alleged offender cannot be found to have contravened the Law, Directive or Regulation because the contravention was necessary to avoid an immediate greater danger, particularly if the situation might have caused damage, injury or death.

Where due diligence is proven, the alleged offender cannot be found in contravention of the Act, Requirements, Directives or Regulations because all reasonable care to avoid the contravention was made. In all cases where either necessity, due diligence or officially induced error is a consideration, the Director of Civil Aviation shall be consulted.

The Director of Civil Aviation shall make a decision and issue a ruling based upon the facts of the case and the recommendation of the applicable supervisor and investigating Inspector.

6.4.2 The defence of necessity

It is the policy of the Authority to consider all cases upon their own merit. In deciding whether the defence has been established, the Director of Civil Aviation should carefully examine the facts to determine whether all of the following conditions apply. All of the following conditions must be satisfied in order for the defence of due diligence to be valid:

- (a) The situation must have been so urgent and the dangers from inaction were so imminent that it was unreasonable to delay any action;
- (b) Compliance with the Regulations was demonstrably impossible; the violation was inevitable or unavoidable in that there was no opportunity for an alternative course of action that did not involve a contravention of the regulations; and

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- (c) The hazards to flight safety caused by the contravention were less serious than the hazard posed by complying with the Regulations. For example; breaking the Law Governing Civil Aviation or MCAR's is less serious than any accident that might have resulted from complying with it in the particular circumstance.

6.4.3 The defence of due diligence

The defence of due diligence is found in a situation where the alleged offender took all reasonable care to avoid committing the contravention. What constitutes due diligence will vary from case to case depending upon the facts. The Director of Civil Aviation's decision to accept such a defence or not, should be based upon his opinion that the alleged offender did all in his power to avoid the contravention, using good judgement and decision making and in fact exhausted all other options before committing the act.

6.4.4 The defence of officially induced error

The defence of officially induced error is available where an alleged offender has reasonably relied upon the erroneous opinion or advice of an official who is responsible for the administration or enforcement of laws and regulations. It must be proved that on a balance of probabilities the offender relied upon the erroneous opinion, direction or advice of the official and that his reliance was reasonable.

The defence however is not applicable if the alleged offender failed to ascertain whether the Official had any jurisdiction over the applicable situation, the advice given was reasonable and would not cause any clear and present hazard to aviation safety.

6.4.5 Other consideration

Contraventions, which may have National or Aerodrome Security considerations, shall be notified to the Director of Civil Aviation or the Deputy Director (Regulatory) immediately upon discovery.

Cockpit Voice Recorder/Flight Data Recorder recordings shall not be used by the Authority in any enforcement matters. Their use is limited to aircraft accident investigations to assist in determining the cause of accidents and incidents.

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6.4.6 Conduct

Comprehensive investigations shall only be conducted by Inspectors with experience in the applicable discipline. However, a contravention in progress, regardless of what area of competence the case may involve, shall be dealt with by any Inspector available. If no Inspector with detailed competence in the situation is available. The intent of this policy is to ensure that all Inspectors are obliged to stop an unsafe situation to the best of their ability.

6.4.7 Specialised Investigations

When any Inspector becomes aware of a possible contravention concerning the airworthiness or operation of an aircraft, or the safety and security of an aerodrome, he shall advise his supervisor of the allegation and conduct a preliminary investigation. If he believes that there is an immediate threat to aviation safety, he shall undertake steps to mitigate such immediate threat.

6.5 Interviewing

6.5.1 General

Interviews occur routinely during an Inspector's performance of his duties. They range from the informal questioning of a potential witness in an attempt to determine what useful information the individual may possess about a suspected contravention, to the formal interrogation of an alleged offender. Questions may be asked of any person, suspected or not, if it is deemed that useful information may be obtained. Persons to be interviewed are witnesses to an occurrence.

An alleged offender himself or any other person who, by having knowledge to any aspect of the investigation, may be able to reveal the facts of the case.

An interview is the questioning of a person who is believed to possess information relevant to the matter under investigation. Normally in an interview the person being questioned will be cooperative and furnish the desired information without hostility or evasiveness.

An interrogation is a form of interview using detailed questioning where the person, who is alleged to have committed an offence, or a witness, is reluctant to make a full and truthful disclosure of the particular information in his possession.

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6.5.2 Objectives of the interview

The purpose of the interview or interrogation is to develop credible information relevant to the investigation and to record it for future reference. Specific objectives vary with the nature of the case, its facts and circumstances, the Inspector is attempting to ascertain. To prevent aimless questioning, the objectives must be formulated carefully and must be fully understood by the interviewer. In seeking the truth, the Inspector must constantly inquire: WHO did WHAT, WHEN, WHERE, WHY and HOW.

He must continue to inquire until all the essential facts are assembled. Since questions are the tools of the interviewer, it is essential that questions be clear, communicative and designed to obtain information. The interviewer should always endeavour to ask questions in such a manner that the person being questioned understands what is being asked.

6.5.3 Interview conduct

If possible, the interviewer should, prior to the interview, have conducted a legislative analysis of the provision allegedly contravened. The analysis may provide the interviewer with the required evidentiary information necessary to obtain a conviction. He then has the ability to tailor the questions used in the interview towards the desired information. As an investigation is a search for the truth, the investigator must utilise all the necessary investigative techniques available to him. The success of the investigation often depends on the proper and effective use of techniques and procedures in conducting the interview.

Inspectors have no right to force testimony or admissions from witnesses or alleged offenders. This power is limited to courts and legislative bodies.

The best technique is to systematically persuade the witness or alleged offender in a humane and friendly atmosphere to offer testimony or evidence. Using logic, the interviewer should subdue the interviewee's inhibitions, stimulate his natural inclination to cooperate and encourage a conclusion that truthfulness will benefit him in some manner. However, care must be taken not to utter any promises, which the interviewer may not be able to keep. Likewise the promise or threat of sanction uttered will place in doubt the veracity of any statement obtained under such promise or threat. The entire interview would then be worthless in any judicial proceedings.

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To properly conduct the interview, the Inspector should have as intimate as possible knowledge of the facts of the case, thus enabling him to distinguish truth from falsehood and fact from fiction. Knowledge of human nature enables Inspectors to judge character and understand motivations. He must think clearly and without bias, and exercise good judgement, patience and self-control. He must never be angry or become emotionally involved.

He must also realise that what a witness says he saw, may not always be what happened. Eyewitness identification and description is regarded as a most unreliable form of evidence and causes more miscarriages of justice than any other method of proof. This weakness has long been recognised by courts and was aptly described as follows.

“The carelessness or superficiality of observers, the variety of powers of graphic description, and the different force with which peculiarities of form or colour or expression strike different persons, make recognition or identification one of the least reliable facts testified to by even the actual witnesses who have seen the parties in question.”

6.5.4 Other considerations

A person may be a most cooperative witness and vividly describes in detail what he saw. However, before accepting the information, determine if the witness actually was in a position to see or hear what he is describing. Check the angle of view, look for any obstruction to the line of sight and determine if the information he is giving you could have actually been detected from his position at the time of the occurrence. These precautions are necessary because witnesses tend to augment their observations with what they believe occurred, when there are gaps in those observations. In the case of alleged offenders, such verification may also reveal the veracity of their statements.

Other considerations are:

- (a) Optical illusions can also lead to misjudgements. Witnesses will often over estimate heights and underestimate breadth and width. Colours may also affect judgement of distance. A red object appears to most people to be larger than a blue one of equal size. Very rarely will two eye witnesses will be able to judge aircraft height, especially in cases of low flying.
- (b) The factor of suggestions must also be considered. Separate the witnesses so that they cannot overhear one another. During the interview do not repeat a statement

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made by another witness. This precaution must be taken, as there is a tendency for people to conform to the opinion held by the majority. And lastly, do not suggest any particular idea to the interviewee, as people at times will tell you what they have just heard from you in order to please you. Also accept the fact that sometimes people cannot remember at all what they might have seen.

- (c) A witness must be interviewed at the earliest time possible, because people have a tendency to forget, some more rapidly than others. Furthermore there is a danger that the witness will acquire additional information, which will displace or bias the original information in his mind.

6.5.5 Techniques in the Conduct of an Interview

At the beginning of a session, the Inspector conducting the interview should put the witness at ease by introducing himself and then asking basic identifying data, such as a name, address and telephone number. If there are language difficulties, an interpreter may be used in the conduct of the interview. It is desirable to use a tape recorder during interviews whenever possible. The witness must always be informed if he is being recorded. If no tape recorder is used, notes need to be taken to ensure that a reliable record is created, that will have legal standing.

The following guide may be useful in taking witness statements;

- (a) Have the witness describe everything he heard and saw relative to the time, place, person and event in question;
- (b) Listen and make brief notes as a memory jogger;
- (c) Ask questions to explore specific aspects of the story;
- (d) Establish how the witness happened to be in the place where he made the observation and what was his exact physical position in relation to the location of the contravention;
- (e) Present exhibits to the witness for identification and marking;
- (f) Ask the witness to state any relationship, which may exist between himself and any other person concerned with the contravention or its circumstances

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Just prior to concluding the interview, the interviewer should attempt to resolve any minor conflicts, which may appear between the witness' story and the known circumstances of the contravention. To avoid the problem of being suggestive, this should be done in general terms without mention of specifics.

For example "What colour did you say the aircraft was?" is better than asking "You said that the aircraft was yellow; are you sure of that?" Also lying to the witness or an alleged offender by introducing fictitious facts will invalidate the statement obtained.

6.5.6 Statement Preparation

In preparing a written statement the following procedures should be adopted.

- (a) Use the statement form whenever possible. If a statement needs to be taken on short or no notice, use plain paper.
- (b) Record the time, place and date of the interview on the top of the 1st sheet of paper.
- (c) Record the witness' full name, date of birth, address, and telephone number at the beginning of the statement, e.g. "This is the statement of" and then add the details.
- (d) The narrative of the statement is next. Ask the witness to relate the events in chronological order, beginning far enough back that he feels comfortable by the time he reaches the point in the statement where there is specific interest.
- (e) When the narrative is finished, ask questions to clarify it. Take your time in doing this by first writing the question down, then reading it to the witness. Record the answer exactly as the witness replies.
- (f) When the statement is complete, ask the witness to read it back aloud.
- (g) Make any corrections the witness requires and have the witness initial the changes. Do not correct spelling or grammar in a statement without the witness' consent and initials.
- (h) Have the witness sign the last page of the statement, but do not pressure him if he is reluctant to do so.

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- (i) If the witness was interviewed through an interpreter, ensure that the interpreter's personal details are also recorded and ask him to initial and sign the statement wherever appropriate.

- (j) At the end of the process the interviewer must sign and date the document and enter the completion time next to the date.

6.6 Referrals

6.6.1 Referral to a foreign authority

In the event that an Inspector is apprised of an alleged offence by a foreign operator, the allegation of the offence should be forwarded to that Civil Aviation Authority where the alleged offender's aircraft is registered. A Preliminary Investigation shall be conducted and any perishable evidence collected. This includes the securing of ATS records and any available aerodrome traffic movement records as well as loading information, etc.

Once the Preliminary Investigation has been conducted the Director of Civil Aviation shall be apprised of the situation. Any immediate threat to aviation safety shall be dealt with without delay. Once the situation is stabilized and the immediate threat has been mitigated, the Director of Civil Aviation will apprise the foreign Authority of the aircraft's State of Registry by letter, including copies of the relevant information for their investigation and action.

6.6.2 Referral to the Appropriate Ministry

In the event that the detection resulted from a serious contravention such as one violating a provision of the Civil Aviation Act or Regulations or MCAR's, the Minister may decide to forward the information to the appropriate authority (e.g. State Law Office) for further legal action. In this case a complete investigation must be conducted. It shall contain the following items:

- (a) A completed Contravention Report;
- (b) Records of a Preliminary Investigation;
- (c) A decision record by the Director of Civil Aviation to conduct a comprehensive investigation;
- (d) All details of the comprehensive investigation;
- (e) All evidence obtained during the investigation;

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- (f) A record of change of custody and control of any evidence obtained that was passed to another Inspector;
- (g) An analysis of the legislative provision, which is alleged to have been contravened.
- (h) A document recommending an appropriate sanction if the alleged offender is convicted.
- (i) A receipt form for the package, which is to be signed by the receiving member of the appropriate Authority to ensure continuity of possession of the evidence.

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Chapter 7

Analysis of Legislative Provisions

7.1 Introduction

This chapter provides a procedure for analysing offence creating legislative provisions to obtain a precise interpretation and to determine the facts and evidence required for their enforcement. The decision to continue or terminate a case is often based on the results of the analysis of legislation. Investigators will complete an analysis of each provision which has been contravened for each case where a comprehensive investigation is conducted.

7.2 Construction of Legislative Provisions

7.2.1 General

- (a) Types of Legislative Provisions: Legislative provisions may be enabling, administrative, informative or offence creating. Only the latter can be the subject of enforcement actions.
 - (1) Enabling provisions are those which confer power on persons to make some other type of standard or policy. Some enabling provisions in the Civil Aviation Law and Regulations are those which give powers to make regulations, orders and publications.
 - (2) Administrative provisions confer a power or impose a duty on the Authority; for example, to issue licences. They may provide criteria used in discharging these powers or duties. Although these provisions are public notice of what the Authority can do, their purpose is to provide a statutory basis for administrative procedures or actions.
 - (3) Informative provisions are intended to guide the aviation community and assist individuals in complying with aeronautics legislation. For example: Policy Directives
 - (4) Offence creating provisions can be one of two types. Those that mandate a certain form of conduct and those prohibiting certain conduct. Non-compliance with these provisions is a violation that can result in judicial or administrative enforcement action.

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The legislative provisions of interest in this chapter are the “offence creating provisions” and are mainly contained in the Civil Aviation Act and Regulations. They are easy to recognize as they contain words such as, “No person shall”, “an operator shall”, “the pilot-in-command shall”.

- (b) A provision is composed of legislative elements. Precise interpretation requires analysis of the various elements of a legislative provision. An element is a segment, either a single word or group of words that expresses a unit of thought. Every element contributes to the total meaning of the legislative provision.

Core elements contain the subjects and verbs while qualifying elements describe or modify core elements. Common elements are those which appear frequently in the legislative provisions (e.g. “no person”, “shall fly”, "aircraft", "pilot-in-command"). Uncommon elements are those which do not appear frequently (e.g., "legal custody and control", "accredited representative", "influence of alcohol").

7.2.2 Identify Possible Violations

Early during an investigation the Inspector should list the possible violations but not necessarily in order of importance. All of the listed provisions should be analysed. An early analysis should indicate what evidence is required and available, and provide clues as to what further evidence will be required to successfully prosecute an alleged offender. The analysis may however also reveal that there is no violation.

7.2.3 Analysis of Offence Creating Legislative Provisions (Interpretation)

Analysis for interpretation consists of the following steps:

- (a) Common Elements are those that appear frequently in legislative provisions, e.g. (A person shall not), (aircraft), (Pilot-in-Command), (Certificate of Registration) etc.
- (b) Uncommon Elements are those, which do not appear frequently, e.g., (not less than 1000 feet), (in formation flight) etc.

7.2.4 Evidence Considerations

Whilst standard forms of evidence are used to establish the facts concerning common elements, special forms of evidence may be needed to establish the facts concerning uncommon elements. Standard forms of evidence include witness statements or oral

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testimony, journey or technical log books, business records, tape recordings, photographs, objects and admissions to a contravention. Special forms of evidence include ATC transcripts, radar print-outs, x-rays, magnaflux, dye checks, weather records etc.

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Chapter 8

Case Reports

8.1 General

A case report is an abridged relation of the facts of a case drawn up by the investigator. It is inserted as the first section of a case file. The case report provides a method of systematically compiling and summarizing all information pertinent to the case so that the investigator can quickly become as familiar and conversant with the case as possible without the need to review in detail the complete contents of the file.

After reading the case report, the investigator should have a sufficient understanding of the case to be able to determine with confidence the appropriateness of the action recommended by the investigator. The case report also serves as a checklist for the investigator to ensure that all necessary investigative steps have been completed and nothing further remains to be done. It should be as accurate and comprehensive as possible.

8.1 Content and Preparation of Case Reports

The cover sheet of the case report should contain the identity of the alleged offender by name and licence number, if appropriate, as well as the alleged contraventions and the name of the investigator. This should be followed by a case synopsis, which could be described as a thumbnail sketch of the case, providing a quick overview of the situation. Next is a sheet fully identifying the alleged offender by name, address and date of birth, and setting out licensing details and details of the aircraft involved.

An analysis of legislation follows breaking down the alleged contraventions into their elements, listing the facts to be established and identifying the evidence to be used to prove those facts. A list of evidence which may be entered as exhibits if the case were to progress to the Director of Civil Aviation should be followed by the exhibits, e.g. copies of statements, diagrams, photographs and Certificates. The exhibits should be flagged with a letter to ensure quick and easy location.

Originals of the items can be placed in the case report. If applicable, the alleged offender's enforcement history is indicated next. The package is rounded off with the inspector's recommendation in which any mitigating or aggravating circumstances may be outlined based on this manual.

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While preparing a case report demands much work, a case cannot be expediently concluded without a properly prepared case report. In some instances, many man-hours may have been expended in investigating the offence. A successful and thorough investigation should not be jeopardized by the use of a poorly prepared or inadequate case report.

The legal department i.e. the State Law Office as adviser to the Department should lead the process of preparing case reports if required.

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Chapter 9

Case Reports

9.1 Introduction

9.1.1 General

The most critical decision to be made in the enforcement process is in determining the deterrent action to take when the evidence indicates that a person has violated a provision of the Civil Aviation Act, Regulations and/or the MCAR's. The decision may significantly affect the person's attitude towards compliance and safety in the future. The intent of the procedures in this and other Sections is to promote fairness, firmness and uniformity in the selection of appropriate sanctions.

9.1.2 Objectives of Deterrent Action

The major objectives of deterrent action are:

- (a) Protection of the public and the individual from harm;
- (b) Encouragement for future compliance; and
- (c) Deterrent of others from contravening the legislation.

***Note:** Achieving these objectives will contribute to the advancement of aviation safety which is the primary aim of aviation regulation.*

9.1.3 Types of Deterrent Action

There are two types of deterrent actions, judicial and administrative. Judicial action involves the prosecution of an alleged offender in civil court. This is accomplished by the Appropriate Authority and usually involves contraventions under the various laws. Administrative Action comprise all other deterrent measures taken by the Authority and is usually applied by the Director of Civil Aviation or his delegate.

Deterrent action for hybrid offences, those that are dealt with under the Civil Aviation Law and also the MCARs, shall not be applied in court as well as by administrative action as this would be considered double jeopardy (that is cannot be punished twice).

9.2 Administrative Action

Administrative action may comprise of sanctions taken from the recommended sanctions or it may be administered by decision of the

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Director of Civil Aviation. A subjective judgment needs to be made as to which process to follow. For a first offence a warning letter might be appropriate, whereas an offence conducted twice or more may require a multiple of the recommended sanction or perhaps a revocation of an aviation document. In deciding the degree of deterrent action required, any possible defences or mitigating circumstances should be considered, such as:

- (a) What was the role of the offender – perpetrator or accomplice?
- (b) Was there any pressure or undue influence exerted by an employer or another employee?
- (c) Were there mitigating circumstances such as weather, improper ATC instructions etc.?
- (d) Was there an actual threat to aviation safety?
- (e) Was there any actual harm done?
- (f) Was there carelessness or reckless conduct?
- (g) Was there any premeditation or deliberateness in the offence and/or the attitude of the offender?
- (h) What was the offender's attitude towards future compliance?
- (i) Did the offender have a prior record?
- (j) Is the offender's competence in question?
- (k) What would be the minimum sanction required to achieve compliance?
- (l) Is there an element of punishment required?
- (m) Will public safety be ensured by the application of the sanction?
- (n) Will the sanction act as a deterrent?
- (o) In summary, the sanction needs to fit the severity of the offence. It must be applied fairly, consistently and with compassion.

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9.3 Selection of Appropriate Deterrent Action

The type of deterrent action permitted in response to an offence depends on the specific offence. To determine which deterrent action is available it is essential to first ascertain whether a particular offence is one of the hybrid offences, summary conviction offences or the designated provisions.

9.3.1 Designated Provisions

A designated provision is a regulation that has been listed. Designated provisions may be enforced only by administrative action in the form of a monetary penalty or a suspension; no prosecutions may be commenced in respect of the contravention of a designated provision.

9.3.2 Hybrid and Summary Conviction Offences

Where a person has contravened a non-designated provision, the Authority must decide whether to take administrative action by way of suspension or to take judicial action. All alleged contraventions of the Civil Aviation Law and MCARs shall be dealt with by taking administrative deterrent action except where the criteria for judicial action are satisfied. The presumption is that a minimum enforcement sanction will be sufficient to achieve compliance. Stringent sanctions for a first offence are more likely to cause resentment than encourage future compliance.

Moreover, administrative measures are usually more expeditious than prosecutions. (Criminal procedure is lengthy and expensive and courts are often unfamiliar with the significance of aeronautics offences.) Offenders may wish to have matters resolved with a minimum of delay while retaining the option for a review by a body that has expertise in aeronautics.

Where the alleged offender has been suspended in the past or has seriously jeopardized aviation safety, administrative action may be insufficient. In these cases judicial action may be more appropriate, particularly in light of the heavier sanctions normally imposed.

9.3.3 Joint Judicial-Administrative Deterrent Action

Judicial action and administrative action may be taken simultaneously where evidence discloses that a person has contravened two or more different provisions arising from the same incident provided that each provision violated does not rely on the same facts. For example, if a charge of reckless and negligent flying under the regulations relied in part on the fact that the pilot was low flying, the pilot could not also be proceeded against for low flying.

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A prosecution for one offence may be accompanied by suspension for another offence only where common facts are not relied on. Judicial and administrative deterrent action shall not be taken in respect of the same contravention. Either one or the other shall be selected depending upon the facts of the particular case.

9.4 Deterrent Action – Air Transport Operators

9.4.1 General

Different considerations apply regarding deterrent action for contraventions committed by air transport operators than apply to contraventions committed by pilots and others. This is because sanctions imposed in respect of a contravention affect not only the carrier but also the carrier's employees and the public the carrier serves. Safety remains the overriding factor. Deterrent measures must impress upon the carrier that unsafe operation at the risk of public safety will not be tolerated.

9.4.2 Administrative Action

Four types of administrative action which may be taken where an air carrier contravenes a provision or regulation are:

- (a) oral counselling;
- (b) a monetary penalty;
- (c) a suspension of an aviation document; or,
- (d) a cancellation of an aviation document.

Suspension or cancellation of an aviation document would be appropriate where the carrier had repeatedly contravened the regulations even though the safety implications were minimal. Cancellation would also be appropriate where suspensions or monetary penalties are not having the desired effect.

9.4.3 Judicial Action

Prosecution of an air carrier for a contravention of a non-designated provision is recommended in all cases where, in the opinion of the Authority, the contravention is such that it would be appropriate to seek a significant fine in court.

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9.4.4 Emergency Action

Occasionally, the contravention of a regulation by an air carrier may pose an immediate threat to aviation safety. Two courses of action are available in such a situation.

- (a) Aircraft Detention for Immediate Threat to Aviation Safety. Where the threat arises from a particular aircraft that is unsafe or likely to be operated in an unsafe manner, that aircraft may be detained pursuant to the Regulations. The detention shall remain in effect until the unsafe condition is corrected.

- (b) Air Operator Certificate Suspensions for Immediate Threat to Aviation Safety

Where the threat arises from the operations of the carrier (instead of a single aircraft), the Authority may decide to suspend the Air Operator Certificate under the Regulations. This sort of suspension must be viewed as a last resort to be carried out with extensive consultation among the various branches as appropriate.

The Authority must be satisfied that the immediate threat to aviation safety exists or is likely to occur as a result of an act or thing having been, being or proposed to be done under the Authority of the document to be suspended.

The Director of Civil Aviation would usually be the suspending authority. The AOC suspension shall come into effect immediately and remain in effect until such time as the threat to aviation safety is removed.

9.4.5 Punitive Suspension or Cancellation of an Air Operator Certificate

The authority for cancelling an Air Operator Certificate rests with the Director of Civil Aviation of the Department of Civil Aviation in accordance with Regulation 85 of the Mauritius Civil Aviation Regulations.

A punitive suspension of an AOC should only be considered when the carrier has a history of repeat offences (two or more significant offences) and when, in the opinion of the suspending authority other measures (e.g. monetary penalties) would not promote future compliance. The suspending authority is responsible for reviewing the factors affecting the choice of sanction before the decision is made to suspend an Air Operator Certificate. The suspending authority should consult with various branches, as appropriate, to discuss:

- (a) the technical accuracy of the evidence and findings;

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- (b) the coordination of concurrent regulatory actions, if applicable; and
- (c) the severity of the sanction as a response to the violation;

Once a final decision to suspend has been made, the standard practice is to provide an opportunity for an informal meeting with the carrier. The imposition of a punitive cancellation of an AOC should follow the same procedure as that for a suspension.

9.5 Sanctions for Multiple or Continuing Violations

9.5.1 Multiple Violations

Multiple violations involve a series of distinct and separate contraventions of a particular regulation or regulations over a period of time. Each time, the circumstances of the offence may be different. For example, an aircraft could be operated in an overloaded condition each time it was flown during a certain period. Each time, the amount of overload could be different but there would be a violation every time. The contravention was not caused by something "inherent" in the aircraft, rather by factors present during the preparation of the flight. In cases of multiple violations, the following procedures shall be used:

- (a) Administrative Action

For multiple violations of the Designated Provisions, the Notice of Suspension or of Monetary Penalty shall state in the statement of offence the particulars of each offence including the dates and times of each flight in violation, and the sanction proposed in respect of each. Evidence to prove each individual infraction shall be secured so that in the case of a review by the Government the evidence can be presented.

- (b) Prosecution

In the case of a summary conviction offence involving multiple violations, where prosecution is the desirable option, the government shall be advised of Authority's intention to lay charges in respect of each flight conducted in contravention of the regulations, that is, each flight should be set out as a separate count in the information.

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9.5.1 Continuing Violations

There are a number of offences which could be repeated over a period of time as the result of a continuing condition or state of affairs. These generally relate to aircraft or personnel aviation document requirements, modifications or additions to aircraft equipment outside of airworthiness specifications and entries made in a log. In view of the fact that separate acts which are successive and cumulative, comprising a continuous series, can be considered as one offence at the discretion of the Authority the following procedures shall apply in the disposition of such cases:

(a) Administrative Action

In all cases of suspension or monetary penalty determination, each separate flight conducted in violation of the regulations shall be considered as a separate offence. The Notice shall provide the dates and times of each flight during the period of non-compliance, together with particulars and the sanction in respect of each offence.

(b) Termination of a Continuing Violation

A continuing violation which was the subject of enforcement action, but has not ceased, may need further action to secure compliance. If the violation was in respect of provisions not affecting airworthiness requirements, detention of an aircraft pursuant to the regulations may not be possible. When the violations involve an air carrier, a viable option is to suspend the Air Operator Certificate relating to the particular aircraft operation in addition to any Enforcement action.

9.5.3 Disclosure to Employers

Employers of aviation document holders should be advised of the deterrent action taken if the contravention took place while the alleged offender was on company business. If the alleged offender was not on company business at the time of the contravention, the disclosure of deterrent action to their employer is prohibited unless an exception under the regulations applies. An exception may exist where the deterrent action taken against a professional pilot affects the pilot's employment, e.g. suspension of licence privileges. An exception may also exist where it would definitely be in the public interest, usually in terms of aviation safety, to inform the employer, e.g. a pilot who has been detected flying while under the influence of alcohol. The question

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of whether or not to inform an employer must be addressed on a case-by-case basis.

The Director of Civil Aviation will decide if disclosure to the employer is appropriate.

9.5.4 Notification of Detection Source

The DCA shall ensure that the detection source is advised of the outcome of the case and record this action. The identity of any source should never be divulged as this will discourage persons using a Voluntary (Confidential) Reporting System.

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Chapter 10

Administrative Action

10.1 Introduction

10.1.1 General

Administrative action comprises all deterrent measures, other than judicial action, taken by the DCA pursuant to the provisions of the Civil Aviation Act, Regulations and MCARs. Administrative action in the form of a suspension or oral counselling can be used not only for designated provisions offences but also for summary conviction and hybrid offences. Almost all deterrent actions taken by the Authority are administrative actions. They are usually resolved quickly yet give the offender access to a review and the full process of natural justice.

10.1.2 Administrative Action Options

There are two categories of administrative actions which may be taken when a contravention has occurred. Determination of the appropriate action depends upon policy considerations, the detection source and the circumstances of each contravention.

(a) Preventive Action

Oral counselling. If a comprehensive investigation is concluded with an oral counselling, that fact is recorded and the file is closed.

(b) Administrative Sanctions

(1) Administrative Monetary Penalties

Administrative monetary penalties may be assessed where there has been a contravention of a designated provision. The monetary penalty procedures are set out in the Law.

(2) Suspension of Aviation Documents

A punitive suspension may be taken in respect of any contravention of a provision of the Civil Aviation Act, Regulations and the MCAR's

10.2 Administrative Action: Selection and Process

10.2.1 General

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Contraventions of designated provisions may be dealt with either by suspension or by assessment of an administrative monetary penalty. When contraventions of non-designated provisions are dealt with administratively the only sanction which may be imposed is suspension of an aviation document. Simultaneous administrative and judicial enforcement action under the Civil Aviation Act, Regulations and MCARs may be taken for different contraventions arising out of the same circumstances, but this is very rare.

For the limited number of offences where there is an option, administrative and judicial enforcement action shall not be taken in respect of the same contravention; one or the other shall be selected depending upon the facts of the particular case. When, in the opinion of the Authority, aviation safety is an issue, or, in the case of an air operator, the violation was associated with the “cost of doing business” or was a way of reducing operating costs, the minimum penalty should be imposed.

10.2.2 Procedure for Administrative Monetary Policies

When the Director of Civil Aviation receives a case report from the investigating inspector, he may assess an administrative monetary penalty as a sanction, whether or not a monetary penalty is recommended in that report. The following procedures apply in all cases where an administrative monetary penalty is assessed.

- (a) The Director of Civil Aviation shall determine and recommend the amount of the penalty that is appropriate.
- (b) The Director of Civil Aviation shall complete the Notice of Monetary Penalty. The Notice shall contain a clear description of the offence, and sufficient details of the contravention so the alleged offender can identify the incident or incidents constituting the contravention.
- (c) With the Notice, the Director of Civil Aviation shall enclose an information sheet describing the informal meeting procedure and offering the alleged offender an opportunity to discuss the sanction.
- (d) The Director of Civil Aviation shall serve the Notice on the alleged offender personally or by registered mail. The date appearing on the Notice shall be the date on which the Notice is to be served or sent.
- (e) The monetary penalty may be paid by one of the methods acceptable to the Authority and may be sent by mail or brought personally to the Director of Civil Aviation or appointed delegate. An official receipt will be issued.

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- (f) Should the monetary penalty not be paid by the due date (a minimum of 30 days not counting the day the Notice is served).

10.2.3 Suspension Procedure

The suspension of an aviation document for contravention of a provision of the Civil Aviation Law and MCARs, is the most severe administrative sanction the Director of Civil Aviation can impose. Suspension action is taken where a monetary penalty would be an inadequate deterrent or continued use of the document would create a hazard to aviation safety and judicial action is either not available or inappropriate.

Where an aviation document has been suspended, the person to whom it was issued shall return it to the Authority and shall not exercise the privileges attached to that document until it is restored by the Authority. Suspensions for contravention are punitive in nature and are in effect for a specified time period.

Note: *Suspensions on other grounds may be corrective in nature and may be accompanied by conditions for restoration*

The following paragraphs outline the suspension process:

- (a) The Director of Civil Aviation shall determine and recommend the appropriate duration of suspension by considering the recommendation of the investigator.
- (b) The Director of Civil Aviation shall complete the Notice of Suspension. The Notice shall contain a clear description of the offence, and sufficient details of the contravention so the alleged offender can identify the incident or incidents constituting the contravention.
- (c) With the Notice, the Director of Civil Aviation shall enclose an information sheet describing the informal meeting procedure and offering the alleged offender an opportunity to discuss the sanction.
- (d) The Director of Civil Aviation shall serve the Notice on the alleged offender personally or send it by registered mail. The date appearing on the Notice shall be the date on which the Notice is to be served or sent.
- (e) Where the alleged offender requests a review by the Director of Civil Aviation and applies for a stay of suspension pending its decision, the Director of Civil

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Aviation shall not oppose the application unless it appears that a threat to aviation safety would result.

- (f) Where the alleged offender does not ask for a review by the Director of Civil Aviation within thirty days and then fails to deliver the suspended document, after giving due consideration for delay in the mail, charges shall be laid against the alleged offender. Prior to laying charges, the document holder should be contacted to confirm the situation.

10.2.4 Cancellation of a Certificate

Cancellation of a document of entitlement because of incompetence, lapse in qualifications of the document holder or lack of medical fitness is within the purview of licensing and certification authorities. To cancel a document for enforcement reasons must be actioned suspending authority.

10.2.5 Informal Meeting

The informal meeting offers the alleged offender who has received a Notice of Monetary Penalty or a Notice of Suspension, the opportunity to discuss the sanction. Keeping in mind that the objective of the sanction is to obtain future compliance and provide deterrence to others, the Director of Civil Aviation may modify or amend the original decision. This may be done when new evidence of a statutory defence or mitigating factors come to light, or when the Director of Civil Aviation obtains the assurance, during the discussion, that the alleged offender will comply in the future.

The Director of Civil Aviation may conduct informal meetings with alleged offenders in person, or other electronic medium, or through written submissions. During an informal meeting, the Director of Civil Aviation, or his delegate, may enter into penalty negotiations with a view to reaching a settlement in the case, thereby closing the file. Any discussions during the informal meeting are predicated on the fact that the alleged offender or the alleged offender's representative will not question the finding of the investigation. The alleged offender normally has thirty days from the date the Notice is served or sent to accept the offer.

10.2.6 Penalty Negotiation Consideration

The following factors shall be considered in deciding whether to enter into penalty negotiations or not:

- (a) Evidence of mitigating factors not previously identified during the investigation;

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- (b) The alleged offender's enforcement record;
- (c) The seriousness of the offence;
- (d) The attitude of the offender toward future compliance;
- (e) Whether deterrence can still be achieved through a negotiated settlement;
- (f) The financial burden on the alleged offender of costs associated with Legal proceedings; and
- (g) Whether negotiations with a particular alleged offender would bring the enforcement program into disrepute.

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Chapter 11

Penalties

11.1 General

Penalties which may be imposed on conviction are stipulated in the relevant regulations.

For regulations where penalties are not referred to Civil Aviation Regulations 2007, The Civil Aviation Act under the Section Offences (as amended) stipulates the penalties to be imposed.

Note: *Care must be taken to ensure that penalty provisions are applied as stated in the applicable legislation.*

Any deviation from the recommended sanction, given the circumstances of the case, must be justified based on the following factors:

- (a) The penalty may be moderated in light of mitigating circumstances, (events which were inadvertently caused by misunderstanding, misconception or an honest mistake).
- (b) The highest category of document related to the contravention would be the document suspended as a sanction for the contravention.
- (c) A second offence is considered to take place when the record of a previous similar but not necessarily identical offence is still on the offender's file. (i.e. within a reasonable period, to be defined by the Authority.)
- (d) Penalties for all subsequent contraventions should be raised from previous penalties.

11.2 Factors Affecting the Choice of Penalty

- (a) The facts surrounding the commission of the offence
 - (1) What was the role of the offender;
 - (2) Was there any pressure or undue influence exerted by an employer or an employee; and
 - (3) Were there mitigating circumstances not amounting to a defence?

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- (b) The gravity of the offence
 - (1) Was a threat to safety posed;
 - (2) Was there any actual harm done;
 - (3) Did the violation result in an incident or accident;
 - (4) Was there careless or reckless conduct; and
 - (5) What is the maximum punishment available?

- (c) The premeditation or deliberateness of the offence and attitude of the offender
 - (1) While “the mental element” is not relevant to guilt in strict liability offences it may be indicative of the offender’s attitude;
 - (2) Was recklessness involved or plain negligence;
 - (3) What is the offender’s attitude toward safety; and
 - (4) What is the offender’s attitude toward future compliance?

- (d) Personal characteristics to be considered– what is the offender’s:
 - (1) Age;
 - (2) Experience level, knowledge and skill in Aviation;
 - (3) Training record;
 - (4) Employment – is a licence required to hold employment;
 - (5) Work in relation to any aviation documents; and
 - (6) Financial position in regard to the ability to pay a fine or penalty?

- (e) The record of the offender
 - (1) Are there any prior sanctions on record;

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- (2) Is this an isolated act or is this person a repeat offender;
 - (3) Are there any related or similar offences on record; and
 - (4) Is there any question of competence or qualification involved?
- (f) Punishment
- (1) What is the range of penalties available?
- (g) Deterrence and public safety
- (1) Would the recommended penalty contribute to public safety; and
 - (2) Will the penalty act as deterrent to others?
- (h) Rehabilitation
- (1) Will the penalty promote future compliance on the part of the offender?

11.3 Non Designated Offences

Typical violations of the following offences could be handled by prosecution.to:

- (1) walk, stand, park a vehicle or cause an obstruction at an aerodrome
- (2) tow an aircraft on the manoeuvring area without displaying lights
- (3) park an aircraft on the manoeuvring area without it being lighted as prescribed
- (4) cause an obstruction on surface of water aerodrome
- (5) knowingly remove, deface, extinguish, etc. any signal/marker etc. used for the navigation of aircraft
- (6) knowingly display a marker/signal/light, etc. to cause someone to believe the place is an aerodrome
- (7) knowingly display a marker/signal/light etc. likely to be hazardous to aircraft safety

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- (8) allow an animal to be unrestrained within the boundaries of an aerodrome
- (9) discharge a firearm at an aerodrome
- (10) smoke/display an open flame at an aerodrome without authorization
- (11) operate specified aerodromes without an airport certificate
- (12) use an airport contrary to airport certificate
- (13) walk, stand, park a vehicle or cause an obstruction at an airport
- (14) cause an obstruction on surface of water airport
- (15) tow an aircraft on the manoeuvring area of an airport without displaying lights
- (16) park an aircraft on the manoeuvring area of an airport without it being lighted as prescribed
- (17) knowingly remove, deface, extinguish, etc. any signal/marker etc. used for the navigation of aircraft
- (18) knowingly display a marker/signal/light etc. likely to be hazardous to aircraft safety
- (19) allow an animal to be unrestrained within the boundaries of an airport
- (20) consume alcoholic beverages that are not provided by operator
- (21) failure of a passenger to comply with instructions of crew member
- (22) smoke during t/o, landing or as directed
- (23) smoke in lavatory
- (24) tamper with smoke detectors
- (25) use portable electronic devices when not authorized
- (26) operate a non-piloted aircraft without /not in accordance with a special flight operations certificate

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- (27) fly model aircraft/kites, launch model rockets into cloud or in a manner likely to endanger aviation safety
- (28) failure of responsible persons to report overdue aircraft and provide all pertinent information to the flight.

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APPENDIX A

Sample Letter of Investigation

CERTIFIED MAIL – RETURN RECEIPT REQUESTED

[Date]
EIR Number

ABC Airlines, Incorporated
P.O Box xxxx
Plaisance

Attention: Mr. John F. Johnson
Vice President, Engineering and Maintenance

Dear Mr. Johnson:

During a recent spot check of ABC Airlines, Inc.'s maintenance facilities, the DCA discovered irregularities concerning ABC Airlines, Inc.'s maintenance procedures and records. Specifically, the DCA found that ABC Airlines' B-767 aircraft, 3B-XXX, was operated beyond a Number A check (600-hour periodic inspection) by zero hours and 41 minutes. The DCA also discovered that ABC Airlines' L-1049H aircraft, 3B-XXX, exceeded a Number 2 check by 11 hours and 3 minutes.

This is to inform you that the DCA is investigating this matter. We wish to offer you an opportunity to discuss the incident in person or submit a written statement within days following receipt of this letter. Your statement should contain all pertinent facts and any mitigating circumstances you believe may have a bearing on the incident. If we do not hear from you within the specified time, we will process this matter without the benefit of your statement.

[Insert the following paragraph if information is needed to determine whether an alleged violator that is a business is a "small business concern:"]

As part of our investigation, we must determine whether [Name of Alleged Violator] is a small business concern under applicable law. To assist us in making this determination, please advise us of [insert the appropriate language based on the guidance "the number of employees at" or "the annual receipts of"] [Name of Alleged Violator].

Sincerely,
[Name]

Safety Inspector
For Director of Civil Aviation

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APPENDIX B

Warning Notice

CERTIFIED MAIL – RETURN RECEIPT REQUESTED

[Date] EIR Number Mr. Fred Smith
P.O Box xxxx
Plaisance

Dear Mr. Smith:

On May 26, 2004, you were the pilot in command of a that landed at the Airport. At the time of your flight, it appears that you did not have in your personal possession a pilot certificate or photo identification in your possession or readily accessible to you in the aircraft. This conduct is allegedly in violation of Regulation.....

After a discussion with you concerning this matter, we have concluded that the matter does not warrant legal enforcement action. In lieu of such action, we are issuing this letter which will be made a matter of record for a period of two years, after which, the record of this matter will be expunged.

If you wish to add any information in explanation or mitigation, please write me at the above address. We expect your future compliance with the regulations.

Sincerely,

Safety Inspector
For Director of Civil Aviation

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APPENDIX C

Sample Letter of Correction

CERTIFIED MAIL-RETURN RECEIPT REQUESTED

[Date]

ABC Repair Station Company
P.O Box xxxx
Plaisance

Attention: Mr. J. A. Jones, President

Dear Mr. Jones:

From June 14-18, 2014, the DCA inspected your repair station's organization, systems, facilities, and procedures for compliance with Regulation At the end of that inspection, we advised you of the following findings:

[State Findings].

This is to confirm our discussion with you on June 18, 2014, at which time immediate corrective action was begun.

[State corrective action taken].

We have considered all available facts and concluded that this matter does not warrant legal enforcement action. In lieu of such action, we are issuing this letter of correction which will be made a matter of record.

Sincerely,

Safety Inspector
For Director of Civil Aviation

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Appendix D

Airworthiness/ Flight Operations Tel: 230-6032000 Fax: 230 6373164 Email: civil-aviation@govmu.org		DEPARTMENT OF CIVIL AVIATION ENFORCEMENT FORM NON CONFORMANCE FINDING (NCF)		
NCF No.		AUDIT No.		ISSUE DATE:
COMPANY / DEPARTMENT AUDITED AND ADDRESS				
Pursuant to the requirements of the applicable Mauritius Civil Aviation Regulations 2007, you are hereby directed to have these items assessed and rectified soon but no later than				
SUMMARY OF THE NON-CONFORMANCE (Excluding the specific details)			REFERENCE	
AUDIT TEAM LEADER SIGNATURE:				
PROPOSED CORRECTIVE ACTION OR ACTION TAKEN TO ADDRESS THE AUDIT FINDING AND PREVENT RECURRENCE The data you will provide on the lower portion of this form will convey important information to DCA about remedial actions taken or being taken to address items identified above as requiring attention. In resolving the deficiency, the auditee is required to identify the root cause and then establish the appropriate corrective action. On completion of the lower portion of this form, you are required to submit a copy of this NCF and retain the original				
Root Cause				
Corrective Action				
AUDITEE REPRESENTATIVE- NAME		SIGNATURE	DATE	
FOLLOW UP DETAILS & DATE		DATE NCF CLOSED	AUDITOR	