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Civil Aviation Authority of Sri Lanka

"සැමට සුරැකි අහසක්"  
"அனைவருக்கும் ஆபத்தற்ற ஆகாயம்"  
"Safe skies for all"

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### STAFF INSTRUCTIONS

Staff of the Civil Aviation Authority of Sri Lanka is hereby instructed to be guided by the Policies and Procedures specified in the Schedule below in regard to the grant of exemptions from the specified requirements under the Regulations on Grant of Exemptions from the Specified Requirements relating to Civil Aviation No.01 of 2014.

H.M.C.Nimalsiri,  
Director General of Civil Aviation and Chief Executive Officer

### Schedule

#### **Policies and Procedures relating to Grant of Exemptions from Specified Requirements in terms of Regulations on Grant of Exemptions from the Specified Requirements relating to Civil Aviation No.01 of 2014**

#### **1 Introduction**

- When Parliament enacts a law, or a Regulation or an Order is made under an Act of Parliament, it is a fundamental requirement of the country's legal system that legislative enactments will be applied universally and governs all members of the affected public equally. This enables each person to know what is required by the law and to act with the expectation that all persons to whom the law applies will be obeying the known requirements of that law.
- However, it has long been recognized that, in certain situations governed by law, there may be occasions when the regulation cannot or ought not to apply. In such cases, it may be appropriate to issue an "exemption" which excuses compliance from all or part of the regulatory requirement.
- Parliament has vested the authority of making regulations in the Minister in charge of the subject of civil aviation.
- The Minister has promulgated Regulations on grant of exemptions from the specified requirements relating to civil aviation No.01 of 2014, authorizing the Director General of Civil Aviation (DGCA) to grant exemptions from the specified requirements.
- The Regulations empower the DGCA to grant exemption from the application of specified requirements made pursuant to the Act only in exceptional situations when such requirements cannot or ought not apply, and if certain conditions are met.



## 2 Purpose

The purpose of this document is

- a. to define criteria that would be subject to evaluation when granting exemptions from the specified requirements and
- b. to ensure the exemption process is equitable to all those who come forward with a request, while simultaneously ensuring the best interests of the public are protected.

## 3 Policy involving grant of exemptions

- a. DGCA is committed to implementing national standards and procedures for the consistent processing of exemption requests and a rationale in the development of criteria to either grant or deny exemptions from the specified requirements.
- b. In most cases, exemptions are issued only in exceptional circumstances after conducting a thorough analysis on the possible impact of granting of the exemption may have on aviation safety. An equivalent level of safety is established through the development of terms and conditions that will provide alternate requirements or procedures to ensure any safety concerns are satisfied and safety is not compromised. In this regard, consideration may be given to any pending amendments to the regulation as well as the terms and conditions of previously issued exemptions.
- c. Exemptions will be granted only in unforeseen circumstances which are unlikely to recur or when the specified requirements are being amended to address certain situations.
- d. A person may also be exempt from the application of standards incorporated by reference into a specified requirement. For that purpose, the person may be exempt from the specified requirement only to the extent that compliance to the standards is required.
- e. The test for assessing the merits of a request for grant of an exemption is two-fold viz: whether the grant of exemption is in the public interest and whether such exemption if granted will not likely to affect the aviation safety adversely. Each question stands on its own and must be addressed independently.
- f. Exemptions granted by DGCA cannot be construed to have changed the specified requirements. Until the entire regulation-making process to amend a specified requirement is completed, the old regulation stands. In some instances where the intended change to the specified requirement is to bring relief rather than impose stricter requirements, exemptions can be used to bring the change into effect before the amendment officially comes into force.
- g. Regulation requires exemption granted to be published. However care will be taken to determine whether the text contains references to either personal or proprietary information and, in such cases, relevant information would be purged first before release.
- h. Receipt of exemption by a person does not exempt him from making the applicable fee if he was to comply with the requirement. A person receiving an exemption shall pay the applicable regulatory fee and additional 50% thereof, as the fees for processing the request for grant of exemption
- i. An exemption cannot be dated retroactively. It shall be effective only from the date on which it is signed by the DGCA.
- j. An exemption cannot be granted against a provision that imposes a duty on the Minister.
- k. The party being exempt has the choice to follow either the exemption, or the regulation. However, once the choice is made to follow the exemption, the party must comply with its conditions. If the party chooses not to follow the exemption, the regulation applies.
- l. Enforcement can only be exercised against the regulation, not the exemption.



- m. If an exemption is being issued pursuant to a leasing arrangement, the lease should become an Appendix to the exemption document.
- n. The issuance of an exemption is a privilege and cannot be guaranteed, and the time required for the process to be completed will depend on many factors over which one may not have control.

#### 4 Applicability

The contents in this document applies to all parties involved in the exemption-granting process.

#### 5 Definitions

- a. **Exemption** mean an exemption, exception, extension or deviation from a specified requirement that entitles a person to act outside the normal specified requirements.
- b. **Specified requirements** – means a requirement specified in terms of a Regulation, Rule, Order, Implementing Standard, Directive, Direction, Aviation Safety Notice in terms of the legislative provisions or Guidance Material issued by DGCA .

#### 6 Procedure for issuing exemptions

##### 6.1 General

Each exemption granted by the CAASL shall be signed by the DGCA.

##### 6.2 Application

- a. Any person or organization seeking grant of exemption from a specified requirement shall submit an application to the CAASL with the details specified in the Regulation
- b. The application shall accompany the processing fee which is 50% of the regulatory fee, if the applicant was to comply with the requirement for which exemption is sought.

##### 6.3 Processing of request for exemption

Processing of a request for grant of exemption involves five distinct steps viz

- a. **Step 1: Client Exemption Request** - Client must make own case sufficiently justifying the need for exemption to be granted.
- b. **Step 2: Exemption Request Assessment** – Relevant Division on receipt of the Client Exemption Request must assess whether the client was able to successfully argue its case against the criteria test.
- c. **Step 3: Exemption Disposition** – Relevant Division should decide on the basis of the assessment findings completed in accordance with the criteria test whether or not to grant or refuse the exemption request.
- d. **Step 4: Legal Review of Exemption Document** – Relevant Division, if convinced of the need to granting the exemption, should draft the exemption and forward the draft for the review of the Manager, Legal Affairs.
- e. **Step 5: Signature of the DGCA on Exemption Document** – After scrutiny of the Exemption Document by the Manager, Legal Affairs, it shall be returned to the Head of Relevant Division for its submission with his recommendation to the DGCA for signature.

##### 6.4 Exemption to be reviewed by the Manager, Legal Affairs

A draft containing the exemptions to be issued must be prepared by the relevant Head of Division and be submitted to the Manager, Legal Affairs of the CAASL for legal vetting to



ensure proper form and standardization prior to final submission for signature by the Director General of Civil Aviation. The complete file supporting the exemption request must be provided with the draft exemption for this purpose.

## 6.5 Internal Distribution of Exemptions

1. one copy on file of the party named in the exemption, sent by the originating Division.
2. one copy to each Division with need to know, sent by the originating Division.
3. one copy to the Manager, Documents and Web Services .
4. one copy to the Manager, Legal Affairs.

## 6.6 General Considerations

During the evaluation of a request for exemption the following shall be considered.

- a. consequence of an exemption being granted or denied in terms of the needs of or benefits to the aviation public and the local community;
- b. consequences which may be of commercial or practical convenience, or necessity of the operation.
- c. It is not sufficient that the exemption be considered “safe” and commercially expedient” for the applicant alone.
- d. All factors that examine the safety impact on the community at large.
- e. All factors that examine the economic impact on “non-exempt” operators given that an exemption must not result in any unjustified competitive advantage to one party over another.
- f. All factors that examine whether or not an exemption written against a foreign carrier will economically penalize another foreign carrier, or Sri Lankan operator.

## 6.7 Special Considerations

When an exemption request is for a commercial purpose that has potential for unfair economic advantage of one company over another, or a foreign air carrier over a Sri Lankan Operator; or any other situation where social or economic policy issues of national concern may be implicated, such matters shall be discussed with DGCA prior to processing the exemption request.

## 6.8 Safety Test

The safety test should be performed first prior to ascertaining whether the request for exemption is in the public interest.

## 6.9 Assessment Paper

- a. The Relevant Head of Division of the CAA, after evaluation of the request for exemption shall submit an Assessment Paper to DGCA.
- b. The purpose of the Assessment Paper is to summarize the case being put forward by the party making the request for an exemption with a view to documenting both the exemption request process, and to justify the basis for the decision made by DGCA to either grant or refuse the request.
- c. The Assessment Paper will reflect DGCA’s consideration of the exemption request being made based on the facts, law and proposed conditions put before it; together with the results of the CAA’s assessment of the party’s arguments.



- d. **Content** - The contents of the “Assessment Paper” is an answer to the arguments being presented by the party making the exemption request and must include the following information:
- Criteria to show that the exemption is in the public interest and not likely to affect aviation safety.
  - Conditions identified to mitigate any potential risk resulting from regulatory requirements being exempt.
  - Documented references of meetings, dates, attendees, issues addressed and decisions made.
  - Documented references that the Criteria test has been addressed.
  - Documentation of the decision to grant or deny the request based on the findings.
  - Conditions of the Exemption.
  - Validity period.
- e. **Subject Headings:** The subject headings of the Assessment Paper should be:
- Background
  - Public Interest
  - Aviation Safety
  - Justification to Grant/Deny
  - Conditions
  - Validity
  - Final Disposition
  - Regulatory Change if needed
  - NPA Initiated if needed
  - Exemption to Expire on (date)
  - Further Action (describe)

## 6.10 Format of the exemption

### a. Introduction

Note that an exemption as a legal document must contain certain essential elements of both substance and form to ensure its legal validity. By virtue of the fact that the exemption removes a party from complying with the requirements of a particular regulation, the exemption then becomes the “new legal regime”.

### b. General Structure

The exemption must be a stand-alone document and written on an independent sheet of paper. It must not be incorporated into a letter or other correspondence, nor include any extraneous information such as ordinary business matters. The document must speak exclusively to the exemption, its purpose, to whom it applies, the conditions that must be met in order for the exemption to come into effect, and the terms under which it will remain valid, and its expiry date.

### c. Headings

The exemption should provide information under the following general headings, as appropriate:

1. **Introductory Paragraph** should identify the source of power to exemption, or the specific provision number of the regulation (authorization) on the part of a person or corporation (name and address), with description of what is required by the exempted regulation.
2. **Purpose.** Explain why the exemption is necessary, and how the current regulatory structure is preventing the party from doing what is desired.
3. **Application.** The document must clearly indicate to whom or to what entity the exemption applies. All identifying particulars are to be included here; such as Sri Lanka aviation document registration numbers, aircraft identification by manufacturer, type, model serial number, registration marks, AOC number, etc. Also included under this





heading would be any requirements that must first be satisfied before the exemption can take effect.

4. **Conditions:** The terms and conditions of any exemption will vary depending on the facts of the situation. The terms of the exemption are those criteria that were identified during the public interest test and aviation safety test, and can be included here. It must be clear that the exemption is in effect only if the conditions are satisfied throughout the validity period of the exemption.
5. **Validity:** The validity section defines the term of the exemption, as well as identifies grounds for cancellation setting out a chronology of potential triggering events which would allow for the revocation of the exemption by the DGCA should circumstances require it.
6. **Cancellation:** There may be a number of circumstances which give rise to the need to legally revoke the exemption. This must not be overlooked for there can be legal consequences if the document does not expire.
7. **Signature of the DGCA :** The signature line must state the name, designation with official seal and the date and place where the exemption is issued.

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