

# **THE PACIFIC ISLANDS CIVIL AVIATION SAFETY AND SECURITY TREATY**

## **Preamble**

The Parties to this Treaty (hereinafter, "the Parties");

ACKNOWLEDGING the global basis of civil aviation encompassed by the Chicago Convention on International Civil Aviation and its related Protocols and Amendments,

RECOGNISING the difficulties faced by individual States in discharging their obligations and responsibilities under the Chicago Convention on International Civil Aviation and its related Protocols and Amendments,

RECOGNISING the advantages to individual States of a standardised regional approach to civil aviation safety and security regulatory oversight,

CONFIRMING the decision of the Pacific Islands Forum Aviation Ministers to establish a cooperative and regionally based safety and security regulatory organisation to meet the needs of Pacific Island States,

DESIRING to ensure the highest degree of safety and security in air transport and reaffirming the grave concern about acts or threats against the security of aircraft expressed by Pacific Islands Forum Aviation Ministers,

Have agreed as follows:

## ARTICLE 1 - DEFINITIONS

For the purposes of this Treaty, unless otherwise stated, the term:

- (a) “Constitution” means the Constitution of the Pacific Aviation Safety Office which provides direction to the Council and staff of the Pacific Aviation Safety Office;
- (b) “Convention” means:
  - (i) the Convention on International Civil Aviation, opened for signature at Chicago on December 7, 1944, including:
    - (a) any amendment that has entered into force under Article 94(a) of the Convention and has been ratified by all Parties to this Treaty,
    - (b) any Annex or any amendment thereto adopted under Article 90 of the Convention, insofar as such Annex or amendment is at any given time effective for all Parties to this Treaty, and
  - (ii) other Conventions and Protocols relating to civil aviation, and in particular to security;
- (c) “Council” means the Council of Directors of the Pacific Aviation Safety Office, comprising the Parties’ authorised representatives which provide policy direction for the Pacific Aviation Safety Office; and representatives from other organisations;
- (d) “Forum Island Countries” means the Pacific Island members of the Pacific Islands Forum;
- (e) “Inspector” means a person appointed or recruited by the Pacific Aviation Safety Office to undertake inspection duties;
- (f) “Pacific Islands Forum members” means Forum Island Countries, Australia and New Zealand;

- (g) “Pacific Aviation Safety Office, PASO” means the non-profit organisation incorporated to provide aviation safety and security regulatory oversight advice to those Parties seeking services;
- (h) “Party” means any State which has signed and ratified, or acceded to, the Treaty once it has entered into force;
- (i) “Requested level of service provision” means the classification of services to be provided by the PASO, that have been agreed and that are included in an agreement between a Party to this Treaty and the PASO;
- (j) “Safety” means a combination of measures and directions intended to provide appropriate standards for civil aviation including the requirements of Annexes 1, 6, 8 and 14 to the Convention and related documentation;
- (k) “Secretary General” means the Secretary General of the Pacific Islands Forum Secretariat;
- (l) “Security” means a combination of measures and human and material resources intended to safeguard civil aviation against acts of unlawful interference including the requirements of Annex 17 to the Convention and related documentation;
- (m) “Treaty” means this Treaty, and any amendments thereto.

## **ARTICLE 2 - SOVEREIGNTY**

The Parties recognise that each Party has complete and exclusive sovereignty over its airspace and responsibility for aviation safety and security regulatory oversight within its territory.

### **ARTICLE 3 - REGIONAL AND COLLABORATIVE BASIS**

Without prejudice to Article 2 and consistent with the rights and obligations of the Parties under international law, the Parties agree that the following obligations for the regulatory oversight of civil aviation under the Convention will be met in a regional and collaborative manner:

- (i) Airworthiness,
- (ii) Flight Operations,
- (iii) Airports,
- (iv) Security, and
- (v) Personnel licensing for these subjects.

### **ARTICLE 4 - THE MECHANISM FOR REGIONAL COLLABORATION**

1. The Parties agree that the mechanism used to meet the obligations in Article 3, will be the establishment of a centralised technical advisory organisation known as the Pacific Aviation Safety Office (PASO). The Pacific Aviation Safety Office shall function in accordance with the provisions of this Treaty, the Constitution of the Pacific Aviation Safety Office and other directions provided by the Council of Directors of the Pacific Aviation Safety Office.

2. The Pacific Aviation Safety Office shall provide to any Party as requested by that Party, advice and technical assistance on matters related to the regulatory oversight of civil aviation safety and security of that Party.

3. The Pacific Aviation Safety Office shall have international legal personality and such legal capacity as may be necessary to carry out its functions. The privileges and immunities which the Pacific Aviation Safety Office shall enjoy in the territory of a Party are only those as defined in Article 8 unless there is in place a separate agreement between the Council and the Party concerned.

## **ARTICLE 5 - RESPONSIBILITIES OF PARTIES**

The Parties shall:

- (a) retain at all times full responsibility for all matters related to aviation safety and security in their respective territories;
- (b) support the will and intent of this Treaty by directing the Pacific Aviation Safety Office through membership of the Council;
- (c) meet their annual financial contribution as set by the Council;
- (d) for those Parties requesting services from PASO, institute and maintain an aviation safety and security legislative framework in a standardised and consistent manner;
- (e) review and respond to, and act appropriately upon such reports and recommendations, as the Pacific Aviation Safety Office may provide, to fully meet international obligations;
- (f) ensure that any fees charged by the Pacific Aviation Safety Office to recover costs for the provision of services are reimbursed in a timely manner;
- (g) respond positively and in a timely manner to requests for information or data submitted by the Pacific Aviation Safety Office through that Party's authorised representative on the Council; and
- (h) from time to time notify the Council and other Parties of any change in their requested level of service provision by the Pacific Aviation Safety Office.

**ARTICLE 6 - THE PACIFIC AVIATION SAFETY OFFICE COUNCIL OF DIRECTORS**

1. The Pacific Aviation Safety Office Council of Directors shall consist of representatives of the Parties and representatives of such other organisations as may be decided by the Council and detailed in the Constitution.

2. The objective of the Pacific Aviation Safety Office Council of Directors is to support the mission of the Pacific Aviation Safety Office to inculcate an aviation safety and security culture in the Pacific.

3. The functions of the Council shall be to:

- (a) appoint the General Manager of the Pacific Aviation Safety Office;
- (b) provide policy and strategic direction to the Pacific Aviation Safety Office;
- (c) abide by, and from time to time review the adequacy and appropriateness of, the Constitution of the Pacific Aviation Safety Office and amend as required;
- (d) adopt rules of procedures and financial regulations, including in relation to annual and service fees, and other administrative regulations as may be required to amplify the Constitution of the Pacific Aviation Safety Office;
- (e) consider and approve the proposed annual budgets, work programmes, fee structures and staffing levels of the Pacific Aviation Safety Office;
- (f) receive, examine, comment on and release the annual report of the General Manager of the Pacific Aviation Safety Office; and
- (g) appoint financial auditors and receive their reports annually.

4. The Council shall appoint a Chair for a tenure of twelve months. The Chair may exercise a vote in Council decisions.

5. The Council shall hold a meeting at least once each calendar year. The Council may meet at anytime during the year following the agreement of one half or more of the Parties.

6. Generally, decisions in Council shall be by consensus, however, if all efforts to reach a decision by consensus have been exhausted then decisions will be undertaken by open vote requiring a two thirds majority of Parties present and voting. Consideration may be given in the Constitution to the use of written proxy authorities.

7. The Council shall determine a type of membership of representation other than Parties.

#### **ARTICLE 7 - FUNCTIONS OF THE PACIFIC AVIATION SAFETY OFFICE**

1. Subject to the directions of Council and the Constitution, the functions of the Pacific Aviation Safety Office shall be to:

- (a) conduct aviation safety and security regulatory tasks as requested by, and agreed with, any Party;
- (b) provide any Party upon request with advice and technical assistance relating to the regulatory oversight of civil aviation safety and security by that Party, using as a basis the standardised rules and procedures under that Party's legislative frameworks;
- (c) provide an annual work plan showing anticipated activities;
- (d) prepare an annual budget and annual report;
- (e) maintain records concerning aviation safety and security; and

(f) provide any Party that has requested advice and technical assistance with applicable copies of reports, findings of non-compliance and recommendations for rectification;

2. The Pacific Aviation Safety Office shall report to the Council on a regular basis on the implementation of the work plan, commitments, and any indications of unsafe incidents or trends in civil aviation safety and security.

### **ARTICLE 8 - AUTHORISATION**

1. Inspectors shall be authorised by a Party to conduct surveillance, data gathering and other activities for the purposes of facilitating advice to that Party as required for appropriate regulatory oversight.

2. Inspectors shall, when carrying out their duties on behalf of a Party, be deemed to be officers of the civil aviation administration of that Party, and shall attract rights, privileges and responsibilities no less favourable than those granted to civil aviation officers of that Party.

3. The Parties shall indemnify Inspectors from any pertinent legal suit arising out of the appropriate performance of their duties.

### **ARTICLE 9 - SETTLEMENT OF DISPUTES**

1. In case of a dispute between Parties as to the interpretation or application of, or compliance with, this Treaty, the Parties concerned shall seek a settlement of the dispute through negotiation, mediation or any other peaceful means of their own choice.

2. If any dispute between the Parties cannot be settled by negotiation, mediation or such other peaceful means of their own choice, any Party to the dispute may seek a decision from the Council. The decision of the Council shall be final and binding on the Parties.

## **ARTICLE 10 - SIGNATURE, RATIFICATION, ACCEPTANCE, APPROVAL**

1. This Treaty shall be open for signature by Pacific Islands Forum members and shall remain open for signature for twelve months from the 7<sup>th</sup> day of August two thousand and four.
2. Instruments of accession or approval shall be deposited with the Depositary.
3. Each Party shall be a member of the Council.

## **ARTICLE 11 - ACCESSION**

1. After the entry into force of this Treaty, any Pacific Island Forum member who has not signed the Treaty within twelve months from the date on which it was opened for signature, may accede to the Treaty upon deposit of an instrument of accession to the Depositary.
2. After the entry into force of this Treaty, the Parties may, by 2/3 majority, invite other States who are not Pacific Island Forum Members to accede to this Treaty.
3. For each State which accedes to the Treaty after the entry into force of the Treaty, this Treaty shall enter into force on the thirtieth day following the deposit of its instrument of accession.

## **ARTICLE 12 - ENTRY INTO FORCE**

1. This Treaty shall enter into force thirty days after the fifth signature on the Treaty.
2. If there are less than five signatories after the lapse of the twelve month period from the date this Treaty is opened for signature, this Treaty shall enter into force thirty days after the deposit by the fifth State of its instrument of accession. Such State shall be inclusive of those States who have signed the Treaty.

### **ARTICLE 13 - AMENDMENT**

1. Any Party may propose amendments to this Treaty by a written communication addressed to the Depositary. The depositary shall promptly circulate the proposal to all Parties.
2. Discussion in Council will be the normal method of progressing amendments however the Parties may notify the Depositary in writing of acceptance of the amendment.
3. Amendments to this Treaty shall enter into force thirty days following notification by the Party which provides a two thirds majority by its acceptance of the amendment.

### **ARTICLE 14 - WITHDRAWAL**

A Party may withdraw from this Treaty by giving written notice of withdrawal to the Depositary. The withdrawal shall be effective twelve months after receipt of the notice by the Depositary, unless the Party withdraws its notice by written communication to the Depositary prior to the end of the twelve months period.

### **ARTICLE 15 - DEPOSITARY**

The Secretary General of the Pacific Islands Forum Secretariat shall be the Depositary of this Treaty and any amendment or revisions thereto. The Depositary shall register this Convention with the Secretary-General of the United Nations in accordance with Article 102 of the Charter of the United Nations and to the Secretary General of the International Civil Aviation Organisation in accordance with Article 83 of the Convention.

**IN WITNESS THEREOF**, the undersigned, duly authorised thereto by their respective Governments, have signed this Treaty.

**DONE** at Apia this 7<sup>th</sup> day of August two thousand and four in a single original in the english language.

For the Government of Australia .....  
this \_\_\_\_\_ day of \_\_\_\_\_

For the Government of Cook Islands .....  
this \_\_\_\_\_ day of \_\_\_\_\_

For the Government of the Federated States of Micronesia .....  
this \_\_\_\_\_ day of \_\_\_\_\_

For the Government of the Republic of the Fiji Islands .....  
this \_\_\_\_\_ day of \_\_\_\_\_

For the Government of Kiribati .....  
this 7<sup>th</sup> day of August 2004

For the Government of the Republic of Nauru .....  
this \_\_\_\_\_ day of \_\_\_\_\_

For the Government of New Zealand .....  
this \_\_\_\_\_ day of \_\_\_\_\_

For the Government of Niue

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this \_\_\_\_\_ day of \_\_\_\_\_

For the Government of the Republic of Palau

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this \_\_\_\_\_ day of \_\_\_\_\_

For the Government of the Independent State of Papua New Guinea

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this \_\_\_\_\_ day of \_\_\_\_\_

For the Government of the Republic of the Marshall Islands

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this \_\_\_\_\_ day of \_\_\_\_\_

For the Government of Samoa

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this 7<sup>th</sup> day of August 2004

For the Government of Solomon Islands

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this 12 day of MAY 2005

For the Government of Tonga

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this 7<sup>th</sup> day of August 2004

For the Government of Tuvalu

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this \_\_\_\_\_ day of \_\_\_\_\_

For the Government of Vanuatu

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this 9<sup>th</sup> day of August 2004