Act on Conduct of Violating Aircraft B.E.2553 (2010)

BHUMIBOL ADULYADEJ, REX.

Given on the 11th Day of November B.E.2553

Being the 65th year of the Present Reign

His Majesty King Bhumibol Adulyadej is graciously pleased to proclaim that:

Whereas it is expedient to have the law on Conduct of Violating Aircraft,

This Act contains certain provisions in relation to the restriction of rights and liberties of persons, in respect of which Section 29, in conjunction with Section 32, Section 34, Section 36, and Section 41, of the Constitution of the Kingdom of Thailand so permit by virtue of law;

His Majesty the King, by and with the advice and consent of the House of Parliament, is graciously pleased to enact an Act as follows:

Section 1 This Act is called the "Act on Conduct of Violating Aircraft B.E.2553".

Section 2 This Act shall come into force ninety days after the day of its publication in the Government Gazette.

Section 3 The following shall be repealed:

(1) Act on Conduct of Violating Aircraft B.E.2519

(2) Act on Conduct of Violating Aircraft (No.2) B.E.2522

Section 4 In this Act,

"Aircraft" means an aircraft under the Law on Air Navigation;

"Civil Aircraft" means an aircraft that is registered under the Law on Air Navigation and an aircraft that is registered and having nationality in accordance with a foreign law;

"Kingdom" shall mean to include an Air Defence Identification Zone stipulated by the Minister of Defence in cooperation with the Minister of Transport under Section 6.

"Flight Plan" means flight plan under the Law on Air Navigation.

"Air Traffic Service Unit" means unit that provides air traffic services under the Law on Air Navigation.

"Identification" means investigating and identifying the type, nationality and registration of an aircraft as well as its conduct according to the flight plan and the specifications of an aircraft via radio communication, electrical system, visual signals, and aircraft interception, or by any means whatsoever.

"Interception" means operation to identify and control the aircraft to operate under the military official command and shall mean to include the destruction of aircraft in case of necessity in order to maintain internal security or disaster prevention to the public.

"The act that might endanger the security of the Kingdom or the public" shall mean to include the act that might endanger the security of the Kingdom or the public according to the Minister of Defence stipulated under Section 11 paragraph three.

"Initial Investigation" means searching for facts and evidences as well as gathering evidences or implementing by any means under this Act, which the military official had done under Conduct of Violating Aircraft in order to find the facts and details of the act or to bring the offender to legal proceedings.

"Aircraft Commander" means aircraft commander under the Law on Air Navigation including the pilot appointed by government office under the Law on Air Navigation or foreign state to command and be responsible for the security of government aircraft or foreign state aircraft, as the case may be.

"Military Officials" means Air Force officials or the other military officials with the power and duty as stated in the Air Defence Plan.

Section 5 The Prime Minister, the Minister of Defence and the Minister of Transport shall be responsible for the enforcement of this Act and shall have rights to issue the Ministerial

Regulations, Proclamations and Rules for the execution of this Act under authority of each Ministry or State agency.

The Ministerial Regulations shall come into force upon their publication in the Government Gazette.

Chapter 1
Inspection and Identification

Section 6 For the enforcement of this Act, the Minister of Defence in cooperation with the Minister of Transport shall be responsible for declaring an Air Defence Identification Zone by publishing in the Government Gazette.

Section 7 Inspection and Identification system shall follow an Air Defence Plan stipulated by the Royal Thai Armed Forces with the approval of the Minister of Defence and as specified in this Act.

Section 8 Upon granting a permission to any Aircraft to fly or upon receiving the Flight Plan, the competent authority shall permit the Aircraft to fly under the Law on Air Navigation and the Air Traffic Service Unit receiving the Flight Plan shall submit the license or the Flight Plan as the case may be to the Military Officials in accordance with the rules stipulated by the Minister of Transport in cooperation with the Minister of Defence.

Section 9 Military Officials shall be responsible for inspecting and identifying every Aircraft that flies into or flies out of the Kingdom, or takes off and lands within the Kingdom, or flies across the Kingdom in accordance with those specified under Section 7 in the Air Defence Plan.

Section 10 For the execution of this Act, Military Officials shall have the following powers:

(1) Order the Aircraft to fly on route specified in the Flight Plan, or to fly to the border area or out of the prohibited area, restricted area or dangerous area, or to land at airfield or temporary takeoff and landing area for Aircraft or to order the Aircraft to perform in other matters if necessary.

(2) Aircraft Interception under Section 11

(3) Destruction of Aircraft from ground under Section 13

Section 11 Military Officials shall intercept an Aircraft when any of the following incidents occur:

(1) It is unable to inspect and identify the Aircraft from ground.

(2) When there are reasonable grounds to suspect that an Aircraft has violated or failed to comply with the Law on Air Navigation or other laws or convention or international agreement, for example:

(a) The execution of Flight Plan or air traffic rules, for example, the use of takeoff and landing area for Aircraft, flying follow the route plan, flying into or across the prohibited area, restricted area or dangerous area.

(b) Flying into or out of the Kingdom or taking off or landing in the Kingdom or flying over the Kingdom.

(c) Controlling or releasing a pilotless Aircraft or parachuting.

(d) Carrying munitions of war on board an Aircraft or using photograph apparatus or using data collection equipment from Aircraft.

(3) Whenever an Aircraft has committed the act likely to threaten national security or public,

To conduct Interception under paragraph one, Military Officials shall communicate via radio or electronic system. If it is not possible to communicate by the aforementioned system, the visual signal under the rules stipulated by the Minister of Defence in cooperation with the Minister of Transport shall be used by publishing in the Government Gazette.

The Minister of Defence may specify any act of an Aircraft as the act that might be against security of the Kingdom or a threat to the public by publishing in the Government Gazette.

Section 12 For the enforcement of Section 11 or in case of a reasonable cause to believe that an Aircraft has committed the act which may endanger the security of the Kingdom or the public, Military Officials shall have the powers as follows:

(1) Use Aircraft weapons or other weapons to control the Aircraft that failed to comply with Military Officials orders or committed the act that may endanger to the security of the Kingdom or the public in accordance with the rules and procedures as specified in the Defence Ministerial Rules.

(2) Destroy the Aircraft by receiving approval from the Minister of Defence. In case of necessity which is unavoidable, Military Officials shall destroy such Aircraft and immediately report to the Minister of Defence.

Section 13 In case the Military Official has conducted the Interception but the result is in vain or is unable to intercept such an Aircraft in time, if that Aircraft has committed the act that might endanger the security of the Kingdom or the public, Military Officials shall have the right to use ground-to-air weapons to destroy such Aircraft. The provisions of Section 12 (2) shall apply.

Section 14 Subject to Section 12, in case of civil Aircraft, the conduct of Interception to identify shall be the final solution. After the identification process has completed, the communication or visual signals shall be used to lead such civil Aircraft to fly into the route specified in the Flight Plan or lead to the border area or lead out of the prohibited area, restricted area, or dangerous area, or lead to land at airfield or temporary takeoff and landing area for the Aircraft or to order the civil Aircraft to perform in other matters if necessary.

Chapter 2

Detention and Seizure of Aircraft, and the Arrest, Control and Initial Investigation

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Section 15 Military Officials shall have power to execute the Aircraft, the Aircraft Commander and other persons on board the violating Aircraft or suspected violating Aircraft as follows:

(1) Inspect, search or detain an Aircraft

(2) Seize an Aircraft and articles relating to an offence or articles which are about to commit or has committed an offence.

(3) Arrest, control or initial investigate an Aircraft Commander and other persons involved.

(4) Order an Aircraft Commander or other persons involved to move an Aircraft or perform any act for the interest of the execution of the Military Official.

The use of power of the Military Official under paragraph one shall follow the rules set forth by the Minister of Defence in cooperation with the Commissioner General.

Section 16 If the result from the inspection or the initial investigation of an Aircraft found that such Aircraft Commander unintentionally used the Aircraft in an illegal way or violated the Flight Plan and has not committed any offences as well as not having any articles relating to an offence or articles which is about to commit or has committed an offence on board an Aircraft, the Military Official shall have the power to consider the release of such the Aircraft or coordinate the competent authority of civil aviation to consider the release of such the Aircraft, as the case may be, pursuant to the rules set forth by the Minister of Defence in cooperation with the Minister of Transport.

Section 17 Subject to Section 20, after the Military Officials have executed the operation as may be necessary for the initial investigation, the Military Officials shall deliver the offender together with an Aircraft, evidences, seized articles as well as all the relevant official records made by the Military Officials to the inquiry officer as soon as possible.

Section 18 In case the Military Officials have delivered the offender to the inquiry officer for further proceedings, the period of the offender's detention before being delivered to the inquiry officer shall not be calculated as the detention time by the inquiry officer pursuant to the Criminal Procedure Code which shall not exceed twelve days. If it is necessary to exceed twelve days, the Military Officials shall obtain the approval from the Chief of Defence Forces for such extension as may be necessary but shall not exceed twelve days.

The normal delivery time of the offender to the office of the Military Officials having power to conduct initial investigation shall not include the period of delivery the offender to the inquiry officer under paragraph one.

Section 19 To perform the duties under this Act, Military Officials shall have the same powers as administrative official or senior police officer and inquiry officer under the Criminal Procedure Code.

Section 20 Retention of an Aircraft as well as articles and all relevant evidences shall follow the rules set forth by the Minister of Defence in cooperation with the Commissioner General. In case of delivery of the official records of inquiry to the inquiry officer under Section 17, if such rule requires other person who is not the inquiry officer to retain an Aircraft, it shall be deemed that such retention is the act on behalf of the inquiry officer.

In case the articles or relevant evidences are perishable or not appropriate to keep or such keeping will cause excessive duties for the official, the distribution of such articles or evidences can be made through the auction or by other appropriate means.

Retention of an Aircraft or articles or evidences which shall be long kept may require any other unit to retain. Such unit shall have power to use such property for the interest of the government.

Chapter 3
Expenses

Section 21 In case the Military Officials have conducted Interception or operated to destroy an Aircraft from ground under this Act, if it appears that such Aircraft has violated the law or convention or international agreement or committed the act that might endanger the security of the Kingdom or the public, the owner of the Aircraft or the Aircraft Commander shall be responsible for the expenses under this chapter.

Section 22 The expenses of conduct of Interception or destruction of Aircraft from ground shall be as follows:

(1) Inspection and identification

(2) Interception

(3) Move of Aircraft

(4) Retention of Aircraft, articles and evidences

(5) The use of weapons for destruction of Aircraft

(6) Other relevant expenses as specified in the Ministerial Regulations

The calculation of expenses under paragraph one shall be in accordance with the rules and procedures specified in the Ministerial Regulations.

Section 23 The Expenditure Review Committee shall be organized comprising the Commander-in-Chief of the Royal Thai Air Force as Chairman along with a representative of the Ministry of Defence, a representative of the Office of the Attorney General, a representative of the Department of Civil Aviation, a representative of the Comptroller General's Department, a representative of the Department of Treaties and Legal Affairs as board members. In addition, the Commander of the Directorate of Air Operations Control shall be appointed as a board member and a secretary.

The Committee under paragraph one shall have power to specify the amount of expenses as a result of the conduct of Interception under this Act.

Section 24 After the Committee under Section 23 has considered the expenses, such Committee shall inform the Royal Thai Air Force and having the Royal Thai Air Force call for the payment from the Aircraft owner or the Aircraft Commander as soon as possible in accordance with the rules set forth by the Minister of Defence.

In case of seizing the Aircraft and articles on board the Aircraft for legal proceedings, the Royal Thai Air Force shall have rights to continue the seizure of such Aircraft and articles until all payment is paid, even the case is ended. The provisions of Section 20 shall apply mutatis mutandis.

In case an Aircraft owner or an Aircraft Commander fails to pay for the expenses in time, the Royal Thai Air Force shall conduct the auction or other means on such Aircraft and articles on board the Aircraft.

The money received from the auction or by other means under paragraph three shall be paid for the expenses at the amount specified by the Committee under paragraph one. In case of there is some amount left, the Aircraft owner or the Aircraft Commander shall be summoned to receive such amount back within one year. If there is no presence of the Aircraft owner

or the Aircraft Commander, that amount shall be devolved on the state. In case of insufficient amount for the payment, the Royal Thai Air Force shall have power to proceed for civil case to the court.

Section 25 Any expenses incurred from the conduct of Interception and destruction of an Aircraft from ground for a foreign state Aircraft shall be in accordance with the rule of international comity and reciprocity.

Chapter 4
Penalty Provisions

Section 26 Any person who does not comply with the Military Officials orders to move an Aircraft or perform any act for the interest of the execution under Section 15 (4) with no sufficient reason shall be liable to imprisonment for a term not exceeding six months or a fine not exceeding twenty thousand baht or both.

If the offender under paragraph one is an Aircraft Commander, such offender shall be liable to imprisonment for a term not exceeding one year or a fine not exceeding forty thousand baht or both.

Transitory Provision

Section 27 Air Force officials under the Act on Conduct of Violating Aircraft B.E.2519 shall be the Military Officials under this Act until Air Force officials or other Military Officials are appointed to have power and duty as stated in the Air Defence Plan.

Section 28 All the Ministerial Regulations, Proclamations or Rules stipulated in accordance with the Act on Conduct of Violating Aircraft B.E.2519 which have been previously in effect prior to the enactment of this Act shall continue to be applicable only if it is consistent with this Act until the Ministerial Regulations, Proclamations or Rules under this Act have been granted and enforced.

Section 29 The Air Defence Plan and the Air Defence Identification Zone which have been in effect prior to this Act shall continue to be the Air Defence Plan and the Air Defence Identification

Zone under this Act for ninety days from the enactment of this Act, only if it is consistent with this Act.

Section 30 All investigations conducted under the Act on Conduct of Violating Aircraft B.E.2519 which are not completed by the enactment of this Act shall be continued under this Act and all investigations previously conducted under the Act on Conduct of Violating Aircraft B.E.2519 shall be regarded as an investigation under this Act.

The seizure of an Aircraft and articles which its possession constitutes an offence or articles to be used or were used in the commission of offence under the Act on Conduct of Violating Aircraft B.E.2519 shall be regarded as a seizure under this Act.

Section 31 The reimbursement of expenses occurred under the Act on Conduct of Violating Aircraft B.E.2519 for identifying or forcing an Aircraft to land as well as any incurred cost and other expenses as the result of aircraft retention which are incomplete shall be regarded as the expenses under this Act.

In case of an appeal to the Minister of Defence, the Minister of Defence shall send the case to the Expenditure Review Committee under Section 23 within thirty days from date of enforcement of this Act for further consideration.

Within the appeal period of the Act on Conduct of Violating Aircraft B.E.2519, the person liable, when informed, shall have the right to appeal to the Expenditure Review Committee under this Act subject to Royal Thai Air Force Order of expenses and incurred costs.

Section 32 Section 5 under the Act on Conduct of Violating Aircraft B.E.2519 shall remain in effect until the Ministerial Regulations relating to Flight Plan under the Law on Air Navigation takes effect.

Countersigned by
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Prime Minister