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## **The Malaysian Aviation Commission takes flight**

Malaysia Airlines had a practical monopoly on aviation in Malaysia for the longest time, since its establishment in 1972. More than forty years later, Malaysian consumers today have so many options when travelling by air. And even though there may be less direct connectivity between Malaysia and Europe or the Americas, there has recently been renewed interest from regional carriers, with the likes of VietJet and TigerAir Taiwan commencing flights into East Malaysia in 2016. As such, the recent launch of the Malaysian Aviation Commission is indeed timely, and is welcomed by both the travelling public and industry players.

There are more Malaysians than ever before, travelling by air in Malaysia and around the world. For a country of our size, it is remarkable that we have so many national carriers – Malaysia Airlines, AirAsia, AirAsia X, Firefly, Malindo, Berjaya Air and Maswings. There are also various charter operators and cargo carriers as well. Our skies are indeed crowded, and getting more so every day.

The Malaysian Aviation Commission (“the Commission”) was established pursuant to the Malaysian Aviation Commission Act 2015 (“the Act”), which came into effect on 1st March 2016, the same day the Commission commenced its operations.

The Commission is responsible for regulating economic matters relating to the civil aviation industry in Malaysia. Chaired by Gen (R) Tan Sri Abdullah Ahmad, the Commission will have 6-8 members, including 2 permanent members comprising the Secretary-General of the Ministry of Transport and the Director-General of the Economic Planning Unit. These latter 2 members emphasise the balancing role the Commission has to play, in ensuring both transportation and economic needs are equally addressed. The other 4-6 members of the Commission will be persons with experience in economics, finance, aviation, business or administration relevant to the Commission.

The current structure of the Commission, with 4 departments namely Aviation Development, Consumer Affairs, Economics and Research and Legal, further illustrates the focus areas for the Commission. The management team is led by a Chief Operating Officer. The choice of Azmir Zain

(formerly of Khazanah Nasional) as the first Chief Operating Officer, with his extensive experience in strategic planning, finance and investments, including for the aviation industry, has also been received positively.

The Commission is meant to be an independent body, and this independence is underlined by various provisions of the Act itself – Commission members are prohibited from holding office / employment / being involved in activities related to aviation services (s.5(3)); Former Commission members cannot be involved in aviation services for 2 years after their departure from the Commission (s.11); and there is also a provision for a Code of Conduct for the Commission (s.15).

Protection of consumers is one of the key functions of the Commission. For the first time, consumers will now have a specific avenue to air their grievances over air travel, regardless of whether they are travelling full-service or low-cost. This is surely a welcome development for consumers who would have had to resort to filing complaints through the Consumer Tribunals or through written complaints to the Ministry of Transport previously. In a current example - the Ministry of Transport has recently announced that it will refer to the Commission, to look into the rights of passengers (who have already purchased air tickets but have now been deprived of their flights) of Rayani Air, which had announced its suspension of operations shortly before the Department of Civil Aviation itself suspended Rayani Air's operations.

In addition, with the Commission's emphasis on economic regulation, consumers will be comforted that airlines will have to justify their actions from an economic perspective, whether the airline concerned is intending to add new routes or reduce frequency on existing routes.

Airlines too, should look forward to the Commission's role of administering and allocating air traffic rights. The subject of air rights allocation has been a sensitive matter. AirAsia once had to fight long and hard and also win in the court of public opinion, before AirAsia was given the right and ability to operate into Singapore from Kuala Lumpur. It is hoped that moving forward, the allocation of routes and slots will be determined primarily by economic factors – which airline can best serve consumer needs on a route; and which slots would fit into the airline's demographics, whether serving a business traveller or a backpacker.

Meanwhile, Malaysian carriers should be pleased to note that their existing air traffic rights will not be affected by the Act, although the Commission has the power to alter any terms or conditions that may have been attached to those rights previously. Similarly, the operations of the Rural Air Services by MASWings will remain governed by the existing arrangements.

Although certain Commission functions such as air traffic right allocations were previously under the purview of the Ministry of Transport, the Department of Civil Aviation ("DCA") will remain responsible for matters related to technical, safety and security issues. As these are not related to economics, and

the DCA has the technical expertise, operational and safety requirements are best looked after by the DCA.

Further support for the consumers' interests can be seen in the provisions of sections 48 to 65 of the Act, which reflect provisions that are very similar to those already contained in the Malaysian Competition Act. With this, it is expected that anti-trust issues related to the aviation sector will be able to be addressed by members of the Commission, with their varied experiences and expertise in various areas including economics and of course aviation itself. These provisions are aimed at promoting healthy competition between the various commercial carriers in Malaysia – Malaysian operators will have to be able to compete more efficiently, and on a more level playing field. And if unhealthy issues such as predatory pricing and fares dumping are controlled and regulated, airlines may even see better financial and operational results moving forward.

Looking at similar bodies in other jurisdictions, the Airports Commission in the UK is responsible for "creating economic, sustainable and socially responsible growth through competitive airlines and airports"; and Australia's International Air Services Commission allocates capacity entitlements to Australian airlines for the operation of international airline services. Two features that have stood out in these examples are the independence of the Commission members, and the transparency in the decision-making process. The Aviation community in Malaysia looks forward to similar features in our landscape here as well. As the set-up of the Commission was initially propounded as part of Malaysia Airlines' recovery plan, demonstrating its independence and transparency will ensure that the Commission is able to deliberate and make recommendations which are truly prioritizing the future of Malaysia's aviation industry.

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Over the course of 6 years as in-house counsel for Shell Malaysia, Datin Shelina served various roles – including being the Company focal point for all HR-related legal matters; responsible for setting up the in-house Litigation Management Program; and had direct responsibility for managing all major litigation matters.

In 2007 Datin Shelina was a pioneer member of the senior management team at AirAsia X Berhad. Her first position was as the Legal and Human Resources Director for 3 years, moving into a Legal and Regulatory role at the end of 2010.

As Legal Director, Datin Shelina worked across all spheres of aviation, including HR matters, operations and engineering – with particular focus in Aircraft Leasing and Financing, Engines and Avionics as well as Aviation / Aerospace regulatory matters. While in AirAsia X, she saw through the successful AirAsia X Berhad Initial Public Offering (July 2013).

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