

**International
Comparative
Legal Guides**



Aviation Law

2024

12th Edition

Contributing Editors:

Alan D. Meneghetti
Ipeco Holdings Limited

Philip Perrotta
K&L Gates LLP

glg Global Legal Group



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Preface

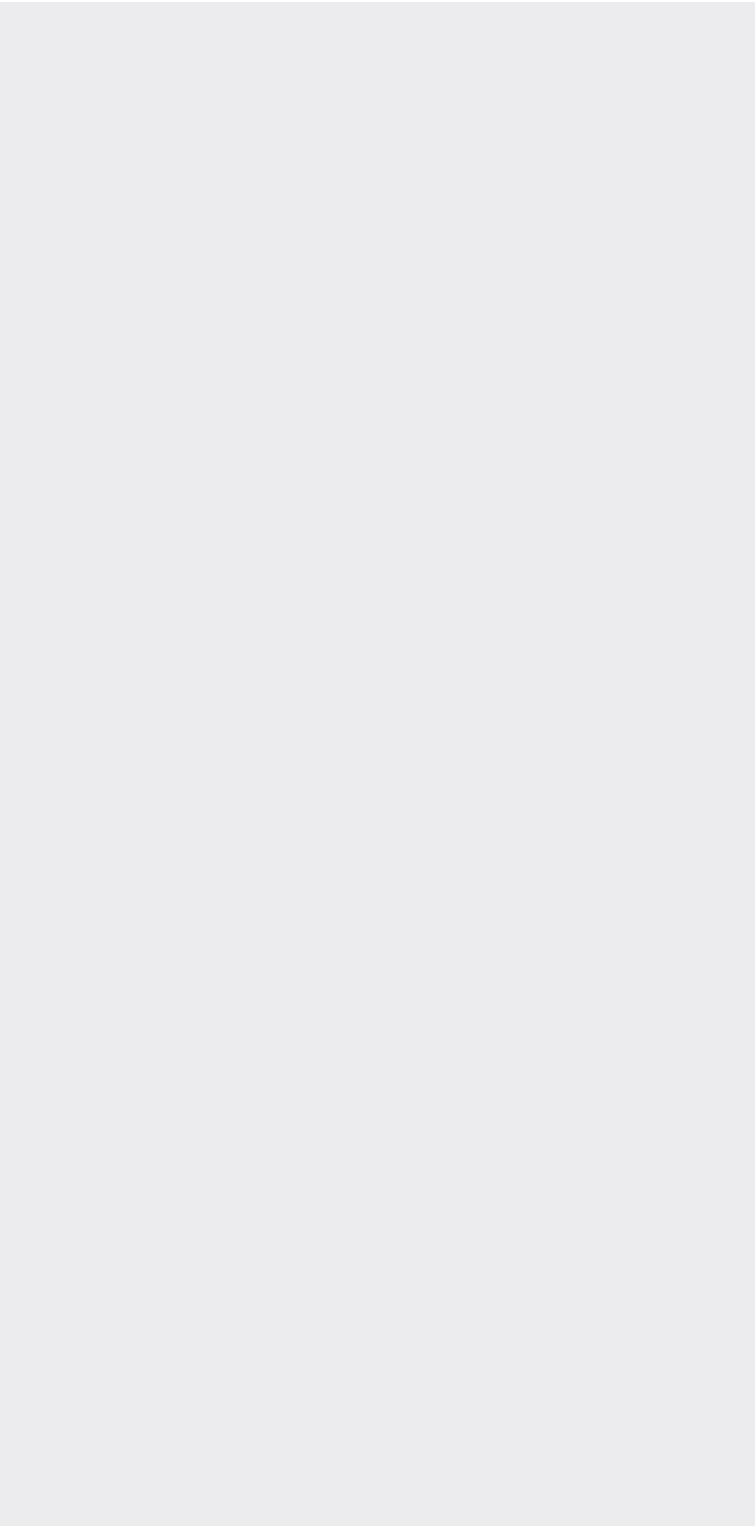
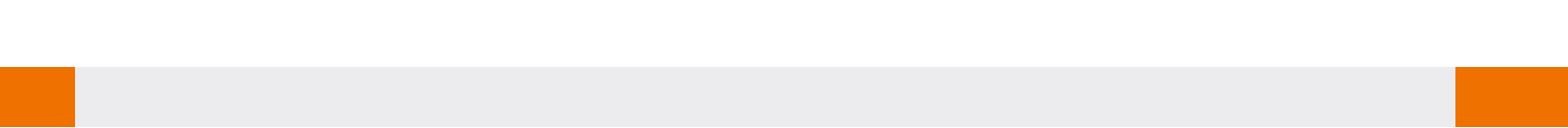
Dear Reader,

I am pleased to introduce the 12th edition of *ICLG – Aviation Law* published by Global Legal Group on the occasion of IATA's 2024 World Legal Symposium. This edition is an excellent resource for expert commentary and analysis of leading developments in aviation law.

IATA is the trade association for the world's airlines, representing approximately 320 airlines and 83% of global air traffic. The scope and breadth of the legal issues our airline members are facing is evolving at pace. In addition to traditional aviation law topics such as the application of the liability conventions, aviation lawyers now must be conversant in consumer protection, advertising standards and data privacy compliance matters. Legal challenges presented by aviation's environmental goals are increasingly complex and diverse. Litigation relating to aviation industry participants communications about those very goals are moving forward in many jurisdictions.

I would like to thank Global Legal Group for its contribution to the work of in-house aviation lawyers throughout the *Guide* and also for their support of the World Legal Symposium.

Leslie MacIntosh
Interim General Counsel
International Air Transport Association



International Comparative Legal Guides

Views from the Open Plan Office: A Private Practice Lawyer's Move In-House

Ipeco Holdings Limited



Alan D. Meneghetti

A little over a couple of years ago, I decided to swap the only working life I had ever known as a private practice lawyer (well, apart from the occasional summer vacation job in a hotel or sports store, and a brief dalliance with running a restaurant), and go in-house as the General Counsel at one of my clients. This chapter is not about whether this was one of the best decisions of my working life (it was) or how much more I prefer being in-house to slugging it out as a partner in a variety of international law firms (infinitely so), but rather it is about the different perspectives one has on the world when one is in-house as opposed to in private practice, and what matters most to those of us who have traded one lifestyle for another. And no, the answer to that last question is not simply that one no longer has to account for every second of every working day. At least for me, anyhow.

An important consideration for me, when moving in-house, was remaining in the aviation field. It is an area that I love and have a passion for and, whilst I have an interest and passion for a number of other areas too (for instance, fashion and sporting attire), there are a lot of areas that I have very little to no interest in. I could not, at least not very happily or successfully, see myself working in areas I had little interest in. For me, as for most General Counsel I suspect, being invested in your employer's product makes a huge difference to your enjoyment of your job and overall satisfaction, both at work and, dare I say it, in life. No matter what one says about keeping work and life separate, if one has any form of commitment to one's job it is very difficult for a miserable day at the office not to bleed into your home life. And *vice versa* for a good day. I am not foolish enough to start writing about bad days at home leading to miserable days in the office, but I am sure you get the idea. The one impacts the other.

One of the frustrations that I had as a private practice lawyer was that I rarely got to see transactions I was advising on being implemented and coming to fruition. Once the deal was signed – and often before if the client was particularly cost conscious – I would move onto another transaction, and would then move on from that to another transaction (either three-quarters of the way through or, at the latest, as soon as the execution versions of the relevant agreements were agreed). Now this may not be a frustration for everyone but, for me, it was: you see, I wanted to be part of the rolling out of the deal. I wanted to see the cockpit seats being manufactured, shipped and installed in a new commercial aircraft, or the coffee maker working in the aircraft galley. So, after a while, I found this aspect of my job a smidgen unsatisfying. And then, after a while more, it got to be more than a smidgen unsatisfying, and it became downright annoying. Being in-house, one obviously gets to see the fruits of one's labour, as it were, being produced and rolled out. Not only that, as one also gets the chance to deal with any issues which

arise with the implementation of the agreement once it has been signed and is being rolled out. Furthermore, and whilst my clients were, generally, pretty good about making me feel part of their wider legal team, being in-house really makes me an integral part of the business, and part of the ongoing endeavours of the wider group of folks who make up the business and who are all working towards a single defined end. To me, this is enormously satisfying: I get to work alongside colleagues who are experts in a range of areas (from sales and customer support to aviation regulation compliance and supply chain management) and, whilst we all pull on different metaphorical ropes, we are all pulling in the same direction and with the same end goal in mind. It feels like I am now part of an orchestra, rather than just being part of, say, the brass section.

A significant benefit of working alongside commercial colleagues is that one starts to acquire a far better understanding of the law in practice, and what “works” for a business. When one is advising a client as a private practitioner, one has, more or less constantly, the fact that one has to give as comprehensive an answer to a legal query which arises as is possible. Not only is this to safeguard the private practitioner against a possible insurance claim, but also because one often is not privy to the full context of the situation which is giving rise to the question. Now, as a private practice lawyer the trick, of course, is to give an answer to a question which is not too verbose or off topic, something which is not that easily done and which, in any event, usually leaves the client with the ultimate decision to make which they have to do with a varying degree of difficulty (depending on, amongst other things, how on topic your answer is). Being in-house, one acquires a far better feel for the issues and the commercial tensions which exist, the business' tolerance for risk and where the real points of pressure lie. In other words, where do the battles need to be waged and where might victory, as it were, be conceded. Acquiring this type of knowledge has been both satisfying (on a personal and intellectual level), as well as enormously helpful (on a professional level) when providing my advice, which is (I think) becoming less verbose, and more concise and on point. My CEO may disagree, and this is certainly an aspect which is a work in progress, but I do feel that, after having practised law for over 25 years, I am finally providing what I consider to be “good” commercial-based advice which may be taken with the confidence that I understand the issues at play, the tolerances involved and the appetites for risk involved.

It is probably not very helpful for me to harp on about the relief I have at not having to record my billable hours or having to explain to my senior partner why I have not hit a particular target (there are only so many excuses cum reasons one can recycle). Somewhat oddly, though, I found myself suffering from some form of lawyer's Stockholm Syndrome when I did

not have to account for less than a 10-hour day to anyone. There is, perversely, some comfort in the familiar accounting and recording of time: a non-literary diary of what you have achieved each day. I do still find myself thinking, when having a cup of coffee with a colleague, that I am going to have to find this 45 minutes at the back end of the day so that I do not end my day short on time (or, even worse, not be allowed to “close” my time for the day as I had not met the firm’s daily minimum threshold). However, what I have found the “freedom” from time recording has allowed me to do is to just chat with people to find out about, amongst other things, issues which they have with particular suppliers or products and, generally, to foster a better understanding of the various parts of the business, what makes each “tick” and what challenges they face. And I can do all this without the pressure of needing to either bill someone or record the time under some or other marketing code which has to be justified to someone in Accounts at some point during the financial year. Also, it is no longer a disaster in the order of the Fall of Rome if my 45-minute coffee turns into a 90-minute coffee. That’s nice too.

I appreciate that not all in-house lawyers are as fortunate as I am with regards to the timekeeping point, and I am grateful for this. My point, however, is that for me I have far more freedom now to “just chat” with people about work-related things *sans* the pressure of having to explain to anyone why I spoke to Keith from Procurement for an hour about the training needs of his team and how and when we might best address these.

Another aspect of the in-house role I relish is, in keeping with the orchestral theme, having other strings to my bow. No longer am I simply involved in giving pure legal advice in relative isolation. I am now involved in strategy discussions, in meetings discussing business operations and employee challenges, and in trouble-shooting general issues which arise in the business and where my employer feels I may have something to add, even if this is not necessarily legal. I like this, a lot, I have to say, as it adds diversification to a job which I have been doing for over a quarter of a century and which had become somewhat routine. I mean, how different can privacy policies be after you have drafted or reviewed a few hundred? Here’s the thing: the invitation to be involved in more commercial decisions and discussions has not only been interesting but also, personally, rather invigorating and I feel that, as a lawyer as much as an individual, I have developed as a result of this.

The opportunity to work alongside our customers in solving issues has also been a huge boon. No longer am I wheeled out simply for the passive-aggressive contract negotiation or tussle over the liability of intellectual property clauses: I now have the chance to work alongside our customers to reach a solution which works for both sides. Part of this is *talking with* (not *at*) customers, and *hearing* about the issues they are facing, and then working with them to resolve these in ways which are mutually beneficial. There is some sort of camaraderie, I find, amongst in-house lawyers, something which was not, I must say, omnipresent in private practice. There is more openness than I experienced previously in private practice: perhaps because I am more transparent with our customers about our issues which I now understand better, or perhaps because I am not regarded as a “gun for hire”: I’m not sure, but I’ll take it. It is enormously beneficial really knowing and understanding the issues are which a customer is facing as it informs their position on various contractual provisions and allows one to come up with solutions which work, hopefully, for everyone.

Also, I have now discovered that when one comes up against a private practitioner, they are generally nicer to deal with now that they are not dealing with a competitor in the private practice space. Possibly this is because I am now nicer to deal

with as I am not fighting desperately to win every argument and contractual point that is being taken so as to justify my presence on the transaction and, ultimately, my invoice. Whatever the reason, I feel that I am now nicer to deal with as I am more relaxed in the fact that I really do know my client well (as they are my employer), and I know better than previously the issues we need to raise and the reasons for them. My blood pressure and resting heart rate have dropped nicely too.

Being in-house gives one an inside track as to what is happening in the industry, and what the next “big thing” is going to be. In aviation, we have not really had a “big thing” for quite a while. We have had lots of “things” (such as sustainable aviation fuel, emissions trading, slot regulation, delayed flight compensation and the challenges wrought by Brexit), but I am not sure we have really had a “big thing” for a while. I am sure that someone will correct me but, regardless, what I do think we are going to be seeing is the extremely exciting arrival of electric vertical take-off and landing (eVTOL) craft and the rapid growth of urban air mobility (UAM) and the day-to-day utilisation of drones by businesses to deliver services and products to consumers. One of the hats I wear is as Vice President of WALA (the Worldwide Airport Lawyers Association), and there is an extraordinary amount of noise and excitement around these areas and, in particular, the UAM piece. This is surely going to be the biggest “thing” we have seen in the aviation and air law space for decades: the infrastructure and regulatory changes required are enormous, as lawyers and urban planners figure out how to introduce air taxis into the existing urban infrastructure and legislative regime. Not only will the advent of these technologies create an optically different environment, but it will also necessitate one which is legislatively different to that in which aviation has operated for the past century or so. In short, it is an extremely exciting time to be an aviation lawyer, whether in academia, private practice or in-house. The advantage of certain in-house roles is that the lawyers in these positions will have a real say in shaping the legal and contractual infrastructure in which we do business. Working with eyes to both the future as well as the past and by using knowledge acquired over decades, the aviation lawyer will be required to adapt this knowledge and the existing infrastructure to the brave new world of the urban air taxi or pilotless drone. With an apology to the Bard, we really are entering into a brave new world which has such fantastic innovations and machines in it.

The other “thing” which I foresee seeing more of in 2024 is an increase in the ongoing supply chain difficulties global markets have been experiencing since COVID-19. No sooner had these supply chains recovered from the impact of COVID-19 than they were impacted by the Russian-Ukraine war and now, more recently, the war between Israel and Palestine. Whilst we are not hearing as much about these issues in the news as was once the case, they are still very much there and a more or less constant headache for supply chain departments. As lawyers, we are going to have to come up with contractual provisions which work better than the ones on which we currently rely: penalising one side for a delivery default or simply declaring a *force majeure* event is starting to wear thin. As we have seen, just because a particular crisis ends (such as COVID-19), it does not mean that the impact of that crisis ends, and customers enforcing delay penalties are only pushing businesses already under strain to breaking point. This is no good for either the customer or its suppliers and does not advance the resolution of the supply chain issue. In short, we, as lawyers, are going to need to be more innovative with our solutions and our drafting on this issue, build in more communication and assistance obligations, and reference better yardsticks to determine when deliveries should be getting back on track.

To bring all this together in closing, perhaps the biggest difference for me in going in-house has been to see and experience the law as a “living thing”. Now, before you start to baulk at how corny this sounds, hear me out. For years I drafted contracts and worked on revisions which both my client and their client/supplier found acceptable. I did not have to think too much about how things were really truly going to work: if my client was happy and the other side could live with the drafting, the box was ticked, and we moved on to the next issue. If an issue arose with the implementation of the relevant clause, the two parties invariably found a way of working through this without, in most cases, my help or agreeing a formal contract amendment. Being in-house, as I have said above, I now understand the issues involved better and, if something is not working, then I get to revisit the contract and figure out not

only a contractual/legal compromise, but also a compromise that is going to work for the folks on the shop floor. That is, something which works both legally and practically. So, whilst I still read new case law and keep up to date on know-how, I now read this with slightly different glasses: I take the law and see how it might apply to my business and the challenges we encounter, both legally as well as practically. Which is all rather nice actually, as this is how law started. My law degrees have all been founded on the basis of Roman Law, and Justinian’s Twelve Tables which were created with exactly this in mind: codifying how to solve the day-to-day difficulties of fifth century BCE Romans in a practical and fair manner. I haven’t donned my toga to the office yet, but I am rather excited to be rediscovering ways in which the law really can and does make a difference on a daily basis, and for that I’m rather grateful.



Alan D. Meneghetti is the General Counsel of Ipeco Holdings Limited. Prior to joining Ipeco, Alan worked in private practice for over 20 years, holding partnerships in a number of London and US law firms. When in private practice, Alan undertook a full range of commercial and regulatory work in the general commercial, aviation, technology and telecommunications sectors, and he worked, and continues to work, extensively on matters in Europe, India, the USA and the United Kingdom. Alan has law degrees from the Universities of Cape Town and Aberdeen, and is qualified as an attorney in South Africa and as a solicitor in England and Wales.

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Founded in 1960, Ipeco is a world leader in aircraft crew seating and executive jet passenger seating, with an expanding presence within the electrical galley insert sector. The Company has developed an extensive manufacturing capability to deliver these products and has sustained a reputation for innovation and quality. Ipeco is a global company and operates around the globe for AOG, spare parts distribution, repair services and technical support.

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WALA: Bringing Airport Lawyers Together to Support the Legal Acceptance of Urban Air Mobility (UAM)

Worldwide Airport Lawyers Association (WALA)



Diego R. Gonzalez



Alan D. Meneghetti

About WALA

Airports by their nature are geographically separated and raise specialised issues that airport lawyers are often required to grapple with alone or in small teams. The Worldwide Airport Lawyers Association (WALA) brings together airport lawyers, aviation industry colleagues and interested parties to develop, share and debate relevant issues in their field of law through annual conferences, webinars, news feeds and other events.

The objectives of WALA are to:

- promote and assist in cooperation among legal advisors and other public and private sectors of the worldwide airport, aviation and aeronautical industries;
- act and provide a networking channel for airport legal and non-legal areas;
- promote, organise, coordinate and disseminate airport law in all its different features and create opportunities for its appropriate analysis, development, specialisation and systematisation;
- instigate education and legal expertise, promote, organise and participate in events and activities aimed at education, training and legal expertise in airport law;
- promote cooperation and exchange between public sectors as well as in the private sectors, whether national or international;
- disseminate experiences through specialised reports, statistical reports, compilations, publications and all kinds of educational, informational materials, research, analysis or academic references; and
- establish institutional relationships with entities and organisations, national and international, which keep close relations with airport themes.

WALA is a unique organisation, distinguished by its global reach and the forum it provides for sharing experience and knowledge. Since 2008 1,130 delegates representing over 96 countries, 224 speakers and 551 organisations (12 hosts, 47 sponsors) have attended the 13 WALA Conferences Editions, with other networks and forums extending well beyond.

Bringing Airport Lawyers Together to Support the Legal Acceptance of Urban Air Mobility (UAM)

In the 21st century, we are witnessing a paradigm shift that impacts the foundations of civil aviation. Transportation, as we have traditionally and historically regarded it, is being replaced by mobility. To take a quote from Georges Amar:

“Mobility is a new value that allows the creation of relationships, opportunities, and synergies. It encompasses and surpasses the value of speed-distance, which resides in the paradigm of Transportation.”
(Amar, Georges. *Homo mobilis*. 2010).

This transition is based on the convergence of information technologies, the speed of technological change, the increasing concerns around global warming, and the collapse and de-urbanisation of large cities. Out of all of this emerges Urban Air Mobility (or “UAM”), a new transport ecosystem that integrates within the existing Urban Mobility ecosystem, and promises to change our way of life and societal functioning.

UAM is, in short, a system within the wider transportation ecosystem. One of its elements is the flying machine called eVTOL (electric Vertical Take Off and Landing). eVTOLs are designed to fly autonomously, powered by clean energy (lithium-ion battery), with very low noise levels. They are ideally suited to the transportation of between one to six people at low altitudes from one point to another in city and urban environments in a short amount of time. The airport element of eVTOLs, which is of course of enormous interest to an organisation such as WALA, is the Vertiport, a point where the eVTOL vehicle lands, takes off, recharges, and embarks or disembarks users. The third and final element in the UAM jigsaw is the navigation of the airspace, and the design of air routes through which the eVTOL moves around the city, and the traffic rules that apply to them.

This advance (or, perhaps, evolution is a better term) in the urban mobility landscape challenges civil aviation law in general and, specifically, air transport, airport services, and air navigation services; however, it also challenges and impacts other aspects of the law, such as constitutional law, administrative law, civil law, environmental law, and international law. How the law responds to these challenges remains to be seen, but there is, overall, we believe a general willingness to embrace the changes which UAM provides, as well as the convenience and widespread benefits which it heralds.

In conclusion, the new mobility paradigm, especially in its urban air mode, requires a new legal framework. States must design public policies that favour both social and legal acceptance of UAM, an area where lawyers have both responsibilities and opportunities.

All of the above is why, at WALA XIII, the 2023 edition of the World Airport Law Conference (Paris, June 28–30), we created the first international legal forum on UAM, to explore the legal implications of UAM. Christopher Petras, ICAO Legal Officer, presented ICAO’s approach to UAM. Dr. Benjamyn I. Scott, Associate Professor at Leiden University, Dr. Vassilis Agouridas, Leader of the UAM Initiative Community of Cities (UIC2) – UAM Initiative Community of Cities (EU CIVITAS), and Professor Pablo Mendes de Leon commented and discussed the current status and future of UAM, presenting the challenges, opportunities and legal implications of the sector. Finally, Ms. Ouahida Bendjedou, Mr. Michael Tegethoff and Mr. Peter

Kirsch, Partner at Kaplan Kirsch & Rockwell, described the legislative landscape and the crucial role of the legal framework in achieving a rapid advancement of UAM.

In 2024, WALA XIV will be the second meeting of this amazing international legal forum on UAM. We invite colleagues from around the world to join us for this important event, whose date and place will be announced on our website.

Annual Conference – Wala XIII, Paris 2023: ‘Enabling a Sustainable Future for Civil Aviation: The Airport of Tomorrow’

The XIII World Airport Lawyers’ Association conference was held in Paris, and hosted by Groupe ADP in June. The conference was attended by 110 delegates from 31 countries. Notable presentations included Keynote speaker Prof. Alan Khoo-Jin Tan of the National University of Singapore (NUS) on the topic of the EU and the Association of Southeast Asian Nations (EU-ASEAN) Comprehensive Air Transport Agreement (CATA) and its impact on international air transport, with a focus on the opportunities it presents for airports.

Ms. Ouahida Bendjedou and other colleagues from the Legal Department of the Head Office of Groupe ADP delivered presentations on Multi-modal transportation and the critical aspect of decarbonising ground handling activities. Mr. Andrew Charlton, addressed the dilemmas and challenges for Airport Lawyers in the 21st Century. Mr. Bastiaan de Bruijne, presented the implications of airport capacity reduction for competition and connectivity. Mrs. Olga Ramirez, Partner of DLA Piper Martinez Beltran, delved into the implications of airline cessation of operations, licence revocation, and bankruptcy on airport slot management.

Mr. Stephen Baird and Mrs. Tatiana Arima, from SITA Legal department presented the topic of ‘Data Breaches and Responses from the Aviation Sector – Passenger and Critical’. Dr sci Berin Ridanovic, the Head of the Legal Department of Sarajevo International, delivered a presentation on the airport’s liability of airport operator damage in the international carriage

of cargo. Mr. Juan Fernando Puerta, Head of Aviation Law of Cuatrecasas based in Bogotá, Colombia, spoke to consumer protection in the field of national and international aviation law.

Prof. Pablo Mendes de Leon, Mrs. Patricia O’Shea and Mrs. Laura Pierallini considered legal aspects concerning airport operators’ liability in cases of significant flight disruptions.

Other great speakers: Mr. Augustín de Romanet, the Chairman and CEO of the Groupe ADP; Mr. Eduardo Carvalhaes, Partner of Lefosse Advogado; Mr. Rafael Dickson Morales, the founding Partner of DMAC; Mrs. Yudith Castillo, the Chief Legal Officer of Gupo Puntacana, Dominican Republic; and Mr. Ignacio Curbelo, Director General of the Ministry of Tourism of Uruguay.

Presentations can be found at <https://www.abiaxair.com/wala/index.php>

WALA – Our Aim

Our aim is to become increasingly embedded in the airport sector as a trusted collegiate body. In the near term our focus is on:

- Growing WALA participation and ensuring our members have the resources and facilities they require.
- Continuing annual conferences.
- Providing activities as interest and need requires.
- Growing WALA Executive and Board capability.

Acknowledgments

The authors would like thank their colleagues:

- Vice Chair and Executive Board Member **Michael Siebold**; and
- Board Member, **Elizabeth Albergoni**

for their contributions to this chapter and ongoing support. Special thanks also go to Gustavo Di Cio of Abiax and his team for their continuing support of WALA events. As a Board we are deeply grateful for the support provided to us from attendees, speakers, friends and sponsors over the years. We look forward to welcoming you to the next WALA conference in 2024.



Diego R. Gonzalez is based in the Aeropuertos Argentina 2000 SA office and has responsibility for legal matters. He has extensive industry executive experience including 25 years with AA2000 working as a regulatory lawyer focused on airports and administrative law. Diego teaches airport law at universities and institutes in Argentina, Spain and Uruguay. He is the author of the book *Derecho Aeroportuario. Regimen Juridico del Servicio Aeroportuario* (2013) and Co-Director of the book *Derecho Aeroportuario en Iberoamérica* (2024).

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The Worldwide Airports Lawyers Association is a non-profit partnership with the goal of promoting cooperation among airport legal affairs departments and legal advisors for airports worldwide, as well as other public and private sectors related to the aeronautical industry.

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New Technology Aircraft and the Environment – The Financing Challenge

K&L Gates LLP



Philip Perrotta

Introduction

The adoption by the International Air Transport Association (IATA) of its commitment as an airline industry to reduce its carbon emissions worldwide to absolute zero was and will remain a seismic moment. At the 77th Annual General Meeting in Boston, USA, on 4th October 2021, a resolution was passed by IATA member airlines committing them to achieve net-zero carbon emissions from their operations by 2050. Despite legitimate reservations about its ability to do so, this brought the industry firmly into alignment with the Paris Agreement to limit global warming to well below 2° Celsius and, in parallel, pursue efforts to limit the temperature increase to 1.5° Celsius above pre-industrial levels.

The Paris Agreement is the legally binding international treaty on climate change adopted by some 196 parties at the United Nations Climate Change Conference (COP21) in Paris on 12th December 2015. The treaty entered into force on 4th November 2016. It was, and is, rightly hailed as a landmark in the multilateral climate change process, with all nations signing up to a binding agreement to combat climate change and adapt to its effects.

The stated aim of IATA to 'Fly Net-Zero' by 2050 in circumstances where projections estimate that demand for air passenger journeys in 2050 could exceed 10 billion(!), and the expected carbon emissions on a 'business as usual' trajectory is likely to be in the region of 21.2 gigatons of carbon dioxide, could not be more brave and the impact on the environment if successful could not be more profound it seems.

Clearly, a number of factors need to align as part of the process towards achieving Fly Net-Zero, and there are significant shifts required in the current practices as regards airline operations globally if the prospect of a successful outcome in this regard can be realistically addressed. From changes in philosophy and prioritisation among business leaders, to modifications in infrastructure and other hardware that is intended to facilitate one of the most far-reaching programmes of change ever undertaken, the price on every level will be a high one; however, it has been generally accepted that it will be well worth paying. Furthermore, the introduction and operation of aircraft that are ultimately intended to remove all carbon emissions, and thereby contribute enormously to the reduction of global warming relative to the current situation, is an intrinsic part of that programme.

What are the New Technology Aircraft?

The drive to create a sustainable aviation industry long term, along which path the target of Fly Net-Zero is ultimately intended to be a signpost rather than a destination in itself, and one that will have to be populated by equipment supporting

these wide-reaching and holistic climate change aspirations, is naturally spearheaded by the manufacturers in the first instance. As IATA itself identifies, success in this respect will require the coordinated efforts of the entire industry (airlines, airports, air navigation service providers, manufacturers) and significant government support, but with a combination of sustainable aviation fuel (SAF) and new technology (electric and hydrogen) believed to represent 78% of the contribution required to achieve Fly Net-Zero, the onus on existing and new original equipment manufacturers is clear.

This particularly applies to progression in new engine technology, and while the terminology itself is sometimes unevenly applied, the technical advances in this respect have given rise to broadly three categories of aircraft that will also form the basis of this chapter, namely the following:

I) 'Hybrid' aircraft

A hybrid aircraft is an aircraft with a hybrid electric engine. Due to the fact that lithium-ion batteries have a lower density than traditional aviation fuel, hybrid aircraft may effectively increase flight range compared to a pure electric aircraft (see III below). Hybrid aircraft represent an incremental step towards full decarbonisation while in the meantime improving the energy efficiency applicable to just about every class of aircraft.

II) eVTOL aircraft

This is an electrical vertical take off and landing (eVTOL) aircraft that uses electric power to hover, take off and land vertically. The result of technological advances in electric propulsion involving motors, batteries, fuel cells and electronic controllers is that both traditional and new start-up producers are making progress with their designs for the aircraft type, with prototypes from Airbus, Boeing, Embraer, Honda, Hyundai, Toyota, Archer Aviation, EHang, Joby Aviation, Overair and Volocopter all at various stages, including (in some cases) having completed a crewed flight.

III) Electric aircraft

An electric aircraft is an aircraft powered exclusively by electricity that is supplied by a variety of methods, the most common being batteries that power electric motors driving either propellers or turbine engines, or hydrogen-electric engines, in each case for flights that are quieter and zero emissions in terms of carbon dioxide.

The Demand for Capital

The description above of what is essentially intended to be a move to re-fleet the entirety of the global operation of aircraft over time is increasingly overwhelming as the days, weeks, months and years go by and airlines continue to welcome traditional aircraft into their ranks pursuant to legacy (i.e., prior to the Fly Net-Zero declaration) and additional new orders. The fundamental shift from energy efficiency as a commercial benefit (represented by successful New Engine Options developed, promoted and sold by the current and long-standing duopolists of Airbus and Boeing) towards the new innovative technologies encompassing SAF and the new-age aircraft described above for the sake of carbon-emission reduction and ultimately removal would seem to remain an outstanding, but still necessary, phenomenon.

Nevertheless, there may already be signs of a significant and possibly determinative external catalyst for this fundamental change against the backdrop of the significant demand for enormous amounts of external financing which is required to effect these transactions in what is generally already a hugely capital intensive sector. Put simply, traditional (and, to some extent, non-traditional) sources of financing for aircraft, ranging from well-established divisions of mainstream international banks, to some of the world's largest equity funds, opportunistic speculators with a track record of impressive returns on behalf of their high-net-worth clients, and various family and sovereign funds in those areas of the globe where political support for improving infrastructure and/or the profile in a high technology activity is important, have come under pressure to take a more nuanced view of supporting a 'brown' industry. Indeed, in certain circumstances, there are documented reports of specific corporate and private clients expressing concern at the non-alignment of environmental values with their own operations and philosophies, and not always thinly veiled threats to re-deploy their capital deposits in favour of more 'greenified' activities and opportunities with more enlightened service providers.

It is therefore not difficult to see that the required investment in these new technology aircraft represents, in principle, an opportunity to retain the traditional providers of financing while attracting new players who would hitherto not have considered the industry, including various governmental and quasi-political sources of finance established specifically for the purpose of environmental investment and related activities.

One pertinent example is the Jet Zero Council created by the UK government and which, despite its rather embarrassing approach to naming itself, recently published a two-year plan for the purpose of supporting the Fly Net-Zero challenge. Leaving aside its overtly political statements made for broader reasons such as deflecting attention from its unsuccessful policies in other areas, the UK government continues with its ambitious plans to decarbonise further than any other G7 country, which of course places the aviation industry sharply in focus. The Jet Zero Council plans to accelerate the production of SAFs by continuing to invest millions of pounds in SAF plants (for example, a £165 million Advanced Fuel Fund) and working to speed up the design, manufacture and roll-out of zero emission aircraft and vital infrastructure at UK airports.

The Relevant Financing Segments

It is clear that, globally speaking, the political will and commercial demand for the new technology aircraft (be it 'hybrid', 'eVTOL' or 'electric') is present and a priority. The finance required to carry the development risk, the manufacture of aircraft types not yet fully certified, and then to ultimately acquire the aircraft, all being well and in compressed time-scales, is therefore enormous in terms of volume but also possibly unique in terms of the type of financier required to undertake such an ambitious project.

It is not easy to characterise the new aircraft types as to where they fit in aircraft financing terms given the uncertainty of development and manufacture, their size and utility at this stage and then the necessarily speculative nature of any projections regarding transition to larger aircraft, more efficient operations and data as to the robustness and safety as the technology continues to evolve. However, for present purposes, it is likely that the matter of financing the new technology aircraft as they begin to arrive on the market is a development that will reshape the lower end of the aviation market (in terms of values), initially with the expectation that other segments will become relevant as the capability, size and applicability of the new aircraft technology increases exponentially over time.

One particularly pertinent question to pose from a financier's perspective is, therefore, how long its expected life will be. There is no substitute for decades of operating experience, associated technological modification, passenger acceptability and general regulatory receptiveness by various relevant airworthiness agencies in the relevant jurisdictions, but of course none of this currently exists in relation to the new-age fleet.

This brings us quite quickly to the matter of the aircraft financing structures that will likely be relevant given that the primary issues will relate to the risks of aircraft values. Whether financing the aircraft in a non-traditional sense (typically by way of a loan and debt security structure where the aircraft would be used to repay amounts in the event of a default by the operator/customer) or by virtue of a leasing structure, it is not yet clear what the specific appetite of the market is likely to be. History suggests that some of the aforementioned support by quasi-political agencies will be required in order to persuade the commercial lending market to take the financing risk and burden that will be necessary in order to supply the requisite financial support. Typically, this might be expected to take the form of asset value guarantees or indemnities linked to any losses incurred by financiers following a requirement to sell the subject aircraft following an enforcement of security, or in some cases possibly grant contributions to reduce the relevant loan-to-value calculations. Equally typically, it will be laid at the door of the relevant manufacturers to similarly support the wider risk picture in this regard by offering buy-back options, similar asset value guarantees and re-marketing support as required, in each case as part of an aircraft order.

While this uncertainty exists and the approach to financing these aircraft continues to ferment prior to settling into some sort of pattern and provide a level of certainty and planning possibilities, it is fair to say that it all conspires to discourage traditional leasing companies and leasing products generally. This is a feature of the evolutionary landscape that needs to be addressed given the meaningful role lessors have played and continue to play in terms of product development and a lower-cost, lesser-risk model to entry into the market for relevant operators and airlines. Looking back as a methodology in order to project forward (as the Danish philosopher Kierkegaard might have said), the possibility of aircraft leasing has also provided a fundamental component of the original equipment manufacturer's distribution network, allowing essentially batches of aircraft to be recorded as sales and released to the market in synchronisation with the manufacturer's own production and delivery timescales to other customers. This goes a long way to enabling a certain level of control to be applied to the market dynamics of supply-and-demand and the consequential benefits of stability and certainty around aircraft residual values and the projected demand for spares and maintenance support services, where margins are optimised and the economic cycle from a manufacturer's perspective completes.

It is therefore encouraging to see both established and new-entrant aircraft leasing platforms, where the business model

is effectively dependent on both aircraft life for depreciation purposes as well as lease utility and so-called residual values, set sail on the journey to decarbonisation so decisively and systematically. With names such as Avolon, Falko and ACG joined by Azorra Aviation and Lobo Leasing becoming increasingly prominent and all having partnered with relevant original equipment manufacturers in the new aircraft space, there is a sense of momentum and seriousness that goes beyond some of the predictable sound bites and opportunism inevitably accompanying one of the highest-profile developments in the sector ever. No doubt some of the support mechanisms referenced above will play their part; however, Fly Net-Zero does seem to have delivered a watershed moment for the aviation sector and unleashed a passionate response from some fairly unexpected areas. The topic of sustainability is featuring increasingly prominently in every facet of aviation financing, whether by way of compliance and penalties linked to non-compliance with increasingly developed regulatory parameters for carbon emissions, or by incentivised pricing and lease rates for certain aircraft types and operations, through to transition packages of support limited to the new-age aircraft technologies when they become available.

Security Aspects

Thanks to the work of industry participants such as the Aviation Working Group and the widespread adoption of the Cape Town Convention on International Interests in Mobile Equipment, the framework for financiers of the new technology and comfort that their interests (whether ownership or security *'in rem'* rights through a properly constituted mortgage or similar, depending on the financing structure involved) can be notified to all relevant third parties as 'international interests' is assured.

Nevertheless, from a practical perspective, in association with such established security rights, the new technology will present additional challenges from the point of view of, in the first place, taking effective security, and, latterly if necessary, enforcing the relevant security interests and thereby justifying the risk allocation applied to a particular transaction. For example, will it be possible to take a separate security interest (in the case of hybrid aircraft) over the aircraft battery as a fundamental component with an intrinsic value that is critical to the operation of the aircraft – as is currently the case with an Auxiliary Power Unit on conventional aircraft? And in the case of aircraft repossession and, where necessary, disabling the relevant aircraft for such purposes, what approaches by mortgagees, owners and their representatives will be needed to modify the new types of aircraft from a technical perspective? For example, it is not difficult to envisage a situation where the aircraft is repossessed in the course of a contested situation between the financier and the aircraft operator and batteries that are charging using the power provided by new technology infrastructure at the relevant airport may need to be forcibly disconnected, thereby involving airports themselves potentially more significantly than currently need be the case with 'conventional aircraft in a contractual dispute between parties'. The follow-on consequences from a liability, risk and ultimately insurance analysis perspective are several and potentially significant and will need to be thought through on a case-by-case basis, for example.

The Outlook

In many respects, it might be too early to state with any degree of certainty as to how the financing of new technology aircraft is likely to play out. The required dogma of applying historical

approaches to a new era is always risky and open to criticism; however, there is a real sense of optimism and encouragement that the various hurdles to providing capital to supply the unquestionable demand for the new technology aircraft can be addressed efficiently and decisively.

Key to this efficiency and decisiveness will be the aforementioned collaboration and ongoing interplay between the various stakeholders involved, including, as a minimum, the relevant original equipment manufacturers (both airframe and power plant), the government agencies, the sources of capital themselves, the leasing companies, the airlines and operators ... and, last but not least, of course the consumers (at least in relation to passenger operations). It is the individuals who will ultimately choose whether or not the new technology aircraft functions as a safe and comfortable solution to their future travel requirements. Certain other product-based events in recent years, such as the furore rightly created around the issues with the certification and operability of the B737-MAX aircraft, proved that a generation of travellers who suddenly become unconvinced about a particular aircraft type or its integrity can have a profound effect on the success or otherwise of an aircraft production programme. Many airlines affected seemed caught out by a surge in enquiries from booking customers who wanted to know which aircraft equipment was being operated on a particular route and making reservations accordingly, while the original equipment manufacturer at Boeing continued what ultimately proved to be an unwise apparent policy of 'plausible deniability' of the production and certification issues affecting the type of aircraft that continued to be pressed into service.

One hopes that this type of lesson has been well-learned and that the necessary nettles of passenger confidence, as well as a broader support for the integrity of the new technology and, by implication for this particular chapter, the desire to make possible their implementation by way of financing, will be properly grasped and in good time.

Notwithstanding these challenges, however, the perspectives remain mainly positive from every quarter of the industry and this is currently backed up by the quantity but also the quality of numerous partnering and collaborative activities across the industry. Fortunately, it also seems that aircraft financiers, whether in their guise as traditional providers of debt, as equity investors, environmental support agencies, or leasing companies, are at the forefront of a lot of the relevant conversations at this point.

Conclusion

While general in its commentary, it is hoped that the overview of the matter of financing 'green aircraft' represented by the new aircraft technologies in the drive to Fly Net-Zero in this chapter is both useful and upbeat. Clearly much work has been achieved already and that is laudable as a response to the challenge of a zero carbon industry hitherto characterised by heavy carbon emissions. Fly Net-Zero indeed.

Nevertheless, the prevailing sense is now one of anticipation as the industry and all its multitude of observers look for the momentum across all these various fronts to necessarily accelerate progress and ultimately ensure that the world's fleet is in a position to support IATA's pledge while the economies of the world remain supported by aviation as a fundamental component of infrastructure and development. This will in no small way be stimulated by the involvement of the financiers of the new technology, especially given IATA's most recent pronouncement that its target is still achievable but that somewhere in the region of US\$ 5.1 trillion investment will be required. Fly Net-Zero is here as a common challenge – but 2050 is not far away.



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Philip acts for a broad range of significant aviation businesses across the world and he has an impressive track record of successful transactions, some being landmark deals in the industry. He has successfully concluded literally hundreds of transactions involving commercial and business aircraft, aero-engines and other aviation assets in jurisdictions in every continent. Philip is a regular contributor at industry events, and is often sought after to comment on developments in a variety of segments of the aviation sector and the aviation finance market, where his insight as a commentator is highly valued.

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Regulations on Drone Flights in Japan

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A. Introduction

The following laws and regulations are the material legislation in Japan on the flights of unmanned aircraft vehicles (drones) (“UAVs”):

- (a) Civil Aeronautics Act (the “CAA”);
- (b) Act Prohibiting UAVs’ Flights Over Important Facilities and Surrounding Areas (the “Drone Act”);
- (c) Civil Code;
- (d) Radio Wave Act; and
- (e) local regulations (*jourei*) legislated by local governments.

The CAA is the key legislation for aviation safety in Japan, and the Ministry of Land, Infrastructure, Transport and Tourism (the “MLIT”) is the principal regulator of aviation matters, including the CAA. In 2015, the CAA was amended to introduce safety rules regarding unmanned aircraft vehicles (drones or “UAVs”) after a drone was found on the roof of the Prime Minister’s office on 22 April 2015. It took less than eight months to enact the 2015 amendment, and that was extraordinarily rapid in terms of legislative amendments in Japan.

Further, governmental bodies and the private sector set up the Council to Improve the Environment regarding UAVs (the “Council”) in 2015. The Council holds ongoing discussions on regulations to develop the commercial use of UAVs, as well as regularly revising the “Roadmap towards the Industrial Revolution in the Air” (the “Roadmap”). According to the Roadmap published in August 2022, there are four phases on the use of UAVs. In the first and second phases, UAVs may be flown within visual line of sight. In the third phase, UAVs may be flown beyond visual line of sight (“BVLOS”) over areas where it is unlikely for a third party to enter (e.g., mountains, sea, rivers, lakes and forests). Finally, in the fourth phase, UAVs may be flown BVLOS over areas where a third party may be located. With the aim of achieving the fourth phase as scheduled, the CAA was amended in 2020 to require the registration of UAVs and in 2021 to require the certification of the functions and performance data of UAVs in accordance with safety standards and a licence to operate UAVs. The 2020 amendment requiring registration took effect on 20 June 2022 and the 2021 amendment requiring certification and licensing took effect on 5 December 2022.

B. Overview of the Regulations Under the CAA

The CAA provides for the definition of UAVs, the prohibited airspaces for flight, the operating limitations and penalties for violations. If a person intends to fly UAVs in prohibited airspaces, beyond the limitations of permitted operations, then that person must have permission or approval from the MLIT. However, according to the interpretation published by the MLIT, if an operator flies UAVs within a closed area where there is no possibility for them to leave the area, then permission or approval is not necessary. Further, under the amended enforcement rules of the CAA which took effect on 24 September 2021, if a UAV is being operated under certain conditions, such as the UAV is moored by sufficiently strong strings which are 30 metres long or less, permission or approval is not necessary.

After the amended CAA took effect in 2022, UAV operations have been classified into three categories based on the associated risks. Category I covers the operation of UAVs with the lowest risk, which does not require any permissions or approvals even under the current CAA. Category III covers the operation of UAVs over areas where third parties may be located and, therefore, is associated with the highest risk. Category II covers the operation of UAVs not included in Category I or III. There are two classes of certifications of UAVs (i.e., first-class and second-class certificates) and two categories of licences (i.e., first-class and second-class licences).

UAVs under Category III must have a first-class certificate and their operators must each hold a first-class licence. In addition, a separate permission or approval is required for each UAV operation.

The operation of Category II UAVs that meet the following requirements will be permitted without any permissions or approvals:

- (a) the UAV has, as a minimum, a second-class certificate;
- (b) the UAV operator holds, as a minimum, a second-class licence;
- (c) the UAV does not fly over areas where third parties may be located;
- (d) the UAV does not (i) fly in airspaces in which it will likely affect the safe operation of other aircraft, (ii) fly over event sites where many people gather, (iii) transport hazardous

materials specified in the relevant ordinance, (iv) drop any objects except for goods specified in the relevant ordinance, and (v) weigh 25 kg or more; and

- (e) measures are being properly taken to prevent any parties other than the UAV operator and its assistants from entering areas inside the route of the vehicle.

In cases where permissions or approvals are required, the standards published by the MLIT (the “Standards”) must be complied with. Applications may be submitted at the following website, which is available only in Japanese: <https://www.ossportal.dips.mlit.go.jp/portal/top/>

According to the Standards, an operator must submit an application for permission or approval, in general, 10 business days before each Category II flight of a UAV and 20 business days before each Category III flight. Permission or approval is generally effective for three months for Category II flights and for one month for Category III flights. However, if a person plans to continuously fly UAVs under the same conditions, it can apply for permission or approval that is effective for up to one year. This type of application is usually made by mass media organisations which use drones in Japan.

1. Definition of UAVs

The CAA defines UAVs as airplanes, helicopters, gliders, airships and other facilities that are available for aviation uses designated by the relevant ordinance of the CAA and which:

- (a) human beings cannot ride due to its structure; and
- (b) can fly by remote control or automatic operation based on programs,

except when such facility weighs less than 100 grams (previously 200 grams before the relevant amendment of the CAA took effect on 20 June 2022).

Therefore, only very light drones (e.g., toy drones) can be exempted from the definition of UAVs. Further, the Standards classify the requirements for those which weigh less than 25 kg and those which are 25 kg or more. The requirements for UAVs weighing 25 kg or more are stricter than those for the lighter ones. The requirements discussed below are for UAVs weighing less than 25 kg.

2. Prohibited airspaces

It is generally prohibited to operate a UAV in the following airspaces:

- (a) airspaces in which the UAV is likely to affect the safe operation of aircraft, which can be further classified into (i) airspaces above airports and their vicinity (which differ for each airport), (ii) airspaces designated by the MLIT in cases where the safety of aircraft used by the MLIT or other administrative organs for rescue work during emergencies must be secured, and (iii) airspaces which are 150 metres above ground or water surface level; and
- (b) airspaces which are above a “densely populated area”, which is defined as a densely inhabited district (*jinkou shunchuu chiku*) (“DID”) designated based on the results of the national census. A DID is, in principle, an area with a population density of 5,000 people or more per square kilometre. An example of a DID is most of the Tokyo Metropolitan area.

The foregoing airspaces can be summarised in Figure 1 (please see the end of the chapter).

Any person who intends to fly a UAV in a prohibited airspace must obtain prior permission of the MLIT. An application for

permission must provide certain information required by, and meeting specific requirements of, the Standards, including (i) the applicant’s name and address, (ii) information identifying the UAVs to be flown (e.g., manufacturers, and the name and weight of the UAVs) except for UAVs that the MLIT has identified on its website (e.g., the Mavic series manufactured by DJI), (iii) the purpose, date and time, route and altitude of the flights, (iv) the reason for flying in the prohibited airspace, (v) the functions and performance data of the UAVs, (vi) flight records and ability of the operator, and (vii) the manual for safe flights. Examples of specific requirements include, in the case of item (vi), the operator having at least 10 hours’ experience of flying the same kind of UAV covered by the application.

3. Operational conditions

(1) General

Under the CAA, UAV operators must:

- (a) not operate UAVs while under the influence of alcohol or medication, including illegal drugs;
- (b) confirm that all necessary preparations have been completed, including confirming the externals (e.g., batteries, propellers and cameras being firmly installed onto the drones) and functions of UAVs, weather, and other flight conditions prior to operation;
- (c) operate UAVs in a manner that prevents any collisions with aircraft or other UAVs;
- (d) not operate UAVs in a manner that causes any issues with third parties, including by making unnecessary noise or causing UAVs to nosedive;
- (e) operate UAVs only in the daytime;
- (f) operate UAVs within visual line of sight of the operator;
- (g) maintain a certain operating distance (30 metres) between UAVs and persons or properties on the ground or water surface;
- (h) not operate UAVs over event sites where many people gather;
- (i) not transport hazardous materials specified in the relevant ordinance by UAVs; and
- (j) not drop any object from UAVs except for the goods specified in the relevant ordinance.

For the purposes of the foregoing conditions:

- “Daytime” under condition (e) means from sunrise to sunset, as announced by the National Astronomical Observatory of Japan, which differs depending on the area and time of year.
- “Visual line of sight” under condition (f) means that the operator is able to oversee by naked eye but does not include overseeing through binoculars.
- “Persons” under condition (g) do not include persons who are, directly or indirectly, related to the UAV operator (the “Related Persons”), and “properties” do not include properties controlled by Related Persons, such as cars, trains, vessels, airplanes, construction machines, buildings, houses, factories, storehouses, bridges, power plants, telephone poles, telephone cables, traffic signal, and street lights. “Properties” do not include land and nature (e.g., trees, grasses and weeds). In this regard, if an operator flies UAVs in a city area, it would not be easy to find an area where there are no persons other than Related Persons and no properties other than those controlled by Related Persons. Thus, operators will need approval to operate UAVs outside the parameters of condition (g).

- For “event sites” under condition (h), the CAA cites festivals and exhibitions as examples. According to the interpretation published by the MLIT, if many people gather on specific dates or in specific locations, such as concerts and demonstration marches, these will be considered as event sites.
- “Hazardous materials” under condition (i) means explosives, high-pressure gas, inflammable fluids and other harmful materials that are the same as any materials that airplanes are prohibited from transporting.
- To “drop any object from UAVs” under condition (j) includes spraying water or other liquids (e.g., agricultural chemicals).

A person who intends to operate a UAV without complying with conditions (e) through (j) must obtain prior approval of the MLIT. However, conditions (a) through (d), which were introduced in the amendment to the CAA in September 2019, are absolute without exception. The applicant must comply with the specified requirements under the Standards. For example, if an operator intends to operate UAVs BVLOS, then it must show that, among others, (i) the UAVs have a fail-safe function, (ii) it has experience in flights BVLOS, and (iii) it has an assistant to oversee the flight.

(2) **Revised Standards requirements for BVLOS without assistants**

To achieve the third phase of the Roadmap (see Section A), the Study Group examined the requirements for operating UAVs BVLOS without assistants, from September 2017 to March 2018. Based on the results, in September 2018, the Standards were revised to add conditions for flights BVLOS without assistants. The conditions are stricter than those for flights BVLOS with assistants, in terms of UAV functions, the operator’s experience and safety measures. For example, the additional requirements include (a) the flight route being in areas where it is unlikely for a third party to enter (e.g., mountains, sea, rivers, lakes and forests), (b) manufacturers certifying that the functions of the UAVs will not harm third parties, (c) the ability of operators to determine, through the use of the UAV’s cameras or ground cameras, whether third parties can enter areas directly below the UAV flight routes or surrounding areas, and (d) the ability of operators to confirm, through the use of the UAV’s cameras or ground cameras, the status of airplanes which may fly into the UAV flight route. However, there are alternative options for requirements (b) to (d). For example, requirement (b) does not have to be satisfied if the UAV operator controls, by prohibiting or restricting entry by third parties, the area over which a UAV in flight may fall as calculated by UAV manufacturers.

(3) **Guidelines for cargo delivery**

On 18 September 2018, the sub-group of the Study Group published the guidelines regarding the delivery of cargoes by UAVs (the “Guidelines”); these Guidelines are not legally binding. The Guidelines stipulated (a) obligations which business operators are strongly expected to comply with at the minimum, and (b) obligations which business operators are encouraged to voluntarily comply with. Minimum obligations include not overloading UAVs with cargoes and taking insurance to cover damages caused by falling UAVs and cargoes. Voluntary obligations include properly packing the cargoes on the assumption that they will fall off the UAVs, and verifying the proper loading of the cargoes on the UAVs (for example, by using a sensor with a simple structure).

4. Penalties

A person who violates CAA regulations may be subject to penalties that vary depending on the severity of the violation and at the maximum can be imprisoned for up to two years or fined up to JPY 1,000,000. A person who operates UAVs under the influence of alcohol or medication in public areas (e.g., roads, parks, public squares and stations) may be subject to imprisonment for up to one year or a fine of up to JPY 300,000. Further, as of the CAA amendment in 2019, the MLIT may enforce the CAA by requesting any party who operates, designs, manufactures, maintains or alters UAVs to report such operation, design, manufacture, maintenance or alteration.

5. Supplemental provision

When the CAA was amended to introduce the regulations on UAVs, it also stipulated a supplemental provision that the State will examine possible actions to make further contributions to the safe flights of UAVs and to serve the sound development of businesses using UAVs, based on the progress of technologies relating to UAVs, the diversification of the use of UAVs and other circumstances, and the State will take necessary measures based on the results of that examination. In line with the supplemental provision of the CAA, the CAA and the Standards have been amended or revised, and will continue to be amended or revised from time to time.

C. Drone Act

This law was enacted on 17 March 2016 and took effect the following month on 7 April, just before the G7 Foreign Ministers’ Meeting in Hiroshima, Japan. It prohibits flights of UAVs over important facilities, including the Houses of Parliament, the Prime Minister’s Official Residence, buildings of the government Ministries, the Supreme Court, the Imperial Palace, and nuclear plants, and areas within approximately 300 metres of these facilities. The purpose of the law is to prevent danger in the facilities and to secure the central affairs of the State, maintenance of good international relationships and public safety. Thus, it differs from the purpose of the CAA, which is to secure the safety of aviation. The Drone Act was amended in 2019 and 2020 to prohibit the operation of UAVs over important facilities designated by the Ministry of Defense and over major airports.

The definition of UAVs under the Drone Act is basically the same as under the CAA. However, this law prohibits the flights of UAVs weighing less than 100 grams. Under this law, UAV flights over important facilities and surrounding areas are permitted only if the operator (a) is an administrator of the facilities or has obtained the consent of the facility administrator, (b) owns the land or has obtained the consent of the owner of the land, or (c) flies the UAV to perform services for the State or local governments, and submits a notification to the Public Safety Commission through the Police Station with jurisdiction over the facilities, 48 hours prior to the flight. Any person who violates the Drone Act may be subject to imprisonment for up to one year or a fine of up to JPY 500,000.

D. Civil Code

The handling of land ownership is material to the further development of flights of UAVs. Under the Civil Code, land ownership extends above and below the land and allows owners to exclude third parties to that extent. Any person who violates

land ownership may be subject to tort action under the Civil Code, and the owner may seek damages against that person. In addition, the owner may seek an injunction to prevent that person from violating the owner's rights of ownership.

While there are no provisions which set the limits as to how far ownership extends over or under the land surface, it is generally interpreted that ownership extends to the extent that the owner's interests exist. For instance, for flights of airplanes, it is generally considered that they would not constitute a violation of land ownership because airplanes fly considerably higher up and thus it is beyond the altitude where the owner's interests exist. However, UAVs usually fly lower than airplanes. In fact, permission is required if UAVs fly in airspace within 150 metres of the ground or water surface level (see Section B.2). Further, to develop logistics services by UAVs in city areas during the fourth phase of the Roadmap (see Section A), it would almost always be necessary to fly closer to the ground surface. In this regard, there are currently no rules that deal with the relationship between land ownership and UAV flights. A paper published by the Council, after a meeting held in June 2021, states that flying over land owned by a third party does not always infringe the owner's land ownership, but also states that it is difficult to uniformly determine the extent of the owner's interests and the determination will be made on a case-by-case basis, depending on the building or other fixtures installed on the land. While it would be difficult to set a clear line as to how UAVs should fly over private land without violating the rights of owners, it is necessary to provide certain comfort to business operators of UAVs.

E. Radio Wave Act

UAVs are operated by telecommunications, using radio frequencies between a device on the UAV and the controller in the hands of an operator. Under the Radio Wave Act, an electric facility which transmits and receives radio frequencies and its operator are collectively defined as a Radio Station (*musen-kyoku*). Establishing a Radio Station generally requires a licence, except for a Radio Station which transmits a very weak radio wave or is specifically excluded by the Radio Act and its ordinance. UAVs which are commercially available to consumers are generally

equipped with a device that does not require a licence to operate. However, the device which uses a system for transmitting data from UAVs (*musen-idoutai-tsuushin* system), which was introduced on 31 August 2016, so that UAVs can transmit large-volume data, requires a licence for establishing a Radio Station. Further, the operator of a Radio Station must have the qualifications designated under the Radio Wave Act and its ordinance.

When the said system was introduced, a trial licence to use the device on UAVs in the same manner as a mobile phone was put in place. Under this trial licence, UAVs may transmit large volumes of data without passing through a controller, while flying over large areas covered by multiple base stations. In 2020, the Ministry of Internal Affairs and Communications, which is the key regulator of the Radio Wave Act, fixed the technical requirements for providing full, non-trial licences for such device-equipped UAVs.

F. Local Regulations (*jourei*)

Local governments such as the Tokyo Metropolitan Government and other prefectures have the authority to establish regulations (*jourei*) covering areas governed by them to the extent that they do not conflict with national laws. For instance, many local governments have regulations for the use of public gardens. Most of them prohibit and penalise acts that impede the management of public gardens. For example, under the Regulations for Gardens of the Tokyo Metropolitan Government, a person cannot make an act that hampers the management of gardens without the permission of the Governor, under the threat of a penalty of up to JPY 50,000.

G. On the Horizon

According to the Roadmap published in August 2022, the government plans to develop the UAV traffic management system and expand the fourth phase of UAV operation to city areas gradually during the 2023 through 2024 fiscal years. The progress of technology and regulatory amendments are anticipated to promote the commercial use of UAVs, which will to a certain extent resolve the labour shortage resulting from Japan's declining population.

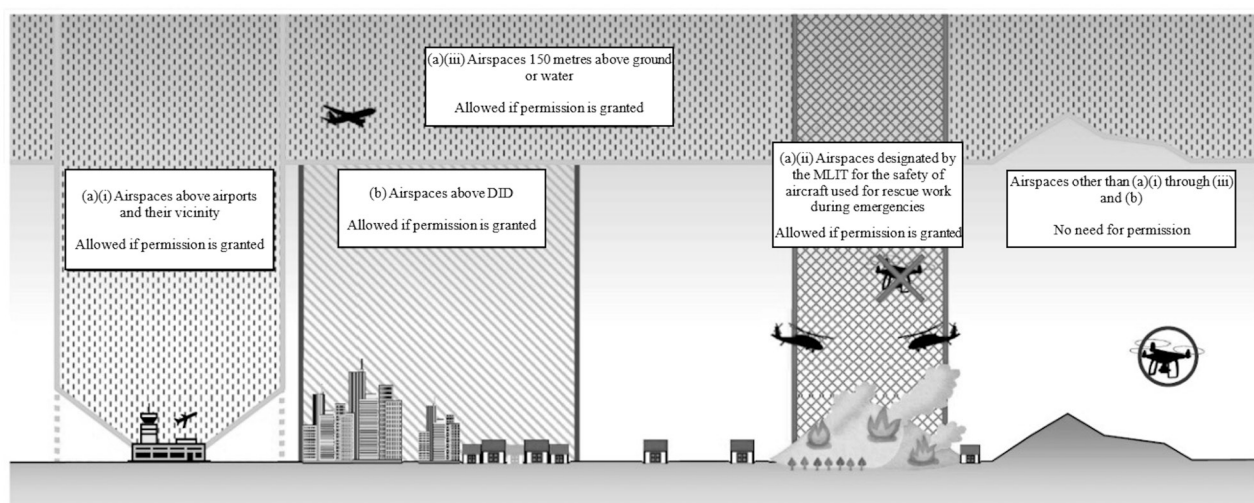


Figure 1

From the website of the MLIT, with modifications added by the authors for this chapter.



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Mori Hamada & Matsumoto is a full-service international law firm based in Tokyo, with offices in Fukuoka, Takamatsu, Nagoya, Osaka, Beijing, Shanghai, Singapore, Yangon, Bangkok and Ho Chi Minh. The firm has over 550 attorneys and a support staff of approximately 450, including legal assistants, translators and secretaries. It is one of the largest law firms in Japan and is particularly well known in the areas of mergers and acquisitions, finance, litigation, insolvency, telecommunications, broadcasting and intellectual property, as well as domestic litigation, bankruptcy, restructuring and multi-jurisdictional litigation and arbitration. The firm regularly advises on some of the largest and most prominent cross-border transactions, representing both Japanese and foreign clients. In particular, the firm has extensive practice in, exposure to and expertise on telecommunications, broadcasting, the Internet, information technology and related areas, and provides legal advice and other legal services regarding the corporate, regulatory, financing and transactional requirements of clients in these areas.

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Navigating Legal Trends in U.S. Aviation Law

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Our firm, Kreindler & Kreindler, has represented more victims of aviation accidents in the U.S. than any other law firm. As a result, we have seen both major and minor developments in the law and their impact on the rights of our clients. In recent years, a major issue facing U.S. aviation attorneys has been federal preemption: the question of whether federal or state law governs aviation claims. The defense bar has argued, with considerable success, that U.S. federal aviation standards should preempt state-level negligence and products liability laws. Until very recently, the trend leaned toward a federalization of aviation liability standards, but that trend recently suffered a setback with the landmark Third Circuit decision in *Sikkelee v. Precision Airmotive Corp.*¹ While federal preemption remains the most important unresolved substantive issue in aviation law, and the one most likely to soon reach U.S. Supreme Court,² the subject is beyond the scope of this chapter. Instead, we will focus on important trends in personal jurisdiction and the Montreal Convention.

The question of jurisdiction, or the court's authority to hear a case, is a foundational issue when foreign passengers seek redress in U.S. courts for injuries sustained during air travel. The landscape of "personal" jurisdiction in the U.S., as defined by the Supreme Court and lower court decisions, has undergone significant transformation in recent years. Confronted with the issue of whether an airline can be required to defend a claim in a U.S. court, the evolving jurisprudence on personal jurisdiction and the *forum non conveniens* doctrine has created formidable hurdles for victims striving to pursue legal recourse from the U.S. judicial system. Courts in recent years have dismissed several aviation cases, including lawsuits arising from the Malaysia Airlines Flight 370³ and Air France Flight 447⁴ disasters because the U.S. forum was deemed inconvenient to the litigants. Plaintiffs, however, have successfully brought other important cases including those arising from the Boeing 737-8 MAX disasters, in U.S. courts. Through an exploration of important recent decisions, we aim to shed light on the evolving body of law on jurisdiction and to offer insights into the challenges faced by victims seeking to hold aviation defendants accountable here in the U.S.

We will also examine recent developments in Montreal Convention cases in the U.S. by examining important U.S. Courts of Appeals decisions. These include a fascinating decision concerning how courts should determine whether an Article 17 accident has taken place, thus rendering a defendant airline liable, and a highly influential decision that has expanded the damages available to plaintiffs.

Recent Developments in Personal Jurisdiction

To successfully sue a defendant in the U.S., a plaintiff must establish that the court has both subject matter jurisdiction and personal jurisdiction to hear the claims at issue. Personal jurisdiction under U.S. law falls into two categories: specific jurisdiction; and general jurisdiction.

General jurisdiction is "all-purpose" jurisdiction, meaning that a plaintiff can sue the defendant for any claim regardless of whether not that claim has a nexus to the U.S. forum. General jurisdiction exists where the defendant "resides". Corporate defendants "reside" in the place of their incorporation, the location of their "principal place of business" (usually the corporate headquarters), and any other place where they conduct such "continuous and systematic" business that they can be considered "at home" in that jurisdiction.⁵ In actual practice, however, general jurisdiction typically is only found in the corporate defendant's place of incorporation or the location of its headquarters. While it is technically possible for a defendant to be subject to general jurisdiction in a third location where it conducts "continuous and systematic" business such that it is "at home" in that location, in practice it is rare.

Specific jurisdiction only exists when there is a link between a plaintiff's claims and the defendant's contacts with the forum.⁶ In particular, the plaintiff's claim must "arise from" or be "related to" those contacts. If, for example, a foreign carrier operates a flight to the U.S. and a passenger is injured while deplaning at a U.S. airport, the passenger's claim would be deemed to have "arisen" in the U.S. and an appropriate U.S. court would have specific personal jurisdiction to adjudicate the claim.

"Relating to..." Specific Jurisdiction: *Ford Motor Co. v. Montana Eighth Jud. Dist. Ct.*

In litigating claims arising from accidents that occur outside the U.S., it is more difficult to obtain specific personal jurisdiction over a foreign defendant than general jurisdiction. That is because the corporation's relevant "contacts" are in the foreign country especially where the claim involves an accident outside the U.S.⁷ Under these circumstances, courts in the U.S. often cannot exercise personal jurisdiction over the foreign defendant.

This concept is illustrated by the U.S. Supreme Court's 2011 decision in *Goodyear Dunlop Tires Operations, S.A. v. Brown*.⁸ The case arose from the death of two 13-year-old soccer players from North Carolina in a bus accident in France due to a faulty tire, which had been manufactured in Turkey, distributed through

Luxembourg, and sold in France by Goodyear subsidiaries.⁹ Plaintiffs, the families of the two boys, brought a suit in North Carolina against Goodyear USA and its European and Turkish subsidiaries who manufactured, distributed and sold the tire at issue. Plaintiffs claimed that personal jurisdiction existed over the foreign Goodyear subsidiaries in the U.S. because tires manufactured and sold by the subsidiaries made it into North Carolina through Goodyear USA as part of a coordinated distribution network. The subsidiaries challenged personal jurisdiction, claiming that the court lacked specific jurisdiction over them because they had no contacts with North Carolina.¹⁰ The Supreme Court found that because “the bus accident occurred in France, and the tire alleged to have caused the accident was manufactured and sold abroad, North Carolina courts lacked specific jurisdiction to adjudicate the controversy.”¹¹

The Supreme Court’s 2020 decision in *Ford Motor Co. v. Montana Eighth Jud. Dist. Ct.*,¹² though not involving claims arising in a foreign country, suggests that the scope of specific jurisdiction may be expanding in U.S. Courts, and that the Supreme Court may be taking a more expansive view of the type of contacts sufficient to create specific jurisdiction.

Ford involved wrongful death claims brought in Montana and Minnesota against the Ford Motor Company alleging that the defective design of its vehicles caused deadly accidents in each decedent’s respective home state.¹³ Even though Ford had neither sold nor maintained the vehicles in the decedent’s home states, as would usually be required to show the contacts necessary to create specific jurisdiction,¹⁴ the Supreme Court found the existence of specific jurisdiction because Ford’s contacts within the states “related to” plaintiffs’ claims, even though they did not directly “arise” from them. In particular, the court found that Ford purposefully availed itself of the ability to serve the markets in both Minnesota and Montana, including advertising, maintaining networks of dealerships and authorized maintainers, and sending replacement parts into the states.¹⁵

It is important to note that while *Ford* has no direct application to cases arising in foreign countries, the decision demonstrates some flexibility concerning how the courts should approach the question of whether a plaintiff’s claim “arises from or relates to” a corporation’s contacts with the forum.

The Registration Hook and General Jurisdiction: *Daimler AG v. Bauman* and *Mallory v. Norfolk Southern Railway Corp.*

Where specific jurisdiction does not exist, a plaintiff injured abroad often must establish that the court enjoys general jurisdiction over his or her case.

In 2014, the United States Supreme Court handed down *Daimler AG v. Bauman*,¹⁶ a landmark decision relating to general jurisdiction that frames the challenge. *Daimler* involved claims brought in California by surviving family members of workers at a Mercedes-Benz plant in Argentina who were “disappeared” by authorities in Argentina’s right-wing military dictatorship during Argentina’s “Dirty War”. The families alleged that employees of Mercedes-Benz Argentina, a subsidiary of Daimler AG, were involved in the crimes.¹⁷ The U.S. Supreme Court held that Daimler AG was not subject to general jurisdiction in California despite the fact that it conducted significant business activity in the state through its subsidiaries.¹⁸ The Court reasoned that Daimler AG was incorporated and headquartered in Germany, not California, and that while its US-based subsidiary Mercedes-Benz USA did business in California (marketing and selling cars)

the subsidiary’s contacts could not be imputed to Daimler AG. Moreover, even if they could be imputed to the company, the contacts were not significant enough to meet the “continuous and systematic” standard that would render Daimler AG essentially “at home” in California.¹⁹

Daimler AG is important because it sets a high bar to meet the requirements for general jurisdiction. General jurisdiction is likely to exist in the defendant’s state of incorporation and the state where defendant maintains its headquarters, unless the defendant’s activities in another state are so extensive that the defendant can be considered “at home” in that location as well.

The Supreme Court’s recent decision in *Mallory v. Norfolk Southern Railway Corp.* offers insight into the Court’s view on the “third state” exception. *Mallory* did not involve a foreign claim, but it created an exception to the restricted view of general jurisdiction laid out in *Daimler*.

In *Mallory*, the plaintiff worked for Norfolk Southern Railway in Ohio and later Virginia, that is the location of the railway’s headquarters and its state of incorporation. Mallory alleged that during his work, he was exposed to asbestos and other toxic chemicals which caused him to develop colon cancer.²⁰ Mallory sued Norfolk Southern Railway in Pennsylvania, where he had moved after leaving the company and where he lived when his cancer was diagnosed. He argued that Norfolk Southern Railway was subject to general jurisdiction in Pennsylvania because it was registered to do business in that state and according to a Pennsylvania statute, any company registered to do business in Pennsylvania was required to agree to appear in its courts on “any cause of action” against them.²¹

The Supreme Court agreed with the *Mallory* plaintiff, noting that “Pennsylvania law is explicit that ‘qualification as a foreign corporation’ shall permit state courts to ‘exercise general personal jurisdiction’ over a registered foreign corporation, just as they can over domestic corporations”. 42 Pa. Cons. Stat. § 5301(a)(2)(i). In the Court’s view, by registering to do business in Pennsylvania, Norfolk Southern knew that it would subject it to general jurisdiction in that State.²²

In addition to Pennsylvania, Georgia, Minnesota, and Connecticut all have similar laws. A plaintiff injured in a claim arising in a foreign country would be wise to scrutinize all the states in the U.S. where a potential defendant is registered to do business to determine if one of them requires corporations to submit to general jurisdiction in exchange for the right to be so authorized.

Because the threshold issue in any aviation case is the jurisdiction of a U.S. court, anyone bringing such a claim should consult with attorneys who know about the current shifting landscape of personal jurisdiction.

Recent Developments in U.S. Montreal Convention Jurisprudence

The Montreal Convention was designed to harmonize the legal framework for compensating passengers injured or killed during international flights. In the U.S., recent influential legal decisions have impacted Montreal Convention cases in positive ways for victims. These include decisions on whether an “accident” has taken place and the circumstances under which passengers can recover for their psychological injuries. We will address the basics of the Montreal Convention, as interpreted by U.S. courts, and explore key decisions that will have far-reaching positive implications for future Montreal Convention cases in the U.S.

The Basics of the Montreal Convention

The Montreal Convention provides a liability regime governing injuries and deaths occurring on international commercial flights. Where the Montreal Convention applies, it pre-empts all other liability laws and if a claim that falls within the Montreal Convention's scope is not valid under the Convention, it is not actionable under any local tort law.²³ The Convention applies on "international carriage" by air, where the place of departure and place of destination are within the territories of Member States.²⁴

The Montreal Convention has a strict two-year limitations period to bring injury or death claims that arise on international flights or during the course of embarking or disembarking.²⁵ To be successful in establishing a claim under the Convention, a plaintiff must prove: (1) an "accident" has occurred; (2) the accident caused the passenger to become injured; and (3) the accident occurred aboard the aircraft or during boarding or deplaning.²⁶ The plaintiff must prove the occurrence of a physical injury; purely psychological injuries are not sufficient.²⁷ Under Article 20, airline defendants can eliminate or reduce their liability by proving that the passenger's own conduct either caused or contributed to the passenger's injury. The Montreal Convention includes a potential limit on liability under Article 21(2), which dictates that the airline is not liable beyond a pre-set limit if it can prove that its own negligence did not cause the accident. The current limit for personal injury and death is 128,821 Special Drawing Rights, or approximately \$170,000.²⁸

The Montreal Convention sets forth five jurisdictions where legal claims may be brought: (1) where the carrier resides; (2) where the carrier has its principal place of business; (3) where the contract of carriage was made; (4) the place of destination; and/or (5) where the passenger maintains his or her principal and permanent residence, if the carrier also flies passengers to and from that location.²⁹

A confounding jurisdictional problem facing U.S. passengers with permanent residences in the U.S. lies in some recent district court decisions interpreting Article 33(2) of the Montreal Convention. Even though the clear language and purpose was to allow passengers residing in the U.S. to sue foreign carriers where the accident occurs outside the U.S., these courts have rejected the claims and dismissed the cases. The dismissals were rooted, we think, in erroneous logic that neither specific nor general jurisdiction has been shown to exist because of a lack of a nexus to the U.S. Article 33(2) was written into the Montreal Convention precisely to establish the nexus. If a foreign carrier regularly flies to U.S. airports with U.S. passengers, U.S. passengers should have the right to maintain their lawsuits in the U.S.

Too Late – The Strict Montreal Convention Time Limit: *Cohen v. American Airlines, Inc.*³⁰ and *Dangi v. Delta Airlines, Inc.*³¹

Passengers injured on international flights should consult with experienced aviation counsel because the Montreal Convention contains traps for the unwary. We frequently see inexperienced plaintiffs' lawyers file lawsuits in incorrect jurisdictions or in the wrong court, or alleging negligence claims rather than Article 17 accident claims under the Convention. Other plaintiffs' cases often meet quick ends because they fail to file their lawsuits within the two-year limitations period. Two recent Court of Appeals decisions addressed untimely Montreal Convention cases.

In *Cohen v. American Airlines*, a passenger brought a case in New York state court claiming that a flight attendant assaulted him.³² The airline removed the case to a federal district court,

which subsequently dismissed the case as untimely. On appeal, the passenger claimed that the two-year filing deadline did not apply to his case because the flight attendant's conduct constituted "willful misconduct". The court made short work of the plaintiff's argument, noting that "willful misconduct" was a provision in the inapplicable Warsaw Convention, which the Montreal Convention replaced, and that proving willful misconduct under the Warsaw Convention nonetheless did not extend the limitations period.³³

In *Dagi v. Delta Air Lines, Inc.*, a passenger sued the airline for false arrest and wrongful imprisonment after he was detained after landing on suspicions that he had stolen a crew member's bag during the flight.³⁴ Dagi filed his lawsuit after more than two had passed, and the district court dismissed the case based on the untimely filing. On appeal, to escape the two-year bar, the plaintiff attempted to convince the court that his injury had occurred after disembarkation, in a room within the airport, so the Montreal Convention did not apply. The First Circuit affirmed the district court's dismissal, finding that Dagi's false imprisonment was a continuous offense that had started onboard the airplane, and that whatever occurred after disembarkation was not a new or separate claim.

The Montreal Convention and the Ordinary Passenger's Expectations *Moore v. British Airways, P.L.C.*³⁵

The Montreal Convention requires that a plaintiff prove that an "accident" has occurred but does not explicitly define the meaning of the term within Article 17. The Supreme Court has defined "accident" to mean an "unexpected or unusual event or happening" that is external to the passenger.³⁶ Where a passenger's injury "results from the passenger's own internal reaction to the usual and expected operation of the aircraft, it has not been caused by an accident".³⁷

In the recent First Circuit case *Moore v. British Airways PLC*, a passenger was injured while deplaning from a Boeing 777 at London's Heathrow Airport.³⁸ The flight deplaned passengers down a mobile staircase, which had steps with riser heights of 7.4 inches, except the distance from the last step to the ground measured 13 inches. The passenger claimed that the distance from the last step to the ground was "further down" than she expected, and the height discrepancy caused her to lose her balance and fall.³⁹ The district court granted a summary judgment for the airline, finding that a Montreal Convention "accident" did not cause plaintiff's injuries because the stairs in question were not "unexpected or unusual" in that they conformed to industry standards and were commonly used to disembark passengers at London Heathrow.⁴⁰ The First Circuit reversed, finding that the injury-causing event did not have to be unusual *and* unexpected, but merely one or the other. While the use of the mobile staircase may not have been unusual, it met the definition of an accident due to the unexpected nature of the height discrepancy. Importantly, the court noted that in determining whether a certain circumstance is "unexpected", "the problem of perspective looms large, because what is or not expected often lies in the eye of the beholder".⁴¹ It is the ordinary passenger's perspective that determines whether something is sufficiently "unexpected" be a Montreal Convention accident. The court commented that the Montreal Convention "favors passengers rather than airlines" and rejected the defendant's argument that the staircase's bottom step could not be unexpected or unusual since it was customarily used within the airline industry.⁴² The court did, however, reject the notion that a passenger's subjective expectations could control whether an event is an "accident" Under Article 17.⁴³

The essential holding in *Moore* is that an injury-causing event is “unexpected” when a “reasonable passenger with ordinary experience in air travel, standing in the plaintiffs’ shoes, would not expect the event to happen”. Based on that definition, the court found that there was sufficient evidence⁴⁴ to support a finding that an accident occurred and reversed and remanded the case.⁴⁵

Recovery for Psychological Harm Under the Montreal Convention: *Doe v. Etihad Airways*⁴⁶

To prevail against an airline in a Montreal Convention claim, a passenger must prove, among other things, that he or she suffered a physical injury. If a passenger cannot prove a physical injury, there is no case. This is a substantial limitation because it renders unactionable claims for purely psychological harm, regardless of the conduct that caused the harm. In 2017, the Sixth Circuit Court of Appeals issued a decision that massively impacted Montreal Convention cases in the U.S. and resulted in greater recoveries for passengers’ psychological damages.

In *Doe v. Etihad Airways*,⁴⁷ the plaintiff reached into the seatback pocket in front of her and pricked her finger on a hypodermic needle hidden in the pocket. Her physical injury was very minor – only a small cut – but the psychological harm, which included fear of contracting a disease, was much greater. She sued the airline claiming damages for her physical injury, the small cut, and her “mental distress”. Her husband made a claim for his loss of consortium.

The district court granted summary judgment in favor of the airline, holding that the plaintiff’s physical injury did not directly cause the passenger’s mental distress, which the district court found was a requirement for liability under the Montreal Convention. The Sixth Circuit reversed, holding that under the Montreal Convention, emotional or mental damages are recoverable if they are traceable or linked to the accident. A focus of the Sixth Circuit’s analysis was its interpretation of the language contained in Article 17(1), which provides that an airline “is liable for damage in case of death or bodily injury”. The court found that the Convention’s drafters intended for the language to be conditional, rather than causational, noting that the provision was new to the Montreal Convention, and therefore, precedent set under the Warsaw Convention (which required direct causation) was not binding.

The *Doe* decision is important because it allows passengers who have suffered far greater psychological injuries than physical injuries to recover for their psychological damages, even where their physical injuries standing alone did not cause the psychological harm.

Conclusion

Victims injured in aviation accidents anywhere should be wary. We hope this chapter identified some of the challenges they will face seeking justice in U.S. courts.

Endnotes

1. 822 F.3d 680 (3d Cir. 2017) (Federal Aviation Act did not field preempt aviation design defect claims.); 907 F.3d 701 (3d Cir. 2018) (federal law did not preempt strict liability and negligence claims).
2. For a comprehensive review of recent U.S. jurisprudence concerning federal preemption of aviation law, see Justin T. Green, *Aviation Manufacturer Held Subject to State Law Standards in US Products Liability Action* (2016) No. XVII, McGill Center for Research in Air and Space Law Occasional Paper Series.

3. *In Re: Air Crash Over the Southern Indian Ocean on March 8, 2014*, 946 F.3d 607 (D.C. Cir. 2020) (Malaysia was an adequate available forum and the balance of *forum non conveniens* factors favored the case proceeding in Malaysia).
4. *In re Air Crash Over the Mid-Atlantic on June 1, 2009*, 760 F. Supp.2d (N.D. Ca. 2009) (*Forum non conveniens* factors favored dismissal of case in favor of France).
5. *Daimler AG v. Bauman*, 571 U.S. 117 (2014); *Goodyear Dunlop Tires Ops., SA v. Brown*, 564 U.S. 915, 924 (2011).
6. *Bristol-Myers Squibb Co. v. Superior Ct. of California, San Francisco Cnty.*, 582 U.S. 255, 262 (2017) (“[T]here must be an affiliation between the forum and the underlying controversy, principally, [an] activity or an occurrence that takes place in the forum State and is therefore subject to the State’s regulation.”) (internal quotation marks omitted).
7. Montreal Convention cases are unique in this regard; the sale of tickets for an international flight may be sufficiently related to the claim to provide for specific jurisdiction. See *Selke v. Germanwings GmbH*, 261 F. Supp.2d 666 (E.D. Va. 2017).
8. 564 U.S. 915 (2011).
9. *Id.* at 920–21.
10. *Id.* at 922.
11. *Id.* at 919.
12. 141 S. Ct. 1017, 1022, 209 L. Ed. 2d 225 (2021).
13. *Id.* at 1,023.
14. *Id.*
15. *Id.* at 1028.
16. 571 U.S. 117 (2014).
17. *Daimler AG*, 571 U.S. at 122.
18. *Id.* at 139.
19. *Id.*
20. *Mallory v. Norfolk S. Ry. Co.*, 600 U.S. 122, 126 (2023).
21. *Id.* at 127, citing 15 Pa. Cons. Stat. § 411(a).
22. *Id.* at 134–36.
23. See *El Al Israel Airlines, Ltd.*, 525 U.S. 155 (Warsaw Convention); *Moore v. British Airways PLC*, 32 F.4th 110 (1st Cir.2022); *Dagi v. Delta Airlines, Inc.*, 961 F.3d 22, 27–28 (1st Cir. 2020).
24. Montreal Convention, Article 1.2.
25. *Narayanan v. British Airways*, 747 F.3d 1125, 1132 (9th Cir. 2014) (“the Montreal Convention’s limitations period operates as a condition precedent to suit and, as such, is not subject to equitable tolling”).
26. Montreal Convention, Article 21(2).
27. See *Eastern Airlines v. Floyd*, 499 U.S. 530, 552 (1991) (interpreting the Warsaw Convention).
28. https://www.icao.int/secretariat/legal/Pages/2019_Revised_Limits_of_Liability_Under_the_Montreal_Convention_1999.aspx
29. Montreal Convention, Article 33(1)– (2).
30. 13 F.4th 240 (2d Cir. 2021).
31. 961 F.3d 22 (1st Cir. 2020).
32. *Cohen v. Am. Airlines, Inc.*, 13 F.4th 240, 243 (2d Cir. 2021).
33. *Id.* at 246.
34. *Dagi v. Delta Air Lines, Inc.*, 961 F.3d 22 (1st Cir. 2020).
35. 32 F.4th 119 (1st Cir 2021).
36. *Air France v. Saks*, 470 U.S. 392, 405 (1985) (addressing the meaning of “accident” in the Warsaw Convention); see also *Olympic Airlines v. Husain*, 540 U.S. 644 (2004) (airline was liable when an asthmatic passenger died after suffering an asthma attack aboard a flight and the airline’s flight attendants rejected the passenger’s wife’s requests to be moved away from smoking passengers). Courts have applied the *Saks* definition of accident to Montreal Convention cases. See, e.g., *Moore*, 32 F.4th at 112).

37. *Id.* at 405–6.
38. For a comprehensive examination of *Moore*, see Erin R. Applebaum, *British Airways Position on Montreal Convention Accident Determination Rejected*, (2022) VOL XLVII McGill Annals of Air and Space Law.
39. *Moore*, 32 F.4th at 112.
40. *Id.* at 114.
41. *Id.* at 117.
42. *Id.* at 117.
43. *Id.* at 118.
44. The court noted the plaintiff's and her traveling companion's testimony, the testimony of plaintiff's expert that the staircase did not comply with certain voluntary standards concerning stair height, the lack of any warning by the airline concerning step down from the staircase, and other evidence to find there were triable questions of fact. *Id.* at 121–22.
45. The court noted a decision that it considered an “outlier”—*Blansett v. Continental Airlines*, 379 F.3d 177, 182 (5th Cir. 2004). In *Blansett*, the Fifth Circuit held that failure to warn on the risk of passengers developing deep vein thrombosis syndrome on long-haul flights could not be an accident because it was not unusual in the industry and complied with the expectations of the Federal Aviation Administration. The *Moore* court squarely rejected *Blansett* to the extent that the decision is read to spurn a “passenger-focused perspective as to whether an event is unexpected...” *Moore*, 32 F.4th at 119 n.7.
46. 870 F.3d 406 (6th Cir. 2017).
47. *Id.* at 426–427.



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Austria

GHP Attorneys at Law



Mag. Irena Gogl-Hassanin

1 General

1.1 Please list and briefly describe the principal legislation and regulatory bodies which apply to and/or regulate aviation in your jurisdiction.

Most of aviation-related legislation is harmonised on the level of the European Union, of which Austria is a Member State. Next to EU legislation, the main legislative act applicable in Austria is the Austrian Aviation Act and several federal regulations, providing provisions relating to the aircraft register and aircraft operation.

The competent authorities in Austria are the Austro Control GmbH and the Ministry of Climate Protection, Environment, Energy, Mobility and Technology.

1.2 What are the steps which air carriers need to take in order to obtain an operating licence?

The relevant provisions are set out in EU Regulation No. 1008/2008 on common rules for the operation of air services in the Community. Pursuant to Art. 4 of this regulation, the following needs to be fulfilled:

- the principal place of business must be located in a Member State;
- the carrier must hold a valid Air Operator's Certificate issued by a national authority of the same Member State whose competent licensing authority is responsible for granting, refusing, revoking or suspending the operating licence of the Community air carrier;
- the carrier has one or more aircraft at its disposal through ownership or a dry lease agreement;
- the carrier's main occupation is to operate air services in isolation or combined with any other commercial operation of aircraft or the repair and maintenance of aircraft;
- the carrier's company structure allows the competent licensing authority to implement the provisions of the respective regulation; and
- Member States and/or nationals of Member States own more than 50% of the carrier and effectively control it, whether directly or indirectly, through one or more intermediate undertakings, except as provided for in an agreement with a third country to which the Community is a party.

In addition, certain financial needs, insurance requirements and provisions as to good repute need to be complied with.

1.3 What are the principal pieces of legislation in your jurisdiction which govern air safety, and who administers air safety?

Pursuant to Art 120 of the Austrian Aviation Act, air safety (*Flugsicherung*) is administered by Austro Control GmbH as the responsible authority, as far as European Regulations do not delegate such tasks to EASA, the European Union Aviation Safety Agency or other authorities.

The main legislative framework is set out in the Single European Skies ("SES") Regulations, in particular, the EU-Regulations No. 550/2004 as amended by EU-Regulation No 1070/2009 the EU-Commission Regulation No. 923/2012 ("SERA Regulation") as well as No. 2015/320 ("ATCO Regulation"). On a national level provision, air safety is regulated in the Austrian Aviation Act as well as further regulations and ordinances by the relevant authorities, such as the Air Traffic Rules 2014 (*Luftverkehrsregeln 2014*).

1.4 Is air safety regulated separately for commercial, cargo and private carriers?

There is no difference in regulation between commercial, cargo and private carriers.

1.5 Are air charters regulated separately for commercial, cargo and private carriers?

No, they are not regulated separately.

1.6 As regards international air carriers operating in your jurisdiction, are there any particular limitations to be aware of, in particular when compared with 'domestic' or local operators? By way of example only, restrictions and taxes which apply to international but not domestic carriers.

Air carriers based in the European Union operating under an operating licence under EU Regulation No. 1008/2008 on common rules for the operation of air services in the Community are treated in the same way as Austrian air carriers. Third country operators ("TCO") need to apply for a TCO Authorization with EASA in accordance with the procedure outlined in Commission Regulation No. 452/2014 air carriers.

Foreign air carriers also need to be nominated by their local governments as designated airlines under possibly applicable Air Treaties (typically bilateral treaties). Such treaties will typically contain restrictions with regard to cabotage.

1.7 Are airports state or privately owned?

Airports are privately owned; however, some airports have state participation to a certain degree, e.g. Vienna International Airport, Austria's main airport, is a listed stock corporation and is currently 40% state-owned (city of Vienna and lower Austria).

1.8 Do the airports impose requirements on carriers flying to and from the airports in your jurisdiction?

There are no specific Austrian requirements imposed by airports on carriers. The carrier is required, based on its state of registration, to comply with the air laws applicable by international treaties or European regulations, and will need an allocated time slot for landing and take-off. As in other jurisdictions, carriers will need to pay the applicable airport charges.

1.9 What legislative and/or regulatory regime applies to air accidents? For example, are there any particular rules, regulations, systems and procedures in place which need to be adhered to?

Air Accidents are mainly regulated by the Austrian Accident Investigation Act (*Unfalluntersuchungsgesetz – UUG*) and EU Regulations No. 56/9 and No. 996/2010. Furthermore, in cases of injuries or death of persons, criminal proceedings will be initiated by the Federal Criminal Prosecution.

1.10 Have there been any recent cases of note or other notable developments in your jurisdiction involving air operators and/or airports?

There have not been any recent noteworthy cases.

1.11 Are there any specifically environment-related obligations or risks for aircraft owners, airlines, financiers, or airports in your jurisdiction, and to what extent is your jurisdiction a participant in (a) the EU Emissions Trading System (EU ETS) or a national equivalent, and (b) ICAO's Carbon Offsetting and Reduction Scheme for International Aviation (CORSIA)?

Austria is part of the European Union and is a participant in the EU ETS as well as ICAO's CORSIA programme.

2 Aircraft Trading, Finance and Leasing

2.1 Does registration of ownership in the aircraft register constitute proof of ownership?

No, the Austrian Aircraft Registry is an operator-based registry, meaning that the owner is not registered in the Registry. Only the operator is registered and can apply for changes in the registry, and in particular, also registration and deregistration of aircraft. However, the owner must be notified to the Austro Control GmbH as the relevant body administering the Registry, and certain changes in the Registry will require that ownership and the proper chain of transfer is disclosed to the authority.

2.2 Is there a register of aircraft mortgages and charges? Broadly speaking, what are the rules around the operation of this register?

There is no register for aircraft mortgages and charges. Austria has also not ratified the Cape Town Convention on International Interests in Mobile Equipment, which is, therefore, also not applicable.

2.3 Are there any particular regulatory requirements which a lessor or a financier needs to be aware of as regards aircraft operation?

There are no specific rules particular to the operation of an aircraft which is financed.

2.4 As a matter of local law, is there any concept of title annexation, whereby ownership or security interests in a single engine are at risk of automatic transfer or other prejudice when installed 'on-wing' on an aircraft owned by another party? If so, what are the conditions to such title annexation and can owners and financiers of engines take pre-emptive steps to mitigate the risks?

Engines are qualified as a "movable asset" and do not follow the legal status of the airframe. Title (ownership) to an engine is therefore not annexed when detached from an airframe and then installed on an aircraft owned by another party.

However, regarding security interests, a particularity of Austrian proprietary law called the "dead pledge" principle needs to be considered by financiers of aircraft registered in Austria.

This particular Austrian rule of law provides that security over a movable asset can only be created by physically handing over the asset to the secured party. The secured party may, however, also indirectly possess the aircraft, i.e. instruct a third party (which can also be the operator of the aircraft) to possess the aircraft on behalf of the secured party. If the asset is handed over by the operator (or lessee) to another party not instructed by the secured party to possess the aircraft on their behalf, then the security interest risks being eliminated.

2.5 What (if any) are the tax implications in your jurisdiction for aircraft trading as regards a) value-added tax (VAT) and/or goods and services tax (GST), and b) documentary taxes such as stamp duty; and (to the extent applicable) do exemptions exist as regards non-domestic purchasers and sellers of aircraft and/or particular aircraft types or operations?

VAT applies to supplies of goods or services which are carried out within Austria, the importation of goods from non-EU Member States, as well as to the intra-EU acquisition of goods. Taxable transactions are defined as any supply of goods or services rendered:

- by a taxable person;
- within Austria;
- for consideration (i.e. payment); and
- for purposes of the business.

"Supply of goods" is defined as the transfer of the right to dispose of tangible property as the owner, made by a taxable person to a customer, or upon the customer's instruction to a third party. Supply of goods therefore means the transfer of the right of disposal of goods.

A supply of goods is deemed to have taken place within Austria if the goods were located in Austria at the point at which the power of disposition (*Verfügungsgewalt*) was transferred. In the case of the dispatch or transport of supplies of goods, the supply is deemed to have been made from the point at which the goods are handed over to the forwarding agent.

In the context of aviation, there is only one VAT exemption in Austria; exempt transactions for aviation are the supply, conversion, repair, maintenance, chartering and hiring out of aircraft intended for use by traders who, in air transport for reward, predominantly carry out international transport or transport on routes situated exclusively abroad.

Cross-border deliveries to purchasers in Member States of the EU (intra-Community deliveries) are exempt from VAT under certain conditions. Since these are genuine tax exemptions, the input taxes associated with these deliveries can, in principle, be claimed.

These tax exemptions are, however, subject to strict requirements, with the delivering entrepreneur having to provide evidence of their compliance with these requirements to the tax authority. Where the required evidence cannot be provided, VAT must be paid on the corresponding sales transactions, irrespective of whether or not this tax can be recovered by the purchaser.

In the case of an intra-Community delivery, the invoice shall be issued without Austrian VAT but with the reference to the intra-Community supply. The VAT number must appear on the invoice. Furthermore, intra-Community deliveries are only exempt from tax in cases where the delivering entrepreneur has complied with the obligation to submit a recapitulative statement (*Zusammenfassende Meldung*) within the deadline stated in article 21 paragraph 3 of the Austrian VAT Act.

2.6 Is your jurisdiction a signatory to the main international Conventions (Montreal, Geneva and Cape Town)?

Austria is a signatory of the Montreal Convention, which is also implemented by EU law and therefore part of the EU *acquis*, and the Geneva Conventions. However, Austria has not ratified the Cape Town Convention, which is therefore not applicable in Austria.

2.7 How are the Conventions applied in your jurisdiction?

The provisions of the ratified conventions are directly applicable.

2.8 Does your jurisdiction make use of any taxation benefits which enhance aircraft trading and leasing (either in-bound or out-bound leasing), for example access to an extensive network of Double Tax Treaties or similar, or favourable tax treatment on the disposal of aircraft?

There are no particular benefits applicable to aircraft trading and leasing transactions.

2.9 To what extent is there a risk from the perspective of an owner or financier that a lessee of aircraft or other aviation assets in your jurisdiction may acquire an economic interest in the aircraft merely by payment of rent and thereby potentially frustrate any rights to possession or legal ownership or security?

A lessee will usually be entitled to possess an aircraft subject to the terms of the lease agreement concluded with the lessor

(usually the owner of the aircraft). Depending on whether the lessee has concluded an operating lease or a financing lease, he/she may or may not obtain a right to legal ownership to the aircraft. During a lease term, if the lessee pays the rent on time and does not violate any other terms of the lease agreement, the lessor will usually not have any possibility to repossess the aircraft. In case of an event of default, the lessor or financier usually obtains a power of deregistration to be able to repossess the aircraft faster than through the normal procedure.

3 Litigation and Dispute Resolution

3.1 What rights of detention are available in relation to aircraft and unpaid debts?

Unless otherwise agreed amongst the parties, rights of retention might exist. Art. 471 of the Austrian Civil Code applies where the retaining party has made expenses with regard to the detained object or was damaged by that object. A connectivity element is required between the object and the reason of the retention. The retaining party may refuse to hand over the object but does not have any right to sell the retained object in order to satisfy its claim.

Amongst entrepreneurs, the commercial detention right pursuant to Art. 369 of the Austrian Commercial Code applies, which goes beyond the right of retention under the Austrian Civil Code insofar as it does not require connectivity, and furthermore entitles the retaining party to sell the retained object in the same way as a lien.

3.2 Is there a regime of self-help available to a lessor or a financier of an aircraft if it needs to reacquire possession of the aircraft or enforce any of its rights under the lease/finance agreement?

A lessor remains the owner of an aircraft throughout the lease and therefore, as an owner, can at any time repossess the aircraft. A financier who holds a security interest in the aircraft may also repossess the aircraft, unless the security interest has expired due to breach of the dead pledge principle. However, rights of retention (e.g. of suppliers, maintenance companies or airports) might make it harder for the lessor or financier to repossess the aircraft if the lessor/financier does not pay the outstanding debt resulting in the detention of the aircraft.

3.3 Which courts are appropriate for aviation disputes? Does this depend on the value of the dispute? For example, is there a distinction in your jurisdiction regarding the courts in which civil and criminal cases are brought?

Austrian civil courts are competent to handle aviation disputes; depending on whether one party of the dispute is a consumer or not, either the pure civil courts or the commercial courts (which are, however, also civil courts, but only handle disputes between entrepreneurs) are competent.

Depending on the value of the claim, either the district court (*Bezirksgericht*), for claims of a value up to a total amount of EUR 15,000, or the competent regional court (*Landesgericht*), for claims of a higher value, are competent.

Civil courts do not handle criminal charges; such proceedings are subject to the jurisdiction of the criminal courts.

3.4 What service requirements apply for the service of court proceedings, and do these differ for domestic airlines/parties and non-domestic airlines/parties?

Court proceedings are initiated by filing a complaint before the competent court. Service of the complaint is then performed by the court. If the defendant is a non-domestic party, the German (officially required) version of the complaint might need to be accompanied by an official certified translation. The court will appoint a translator whose costs will need to be paid by the claimant. Depending on where the defendant is situated, the Austrian court might need to ask the local authorities or courts for legal assistance with serving the documents.

3.5 What types of remedy are available from the courts or arbitral tribunals in your jurisdiction, both on i) an interim basis, and ii) a final basis?

Before the courts or arbitral tribunals, a claim for performance, damages, injunctive relief or a declaratory motion can be made. In cases where the plaintiff fears an irreversible loss, a preliminary injunction can be filed which, however, may not anticipate the final judgment that is sought.

3.6 Are there any rights of appeal to the courts from the decision of a court or arbitral tribunal and, if so, in what circumstances do these rights arise?

Any kind of judgment can be appealed. According to section 482 of the Code of Civil Procedure (*Zivilprozessordnung – ZPO*), the appellate court may only decide on the basis of the content of the proceedings before the court of first instance.

An arbitral award can be contested only if it goes against the *ordre public* or if the matter decided was a matter which was not arbitrable.

3.7 What rights exist generally in law in relation to unforeseen events which might enable a party to an agreement to suspend or even terminate contractual obligations (in particular payment) to its contract counterparties due to *force majeure* or frustration or any similar doctrine or concept?

In Austrian law, several concepts exist where an unforeseen event has an effect on the performance of the parties. One needs to distinguish whether the unforeseen event is permanent or temporary.

If the event is temporary, the party which is not able to perform will be considered a delay of its performance (Art. 918 of the Austrian Civil Code). Austria applies an objective standard, meaning that it is not relevant whether that delay was caused by the performing party's default or *force majeure*. The consequence of such delay is that the other party may either insist on the performance of the contract or terminate the contract. Whatever the other party decides, the other party only has an additional claim for damages if the delay was caused by default of the performing party.

If the performance becomes impossible permanently, then Austrian law applies the doctrine of 'subsequent impossibility' (*Nachträgliche Unmöglichkeit*). If the impossibility is caused by *force majeure*, then all obligations under the contract are cancelled and there is no claim for damages. If the impossibility is caused by default of either party, the non-defaulting party can either terminate the contract or claim damages for the non-performance of the contract.

4 Commercial and Regulatory

4.1 How does your jurisdiction approach and regulate joint ventures or other forms of partnership and/or alliances between airlines?

Mergers and joint ventures between competitors, whether an airline or a company operating in another industry, are subject to merger control by the Austrian Federal Competition Authority (*Bundeswettbewerbsbehörde*) if certain thresholds are reached. Consequently, a merger must be notified to the Austrian Federal Competition Authority if the parties have achieved the following turnover in the last financial year before the merger:

- worldwide, a total of more than EUR 300 million;
- domestically, a total of more than EUR 30 million; and
- for at least two companies, each more than EUR 5 million worldwide.

Excluded from this provision are mergers where the parties achieved the following revenue totals in the last financial year before the merger:

- only one of the parties, domestically, more than EUR 5 million; and
- the other parties involved, worldwide, a total of no more than EUR 30 million.

Mergers also require notification if:

- the undertakings concerned achieved an aggregate worldwide turnover of more than EUR 300 million in the last business year preceding the transaction;
- the undertakings concerned achieved an aggregate domestic turnover of more than EUR 15 million in the last business year preceding the transaction;
- the value of the transaction is more than EUR 200 million; and
- the undertaking to be acquired is active to a large extent in the domestic market.

4.2 How do the competition authorities in your jurisdiction determine the 'relevant market' for the purposes of mergers and acquisitions?

The relevant market is determined on a case-by-case basis by looking closely at the type of activity of the concerned parties. With regard to commercial airlines, the relevant market is typically determined on the basis of the flight routes, aircraft types and additional services provided.

4.3 Does your jurisdiction have a notification system whereby parties to an agreement can obtain regulatory clearance/anti-trust immunity from regulatory agencies?

The Austrian Federal Competition Authority provides a service where the merger can be described by e-mail to POST-Anmeldepflicht@bwb.gv.at and the Authority then responds with their indication. The more details are given the more determined the Authority's response will be. In addition, pre-notification talks can be arranged. The Authority published guidelines for pre-notification talks on their website.

4.4 How does your jurisdiction approach mergers, acquisition mergers and full-function joint ventures?

See response to question 4.1.

4.5 Please provide details of the procedure, including time frames for clearance and any costs of notifications.

The Austrian Federal Aviation Authority provides a form on its website that needs to be filled in by the parties and submitted to the authority electronically. Additionally, a fee of EUR 6,000 must be paid to the Authority by transfer to the Authority's account.

After receipt of the notification, the Austrian Federal Aviation Authority has a fixed time limit of four weeks to clear the merger. If the Authority or the Federal Cartel Prosecutor, who receives a copy of the filed merger notification from the Federal Competition Authority, comes to the conclusion that the merger cannot be cleared within the four-week period or if that the merger is critical from a competition perspective, they will apply for examination of the merger (Phase II) at the Cartel Court by that time. The Cartel Court will then initiate ordinary proceedings and give both sides a chance to submit their arguments.

Parties therefore typically try to clarify with the Austrian Competition Authority in pre-notification talks or during the four-week examination phase what needs to be done in order to avoid entering Phase II. If Phase II is entered, the time until clearance (if at all) is not foreseeable.

4.6 Are there any sector-specific rules which govern the aviation sector in relation to financial support for air operators and airports, including (without limitation) state aid?

No, there are not.

4.7 Are state subsidies available in respect of particular routes? What criteria apply to obtaining these subsidies?

No there are not.

4.8 What are the main regulatory instruments governing the acquisition, retention and use of passenger data, and what rights do passengers have in respect of their data which is held by airlines and airports?

The main legislation applicable to the acquisition, retention and use of passenger rights by airlines and airports is:

- the General Data Protection Regulation (EU) 2016/679 ("GDPR");
- the Data Protection Act (*Datenschutzgesetz*); and
- the Passenger Name Record ("PNR") Act, by which the EU Directive on the use of PNR data for the prevention, detection, investigation and prosecution of terrorist offences and serious crime was implemented.

Passengers generally have a right to enquire about which data is stored by the data-collecting party. Pursuant to the GDPR, any entity using personal data must provide a data protection declaration outlining which data is used, how it is used and for how long it is stored. The declaration must be made publicly available.

Pursuant to the PNR Act, airlines which transport passengers from an EU country to a non-EU country are required to submit extensive passenger data to the Passenger Information Unit established at the Ministry of Interior.

4.9 In the event of a data loss by a carrier, what obligations are there on the airline which has lost the data and are there any applicable sanctions?

The carrier is obliged to inform the passenger of any data loss and may be subject to civil claims by the passenger if the carrier did not comply with data protection or safety regulations applicable in the respective case. Any regulation violation by the carrier resulting in a data loss may additionally be sanctioned by the respective data protection authority through fines.

4.10 What are the mechanisms available for the protection of intellectual property (e.g. trademarks) and other assets and data of a proprietary nature?

Trademarks and utility models can be registered in a register with the Austrian Patent Office or as a Union trademark or utility model with the European Union Intellectual Property Office ("EUIPO").

Any claim for violation of protected IP rights can be either addressed directly to the competent patent office or brought before the competent commercial courts in Austria, depending on the type of relief claimed (deletion of the registered IP right itself, compensation for damages, injunctive relief).

4.11 Is there any legislation governing the denial of boarding rights, delayed flights and/or cancelled flights?

In Austria, EU Regulation No. 261/2004, establishing common rules on compensation and assistance to passengers in the event of denied boarding and of cancellation or long delay of flights, applies in case of denied boarding and/or cancelled flights. Under this Regulation, an airline is required to pay compensation in case of denied boarding, cancelled and delayed flights, as well as possible on-site support, such as rerouting, accommodation or supply of food and drinks at the airport.

Depending on the distance between the place of departure and the passenger's final destination (of one booking), the awardable compensation varies from EUR 250 to EUR 600 per passenger.

4.12 What powers do the relevant authorities have in relation to the late arrival and departure of flights?

There are no particular powers of the authorities in relation to late arrival and departure of flights.

4.13 Are the airport authorities governed by particular legislation? If so, what obligations, broadly speaking, are imposed on the airport authorities?

Airports require an operating licence under the Austrian Aviation Act and the Civil Airport Regulation (*Zivilflugplatz-Verordnung – ZFV 1972*).

The Austrian Aviation Act establishes a two-step procedure to obtain a licence: in the first step, the airport project must be presented to and approved by the Minister of Transport, Innovation and Technology as the competent authority, whereas in the second step it verifies that the airport was built according to the approval given and then grants an operating licence. This procedure not only applies to the construction of airports but also to the extension or restriction of an airport.

With regard to the provision of ground handling services, either by the airport itself or a third-party ground handling company, the Austrian Ground Handling Act (*Flughafen-Bodenabfertigungsgesetz – FBG*) provides particular provisions.

4.14 To what extent does general consumer protection legislation apply to the relationship between the airport operator and the passenger?

There are no particular rules deriving from consumer protection legislation that apply to the relationship between the airport operator and the passenger. Generally, consumer protection laws apply in contractual relationships. Passengers typically have contractual relationships with the air carrier or a travel agency, but not directly with the airport. Therefore, any claims of passengers will typically be brought to the attention of these contracting parties.

4.15 What global distribution suppliers (GDSs) operate in your jurisdiction?

The main GDSs operating in Austria are: Amadeus; Sabre; and Travelport.

4.16 Are there any ownership requirements pertaining to GDSs operating in your jurisdiction?

No, there are no specific ownership requirements.

4.17 Is vertical integration permitted between air operators and airports (and, if so, under what conditions)?

Yes, vertical integration is permitted between air operators and airports. There are no particular conditions that apply thereto.

4.18 Are there any nationality requirements for entities applying for an Air Operator's Certificate in your jurisdiction or operators of aircraft generally into and out of your jurisdiction?

See answer to question 1.2.

5 In Future

5.1 In your opinion, which pending legislative or regulatory changes (if any), or potential developments affecting the aviation industry more generally in your jurisdiction, are likely to feature or be worthy of attention in the next two years or so?

As of 1 January 2024, the EU Drones Regulation will apply in Austria, which means that new rules for the handling of drones will apply. Other than that, there are no significant new changes to be expected.



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Ariga



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1 General

1.1 Please list and briefly describe the principal legislation and regulatory bodies which apply to and/or regulate aviation in your jurisdiction.

A distinction should be made between international conventions and treaties that are directly applicable and their implementation instruments, EU regulations and directives, and Belgian law.

The Chicago Convention was ratified in Belgium on 30 April 1947 (Belgian Official Journal (OG) 2 December 1948) and was implemented by the Royal Decree of 15 March 1954, which has been amended several times. The Law of 30 April 1947 has been further implemented by another 25 royal and ministerial decrees. In effect, that law, together with the Law of 27 June 1937 and the Royal Decree of 15 March 1954, are the basic regulations for aviation operations in Belgium.

At a national level, the basic regulations with respect to technical operations are laid down in the Royal Decree of 9 January 2005 regulating the conditions for technical operations of aircraft belonging to general aviation (OG 7 February 2005) and, with respect to flight operation licences, as set out in the Royal Decree of 25 October 2013 (OG 16 December 2013) implementing Regulation (EU) No. 1178/2011 as amended by Regulation (EU) No. 290/2012. The Ministerial Decree of 13 February 1970 as amended (see especially Ministerial Decree of 20 October 2003) sets out further technical requirements for the operation of aircraft of 5,700kg or more, as well as organisational requirements for the airline and the maintenance of aircraft (OG 4 April 1970).

As a result of Regulation (EC) No. 3922/91, the Joint Aviation Requirements (JAR) (subsequently replaced by EU-OPS and then by IR-OPS (see Commission Regulation (EU) No 965/2012 of 5 October 2012 laying down technical requirements and administrative procedures related to air operations pursuant to Regulation (EC) No 216/2008 of the European Parliament and of the Council) also apply in Belgium and have been further implemented by the Royal Decrees of 25 June 2001 (OG 15 August 2001) and of 9 January 2005 (OG 7 February 2005). With the creation of the European Aviation Safety Agency, many safety issues are now further regulated and harmonised at EU level, namely by Regulation (EC) No. 216/2008 of 20 February 2008 as replaced by Regulation (EU) No. 2018/1139 (OJ L 212, 22 August 2018).

There are three regulatory bodies in Belgium:

- General authority lies with the Civil Aviation Authority of the Federal Public Service (FPS) of Mobility and Transport (BCAA), which was created by the Law of 27 June 1937 amending the Law of 16 November 1919 with respect to air navigation (as amended) (OG 26 July 1937) and its Royal Decree of 15 March 1954 with respect to air navigation (as amended) (OG 26 March 1954).

- Skeyes (previously known as “Belgocontrol”) is responsible for air traffic control and civil air navigation services for Luxembourg and Belgium, and was created by the Law of 19 December 1997, for the rationalisation of Brussels National Airport (OG 30 December 1997).
- The Belgian Supervising Authority for Air Navigation Service was created in the context of the Single European Sky (SES) by the Royal Decree of 14 February 2006 for the creation of the national supervising authority for air navigation services (OG 28 February 2006).

1.2 What are the steps which air carriers need to take in order to obtain an operating licence?

Regulation (EC) No. 1008/2008 of 24 September 2008 (as amended i.a. by Regulations (EU) No. 2018/1139, (EU) No. 2019/2 and (EU) No. 2020/696) is directly applicable in Belgium. The Ministerial Decree of 3 August 1994 (OG 1 October 1994) further sets out the licence requirements for the commercial operation of aircraft.

The licence and the air operator’s certificate (AOC) are issued by the Civil Aviation Authority.

The applicants must have their principal place of business and, if any, their registered office in Belgium.

Applicants must have at least one aircraft registered in Belgium, adequate insurance and evidence that the company is and will continue to be owned directly or through a majority shareholding by a company established and controlled by a company or person established in the European Economic Area (EEA).

The application must be accompanied by the documents that identify the applicant and its shareholding structure and the routes it wishes to operate, together with all the documents required pursuant to Regulation (EC) No. 1008/2008.

Except for certain exceptions set out in the Royal Decree, an operating licence may not be granted if the operator has not previously obtained a certificate affirming that it has the ability and resources to ensure the safe operation of the aircraft for the activities set out in the certificate. The financial fitness criteria are those laid down in Regulation (EC) No. 1008/2008.

1.3 What are the principal pieces of legislation in your jurisdiction which govern air safety, and who administers air safety?

Please see question 1.1 above, as well as question 1.9 regarding the implementation of the Just Culture regime.

1.4 Is air safety regulated separately for commercial, cargo and private carriers?

The air safety regulations depend, first of all, on the weight of the aircraft.

Aircraft above 5,700kg are regulated by the Royal Decree of 9 January 2005 and the Ministerial Decree of 13 February 1970 as amended from time to time (see above). Aircraft weighing less than 5,700kg are regulated by the Ministerial Decree of 12 September 1991 (OG 8 November 1991) and ultra-light aircraft are regulated by the Royal Decree of 25 May 1999 (OG 26 August 1999). The Royal Decrees of 9 January 2005 with respect to technical operations, and Regulation (EU) No. 1178/2011 as amended by Regulation (EU) No. 290/2012 with respect to flight operation licences, make a clear distinction between the different types of aircraft.

The Royal Decree of 15 March 1954 applies to all civil aircraft, whether they are used for commercial or cargo transport. However, with respect to the licence requirements for commercial transport, a distinction is drawn between taxi services and other commercial operations. A taxi service is defined as an aircraft with no more than 10 seats and in respect of which the destination is fixed by the users without any seats going to other commercial passengers. The licence requirements for taxi services are less stringent than for other commercial operations. If an aircraft is not used for commercial transport, the licence requirements for commercial operations do not apply.

1.5 Are air charters regulated separately for commercial, cargo and private carriers?

Regulation (EU) No. 1008/2008 makes no distinction between regular services and chartered services. The Royal Decree of 15 March 1954 provides, in article 47, specific licence requirements for charter services, and specifies that non-scheduled flights or a series of non-scheduled flights are subject to specific authorisation of the Minister. Non-scheduled air services are considered on a case-by-case basis within the framework of the bilateral treaties.

1.6 As regards international air carriers operating in your jurisdiction, are there any particular limitations to be aware of, in particular when compared with 'domestic' or local operators? By way of example only, restrictions and taxes which apply to international but not domestic carriers.

There are no specific taxes other than those applicable to all companies.

As to flight and operating restrictions, a distinction must be made between an EU air carrier, any other air carriers and flights within the EU, and flights to a non-EU Member State. In accordance with article 15 of Regulation (EC) No. 1008/2008, any EU air carrier duly licensed by its home country in accordance with the above-mentioned EC Regulation can freely operate intra-European routes. No Member States can submit the Community air carrier to any further formalities or conditions. This is the essence of the SES.

The Royal Decree dated 18 August 2010 regulates the allocation of traffic rights to non-EU countries. Only EU air carriers established in Belgium are entitled to traffic rights to non-EU Member States. These airlines must submit: a formal application to the BCAA, together with a copy of their AOC

and of their insurance certificate; evidence that the airline is established in Belgium in accordance with Community law; information on their operational and financial sustainability; information on the planned flights; and the possible acceptance of the applicant to cover, in exceptional circumstances, any required capacity to fulfil the national or international requirements of Belgium. The allocation of traffic rights and the possible limits on the number of flights will be determined by the terms and conditions of the applicable bilateral treaty. A non-Community carrier is not permitted to operate regular air transport services unless it has received prior authorisation from the Minister of Transport, either through bilateral agreements or specific authorisation. Such bilateral treaties or authorisation will set out specific conditions with which the airline must comply. Moreover, such airline may not be blacklisted as an unsafe airline by the European Commission, pursuant to Regulation (EC) No. 2111/2005.

Any carrier that has a trading activity in Belgium must also be registered in the commercial register and obtain a value-added tax number. If such air carrier opens a branch office in Belgium, it must also fulfil the formalities for the opening of a branch office in Belgium as stipulated in the Belgian Company Code.

1.7 Are airports state or privately owned?

A distinction must be made between the ownership of the airports themselves and the exploitation thereof. The airports themselves are state property and belong to the public domain.

The infrastructure at Brussels Airport, which is the main airport in Belgium, is owned by Brussels Airport Company (BAC, previously called BIAC). The exploitation of Brussels Airport is also granted to BAC, which is a private limited company. Although the state still owns 25% of the shares, through FPIM NV, the other 75% are privately owned by Brussels Airport Investments.

Skeyes manages safety, policing at the airport, air traffic control and civil air navigation services.

The other airports in Belgium are: Liège Airport in Bierset, close to Liège; Brussels South Charleroi Airport (BCSA) in Charleroi; Ostend-Bruges International Airport; and Antwerp Airport in Deurne.

The infrastructure at both Ostend-Bruges International Airport and Antwerp Airport are owned by the Flemish Region – by LOM Vlaanderen – but the management of both airports has been granted to LEM Oostende-Brugge and LEM Antwerpen, which are privately held companies controlled by EGIS.

The infrastructure of Liège Airport is state-owned, and managed by SOWAER, but the exploitation is granted to Liège Airport SA, the shareholding of which is determined as follows: SOWAER – 24.4%; NEB Participations – 50%; and ADP International – 25.6%.

The infrastructure of BCSA is owned by the Walloon Region and managed by SOWAER. The exploitation thereof is granted to BCSA, of which the largest shareholders are la Société Wallonne des Aéroports Belgian Airports – SOWAER, (35.87%), Belgian Airports (48.32%) (controlled by Save – an Italian company), la Société de Développement et de Participation du Bassin de Charleroi – SAMBRRINVEST (13.68%) and some smaller investors.

1.8 Do the airports impose requirements on carriers flying to and from the airports in your jurisdiction?

The operating licence of the airport operators sets out which type of aircraft may land at the airport and when and how

landing fees can be charged. The landing fees are calculated based on parameters of weight, noise and the time of landing. Every airport operator has its own specific rules with respect to the landing fees.

There are specific noise restrictions relating to the type of aircraft, its weight and the time of landing. These restrictions are different for each airport.

Further noise restrictions for aircraft are laid down in the Royal Decree of 25 September 2003 (OG 26 September 2003) setting out operating restrictions at Brussels Airport, and by the Ministerial Decree of 3 May 2004 (OG 11 June 2004) as amended by the Ministerial Decree of 27 September 2009 (OG 21 August 2009). The Brussels Region has issued strict noise restrictions which are very much debated (Decree of 17 July 1997 as amended by Decree of 19 April 2018; decisions of 27 May 1999, 19 May 2016 and 21 January 2021). See also the restrictions for chapter 2 aircraft laid down in Council Directive 2006/93/EC. More restrictions are contained in the Royal Decree of 16 December 2005 (implementing EC Directive 2004/36) with respect to the safety of aircraft of third countries wishing to land at a Belgian airport (OG 23 January 2006).

1.9 What legislative and/or regulatory regime applies to air accidents? For example, are there any particular rules, regulations, systems and procedures in place which need to be adhered to?

Pursuant to the Royal Decree of 9 December 1998 (OG 29 December 1998) as amended by Royal Decree of 27 April 2007, an independent unit has been created within the Ministry of Transport, namely the accidents and incidents investigation unit. The unit is responsible for the independent investigation of any accident or incident and is especially independent from the Civil Aviation Authority, which is responsible for, among other things, monitoring the airworthiness of aircraft.

The accident and incident investigation unit will, following any accident or incident, carry out a full investigation and draft a report within 12 months to be available on a database for those responsible for safety in aerospace. Such report is, furthermore, communicated to the companies involved, the Civil Aviation Authority, the European Commission and the international civil aviation organisations. The investigators have free access to all data relating to the aircraft and accident or incident.

Following an accident, no repair can be carried out without prior approval of the Civil Aviation Authority, unless such repair is carried out in accordance with the manufacturer's manuals and maintenance programme.

Skeyes is also responsible for safety in the air and on the ground.

Pursuant to the Royal Decree of 9 August 2020 implementing Regulation (EU) No. 376/2014 of the European Parliament and of the Council of 3 April 2014 on reporting, investigation and follow-up of occurrences in civil aviation, amending Regulation (EU) No. 996/2010 of the European Parliament and of the Council and repealing Directive 2003/42/EC of the European Parliament and of the Council and Commission Regulations (EC) No. 1321/2007 and (EC) No. 1330/2007, as well as the Royal Decree of that same date on establishing a Just Culture platform, the BCAA as well as the Just Culture Platform have been tasked with handling infringements, incidents or occurrences posing a risk to civil aviation, as well as the foreseen voluntary reporting system:

- The BCAA is appointed as the competent authority for the implementation of the analysis process for incidents, as well as the collection, assessment and storage of the details of occurrences reported in accordance with both the mandatory

as well as the voluntary reporting system. By means of the mandatory reporting system in accordance with the Regulation, persons should report occurrences which may present a significant risk to aviation safety.

- Functionally independent from the BCAA, a Just Culture Platform will be established, which is tasked with receiving and processing alleged infringements which are reported by workers and recruited staff, after which it will formulate motivated advice.

1.10 Have there been any recent cases of note or other notable developments in your jurisdiction involving air operators and/or airports?

Sint Truiden Droneport opened on 21 December 2018. At the Droneport, companies active in the drone industry can open their offices, and there is a dedicated area for drone operations and courses.

A further area of interest is the progress towards the creation of a single Belgian airspace, and cooperation between civilian and military operators in airspace management.

Belgium has several zones in the air, including a large number of zones reserved for the military, which often prevent commercial airlines from choosing the most efficient route. Given the increase in air traffic, due to the surge in commercial aviation and the emergence of drones, this distribution of airspace should be reorganised. In addition, the division of airspace management between three different players – namely Skeyes, the Belgian army and European Organisation for the Safety of Air Navigation (EUROCONTROL) (Maastricht Upper Area Control Centre, or MUAC) – is not efficient. This should hopefully become a thing of the past, due to the creation of a single airspace in which the deployment of zones will be dynamic instead of the static no-go zones of today, which is consistent with the creation of the SES on the European level. Recently, the Ministers of the European Parliament want to update the current SES rules, bringing them more into line with the European Green Deal. Depending on how the negotiations between the Parliament and the Council turn out, this could possibly impact all European Member States' current zones and aircraft regulation (see as well the Report of the Council of 27 May 2021). It was put under the priority "A European Green Deal". On the Belgian level, Skeyes, the FPS of Mobility and Transport through the BCAA, the military and EUROCONTROL consulted each other. As a result, the parties drafted the "Belgian Airspace Vision 2030", which should ensure that the available airspace for commercial aviation is enlarged.

This expansion of airspace capacity calls for joint air traffic control. That is why the military's air traffic control and that of their civilian colleagues from Skeyes are now being brought together at the air traffic control centre in Steenokkerzeel. For the time being, however, each party is still working with its own air traffic control system, pending the creation of the SES.

1.11 Are there any specifically environment-related obligations or risks for aircraft owners, airlines, financiers, or airports in your jurisdiction, and to what extent is your jurisdiction a participant in (a) the EU Emissions Trading System (EU ETS) or a national equivalent, and (b) ICAO's Carbon Offsetting and Reduction Scheme for International Aviation (CORSIA)?

As Belgium is a part of the EU, the EU legislation implementing the EU ETS scheme has been implemented in Belgium. This is the competency of the Belgian Regions. To co-ordinate the emissions trading scheme efforts in Belgium the Federal State

(of Belgium), the Flemish Region, the Walloon Region and the Brussels-Capital Region concluded a cooperation agreement on 2 September 2013 (as amended from time to time) on the inclusion of aviation activities in the scheme for greenhouse gas emission allowance trading within the Community in accordance with Directive 2008/101/EC of the European Parliament and of the Council of 19 November 2008 amending Directive 2003/87/EC so as to include aviation activities in the scheme for greenhouse gas emissions allowance trading within the Community. Each of the members has adopted the cooperation agreement:

- The Walloon Region by the Decree of 24 October 2013 (Belgian Official Gazette, 6 November 2013).
- The Brussels-Capital Region by the Order of 21 November 2013 (Belgian Official Gazette, 2 December 2013).
- The Flemish Region by the Decree of 8 November 2013 (Belgian Official Gazette, 6 December 2013).
- The Federal State by the Act of 19 March 2014 (Belgian Official Gazette, 30 April 2014).

The Federal council of ministers approved, on 2 December 2022, three draft royal decrees amending the (third) management contract between the Federal State and Skeyes in order to make aviation greener. For instance, tariffs will be further increased for polluting aircraft. Major airlines Brussels Airlines and TUI, have already updated their fleets and are expected to pay less fares. However, a separate tariff will now be introduced for private jets, starting in April 2023, making flying with a private jet to and from Brussels airport more expensive.

Furthermore, the Royal Decree of 26 December 2022 establishes a subsidy for rendering aviation more environmentally friendly pursuant to which a single maximum amount of EUR 2 million as subsidy will be paid to Brussels Airport Company NV.

Additionally, the Flemish Region has implemented the following regulations in relation to the EU ETS system:

- The Decree amending the Decree of 5 April 1995 containing general provisions on environmental policy and the Energy Decree of 8 May 2009 of 14 February 2014.
- The Decree of the Flemish Government amending the Decree of the Flemish Government of 20 April 2012 on tradable emission rights for greenhouse gases for fixed installations and the use of flexible mechanisms, as regards the extension to aviation activities of 4 April 2014 (VER-decree).

Likewise, the Walloon Region has implemented:

- The Order of the Walloon Government of 30 August 2018 amending the Order of 17 November 2011 fixing the greenhouse gas emission allowances allocated free of charge to aircraft operators for the year 2012, the period 2013–2020 and the period 2017–2023 (original: *Arrêté du Gouvernement wallon du 30 Août 2018 modifiant l'arrêté du 17 novembre 2011 fixant les quotas d'émission de gaz à effet de serre alloués à titre gratuit aux exploitants d'aéronefs pour la période 2012 et la période 2013-2020, pour ce qui concerne la période 2017–2023*).
- The Decree of 10 November 2004 establishing a greenhouse gas emission allowance trading system creating a Walloon Kyoto Fund and relating to the flexibility mechanisms of the Kyoto Protocol, article 12/2/1, inserted by the Decree of 20 October 2016.
- Under the EU Green Deal and Fit-for-55 package, the current EU ETS system came under revision (European Commission, Proposal for a Directive of the European Parliament and of the Council amending Directive 2003/87/EC as regards aviation's contribution to the Union's economy-wide emission reduction target and appropriately implementing a global market-based measure, COM (2021) 552 final, article 1(2)(b)).

On 15 May 2023 the European Directive 2023/958 of 10 May 2023 of the European Parliament and of the Council amending Directive 2003/87/EC as regards aviation's contribution to the Union's economy-wide emission reduction target and the appropriate implementation of a global market-based measure was published. The directive will enter into force on 1 January 2024.

The Directive sets out further reductions of emissions via the cap and trade system. The cap on the aviation sector will be aligned with the allocation for flights under Directive 2003/87/EC, whereby the 2024 allocation will have to be derived from the 2023 allocation to active operators, adjusted by the reduction factor in the Directive.

Free allowances will be phased out. The EU ETS system is applicable to intra-EU flights, with an exception regime until 31 December 2023 for flights to and from airports located in an outermost region.

Allowances supporting the use of sustainable aviation fuel

Between 1 January 2024 and 31 December 2030, up to 20 million allowances from the total amount of allowances will be set aside for sustainable aviation fuels and will be allocated to cover (a part) of the price difference between kerosene of fossil origin and eligible sustainable aviation fuels. Commercial airlines can apply for these allowances.

Decrease in allowances allocated for free

In the years 2024 and 2025, the amount of free allowances will be reduced gradually.

From 1 January 2026 onwards, the entire quantity of allowances in respect of which free allocation would have taken place in that year shall be auctioned.

Allowances which are allocated for free shall be allocated to aircraft operators proportionately to their share of verified emissions from aviation activities reported for 2023.

CORSIA

The CORSIA system, established by ICAO as a carbon offset mechanism, will be implemented for flights beyond the EEA, encompassing travel to and from a member state of the EEA to a third country participating in the CORSIA programme.

Sustainable Aviation Fuels

The EU further puts pressure on the use of sustainable aviation fuels by the industry: in 2025, 2% of jet fuel must be sustainable, an amount that will need to have increased to 70% by 2050.

CBAM

The EU ETS system is complemented by the Carbon Border Adjustment Mechanism (CBAM). This mechanism addresses the risk of carbon leakage in the EU's Emissions Trading System and is meant to avoid that the emissions reduction efforts of the Union are offset by increasing emissions outside the Union through relocation of production or increased imports of less carbon-intensive products. Without such a mechanism, carbon leakage could result in an overall increase in global emissions.

2 Aircraft Trading, Finance and Leasing

2.1 Does registration of ownership in the aircraft register constitute proof of ownership?

Rights *in rem* are regulated by Book III of the Belgian Civil Code. According to article 89 of the International Private Law Code, the rights of aircraft are determined by the law of the country where the aircraft is registered.

The Royal Decree of 15 March 1954 provides that the following aircraft can be registered in the Belgian aviation register:

- civil aircraft that are fully owned by nationals of an EU Member State or nationals of an EEA country who are domiciled in Belgium; or
- civil aircraft wholly owned by legal entities incorporated under Belgian law and whose main shareholders, managing shareholders, directors or agents are nationals of an EU Member State or an EEA country.

In case of an ownership registration, proof of ownership must be filed at the BCAA; however, the registration of an aircraft does not constitute proof of ownership.

2.2 Is there a register of aircraft mortgages and charges? Broadly speaking, what are the rules around the operation of this register?

Belgium ratified the Geneva Convention on the International Recognition of Rights in Aircraft on 22 October 1993, but failed, until recently, to implement a law on the recording of security interests on aircraft in a public register. The Law dated 11 July 2013 as amended from time to time on Security Interests on Mobile Goods introduced a national register for all security interests on mobile goods, including aircraft pledges, which records any security interest created over such mobile good (the Pledge Law). It entered into force on 1 January 2018. The cost of registering a pledge over an aircraft or engine depends on the value thereof, but the maximum is EUR 500 to be adapted to the index annually. The current maximum amount is EUR 518. The registered pledge functions as a mortgage. The perfection of the pledge towards third parties is achieved through its registration in the national register, and the date of registration will determine the ranking. The register is a public register and will relate not only to aircraft, but to all mobile goods.

A registered aircraft pledge creates a security right *in rem* over an aircraft, which gives the pledgee rights similar to those of a mortgagee; namely a right, in the event of default by the debtor, to sell or lease the aircraft and a preferential right to the sale and/or lease proceeds.

2.3 Are there any particular regulatory requirements which a lessor or a financier needs to be aware of as regards aircraft operation?

In case of unpaid airport charges or flight charges, the airport is permitted to prevent the aircraft from taking off until those charges are paid. Maintenance providers have a retention right with respect to work performed on aircraft or a fleet of aircraft, and such retention right gives the maintenance providers a similar right to that of a pledge, except that no enforcement measures can be taken.

2.4 As a matter of local law, is there any concept of title annexation, whereby ownership or security interests in a single engine are at risk of automatic transfer or other prejudice when installed 'on-wing' on an aircraft owned by another party? If so, what are the conditions to such title annexation and can owners and financiers of engines take pre-emptive steps to mitigate the risks?

Pursuant to articles 3:8, 3:9* and 3.55 of the Belgian Civil Code, the owner of the main asset is presumed to be the owner of the ancillary assets or parts. However, in the case that the part which is owned by a third party is united with the main asset

but can be separated therefrom, the owner of the main asset can acquire ownership of the part by paying a fair price. In the case that the united asset is worth considerably more following annexation and such annexation has taken place without consent of the owner of such part, he can request the separation thereof. Furthermore, the owner of the main asset must act in good faith. It is, therefore, advisable for the owner to attach ownership plates to the parts and obtain a recognition of title (see articles 3.57, 3.24 and 3.28 Belgian Civil Code).

2.5 What (if any) are the tax implications in your jurisdiction for aircraft trading as regards a) value-added tax (VAT) and/or goods and services tax (GST), and b) documentary taxes such as stamp duty; and (to the extent applicable) do exemptions exist as regards non-domestic purchasers and sellers of aircraft and/or particular aircraft types or operations?

Pursuant to article 42§2 (1) of the Belgian VAT Code, a supply of aircraft destined for use by an airline which chiefly operates on international routes for reward is exempt from VAT. Circular Letter No. 6/1983 (referred to in Circular Letter No. 3/2010 commenting on the newly adopted VAT package, spec. No. 125) contains an administrative favour in case the aircraft is actually bought by a company which is not a qualifying airline, provided the sale is realised for the sole purpose of leasing the aircraft to a qualified carrier. This is provided the following conditions are fulfilled:

1. The sale agreement must refer explicitly to: (i) the immediate leasing of the aircraft to an airline operating for reward chiefly on international routes; (ii) the aircraft, model make and registration; (iii) the VAT Certificate; and (iv) the exemption of the sale of the aircraft pursuant to article 42§2 (1) of the Belgian VAT Code.
2. The seller must issue an invoice containing the same references.

There are no stamp duties or documentary taxes.

2.6 Is your jurisdiction a signatory to the main international Conventions (Montreal, Geneva and Cape Town)?

Belgium is a signatory to: (i) the Geneva Convention (Law of 6 August 1993, OG 18 December 1993); (ii) the Chicago Convention (Law of 30 April 1947, OG 2 December 1948); (iii) the Warsaw Convention (Law of 7 April 1936, OG 24 September 1936); and (iv) the Montreal Convention (Law of 13 May 2003, OG 18 May 2004). Belgium is not a signatory to the Cape Town Convention.

2.7 How are the Conventions applied in your jurisdiction?

All of the Conventions in question 2.6 are ratified by law and must be applied by courts.

2.8 Does your jurisdiction make use of any taxation benefits which enhance aircraft trading and leasing (either in-bound or out-bound leasing), for example access to an extensive network of Double Tax Treaties or similar, or favourable tax treatment on the disposal of aircraft?

Belgium has a very extensive network of treaties for the avoidance of double taxation but has no specific taxation benefits which enhance aircraft trading and leasing.

2.9 To what extent is there a risk from the perspective of an owner or financier that a lessee of aircraft or other aviation assets in your jurisdiction may acquire an economic interest in the aircraft merely by payment of rent and thereby potentially frustrate any rights to possession or legal ownership or security?

We assume that the lessee is not a consumer. This may be the case in the context of a corporate jet financing. Specific rules apply with respect to consumer financing.

The Pledge Law in its article 69 explicitly recognises retention of title clauses, which are, for example, contained in hire purchase agreements. Legal authors have deduced thereof that ownership rights of a lessor in financial or operating leases follow the same recognition. This being said, the lessor when seeking reimbursement of all rental payments until the contractually foreseen expiry date, in addition to the repossession of the leased aircraft or other aviation assets, may be subject to court review with respect to the calculation of the damages.

Bankruptcy does not affect the lessor's right to recover goods in the possession of the debtor-lessee as set out by article XX.194 of the Economic Law Code of 28 February 2013.

The action for recovery must be brought before the first report on the verification of claims is filed.

If the preservation or return of the recovered goods has caused costs to be incurred at the expense of the bankrupt company, the trustee in bankruptcy shall demand that these costs be paid by the lessor-owner when the goods are handed over. If the lessor-owner refuses to pay these costs, the trustee in bankruptcy shall be entitled to exercise the right of retention.

In case of a judicial reorganisation, it is impossible for the lessor during the suspension period to proceed to revindicate the asset (article 55 of the Economic Law Code).

3 Litigation and Dispute Resolution

3.1 What rights of detention are available in relation to aircraft and unpaid debts?

There are three types of liens under Belgian law: liens such as repairmen's liens, statutory liens or liens with respect to salvage and conservation costs (see the Geneva Convention); temporary seizure; and forced sale.

Temporary seizures are regulated by article 1413 *et seq.* of the Judicial Code and are limited by the Convention of Rome on Precautionary Arrest. The exercise of this right is conditional on there being urgency and a manifest undisputed claim that is certain, due and liquid.

The seizure for forced sale is regulated by article 1494 *et seq.* of the Judicial Code and by the Geneva Convention. A forced sale requires an enforceable title (such as a judgment) and a manifest undisputed claim that is certain, due and liquid. No self-help is possible under Belgian law.

Pledgees of a registered pledge can proceed to the sale and enforcement of their title without a prior court decision.

Pursuant to article 37 of Law of 27 June 1937, aircraft which do not comply with airworthiness standards, or in respect of which the charges, fees or other duties are not paid in accordance with the applicable regulations, can be prevented from taking off until full compliance therewith or payment thereof, respectively. No specific measures have been implemented in Belgium with respect to the rights of EUROCONTROL pursuant to Annex 4 of the protocol to the EUROCONTROL Convention of 27 June 1997.

Article 42, 1° of the Belgian Criminal Code states that the aircraft can be forfeited if the aircraft was the object of the criminal act and was used or served for committing the criminal act, provided the aircraft is property of the operator. Therefore,

no such forfeiture can take place if the operator is not the owner of the aircraft, provided the owner was not aware or participated in such criminal offence.

However, the Drugs Act considerably extended the possibility to forfeit the objects, as Article 4§6 states that: "Without prejudice to the application of Articles 42 and 43 of the Criminal Code, the court may order the forfeiture of the vehicles, devices and instruments or objects that served or were intended to serve or were the object of committing the crimes defined in Articles (2, 2°, 2a, 2c and 3), even if they are not the property of the convicted person."

3.2 Is there a regime of self-help available to a lessor or a financier of an aircraft if it needs to reacquire possession of the aircraft or enforce any of its rights under the lease/finance agreement?

Self-help is prohibited for lessors, and judicial authorisation is always necessary for a lessor to take possession of an aircraft or engine. For financiers who are pledgees pursuant to a registered pledge, no prior judicial authorisation is required for the enforcement of the pledge; however, no possession can be acquired without judicial authorisation in case the pledgor/owner is not the possessor or operator of the aircraft. The Pledge Act does not have any concept of self-help regarding the ownership and repossession claims pursuant to leasing a contract and thus falls outside of the scope of the Pledge Act.

3.3 Which courts are appropriate for aviation disputes? Does this depend on the value of the dispute? For example, is there a distinction in your jurisdiction regarding the courts in which civil and criminal cases are brought?

Belgium makes a distinction between commercial and civil claims. In the case that the operator is an airline, or the owner of a private jet is a company, the court of enterprises will be competent for any commercial disputes between the parties. The criminal courts are exclusively competent for criminal offences. The judge of seizure is competent for any conservatory or executory seizure or any disputes with respect to enforcement of security interests. Administrative proceedings must be brought before the competent administrative courts.

3.4 What service requirements apply for the service of court proceedings, and do these differ for domestic airlines/parties and non-domestic airlines/parties?

The service requirements are regulated by: the Judicial Code with respect to civil and commercial proceedings; the Code of Criminal Procedures; and, in case of administrative law, the administrative procedural laws.

Within the EU, the rules of service are furthermore set out in Regulation (EC) No. 1393/2007.

3.5 What types of remedy are available from the courts or arbitral tribunals in your jurisdiction, both on i) an interim basis, and ii) a final basis?

1. Interim basis

In case of urgency and an undisputed claim which is certain, due and liquid, a conservatory seizure can be obtained before the court of seizure on unilateral request. Together with the conservatory seizure, the creditor can

also ask for the appointment of a sequester of the aircraft (subject to the Rome Convention, as set out in question 3.1 above). The conservatory seizure requires ownership by the debtor of the aircraft.

In the case that the aircraft is owned by the lessor, he can request of the court of seizure, as an interim measure, a possessory seizure together with the appointment of a sequester.

The courts in summary proceedings can order, in case of urgency, interim measures, such as storage or maintenance of the aircraft or payment of undisputed claims, and even repossession.

Such interim measures can also be asked of the normal courts, provided they are purely interim measures.

2. Final judgment

First of all, judgments, unless otherwise stated, are enforceable notwithstanding appeal. The creditor in case of enforcement then has to pay damages if the debtor wins on appeal.

The creditor can then request of the judge of seizures an executory seizure, which needs to be enforced by the bailiff. Pledges of a registered pledge do not need prior court approval for the enforcement of the registered pledge but can only take possession upon judgment by the judge of seizures, who is also competent for any appeal against the unilateral enforcement.

An arbitral award can only be enforced in Belgium following a judgment of the court of first instance.

The court of first instance has only a marginal appreciation right, such as incapacity or illegality of the arbitration agreement or clause, in case of breaches of the right to defence, where the actual case does not fall under the arbitration clause or agreement, where the arbitration award is not duly motivated, where the award is not yet binding, or where the arbitration tribunal has exceeded its competence.

Executory seizure and repossession are only possible following an enforceable title, such as a judgment or notarial deed.

Forced sales are organised through the court of seizures provided the creditor has an enforceable title, i.e., through a final court decision or notarial deed.

3.6 Are there any rights of appeal to the courts from the decision of a court or arbitral tribunal and, if so, in what circumstances do these rights arise?

Any judgment obtained at first instance before the civil, commercial or criminal courts can be appealed against, unless the value of the claim is deemed too low (the critical amount depending on which Court has jurisdiction) in order not to overburden the courts (See article 619 Belgian Judicial Code).

Arbitral awards are only subject to appeal in cases where the parties have explicitly agreed upon the possibility of appeal in their arbitration agreement or clause. An arbitration award can otherwise be nullified before the commercial or civil courts in the limited circumstances set out in the Judicial Code.

3.7 What rights exist generally in law in relation to unforeseen events which might enable a party to an agreement to suspend or even terminate contractual obligations (in particular payment) to its contract counterparties due to *force majeure* or frustration or any similar doctrine or concept?

Force majeure

Failure to perform a contract will result in a contractual breach

for which a party is liable. A party can release itself from this liability by proving that there was a situation of *force majeure*.

If no contractual provisions exist between the contracting parties describing what constitutes *force majeure*, the Civil Code and general principles of law regulate what constitutes *force majeure*: it is the situation in which the performance of an obligation has become completely impossible due to circumstances which are not down to a fault on the part of the debtor, and which were unforeseeable and insurmountable to him. If it is a temporary impossibility to perform the contract, the performance of the contract may be suspended. If the performance becomes permanently impossible, the debtor is freed from his contractual obligations and cannot be held liable for this non-performance.

Hardship refers to a situation where, due to unforeseeable circumstances not attributable to the fault of the debtor, the contractual duties of the parties become seriously imbalanced (but not impossible) to such an extent that the debtor's contractual obligations are unreasonably aggravated. The Civil Code has, in its article 5.77, included the hardship conditions reflecting the above, which applies to the extent it is not excluded by law or by contract, or in case the debtor has accepted such a risk. In case of a circumstance of hardship, the debtor is entitled to negotiate the contract. If no agreement can be reached between the parties, the contract can be amended upon a court decision. The new contract law, which includes article 5.77, came into force 1 January 2023 and applies to contracts concluded from that day onwards.

4 Commercial and Regulatory

4.1 How does your jurisdiction approach and regulate joint ventures between airline competitors?

Joint ventures on the basis of a joint venture company are subject to Belgian merger control if the turnover thresholds are met. Joint ventures based solely on a cooperation agreement may be subject to the rules on the prohibition of cartels, which are similar to EU antitrust law.

4.2 How do the competition authorities in your jurisdiction determine the 'relevant market' for the purposes of mergers and acquisitions?

The Belgian Competition Authority (BCA) follows the EU approach, known as the "point of departure and point of destination" approach, which means that every single route is seen as a separate product market.

4.3 Does your jurisdiction have a notification system whereby parties to an agreement can obtain regulatory clearance/anti-trust immunity from regulatory agencies?

Yes, parties can obtain regulatory clearance for mergers from the BCA under the terms of article IV.9 of the Code of Economic Law (CEL). It is only necessary to notify the BCA of mergers that meet the following turnover thresholds as laid out in article IV.7 CEL:

- undertakings with a total turnover in Belgium of more than EUR 100 million; and
- at least two of the undertakings each generate a turnover in Belgium of at least EUR 40 million.

There is no system of clearance for cartels.

4.4 How does your jurisdiction approach mergers, acquisition mergers and full-function joint ventures?

A “merger” within the meaning of the CEL refers to an operation that results in a lasting change of control of an undertaking; in other words, the possibility of exercising decisive influence over its activity. A merger can, in particular, occur when: two independent undertakings decide to integrate; one undertaking or one person having control of an undertaking purchases another undertaking or part of its activities (acquisition); or two undertakings create a lasting common undertaking between them (joint venture). The Belgian approach is very similar to the EU approach.

4.5 Please provide details of the procedure, including time frames for clearance and any costs of notifications.

In view of the nature, or of the small market shares, of the undertakings concerned, certain mergers are unlikely to raise competition problems. The notifying parties can then request the application of the simplified procedure (article IV.63 § 1 CEL).

When the conditions for the application of the simplified procedure are not satisfied, the first phase (Phase I) begins. The Competition College adopts a decision within 40 business days after acceptance of the notification.

When there are serious doubts as to the merger’s eligibility, the Competition College can decide to launch the so-called second phase (Phase II) procedure. The Competition College issues its decision within a time limit of 60 business days after its decision to launch the second phase.

Costs for Phase I range between EUR 2,000 and EUR 8,000, while Phase II proceedings are much more expensive.

4.6 Are there any sector-specific rules which govern the aviation sector in relation to financial support for air operators and airports, including (without limitation) state aid?

The (EU) Guidelines on state aid to airports and airlines were adopted in February 2014, replacing the older 2005 guidelines and the 1994 aviation sector guidelines. They are further set out in Regulation (EU) No. 2019/712 of the European Parliament and of the Council of 17 April 2019 on safeguarding competition in air transport, and repealing Regulation (EC) No. 868/2004.

4.7 Are state subsidies available in respect of particular routes? What criteria apply to obtaining these subsidies?

EU rules and criteria apply. Airport infrastructure projects of a certain size do not have to be notified to the European Commission, since they have been included in the general block exemption regulation. (Regulation No. 651/2014 of 17 June 2014 as amended i.a. by Commission Regulation (EU) No. 2017/1084 of 14 June 2017, Commission Regulation (EU) No. 2021/1237 of 23 July 2021 declaring certain categories of aid compatible with the internal market in application of articles 107 and 108 of the Treaty on the Functioning of the European Union.)

4.8 What are the main regulatory instruments governing the acquisition, retention and use of passenger data, and what rights do passengers have in respect of their data which is held by airlines and airports?

The passenger Data Processing Act of 25 December 2016 (OG

25 January 2017) transposes the EU Passenger Record Directive into Belgian law. The Passenger Data Processing Act came into force on 25 January 2017. A Royal Decree containing the obligations imposed on air carriers was adopted on 18 July 2017 (OG 28 July 2017) and entered into force on 7 August 2017.

The EU General Data Protection Regulation (GDPR) governs the collection and use of an individual’s personal data. The GDPR applies to all entities based in an EU country that process personal data, as well as all entities worldwide that process personal data belonging to EU residents. The Belgian Act of 30 July 2018 on the protection of natural persons with regard to the processing of personal data addresses the areas where the GDPR leaves room for EU Member States to adopt country-specific rules. The GDPR also applies to airports.

Passengers have the following rights under the GDPR in relation to their personal data:

1. the right to be informed about the collection and use of their personal data;
2. the right to access their personal data;
3. the right to rectification – to have inaccurate personal data rectified, or completed if it is incomplete;
4. the right to have personal data erased;
5. the right to request the restriction or suppression of the processing of their personal data;
6. the right to data portability, which allows individuals to obtain and reuse their personal data for their own purposes across different services;
7. the right to object to the processing of their personal data in certain circumstances; and
8. specific rights in relation to automated decision-making and profiling (e.g. an information obligation, or a request for human intervention).

4.9 In the event of a data loss by a carrier, what obligations are there on the airline which has lost the data and are there any applicable sanctions?

The data controller (i.e. the airline) must report personal data breaches (e.g. data loss of its passengers by a carrier) to the competent Data Protection Authority (DPA), unless the data breach is unlikely to result in a risk to the rights and freedoms of individuals. Such notification must be made within 72 hours of becoming aware of the breach, where feasible.

If the breach is likely to result in a high risk of adversely affecting individuals’ rights and freedoms, the data controller must also inform those individuals without undue delay. Notification of the affected individuals is, however, not required if the data controller has implemented technical safety measures (e.g. data encryption) and/or organisational measures (e.g. robust breach detection, investigation and internal reporting procedures) limiting the privacy risk of individuals, or where notifying the affected individuals would involve disproportionate effort.

The data controller must also keep a record of any personal data breaches, regardless of whether it is required to notify.

In Belgium, the DPA monitors data protection compliance. Data breaches can be notified to the DPA via an online form available at: <https://www.dataprotectionauthority.be/professional/actions/data-breach>. Depending on the nature of the personal data breach, the DPA may impose administrative penalties of up to EUR 20 million or 4% of a company’s global annual turnover of the preceding financial year. Personal data breaches may also lead to criminal penalties ranging from EUR 800 to EUR 240,000. Individuals also have a right to compensation in respect of proven material and non-material damage (not punitive damages).

4.10 What are the mechanisms available for the protection of intellectual property (e.g. trademarks) and other assets and data of a proprietary nature?

Trademarks – any sign or combination of signs used to identify a product as distinct from products manufactured or sold by others – can be protected via the Benelux Office for Intellectual Property (BOIP) at The Hague. Trademark protection that is sought in Belgium applies to the Netherlands, Belgium, and the Grand Duchy of Luxembourg (Benelux trademark). There is also the option of obtaining trademark protection throughout all EU Member States (EU trademark). The application must be filed at the European Union Intellectual Property Office (EUIPO) in Alicante, Spain.

Copyrights protect artistic or literary works from the moment the original expression is created, without registration. In Belgium, copyright is valid for up to 70 years after the death of the author, or the last surviving author. It includes, among others:

- the right to control the method of reproduction and communication of the work;
- the right to have authorship known;
- the right to decide when the work will be disclosed; and
- the right to oppose modification of the work.

Patent protection covers inventions that are new, involve an inventive step, and are useful to industry – even if they contain biological material or a process that involves or uses biological material. Patents are governed by the Belgian Patent Act. Patent holders have the right to exploit, grant licences to, or assign the patent, with some exceptions. Patent protection lasts for 20 years, and the holder must pay annual taxes.

Additionally, one can obtain protection in Belgium for software (copyright), designs and models, databases and trade secrets.

4.11 Is there any legislation governing the denial of boarding rights and/or cancelled flights?

This is regulated by Regulation (EC) No. 261/2004 of the European Parliament and of the Council of 11 February 2004 establishing common rules on compensation and assistance to passengers in the event of denied boarding and of cancellation or long delay of flights, and repealing Regulation (EEC) No. 295/91, which grants passengers a right to fixed-rate compensation, a right to reimbursement or re-routing, as well as a right to care in case of denied boarding and cancellation. There is no specific law, ministerial decree or royal decree that deviates from the general principles of Regulation (EC) No. 261/2004 on air passenger rights.

Article 5(3) waives the right to compensation on condition that the cancellation in question “is caused” by extraordinary circumstances, which could not have been avoided even if all reasonable measures had been taken.

The right to care subsists only as long as passengers have to wait for a re-routing at the earliest convenience (article 5(1)(b) in conjunction with article 8(1)(b)).

Carriers may find it impossible to re-route the passenger to the intended destination within a short period of time. Moreover, it may not be clear for some time when re-routing will become possible. This situation may arise, for example, where a Member State suspends flights or stops trains, buses, coaches or ships arriving from certain countries. Depending on the case, therefore, the “earliest opportunity” for re-routing may be considerably delayed and/or subject to considerable uncertainty.

If passengers have booked their flights in a package deal, the above does not apply.

4.12 What powers do the relevant authorities have in relation to the late arrival and departure of flights?

The enforcement body of the Regulation is SPF Mobilité & Transport – Direction Générale Transport Aérien, Cellule Stratégique, Droits des passagers, City Atrium, Rue du Progrès 56, 1210 Brussels – passenger.rights@mobilite.fgov.be.

SPF Mobilité & Transport – Direction Générale Transport Aérien is competent for the implementation of Regulation (EC) No. 261/2004. Apart from the implementation of the regulation, it has no specific powers in relation to the late arrival and departure of flights.

4.13 Are the airport authorities governed by particular legislation? If so, what obligations, broadly speaking, are imposed on the airport authorities?

Brussels Airport is regulated by the Law of 19 December 1997, the Royal Decree of 27 May 2004 (OG 24 June 2004) and the Royal Decree of 21 June 2004 (OG 15 July 2004). The Walloon airports are regulated by the Decree of 23 June 1994 (OG 15 July 1994) and the Flemish airport by the Decree of 10 July 2008 (OG 22 October 2008).

The slots are regulated by Regulation (EEC) No. 95/93 of the Council dated 18 January 1993 (OJ L 14, 22 January 1993).

Further noise restrictions for aircraft are laid down in the Royal Decree of 25 September 2003 (OG 26 September 2003) setting out operating restrictions at Brussels Airport, and by the Ministerial Decree of 3 May 2004 (OG 11 June 2004). The Brussels Region has issued strict noise restrictions which are very much debated (Decree of 17 July 1997 as amended by the Decree of 19 April 2018, decision of 27 May 1999 and 19 May 2016). The Walloon Region has issued several Decisions relating to noise restrictions of which the latest is the Decision of 28 April 2022 delimiting the first zone of the plan relating to noise exposure from Charleroi-Brussels South Airport (zone A') following the 5th revision of the noise exposure plans and repealing the Walloon Government decree of 27 May 2004 delimiting the first zone of the plan relating to noise exposure from Charleroi-Brussels South Airport (zone A').

See also restrictions for chapter 2 aircraft laid down in Council Directive 2006/93/EC. More restrictions are contained in the Royal Decree of 16 December 2005 (implementing EC Directive 2004/36) with respect to the safety of aircraft of third countries wishing to land at a Belgian airport (OG 23 January 2006).

Ground handling is regulated by the Royal Decree of 6 November 2010 (OG 17 November 2010) as amended by Royal Decree of 21 November 2016 (OG 28 November 2016) with respect to Brussels Airport, and by the Ministerial Decree of 9 June 2010 (OG 24 June 2011) with respect to the Walloon airports and by the Flemish decision of 17 December 1999 (OG 7 March 2000) with respect to the Flemish airports.

4.14 To what extent does general consumer protection legislation apply to the relationship between the airport operator and the passenger?

There is no specific Belgian consumer protection legislation that applies to the relationship between the airport operator and the passenger.

Nonetheless, airport operators must comply with Regulation (EU) No. 1107/2006/EC to provide assistance to disabled persons and those with reduced mobility.

Said regulation places obligations on airport operators to provide access to air travel for persons with reduced mobility, subject to some safety and security issues. These include: obligations on airport operators to provide assistance throughout the passenger journey at the airport; set, publish and monitor “quality standards” on service performance; train customer-facing staff; and charge airlines for provision of the service.

4.15 What global distribution suppliers (GDSs) operate in your jurisdiction?

Radixx (acquired by Sabre), Amadeus, Sabre, Worldspan and Galileo operate in Belgium.

4.16 Are there any ownership requirements pertaining to GDSs operating in your jurisdiction?

No. However, it should be noted that, pursuant to Regulation (EC) No. 80/2009 of the European Parliament and of the Council of 14 January 2009 on a Code of Conduct for computerised reservation systems and repealing Council Regulation (EEC) No. 2299/89 (“Regulation (EC) No. 80/2009”), a system vendor shall publicly disclose, unless this is otherwise made public, the existence and extent of a direct or indirect capital holding of an air carrier or rail transport operator. A system vendor within the meaning of Regulation (EC) No. 80/2009 means any entity and its affiliates which is or are responsible for the operation or marketing of a computerised reservation system.

4.17 Is vertical integration permitted between air operators and airports (and, if so, under what conditions)?

The Royal Decree of 6 November 2010 allows only two ground handlers for each of the following activities: baggage handling; cargo handling; fuel supply; and platform handling at Brussels Airport. None of them may be directly or indirectly owned by more than 25% by the airport or any of its users. The selection must be based on objective, transparent and non-discriminatory criteria.

4.18 Are there any nationality requirements for entities applying for an Air Operator’s Certificate in your jurisdiction or operators of aircraft generally into and out of your jurisdiction?

The applicants must have their principal place of business and, if any, their registered office in Belgium. The applicant is and will continue to be owned, directly or through a majority shareholding, by a company established and controlled by a company or person established in the EEA.

5 In Future

5.1 In your opinion, which pending legislative or regulatory changes (if any), or potential developments affecting the aviation industry more generally in your jurisdiction, are likely to feature or be worthy of attention in the next two years or so?

The major developments and challenges for the aviation industry in Belgium will be Fit-for 55 and the Green Deal (see also question 1.11 above).

Brussels Airport together with its partners, including Brussels Airlines and TUI Airlines Belgium created Stargate has three main goals to: enhance further decarbonisation; improve the local environmental quality; and stimulate the modal shift.

A blending installation for biofuel has been built at Brussels Airport. Brussels Airport will thus become the first airport in the world where kerosene is blended with biofuel on site. This allows a systematic increase in the proportion of biofuel. The airlines within Stargate (Brussels Airlines, TUI and DHL) are the first to fly on this fuel. A companion to this project is the development of an electric fuel truck and the collection of waste fats and oils that can be used for that biofuel. This will allow the airlines to comply with the proposed Regulation on minimal percentages of SAF.

Brussels Airlines has introduced a Green Fare which includes full offsetting of CO₂ emissions using sustainable fuel and investment in climate protection projects.

Since 1 April 2022, a special boarding tax is applicable: 10 EUR per passenger for flights shorter than 500 km; 2 EUR per passenger for flights longer than 500 km within the EEA, United Kingdom or Switzerland; and 4 EUR per passenger for flights longer than 500 km and outside of the EEA, United Kingdom and/or Switzerland. The tax is payable by the airlines, but this is usually charged to the passengers. The government wishes to encourage people to take other means of transport for short haul flights. (Code on various levies and taxes, Book II, Title III article 162.) Political discussions are ongoing whether this tax should be further increased. In the context of the Green deal, there are also political discussions as to the VAT exemptions for airlines.



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Birgitta is a leading expert in aircraft finance, acting for the major airlines in Belgium as well as for lessors, financial institutions and private jet owners. She focuses her practice on all matters relating to aircraft, including engines, parts and maintenance thereof, but also European Union Aviation Safety Agency (EASA) rules and regulations and pilot licences. She assists her clients not only in transactions, but also in litigation and with legal advice.

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1 General

1.1 Please list and briefly describe the principal legislation and regulatory bodies which apply to and/or regulate aviation in your jurisdiction.

International and Multilateral Agreements

Brazil is a party to a number of multilateral agreements relating to international carriage, some of which are pending ratification and are listed below.

Agreement	Date of signature by Brazil	Date of ratification by Brazil
Warsaw Convention for the Unification of Certain Rules Relating to International Carriage by Air	12 October 1929	2 May 1931
Chicago Convention on International Civil Aviation	29 May 1945	26 March 1946
Hague Protocol to Amend the Convention for the Unification of Certain Rules Relating to International Carriage by Air	28 September 1955	16 June 1964
Guadalajara Convention, Supplementary to the Warsaw Convention, for Unification of Certain Rules Relating to International Carriage by Air Performed by a Person other than the Contracting Carrier	18 September 1961	8 February 1967
Hague Hijacking Convention	16 December 1970	14 January 1972
Montreal Convention	3 August 1999	19 May 2005

Agreement	Date of signature by Brazil	Date of ratification by Brazil
Beijing Convention on the Suppression of Unlawful Acts Relating to International Civil Aviation	10 September 2010	–
Beijing Protocol to the 1971 Hague Convention on the Suppression of Unlawful Seizure of Aircraft	10 September 2010	–

Brazil is also party to air services agreements with the following countries and territories: South Africa, Albania, Germany, Angola, Saudi Arabia, Argentina, Aruba, Australia, Austria, Azerbaijan, Bahamas, Bahrain, Barbados, Belgium, Benin, Bolivia, Botswana, Burkina Faso, Cape Verde, Cambodia, Cameroon, Canada, Kazakhstan, Chile, China, Colombia, South Korea, Costa Rica, Côte d'Ivoire, Cuba, Curaçao, Denmark, Egypt, El Salvador, United Arab Emirates, Equator, Spain, United States of America, Ethiopia, Philippines, Finland, France, Ghana, Greece, Guatemala, French Guyana, Guinea-Bissau, Guyana, Haiti, Honduras, Hong Kong, Hungary, Yemen, India, Iran, Iraq, Iceland, Israel, Italy, Jamaica, Japan, Jordan, Kuwait, Lebanon, Luxembourg, Macau, Malaysia, Malta, Morocco, Mauritius, Mexico, Mozambique, Namibia, Nicaragua, Nigeria, Norway, New Zealand, Oman, Netherlands, Panama, Paraguay, Peru, French Polynesia, Poland, Portugal, Qatar, Kenya, United Kingdom, Congo, Dominican Republic, Czech Republic, Rwanda, Russia, Senegal, Sierra Leone, Serbia, Seychelles, Singapore, St Martin, Sri Lanka, Sudan, Sweden, Switzerland, Suriname, Thailand, Tanzania, Togo, Trinidad and Tobago, Turkey, Ukraine, Uruguay, Venezuela, Vietnam, Zambia and Zimbabwe.

Local Legislation

In addition to the International Treaties, Conventions and Acts that Brazil is a part of, Law No. 7,565, of 19 December 1986 (the Brazilian Aeronautical Code) provides for the rules relating to ownership, operation and liability of aircraft in the Brazilian territory, as well as matters relating to air traffic control and airport infrastructure, among others.

Law No. 11,182, of 27 September 2005 is also relevant as it is the law that created the National Civil Aviation Agency (ANAC), which is the government agency responsible for civil aviation activities in Brazil. ANAC is responsible for, among other things, (1) representing Brazil in civil aviation international treaties and international organisations, (2) regulating and overseeing air transport services and training and certification of crew, (3) certification of air carriers, and (4) administration of the Brazilian Aeronautical Registry, the governmental body responsible for registration of aircraft and interests over aircraft in Brazil.

1.2 What are the steps which air carriers need to take in order to obtain an operating licence?

Generally, scheduled and non-scheduled public air transport of passengers and cargo are subject to licensing by ANAC. Airlines shall apply for an air operator certificate (COA) pursuant to Brazilian Civil Aviation Regulation (RBAC) 119, 121 and 135. RBAC 119 provides for general guidelines for certification, while RBACs 121 and 135 set out rules applying to specific operations under each Regulation (RBAC 121 applies to airlines that operate aircraft with more than 19 passenger seats or cargo capacity greater than 3,400 kilograms, and RBAC 135 applies to airlines operating aircraft with up to 19 passenger seats or cargo capacity of up to 3,400 kilograms, and helicopters).

The certification process comprises five phases: (1) advance request; (2) formal request; (3) review of documents; (4) demonstration and inspection; and (5) effective certification. As part of the advance request, the company shall request an initial orientation meeting with ANAC to obtain all the information required regarding the type of certification applied for.

Following this meeting, the company will prepare for certification all documents stipulated by ANAC in the orientation meeting. These usually include, among others, enrolment of the company's management personnel, a draft of the operations specifications (which describes, among other things, the type of aircraft to be operated), general operations manual, aircraft operations manual, route guide (in the case of scheduled flights), operation safety management manual, operations training guides and aircraft maintenance manuals.

After receiving this documentation, ANAC will assess it for compliance with RBACs 119, 121 and 135, as applicable, and request amendments to the documentation if necessary; such a request must be complied with within the deadline set by ANAC. This is the longest phase in the certification process.

In the next step, ANAC verifies the company's compliance with the procedures set out in the documentation analysed by ANAC. The Agency will assess the company's ability to operate as described in the certification documentation. This phase includes inspection of the main operation base and flight inspection.

In the final phase, following ANAC's review of the company's compliance with the legal and technical requirements for operation, the Agency will issue the COA and the definitive operations specifications.

1.3 What are the principal pieces of legislation in your jurisdiction which govern air safety, and who administers air safety?

Brazilian air carriers licensed pursuant to RBAC 121 and 135 are subject to compliance with safety standards defined by ANAC. The safety standards and maintenance requirements are mainly regulated by RBAC 121, RBAC 135 and ANAC Supplementary Instruction 120-016A of 3 September 2021.

With the goal of improving safety and setting minimum standards, ANAC imposes rules on minimum requirements for maintenance, maintenance programmes, training programmes for crew, mechanics and flight dispatchers, minimum qualifications for crew, mechanics and flight dispatchers, limitations for aircraft operations, and minimum requirements for operation of certain kinds of routes (e.g., flights over water).

1.4 Is air safety regulated separately for commercial, cargo and private carriers?

Air safety regulated is equally regulated for commercial and cargo, however, the regulations for private carriers are different.

1.5 Are air charters regulated separately for commercial, cargo and private carriers?

Yes, under Brazilian law air charters regulated separately for commercial, cargo and private carriers.

1.6 As regards international air carriers operating in your jurisdiction, are there any particular limitations to be aware of, in particular when compared with 'domestic' or local operators? By way of example only, restrictions and taxes which apply to international but not domestic carriers.

Previously a more burdensome process, the authorisation for foreign carriers to operate in Brazil was simplified by the recently approved Law No. 14,368, of 14 June 2022. Foreign carriers must seek authorisation from ANAC at least 30 days before commencing scheduled operations to and from Brazil, pursuant to RBAC 129. The process involves the request for homologation of the air operator certificate and the operations specifications issued by the civil aviation authority of the country where the foreign carrier is based, along with details relating to (1) aircraft operated by the foreign carrier and the insurance coverage for the aircraft, (2) operational dispatch of flights to and from Brazil, (3) the ground handling service providers that will render services to the foreign carrier in Brazil, and (4) maintenance services to be performed in Brazil. ANAC will assess this information upon receipt and, if necessary, request amendments or supplemental information. The foreign carrier must comply with such a request within 60 days. Following completion of the review and compliance by the foreign carrier with any additional requirements, ANAC will issue a local COA and a local operations specification for the foreign carrier.

1.7 Are airports state or privately owned?

Airports can be either state or privately owned.

1.8 Do the airports impose requirements on carriers flying to and from the airports in your jurisdiction?

The requirements on carriers flying to and from the airports are imposed by ANAC, according to the provisions of RBAC n° 135 and 153, and not by the airports itself.

RBAC n° 153 provides for a list of activities under the responsibility of the aerodrome operator, among them: (i) comply with and enforce current rules and regulations; (ii) maintain the operational safety of the aerodrome within levels acceptable by ANAC; and (iii) establish, implement and guarantee the functioning of an Operational Safety Management System

(SGSO) and the Airport Emergency Response System (SREA) that meet the parameters of RBAC 153.

1.9 What legislative and/or regulatory regime applies to air accidents? For example, are there any particular rules, regulations, systems and procedures in place which need to be adhered to?

Carriers are subject to reporting obligations in the event of aircraft accidents and incidents, the investigation of which is the responsibility of the Brazilian Air Force Command. As in other jurisdictions, investigation of aircraft accidents and incidents in Brazil is designed to prevent the occurrence of future accidents and incidents and to improve the overall safety standards of Brazilian civil aviation.

1.10 Have there been any recent cases of note or other notable developments in your jurisdiction involving air operators and/or airports?

On 30 December 2021, the Federal Government published the Provisional Measure No. 1,089 as part of the Simple Flight Programme, the aim of which is to simplify the rules applicable to the aviation industry and ultimately promote competition and reduce costs for airlines.

The main changes among those introduced by the Provisional Measure relate to the authorisation of domestic and foreign carriers. Public air transport is now deemed an economic activity subject to regulation and oversight by a regulatory agency (i.e., ANAC), and not an activity subject to the award of a public concession by the government. The requirement for renewal of domestic carriers' authorisations every five years has been discontinued. The licensing process for foreign carriers to operate in Brazil has also been simplified as a result of the elimination of the requirement for (1) presentation of an authorisation from the foreign affairs office of the country where the carrier is based, and (2) issuance of a licence to operate, by ANAC acting as the representative of the government (this authorisation is now based on the assessment and homologation by ANAC of the authorisations granted by the civil aviation authority of the country where the foreign carrier is based).

These changes were enacted as a provisional measure, which was accordingly subject to review and approval by the National Congress and amendments were made by the lower and upper houses of Congress. The main change was the return of mandatory free luggage for passengers. The analysis of Provisional Measure No. 1,089 by Congress was completed on 24 May 2022 and Law No. 14,368 – which replaces the provisional measure – was approved by the President on 14 June 2022 with a veto, restricting the return of mandatory free luggage for passengers. The veto is still subject to a new analysis by the National Congress, which may overrule it and reinstate language regarding mandatory free luggage for passengers.

1.11 Are there any specifically environment-related obligations or risks for aircraft owners, airlines, financiers, or airports in your jurisdiction, and to what extent is your jurisdiction a participant in (a) the EU Emissions Trading System (EU ETS) or a national equivalent, and (b) ICAO's Carbon Offsetting and Reduction Scheme for International Aviation (CORSIA)?

On 7 October 2022, Brazil signed international commitments to reduce CO₂ emissions in international air transport. This

is a historic agreement for the sustainability of the airline industry, adopted during the 41st Assembly of the International Civil Aviation Organization (ICAO). Brazil also joined the cooperation programme for the promotion of sustainable aviation fuels, the ICAO Assistance, Capacity Building and Training (ACT) for Sustainable Aviation Fuels (SAF) – ACT-SAF, which aims to stimulate the promotion of sustainable aviation fuels.

2 Aircraft Trading, Finance and Leasing

2.1 Does registration of ownership in the aircraft register constitute proof of ownership?

Yes, under Brazilian law the registration of ownership in the aircraft register, the Brazilian Aeronautical Registry (RAB), constitutes proof of ownership.

Registration of aircraft in Brazil is accomplished through a request for the RAB by the Brazilian operator to such effect (together with supporting documents evidencing the transaction entered into between the owner/lessor and the operator for utilisation of that given aircraft, in addition to applicable governmental approvals), and is evidenced by means of a Certificate of Registration (*Certificado de Matrícula*) and a Certificate of Airworthiness (*Certificado de Aeronavegabilidade*) issued by RAB after technical inspection of the aircraft by ANAC.

In order to perfect a transfer of title to an aircraft, the respective bills of sale must be registered with RAB. After full and complete registration of the same with RAB, transfer of title to the aircraft to the new owner will be completed and will become valid for all Brazilian due purposes.

Upon full and complete registration of the bills of sale with RAB (with supporting documentation – as the case may be), a new Certificate of Registration will be issued by RAB evidencing the new owner of the aircraft.

2.2 Is there a register of aircraft mortgages and charges? Broadly speaking, what are the rules around the operation of this register?

The RAB is in charge of registering titles of property to aircraft subject to Brazilian legislation and registration of all agreements, occurrences, acts and liens connected with aircraft registered in Brazil. Therefore, any and all agreements, instruments and deeds, which institute, acknowledge, transfer, modify or extinguish rights over an aircraft subject to Brazilian law must be registered with RAB.

2.3 Are there any particular regulatory requirements which a lessor or a financier needs to be aware of as regards aircraft operation?

Yes, it is worth noting the rules relating to the liability of aircraft operation in Brazil.

When the operator's name is expressly indicated in the certificate of record of the aircraft, as operator under an agreement for utilisation of the aircraft (e.g., under a lease agreement or interchange agreement), the liability of the aircraft's owner is excluded. If the operator's name is not registered in the aircraft's certificate of record, the owner will be deemed the operator unless otherwise evidenced, but once the existence of an operator is evidenced, the operator and the owner will be jointly liable for damages arising from the aircraft's operation.

In view of the above, having the aircraft operator registered in the aircraft's certificate of record is always a key requirement for lessors and financiers engaging in transactions with Brazilian aircraft operators.

2.4 As a matter of local law, is there any concept of title annexation, whereby ownership or security interests in a single engine are at risk of automatic transfer or other prejudice when installed 'on-wing' on an aircraft owned by another party? If so, what are the conditions to such title annexation and can owners and financiers of engines take pre-emptive steps to mitigate the risks?

Yes, as a matter of local law, there is a concept whereby the transfer of title of an aircraft always includes the engines, equipment and internal installations, unless otherwise expressly stated.

2.5 What (if any) are the tax implications in your jurisdiction for aircraft trading as regards a) value-added tax (VAT) and/or goods and services tax (GST), and b) documentary taxes such as stamp duty; and (to the extent applicable) do exemptions exist as regards non-domestic purchasers and sellers of aircraft and/or particular aircraft types or operations?

There are five taxes levied upon the importation of aircraft in Brazil, as follows: (i) the Import Duty (II); (ii) the Tax on Manufactured Products (IPI); (iii) the Profit Participation Program – Import (PIS-Import) and the Social Security Financing Contribution – Import (COFINS-Import), which are federal taxes; and (iv) Tax on Distribution of Goods and Services (ICMS), which is a state tax. Please find below specific comments on each of these taxes:

- (a) II is calculated on the customs value of the goods, plus insurance and charges related to their transport. The applicable rates vary according to the tax classification of the product. Aircraft are classified under tariff code 8802, and are subject to the II assessment at a rate of 0%;
- (b) IPI is levied on the amount used for import duty calculation plus the amount paid as import duty. The rates vary between 0% and 365% depending on the tariff code of the product; in case of aircraft imported under tariff code 8802, IPI is assessed at the following rates depending on the importer qualification: 0%; 5%; or 10%. Please note that the 0% rate is applicable for regular commercial airlines, the 5% rate for charter companies, and the 10% rate for other companies;
- (c) as a general rule, PIS-Import and COFINS-Import are respectively assessed at the rate of 1.65% and 7.6%. The calculation basis of such taxes is the customs value that served or should serve as the basis for calculation of the import duty, plus the ICMS levied on customs clearance and the PIS and COFINS contributions themselves. As for aircraft, PIS-Import and COFINS-Import are assessed at a 0% rate provided that the relevant asset is used in the importer's regular activities; and
- (d) ICMS, a state tax levied on the amount used for II purposes, plus the amount paid as II, IPI, and that corresponding to the ICMS itself. Its rates may vary from state to state and in view of the tariff code of the goods. In accordance with the ICMS Convention No 75/91, aircraft importers that are listed in ordinances enacted by the Ministry of Finance may benefit from a favourable tax treatment, being subject

to the ICMS assessment at a rate of 4%. To be noted that assessment of the ICMS over aircraft lease agreements is quite debatable in Brazil and there are precedents to the benefit of the local lessees.

2.6 Is your jurisdiction a signatory to the main international Conventions (Montreal, Geneva and Cape Town)?

Yes, Brazil is a signatory of the Montreal, Geneva and Cape Town Conventions.

2.7 How are the Conventions applied in your jurisdiction?

In accordance with Article 84, VIII of the Brazilian Federal Constitution, international treaties, such as the Montreal, Geneva and Cape Town Conventions, shall be ratified by the President by means of issuance of a Decree by the President of the Federative Republic of Brazil (the "Presidential Decree") and publication in the Official Gazette, which is required to internalise the treaty into the Brazilian legal system and give it status of an ordinary law, imposing obligations to all governmental bodies, such as the Brazilian Aeronautical Registry, and authorising such bodies to issue infralegal rules and regulation relating therewith.

2.8 Does your jurisdiction make use of any taxation benefits which enhance aircraft trading and leasing (either in-bound or out-bound leasing), for example access to an extensive network of Double Tax Treaties or similar, or favourable tax treatment on the disposal of aircraft?

The Brazilian lessee (paying source) is liable for levying the withholding income tax (IRF) on payments made abroad related to lease transactions. Although the lessor is the actual taxpayer of the IRF, the Brazilian lessee is only required to withhold and collect the tax., in most of the cases the burden of the IRF is assumed by the lessee (i.e., when the relevant lease agreement has a gross-up provision, then the burden of the IRF is assumed by the lessee).

The following Brazilian taxes are assessed on the payments made by Brazilian lessees under cross-border lease transactions: (i) IRF; (ii) Tax on Financial Transactions (IOF); (iii) Tax on Services (ISS); (iv) PIS-Import; and (v) COFINS-Import:

- (a) IRF: According to Law No 9,959 of 27 January 2000 (Law 9959/00) the amounts paid, credited, used, delivered or remitted abroad under agreements for leasing (financial and operating lease, i.e. leases where the lessee has an option to purchase the aircraft) of capital goods entered into with foreign-based entities are subject to IRF at the rate of 15%, even if the lessor is domiciled in a country with a favourable tax treatment (tax haven). However, Article 16 of Law 11,371 of 28 November 2006, as amended by Provisional Measure No. 1.094/2021, reduced to 0% the withholding income tax rate for triggering events that occurred between 1 January 2022 and 31 December 2023, to 1% in 2024, 2% in 2025 and 3% in 2026, and assessed on lease transactions with respect to payments, credits, delivery, use or remittance from a source located in Brazil to a legal entity domiciled abroad in consideration of aircraft or engine finance lease agreements, entered into by a regular public passenger or cargo airline. Also, as per paragraph 2 of Article 6 of Normative Ruling No. 1,455

of March 6, 2014 (NR 1,455/14), exclusion of the value of each instalment corresponding to amortisation of the leased goods is permitted for the purpose of determining the IRF tax basis, as established in the corresponding leasing agreement.

The IRF tax rate in international (operating) simple leases (i.e. leases with no purchase option) varies according to the goods that are being leased. In the leasing of foreign aircraft, for example, the IRF tax rate on the payments set forth in the respective lease agreement is 0% in 2022 and 2023, as explained in the paragraph above. However, according to Article 8 of Law 9,779 of 19 January 1999, if the foreign lessor is domiciled in a country where income is not taxed or subject to taxation at a maximum nominal rate lower than 20% – tax havens – the foreign remittances of payments under international simple lease transactions will be subject to IRF at the rate of 25%. Please note that the taxpayer of the IRF is the lessor, being the lessee only responsible for carrying out the payment of the tax.

- (b) IOF is levied on foreign exchange transactions at a rate of 0.38% for virtually all foreign exchange transactions, although the federal government may increase such rate up to 25%, according to Decree No. 6306 of 14 December 2007 (Decree 6306), as amended. Thus, foreign exchange transactions related to leasing payments will be subject to IOF at a rate of 0.38%.
- (c) ISS: Supplementary Law No. 116, enacted on 31 July 2003 (LC 116/03), sets forth that services imported from foreign parties are subject to the ISS assessment. Please note that the Brazilian Federal Supreme Court (STF) has rendered a decision before in which finance lease transactions are deemed to be characterised as a service. In this sense, finance lease payments would be subject to the ISS taxation (i.e., lessor would be the taxpayer) at rates that varies between 2% and 5%, depending on the Municipality in which the Brazilian paying source is located. However, we understand that there are very good arguments to support that the ISS should not be assessed on simple and operating lease transactions, in view of the fact that simple lease transactions, although comprised in the list of services attached to LC 116/03, should be taken as a rent instead of a service.
- (d) PIS-Import and COFINS-Import: According to Article 8, paragraph 14 of Law 10865/2004, as amended by Law 10925/2004, the tax rates of both PIS-Import and COFINS-Import are reduced to zero on the amounts paid, credited, delivered, used or remitted to a foreign party by means of leasing payments and rentals for aircraft, amongst others, used in the company's activities. Please note that the taxpayer of the PIS-Import and COFINS-Import is the lessee.

For ease of understanding, please find below a chart summarising the taxes assessed on remittances abroad related to lease payments:

	Finance Leases/ Operating Leases	Simple Leases
IRF	15% (0% for remittances executed between 1 January 2022 and 31 December 2023 – applicable only to leases entered into by Brazilian airlines)	0% 25% (tax haven)
IOF	0.38%	0.38%

	Finance Leases/ Operating Leases	Simple Leases
ISS	Finance Leases: ISS rates vary depending on the municipality that the importer's headquarters are located Operating Leases: very good arguments to support that the ISS does not apply	Good arguments to support the non-assessment of the ISS in the present case
PIS and COFINS	0%	0%

2.9 To what extent is there a risk from the perspective of an owner or financier that a lessee of aircraft or other aviation assets in your jurisdiction may acquire an economic interest in the aircraft merely by payment of rent and thereby potentially frustrate any rights to possession or legal ownership or security?

We understand that there is no risk from the perspective of an owner or financier that a lessee of aircraft or other aviation assets in Brazil may acquire an economic interest in the aircraft merely by payment of rent and thereby potentially frustrate any rights to possession or legal ownership or security.

3 Litigation and Dispute Resolution

3.1 What rights of detention are available in relation to aircraft and unpaid debts?

In the event the Brazilian lessee does not oppose repossession of the aircraft upon the occurrence of an event of default under the lease agreement, no judicial proceeding will be required for repossession of the aircraft by the owner or lessor. If, however, the lessee opposes such amicable repossession, a judicial repossession proceeding will be required since the owner or lessor under Brazilian law cannot simply enter into the premises of the lessee and take physical possession of the asset.

In repossession proceedings, it is possible for the owner/lessor to obtain an injunction to immediately repossess the aircraft without the lessee/defendant being heard on the matter or even learning of the existence of the action. For this purpose, the complaint must fully demonstrate and prove: (a) indirect possession of the aircraft by the owner/lessor by proper documentation (i.e., lease agreement); (b) breach of contract by the lessee; (c) termination of the lease agreement and refusal by the lessee to return the aircraft amicably; and (d) filing of the repossession action within one year as from termination of the lease agreement.

This injunction may be revoked at any time if the court deems that it is inappropriate or irrelevant. If the injunction is granted, the owner/lessor will immediately recover possession of the aircraft.

If the facts justifying the request for repossession are not duly evidenced in the complaint, a justification hearing will be scheduled, and shall be attended by both plaintiff and defendant. If the justification presented in the hearing is considered valid, the repossession order will be immediately issued. If it is dismissed, the injunction will be denied and the case will proceed with the filing of a defence by the defendant. After evidence is submitted, a decision will be rendered either accepting or dismissing the grounds, but subject to re-examination by a

second instance court if an appeal is filed. Even if the injunction is initially denied, repossession will occur if the action is later considered valid.

3.2 Is there a regime of self-help available to a lessor or a financier of an aircraft if it needs to reacquire possession of the aircraft or enforce any of its rights under the lease/finance agreement?

Please refer to question 3.1 above.

3.3 Which courts are appropriate for aviation disputes? Does this depend on the value of the dispute? For example, is there a distinction in your jurisdiction regarding the courts in which civil and criminal cases are brought?

In Brazil, there is no specialised court for aviation matters and an aviation-related claim will likely be presented to civil courts.

3.4 What service requirements apply for the service of court proceedings, and do these differ for domestic airlines/parties and non-domestic airlines/parties?

Pursuant to article 83 of the Brazilian Code of Civil Procedure, the Brazilian or the foreign plaintiff who resides abroad or is abroad during the course of the suit initiated in Brazil must provide a bond to cover legal fees and court expenses of the defendant, should there be no immovable assets (real estate) in Brazil to assure payment thereof, except in connection with execution actions, judgment compliance, counterclaims or whenever there is a waiver by international agreement or treaty which Brazil is part of, according to article 83, first paragraph of the Brazilian Code of Civil Procedure.

3.5 What types of remedy are available from the courts or arbitral tribunals in your jurisdiction, both on i) an interim basis, and ii) a final basis?

Please refer to question 3.1 above.

3.6 Are there any rights of appeal to the courts from the decision of a court or arbitral tribunal and, if so, in what circumstances do these rights arise?

The Brazilian legal system, in general, provides for the right to appeal a court decision from adverse decisions, either to higher courts or within higher ranks or administrative tribunals within the audit structure. It is also possible to bring adverse decisions rendered in administrative proceedings to the Judiciary.

The judiciary branch at federal level is mainly comprised by the Supreme Court (*Supremo Tribunal Federal* – “STF”), the Superior Court of Justice (*Superior Tribunal de Justiça* – “STJ”) and the Superior Labor Court (*Tribunal Superior do Trabalho* – “TST”), who are generally in charge of ruling and interpreting constitutional, federal-law and labour matters countrywide. At state level, each state has their own court of appeals and first-degree courts whose magistrates are generally admitted through competitive public-service examination. Jurisdictional competence of each court is also defined under the Brazilian Federal Constitutional, whereby federal and state courts can rule on a wide range of matters relevant to pretty much all legal areas, except for labour discussions (which competence is exclusive of the labour courts).

3.7 What rights exist generally in law in relation to unforeseen events which might enable a party to an agreement to suspend or even terminate contractual obligations (in particular payment) to its contract counterparties due to *force majeure* or frustration or any similar doctrine or concept?

Force majeure events are defined under the Brazilian civil code as inevitable fact, the effects of which are impossible to avoid or prevent. In addition to specific clauses that can be agreed between the parties in relation to *force majeure*, Brazilian civil legislation generally provides that losses arising out of *force majeure* shall not be attributable to a debtor, except if agreed otherwise.

In addition, Brazilian civil legislation provides that when, for unforeseeable reasons, there is a manifest disproportion between the amount of an obligation due and the time of its execution, such disproportion may be judicially rebalanced.

Under a general analysis, it is possible to assert that the majority position of the courts and doctrine states that the revision is only possible if:

- (i) there is an effective subsequent change in the basic conditions that occurred at the time the contract was entered into;
- (ii) these are unpredictable alterations that could not be anticipated or foreseen by the contracting parties at that initial moment; and
- (iii) the subsequent changes end up creating, at the time of their fulfilment, a clear disproportionality between the obligations to be fulfilled individually by the parties.

That is, in cases where a certain external fact modifies the business conditions in an unpredictable manner, altering the basis of the legal business and generating great harm to one of the parties, the doctrine is peaceful in recognising the need to renegotiate the obligations assumed.

4 Commercial and Regulatory

4.1 How does your jurisdiction approach and regulate joint ventures or other forms of partnership and/or alliances between airlines?

The airline industry is not subject to an industry-specific competition regime, but, as with other sectors, it is generally bound by the general antitrust regime of Law No. 12,529 of 30 November 2011, as amended. Such Law provides that the Brazilian Competition Authority (CADE) has both: a (i) preventive function by examining all mergers that meet the legal thresholds under a pre-merger review system; and (ii) repressive function by investigating potential violations to the economic order such as cartels, exchange of sensitive information, price discriminations, among others.

Joint ventures are seen as a concentration act and, thus, the general pre-merger system rules apply. Joint ventures can be classic (new company to explore another market) or concentrationist (new company to explore a market in which parties are already active). CADE will examine the market shares of the companies and balance the pro-competitive and potential negative aspects derived from the transaction. Joint ventures can be cleared without restrictions, rejected, or cleared with the imposition of remedies.

As for other types of partnership, the Law also consider as concentration act “associative agreements”. CADE Resolution n. 17/2016 establishes that associative agreements is characterised if the following criteria are met: (i) duration of two years or more; (ii) the establishment of a joint enterprise to exploit economic

activity; (iii) contracting parties must share the risks and results of the economic activity; and (iv) parties are competitors.

4.2 How do the competition authorities in your jurisdiction determine the 'relevant market' for the purposes of mergers and acquisitions?

CADE historically divides the relevant market of air transport between passengers and freights on the product side. There are also some discussions on the freight market considering that the freight transport can be carried out by: (i) dedicated companies with cargo planes; (ii) airline companies that combine passenger and freight; or (iii) integrated companies. On the geographic side, CADE usually examines the market focusing on the origin and destination of a particular route and, in some cases, CADE also focused on a larger scope comprising a macro region.

With respect to the manufacture of airplanes, CADE usually divides the market into the following groups: (i) large commercial airplanes; (ii) regional airplanes; (iii) executive or corporate airplanes; and (iv) military airplanes. In *Boeing/Embraer* deal, CADE divided the market of large commercial airplanes according to the seats (between 100–200 and more than 200). On the geographic side, CADE considered the market as global.

One comment to note is that all the relevant market analysis varies according to the complexity of the case.

4.3 Does your jurisdiction have a notification system whereby parties to an agreement can obtain regulatory clearance/anti-trust immunity from regulatory agencies?

Yes. As per question 4.1 above, CADE is the Brazilian Antitrust Authority that adopts a pre-merger notification system. There are transactions subject to mandatory notification in Brazil that must meet some criteria (effects in Brazil, qualify as a concentration act, and meet the financial thresholds of the economic groups involved in the deal).

4.4 How does your jurisdiction approach mergers, acquisition mergers and full-function joint ventures?

Please refer to question 4.1 above.

4.5 Please provide details of the procedure, including time frames for clearance and any costs of notifications.

In Brazil, transactions can be examined by CADE under two different merger review procedures: (i) the fast-track procedure; or (ii) the ordinary procedure (non-fast track procedure). The procedure of analysis will depend on the combined market share and on the measure of market concentration (based on the HHI calculations).

The fast-track procedure (meaning a faster review conducted by CADE, in which the parties complete a simplified form) applies to cases which, by virtue of their very nature, have less potential to injure competition. In practice, a deal generally qualifies for the fast-track procedure if the combined market share is below 20% market share (horizontal cases) or parties have less than a 30% market share (vertical cases) in the relevant market affected by the transaction. Parties have room to bring to CADE other aspects beyond market share figures to justify that certain transactions are pro-competitive.

The ordinary procedure means a more time-consuming review process where a more complex form must be completed (full form), and applies to deals leading to market concentrations of 20% or more in a given relevant market or to vertical integrations where one of the parties involved has more than 30% of a given relevant market.

As to the times for a CADE ruling, the law provides that the merger review must be completed within 240 days from original or amended merger filing. This period can only be extended: (i) by up to 60 days, not extendable, upon request of the parties involved in the deal; or (ii) by up to 90 days through a well-grounded decision of CADE's Tribunal specifying the reasons for such extension, the extension period (not renewable), and requisite procedures for judgment of the deal. For the fast track-cases, CADE takes up to 30 days to conclude a fast-track case.

Deals approved by the General Superintendence can only be closed within 15 consecutive days from publication of the decision in the Official Gazette of the Federal Executive (after expiration of the time period for a third party to appeal or for the Administrative Tribunal to request revision).

The main costs involve payment of a filing fee to CADE and costs incurred with sworn translation of the transaction agreements.

4.6 Are there any sector-specific rules which govern the aviation sector in relation to financial support for air operators and airports, including (without limitation) state aid?

Yes. Law No. 12,462 of 4 August 2011, as amended, created the Civil Aviation National Fund (FNAC), an accounting fund managed by the Federal Government, with the purpose of funding the development of the civil aviation in Brazil. Particularly, resources of FNAC may be used to fund the development and fostering of the civil aviation and airport infrastructure in Brazil. From a practical standpoint, as most public airports in Brazil are state-owned, the Federal Government has access to the FNAC resources to fund construction and repair activities relating to airports, instead of relying on budgetary approvals.

4.7 Are state subsidies available in respect of particular routes? What criteria apply to obtaining these subsidies?

Law No. 13,097 of 19 January 2015, as amended, created the Regional Aviation Development Program (PDAR), aiming at integrating isolated communities to the civil aviation network, especially those in less developed areas. Airlines which are a party of the program may be granted subsidies with respect to air navigation charges and airport fees when flying to regional airports (i.e., those serving less than 600,000 passengers per year, or 800,000, in case of airports in the Amazon region), as well as operating costs for transportation of up to 60 passengers per flight in regional flights. The resources used by the Federal Government to fund the PDAR program come from the FNAC (described in question 4.6 above).

4.8 What are the main regulatory instruments governing the acquisition, retention and use of passenger data, and what rights do passengers have in respect of their data which is held by airlines and airports?

The Brazilian General Data Protection Law (Law No. 13.709/18 – the LGPD), which was inspired by the General Data Protection

Regulation (GDPR), came into force on 18 September 2020, and brought significant changes to the processing of personal data (any information related to an identified or identifiable individual) by individuals and legal entities.

The LGPD reaches individuals and private and public legal entities, regardless of the country where they are located or where data is hosted, as long as: (i) data processing takes place in Brazil; (ii) the processing activity is intended to offer or supply goods or services or to process data of individuals located in Brazil; or (iii) personal data being processed was collected in Brazil/the data subjects are located in Brazil at the time their personal data is collected.

LGPD establishes in its article 18 several rights to the data subjects related to their personal data. In view of this, passengers have the following rights in relation to their personal data processed by airlines and airports: (i) confirmation of the processing of their personal data; (ii) access to their personal data; (iii) correction of personal data that is incomplete, inaccurate or out of date; (iv) anonymisation, blocking or deletion of personal data deemed unnecessary, excessive or processed in violation of the LGPD; (v) portability of their personal data to another service or product provider, observing the commercial and industrial secrets, after regulation issued by the Brazilian Data Protection Authority (“ANPD”); (vi) deletion of personal data processed on the basis of their consent, except in the cases of retention of personal data provided for in the LGPD; (vii) receive information about with whom the controller shares their personal data with; (viii) receive information about the possibility of not providing their consent; (ix) withdrawal of their consent to the processing of their personal data, when personal data is processed on the basis of their consent; (x) file an opposition to processing activity in violation of the LGPD; (xi) review of decisions made solely in reliance on automated processing of personal data; and (xii) petition, in relation to their personal data, to the ANPD.

4.9 In the event of a data loss by a carrier, what obligations are there on the airline which has lost the data and are there any applicable sanctions?

Data loss is considered a security incident involving personal data and therefore, the data controller – i.e., the airline – must assess whether the security incident may pose risk or relevant damage to the data subjects – the passengers. If the security incident may pose risk or relevant damage to the passengers, the data controller must notify the ANPD and the data subject about the security incident. Such notification must contain, at least: (a) a description of the nature of the affected personal data; (b) information about the data subjects involved; (c) indication of the technical and security measures used for the protection of the personal data, subject to commercial and industrial secrets; (d) risks related to the security incident; (e) reasons for the delay, in case the communication was delayed; and (f) measures that have been or will be adopted to reverse or mitigate the effects of the damage.

Not reporting a security incident deemed to affect data subjects may be considered as a violation of the LGPD. Violation of the LGPD may result in administrative penalties applied by the ANPD, which includes: (i) warnings; (ii) fines up to 2% of the revenues of the company, economic group or conglomerate in Brazil in the preceding year, capped at BRL 50 million per offence; (iii) daily fines; (iv) disclosure of the offence; (v) blocking of the personal database to which the offence refers, until the processing activity is corrected; (vi) elimination of the

personal data to which the offence refers; (vii) partial or total suspension of the operation of the database to which the offence refers for a maximum period of six months, extendable for the same period; (viii) suspension of the processing of personal data to which the infringement refers for a maximum period of six months, extendable for the same period; and (ix) partial or total prohibition of the performance of any activities relating to data processing.

According to ANPD’s Resolution CD/ANPD No. 4/2023, the definition of which administrative sanctions will be applicable in cases of violation of the LGPD will depend on: (i) the classification of the infraction as “slight”, “medium” or “serious”; and (ii) the ANPD’s understanding of the proportionality of the sanction in relation to the infraction committed.

In 2023, ANPD has issued three decisions in the context of sanctioning procedures, applying administrative sanctions (fine and warnings).

Other authorities in Brazil could still apply the LGPD through administrative procedures or lawsuits and individuals and non-governmental or private associations could file complaints or bring lawsuits based on violations of the LGPD.

4.10 What are the mechanisms available for the protection of intellectual property (e.g. trademarks) and other assets and data of a proprietary nature?

The protection of intellectual property rights in Brazil is provided by the Federal Constitution and various federal laws and international treaties. The main federal laws governing intellectual property are:

- Law Number 9,1279 of 14 May 1996 (the “Industrial Property Law”), which regulates the legal framework for trademarks, patents, utility models, industrial designs, technology transfer, and actions against unfair competition;
- Law Number 9,610 of 19 February 1998 (the “Copyright Law” or “BCL”), which regulates the protection of copyrights and related rights;
- Law Number 9,609 of 19 February 1998 (the “Software Law”), which regulates software protection;
- Law Number 9,456 of 25 April 1997, which regulates plant cultivation protection;
- Provisional Measure Number 2,186-16 of 23 August 2001, which regulates the Convention on Biological Diversity (access to genetic resources and to associated traditional knowledge); and
- Law Number 11,484 of 31 May 2007, which regulates the layout design (topography) of integrated circuits.

The laws and regulations follow the standards established in the Trade Related Aspects of Intellectual Property Rights (TRIPS) Agreement, which was incorporated into the Brazilian legal system by Decree Number 1,355 of 1994.

In addition to TRIPS, Brazil is a signatory to the major international treaties dealing with intellectual property rights, such as:

- the Paris Convention of 1883, revised in Stockholm in 1967;
- the Berne Convention of 1886, revised in 1971;
- the Rome Convention of 1961;
- the Patent Cooperation Treaty (PCT); and
- the Madrid Protocol.

In short, the Brazilian system for protection of intellectual property rights comprises patents for inventions and utility

models, trademarks, industrial designs, topographies of integrated systems, geographical indications, protection against unfair competition, plant cultivar, company names, trade secrets, know-how, undisclosed information, copyrights, data base, software rights, transfer of technology, and control of anticompetitive practices regarding intellectual property rights.

The Brazilian Institute of Industrial Property (*Instituto Nacional da Propriedade Industrial*, or INPI) is the federal governmental agency in charge of reviewing application for registration of trademarks, geographical indications, patents, and other agreements related to intellectual property rights.

4.11 Is there any legislation governing the denial of boarding rights, delayed flights and/or cancelled flights?

ANAC Resolution No. 400 of 13 December 2016, as amended, sets out the general rules governing the transport of passengers in Brazil. It provides for the marketing and sale of tickets by airlines, minimum information to be disclosed to passengers in respect of the transport contract, rescheduling of flights, etc.

The Resolution also provides for passenger rights arising from the airline's failure to render the transportation service to passengers properly. Airlines shall provide material assistance to passengers, free of charge, whenever there is (1) a delay, (2) a cancellation, (3) disruption in services, and (4) denial of boarding (e.g., in cases of overbooking). The level of assistance to be provided depends on the waiting time the passengers are subjected to. If the wait is greater than one hour, the airline shall provide passengers with access to communication (e.g., access to telephones, internet). If the wait is greater than two hours, the airline shall provide a meal appropriate for the time of day (i.e., breakfast in the morning, lunch in the middle of the day, dinner in the evening). If greater than four hours, the airline shall provide accommodation (if the delay takes place overnight) and transportation to and from the airport, which may be waived if the passenger resides in the same area as the airport of origin.

The assistance described above may be waived if the passenger voluntarily decides to either (1) be reaccommodated on a new flight operated by the airline at a date and time chosen by the client, or (2) be fully reimbursed.

Passengers requiring especial assistance (PNAEs) are entitled to further rights and protections. ANAC Resolution No. 280 of 11 July 2013, as amended, sets out who those passengers are and the airlines' obligations when transporting such passengers. Pursuant to the Resolution, the following passengers qualify as PNAEs: (1) disabled persons; (2) persons aged 60 or older; (3) pregnant women; (4) breastfeeding women; (5) persons travelling with toddlers; (6) persons with reduced mobility; and (7) generally, persons with limited autonomy as a result of a specific condition.

PNAEs have the same rights as other passengers but are entitled to priority treatment in all phases of the journey, free of any additional charges. This includes preferred treatment for check-in, boarding, baggage claim, etc. While the airline is obliged to enquire of all passengers whether they need special assistance, PNAEs must inform the airline with respect to their status as PNAEs either at the moment they purchase the ticket or up to 48 or 72 hours before boarding.

In those circumstances in which airlines must provide material assistance to passengers in accordance with ANAC Resolution No. 400, PNAEs will have priority in rescheduling their itinerary, as well as the right to hotel accommodation in cases of delays greater than four hours, irrespective of the time of the day at which the delay occurs (as opposed to only being provided with accommodation if the delay takes place overnight).

4.12 What powers do the relevant authorities have in relation to the late arrival and departure of flights?

Please refer to question 4.11 above.

4.13 Are the airport authorities governed by particular legislation? If so, what obligations, broadly speaking, are imposed on the airport authorities?

The National Commission of Airport Authorities (CONAERO) is a consultative and deliberative forum formed by representatives of nine federal government bodies that work directly in the management of the country's airports, under the coordination of the Civil Aviation Secretariat. Its main goal is improving airports efficiency in passenger perception. To this end, it promotes, contributes, supervises and evaluates decisions and strategic measures to be taken or implemented by airport authorities.

The Commission monitors the quality of management at the 15 airports that handle 80% of passengers in Brazil.

4.14 To what extent does general consumer protection legislation apply to the relationship between the airport operator and the passenger?

Law No. 8,078 of 11 September 1990, as amended, implemented the Brazilian Consumer Protection Code. The aim of the Code is to create a protective environment for consumers, with provision for indemnification to the greatest extent possible. This principle of consumer law in Brazil can result in conflict with international treaties and the limitations they impose. In enforcing rights under the Consumer Protection Code, Brazilian courts tend to award moral damages in decisions rendered in consumer-related matters. It is most likely therefore that, despite moral damages being expressly excluded by international treaties relating to air carriage to which Brazil is a party, the Brazilian courts will continue to award moral damages.

4.15 What global distribution suppliers (GDSs) operate in your jurisdiction?

GDSs that operate in the Brazil include Amadeus, Sabre, and Travelport.

4.16 Are there any ownership requirements pertaining to GDSs operating in your jurisdiction?

No, there are not.

4.17 Is vertical integration permitted between air operators and airports (and, if so, under what conditions)?

There is no prohibition of vertical integration between air operators and airports. In such a case, however, any discriminatory and abusive practices are prohibited, in accordance with current legislation and ANAC regulations.

4.18 Are there any nationality requirements for entities applying for an Air Operator's Certificate in your jurisdiction or operators of aircraft generally into and out of your jurisdiction?

Ownership rules applying to airlines in Brazil have been subject

to a major overhaul by the federal government since 2016. Until that time, 80 per cent of airline shares with voting rights had to be held by Brazilian shareholders. This requirement was revoked and currently there are no restrictions (including with regard to nationality and technical capability) on who can be a shareholder of a Brazilian airline company.

Notwithstanding, as part of the airline certification process, the company will need to evidence that it has the financial capacity to bear the costs related to its intended operations (payment of personnel, acquisition or lease of aircraft, maintenance services, etc.). This is ultimately a financial requirement for the owner, who is likely to be the company's sole source of funding during the certification phase.

5 In Future

5.1 In your opinion, which pending legislative or regulatory changes (if any), or potential developments affecting the aviation industry more generally in your jurisdiction, are likely to feature or be worthy of attention in the next two years or so?

The Brazilian Federal Government announced a plan for the universal access to air transportation. Under the plan, the three major Brazilian airlines – namely Azul, GOL and LATAM Brazil – committed to offer promotional fares in an effort to democratise the air transportation in Brazil, which has suffered greatly with the COVID-19 pandemic and inflation in the past couple of years. It is yet to be seen if such plan will be translated in legislative or regulatory changes.



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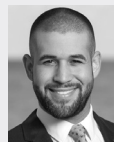
Cayman Islands



Sherice Arman



Shari Howell



Joe Jackson

Maples Group

1 General

1.1 Please list and briefly describe the principal legislation and regulatory bodies which apply to and/or regulate aviation in your jurisdiction.

The Cayman Islands is a British Overseas Territory. The Secretary of State of the United Kingdom Government takes lead responsibility for ensuring that the Cayman Islands (and other overseas territories) comply with the obligations of the Chicago Convention. The Civil Aviation Authority of the United Kingdom has established a subsidiary company, Air Safety Support International (“ASSI”), to oversee, support and promote aviation safety regulation in its overseas territories, including the Cayman Islands. ASSI is responsible for supporting the UK’s overseas territories in all aspects of aviation safety regulation.

Regulatory Body: The Civil Aviation Authority of the Cayman Islands

The Civil Aviation Authority of the Cayman Islands (the “CAACI”) is the body responsible in the Cayman Islands for ensuring that civil aviation in the Cayman Islands conforms to the standards of the International Civil Aviation Organization (“ICAO”).

The CAACI’s functions include the following:

- (a) regulatory oversight of the aviation industry throughout the Cayman Islands;
- (b) certification and licensing of aerodromes, heliports and air transportation services;
- (c) registration of aircraft, including maintenance of the Cayman Islands Aircraft Register (the “**Aircraft Register**”) and the issuance, renewal, cancellation, revocation and variation of certificates of airworthiness of aircraft;
- (d) validation of crew and maintenance personnel licences;
- (e) safety oversight of Cayman Islands Air Operator Certificate (“**AOC**”) holders;
- (f) issuance of air transport permits and operating licences for foreign-registered scheduled and non-scheduled carriers operating in the Cayman Islands;
- (g) regulation of charges levied by airport operators;
- (h) acting as a liaison between the Government of the Cayman Islands and the UK Department for Transport; and
- (i) regulation of air traffic.

It should be noted that the Aircraft Register is primarily for aircraft undertaking private use operations, and aircraft registered on the Aircraft Register must not be used for commercial operations (i.e. for hire or reward) unless an AOC is obtained or the aircraft falls within an Article 83 *bis* agreement.

Legislation

The principal legislation, which applies to and regulates aviation in the Cayman Islands, is the Air Navigation (Overseas Territories) Order 2013 (“**ANOTO**”).

Other notable legislation pertaining to the aviation industry is as follows:

- Air Navigation (Fees) Regulations, 2010.
- Air Navigation (Overseas Territories) (Amendment) (No. 2) Order, 2014.
- Air Navigation (Overseas Territories) (Amendment) (No. 2) Order, 2021.
- Air Navigation (Overseas Territories) (Amendment) Order, 2014.
- Air Navigation (Overseas Territories) (Amendment) Order, 2015.
- Air Navigation (Overseas Territories) (Amendment) Order, 2021.
- Air Transport (Licensing of Air Services) Regulations, 1977.
- Aircraft (Landing and Parking Fees) Regulations, 2020.
- Airport Regulations (As Revised).
- Airports Authority Act (As Revised).
- Civil Aviation Act 1949 (Overseas Territories) Order 1969 SI No. 592 of 1969.
- Civil Aviation Act 1982 (Overseas Territories) (No. 2) Order 2001 SI No. 3367 of 2001.
- Civil Aviation Act 1982 (Overseas Territories) Order 2001 SI No. 1452 of 2001.
- Civil Aviation Act 1982 (Overseas Territories) Order 2021 SI No. 477 of 2021.
- Civil Aviation Authority Act (As Revised).
- Civil Aviation (Investigation of Air Accidents and Incidents) Regulations, 2019.
- Mortgaging of Aircraft Order, 1972.
- Mortgaging of Aircraft Regulations, 2015.

The Overseas Territories Aviation Requirements (“**OTARs**”) provide guidance to the aviation industry in the Cayman Islands (and other UK overseas territories) on the effective implementation of the standards and recommended practices under the Chicago Convention and the ANOTO.

1.2 What are the steps which air carriers need to take in order to obtain an operating licence?

An application for an AOC must be made to the CAACI as the competent authority in the Cayman Islands with responsibility for issuing operator's licences.

The operation of aircraft on a foreign AOC is permitted; however, the granting of air transport permits and operating licences by the CAACI will be required for foreign registered scheduled and non-scheduled carriers to operate in the Cayman Islands. There are minimum requirements that must be met for non-scheduled/charter air transport operations to the jurisdiction as well as scheduled/charter air transport operations to the jurisdiction together with payment of the applicable fees. In addition, companies that supply more than one-off *ad hoc* charters or who provide air ambulance services can be issued with either a blanket permit or verification letter.

1.3 What are the principal pieces of legislation in your jurisdiction which govern air safety, and who administers air safety?

The principal legislation in the Cayman Islands that governs air safety is the ANOTO. The CAACI is responsible for administering air safety in the jurisdiction under the provisions of the ANOTO and the Civil Aviation Authority Act (As Revised).

1.4 Is air safety regulated separately for commercial, cargo and private carriers?

The CAACI regulates all aspects of safety in the aviation industry.

1.5 Are air charters regulated separately for commercial, cargo and private carriers?

Air charters are not regulated separately for commercial, cargo and private charters.

1.6 As regards international air carriers operating in your jurisdiction, are there any particular limitations to be aware of, in particular when compared with 'domestic' or local operators? By way of example only, restrictions and taxes which apply to international but not domestic carriers.

The Airports Authority Act (As Revised) provides that one of the functions of the Airports Authority is to ensure airports in the Cayman Islands conform to the standards and recommended practices of ICAO.

Pursuant to Article 135 of the ANOTO, all foreign-registered aircraft operating into the Cayman Islands for valuable consideration are required to be licensed to do so by the CAACI.

1.7 Are airports state or privately owned?

Airports in the Cayman Islands are state-owned.

1.8 Do the airports impose requirements on carriers flying to and from the airports in your jurisdiction?

Airports in the Cayman Islands prescribe and regulate conditions of use, as well as charges. Users of airports are subject to

charges, which are regulated by the Cayman Islands Airports Authority under the Airport Regulations (As Revised), the Airports (Security Tax) Regulations (As Revised), the Airports Authority (Charges) Regulations, 2008, the Airports Authority Act (As Revised) and the Aircraft (Landing and Parking Fees) Regulations, 2020.

1.9 What legislative and/or regulatory regime applies to air accidents? For example, are there any particular rules, regulations, systems and procedures in place which need to be adhered to?

There are extensive laws, regulations and guidelines that regulate the reporting and investigation of accidents and incidents that are applicable in the Cayman Islands. These include the following:

- (a) ICAO Annex 13 Aircraft Accident and Incident Investigation.
- (b) The Civil Aviation Act 1982 (Overseas Territories) Order 2001 – Article 75.
- (c) Memorandum of Understanding between the Governor and the UKAIB 2006.
- (d) Civil Aviation (Investigation of Air Accidents and Incidents) Regulations, 2019.
- (e) The ANOTO – Articles 5, 7, 174, 175.
- (f) OTAR Part 13 Occurrence Reporting (OTAR 13 Issue 4 dated April 2012).
- (g) Overseas Territories Aviation Circular (“OTAC”) 13-1 Occurrence Reporting (OTAC 31-1 Issue 4 dated July 2015).

The Manual of Aircraft Accident and Incident Reporting – Part I and Part II issued by the CAACI sets out in detail a summary of the legislation, regulations and guidelines relating to aircraft accidents and incident reporting.

The Civil Aviation (Investigation of Air Accidents and Incidents) Regulations, 2019 provide for the Governor of the Cayman Islands to, amongst other things, appoint a chief investigator to carry out investigations into accidents involving aircraft involved in civil aviation. Accidents, Serious Incidents and Incidents (each as defined in ICAO Annex 13 Aircraft Accident and Incident Investigation) are required to be reported and investigated.

1.10 Have there been any recent cases of note or other notable developments in your jurisdiction involving air operators and/or airports?

We are not aware of any cases dealing specifically with air operators and/or airports.

1.11 Are there any specifically environment-related obligations or risks for aircraft owners, airlines, financiers, or airports in your jurisdiction, and to what extent is your jurisdiction a participant in (a) the EU Emissions Trading System (EU ETS) or a national equivalent, and (b) ICAO's Carbon Offsetting and Reduction Scheme for International Aviation (CORSIA)?

The Air Navigation (Overseas Territories) (Environmental Standards) Order 2014 as amended by the Air Navigation (Overseas Territories) (Environmental Standards) (Amendment) Order 2015 has been extended to the Cayman Islands. This Order requires certain aircraft to obtain a noise certificate in accordance with the standards set out in the sixth edition – July

2011 of Volume I of Annex 16 to the Chicago Convention and certain emissions certification as to compliance with the standards set out in the third edition – July 2008 of Volume II of Annex 16 to the Chicago Convention. As a member of ICAO, the UK is obliged to implement CORSIA in its national law. For the purposes of the Chicago Convention, the UK's Overseas Territories (which include the Cayman Islands) are treated as part of the UK. The Cayman Islands will therefore join CORSIA along with the UK and the UK would be required to legislate for CORSIA in the Cayman Islands and other Overseas Territories of the UK.

Aeroplane operators have been voluntarily monitoring, reporting and verifying their emissions since 2019 to set the global baseline for CORSIA.

Consultation is currently ongoing in relation to the development of a draft Air Navigation (CORSIA) (Overseas Territories) Order. This is not yet in force.

2 Aircraft Trading, Finance and Leasing

2.1 Does registration of ownership in the aircraft register constitute proof of ownership?

The registration of title to an aircraft on the Aircraft Register maintained by the CAACI constitutes proof of title to the aircraft. However, such evidence is not conclusive.

2.2 Is there a register of aircraft mortgages and charges? Broadly speaking, what are the rules around the operation of this register?

Mortgage Registration

The CAACI maintains an aircraft mortgage register (the “**Mortgage Register**”) in accordance with the Mortgaging of Aircraft Regulations, 2015 (the “**Mortgaging Regulations**”), thereby offering a system for obtaining the priority and perfection of security interests over aircraft. Registration on the Mortgage Register constitutes express notice to all persons of all facts appearing on the Mortgage Register.

The Cape Town Convention came into force in the Cayman Islands on 1 November 2015 pursuant to the International Interests in Mobile Equipment (Cape Town Convention) Act (As Revised) (the “**Cape Town Act**”). As a result, there exists a dual system for perfection and priority of security over Cayman Islands registered aircraft for entities that qualify as follows:

- (i) where there is a registerable “international interest” under the Cape Town Convention (as defined in the Cape Town Act), any such international interest in respect of an aircraft may be recorded on the international registration facilities established under the Cape Town Convention (the “**International Registry**”) for aircraft that meets the requirements under the Cape Town Convention. In circumstances where an international interest has been registered against an aircraft that is registered with the CAACI in accordance with the Cape Town Convention, priority of a mortgage over that aircraft will be determined solely by the filings on the International Registry. No additional registrations are required with the CAACI in relation to a mortgage over such aircraft; or
- (ii) if the Cape Town Convention does not apply, then the priority of a registered mortgage against the particular Cayman Islands registered aircraft will be determined in accordance with registration on the Mortgage Register pursuant to the Mortgaging Regulations.

Priority notices

It is also possible to file a priority notice with the CAACI by filing the applicable documentation and paying the applicable fee. If the relevant mortgage is filed within 14 days of the date of such a priority notice, it will be deemed to have priority from the time when the priority notice was registered.

2.3 Are there any particular regulatory requirements which a lessor or a financier needs to be aware of as regards aircraft operation?

As mentioned in question 1.1, the Aircraft Register is primarily for aircraft undertaking private use operations and a separate AOC must be obtained before undertaking commercial operations.

Taking physical possession of the aircraft is permitted under Cayman Islands law. Cayman Islands law recognises self-help remedies in the context of security interests in aircraft (often over the shares of the aircraft owning vehicle) without the need to obtain a court order (subject to any liens and other statutory detention or retention rights of third parties); however, it is open to the relevant enforcing party to seek a court order.

Permission of the CAACI is not required prior to pursuing remedies on enforcement. However, possession via either a transfer of title or change of details of the entity registered with the CAACI will require the cooperation of the CAACI (and, as such, compliance with any transfer requirements of the CAACI).

2.4 As a matter of local law, is there any concept of title annexation, whereby ownership or security interests in a single engine are at risk of automatic transfer or other prejudice when installed ‘on-wing’ on an aircraft owned by another party? If so, what are the conditions to such title annexation and can owners and financiers of engines take pre-emptive steps to mitigate the risks?

While there is no concept of title annexation under Cayman Islands law, Cayman Islands law recognises the concept of accession which is similar to annexation.

Based on the example above, where an engine owned by one party is installed “on wing” of any aircraft owned by another party, it is common market practice for relevant parties to require entry into a contractual “recognition of rights” agreement (which is typically governed by English law) as a condition to installing an engine on a different airframe. As noted previously, while aircraft engines are not capable of being registered with the CAACI, relevant parties are able to make filings on the International Registry under the Cape Town Convention in relation to engines.

2.5 What (if any) are the tax implications in your jurisdiction for aircraft trading as regards a) value-added tax (VAT) and/or goods and services tax (GST), and b) documentary taxes such as stamp duty; and (to the extent applicable) do exemptions exist as regards non-domestic purchasers and sellers of aircraft and/or particular aircraft types or operations?

The Cayman Islands currently has no form of income, corporate or capital gains tax and no estate duty, inheritance tax or gift tax.

Customs duty may apply to an aircraft which is brought into the Cayman Islands from any other jurisdiction unless the Collector (as defined in the Customs and Border Control Act (As Revised) (the “**Customs Act**”)) has exercised his discretion pursuant to section 22(1) of the Customs Act to permit the import of such

aircraft free of duty, for retention in the Cayman Islands on a temporary basis with a view to its subsequent exportation, for a period not exceeding six months or such extended period as the Collector may authorise.

2.6 Is your jurisdiction a signatory to the main international Conventions (Montreal, Geneva and Cape Town)?

The Cayman Islands is not signatory to the Montreal Convention or Geneva Convention.

Cape Town Convention

The Cape Town Convention came into force in the Cayman Islands on 1 November 2015 pursuant to the International Interests in Mobile Equipment (Cape Town Convention) Act As Revised.

The Chicago Convention

While the Cayman Islands is not signatory to the Chicago Convention of 1944 on International Civil Aviation, certain provisions thereof are reflected in the ANOTO.

2.7 How are the Conventions applied in your jurisdiction?

Cape Town Convention

The UK Government ratified the Cape Town Convention with UNIDROIT on 27 July 2015. The Cape Town Convention entered into force for the UK, and by extension the Cayman Islands, on 1 November 2015.

The Cayman Islands Government passed enabling legislation entitling the Cayman Islands to international recognition as a territorial unit of a contracting state to the Cape Town Convention and to recognition of the declarations deposited by the UK Government on behalf of the Cayman Islands Government, with the International Institute for the Unification of Private Law acting as depository pursuant to Article 62(1) of the Cape Town Convention and Article XXXVII(1) of the Protocol – UNIDROIT.

Chicago Convention

As mentioned in question 2.6, the Cayman Islands is not a signatory to the Chicago Convention; however, certain provisions thereof are reflected in the ANOTO.

2.8 Does your jurisdiction make use of any taxation benefits which enhance aircraft trading and leasing (either in-bound or out-bound leasing), for example access to an extensive network of Double Tax Treaties or similar, or favourable tax treatment on the disposal of aircraft?

No, the Cayman Islands does not make use of any taxation benefits which enhance trading and leasing.

2.9 To what extent is there a risk from the perspective of an owner or financier that a lessee of aircraft or other aviation assets in your jurisdiction may acquire an economic interest in the aircraft merely by payment of rent and thereby potentially frustrate any rights to possession or legal ownership or security?

Typically, security documents and lease agreements over Cayman Islands registered aircraft are not governed by Cayman Islands

law. As a result, the impact of any issues under the governing law of such documents should be taken into consideration. Cayman Islands law would usually recognise a foreign law security interest subject to the insolvency laws applicable to the grantor of the security interest and such security interest will usually have priority over any claims by third parties (other than those preferred by law) provided it is a valid security interest under its governing law. An aircraft mortgage would usually include provisions which facilitate the lender's self-help remedy of repossession of the aircraft. In addition, where the security interest has been registered pursuant to the Cape Town Convention, a lender would be able to exercise remedies under the security documents and the Cape Town Convention, subject to the provisions therein (including any waiting period), to take possession of the aircraft and apply for its deregistration, exercise its power of sale or remove it from its location without a court order.

3 Litigation and Dispute Resolution

3.1 What rights of detention are available in relation to aircraft and unpaid debts?

Under Cayman Islands law, rights to detain (or potentially sell) an aircraft can arise under the common law or legislation. Such rights may arise in the following circumstances:

- (a) Airport charges: aircraft can be detained and sold for non-payment of airport charges; default of payment creates a statutory lien.
- (b) Possessory lien: where a person has carried out work on an aircraft with the authorisation of the owner, thereby enhancing the aircraft's value, that person may have a lien on the aircraft to the extent that they remain unpaid for the work carried out and may refuse to return the aircraft until they are paid. Such a lien arises from the common law.
- (c) Customs: where anything becomes liable to forfeiture under the Customs Law, any aircraft used for the carriage, handling, deposit or concealment of that thing shall also be liable to forfeiture. Forfeiture of an aircraft may also occur where it has been adapted to be used for or is used for the purposes of smuggling or concealing goods.
- (d) Crimes: where a person is convicted of an offence, any aircraft in his or her possession or under his or her control that was used in connection with such an offence or intended to be used for that purpose may be forfeited to the Crown by order of the court.
- (e) War or national emergency: regulations made under the Emergency Powers Act (As Revised) can give powers to the Governor of the Cayman Islands to authorise the taking possession or acquisition of any property.
- (f) Terrorism: where a person is convicted of an offence under the Terrorism Act (As Revised), the court can make a forfeiture order in respect of any property in that person's possession or control which he intended to use or it was suspected he would use for the purpose of terrorism.

3.2 Is there a regime of self-help available to a lessor or a financier of an aircraft if it needs to reacquire possession of the aircraft or enforce any of its rights under the lease/finance agreement?

Self-help remedies are available under Cayman Islands law (under both the common law and the Cape Town Convention).

For creditors that have taken security, it is possible to enforce certain security rights without a court order; for example, if the

documentation allows the mortgagee to take possession of the aircraft or appoint a receiver. Both are self-help remedies (i.e. they are methods by which a secured creditor can enforce its security, realise the assets secured and obtain the repayment of the debt outstanding). A receiver may be appointed by the secured creditor in accordance with the terms of the security document pursuant to which the appointment is to be made and without an order of the court. The receiver acts principally in the interests of his appointor and not for the general body of creditors. Receiverships are governed exclusively by the terms of the documents and the common law. The powers granted to a receiver are therefore primarily derived from the security document(s) pursuant to which the receiver is appointed. The powers are usually wide and should generally enable him to do all things necessary to realise the secured property for the benefit of the secured creditor. In the unlikely event that the security documentation does not contain a right to appoint receivers (or the right is disputed or subject to doubt), the secured creditor may apply to the court for the appointment of a receiver.

The Cape Town Convention also provides creditors with self-help remedies. These remedies include:

- taking possession or control of any aircraft;
- selling or granting a lease of any aircraft;
- collecting or receiving any income or profits arising from the management or use of any aircraft;
- procuring the: (i) de-registration of the aircraft; and (ii) export and physical transfer of the aircraft from the territory in which it is situated; and
- certain interim relief pending the determination of any claim.

3.3 Which courts are appropriate for aviation disputes? Does this depend on the value of the dispute? For example, is there a distinction in your jurisdiction regarding the courts in which civil and criminal cases are brought?

Aviation disputes will be heard by the Cayman Islands Grand Court (Civil Division). While the Cayman Islands Grand Court has a Financial Services Division, the majority of disputes which arise in the aviation context are unlikely to fit within the meaning of “financial services proceedings”.

3.4 What service requirements apply for the service of court proceedings, and do these differ for domestic airlines/parties and non-domestic airlines/parties?

For domestic airlines/parties that are companies incorporated in the Cayman Islands, any originating process must be served on their registered office in the Cayman Islands.

For non-domestic airlines/parties, leave of the court is required before the service out of the jurisdiction of any originating process. Order 11 of the Grand Court Rules (“GCR”) sets out a prescribed list of proceedings that may be served out of the jurisdiction with the leave of the court – an aviation dispute is likely to fall within this list. Before the court will order that a party has leave to serve out of the jurisdiction, it must be satisfied that:

- the applicant has demonstrated a good arguable case that the claim has an appropriate nexus to the Cayman Islands under one or more heads set out in Order 11, rule 1 of the GCR;
- there is a serious case to be tried on the merits; and
- it is proper in the exercise of its discretion to grant leave and particularly that the Cayman Islands is the appropriate forum.

3.5 What types of remedy are available from the courts or arbitral tribunals in your jurisdiction, both on i) an interim basis, and ii) a final basis?

Although remedies will vary depending on the nature of the dispute, generally the following may be available.

On an interim basis:

- an injunction relating to the aircraft and other aviation assets (for example, an order for detention of the aircraft or a freezing injunction preventing the disposition of the aircraft); and
- interim relief available under the Cape Town Convention (see question 3.2).

On a final basis:

- damages;
- a permanent injunction relating to the aircraft and other aviation assets;
- an order to take control of an aircraft and other aviation assets;
- an order for the sale of an aircraft and other aviation assets; and
- remedies available under the Cape Town Convention (see question 3.2).

3.6 Are there any rights of appeal to the courts from the decision of a court or arbitral tribunal and, if so, in what circumstances do these rights arise?

Appeals from the Grand Court are to the Cayman Islands Court of Appeal (“CICA”), which usually sits three times a year. Subject to certain restrictions, there is an automatic right of appeal to the CICA from any final decision of the Grand Court. In general, leave of the court is required to appeal an interlocutory decision.

An appeal may lie to the Privy Council from the CICA.

3.7 What rights exist generally in law in relation to unforeseen events which might enable a party to an agreement to suspend or even terminate contractual obligations (in particular payment) to its contract counterparties due to *force majeure* or frustration or any similar doctrine or concept?

The concepts of *force majeure* and frustration exist as a matter of Cayman Islands law. The rights that arise when a *force majeure* clause is triggered will be set out in the contract itself and will therefore be a matter of contractual interpretation, although it is not unusual for *force majeure* clauses to confer on the parties a right to terminate the contract in the event of a “*force majeure* event”.

Even in the absence of such contractual provisions, the legal doctrine of frustration still applies and may be invoked. In order for a contract to be frustrated as a matter of Cayman Islands law, it must have become incapable of performance and not due to the fault of any of the parties. However, the contract will not be frustrated if only one of the possible methods of performance of the contract is no longer possible.

In the event that a contract has become frustrated, either party may exercise their common law right to terminate the contract with forward-looking effect. This means that any rights and obligations of the parties that had crystallised prior to termination will survive, subject always to the terms of the contract itself. Accordingly, a party who exercises its right to terminate the contract for frustration will still be liable to

make any outstanding payments owing under the contract at the time of termination but will, however, not be liable to make any future or other payments that were not yet owing under the contract at that time. Furthermore, a party will still have the right to sue the other party for damages for any earlier breaches of the contract that occurred prior to termination.

4 Commercial and Regulatory

4.1 How does your jurisdiction approach and regulate joint ventures between airline competitors?

There are no restrictions or regulations affecting joint ventures between airline competitors in the Cayman Islands.

4.2 How do the competition authorities in your jurisdiction determine the 'relevant market' for the purposes of mergers and acquisitions?

Please refer to question 4.1. There are no restrictions or regulations applicable to airline competitors in the Cayman Islands.

4.3 Does your jurisdiction have a notification system whereby parties to an agreement can obtain regulatory clearance/anti-trust immunity from regulatory agencies?

Please refer to question 4.1. There is no notification system with application to such parties.

4.4 How does your jurisdiction approach mergers, acquisition mergers and full-function joint ventures?

Please refer to question 4.1.

4.5 Please provide details of the procedure, including time frames for clearance and any costs of notifications.

Please refer to question 4.1.

4.6 Are there any sector-specific rules which govern the aviation sector in relation to financial support for air operators and airports, including (without limitation) state aid?

We are not aware of any sector-specific rules that would apply.

4.7 Are state subsidies available in respect of particular routes? What criteria apply to obtaining these subsidies?

As far as we are aware, there are no state subsidies with respect to particular routes that apply in the Cayman Islands.

4.8 What are the main regulatory instruments governing the acquisition, retention and use of passenger data, and what rights do passengers have in respect of their data which is held by airlines and airports?

The Data Protection Act (As Revised) of the Cayman Islands (the "DPA") came into force on 30 September 2019.

A data controller must comply with the data protection principles in respect of personal data which it processes, or which is processed on its behalf by any "data processor". Broadly, personal data must only be processed by a data controller for the purposes of which a data subject is aware and would expect. It is incumbent on the data controller to ensure that the personal data for which it is responsible is protected by its data processors. A data controller is also required to disclose how and why personal data is processed in the context of its activities, and by whom. This is customarily set out in a privacy notice.

Personal data shall be obtained only for one or more specified, explicit and legitimate purposes, and shall not be further processed in any manner incompatible with that purpose or those purposes. Legal bases for processing personal data are set out in the DPA. Additional conditions apply to the processing of sensitive personal data.

Personal data processed for any purpose shall not be kept for longer than is necessary for that purpose. Retention periods should be considered and determined by the data controller.

The DPA grants specific rights to individuals, including the right to be informed, the right of access, the right to rectification, the right to stop/restrict processing, the right to stop direct marketing, the right to complain and seek compensation and rights in relation to automated decision making.

4.9 In the event of a data loss by a carrier, what obligations are there on the airline which has lost the data and are there any applicable sanctions?

The DPA prescribes actions to be taken by a data controller in the event of a personal data breach.

A "personal data breach" is defined in the DPA as "a breach of security leading to the accidental or unlawful destruction, loss, alteration, unauthorised disclosure of or, access to, personal data transmitted, stored or otherwise processed". However, Ombudsman guidance provides that a personal data breach does not need to be reported if it is unlikely to prejudice the rights and freedoms of the affected data subjects.

Sanctions under the DPA include fines of up to CI\$100,000 (approximately US\$120,000) and monetary penalty orders of up to CI\$250,000 (US\$300,000). The DPA also provides that a person who suffers damage due to a contravention of the DPA has a cause of action against the data controller for that damage.

4.10 What are the mechanisms available for the protection of intellectual property (e.g. trademarks) and other assets and data of a proprietary nature?

The Cayman Islands Intellectual Property Office ("CIPO") and relevant Cayman Islands laws provide for a robust and modern regime in the Cayman Islands for the protection of intellectual property rights to the highest international standards.

Trade marks

Cayman Islands law provides for trade marks to be registered with the CIPO and also for, *inter alia*, assignments, licences and security interests be recorded with the CIPO against a registered trade mark.

Patents

Cayman Islands law provides for the recordal in, and extension to, the Cayman Islands of: (i) a patent that is current and effective in the United Kingdom; (ii) a patent granted under the Convention on the Grant of European Patents designating the United Kingdom, and which under the law of the United Kingdom is

treated as if it were a patent granted under such law; or (iii) a patent granted under the Community Patent Convention.

Design rights

Cayman Islands law provides for the recordal in, and extension to, the Cayman Islands of existing registered UK and EU design rights.

The effect of the recording of an extension of the UK or EU patent or design right in the Cayman Islands is to afford in the Cayman Islands, to the owner of the right so recorded, all the equivalent rights and remedies available to the owner in respect of such patent or design right in the UK. Such protection and rights in the Cayman Islands continue from the time the right arose in the UK and continue in force so long as the protection and rights remain in force in the UK.

Copyright

The Copyright (Cayman Islands) Order, 2015 and the Copyright (Cayman Islands) (Amendment) Order, 2016 came into force on 30 June 2016, extending certain provisions of the UK Copyright, Designs and Patents Act 1988 to the Cayman Islands. The copyright regime provides modern IP protection for computer software and databases, among other things such as original literary work, dramatic, musical or artistic work.

4.11 Is there any legislation governing the denial of boarding rights and/or cancelled flights?

There is no specific Cayman Islands legislation governing the denial of boarding rights and/or cancelled flights. Certain provisions of the Warsaw Convention may apply by extension to the Cayman Islands via the United Kingdom, subject to the flight in question being classified as an international flight.

4.12 What powers do the relevant authorities have in relation to the late arrival and departure of flights?

There is no specific Cayman Islands legislation regulating late arrival and departure of flights.

4.13 Are the airport authorities governed by particular legislation? If so, what obligations, broadly speaking, are imposed on the airport authorities?

The Cayman Islands Airport Authority (“CIAA”) is governed primarily by the Airports Authority Act (As Revised).

Broadly speaking, the obligations imposed on the CIAA include the following:

- (i) plan, develop, redevelop, construct, administer, control and manage airports in the Cayman Islands;
- (ii) provide and maintain runways, terminals and other services and facilities as necessary for the efficient operation of airports in the Cayman Islands;
- (iii) provide rescue and fire-fighting equipment and services at airports, and carry out regular drills and exercises and other checks of all security and safety equipment;
- (iv) provide meteorological services to users of the airports;
- (v) provide adequate facilities for the exercise of the regulatory powers of the Cayman Islands, including customs, immigration and health and security checks;
- (vi) collect prescribed or approved dues, rents, landing and parking fees and charges; and
- (vii) ensure that the airports conform to ICAO-recommended standards and practices.

4.14 To what extent does general consumer protection legislation apply to the relationship between the airport operator and the passenger?

There is no consumer rights legislation in the Cayman Islands that applies to the aviation sector.

4.15 What global distribution suppliers (GDSs) operate in your jurisdiction?

The major air carriers operating in the Cayman Islands use the main GDS platforms – such as Sabre, Amadeus, Worldspan and Apollo. Information regarding whether these GDSs operate from the Cayman Islands is not publicly available at the time of this publication.

4.16 Are there any ownership requirements pertaining to GDSs operating in your jurisdiction?

Please refer to question 4.15.

4.17 Is vertical integration permitted between air operators and airports (and, if so, under what conditions)?

There are no restrictions on vertical integration between air operators and airports under Cayman Islands law.

4.18 Are there any nationality requirements for entities applying for an Air Operator's Certificate in your jurisdiction or operators of aircraft generally into and out of your jurisdiction?

In order to qualify to hold an AOC, an applicant must have a principal place of business (physical presence) in the Cayman Islands. As a result, operators generally establish a company in the Cayman Islands or register in the Cayman Islands a branch of an existing company incorporated outside the Cayman Islands.

5 In Future

5.1 In your opinion, which pending legislative or regulatory changes (if any), or potential developments affecting the aviation industry more generally in your jurisdiction, are likely to feature or be worthy of attention in the next two years or so?

Developments in the data protection and consumer protection sectors continue to be an area of major focus for the Cayman Islands. Following the implementation of the Data Protection Act (As Revised), operators in the aviation industry will need to put policies and procedures in place to ensure they meet their obligations under the legislation.

Further, legislative proposals are being made to introduce safeguards for consumer interests in matters relating to the supply of goods and services which will be worthy of attention by the aviation sector over the course of the next couple of years, particularly during the consultation phase of the process.



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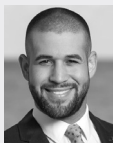


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Dominican Republic



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1 General

1.1 Please list and briefly describe the principal legislation and regulatory bodies which apply to and/or regulate aviation in your jurisdiction.

In addition to the generally applicable provisions contained in the Civil and Commercial Codes of the Dominican Republic and the international treaties and conventions duly ratified by the Dominican Republic, the key domestic statute applicable to civil aviation is the Civil Aviation Law No. 491-06 (the Civil Aviation Law), as amended by Law No. 67-13, as well as Law No. 188-11 on Aviation Security and Civil Aviation. Said statutes specifically regulate civil aviation in the Dominican Republic, as well as provide the legal framework necessary for the oversight and control of all aviation activities under the jurisdiction of national sovereignty.

The regulatory bodies that oversee civil aviation activities in the Dominican Republic are the Dominican Institute of Civil Aviation (IDAC), the Civil Aviation Board (JAC) and the Specialised Airport and Civil Aviation Security Body (CESAC).

The JAC is the main civil aviation regulatory agency which is tasked with advising the executive branch of the government on commercial aviation, as well as regulating all economic aspects of commercial aviation in the Dominican Republic. The IDAC is a specialised and independent body that is tasked with the supervision and control of the technical aspects of civil aviation and security in the Dominican Republic that are not under the jurisdiction of the JAC. Lastly, the CESAC is an office of the Ministry of Armed Forces in charge of the security aspects related to aircraft, airports, aerodromes, and of the infrastructure and facilities that provide civil aviation services, as well as providing for the wellbeing of passengers, crew, ground staff and the general public.

1.2 What are the steps which air carriers need to take in order to obtain an operating licence?

In order to operate in the Dominican Republic, an air carrier must obtain the corresponding authorisations based on whether it is a national or foreign operator. National air carriers must obtain: (i) a certificate of economic authorisation that is issued

by the JAC; and (ii) an air operator certificate that is issued by the IDAC. Foreign air carriers that are protected by a bilateral agreement or have obtained proof of reciprocity with the Dominican Republic must: (i) establish a branch; (ii) obtain a certificate of compliance with the aviation security standards issued by the CESAC; (iii) obtain an operation permit issued by the JAC; and (iv) obtain an acknowledgment certificate issued by the IDAC in accordance with the operation specifications from the country of origin. Both national and foreign operators must submit an operator's security manual to the CESAC for validation and approval.

1.3 What are the principal pieces of legislation in your jurisdiction which govern air safety, and who administers air safety?

Law No. 188-11 on Aviation Security and Civil Aviation and its complementary regulations as well as the Dominican Aviation Regulations (RAD), which are issued by the IDAC in accordance with international treaties and conventions duly ratified by the Dominican Republic.

The IDAC is in charge of the oversight of security in air navigation and of ensuring operational safety. Meanwhile, the CESAC is the competent authority on civil aviation security for the application of Law No. 188-11 and the fulfilment of the National Programme on Civil Aviation Security.

1.4 Is air safety regulated separately for commercial, cargo and private carriers?

All air safety matters are regulated by the IDAC and CESAC as per the legislation stated above, irrespective of if they are commercial, cargo or private carriers.

1.5 Are air charters regulated separately for commercial, cargo and private carriers?

All charter flights are regulated by the same regulatory bodies; any foreign air operator without an operation licence must apply for a charter flight authorisation through a foreign air operator aircraft by a consignee in charter flights.

1.6 As regards international air carriers operating in your jurisdiction, are there any particular limitations to be aware of, in particular when compared with 'domestic' or local operators? By way of example only, restrictions and taxes which apply to international but not domestic carriers.

There are restrictions and taxes which apply to international but not to domestic carriers.

The Civil Aviation Law reserves air transport services for national air operators; however, permits can be granted to foreign air operators from countries that have entered into agreements or treaties with the Dominican Republic or that have obtained proof of reciprocity. In light of the foregoing, requirements for the issuance of operating permits to foreign air carriers differ from those imposed on national air carriers.

The Dominican Republic is a party to air service agreements or a memoranda of understanding with the following countries: Antigua and Barbuda; Argentina; Aruba; Austria; Bahamas; Belgium; Bolivia; Brazil; Canada; Chile; China; Colombia; Costa Rica; Cuba; Curaçao; Czech Republic; Denmark; Ecuador; El Salvador; Finland; France; Germany; Guatemala; Guyana; Haiti; Hungary; Iceland; India; Ireland; Israel; Italy; Jamaica; Jordan; Kenya; Kuwait; Luxembourg; Mexico; Morocco; Netherlands; New Zealand; Nicaragua; Norway; Panama; Paraguay; Peru; Poland; Portugal; Qatar; Russia; Rwanda; Saint Martin; Serbia; Seychelles; Singapore; South Africa; Spain; Sri Lanka; Sweden; Switzerland; Trinidad and Tobago; Turkey; United Arab Emirates; United Kingdom; United States; Uruguay; and Venezuela.

1.7 Are airports state or privately owned?

There are both privately owned and state-owned airports. The busiest airport in the country to date, Punta Cana International Airport, is a privately owned commercial airport in Punta Cana, eastern Dominican Republic. Likewise, a private entity (Aeropuertos Dominicanos Siglo XXI or Aerodrom) has an exclusive concession to operate six state-owned airports in the Dominican Republic, including the Las Americas International Airport.

1.8 Do the airports impose requirements on carriers flying to and from the airports in your jurisdiction?

Since there are no specific regulations for assigning a slot, each airport agrees on the terms with the air operators, according to their requirements.

It is also important to note that Aerodrom has a security committee, a security audit programme, a security equipment maintenance programme, and a baggage security programme in order to implement supervision measures that it deems necessary to ensure passenger safety and the appropriate handling of baggage and cargo.

1.9 What legislative and/or regulatory regime applies to air accidents? For example, are there any particular rules, regulations, systems and procedures in place which need to be adhered to?

The Aviation Accident Investigation Commission (CIAA) oversees the technical investigation of any accidents and serious incidents involving civil aircraft within the territory of the Dominican Republic and those involving aircraft with

Dominican registration in international waters or airspace that is not under the sovereignty of another state. It also has the authority to participate in the investigation of accidents and serious incidents involving an aircraft registered in the Dominican Republic that occurs in the territory of a foreign country, per any treaty, convention or other arrangements between the Dominican Republic and the state in whose territory the accident occurred.

The CIAA follows the guidelines set out in appendix 13 of the Chicago Convention on Aircraft Accident and Incident Investigation. The owners, operators or crew members must promptly inform the CIAA and IDAC of any accidents or incidents involving aircraft under their responsibility within Dominican territory, and incidents abroad concerning aircraft with Dominican registration.

1.10 Have there been any recent cases of note or other notable developments in your jurisdiction involving air operators and/or airports?

On 26 January 2018, the JAC suspended Pan Am World Airways Dominicana, S.A. (PAWA Dominicana), the leading national air carrier at the time and the first Dominican carrier to operate international flights to and from the United States, after the country was upgraded to Category I by the US Federal Aviation Administration (FAA), due to the fact that the operator had failed to comply with tax obligations and airport service fees (amassing a debt of approximately USD68.5 million with public and private institutions).

PAWA Dominicana later declared bankruptcy and filed a restructuring suit with the Mercantile Restructuring Court, a process that is still ongoing, but the regulatory bodies have expressed their intention to permanently cancel PAWA's air operator certificate.

Due to PAWA Dominicana's sudden suspension, thousands of passengers were stuck in airports or left to claim reimbursement and compensation for issued tickets; approximately 500 staff were left unemployed.

1.11 Are there any specifically environment-related obligations or risks for aircraft owners, airlines, financiers, or airports in your jurisdiction, and to what extent is your jurisdiction a participant in (a) the EU Emissions Trading System (EU ETS) or a national equivalent, and (b) ICAO's Carbon Offsetting and Reduction Scheme for International Aviation (CORSIA)?

The Dominican Republic has a framework of laws related to the environment which aim to protect all natural resources within the country, and as such they impose certain obligations and regulations with regard to commercial or industrial operations. For example, airports are required to obtain certain environmental permits or authorisations in order to operate since hazardous substances or materials are handled in day-to-day operations. With regard to owners, airlines or financiers, certain environmental obligations may apply depending on the scope of operations within the country and the way in which any auxiliary services are received on the ground. Recently, the General Law for Integral Management and co-processing of Solid Waste No. 225-20 was enacted, which aims to prevent the generation of waste and establish the legal framework for its integral management and promote the reduction, reuse, recycling, use and recovery of waste.

Under said Law, waste generators have responsibilities in all stages of handling waste, from its generation to its final

disposal. In this sense, whoever generates waste must: (i) reduce their proliferation; (ii) separate waste at the source; and (iii) support the programmes that the state promotes to sustainably manage the waste generated in the country. There is not only responsibility or what is labelled as “extended responsibility” for waste generators, but the new law also creates economic instruments for comprehensive waste management to encourage the participation of the different sectors in the application of the law, and for individuals or legal entities to assume the environmental benefits and costs generated by their economic activities. That is to say, “green” projects will receive economic incentives from the government in the form of tax deductions or exemptions. Similarly, a special obligatory contribution was created, by which every legal person or entity operating locally must pay a mandatory contribution based on their income, in order to create a fund to mitigate the negative effects of the current disposal of waste and develop a comprehensive management system.

The Dominican Republic is not a participant of the EU Emissions Trading System (EU ETS), however, it started its own Emissions Reduction Program in 2019. Said Program is a national initiative focused on lowering forest emissions from deforestation and forest degradation across the country. In May 2021, the Dominican Republic signed an agreement with the World Bank’s Forest Carbon Partnership Facility (FCPF), unlocking payments of up to USD25 million for verified carbon emission reductions between now and 2025 through the country’s emissions reduction programme. With regard to ICAO’s Carbon Offsetting and Reduction Scheme for International Aviation (CORSIA), the Dominican Republic officially confirmed its participation in the scheme from its outset and is one of the 88 voluntary states that started participating in the pilot phase in January 2021.

2 Aircraft Trading, Finance and Leasing

2.1 Does registration of ownership in the aircraft register constitute proof of ownership?

No, the effect of registration is declaratory in nature, establishing a legal presumption of the registered owner’s liability regarding statutory and regulatory obligations stemming from the operation of the aircraft in question or any damages caused by it. It also provides *prima facie*, not definitive, evidence of ownership. Pursuant to article 91 of the Civil Aviation Law, the registration issued in accordance with said Law is not considered proof of ownership in any procedure under Dominican law in the case that the ownership of the aircraft of a particular person is or could be questioned. As further explained in RAD-47, the IDAC issues an Aircraft Registration Certificate to the person who appears to be the owner based on the supposed evidence of ownership submitted with the request for registration of the aircraft.

2.2 Is there a register of aircraft mortgages and charges? Broadly speaking, what are the rules around the operation of this register?

No, the effect of registration is declaratory in nature, establishing a legal presumption of the registered owner’s liability regarding statutory and regulatory obligations stemming from the operation of the aircraft in question or any damages caused by it. It also provides *prima facie*, not definitive, evidence of ownership. Pursuant to article 91 of the Civil Aviation Law, the registration

issued in accordance with said Law is not considered proof of ownership in any procedure under Dominican law in the case that the ownership of the aircraft of a particular person is or could be questioned. As further explained in RAD-47, the IDAC issues an Aircraft Registration Certificate to the person who appears to be the owner based on the supposed evidence of ownership submitted with the request for registration of the aircraft.

2.3 Are there any particular regulatory requirements which a lessor or a financier needs to be aware of as regards aircraft operation?

Liens as a result of due and unpaid taxes or unpaid salaries and severance benefits have priority over all other security interests. The Dominican Republic is not a party to the Cape Town Convention on International Interests in Mobile Equipment, dated 16 November 2001.

Pursuant to Schedule A of RAD-47, deregistration or export of registered aircraft requires either evidence of the cancellation of any registered liens or the express written consent of the person or entity in whose favour the lien in question was annotated. However, the applicable statutes and regulations do not expressly require the IDAC to give notice of any such requests to potentially interested parties.

2.4 As a matter of local law, is there any concept of title annexation, whereby ownership or security interests in a single engine are at risk of automatic transfer or other prejudice when installed ‘on-wing’ on an aircraft owned by another party? If so, what are the conditions to such title annexation and can owners and financiers of engines take pre-emptive steps to mitigate the risks?

In principle no, since interests over aircraft engines are subject to a separate registration in the RNA and, under Dominican law, security interests are *in rem* rights, hence they pursue the asset itself, not the person who owns or is making use of it. Registration certificates are not issued with regard to aircraft engines or spare parts, but letters that attest to the ownership of said parts or their encumbrances may be requested from the IDAC on a case-by-case basis.

Nevertheless, it is important to note that, unless otherwise specified, a security interest over an aircraft includes security interest over its installed engines if they are also owned by the debtor. An effective security interest would not be created over an engine that is not installed on the aircraft in question or specifically referenced in the corresponding mortgage agreement. Whenever an engine is encumbered as a result of being installed in an encumbered aircraft, we understand that said engine would cease to be encumbered upon being replaced by another engine or upon being expressly released from encumbrance by the corresponding parties. If that engine has been encumbered individually (i.e., as a spare engine), then, as a result of the *in rem* nature of the encumbrance, it would only become unencumbered when the parties expressly release it.

2.5 What (if any) are the tax implications in your jurisdiction for aircraft trading as regards a) value-added tax (VAT) and/or goods and services tax (GST), and b) documentary taxes such as stamp duty; and (to the extent applicable) do exemptions exist as regards non-domestic purchasers and sellers of aircraft and/or particular aircraft types or operations?

Aircraft trading and leasing are subject to value-added tax (VAT) (known as “TTBIS” in the Dominican Republic) at the current

applicable rate of 18%. Payments made abroad or to a non-resident individual (individual or corporate entity) are subject to a 10% withholding tax which replaces applicable income tax, with the exception of principal payments in the context of a loan.

Stamp duty is levied on most written contracts and documents evidencing loans, debts and guarantees, and all documents prepared or recorded by notaries or public registrars. The rates vary depending on the type of document or the taxable amount.

There are no tax exemptions or benefits for non-domestic purchasers and sellers of aircraft and/or particular aircraft types or operations. The only tax exemption granted by the Civil Aviation Law is with regard to the customs tax on lubricants, spare parts and aviation engines that are imported by domestic and foreign air operators for the exclusive use of their aircraft according to aircraft inventory and technical recommendations of the manufacturers.

2.6 Is your jurisdiction a signatory to the main international Conventions (Montreal, Geneva and Cape Town)?

The Dominican Republic is a party to the following major air law treaties:

- a) the Warsaw Convention for the Unification of Certain Rules Relating to International Carriage by Air, dated 12 October 1929, and the Hague Protocol modifying said Convention, dated 28 September 1955; in both cases ratified on 25 February 1972 and in force since 25 May 1972;
- b) the Rome Convention on Damage Caused by Foreign Aircraft to Third Parties on the Surface, dated 7 October 1952, to which it is one of the original signatories, but has not yet ratified, hence it is not in force;
- c) the Chicago Convention on International Civil Aviation, dated 7 December 1944, ratified on 25 January 1946 and in force since 4 April 1947. Protocols have been ratified regarding: article 45 on 28 December 1954; articles 48(a), 49(e) and 61 on 28 December 1954; article 50(a) on 24 November 1961; article 50(a) on 2 October 1976; article 56 on 30 May 1972; article 83*bis* on 21 March 2006; article 93*bis*; and the Authentic Quinquelingual Text, with reservation, on 29 September 1995. All of these articles are in force with the exception of the last;
- d) the Geneva Convention on the International Recognition of Rights in Aircraft, dated 19 June 1948, to which it is one of the original signatories, but has not yet ratified, hence it is not in force;
- e) the Montreal Convention for the Unification of Certain Rules for International Carriage by Air, dated 28 May 1999, ratified on 21 September 2007 and in force since 20 November 2007;
- f) the Tokyo Convention on Offences and Certain Other Acts Committed on Board Aircraft, dated 14 September 1963, ratified on 3 December 1970;
- g) the Hague Convention for the Suppression of Unlawful Seizure of Aircraft, dated 26 June 1971, ratified on 22 June 1978;
- h) the Montreal Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation, dated 23 November 1971, ratified on 28 November 1973, although it has not ratified its Supplementary Protocol, dated 24 February 1988;
- i) the Montreal Convention on the Marking of Plastic Explosives for the Purpose of Detection, dated 1 March 1991, ratified on 9 March 2011; and

- j) the Beijing Convention on the Suppression of Unlawful Acts Relating to International Civil Aviation, dated 10 September 2010, ratified on 27 November 2012 and in force since 1 July 2018. The Supplementary Protocol of the same date was ratified on 22 March 2013 and has been in force since 1 January 2018.

The Dominican Republic has neither signed nor ratified:

- a) the Rome Convention for the Unification of Certain Rules Relating to the Precautionary Arrest of Aircraft, dated 29 May 1933; or
- b) the Cape Town Convention on International Interests in Mobile Equipment, dated 16 November 2001.

2.7 How are the Conventions applied in your jurisdiction?

The conventions are applied and respected in our jurisdiction if they were ratified and entered into force as indicated above for each particular case. To a significant extent, the principal legislation on aviation and the rules issued by the regulatory bodies have transcribed or implemented the applicable conventions.

It is important to note that both the Civil Aviation Law and Law No. 188-11 state that local regulations may not contradict or hinder the application of the international treaties and multilateral agreements duly ratified by the Dominican Republic; in the event of a contradiction between the Law or local regulations and the provisions of a convention, the provisions of the international treaty shall prevail.

2.8 Does your jurisdiction make use of any taxation benefits which enhance aircraft trading and leasing (either in-bound or out-bound leasing), for example access to an extensive network of Double Tax Treaties or similar, or favourable tax treatment on the disposal of aircraft?

There are no tangible favourable treatment or taxation benefits that enhance aircraft trading or favourable tax treatment on the disposal of aircraft. However, the Dominican Republic has signed and ratified double taxation treaties with Canada and Spain.

2.9 To what extent is there a risk from the perspective of an owner or financier that a lessee of aircraft or other aviation assets in your jurisdiction may acquire an economic interest in the aircraft merely by payment of rent and thereby potentially frustrate any rights to possession or legal ownership or security?

In principle, there is no risk from the perspective of an owner or financier that a lessee of an aircraft or other aviation assets may acquire economic interest in the property merely by paying rent as there is no legal device that would allow the lessee to do so. On the contrary, there are legal protections in place to safeguard the owners' property rights. However, if a lessee were to obtain a definitive judgment against the owner awarding him damages or other monetary compensations, he could try to seize or attach a lien to the aircraft upon the owner's refusal to pay the owed amounts, especially if the aircraft is the only property of the owner located in the Dominican Republic. Please note that in order to seize any property or attach a lien, the law requires administrative and/or judicial procedures which require notifications be made to the owner.

3 Litigation and Dispute Resolution

3.1 What rights of detention are available in relation to aircraft and unpaid debts?

According to the Civil Aviation Law, aircraft and aircraft engines are subject to a mortgage as provided under the Civil Code for real estate, even if they are movable property. Enforcement of security interest requires the mortgagee to perform an immovable asset seizure process provided for under the Civil Procedure Code. The courts of the Dominican Republic will be involved in this execution process.

Where the mortgagee's credit is additionally guaranteed by collateral guarantees such as authentic promissory notes, drafted by and before a notary public, which are of an executive nature, then an *ex parte* proceeding is technically available via executive seizure, pursuing the collection of debt owed in respect of the debtor's assets in general, including the mortgaged aircraft. This procedure is much less tedious than an immovable asset seizure and, in principle, only one judicial officer is involved (the bailiff), without the need for court intervention.

The aircraft is the asset in respect of which the guaranteed credit will be collected through its sale pursuant to a public auction, both in the immovable assets seizure process as well as in the executive seizure process. These processes, once executed, do not automatically authorise the mortgagee to retain the property of the seized asset (the aircraft), but to recover the amount of its debt from the auction. That said, sometimes, if at the auction there are no interested parties who submit a bid for the initial price, the auction will be declared "not awarded" and, consequently, the mortgagee may keep the property of the seized asset.

3.2 Is there a regime of self-help available to a lessor or a financier of an aircraft if it needs to reacquire possession of the aircraft or enforce any of its rights under the lease/finance agreement?

Following the lease's termination or in the event of a default under the lease, if the lessee does not voluntarily hand over control of the aircraft, the lessor cannot take possession of it without judicial intervention. In order to obtain possession, the lessor must procure a judgment for the delivery of the aircraft in question according to the corresponding lease agreement. It must then issue a writ for specific delivery once the term established in the judgment for such delivery has expired.

3.3 Which courts are appropriate for aviation disputes? Does this depend on the value of the dispute? For example, is there a distinction in your jurisdiction regarding the courts in which civil and criminal cases are brought?

There are no specialised courts for aviation disputes. Administrative procedures are carried out before the regulatory bodies pursuant to the Civil Aviation Law and there are administrative courts for cases filed against the government.

There is a distinction between courts in which criminal, commercial and civil disputes are brought and there are also levels of jurisdiction based on the nature of the case or the value of the dispute. Each court has its own jurisdiction, which means that it has the authority to decide specific types of cases.

3.4 What service requirements apply for the service of court proceedings, and do these differ for domestic airlines/parties and non-domestic airlines/parties?

Service requirements are the same for domestic airlines and non-domestic airlines.

Service of court proceedings, citations and communications regarding judicial processes are primarily carried out by appointed bailiffs pursuant to the applicable procedural codes or by consular officers abroad. Due process of law is established in both the Constitution and the laws to guarantee the protection under the law of both Dominican nationals and foreigners.

3.5 What types of remedy are available from the courts or arbitral tribunals in your jurisdiction, both on i) an interim basis, and ii) a final basis?

In non-criminal cases, there are both legal and equitable remedies available. In most cases, only actual damages are awarded by the courts for both material and moral indemnities. With regard to equitable remedies, specific performance, injunctions and restitutions can be awarded by the courts.

3.6 Are there any rights of appeal to the courts from the decision of a court or arbitral tribunal and, if so, in what circumstances do these rights arise?

The Dominican Constitution stipulates that every decision can be appealed in accordance with the law. Hence, most administrative, criminal, commercial and civil matters have access to an appeal process before the court of appeals or a comparable procedure. Additionally, the Dominican Republic has a Constitutional Court, which is the highest court on the interpretation of constitutional matters, and oversees the protection of fundamental rights.

Nonetheless, Dominican laws also provide for exceptions to the rule of "double degree of jurisdiction" or right of appeal. The suppression of said principle is expressly provided for in specific laws and takes into account the nature of the matter or its economic importance.

3.7 What rights exist generally in law in relation to unforeseen events which might enable a party to an agreement to suspend or even terminate contractual obligations (in particular payment) to its contract counterparties due to *force majeure* or frustration or any similar doctrine or concept?

The Civil Code of the Dominican Republic establishes that the debtor of an obligation will not be condemned to the payment of damages when his breach, duly justified, is due to causes foreign to his will that cannot be attributed to him. Likewise, article 1148 of said legal text provides that damages will not proceed when, as a consequence of *force majeure* or a *fortuitous event*, the debtor was unable to give or do what he is obligated to or has done what was prohibited to him.

The law does not define what is considered as *force majeure* or a *fortuitous event* and, in most cases, the legislator gives them an indistinct treatment or uses them as analogous terms. Nevertheless, classical doctrine and jurisprudence established the distinction of said concepts on the basis that *force majeure* refers to insurmountable events of absolute human externality with a direct source in natural phenomena (such as hurricanes, storms, earthquakes, tsunamis, etc.) and a *fortuitous event* is linked to unpredictable human action (such as revolutions, wars, uprisings, etc.).

Regardless of the distinction between the two concepts, *force majeure* and a fortuitous event operate as a cause of exemption from liability for breach of contract, provided that certain circumstances are verified. There is *force majeure* or a *fortuitous event* in a contractual context when an event that escapes the control of the debtor, which could not have been reasonably foreseen at the signing of the contract and whose effects cannot be avoided with appropriate measures, prevents the debtor from executing his obligation.

In order to determine whether a contract will be suspended or terminated, several factors intrinsic to every specific case must be analysed and, in some instances, brought to a judge; however, as a simplified general rule, if the purpose of the contract can be fulfilled after the situation deemed as *force majeure* or a *fortuitous event* is resolved, the debtor will be exonerated of responsibility for his temporary breach but will not be released from his obligation. In other cases, taking into account the possible short duration of the contract or the situation that caused the breach, the effect will be the release of the obligation and with it the termination of the contract.

4 Commercial and Regulatory

4.1 How does your jurisdiction approach and regulate joint ventures between airline competitors?

There are no specific competition laws for the aviation industry in our jurisdiction. However, Law No. 42-08 on the Defense of Competition has the primary objective of promoting and defending the effective competitiveness of all industries to increase the economic efficiency of all markets of goods and services within Dominican territory, and to create benefit and value in favour of consumers.

Pursuant to Law No. 42-08, all acts, agreements and arrangements among competing economic agents, express or implied, verbal or written, with the objective or effect of imposing unjustified barriers in the market are considered as “concerted practices” and/or “anti-competition agreements” and are prohibited by Law No. 42-08.

It is important to note that the Civil Aviation Law states that an operation permit could be denied or suspended if the traffic needs, according to the JAC, are completely satisfied in that the actions of the operator or operators are deemed to be clearly an anti-commercial practice for the purpose of eliminating other air carriers through unfair competition. Likewise, codeshare agreements require the approval of the JAC, which, as part of the approval process, will evaluate the competition aspects of such agreements and their implications for consumers.

4.2 How do the competition authorities in your jurisdiction determine the ‘relevant market’ for the purposes of mergers and acquisitions?

Law No. 42-08 does not set forth any provisions on mergers, corporate reorganisations or acquisitions, and states that obtaining a dominant position in the market or increasing it does not constitute *per se* a violation of the Law.

In the context of abuse of dominant position, Law No. 42-08 stipulates that the relevant market will be determined by the following elements:

- identification of the product or service whose relevant market is to be determined;
- identification of the corresponding geographical area;

- the effective probability of replacing the good or service in question with another sufficiently similar in terms of function, price and attributes, of national origin or foreign, to be considered by consumers as reasonable substitutes, in the time and cost required to make the replacement, considering them with the sufficient degree of interchangeability;
- the cost of distribution of the good or service, taking into account freight, insurance, tariffs and any other measure that affects its trade, as well as the limitations imposed by other agents and the time required to supply the market from other places;
- the replacement of the demand – in particular, the cost and the probability that suppliers of other products or services that are not substitutable in principle, from the demand point of view, could easily go on to produce and offer products or services that are likely to meet the consumer demand; that is, that consumers can go to other alternative markets for products and services that produce results similar enough to meet their demands for a good or service; and
- national or international regulatory restrictions that limit consumers’ access to alternative sources of supply, or suppliers’ access to alternative customers.

4.3 Does your jurisdiction have a notification system whereby parties to an agreement can obtain regulatory clearance/anti-trust immunity from regulatory agencies?

No, there is no such system in the Dominican Republic.

4.4 How does your jurisdiction approach mergers, acquisition mergers and full-function joint ventures?

Mergers, acquisition mergers and full-function joint ventures are recognised by the law for both national and foreign entities with branches or interests in the Dominican Republic.

The parties are at liberty to contractually determine the terms of any private mergers and acquisitions. However, particular rules may apply to different types of local entities, such as a statutory right of first refusal for stakeholders in an LLC and, in some cases, tag-along rights.

Currently, there are no public companies in the Dominican market, but the legal framework exists. Securities are regulated by Law No. 249-17 and the Securities Market Superintendence, which provide several statutes on the execution and performance of mergers and acquisitions. Additionally, regulated operations such as banking, energy and aviation are subject to special regulations and oversight.

It is important to note that capital gains derived from the sale of assets or shares are included in gross income and are subject to the corporate income tax rate of 27%, including the transfer of shares of an offshore corporation if the underlying assets are located in the Dominican Republic. Additionally, acquisitions of real property are subject to a special tax rate of 3% and a significant portion of goods are subject to VAT at a rate of up to 18%.

4.5 Please provide details of the procedure, including time frames for clearance and any costs of notifications.

Prior to the merger process, it is mandatory to inform the tax authorities of the intention to merge and request approval to proceed with the merger. Likewise, the parties must appoint

one or more special accounts commissioners to verify that the value attributed to the shares is appropriate and that the rate of exchange is equitable.

According to the corporate statute, mergers are defined as a transfer made by one or more entities of their assets and liabilities, either to an existing entity or to a new one, whereby the shareholders of the company that makes the transfer receive shares in the company or companies that received the assets and liabilities. Mergers must be executed by a merger agreement, as well as approved in a shareholders' extraordinary meeting; they entail the dissolution of the entities that disappear and the transfer of all their assets and liabilities to the beneficiary company. When a new company is incorporated as a result of a merger, the by-laws must be approved by a meeting of all the companies that will cease to exist, and the new company must confirm and acknowledge those approvals.

Within 30 days of the execution of the merger agreement and extraordinary shareholders' meetings, the parties must file the applicable documents before the corresponding chamber of commerce. Additionally, an extract with the main terms of the merger agreement must be published in a newspaper with national circulation.

On the other hand, acquisitions are normally asset purchases that are documented by private agreements unless an entity is selling all its assets, in which case a shareholders' meeting must approve the sale. Nevertheless, the law and principles that govern the particular asset agreements will be the common law.

Stamp duty is levied on most written contracts, corporate documents and all documents prepared or recorded by notaries or public registrars. The rates vary depending on the type of document or the taxable amount.

Lastly, it is important to note that changes in the shareholder composition of entities that have been awarded licences by the JAC must be notified to said entity and comply with the applicable procedures if an amendment to the licence is necessary.

4.6 Are there any sector-specific rules which govern the aviation sector in relation to financial support for air operators and airports, including (without limitation) state aid?

There are no such rules in the Dominican Republic.

4.7 Are state subsidies available in respect of particular routes? What criteria apply to obtaining these subsidies?

No such subsidies are available.

4.8 What are the main regulatory instruments governing the acquisition, retention and use of passenger data, and what rights do passengers have in respect of their data which is held by airlines and airports?

The main regulatory instrument enacted in the Dominican Republic with regard to the treatment of personal data is Law No. 172-13, which is aimed at the integral protection of personal data recorded in archives, public records, databases or other technical means of data processing for reporting, whether public or private (G.O. No. 10737 of 15 December 2013). The law contains diverse provisions regarding the protection, collection, storage, use, treatment and handling of personal data, as well as a few scarce provisions on the international transfer of data.

In that sense, pursuant to Law No. 172-13, the protection provisions are applicable to personal data registered in any data bank that is susceptible to "treatment or processing" and to any subsequent use of such data in the public and/or private sectors. Treatment or processing of personal data is considered any operation or procedure that allows, within a database, data regarding consumers to be collected, organised, stored, elaborated, selected, exacted, compared, shared, communicated or transferred.

Broadly speaking, Law No. 172-13 guarantees to passengers the right to consultation, access, rectification, cancellation and opposition, as well as the right to indemnifications upon non-compliance with the Law and the Judicial Action of Habeas Data to enforce their rights.

4.9 In the event of a data loss by a carrier, what obligations are there on the airline which has lost the data and are there any applicable sanctions?

Pursuant to Law No. 172-13, air carriers must adopt and implement technical, organisational and security measures to guarantee the security of personal data and prevent its alteration, loss or potential unauthorised access. In the case of private data banks that are not regulated, contrary to credit bureaus, there are no administrative sanctions applicable. However, the Law does provide for the possibility of any interested party to pursue compensation or damages under common law upon any violations, as would be the case if a carrier failed to adopt or implement security measures to prevent the loss of data.

4.10 What are the mechanisms available for the protection of intellectual property (e.g. trademarks) and other assets and data of a proprietary nature?

The Constitution of the Dominican Republic recognises and protects the exclusive property rights of authors and inventors over their work, trade names, trademarks, distinctive signs and any other creation of their intellect, as established by law. More specifically, Law No. 20-00 on Industrial Property protects and governs the registration of inventions, utility models, industrial designs, trademarks, trade names, signs, logos, geographical indications and designations of origin. Law No. 65-00 on Copyright protects the rights and interests of authors of any intellectual work of a creative nature, whether literary, artistic or scientific in character.

The National Office of Industrial Property (ONAPI), a dependency of the Ministry of Industry, is in charge of the registry of industrial property rights. Any inventions or trademarks must be registered before ONAPI in order to be protected; however, priority rights are recognised for industrial property registered in other countries on the basis of international agreements ratified by the Dominican Republic.

Infringement of industrial property rights and copyright is subject to criminal and administrative penalties, as well as compensation and damages.

4.11 Is there any legislation governing the denial of boarding rights and/or cancelled flights?

There is no specific legislation or regulations governing the denial of boarding rights. However, the Dominican Republic has ratified the Montreal Convention, which is applicable in conjunction with the provisions of the Civil Aviation Law regarding passenger rights; these provisions are widely recognised by Dominican courts regarding civil liability.

Concerning cancelled flights, due to interpretation of the applicable operational and logistics regulations, carriers must inform the IDAC and JAC of the cancellation of scheduled flights. There is no need for approval; carriers must simply inform the authorities via written communication.

Please note that all licensed air operators must file and maintain an adequate compensation policy as indicated by the JAC. Additionally, in principle, the JAC could modify, suspend or cancel the economic certificate or other authorisations issued to a carrier, in whole or in part, if the air operator is not suitable, willing or able to properly exercise its transport commitments.

4.12 What powers do the relevant authorities have in relation to the late arrival and departure of flights?

There is no specific legislation or regulations regarding late arrivals and departures of flights. However, the JAC has established passenger assistance counters in several airports to facilitate enquiries or claims to air carriers pursuant to the applicable compensation policy and regularly follows up on operators to ensure that the claims are answered, and no violations of passenger rights occur.

4.13 Are the airport authorities governed by particular legislation? If so, what obligations, broadly speaking, are imposed on the airport authorities?

The Airport Department (DA) and the Airport Commission were created and are ruled by Law No. 8 of 1978 and its complementary regulation.

The DA takes the necessary measures to ensure the proper operation of airports under Law No. 8 and its Tariff Regulation No. 2658 on Fees and Rights for the Use of Aerodromes and Airports. It is also tasked with ensuring the profitability of privately owned or operated airports so that they can be self-financed and maintenance projects can be carried out.

For 22 years, the DA was in charge of the administration and operation of all the airports in the country, until the concession of the main state airports was formalised in the year 2000 and the government entered into contracts with private airports. After said transition, the DA assumed a new role as supervisor of the contractual obligations established therein, going on to supervise the administration and operation of the “concessioned” and private commercial airports in the country. Nevertheless, the DA is currently still in charge of the operation and maintenance of state airfields.

4.14 To what extent does general consumer protection legislation apply to the relationship between the airport operator and the passenger?

Passenger rights are protected and regulated by Law No. 358-05, the Consumer Rights Protection Act, which aims to protect the economic interests of consumers through equitable treatment and the prevention of discriminatory or abusive behaviour from providers of goods and services. Said Law provides for the general protection principles that must be observed by all service providers in the country, including airport operators.

4.15 What global distribution suppliers (GDSs) operate in your jurisdiction?

The GDSs operating in the Dominican Republic are Amadeus and Sabre.

4.16 Are there any ownership requirements pertaining to GDSs operating in your jurisdiction?

Not to our knowledge.

4.17 Is vertical integration permitted between air operators and airports (and, if so, under what conditions)?

In principle, there is no prohibition on vertical integration between air operators and airports in the Dominican Republic. However, certain behaviours could constitute an abuse of dominant position by the carrier or create unjustified barriers in the market, which is sanctioned by Law No. 42-08.

4.18 Are there any nationality requirements for entities applying for an Air Operator's Certificate in your jurisdiction or operators of aircraft generally into and out of your jurisdiction?

The Civil Aviation Law reserves air transport services for national air operators; in order to consider an entity that is incorporated in the Dominican Republic as a “national company”, the authorities will take into consideration the following:

- a) that the capital or substantial property over the entity belongs to Dominicans, in at least 35%, and its board of directors is made up of Dominicans in at least equal proportion to foreigners;
- b) that at least half plus one of the company's management staff, not board members or directors, comprises Dominican nationals; and
- c) that its main business and commercial office is in the national territory.

In addition to the foregoing, if an operator wishes to exploit commercial air services in internal or cabotage operations, it will only be considered a “national company” if at least 51% of its capital or substantial property belongs to Dominicans, two-thirds of its management personnel are Dominican nationals and it maintains effective control over its air fleet.

Nevertheless, permits can be granted to foreign air operators from countries that have entered into agreements or treaties with the Dominican Republic, or that have obtained proof of reciprocity. In light of the foregoing, requirements for the issuance of operating permits to foreign air carriers differ from those imposed on national air carriers.

5 In Future

5.1 In your opinion, which pending legislative or regulatory changes (if any), or potential developments affecting the aviation industry more generally in your jurisdiction, are likely to feature or be worthy of attention in the next two years or so?

On August 3, 2021, a new law was proposed by congresswoman Dolores Fermin, titled “Bill for the financial assistance to users of air transport in the Dominican Republic”. Said law was officially filed and was sent for commission review but has not been discussed or approved yet. As the name indicates, the purpose of the Bill is to protect the rights of the consumers of air transport services or passengers by imposing regulations on class changes, delays, and oversales, etc. and most importantly impose compensations and sanctions on airlines for non-compliance.



María Esther Fernández Álvarez de Pou is a Partner at Raful Sicard Polanco & Fernández with vast experience in the areas of civil aviation, airports and ports. She has worked for years on maritime, corporate, and tax matters, namely operations regarding M&A and strategic alliances, financial structuring, concessions, and privatisations, combining her extensive knowledge and practical background on negotiation and contracts, administrative and regulatory law, customs, shipments, real estate and investment projects, and litigation. Over the years, María has participated not only in numerous national and international conferences on these subjects as a speaker but also as a professor of diploma courses in various national and international universities and institutions. She is also a member of the L2B Aviation Group that has been recognised by *Chambers Latin America*, *Chambers Global*, *Latin Lawyer*, *The Legal 500*, the *Vance Center-Latin Lawyer Pro Bono Leading Lights* and *Who's Who Legal* in the areas of Aviation, Corporate, Litigation and Arbitration. In 2015, María became the Chair of the Legal Committee of the American Chamber of Commerce in the Dominican Republic (AMCHAMDR).

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María Fernanda Pou Fernández began her professional experience in 2014 as Legal Research Paralegal, becoming a Senior Paralegal in 2016 for the Corporate, Commercial, Business and Aviation Law Departments. As of September 2017, she performed the functions of Intern Lawyer for the Aviation Area and Business Department. After acquiring this experience, she became an Associate Lawyer at Raful Sicard Polanco & Fernández in 2018, where she currently works in the Business Department, mainly on Transport matters, working closely with clients and aviation authorities on the technical process for aircraft inclusion, handling approvals for codeshare agreements, operating permits, special and charter flight approvals, schedule, and insurance issues, among others. As of 2021, María has not only concluded her Postgraduate University Degree at the Ibero-American Institute of Aeronautic and Space Law and Commercial Aviation as a Specialist in Aviation and Space Law, but is also completing a Master's Degree in International Relations at Nebrija University, Madrid, Spain.

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Raful Sicard Polanco & Fernández (RSPF) was founded in 2003 with the primary goal of providing our clients with a legal service of the highest quality, with a personalised touch. The firm is made up of four partners and 12 associate attorneys in addition to our paralegals. It is a vanguard firm, able to manage basic as well as complex legal transactions, litigation and legal counsel in general, with the same ease, effectiveness and professionalism. We are a full-service law firm with the characteristics of a boutique firm, where members of our staff are able to work in five languages (English, French, German, Portuguese and Spanish). RSPF stands out in the local market for the quality of its work as well as its continuous striving for the highest ethical standards. In addition to the usual work done by law firms in the Dominican Republic, RSPF has, throughout its 18 years of incorporation, been able to develop a niche and special recognition in specific industry sectors, such as civil aviation, in which we have the highest level of aviation expertise, providing creative and efficient solutions to the full range of aviation-related matters and needs. We have successfully represented airlines, financiers, lessors,

insurers and airports, among others. We are a source of reference in this sector, acting for many years as legal counsel to the Airline Association and the Courier Association of the Dominican Republic. Our practice areas include corporate, customs, finance and securities, government, public procurement, labour and the Industrial Free Zone, litigation and dispute resolution, real estate, shipping and maritime, telecommunications, agency & distribution, business, and tax.



Egypt

Links & Gains



Mohamed Agamy

1 General

1.1 Please list and briefly describe the principal legislation and regulatory bodies which apply to and/or regulate aviation in your jurisdiction.

The main legal framework for the aviation sector in Egypt is the Civil Aviation Law No. 28 of 1981, which regulates all aspects of civil aviation in the country. According to Article 1 of this law, civil aviation activities are governed by the provisions and rules of this law and its related articles. The Ministry of Civil Aviation is the competent authority for civil aviation affairs in Egypt, and it supervises the Egyptian Civil Aviation Authority (ECAA), which is the civil regulator in Egypt.

1.2 What are the steps which air carriers need to take in order to obtain an operating licence?

To obtain an operating licence, air carriers must follow the executive regulations of the Egyptian Civil Aviation Law No. 28 of 1981. These regulations differentiate between domestic and international carriers and specify the procedures for each category. The operating licence is also known as the air operator certificate (AOC) and it grants the operator the right to conduct commercial air transport activities according to the operational requirements. The AOC is accompanied by operations specifications that are part of the certificate. The applicants for an AOC must meet certain requirements depending on whether they are corporate or non-corporate entities. For corporate applicants, these requirements include disclosing the names and addresses of stockholders, directors, officers, managers, and any person who has direct or indirect control over the applicant. For non-corporate applicants, these requirements include disclosing the names and addresses of each person who has a financial interest in the applicant and each person who will be employed in a management position.

Furthermore, issuance and duration conditions are also stipulated.

1.3 What are the principal pieces of legislation in your jurisdiction which govern air safety, and who administers air safety?

The Ministry of Civil Aviation is dedicated to improving the civil aviation industry while adhering to global standards as per Law No. 56 of 2002. This law requires the Ministry to enhance the civil aviation sector according to international benchmarks.

The main goal is to ensure safe and secure aviation operations for local and global communities. The Ministry also strives to create jobs, develop skills among its staff, and keep up with the changes in the global air transport industry. These goals are aligned with the State's public policy, as stated in the economic and social development plan.

The law also defines the specialisations of the Ministry and articulates that the Ministry of Civil Aviation is responsible for providing and developing navigational aids and aerial surveillance devices to ensure aviation safety within the Egyptian airspace as per international standards. The Ministry also sets rules and regulations to ensure the safety and security of aircraft and passengers as per international agreements.

Moreover, as per international obligations, the Ministry ensures proper inspection and prevention of aircraft accidents and uses advanced research and contemporary methods available in the international aerospace domain to investigate aircraft accidents thoroughly.

The Ministry issues important directives and instructions to prevent any future occurrence of such incidents and monitors their implementation progress and issues licences for the establishment of air transport companies.

According to Article 27 of Law No. 136 of 2010, the ECAA and other relevant Egyptian authorities must create a national civil aviation security programme that complies with international standards. The programme must clearly define the roles and duties of each authority involved in its execution.

The authorities and security agencies mentioned in the programme can control or limit access to certain airport areas, check people, luggage and vehicles entering airports, interrogate any suspects and ensure that people and vehicles do not carry any weapons, machines or other materials that could endanger the aircrafts, airports, or navigational service facilities.

1.4 Is air safety regulated separately for commercial, cargo and private carriers?

The safety of all air operations in Egypt, including commercial, cargo, and private flights, falls under the jurisdiction of the ECAA. The ECAA enforces the implementation of a safety management system (SMS) for all operators and service providers to comply with the safety standards. In addition, organisations that provide ground handling services, such as aircraft and passenger services, pushback, catering, cargo, and fueling, must develop and maintain their own SMS based on their safety performance indicators and targets and get it approved by the ECAA. The SMS should be customised to the specific size, nature, and complexity of the operations authorised under their operations certificate, as well as the associated safety hazards.

and risks. By following these guidelines, operators and service providers can ensure a high level of safety in their operations.

1.5 Are air charters regulated separately for commercial, cargo and private carriers?

Yes. Air charter operations are subject to regulation, with each type of charter flight having specific provisions and conditions to adhere to.

The first category is “Inclusive Tourist Flights (Charter)”, which encompasses flights that cater to a group of tourists as part of a meticulously planned tourist programme. This programme must outline all the expenses related to accommodation, air travel, local transportation, sightseeing activities, and must also mention the authorised travel agent responsible for organising the programme.

The second category is “Public Charter Flights”. These flights are chartered by individuals or organisations, including government entities, for personal purposes involving the transportation of passengers and cargo. The funding for these flights is solely provided by the leasing party, without any contributions from others, whether direct or indirect.

The third category is “Taxi flights”, which pertains to flights that rent their whole payload capacity to a certain entity and should not exceed 50 seats including crew members. The fourth category is “Technical Landing & Ambulance Flights” and the fifth category is “Private Flights (Non-Commercial Purposes)”, which are flights that fly for non-commercial purposes and are used by the owner or his subordinates. Lastly, the sixth category is “Non-scheduled Cargo Flights”, which are flights rented by cargo carriers, companies for collecting cargo, shippers associations and express mail services to sell them.

1.6 As regards international air carriers operating in your jurisdiction, are there any particular limitations to be aware of, in particular when compared with ‘domestic’ or local operators? By way of example only, restrictions and taxes which apply to international but not domestic carriers.

Yes, there are differences when it comes to foreign air carriers as opposed to local carriers operating in Egypt with regard to operating licence requirements.

1.7 Are airports state or privately owned?

All airports are state-owned in Egypt and operated by the Egyptian Holding Company for Airports and Air Navigation (EHAAN), a public enterprise established in 2001. EHAAN oversees 20 airports in Egypt, including Cairo International Airport, the busiest airport in the country and one of the busiest on the continent. EHAAN also has four subsidiaries that provide various services related to airports and air navigation.

1.8 Do the airports impose requirements on carriers flying to and from the airports in your jurisdiction?

Yes, some requirements are imposed on carriers flying to and from the airports as stipulated by the Egyptian Civil Aviation Law No. 28 of 1981 on “The Enactment of Civil Aviation Law”.

1.9 What legislative and/or regulatory regime applies to air accidents? For example, are there any particular rules, regulations, systems and procedures in place which need to be adhered to?

The Egyptian Civil Aviation Law No. 28 of 1981 on “The Enactment of Civil Aviation Law”, Article (98) outlines the department’s competencies and the definition of Aircrafts’ accidents and incidents. For instance: Article (101) stipulates the duties of the local authorities upon an Aircraft’s accident; Article (104) stipulates that the States’ representatives are authorised to participate in the investigation; Article (106) outlines “Judicial Arrest”; Article (108) outlines the Investigation Committee’s report; and Article (111) outlines the authenticity of the Investigation Committee’s final report’s proceedings.

Additionally, regarding “Search and Rescue” (SAR): Article (112) defines the meaning of SAR; Article (114) stipulates the commitment to offer SAR Aid; Article (115) outlines access authorisation into prohibited areas for SAR Purposes; and Article (121) outlines matters related to SAR Lawsuits.

1.10 Have there been any recent cases of note or other notable developments in your jurisdiction involving air operators and/or airports?

Egypt has witnessed several notable developments in its aviation sector in the past few years, driven by long-term tourism opportunities and high demand. Some of the major projects include:

- Cairo Airport improved its air traffic operations by renovating its runways and building a new control tower.
- A new airport west of Cairo started operating in January 2019 and relieved the pressure on the busy Cairo International Airport.
- Cairo International Terminal 2 expanded its capacity from 3.5 to 7.5 million passengers per year and upgraded its facilities and services after renovation.

1.11 Are there any specifically environment-related obligations or risks for aircraft owners, airlines, financiers, or airports in your jurisdiction, and to what extent is your jurisdiction a participant in (a) the EU Emissions Trading System (EU ETS) or a national equivalent, and (b) ICAO’s Carbon Offsetting and Reduction Scheme for International Aviation (CORSIA)?

Egypt has several environmental regulations that affect the aviation sector, such as the Environmental Protection Law, the Civil Aviation Law, and the Air Navigation Regulations. These laws and regulations impose obligations and risks for aircraft owners, airlines, financiers, and airports in terms of environmental impact assessment, noise pollution, waste management, fuel quality, and emissions reduction. Egypt is not a participant in the EU Emissions Trading System (EU ETS), but it is a signatory to the International Civil Aviation Organization (ICAO)’s Carbon Offsetting and Reduction Scheme for International Aviation (CORSIA). Egypt has voluntarily agreed to implement CORSIA from its pilot phase in 2021 and has submitted its emissions monitoring plan to the ICAO.

2 Aircraft Trading, Finance and Leasing

2.1 Does registration of ownership in the aircraft register constitute proof of ownership?

According to the Egyptian Civil Aviation Law No. 28 of 1981, the registration of an aircraft in the ECAA register does not imply any proof of ownership or any rights related to the aircraft. The registration only serves to identify the aircraft and its nationality. The ECAA does not verify the validity of the ownership documents submitted by the applicant for registration.

Therefore, the registration of ownership in the aircraft register is merely a formal requirement for the operation of an aircraft in Egypt, and does not confer any legal protection or presumption of ownership to the registered owner. The owner of an aircraft must prove their ownership by other means, such as a bill of sale, a lease agreement, or a court judgment.

2.2 Is there a register of aircraft mortgages and charges? Broadly speaking, what are the rules around the operation of this register?

According to the Decision of the Minister of Civil Aviation No. 346 of 2022, there are rules and procedures for registering aircraft, the rights and transactions related to them, such as mortgages, leases, liens, etc. The registration is carried out at the ECAA, which maintains a public register that can be accessed by anyone who pays a fee.

However, the registration of an aircraft mortgage is not enough to make it valid and enforceable. According to Law No. 26 of 1976, Article No. 38, the mortgage must also be registered in the aircraft registry, which is a separate document that contains the technical specifications and ownership details of the aircraft. The aircraft registry is also kept by the ECAA, but it is not public and can only be accessed by the owner or a person authorised by the owner.

Therefore, in order to secure rights and interests as a creditor or a lessee of an aircraft in Egypt, both the aircraft mortgage and the aircraft registry must be properly registered and updated at the ECAA.

This way, any disputes or complications that may arise from conflicting claims or unregistered transactions can be avoided.

2.3 Are there any particular regulatory requirements which a lessor or a financier needs to be aware of as regards aircraft operation?

One of the important aspects that a lessor or a financier should consider when operating an aircraft in Egypt is the legal framework for registering the aircraft and the related rights and transactions. According to the Decision of the Minister of Civil Aviation No. 346 of 2022, there are specific rules and procedures for registering aircraft, the rights and transactions in the ECAA. The Decision also provides for the recognition of foreign registrations and the conditions for their validity. However, the lessor or financier should also be aware of Law No. 26 of 1976, which regulates the civil aviation in Egypt and grants the ECAA the authority to supervise and control the aviation activities.

2.4 As a matter of local law, is there any concept of title annexation, whereby ownership or security interests in a single engine are at risk of automatic transfer or other prejudice when installed 'on-wing' on an aircraft owned by another party? If so, what are the conditions to such title annexation and can owners and financiers of engines take pre-emptive steps to mitigate the risks?

Law No. 28 of 1981 stipulates that the definition of an aircraft under Egyptian law includes all spare parts including engines that are installed on the aircraft.

In Egypt, the legal system does not support the concept of title annexation or accession, which means that the ownership or security interests in an engine are not affected by its installation on an aircraft owned by another party.

Therefore, the owners and financiers of engines do not need to take any special measures to protect their rights over the engines, as long as they have valid and enforceable contracts and registrations in place. However, they should be aware of the practical challenges and risks involved in enforcing their rights in case of default or insolvency of the aircraft owner or operator, such as obtaining access to the engines, dealing with local authorities and courts, and complying with local laws and regulations.

To mitigate such risk, a bill of sale evidencing engine title, both of which shall be notarised and legalised as original/certified true copies of same up to the level of the Embassy/Consulate at the country of manufacture, should be provided.

2.5 What (if any) are the tax implications in your jurisdiction for aircraft trading as regards a) value-added tax (VAT) and/or goods and services tax (GST), and b) documentary taxes such as stamp duty; and (to the extent applicable) do exemptions exist as regards non-domestic purchasers and sellers of aircraft and/or particular aircraft types or operations?

According to ICAO policies regarding air transport taxation, adherence to Article 24 of the convention of civil international aviation stipulates that fuel, lubricating oils, spare parts, regular equipment and aircraft stores on board an aircraft of a contracting State, on arrival in the territory of another contracting State and retained on board on leaving the territory of that State, shall be exempt from customs duty, inspection fees or similar national or local duties and charges. This exemption shall not apply to any quantities or articles unloaded, except in accordance with the customs regulations of the State.

In Egypt, aircraft trading is subject to different tax implications depending on the nature and the parties of the transaction. The main taxes that may apply are:

- a) Value-added tax (VAT): Egypt imposes a VAT of 14% on the supply of goods and services within Egypt, as well as on the importation of goods into Egypt. However, there are some exemptions for certain types of aircraft and operations, such as aircraft used for international transportation, aircraft used for military or security purposes, aircraft used for scientific research or rescue missions, and aircraft leased to Egyptian airlines. The VAT is payable by the supplier or the importer of the goods, unless the transaction is subject to the reverse charge mechanism, in which case the recipient of the goods or services is liable to pay the VAT.
- b) Documentary taxes such as stamp duty: Egypt imposes a stamp duty of 0.4% on the value of any contract or agreement executed in Egypt or having effect in Egypt.

This includes contracts for the sale, purchase, lease or financing of aircraft. The stamp duty is payable by both parties to the contract, unless otherwise agreed. There are some exemptions for contracts involving public entities, diplomatic missions, international organisations, or charitable institutions.

2.6 Is your jurisdiction a signatory to the main international Conventions (Montreal, Geneva and Cape Town)?

Egypt is a signatory to the main international Conventions related to air law, namely the Montreal Convention, the Geneva Convention and the Cape Town Convention. These Conventions establish rules and standards for the recognition of rights in aircraft, the liability of air carriers, the suppression of unlawful acts against civil aviation and the financing of mobile equipment. See below a brief overview of each Convention and Egypt's status as a party:

- The Montreal Convention (1999) is a treaty that unifies and modernises the rules for international carriage by air. It sets the liability limits for passengers, baggage and cargo, as well as the conditions for jurisdiction and claims. Egypt ratified the Montreal Convention on 15 February 1996.
- The Geneva Convention (1948) is a treaty that provides for the international recognition of rights in aircraft, such as ownership, mortgages, leases and liens. It also establishes a system of registration and certification of such rights. Egypt ratified the Geneva Convention on 9 December 1969.

The Cape Town Convention (2001) is a treaty that facilitates the financing of mobile equipment, such as aircraft, by creating an international registry of interests and providing for their enforcement and priority. It also contains provisions on remedies, insolvency and jurisdiction. Egypt ratified the Cape Town Convention on 16 November 2004.

2.7 How are the Conventions applied in your jurisdiction?

The Egyptian Civil Aviation Law No. 28 of 1981 on "The Enactment of Civil Aviation Law, Article 3" states that "the provisions of the international and regional Civil Aviation treaties and conventions which State is a party thereto, as well as the provisions of this law, shall be applied, without prejudice to the provisions of such treaties and conventions".

2.8 Does your jurisdiction make use of any taxation benefits which enhance aircraft trading and leasing (either in-bound or out-bound leasing), for example access to an extensive network of Double Tax Treaties or similar, or favourable tax treatment on the disposal of aircraft?

One of the main advantages of doing business in Egypt is its extensive network of Double Tax Treaties (DTTs) with more than 60 countries, including major aviation markets such as China, France, Germany, India, the UK and the US. These DTTs aim to prevent double taxation and facilitate cross-border transactions by reducing or eliminating withholding taxes on income derived from aircraft leasing or sale.

Egypt also offers some incentives for in-bound leasing of aircraft. For instance, the lessee can deduct the lease payments

as an expense for tax purposes, subject to certain conditions. Additionally, the lessee can claim depreciation allowances on the leased asset, even though it does not own it. This can result in significant tax savings for the lessee.

However, it is advisable to consult with a professional tax advisor who can provide guidance on the applicable tax rules and regulations, as well as to help optimise the tax structure and planning of the transaction.

2.9 To what extent is there a risk from the perspective of an owner or financier that a lessee of aircraft or other aviation assets in your jurisdiction may acquire an economic interest in the aircraft merely by payment of rent and thereby potentially frustrate any rights to possession or legal ownership or security?

The aviation industry in Egypt is subject to various legal and regulatory frameworks that may affect the rights and obligations of the parties involved in leasing or financing aircraft or other aviation assets. One of the main concerns for aircraft lessors and financiers operating in Egypt is the possibility of losing their rights to the leased or financed assets due to the lessee's acquisition of an economic interest in them. Such a claim could jeopardise the lessor's or financier's ability to repossess or enforce their legal ownership or security over the assets in case of default or termination of the lease or financing agreement.

3 Litigation and Dispute Resolution

3.1 What rights of detention are available in relation to aircraft and unpaid debts?

According to Law No. 26 of 1976, Article 2, provisional detention cannot be applied to the following aircraft, unless they violate bankruptcy, aviation, customs, public security or criminal laws:

- Aircraft serving the State or the Postal Service, except for commercial aircraft.
- Aircraft operating on regular airlines and their spare aircraft.
- Aircraft transporting people or money for a fee, if they are ready to depart for such transportation, except if they owe money for the current or previous flight.

Additionally, Article (60) grants the competent administrative authority the power to detain the aircraft to ensure the payment of its fees and fines for breaching air traffic regulations.

3.2 Is there a regime of self-help available to a lessor or a financier of an aircraft if it needs to reacquire possession of the aircraft or enforce any of its rights under the lease/finance agreement?

According to the Cape Town Convention, which Egypt ratified in 2004, a lessor or a financier of an aircraft has the right to terminate the lease/finance agreement and take possession or control of the aircraft without the need for a court order in case of default by the lessee/borrower. However, this right is subject to the consent of the lessee/borrower or the existence of a specific provision in the lease/finance agreement that allows the exercise of such right. Therefore, a regime of self-help is available to a lessor or a financier of an aircraft in Egypt, but it depends on the contractual terms and the cooperation of the lessee/borrower.

3.3 Which courts are appropriate for aviation disputes? Does this depend on the value of the dispute? For example, is there a distinction in your jurisdiction regarding the courts in which civil and criminal cases are brought?

According to the convention ratified by Egypt, the courts that are appropriate for aviation disputes are the civil courts of the place where the damage occurred, the place where the carrier has its principal place of business, or the place where the contract was made. The value of the dispute does not affect the jurisdiction of the courts, as long as it falls within the limits of the convention. However, if the dispute involves criminal charges, such as negligence or fraud, then it must be brought before the criminal courts of Egypt, which have different procedures and rules than the civil courts.

For example, Article (28) of Warsaw Convention, and likewise Article (33) of Montreal convention stipulates that international carriage disputes can be brought before four jurisdictions which are carrier domicile, place of business, country of contract and place of destination.

Furthermore, Article (136) of the Egyptian Civil Aviation stipulates that the court's jurisdiction shall be where the accident occurred.

3.4 What service requirements apply for the service of court proceedings, and do these differ for domestic airlines/parties and non-domestic airlines/parties?

According to the convention ratified by Egypt, the service of court proceedings in civil and commercial matters is governed by the Hague Convention on the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters of 1965. However, the convention applies with limited conditions, where a judicial or extrajudicial document must be transmitted from one state party to another for service. Generally, the convention does not distinguish between domestic and non-domestic airlines or parties, but it provides different methods of service depending on the destination country. The main method of service is through the designated central authority of each state party, which is responsible for receiving and executing requests for service from other state parties. Alternatively, the convention allows for other methods of service, such as postal channels, diplomatic or consular agents, or direct service through judicial officers or competent persons of the destination state, subject to certain conditions and limitations.

3.5 What types of remedy are available from the courts or arbitral tribunals in your jurisdiction, both on i) an interim basis, and ii) a final basis?

According to the convention ratified by Egypt in the aviation sector, parties can seek remedies from the courts or arbitral tribunals in Egypt in case of disputes arising from their contracts or transactions. The available remedies depend on the nature and extent of the breach or damage caused by the defaulting party. Generally, the remedies include:

- i) On an interim basis, the aggrieved party can request the court or the arbitral tribunal to order provisional measures such as injunctions, attachments, conservatory measures, or preservation of evidence. These measures aim to prevent further harm, secure the enforcement of the final award, or maintain the *status quo* pending the resolution of the dispute.

- ii) On a final basis, the aggrieved party can claim damages, specific performance, termination, rescission, or declaratory relief. The court or the arbitral tribunal will assess the merits of the case and determine the appropriate remedy based on the applicable law and the terms of the contract. The award or judgment will be binding and enforceable in Egypt subject to certain conditions and exceptions.

However, the Egyptian Civil Aviation Law No. 28 of 1981 on "The Enactment of Civil Aviation Law", stipulates that the available remedy is mainly for compensation.

3.6 Are there any rights of appeal to the courts from the decision of a court or arbitral tribunal and, if so, in what circumstances do these rights arise?

In Egypt, the parties to a dispute have the right to appeal to the courts from the decision of a court or arbitral tribunal in certain circumstances. According to the Egyptian Arbitration Law, an arbitral award can be challenged before the competent court of appeal on limited grounds, such as the invalidity of the arbitration agreement, the violation of due process, the excess of authority by the arbitral tribunal, or the inconsistency of the award with public policy. Similarly, a court judgment can be appealed before a higher court on the basis of errors of law or fact, or lack of jurisdiction by the lower court. The appeal process may vary depending on the type and nature of the case, but generally it involves submitting a written petition to the court within a specified time limit and presenting oral arguments before the judges.

3.7 What rights exist generally in law in relation to unforeseen events which might enable a party to an agreement to suspend or even terminate contractual obligations (in particular payment) to its contract counterparties due to *force majeure* or frustration or any similar doctrine or concept?

The *force majeure* doctrine under the Egyptian laws and regulations is defined as an event that is unforeseeable, unavoidable, and external to the parties, and that prevents the performance of their contractual obligations. *Force majeure* may entitle a party to suspend or terminate its contractual obligations, depending on the nature and duration of the event. Frustration is not a recognised concept in Egyptian law, but the civil code provides for the possibility of modifying or rescinding a contract if there is a radical change in the circumstances that existed at the time of its conclusion, and if such change causes excessive hardship to one of the parties. However, this provision does not apply to contracts that are subject to foreign law or international conventions.

4 Commercial and Regulatory

4.1 How does your jurisdiction approach and regulate joint ventures or other forms of partnership and/or alliances between airlines?

Joint ventures between airline competitors are a form of strategic alliance that can enhance the efficiency and profitability of the participating airlines. However, they also raise concerns about the potential impact on competition and consumer welfare. Egypt, as a member of the ICAO, follows the guidelines and principles established by the ICAO for regulating joint ventures. These include ensuring that the joint venture is consistent

with the public interest, that it does not result in unreasonable market concentration or abuse of dominant position, and that it provides benefits to consumers and other stakeholders. Egypt also requires that joint ventures obtain prior approval from the ECAA, which evaluates the proposed joint venture based on its economic, technical, operational, and environmental aspects. The ECAA may impose conditions or restrictions on the joint venture to ensure that it complies with the relevant laws and regulations and does not harm the interests of other airlines or the public.

This has been regulated under the Law No. 93 of 2003: Promulgating the Law on Fees and Fees for Civil Aviation Services.

4.2 How do the competition authorities in your jurisdiction determine the 'relevant market' for the purposes of mergers and acquisitions?

The relevant market for the purpose of mergers and acquisitions in Egypt is determined by the Egyptian Competition Authority (ECA) according to the provisions of the Competition Law No. 3 of 2005 and its Executive Regulations. The ECA defines the relevant market as the market that includes all products or services that are considered substitutable by the consumer, in terms of characteristics, prices and intended use, and the geographic area where these products or services are offered. The ECA applies both qualitative and quantitative methods to assess the substitutability of products or services, such as consumer surveys, price correlation analysis, critical loss analysis and the hypothetical monopolist test.

4.3 Does your jurisdiction have a notification system whereby parties to an agreement can obtain regulatory clearance/anti-trust immunity from regulatory agencies?

Egypt has a competition law that regulates anti-competitive practices and mergers. The ECA is the regulatory agency responsible for enforcing the law and granting clearance for mergers and agreements that may affect competition. Parties to an agreement that may have anti-competitive effects are required to notify the ECA before implementing the agreement and obtain its approval. The ECA has the power to impose fines, order remedies, or revoke the clearance if the parties violate the law or the conditions of the approval.

4.4 How does your jurisdiction approach mergers, acquisition mergers and full-function joint ventures?

The Egyptian Capital Market Law No. 95 of 1992 Competition Law regulates mergers and acquisition in general terms. Additionally, Competition Law No. 3 of 2005, Article (19), states that the law does not give the regulatory authority the right to monitor mergers and acquisitions. However, anyone involved in a merger or acquisition is required by law to inform the regulatory authority. Such notifications must be made within 30 days after the registration of the merger and acquisition is finalised, and prior to the annual business number reaching EGP 100 million in the previous budget. The business number shall be calculated based on the total business number of sellers and buyers. The notification shall be submitted to the regulatory authority in writing.

4.5 Please provide details of the procedure, including time frames for clearance and any costs of notifications.

Egypt has a liberalised aviation sector that allows for mergers, acquisitions and joint ventures among airlines and other aviation-related businesses. The ECAA is the regulatory body that oversees the aviation industry and approves any transactions that may affect the safety, security and competitiveness of the sector. The ECAA evaluates each case on its own merits and applies the relevant laws and regulations, such as the Civil Aviation Law, the Competition Law and the Investment Law. The ECAA also coordinates with other authorities, such as the Ministry of Finance, the Ministry of Trade and Industry and the ECA, to ensure that the transactions are in line with the national interests and policies of Egypt.

4.6 Are there any sector-specific rules which govern the aviation sector in relation to financial support for air operators and airports, including (without limitation) state aid?

The aviation sector in Egypt is subject to various rules and regulations that aim to ensure its safety, security and sustainability. One of these rules is the prohibition of state aid to air operators and airports, except in certain exceptional circumstances. State aid is any form of financial support or advantage granted by the state or a public entity to a specific undertaking or sector, which distorts or threatens to distort competition and affects trade between countries. State aid can take various forms, such as grants, loans, guarantees, tax exemptions, subsidies, etc. State aid is generally prohibited by the Egyptian Competition Law and the Civil Aviation Law, as well as by the international agreements that Egypt is a party to, such as the Chicago Convention and the EU-Egypt Association Agreement. However, there are some exceptions to this rule, such as:

- Aid for public service obligations: This is when the state compensates an air operator or an airport for providing a service of general economic interest that would not be otherwise profitable or viable, such as serving remote or isolated regions, ensuring connectivity or accessibility, etc. The aid must be necessary and proportionate to the cost of providing the service and must not exceed what is needed to cover the net cost of the service.
- Aid for environmental protection: This is when the state supports an air operator or an airport for implementing measures that reduce the environmental impact of their activities, such as reducing noise, emissions, waste, etc. The aid must be compatible with the environmental objectives and standards of Egypt and the international community and must not create undue distortions of competition.
- Aid for research and development: This is when the state funds or co-funds an air operator or an airport for conducting research and development activities that contribute to the innovation and competitiveness of the aviation sector, such as developing new technologies, products, services, etc. The aid must be limited to a certain percentage of the eligible costs and must not affect trade to an extent contrary to the common interest.
- Aid for rescue and restructuring: This is when the state provides temporary financial assistance to an air operator or an airport that is in financial difficulty and faces a serious risk of bankruptcy or closure, in order to enable them to restore their viability or restructure their operations. The

aid must be conditional on a credible restructuring plan that ensures the long-term viability of the beneficiary and addresses the causes of its difficulties. The aid must also include measures to limit the distortion of competition, such as reducing capacity, selling assets, etc.

These are some of the main rules that govern the aviation sector in Egypt in relation to financial support for air operators and airports. However, each case of state aid must be assessed individually and in accordance with the relevant laws and agreements.

4.7 Are state subsidies available in respect of particular routes? What criteria apply to obtaining these subsidies?

This is not applicable.

4.8 What are the main regulatory instruments governing the acquisition, retention and use of passenger data, and what rights do passengers have in respect of their data which is held by airlines and airports?

In Egypt, the main regulatory instruments governing the acquisition, retention and use of passenger data are the Civil Aviation Law No. 28 of 1981 and its executive regulations, the Personal Data Protection Law No. 151 of 2020 and its executive regulations, and the National Security Law No. 162 of 1958. These laws regulate the collection, processing, storage, transfer and disclosure of passenger data by airlines and airports, as well as the security and confidentiality measures that must be taken to protect such data. Passengers have the right to access, correct, delete, object to or restrict the processing of their data which is held by airlines and airports, subject to certain exceptions and conditions. Passengers also have the right to lodge a complaint with the competent authorities or courts in case of any violation of their data protection rights.

In addition, the general regulatory act is the Personal Data Protection Law No. 151 of 2020, and provisions from the guidelines on advanced passenger information (API) International Air Transport Authority.

4.9 In the event of a data loss by a carrier, what obligations are there on the airline which has lost the data and are there any applicable sanctions?

According to the Egyptian Data Protection Law (Law No. 151 of 2020), which entered into force on October 14, 2020, an airline that loses personal data of its customers or employees may face serious consequences. The law prohibits the processing of personal data without the explicit consent of the data subjects and grants them several rights, such as restricting access to their data, revoking prior consent, and being informed in case of any data breach. The law also requires the airline to obtain a licence from the competent authority to process personal and sensitive data, and to appoint a data protection officer who will be responsible for ensuring compliance with the law. If the airline fails to comply with these obligations, it may be subject to administrative fines up to EGP 5 million or criminal penalties such as a minimum of six months' imprisonment.

Additionally, IATA privacy policy-international air transport association regulates the sharing of personal information according to the limited usage like ground handling in the airports or local security purposes.

4.10 What are the mechanisms available for the protection of intellectual property (e.g. trademarks) and other assets and data of a proprietary nature?

Egypt has a legal framework for the protection of intellectual property rights, including trademarks, patents, industrial designs, and trade secrets. The main laws governing these rights are Law No. 82 of 2002 on the Protection of Intellectual Property Rights and its Executive Regulations, Law No. 118 of 1975 on the Protection of Industrial Designs and Models, and Law No. 132 of 1949 on the Protection of Trade Secrets. These laws provide for the registration, enforcement, and dispute resolution mechanisms for intellectual property rights holders in Egypt.

4.11 Is there any legislation governing the denial of boarding rights, delayed flights and/or cancelled flights?

According to the Egyptian Civil Aviation Law No. 28 of 1981 and its executive regulations, passengers who are denied boarding or whose flights are cancelled have the right to claim compensation from the airline. The amount of compensation depends on the distance of the flight and the reason for the denial or cancellation. The law also stipulates that passengers should be provided with alternative transportation, accommodation, meals and communication services as appropriate. The law applies to all flights departing from or arriving to Egypt, regardless of the nationality of the airline or the passenger.

However, Law No. 136 of 2010 amended and established the rules governing compensation and assistance provided to passengers in the event of denied boarding, flight cancellation, long delay of flights and downgrading.

4.12 What powers do the relevant authorities have in relation to the late arrival and departure of flights?

The ECAA, part 609 titled "scheduled flights regulations", provides general provisions regarding scheduled flights which include, but is not limited to the following:

- Any civilian ACFT operates schedule flights to/from or over flying across or into Arab Republic of Egypt (A.R.E.) territory must get permission from ECAA 30 days before operation.
- Any Egyptian or foreign carrier must get permission or authorisation from the Ministry of Civil Aviation (ECCA) before performing any type of air movements or any flights within A.R.E. territory on condition that previous co-ordination with the directors of the concerned airports (at which the flights will descent) regarding arrival/ departure time is agreed.
- Applications for scheduled flights from, to, or overflying across or within A.R.E. territory should be submitted to the Head of Central Air Transport Department – Egyptian Civil Aviation Building (airport road) through the authorised agents or companies' office in A.R.E.
- Operators must adhere to ECAA permission, the permission of which is valid during the clearly stated timeframe.
- The operation of any flight to/from and over flying A.R.E. territory is prohibited before receiving the ECAA clearance, otherwise the ACFT will be intercepted and forced to land and held responsible for any financial consequences. In such case, the safety of ACFT will be jeopardised and fines and penalties are stipulated in the Egyptian laws and regulations.

4.13 Are the airport authorities governed by particular legislation? If so, what obligations, broadly speaking, are imposed on the airport authorities?

The Airport Authorities are governed by the Egyptian Civil Aviation Law No. 28 of 1981 on The Enactment of Civil Aviation Law and international agreements.

4.14 To what extent does general consumer protection legislation apply to the relationship between the airport operator and the passenger?

In Egypt, the relationship between the airport operator and the passenger is governed by several laws and regulations that aim to protect the rights and interests of both parties. The main sources of consumer protection legislation in this context are:

- The Civil Aviation Law No. 28 of 1981 and its executive regulations, which regulate the civil aviation sector and the obligations of the airport operator towards the passengers, such as ensuring safety, security, comfort and accessibility.
- The Consumer Protection Law No. 67 of 2006 and its executive regulations, which establish the general principles and rules for consumer protection, such as fair trade, transparency, disclosure, quality control and dispute resolution.
- The Egyptian Civil Code, which sets out the general rules for contractual relationships, such as offer and acceptance, consent, liability, damages and termination.

These laws and regulations apply to the relationship between the airport operator and the passenger to the extent that they do not contradict with the specific provisions of the international conventions and agreements that Egypt is a party to, such as the Montreal Convention of 1999 and the Chicago Convention of 1944.

4.15 What global distribution suppliers (GDSs) operate in your jurisdiction?

In Egypt, there are several global distribution suppliers (GDS) that operate in the country and provide travel services to various sectors. Some of the major GDS in Egypt are Amadeus, Sabre, Travco and Travelport. These GDS offer a range of solutions for airlines, hotels, car rentals, travel agencies, and corporate customers. They also facilitate online booking, reservation management, payment processing, and data analysis.

4.16 Are there any ownership requirements pertaining to GDSs operating in your jurisdiction?

This is not applicable.

4.17 Is vertical integration permitted between air operators and airports (and, if so, under what conditions)?

In Egypt, vertical integration between air operators and airports is not explicitly prohibited by the regulatory framework, but it may be subject to antitrust scrutiny by the ECA. According to the ECA, vertical integration may have anticompetitive effects if it allows the airport operator to transfer its market power to the air transport market and exclude or disadvantage competing airlines. However, vertical integration may also have

procompetitive effects if it leads to efficiency gains and lower prices for consumers. Therefore, the ECA evaluates each case on its merits and applies the rule of reason approach. In the future, vertical integration between air operators and airports may become more relevant as new forms of advanced air mobility, such as electric vertical takeoff and landing aircraft, emerge and require new infrastructure and services at airports or vertiports.

4.18 Are there any nationality requirements for entities applying for an Air Operator's Certificate in your jurisdiction or operators of aircraft generally into and out of your jurisdiction?

Foreign Air Carriers and Foreign Operators of Egyptian Registered Aircraft are obligated to engage in Common Carriage rules governing the operation within the A.R.E. of each foreign air carrier holding a permit issued by the ECAA. This additionally applies to Egyptian registered aircraft operated in common carriage by a foreign person or foreign air carrier solely outside the A.R.E.

5 In Future

5.1 In your opinion, which pending legislative or regulatory changes (if any), or potential developments affecting the aviation industry more generally in your jurisdiction, are likely to feature or be worthy of attention in the next two years or so?

One of the most important issues facing the aviation industry in Egypt is the implementation of the Single African Air Transport Market (SAATM) initiative, which aims to create a unified and liberalised air transport market across the continent. The SAATM was launched in 2018 by the African Union, and Egypt was among the first countries to sign the commitment. However, the actual operationalisation of the SAATM has faced many challenges and delays, such as the lack of harmonised regulations, standards, and policies among the participating countries, as well as the resistance from some national carriers that fear losing their market share and profitability. The SAATM has the potential to bring significant benefits to the aviation industry and the economy of Egypt, such as increased connectivity, competition, efficiency, and innovation. It could also boost trade, tourism, and investment between Egypt and other African countries, as well as enhance regional integration and cooperation.

One of the most important pending legislative changes affecting the aviation industry in Egypt is the Civil Aviation Law No. 28 of 1981, which is currently under review by parliament. The law is expected to enhance the competitiveness and efficiency of the Egyptian aviation sector and attract more investments and partnerships.

It would be significant to have more enhancements to the legislative and regulatory changes to include:

- Providing financial support and relief to airlines, such as direct subsidies, loans, guarantees, tax waivers, and fee reductions.
- Easing travel restrictions and facilitating the movement of passengers, such as implementing a harmonised approach to testing, vaccination, and digital health certificates.
- Enhancing air traffic management and airspace modernisation, such as implementing performance-based navigation, flexible use of airspace, and collaborative decision making.

- Promoting environmental sustainability and reducing carbon emissions, such as adopting the CORSIA, implementing fuel efficiency measures, and investing in new technologies.

In addition to these challenges, the aviation industry in the MENA region also faces potential developments that could affect its future growth and competitiveness, such as:

- The emergence of new markets and opportunities, to open new routes and increase connectivity between MEA countries.
- The diversification of business models and strategies, such as the expansion of low-cost carriers, the development of cargo and logistics services, and the exploration of new revenue streams.

- The integration of innovation and digitalisation, such as the adoption of artificial intelligence, blockchain, biometrics, and e-commerce platforms.
- The enhancement of customer experience and loyalty, such as offering personalised services, flexible policies, and loyalty programmes.

These are some of the key factors that could shape the future of aviation in the MENA region. In my opinion, the industry needs to adopt a proactive and collaborative approach to address these issues and seize these opportunities. By doing so, it can overcome the current crisis and achieve a sustainable recovery.

In conclusion, this chapter provides valuable insights into Egypt's Civil Aviation industry, emphasising the dedicated efforts and expertise of the regulatory bodies and authorities and their relentless work that aims to ensure that Egypt's aviation sector aligns with global benchmarks.



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Mr. Agamy obtained his law degrees from Alexandria University and has been certified for "Contract Laws" from Harvard University, edX 2018, and has an LL.M. in International Legal and Commercial Transactions (2012): "AASTM accredited by University of HUDDERSFIELD, UK" with the thesis "Arbitration Role for settling Oil & Gas Disputes".

Mr. Agamy has extensive experience in advising airlines, lessors, financiers, airports, regulators, and other aviation stakeholders on various legal matters, such as aircraft leasing and financing, aviation contracts, regulatory compliance, dispute resolution, and crisis management. He has successfully handled some of the most complex and high-profile aviation transactions in the region, including the acquisition of new aircraft fleets, the restructuring of existing leases and loans, the negotiation of maintenance and service agreements, and the establishment of joint ventures and strategic partnerships.

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Links & Gains has exceptional specialisation in Aviation Law, particularly our aviation lawyers who are based in Egypt, the UAE and the UK. L&G has successfully been linked to diverse international association with lawyers and advisors across the globe. L&G core areas of expertise are commercially oriented with a deep focus on our clients' needs and achievements when we provide our legal services. We are consistent in the standard of excellence that we bring to our clients.

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Clyde & Co



Grégory Laville de la Plaigne



Anna Lavrenyuk

1 General

1.1 Please list and briefly describe the principal legislation and regulatory bodies which apply to and/or regulate aviation in your jurisdiction.

Regulatory bodies

Aviation is regulated by the Ministry of Transport which is the competent administrative body in the field of aviation and, as such, can issue regulations and measures in the field of aviation.

The Civil Aviation Authority, known as the *Direction Générale de l'Aviation Civile* (DGAC), advises the Ministry of Transport on aviation matters and makes administrative decisions regarding all aspects of aviation.

The European Aviation Safety Agency (EASA) has authority in respect of aviation safety regulation within EU Member States.

Legislation

As in other Member States of the European Union, aviation in France is increasingly regulated by EU legislation, most of which is of direct application in France (e.g. Regulation (EC) 261/2004, Regulation (EC) 1107/2006, Regulation (EC) 1008/2008, etc.).

Until 2010, the aviation sector was regulated by the French Code of Civil Aviation. It is now regulated by Section 6 of the French Code of Transport, which covers all means of transport. As of decree n°2023-1008 dated 31 October 2023, most of the regulatory provisions that remained in the French Code of Civil Aviation have been repealed and have now been incorporated into the Code of Transport as well.

Finally, France is party to international treaties related to aviation that have been incorporated into national law. For instance, France is a party to the 1999 Montreal Convention for the unification of certain rules for international carriage by air, which sets out the liability regime of air carriers in the case of an accident. European Regulation has extended this liability regime to domestic accidents (i.e. Regulation (EC) 889/2002).

1.2 What are the steps which air carriers need to take in order to obtain an operating licence?

As a Member of the European Union, French requirements are identical to those of other Member States. This includes article 4 of the Regulation (EC) 1008/2008 of 24 September 2008 which sets out the conditions for granting an operating licence, which are that:

- the air carrier's principal place of business is located in France;

- the air carrier holds a valid Air Operator's Certificate (AOC), issued by the local department of the civil aviation authority where the company will be established (*Direction de l'Aviation Civile – DAC*), which is responsible for granting, refusing, revoking or suspending the operating licence of the Community air carrier;
- the air carrier has one or more aircraft at its disposal through ownership or a dry lease agreement;
- the main occupation of the air carrier is to operate air services in isolation or combined with any other commercial operation of aircraft or the repair and maintenance of aircraft;
- the air carrier's structure allows the competent licensing authority to implement the provisions mentioned in this chapter;
- Member States and/or nationals of Member States own more than 50% of the undertaking and effectively control it, whether directly or indirectly through one or more intermediate undertakings, except as provided for in an agreement with a third country to which the Community is a party;
- the air carrier submits a business plan for at least the first two years from the start of operations and in compliance with the financial requirements provided by Article 5 of Regulation (EC) 1008/2008;
- the air carrier complies with insurance requirements; and
- the persons who will continually and effectively manage the operations of the company are of good reputation and have never been bankrupt as specified in Article 7 of the Regulation.

Depending on the licence to be obtained, it will be delivered either by the Minister for Transport or by decree of the Prefect of the region where the operator has its main place of business. Regional authorisations are handled by regional offices of the DSAC (*DSAC interrégionales*).

These authorities can withdraw the licence if it appears that the conditions are no longer met.

1.3 What are the principal pieces of legislation in your jurisdiction which govern air safety, and who administers air safety?

Firstly, air safety is regulated by the International Civil Aviation Organisation (ICAO) as France is a signatory to the Chicago Convention 1944 and must therefore ensure that air navigation equipment and operations comply with ICAO standards.

Further, air safety is mostly regulated by the EASA and European legislation, as issued by the EU's bodies and courts.

In France, different *DGAC* departments are responsible for enforcing air safety regulation, whether French or European; in particular, the Organisation for Civil Aviation Security (OSAC) and the Safety Oversight Directorate (DCS). The Minister for Transport also has powers in respect of safety inspections of aircraft, equipment and organisations and their employees. French safety rules are contained in Article L6341-1 and the subsequent Articles of the French Code of Transport.

Any aircraft, whether French or foreign, operating at a French airport, and any premises and facilities at which controlled activities are carried out, may be inspected to ensure compliance with French and European civil aviation regulations. In case of any breach of these regulations, the Minister may prescribe any measure to correct and restrict operations, including the grounding of an aircraft.

1.4 Is air safety regulated separately for commercial, cargo and private carriers?

The rules and regulatory bodies are the same in these instances.

1.5 Are air charters regulated separately for commercial, cargo and private carriers?

The rules and regulatory bodies are the same in these instances.

1.6 As regards international air carriers operating in your jurisdiction, are there any particular limitations to be aware of, in particular when compared with 'domestic' or local operators? By way of example only, restrictions and taxes which apply to international but not domestic carriers.

There are no such limitations as France is a party to the 1944 Chicago Convention, which provides for availability, so far as practicable, of aerodromes in its territory and equality of conditions of use of aerodromes for international and domestic aircraft. Article 15 of the Chicago Convention further provides for equality of charges for the use of aerodromes.

As to authorisations, a distinction is to be made between Community and extra-Community carriers:

- Community carriers which have a valid licence can operate intra-Community services in France without a permit or authorisation. A Community carrier must only notify the *DGAC* of the intended operation in France (Article R330-8 of the French Code of Civil Aviation). Extra-Community services are still subject to authorisation by the *DGAC* (Article R330-8 of the French Code of Civil Aviation).
- As to non-Community air carriers, they must seek authorisation from the *DGAC* to operate into or out of France, whether they are carrying out intra-Community air services or extra-Community air services. Such authorisation will be granted only if the necessary traffic rights exist.

1.7 Are airports state or privately owned?

The answer depends on the airport. Some airports are majority-owned by the State or public entities (*e.g.* Paris-Charles de Gaulle, Paris-Orly, Paris-Le Bourget, Bordeaux Mérignac, Toulouse Blagnac, Strasbourg Entzheim *etc.*), while others are owned by private entities (*e.g.* Nice-Côte d'Azur, Lyon-Saint Exupéry, *etc.*).

The Paris region airports were to be privatised but discussions have slowed down these last few years, including because of the COVID-19 pandemic. While the aviation industry returned to its former numbers as prior to the pandemic, the ADP privatisation process has yet to resume.

1.8 Do the airports impose requirements on carriers flying to and from the airports in your jurisdiction?

Conditions of use are imposed, as well as charges. In particular, there are regulations on noise and curfews in some airports, especially in Paris-Charles de Gaulle, Paris-Orly, Paris-Beauvais, Nice-Côte d'Azur, Toulouse-Blagnac, Nantes-Atlantique, *etc.*

Slot allocation also calls for specific measures from certain airports, in addition to those of Regulation (CEE) 95/93 of 18 January 1993. For instance, air carriers who are not yet established in Paris-Charles de Gaulle and Paris-Orly must comply with ADP's slot allocation system.

1.9 What legislative and/or regulatory regime applies to air accidents? For example, are there any particular rules, regulations, systems and procedures in place which need to be adhered to?

France is a party to the 1944 Chicago Convention. Article 26 and Annex 13 of that Convention contain provisions for the investigation of air accidents.

Regulation (EU) 996/2010 also regulates the investigation and prevention of accidents and incidents in civil aviation (amended by Regulation (EU) 376/2014 and Regulation (EU) 2018/1139).

The French Code of Transport (Article L6223-1) obliges any regulated actor to report to the aviation authorities any event which has or is likely to have affected the safety of air operations.

Failure to report such events may result in penalties of one year's imprisonment and a fine of EUR 15,000 (Article L6232-10 of the French Code of Transport).

The *Bureau d'Enquêtes et d'Analyses* (BEA) is responsible for the investigation of civil aircraft accidents and serious incidents in France.

In addition to civil investigation, investigations into serious injuries or deaths are usually carried out by the French Air Transport Gendarmerie. Criminal investigations are also undertaken by a judge of the local criminal court.

An airline's liability is generally governed by the Montreal Convention 1999, which provides a strict liability regime with the possibility to exclude liability for damages above 128,821 Special Drawing Rights (SDR) (approximately EUR 160,000) when such damage was not due to the negligence or other wrongful act of the carrier or its servants or agents and when the accident is a result solely of a third party's fault (Article 21). Pursuant to article L6421-3 of the French Code of Transport, Regulation (EC) 889/2002, which implements relevant provisions of the Montreal Convention 1999, is applicable to Community air carriers.

1.10 Have there been any recent cases of note or other notable developments in your jurisdiction involving air operators and/or airports?

The French highest judicial court, the *Cour de cassation*, had the opportunity to confirm cargo rules when dealing with damage that occurred after the air carrier completed its mission. The *Cour de cassation* confirmed that air carrier's liability cannot be assessed under Montreal Convention 1999 when the event that caused damage to the cargo occurred after the air carrier had

issued delivery notes, even if said carrier was asked to store the cargo for a while before entrusting them onto next freight forwarder. Liability is to be looked at under French common liability rules (Cass. Com. 8 February 2023, n°21-17.932).

Regarding passenger rights, numerous decisions were rendered by lower courts with little of them being presented to the *Cour de Cassation*. One example of a decision is a *Cour de cassation* decision confirming that an airline's refusal to board a passenger who did not collect and present the boarding pass for the third leg of a journey is denied boarding under Regulation (EC) n°261/2004, which gives the passenger the right to compensation (Cass. 1^{ere} civ., 29 March 2023, n°22-10.342 and n°22-10.343). Also, France has been moving forward with a draft proposal that aims at having better predictability of industrial action by air traffic controllers to improve traffic management.

Numerous decisions are also dealing with unruly passengers, especially as such behaviour can now be subject to administrative and criminal sanctions (ordinance 2022-831 of 1 June 2022) and inadmissible persons.

Finally, courts confirmed the application of the French Code of Transport and of the Montreal and Warsaw conventions when dealing with a minor that boarded an aircraft without the parents' knowledge and consent (CA Versailles, 3^e ch., 19 October 2023, n°21/01929).

1.11 Are there any specifically environment-related obligations or risks for aircraft owners, airlines, financiers, or airports in your jurisdiction, and to what extent is your jurisdiction a participant in (a) the EU Emissions Trading System (EU ETS) or a national equivalent, and (b) ICAO's Carbon Offsetting and Reduction Scheme for International Aviation (CORSIA)?

Environmental changes keep on being promoted by citizens in France and sometimes give rise to legal changes, as demonstrated by the Citizen's Climate Convention, which then turned into the "Climate and Resilience Law".

As part of combatting climate change and strengthening resilience of the law, the government banned some domestic flights under Decree 2023-385 of 22 May 2023, which created Article R330-6 in the French Civil Aviation Code.

Starting May 2023 and for three years, France now bans scheduled public passenger transport by air services where routes are covered by rail in under two and-a-half hours. The ban is to apply where there are train stations in the same city as an airport, without connection, several times a day with convenient schedules, which allow for the passenger to spend more than eight hours on site during the day, all year round. As of now, the ban applies to commercial scheduled flights that were operated between the Paris Orly airport and Nantes, Lyon and Bordeaux.

When assessing their routes, air carriers should also be aware that the French Airport Nuisance Control Authority (ACNUSA) is an independent authority that is charged with the supervision of environmental issues. The ACNUSA may impose fines on air carriers for noise pollution and pollutant emissions generated by airport activities on the ground and in the air.

Additionally, the European Union – and therefore France – participates in both the CORSIA and EU ETS programmes. Both programmes are of direct application in France.

(a) EU ETS

The European Directive 2008/101/EC integrating aviation activities into the greenhouse gas emission allowance trading system came into force on 2 February 2009. This Directive amends Directive 2003/87/EC by including aviation activities in the EU ETS.

It was transposed into the French Environment Code by Articles L229-5 to L229-24-2.

As part of the "Fit for 55" package, new directives keep on updating aviation's contribution to the EU's economy-wide emission reduction target and the appropriate implementation of a global market-based measure (Directive (EU) 2023/958 of 10 May 2023 which amends Directive 2003/87/EC). The aim is to continue the application of the EU ETS within the European Economic Area until 31 December 2026 while applying the international CORSIA system to extra-EEA flights and to ensure equal treatment of airlines on the same routes regarding the economic impact of their obligations.

(b) CORSIA

There are three phases of implementation of the programme:

- 2021–2023: pilot phase (voluntary participation).
- 2024–2026: first phase (voluntary participation).
- 2027–2035: second phase (mandatory phase).

The year 2023 marks the end of the pilot phase of CORSIA and presents important deadlines for states that decided to participate in the programme. Within the final months of 2023, States are to calculate and share information as to their 2022 offsetting requirements and the operators that are responsible for it, as well as prepare for the 2024 compliance year.

CORSIA has raised increasing interest from volunteering States since its beginning. As of January 2023, 115 States had announced their intention to participate in COSA. This number has been raised to 126 for January 2024.

France is one of the volunteer States for the application of the pilot stage and the first stage.

2 Aircraft Trading, Finance and Leasing

2.1 Does registration of ownership in the aircraft register constitute proof of ownership?

France is a party to the Geneva Convention of 19 June 1948 and aircraft ownership rights are consistent with the rules set out therein.

Registration of ownership constitutes proof of ownership and is binding on third parties (Article L6121-1 of the French Code of Transport). No transfer of title is binding on third parties until the owner is registered as the owner on the register which is kept by the *DGAC*. When registering an aircraft or dealing with a change of ownership, the *DGAC* will require an original bill of sale and other such documentation necessary to verify the authenticity of the transfer.

2.2 Is there a register of aircraft mortgages and charges? Broadly speaking, what are the rules around the operation of this register?

As France is an owner registry (also known as a "title registry"), mortgages on aircraft registered in France must be registered by owners on the French aircraft register in order to be binding on third parties (Article L6122-8 of the French Code of Transport). Mortgages may only be taken on an entire aircraft (*e.g.* one may not take a mortgage on an engine only). Registration fees are nominal.

Mortgages must be an instrument in writing signed by both parties (the owner as mortgagor, and the creditor of the owner as mortgagee). The amount secured must be indicated; the mortgage may secure the principal plus three years of past due interest, in

addition to the interest accrued during the year of enforcement. The security consists of the aircraft, engines and all other parts; it may also be extended to spare parts provided that a list identifying each of them is included in the mortgage agreement. Mortgages may be obtained by contract only and not by Court Order.

A single mortgage may cover several aircraft or even an entire fleet (if the entire fleet is registered in France) as long as all aircraft included in the security are identified.

An original of the mortgage agreement must be sent to the *DGAC* for the purpose of filing a mortgage. As for registration of ownership, the *DGAC* will require a number of documents in order to verify the authenticity of the mortgage; the mortgage agreement does not need to be notarised. The registration of the mortgage is valid for 10 years. If the mortgage agreement provides that the mortgage is granted for a period in excess of 10 years, a re-filing is required upon the expiry of the 10-year period.

As the *DGAC* moved its office from Paris to Athis-Mons, aircraft mortgagees must elect domicile in the jurisdiction of the *Tribunal Judiciaire* of Evry. Domiciliation may take place through the mortgagee's branch or a notary.

The request for deregistration of a mortgage must be filed by the mortgagee. There may be no deregistration of the aircraft from the French registry unless the mortgage has been released or the mortgagee has agreed to it.

An aircraft mortgage does not give a right to possession, but only to cause the sale, and priority over the proceeds of sale. Several mortgages may be taken on a single aircraft and the mortgages registered first will have priority over the subsequent ones.

Consistent with the rules of the Geneva Convention, some rights have priority over the mortgagee's: (i) legal costs of the public auction sale; (ii) costs incurred for salvage; and (iii) costs that are indispensable for preserving the aircraft.

The registered mortgagee is entitled to receive insurance proceeds up to the secured amount in case of loss or damage to the aircraft, subject to alternative provisions agreed between the parties.

2.3 Are there any particular regulatory requirements which a lessor or a financier needs to be aware of as regards aircraft operation?

Leases (*i.e.* dry lease) are not required to be registered. However, leases and sub-leases may be registered on the French aircraft registry. When a lease is recorded, the owner's liability to third parties is subject to proof of negligence of the owner. The registry only records the existence of the lease to the operator and its duration.

Operation of public transport aircraft may be impacted in some instances, including unpaid amounts by the owner when acquiring the aircraft, training and maintenance, or unpaid airport or traffic dues and fines for curfew and similar violations.

2.4 As a matter of local law, is there any concept of title annexation, whereby ownership or security interests in a single engine are at risk of automatic transfer or other prejudice when installed 'on-wing' on an aircraft owned by another party? If so, what are the conditions to such title annexation and can owners and financiers of engines take pre-emptive steps to mitigate the risks?

Engines installed on an aircraft are deemed to belong to the aircraft and thus to the owner of the aircraft. An engine plate showing different ownership can mitigate risk with limited success as there is no engine registry.

2.5 What (if any) are the tax implications in your jurisdiction for aircraft trading as regards a) value-added tax (VAT) and/or goods and services tax (GST), and b) documentary taxes such as stamp duty; and (to the extent applicable) do exemptions exist as regards non-domestic purchasers and sellers of aircraft and/or particular aircraft types or operations?

Engine sales are subject to a 20% VAT. However, there is an exemption for carriers which operate more than 80% abroad (Article 262 II. 4. of the French Tax Code).

2.6 Is your jurisdiction a signatory to the main international Conventions (Montreal, Geneva and Cape Town)?

France is a signatory of and has ratified most international aviation conventions, including, *inter alia*:

- the 1929 Warsaw Convention, as amended by the Hague Protocol of 28 September 1955;
- the 1944 Chicago Convention;
- the 1963 Tokyo Convention on offences and certain acts committed on board aircraft;
- the 1952 Rome Convention on damage caused by foreign aircraft to third parties on the surface;
- the 1968 Geneva Convention on the international recognition of rights in aircraft; and
- the 1999 Montreal Convention for the unification of certain rules for international carriage by air.

The Cape Town Convention on international interests in mobile equipment has been signed by France; however, to date it has not been ratified.

2.7 How are the Conventions applied in your jurisdiction?

Ratified conventions are recognised and enforced by the court and prevail over French domestic law.

2.8 Does your jurisdiction make use of any taxation benefits which enhance aircraft trading and leasing (either in-bound or out-bound leasing), for example access to an extensive network of Double Tax Treaties or similar, or favourable tax treatment on the disposal of aircraft?

Article 39 C II. 1. of the French Code of Taxes (*Code Général des Impôts*) provides for a mechanism called *GIE Fiscal*, which allows special tax treatment for releasers of aircraft in detailed circumstances and under specific conditions.

2.9 To what extent is there a risk from the perspective of an owner or financier that a lessee of aircraft or other aviation assets in your jurisdiction may acquire an economic interest in the aircraft merely by payment of rent and thereby potentially frustrate any rights to possession or legal ownership or security?

This is not applicable in France.

3 Litigation and Dispute Resolution

3.1 What rights of detention are available in relation to aircraft and unpaid debts?

Any person who has possession of an aircraft can retain it until payment of charges, fees or costs, which arose from the subject's possession, such as repair and maintenance costs, hangar fees, *etc.*, have been satisfied.

Aircraft that are dedicated to public transportation or to State services are protected, in the sense that they can be subject to freezing injunctions only for debts related to the sale or maintenance of the aircraft or training (Article L6123-1 of the French Code of Transport) and for unpaid airport or air service charges (Article L6123-2 of the French Code of Transport).

In other circumstances, freezing injunctions can be sought pursuant to the common rules provided by the Law of 9 July 1991, before the *Juge de l'Exécution*. The conditions are:

- The debt must appear certain.
- Under certain circumstances, the creditor may assume that he will have difficulty in getting paid.

A freezing injunction is not necessary when the creditor already has a judgment which is not yet enforceable, or similar documents such as an unpaid cheque or a notarised agreement. In these instances, the freezing of an aircraft can be pursued directly by a bailiff.

3.2 Is there a regime of self-help available to a lessor or a financier of an aircraft if it needs to reacquire possession of the aircraft or enforce any of its rights under the lease/finance agreement?

There is no such self-help regime under French law. A lessor or a financier has no choice other than to seek an injunction to repossess an aircraft.

3.3 Which courts are appropriate for aviation disputes? Does this depend on the value of the dispute? For example, is there a distinction in your jurisdiction regarding the courts in which civil and criminal cases are brought?

The French judicial system is not based on sector/industry but on the nature and value of the dispute.

Commercial courts have jurisdiction over all commercial claims or other disputes related to trade, finance and commerce. As such, commercial courts have jurisdiction for claims between a lessor and a lessee, or between an airline and a repair company, *etc.*

Criminal cases are heard by criminal courts. Prosecution for manslaughter are heard by the *Tribunal correctionnel*, which can also make decisions on a civil victim's compensation for harm arising from manslaughter.

Civil matters are heard by civil courts, *i.e.* the *Tribunal judiciaire* and the *tribunal de proximité*, depending on the amount in dispute. In an effort to reduce the number of claims presented to civil courts, the Justice Programming Act 2018–2022 had established an obligation for the claimant to try to conciliate the claim through a judicial conciliator, a mediator or participatory procedure before a claim under EUR 5,000 could be presented to the judge. The obligation was cancelled for a short while and has now been reintroduced back into French law by decree n° 2023-357 dated 11 May 2023.

Disputes with the French administration (*e.g.* airport taxes and navigation service taxes) are heard by the *Tribunal administratif*.

3.4 What service requirements apply for the service of court proceedings, and do these differ for domestic airlines/parties and non-domestic airlines/parties?

Litigation in France usually starts with the service, by a bailiff, of a Writ of Summons on the Defendant. The original of the Writ in Summons is then filed with the relevant court which has jurisdiction over the matter.

Service on parties residing abroad varies according to whether the Defendant's State is a member of the European Union or has signed a bilateral or multilateral convention with France.

As to non-EU Member States, service is usually done *via* diplomatic channel. The French court has no obligation to wait for evidence that service on the foreign Defendant was actually completed, service is deemed completed, and it is sufficient to give evidence to the court that the Summons was sent to the public prosecutor who is to take care of service abroad. If it transpires that service of process was not done, which resulted in a Judgment by Default, it would be a specific cause for an appeal.

3.5 What types of remedy are available from the courts or arbitral tribunals in your jurisdiction, both on i) an interim basis, and ii) a final basis?

Remedies vary depending on the nature of the dispute.

On an interim basis, the Claimant can start a *procédure de référé* for urgent cases in order to obtain an *ordonnance de référé* for:

- a provisional Injunction Order to prevent the other party from doing something that clearly violates the law; or
- a provisional payment for damages.

On a final basis, the Claimant can start a *procédure au fond* in order to obtain a decision on the merits of his claim. The Claimant may request:

- damages;
- an injunction to do or not to do something;
- a decision on the ownership and repossession order; or
- other.

It should be noted that there is no definitive list of what a French court may order.

Regarding arbitration, a wide range of remedies is available to arbitral tribunals, including award of damages, injunction or even specific performance. As per interim measures, Article 1468 of the French Code of Civil Procedure allows arbitral tribunals to “take any protective or provisional measure it deems appropriate under the conditions it shall determine”. However, parties to an arbitration may need to seek the assistance of French courts to enforce these measures.

3.6 Are there any rights of appeal to the courts from the decision of a court or arbitral tribunal and, if so, in what circumstances do these rights arise?

Except for small claims below EUR 5,000, there is a right to appeal to a Court of Appeal (*Cour d'appel*). The Court of Appeal has the power to take a new decision on all aspects of the matter, both on questions of fact and questions of law.

After a decision from the Court of Appeal, or if there was no right to appeal, the parties can appeal to the French Supreme Court (*Cour de cassation* for civil matters or *Conseil d'Etat* for administrative matters). The Supreme Court only rules on matters of law: it merely ensures that the lower court correctly applied the law to the facts, without contradicting the Court of Appeal as to what the facts are (with the exception of a clear misrepresentation or distortion of the facts).

Appeal of arbitral awards is only possible for domestic arbitration when agreed upon by the parties. When an appeal against domestic arbitral awards is not possible and for international arbitration awards, a set aside action on very limited grounds is possible before State courts.

3.7 What rights exist generally in law in relation to unforeseen events which might enable a party to an agreement to suspend or even terminate contractual obligations (in particular payment) to its contract counterparties due to *force majeure* or frustration or any similar doctrine or concept?

- **Force majeure** (Article 1218 of the French Civil Code)
Under French contract law, *force majeure* may apply if an event fulfils three conditions: the event is outside the control of the debtor; the event could not be reasonably foreseen when the contract was concluded; and the effects of the event cannot be avoided by appropriate measures. If the impediment is temporary, the performance of the contract is suspended, unless the delay in performance justifies the resolution of the contract. If the impediment is permanent, the contract is automatically rescinded under certain conditions.
- **Unforeseeability** (Article 1195 of the French Civil Code)
Under French contract law, if the performance of the contract becomes overly burdensome on one of the parties because of a change of circumstances which was unforeseeable when the contract was concluded, the injured party may request a renegotiation of the contract to the other contracting party. The injured party must continue to perform the contract during the renegotiation.
If the renegotiation is refused by the other contracting party or fails, the parties can agree to rescind the contract or, by mutual agreement, request before a judge the adjustment of the contract.
If the parties cannot reach an agreement within a reasonable period of time, the judge can – upon request of one of the contracting parties – revise or terminate the contract.
French courts have considered that the COVID-19 pandemic can qualify as being *force majeure* or unforeseeable in some instances. Yet, the parties must demonstrate on a case-by-case basis that the situation at hand falls under the conditions of the *force majeure* or unforeseeability, which proved harder as the pandemic went on.

4 Commercial and Regulatory

4.1 How does your jurisdiction approach and regulate joint ventures between airline competitors?

There are no sector-specific competition law rules that apply to the aviation sector.

Joint ventures such as alliances or code shares can be considered to be agreements which are incompatible with the market (see point 4.1.1 below) or as a concentration (see point 4.1.2).

4.1.1 Agreements incompatible with the market

Article 101§1 of the Treaty on the Functioning of the European Union (TFEU) prohibits all agreements between undertakings, decisions by associations of undertakings, and concerted practices which may affect trade between Member States and which have as their object or effect the prevention, restriction or distortion of competition within the internal market (*i.e.* the European Single Market).

The European Commission will have jurisdiction if it finds that an agreement falls within the scope of this Article.

The European Commission may declare that Article 101§1 of the TFEU shall not apply to certain categories of agreements, decisions of associations, and concerted practices, in the air transport sector (see question 4.3).

In France, Article L420-1 of the French Code of Commerce forbids joint actions, agreements, explicit or implicit collusions or alliances which have as their object, or can have as their effect, the prevention, restriction or distortion of competition within a market, directly or even indirectly through a foreign holding company.

If the scope of such an agreement affects only the French market, the French Authority in charge of competition (*Autorité de la Concurrence*) will have jurisdiction.

4.1.2 Concentrations

European Union law (Article 2 of Regulation (EC) 139/2004) and French law (Article L430-6 of the French Code of Commerce) prohibit concentrations which would significantly impede effective competition in the common market or in a substantial part of it.

The European Commission (see point 4.1.2.1) or the French authorities (4.1.2.2) will have jurisdiction over the concentration depending on the turnover of the undertakings involved. Concentrations which have very little impact on the market given the size of the undertakings are not subject to any control (4.1.2.3).

4.1.2.1 European competence

Regulation (EC) 139/2004 sets thresholds to define the Community dimension of the concentration, and therefore the competence of the European Commission.

A concentration has a Community dimension where:

- the combined aggregate worldwide turnover of all the undertakings concerned is more than EUR 5,000 million; and
 - the aggregate Community-wide turnover of each of at least two of the undertakings concerned is more than EUR 250 million,
- unless each of the undertakings concerned achieves more than two-thirds of its aggregate Community-wide turnover within one and the same Member State.
- Alternatively, a concentration that does not meet the thresholds laid down previously has a Community dimension where:
- the combined aggregate worldwide turnover of all the undertakings concerned is more than EUR 2,500 million;
 - in each of at least three Member States, the combined aggregate turnover of all the undertakings concerned is more than EUR 100 million;
 - in each of at least three Member States included for the purpose of the above point, the aggregate turnover of each of at least two of the undertakings concerned is more than EUR 25 million; and
 - the aggregate Community-wide turnover of each of at least two of the undertakings concerned is more than EUR 100 million,
- unless each of the undertakings concerned achieves more than two-thirds of its aggregate Community-wide turnover within one and the same Member State.

4.1.2.2 French competence

If the above-mentioned thresholds are not met, the French Authority in charge of competition will have jurisdiction.

4.1.2.3 Absence of control

Concentrations which will not have a substantial impact on the market are not controlled.

This is the case when the following thresholds are not met (Article L430-2 of the French Code of Commerce):

- the combined aggregate worldwide turnover of all the undertakings concerned is more than EUR 150 million; and
- the French aggregate turnover of each of at least two of the undertakings concerned is more than EUR 50 million, or alternatively, if at least two of the undertakings concerned operate one or several retail store(s), or at least one undertaking operates all or any part of its activity in one or several French overseas departments or in the French overseas collectivities of Mayotte, Saint-Pierre-et-Miquelon, Saint-Martin and Saint-Barthélemy, and:
 - the combined aggregate worldwide turnover of all the undertakings concerned is more than EUR 75 million; and
 - the French aggregate turnover of each of at least two of the undertakings concerned is more than EUR 15 million.

4.2 How do the competition authorities in your jurisdiction determine the 'relevant market' for the purposes of mergers and acquisitions?

The "relevant market" comprises all the goods and services which can be regarded as substitutable.

They are determined by analysing the relevant product market and the relevant geographic market. As regards the relevant product market, both supply and demand will be taken into account, which implies looking closely at the goods or services provided by competitors.

The French Authority defines the relevant market by reference to European case law, as the Minister of Economy did in a decision of 27 April 2000 concerning the merger between Air France and Brit Air.

The European Commission later defined several relevant markets between airline competitors in a decision of 27 February 2013 concerning the merger of Ryanair and Aer Lingus. Here, relevant markets included routes, types of flights, types of passengers and types of services. The European Commission considers that Origin and Destination are not substitutable by one another, but that two airports serving the same city can be. The substitutability between direct and non-direct flights depends on the length of the flight. Different categories of passengers can constitute different relevant markets. The market packaging of the flight also has an influence on the definition of the relevant market because of the different services that can be linked to the flight.

4.3 Does your jurisdiction have a notification system whereby parties to an agreement can obtain regulatory clearance/anti-trust immunity from regulatory agencies?

4.3.1 In French law

Yes. The parties to a concentration have to notify the project to the Authority in charge of competition (*Autorité de la Concurrence*), with commitments which aim to make the concentration compatible with the market. Under Article L430-5 II of the French Code of Commerce, the Authority can then authorise the concentration, provided that the undertakings comply with their commitments.

Parties to an anticompetitive agreement may also obtain regulatory clearance. Under Article L420-4 of the French Code of Commerce, they must prove that said agreement contributes to promoting economic progress, while allowing consumers

a fair share of the resulting benefit, and does not provide the parties with the possibility of eliminating competition in respect of a substantial part of the products in question.

4.3.2 In European Union law

Similar provisions apply in European Union law when the European Commission has jurisdiction (see question 4.1): the agreement must be notified to the relevant European authority.

Under Articles 6 and 8 of Regulation (EC) 139/2004, if the European Commission finds that the concentration raises serious doubts as to its compatibility with the common market, undertakings can offer commitments to make the concentration compatible with the common market. The European Commission will authorise it if it finds that the concentration, following the commitments, no longer raises serious doubts.

By a decision of 14 July 2010, the European Commission authorised an alliance between British Airways, American Airlines and Iberia which was first seen as incompatible with the common market. But the undertakings committed to make landing and take-off slots available at London Heathrow, which were considered essential to facilitate the entry or expansion of competitors on routes between London and several airports. It was an important step because slots are seen as market barriers.

Regarding incompatible agreements with the market, under Regulation (EC) 487/2009, the European Commission may, by Regulation, declare that Article 101§3 of the TFEU shall not apply to certain categories of agreements and concerted practices in the air transport sector.

4.4 How does your jurisdiction approach mergers, acquisition mergers and full-function joint ventures?

In general, there is no control of foreign ownership. However, airlines' ownership and control are subject to Regulation (EC) 1008/2008 as detailed at question 1.2.

Jurisdiction is distributed between French and European authorities depending on the combined aggregate turnover of all the undertakings (see question 4.1).

Under Articles L430-1 and subsequent of the French Code of Commerce, concentrations shall be notified and cannot be implemented before they are authorised (see question 4.5 for further details).

Under French law, joint ventures can only be considered concentrations if they would be performing on a lasting basis all the functions of an autonomous economic entity (Article L430-1 II of the French Code of Commerce).

4.5 Please provide details of the procedure, including time frames for clearance and any costs of notifications.

4.5.1 In French law

Concentrations shall be notified to the French Competition Authority prior to their implementation. The Authority must then respond within 25 working days.

It can then find that the agreement does not fall within the scope of Articles L430-1 and L430-2 of the French Code of Commerce. It can also authorise the agreement or order a further in-depth examination.

Within five working days after being informed of the Authority's decision, the Minister of Economy can call for a further in-depth examination of the agreement according to Article L430-7-1 of the French Code of Commerce. In the absence of such a call, the agreement will be deemed authorised by the Authority.

4.5.2 In European Union law

Concentrations in the scope of the European Regulation (EC) 139/2004 (see question 4.1) must be notified to the European Commission prior to their implementation.

Proceedings before the European Commission are set out in Articles 4 *et seq.* of Regulation (EC) 139/2004. Its decision shall be made within 25 working days starting from the receipt of the reasoned submission by the Commission.

It can then find that the agreement does not fall within the scope of the Regulation. It can also decide not to oppose the concentration or declare the concentration incompatible with the common market.

4.6 Are there any sector-specific rules which govern the aviation sector in relation to financial support for air operators and airports, including (without limitation) state aid?

This is a European Union law matter. Under Articles 107 to 109 of the TFEU, State aid that distorts or could distort competition is basically incompatible with the common market, although some aid might be exempted in consideration of its purpose.

Under Article 107 of the TFEU, the European Commission has set guidelines regarding State aid in the aviation sector (2014/C 99/03 of 4 April 2014). Those guidelines concern the financing of airports and start-up aid for airlines.

The airport financing guidelines aim to allow an airport under public ownership to behave as a private firm. Consequently, a reduction in airport fees is free of aid if the airport is guided by long-term profitability. In France, there are many examples of small airports conceding reductions in fees to Ryanair, which have allowed them to develop significantly.

Start-up aid for airlines has the main objective of maintaining certain routes (see question 4.7).

In France, there are no sector-specific provisions that regulate direct or indirect financial support to companies or airports.

Due to the COVID-19 crisis, the European Commission published a Working Paper on the interpretation of State aid and public service obligations in the aviation sector which extends the interpretation of the existing legal framework. Therefore, Member States could support airlines, but they should not create discrimination of competition during and after the crisis.

4.7 Are state subsidies available in respect of particular routes? What criteria apply to obtaining these subsidies?

French law has not made available any specific national aid for airlines since 2005. Assistance must be sought at a European level.

Article 86 of the EC Treaty rules that State aid in the form of public service compensation may be granted to undertakings entrusted with the operation of services of general economic interest. Within this Article, Regulation (EEC) 2408/92 (repealed by Regulation (EC) 1008/2008) and a Decision from the European Commission of 28 November 2005 set the rules to be applied by Member States to provide public service compensation to airlines. The main goal of the regulation is to maintain routes considered vital for the economic development of certain regions.

4.8 What are the main regulatory instruments governing the acquisition, retention and use of passenger data, and what rights do passengers have in respect of their data which is held by airlines and airports?

As of 25 May 2018, the principal data protection legislation in

the EU, and thus in France, is Regulation (EU) 2016/679 (the General Data Protection Regulation or “GDPR”). The French Data Protection Act n°78-17 of 6 January 1978, in its latest version, also governs the protection of personal data.

Under the GDPR, passengers’ rights are as follows:

- Right of access to data/copies of data.
- Right to rectification of errors.
- Right to deletion/right to be forgotten.
- Right to object to processing.
- Right to restrict processing.
- Right to data portability.
- Right to withdraw consent.
- Right to object to marketing.
- Right to complain to the relevant data protection authority(ies).

GDPR issues are overviewed by the French Supervisory Authority *Commission Nationale de l’Informatique et des Libertés* (CNIL).

4.9 In the event of a data loss by a carrier, what obligations are there on the airline which has lost the data and are there any applicable sanctions?

The data controller must notify a personal data breach without undue delay (and in any case within 72 hours after first becoming aware of the breach) to the relevant Supervisory Authority unless the breach is unlikely to result in a risk to the rights and freedoms of the data subject(s). A data processor must notify any data breach to the controller without undue delay.

The notification must include the nature of the personal data breach, including the categories and number of data subjects concerned, the name and contact details of the Data Protection Officer (DPO) or relevant point of contact, the likely consequences of the breach and the measures taken to address the breach, including attempts to mitigate possible adverse effects.

4.10 What are the mechanisms available for the protection of intellectual property (e.g. trademarks) and other assets and data of a proprietary nature?

In French law, there are no specific provisions relating to intellectual property rights in relation to aircraft. All available mechanisms are provided for by the French Code of Intellectual Property.

As regards jurisdiction, special courts are established to deal with intellectual property issues.

Furthermore, the European Union joined the Cape Town Treaty in 2009. The accession covers those matters in respect of which legal competence has been transferred to the EU from the Member States. Ratification is therefore required by each Member State in order for the benefits to be realised. France has yet to ratify the Cape Town Treaty.

4.11 Is there any legislation governing the denial of boarding rights and/or cancelled flights?

Pursuant to regulation (EC) 261/2004, directly applicable in France, passengers may receive up to EUR 600 in case of denied boarding and cancellation of flights. In case of a dispute on the application of the Regulation’s provisions, civil State courts will have jurisdiction.

Regarding Regulation (EC) 261/2004, the European Commission proposed the modification of the existing air passenger rights regulations to address the court’s decisions.

The Parliament adopted its first-reading position on the proposal in February 2014. However, the revised Regulation has not yet come into force: although the Council has made some progress on the file, it has not yet agreed on a general approach for negotiations with the Parliament.

In case of a dispute that is not covered by Regulation (EC) 261/2004, French law applies (no specific regulation).

4.12 What powers do the relevant authorities have in relation to the late arrival and departure of flights?

Regulation (EC) 261/2004 also provides for the rights applicable in case of delay.

According to Article R160-1 of the French Code of Civil Aviation, the French *Commission administrative de l'aviation civile* may impose a penalty of up to EUR 7,500 for non-compliance with Regulation (EC) 261/2004 (including late arrival of flights).

In order to contest such a penalty, an action may be brought before the Administrative Court (Article R160-14 of the French Code of Civil Aviation).

4.13 Are the airport authorities governed by particular legislation? If so, what obligations, broadly speaking, are imposed on the airport authorities?

Airports, and consequently airport authorities, are governed by the French Code of Transport, Section 6, Book III, which determines the legal status applicable to airports, safety rules and noise regulations.

In addition, airports are governed by European Regulations, such as (EU) 2018/1139 on common rules in the field of civil aviation and establishing a European Union Aviation Safety Agency, and (EU) 139/2014, which deals with airport certification.

4.14 To what extent does general consumer protection legislation apply to the relationship between the airport operator and the passenger?

Most of the disputes that arise between airports and passengers relate to bodily injury. In case of such disputes, administrative liability applies.

The general consumer protection legislation in France mainly stems from EU legislation and focuses on safety, the protection of financial interests and the duty of information. Most of these general regulations deal with the consumer's protection within the context of sale or use of goods, and are therefore not relevant to the relationship between the airport operator and its passengers.

However, the general consumer protection legislation applies to the relationship between the airport operator and passengers using airport parking.

4.15 What global distribution suppliers (GDSs) operate in your jurisdiction?

Amadeus, Sabre and Galileo are the most common GDSs used in France.

4.16 Are there any ownership requirements pertaining to GDSs operating in your jurisdiction?

No, there are not.

4.17 Is vertical integration permitted between air operators and airports (and, if so, under what conditions)?

There are no legal impediments to vertical integration between air operators and airports.

4.18 Are there any nationality requirements for entities applying for an Air Operator's Certificate in your jurisdiction or operators of aircraft generally into and out of your jurisdiction?

There are no such nationality requirements, except that the holder of a French AOC can only operate aircraft registered in France (there are exemptions).

5 In Future

5.1 In your opinion, which pending legislative or regulatory changes (if any), or potential developments affecting the aviation industry more generally in your jurisdiction, are likely to feature or be worthy of attention in the next two years or so?

Aviation remains a hot topic and one that is likely to keep on evolving. While activity in the aviation industry appear to have gone back to pre-COVID standards, the pandemic challenged the industry and pointed out elements that would need to be addressed.

One example is the slot market and allocation system, including questions relating to the exchange of slots for money. Slot management also needs to take into account environmental constraint, overview by appropriate authorities and public pressure.

Another example relates to environmental issues, which requires the aviation industry's cooperation at all levels, from operators to manufacturers. For instance, in 2023, a draft bill was presented to the French Parliament aiming at prohibiting private jet flights. The draft bill requested the creation of two articles of the French Code of Transport that would be applicable to non-commercial non-scheduled flights and to commercial non-scheduled flights. While the Parliament rejected the request for a ban of private flights and chartered flights on private jets, there is little doubt to the fact that the aviation industry, either commercial or business aviation, will face the challenges of complying with growing environmental needs.

Environmental needs also spark interest for the development of Urban Air Mobility, which evolves in line with sky management challenges. As interest for VTOLs keeps on rising, it will need to be supported by regulation for safety and sustainability, most likely at the European level. UAM-related challenges will need to be addressed and confirmed very shortly as France will be hosting the 2024 Olympic Games.

Finally, Sustainable Aviation Fuels (SAF) will increasingly become an important topic as SAF's development and use will need to be considered in a legal framework which is yet to be elaborated.



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He has significant experience in product liability matters and his strong dispute resolution background includes multi-jurisdictional litigation as well as international arbitration.

Grégory regularly advises airlines on regulatory and consumer protection matters including the setting up of their business in France, slots and also regarding their relationship with various authorities.

Grégory speaks at various conferences such as the Beaumont Conference and regularly lectures in Aviation Law. Before joining Clyde & Co he was a lecturer and researcher in Public International Law at the University of Paris 1 Panthéon-Sorbonne and a tutor in public law, international economic law and international investment law. Gregory has a Master (DEA) in Public Law from the University of Paris 1 Panthéon-Sorbonne and was admitted to the Paris bar in 2011.

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The Clyde & Co Paris aviation department is currently the largest aviation legal practice in France. Our experience spans more than 35 years, acting for a number of airlines including, *inter alia*, Air France and the various airlines in its group.

We are specialists in aviation law and our expertise covers important disputes arising from major aircraft accidents as well as aircraft financing, purchase, charter and lease agreements, litigation and arbitration for airline companies and their insurers. We advise on all aspects of aviation law, including aeronautical activities, disputes relating to freight, ground handling, product liability, sports and leisure aviation, regulations and airline insurance law.

Our team regularly attends court hearings, whether representing clients in passengers' rights matters or in major accident cases.

Our Paris team is ranked Band 1 for Transportation: Aviation in the *The Legal 500 EMEA*. *Best Lawyers in France* also ranked Grégory Laville de la Plaigne among the best practitioners in the aviation practice.

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1 General

1.1 Please list and briefly describe the principal legislation and regulatory bodies which apply to and/or regulate aviation in your jurisdiction.

In Germany, aviation law is mainly governed by international treaties and European law.

Germany is a party to the main following multilateral agreements relating to international carriage:

- Convention on International Civil Aviation (Chicago) – 8 June 1956.
- International Air Services Transit Agreement (Chicago) – 8 June 1956.
- Convention on the international recognition of rights in aircraft (Geneva) – 5 October 1959.
- Convention for the unification of certain rules relating to international carriage by air (Warsaw) – 29 December 1933.
- Protocol to amend the Warsaw Convention (The Hague) – 1 August 1963.
- Convention, supplementary to the Warsaw Convention, for the unification of certain rules relating to international carriage by air performed by a person other than the contracting carrier (Guadalajara) – 31 May 1964.
- Convention for the unification of certain rules relating to international carriage by air (Montreal) – 28 June 2004.
- Convention on offences and certain other acts committed on board aircraft (Tokyo) – 16 March 1970.

Furthermore, the European Regulations on aviation law apply in Germany.

Where international treaties and regulations are not applicable, German national law applies, especially the German Air Traffic Act (*Luftverkehrsgesetz* – *LuftVG*), the Air Traffic Regulation (*Luftverkehrs-Ordnung* – *LuftVO*) and the Aviation Security Act (*Luftsicherheitsgesetz* – *LuftSiG*).

The German Civil Aviation Authority (*Luftfahrt-Bundesamt* – *LBA*) in Braunschweig is the main government body regulating the aviation industry. It is responsible for granting certificates of airworthiness and operating licences. It is the competent authority for aircraft registrations and entry permissions. It furthermore deals with environmental issues, aviation safety and security as well as aviation personnel. The LBA is also the main supervisory body in the aviation industry and, as such, the National Enforcement Body regarding various European Regulations.

1.2 What are the steps which air carriers need to take in order to obtain an operating licence?

As Germany is a Member State of the EU, Regulation (EC) No. 1008/2008 applies and licensed activities are governed by this Regulation.

According to Article 3 para. 1 of Regulation (EC) No. 1008/2008, “no undertaking established in the Community shall be permitted to carry by air passengers, mail and/or cargo for remuneration and/or hire unless it has been granted the appropriate operating licence”.

Under Article 15 of Regulation (EC) No. 1008/2008, air carriers from European Economic Area (EEA) Member States are entitled to operate flights within the Community; a special application or notification is not required. This also applies to air carriers from Switzerland.

Regulation (EC) No. 1008/2008 does not apply to the following undertakings:

- foreign carriers based outside the EEA; and
- carriers based in Germany that operate round-trips or carry passengers or cargo by hot-air balloon.

In respect of scheduled air traffic, air carriers from non-EEA Member States have to obtain an operating licence from the LBA prior to commencing scheduled air services from and to Germany.

In respect of non-scheduled air traffic, an entry permission must be requested for commercial flights of non-EEA air carriers to and from Germany. The permission for entry will only be granted if the state registry of the air carrier submitting the application grants entry to German air carriers in the same way (reciprocity clause).

1.3 What are the principal pieces of legislation in your jurisdiction which govern air safety, and who administers air safety?

In Germany, safety issues are largely governed by EU Regulations, especially Regulation (EC) No. 216/2008.

The national rules governing air traffic safety are primarily the LuftVO, the Regulation for the Operation of Aircraft (*Betriebsordnung für Luftfahrtgerät* – *LuftBO*) and the Regulation on the Examination of Aircraft (*Verordnung zur Prüfung von Luftfahrtgerät* – *LuftGerPV*). The German provisions apply in cases where the EU Regulations are not applicable.

In Germany, the European Aviation Safety Agency (EASA) based in Cologne, Germany, the LBA based in Braunschweig and the Federal Agency for Aircraft Accident Investigation (*Bundesstelle für Flugunfalluntersuchung* – *BFU*) based in Braunschweig are the competent authorities for air safety. Air traffic control (ATC) is administered by the Deutsche Flugsicherung GmbH (DFS) based in Langen.

1.4 Is air safety regulated separately for commercial, cargo and private carriers?

In Germany, an individual framework of regulations on air safety for commercial, cargo and private carriers does not exist.

1.5 Are air charters regulated separately for commercial, cargo and private carriers?

Non-EEA charter carriers must apply for entry permission if they wish to fly to Germany. The permit can be obtained for a single flight or for several flights. The permit is only granted if the home country of the charter carrier grants entry permissions to German charter carriers in the same way (reciprocity principle).

1.6 As regards international air carriers operating in your jurisdiction, are there any particular limitations to be aware of, in particular when compared with 'domestic' or local operators? By way of example only, restrictions and taxes which apply to international but not domestic carriers.

Under Article 3 of the LuftVG, an aircraft can only be registered in the German Aircraft Register if it is exclusively owned by EU nationals or German nationals. In the case of ownership by German-registered entities, the main part of the capital and the actual control thereof must be owned by EU or German nationals, and the majority of representatives or personally liable shareholders must be EU or German nationals.

Under the German Air Traffic Tax Act (*Luftverkehrssteuergesetz – LuftVStG*), carriers whose registered place of business is not in Germany or in the EU must determine a German-based tax representative. The LuftVG requires air carriers to pay a tax for each passenger departing from Germany on their flights; the tax amount is calculated on the basis of the distance flown. The tax representative to be designated by non-EU air carriers is the intermediary between the tax authorities and the air carrier, and bears the same obligations as the air carrier himself. The tax representative is also the tax debtor next to the air carrier. For German or EU air carriers, such tax representative need not be appointed.

1.7 Are airports state or privately owned?

In Germany, airports can be either state owned, privately owned or partly state and partly privately owned.

German airports are mainly state owned by way of operating companies organised under private law.

1.8 Do the airports impose requirements on carriers flying to and from the airports in your jurisdiction?

The airports impose airport charges on the air carriers flying to and from the relevant airport. The charges are levied in accordance with the applicable Airport Charges Regulation issued by each airport. Such Regulation requires prior approval by the supervisory authority.

1.9 What legislative and/or regulatory regime applies to air accidents? For example, are there any particular rules, regulations, systems and procedures in place which need to be adhered to?

Under German law, accidents of civil aircraft must be reported

immediately to the German authority for the investigation of accidents and disruptions, the BFU, by the pilot, a crew member or the owner of the aircraft.

Incidents that endanger or could endanger an aircraft, its passengers or third persons must be reported to the LBA.

A danger to air traffic must be immediately reported by the pilot to the competent ATC.

Under German law, accident investigation and reporting is governed by the Law on the Investigation of Accidents and Disruptions in the Operation of Civil Aircraft (*Gesetz über die Untersuchung von Unfällen und Störungen bei dem Betrieb ziviler Luftfahrzeuge – FIUUG*), which is the transposition of Directive 94/56/EC into German law.

The FIUUG applies to accidents and disruptions that occur in the Federal Republic of Germany and applies to:

- accidents in which:
 - a person suffers a fatal or severe injury on board or in connection with an aircraft;
 - an aircraft has suffered damage because of which the aircraft's performance, its structural strength or flight characteristics are impaired and the repair involves considerable efforts or a replacement of the damaged part;
 - disruptions that impair or could impair the safe operation of a flight; or
 - fatal and severe injuries.

The BFU establishes a report on every investigation in which, *inter alia*, the details of the accident or disruption, the aircraft concerned, the external circumstances, the results of the investigations and the discovery of the (potential) cause of the accident or disruption are indicated. When establishing the report, the BFU may hear the operator of the aircraft, the manufacturer, the crew, representatives of foreign states, ATC and the German Meteorological Service. The BFU may also request assistance, information, documents and equipment from other states for conducting the investigation.

The aim of the BFU is to determine the cause of an accident but they do not establish liability.

1.10 Have there been any recent cases of note or other notable developments in your jurisdiction involving air operators and/or airports?

An airline had asked a German court to temporarily suspend a pending court case due to the COVID-19 pandemic. The airline argued that it was cut off from corresponding with the court due to the COVID-19 pandemic and that it could, therefore, not continue the proceedings. The Local Court in Hamburg rejected this request with the argument that, in order to suspend proceedings due to cut-off communication according to Article 247 of the German Civil Procedure Code, the party must be cut off from communication with the court by order of the authorities, by war or by other circumstances. The court took the view that such a situation is not given with the COVID-19 pandemic as the airline is still able to correspond with the court. In addition, it is not impossible to send a representative to a court hearing.

1.11 Are there any specifically environment-related obligations or risks for aircraft owners, airlines, financiers, or airports in your jurisdiction, and to what extent is your jurisdiction a participant in (a) the EU Emissions Trading System (EU ETS) or a national equivalent, and (b) ICAO's Carbon Offsetting and Reduction Scheme for International Aviation (CORSIA)?

Germany participates in the EU Emissions Trading Scheme (EU

ETS) as well as in ICAO's Carbon Offsetting and Reduction Scheme for International Aviation (CORSIA).

2 Aircraft Trading, Finance and Leasing

2.1 Does registration of ownership in the aircraft register constitute proof of ownership?

The aim of registering an aircraft in the German Aircraft Register is so that the aircraft is authorised to operate in Germany.

However, registration in the Aircraft Register does not establish ownership over the aircraft. Therefore, incorrect registration does not create a legal presumption of ownership for a person registered incorrectly.

2.2 Is there a register of aircraft mortgages and charges? Broadly speaking, what are the rules around the operation of this register?

In Germany, aircraft mortgages can be registered in the Aircraft Mortgage Register (*Register für Pfandrechte an Luftfahrzeugen*) at the Local Court in Braunschweig.

An application for registration of an aircraft mortgage can only be filed once the aircraft is registered on the Aircraft Register. The application for registration of an aircraft mortgage must:

- indicate the Aircraft Register number for the relevant aircraft; and
- be drafted and filed by a German notary by way of notarial deed in the German language.

The notarial deed must be filed with the Local Court in Braunschweig and include the following documents and information:

- The application for registration of the mortgage, which indicates the mortgage amount and the interest specifications.
- General information on the aircraft, including:
 - the page number of the Aircraft Register on which the aircraft is registered;
 - the nationality and registry mark of the aircraft;
 - the aircraft type;
 - the serial number of the airframe; and
 - the name and place of residence of the aircraft owner.
- An affidavit confirming that the mortgagor is the sole owner of the aircraft and that the aircraft is not mortgaged to another person or entity.
- An affidavit confirming the value of the aircraft.
- Confirmation that the mortgagor owes the secured obligations to the mortgagee.
- A declaration subjecting the aircraft to immediate enforcement proceedings in the case of default under the mortgage, which includes enforcement measures against the mortgagor.
- Confirmation that the mortgagee can obtain an enforceable copy of the notarial deed.
- Confirmation that the mortgagor must bear the costs of the notarial deed and of registration of the mortgage in the Aircraft Mortgage Register.

On receipt of the application, the Local Court of Braunschweig will request payment of the registration fees. The amount of these fees is based on the value of the mortgage, and is calculated in accordance with the provisions of the German Court Fee Act (*Gerichtskostengesetz*).

The aircraft mortgage is registered once the payment of the registration fees is made and once the Court has reviewed and

approved the required documents. Registration of an aircraft mortgage takes about two to three days from receipt of payment by the Court.

There is no separate mortgage register for aircraft engines and spare parts in Germany. An aircraft mortgage can only be registered over the whole aircraft. Spare parts or engines attached to the aircraft are not identified separately in the Aircraft Mortgage Register. The engines and spare parts are considered parts of the aircraft. A registered aircraft mortgage will also cover spare parts and engines if both:

- the aircraft owner is also the owner of the spare parts and engines; and
- the engines and spare parts are attached to the aircraft.

The parties can agree that an aircraft mortgage extends to engines and spare parts that are located elsewhere and are not attached to the aircraft. However, it is not possible to grant a mortgage solely over the engines and/or spare parts.

To perfect an aircraft mortgage, the mortgage must be registered in the German Aircraft Mortgage Register. A registered aircraft mortgage takes priority over any subsequently registered mortgage. The buyer of an aircraft will become the owner subject to any previously registered mortgage (and free of any mortgage that was not registered at the time of the purchase).

2.3 Are there any particular regulatory requirements which a lessor or a financier needs to be aware of as regards aircraft operation?

There is no specific register for aircraft leases in Germany.

An aircraft lease is not in itself registered in the Aircraft Register. However, if both the owner and the operator (that is, the lessee) of the aircraft are registered when the aircraft is registered, it is implied that the aircraft is a leased aircraft.

An aircraft lease must be approved by the LBA. The application form must be filed with the LBA at least four weeks before the intended start of the lease. The following documents and information must be provided to the LBA with the application form:

- Aircraft type.
- Aircraft registration number.
- Aircraft serial number.
- Name and address of the operator and the owner.
- Copy of the certificate of airworthiness.
- Copy of the lease agreement or description of the lease agreement, including the financial agreements.
- A declaration signed by the lessee that the parties are aware of their responsibilities.
- Proof that the foreign air carrier (if any) has a valid operating permit and a valid air operator certificate (AOC), and that the aircraft subject to the lease is listed in the AOC of the foreign air carrier (in the case of a wet lease).
- Proof that the aircraft is insured against damages covered by the statutory liability of German air carriers.

2.4 As a matter of local law, is there any concept of title annexation, whereby ownership or security interests in a single engine are at risk of automatic transfer or other prejudice when installed 'on-wing' on an aircraft owned by another party? If so, what are the conditions to such title annexation and can owners and financiers of engines take pre-emptive steps to mitigate the risks?

Under German law, spare parts cannot individually be subject to an aircraft mortgage. A mortgage can only be registered over

the whole aircraft. Spare parts or engines are not identified separately in the Aircraft Mortgage Register.

Spare parts are considered as parts of the aircraft. A registered aircraft mortgage also covers spare parts if both:

- the owner of the aircraft is also the owner of the spare parts; and
- the spare parts are affixed to the aircraft.

If the spare parts are not affixed to the aircraft but are located in a different place, the parties can agree that the aircraft mortgage also covers these spare parts. The extension of the mortgage over these spare parts must also be registered in the Aircraft Mortgage Register.

However, it is not possible to register a mortgage solely over spare parts in the Aircraft Mortgage Register.

The following other forms of security can be taken over spare parts under German law:

- Retention of title (*Article 449, German Civil Code (Bürgerliches Gesetzbuch – BGB)*).
- Chattel mortgage (*Articles 929 and 930, BGB*).
- Lien (*Articles 1204 et seq., BGB*).

These forms of security are not registered in any official register, but are solely based on the agreement between the grantor of the security and the secured party.

2.5 What (if any) are the tax implications in your jurisdiction for aircraft trading as regards a) value-added tax (VAT) and/or goods and services tax (GST), and b) documentary taxes such as stamp duty; and (to the extent applicable) do exemptions exist as regards non-domestic purchasers and sellers of aircraft and/or particular aircraft types or operations?

The import of an aircraft into Germany is exempt from VAT if the aircraft is to be used by a company that predominantly undertakes international air carriage (*Articles 4 and 8, para. 2, no. 1, German Value Added Tax Act (Umsatzsteuergesetz – UStG)*). The German Federal Ministry of Finance has published a list of the companies that mainly operate international air carriage.

If the conditions for VAT exemption are not met, import VAT may be payable at a rate of 19%. However, pre-tax allowances may apply.

2.6 Is your jurisdiction a signatory to the main international Conventions (Montreal, Geneva and Cape Town)?

Germany is a party to the main following multilateral agreements relating to international carriage:

- Convention on International Civil Aviation (Chicago) – 8 June 1956.
- International Air Services Transit Agreement (Chicago) – 8 June 1956.
- Convention on the international recognition of rights in aircraft (Geneva) – 5 October 1959.
- Convention for the unification of certain rules relating to international carriage by air (Warsaw) – 29 December 1933.
- Protocol to amend the Warsaw Convention (The Hague) – 1 August 1963.
- Convention, supplementary to the Warsaw Convention, for the unification of certain rules relating to international carriage by air performed by a person other than the contracting carrier (Guadalajara) – 31 May 1964.
- Convention for the unification of certain rules relating to international carriage by air (Montreal) – 28 June 2004.

- Convention on offences and certain other acts committed on board aircraft (Tokyo) – 16 March 1970.

Germany signed the Cape Town Convention on 17 September 2002 but has not ratified it. Germany has no current plans to ratify the Cape Town Convention.

2.7 How are the Conventions applied in your jurisdiction?

The International Conventions are ratified and thereby implemented into directly applicable national and EU law.

2.8 Does your jurisdiction make use of any taxation benefits which enhance aircraft trading and leasing (either in-bound or out-bound leasing), for example access to an extensive network of Double Tax Treaties or similar, or favourable tax treatment on the disposal of aircraft?

Germany has transposed the Sixth Directive 77/388, as amended by Directive 92/111, into national law.

The European Court of Justice ruled, on 19 July 2012, that: “Article 15(6) of Directive 77/388, as amended by Directive 92/111, must be interpreted as meaning that the exemption for which it provides also applies to the supply of an aircraft to an operator who is not itself an ‘airline operating for reward chiefly on international routes’ within the meaning of that provision but which acquires that aircraft for the purposes of exclusive use thereof by such an undertaking.”

2.9 To what extent is there a risk from the perspective of an owner or financier that a lessee of aircraft or other aviation assets in your jurisdiction may acquire an economic interest in the aircraft merely by payment of rent and thereby potentially frustrate any rights to possession or legal ownership or security?

The answer to that question mainly depends on the wording of the leasing contract. From a legal perspective, if nothing different is ruled in the leasing contract, the lessee cannot acquire an economic interest in the aircraft just by payment of the rent to the effect that legal ownership or security would be at risk.

3 Litigation and Dispute Resolution

3.1 What rights of detention are available in relation to aircraft and unpaid debts?

First, the creditor must obtain an enforceable title in respect of the outstanding debts by filing legal proceedings before a civil court.

If the aircraft in question is registered in the German Aircraft Register, the creditor can file an application with the Local Court in Braunschweig (where the Mortgage Register is kept) for the entry of a registered mortgage on the aircraft. With the mortgage, the creditor can force the aircraft owner (in rather formal proceedings) that the aircraft is sold in a public auction. If the aircraft is not registered in the Aircraft Register (e.g. because it is a foreign aircraft), the title in respect of the outstanding debts can be enforced by instructing a bailiff with the seizure of the aircraft.

As a further measure, the creditor can apply for an arrest of the aircraft until the enforcement proceedings actually start.

3.2 Is there a regime of self-help available to a lessor or a financier of an aircraft if it needs to reacquire possession of the aircraft or enforce any of its rights under the lease/finance agreement?

Self-help remedies are not recognised in Germany, including in the event of default. The lessor or financier must abide by the remedies and procedures provided by German laws to reacquire possession of the aircraft.

3.3 Which courts are appropriate for aviation disputes? Does this depend on the value of the dispute? For example, is there a distinction in your jurisdiction regarding the courts in which civil and criminal cases are brought?

In Germany, special courts for aviation disputes do not exist.

Civil claims must be brought before the German civil courts, and administrative or criminal claims must be brought before the German administrative/criminal courts.

Concerning civil court cases, the Local Courts handle cases with a dispute value of up to €5,000. Cases with a dispute value of more than €5,000 as well as appeals are heard before the Regional Courts. An appeal against a judgment is not possible if the dispute value is €600 or less.

3.4 What service requirements apply for the service of court proceedings, and do these differ for domestic airlines/parties and non-domestic airlines/parties?

In principle, the court documents shall be delivered to the Plaintiff or, if known to the court, to the person or entity authorised to accept service on behalf of the Plaintiff. There are no distinctions between foreign and domestic parties.

When service on foreign parties must be effected abroad, the procedure of service depends on whether service is made in an EU or a non-EU country. Service in EU countries can be made via a registered letter, whereas service in non-EU countries must be effected in compliance with the relevant bilateral agreements between the sending and the receiving state. Service to certain non-EU countries has to be effected via formal diplomatic channels.

The court and the LBA can ask the airlines from non-EU Member States to determine a person or entity in Germany who is authorised to accept service on the airline's behalf. The relevant correspondence will then be sent to this designated entity.

When service on foreign parties is effected abroad, the courts often arrange for a translation of the court documents.

The losing party must bear the costs for the translation and also the service costs.

3.5 What types of remedy are available from the courts or arbitral tribunals in your jurisdiction, both on i) an interim basis, and ii) a final basis?

Concerning passenger claims, on 1 November 2013, the conciliation instrument of alternative dispute resolution (ADR) came into force in Germany to avoid court proceedings in the case of delays, cancellations and denied boarding as well as baggage claims. A framework for voluntary conciliation has been created, so that passengers can make use of this if an airline does not satisfy their claims within two months. Claims of up to €5,000 are dealt with by the conciliation institutions.

There are private law ADR bodies that have been certified by the German authorities and which airlines can join. If an airline has not joined such ADR body, the passenger can turn to the ADR authority within the German Ministry of Justice. The conciliation proceedings are free of charge for the passenger.

The LBA is the National Enforcement Body regarding Regulation (EC) No. 261/2004 and regarding Regulation (EC) No. 1107/2006. It handles passenger complaints free of charge for the passenger. However, the LBA does not have the power to order an airline to pay compensation or to undertake certain measures towards the passenger, but only to impose a fine on an airline for not paying compensation or for not providing certain assistance.

The most common and important remedy is the filing of a lawsuit with the competent courts to pursue one's rights. Representation by a lawyer is not mandatory for claims not exceeding €5,000.

Concerning civil court cases, the Local Courts (*Amtsgericht*) handle cases with a dispute value of up to €5,000. Cases with a dispute value of more than €5,000 as well as appeal cases coming from the Local Courts are heard before the Regional Courts (*Landgericht*). If the Regional Court is the competent court in the first instance (dispute value exceeding €5,000), the Higher Regional Court (*Oberlandesgericht*) is the competent appeal court. An appeal against a judgment is not possible if the dispute value is €600 or less, unless the Regional Court explicitly grants an appeal if the case is of major importance or if an appeal is considered to be necessary for the development of the law.

In certain cases, the appeal court can admit a further appeal (Revision) to the Federal Court of Justice (*Bundesgerichtshof – BGH*). This is only possible if the appeal court considers the case to be of major importance or if a further appeal is considered to be necessary for the development of the law.

3.6 Are there any rights of appeal to the courts from the decision of a court or arbitral tribunal and, if so, in what circumstances do these rights arise?

If the first instance court is a Local Court, an appeal is possible if the dispute value exceeds €600. In such a case, an appeal can be filed with the Regional Court.

If the first instance court is a Regional Court, the competent appeal court is the Higher Regional Court.

In special cases, a further appeal is admitted, which is dealt with by the Federal Court of Justice, being the highest German civil court.

3.7 What rights exist generally in law in relation to unforeseen events which might enable a party to an agreement to suspend or even terminate contractual obligations (in particular payment) to its contract counterparties due to *force majeure* or frustration or any similar doctrine or concept?

Deferral or payment by instalments

Deferral or payment by instalments must be agreed between the parties to the contract. German law does not provide for payment deferral by law. In commercial contracts, so-called "*force majeure* clauses" are often used. The purpose of such a clause is to create an appropriate distribution of risk for circumstances that are not under the control of either party to the contract. If a *force majeure* event occurs, the fulfilment of contractual obligations is suspended at least temporarily.

Disruption of the contractual basis

Article 313 of the German Civil Code provides for a statutory adaptation of the contract or an extraordinary right of withdrawal if circumstances which have become the basis of the contract have changed so seriously after the conclusion of the contract that the parties would not have concluded the contract or would have concluded it only with different content if they had known of the circumstances already at the point in time of the conclusion of the contract. In practice, this legal provision is usually not used successfully as there is often only a temporary change in the economic situation or the risk of economic deterioration can be attributed to one of the parties to the contract.

Release from performance due to impossibility

According to Article 275.1 of the German Civil Code, the debtor is released from his obligation to perform the contract to the extent that performance is impossible for him (subjectively) or for anyone (objectively). However, this does not apply to monetary debts. Inability to pay does not lead to a release from having to perform the contract. According to the case law of the German Federal Court of Justice, everyone is liable for his financial performance according to the principle of unlimited property liability regardless of fault. All other contractual services, however, fall under Article 275.1 of the German Civil Code. The question of whether the circumstance leads to a case of impossibility depends on the concrete form of the contract and the obligation to perform in the individual case. For example, whether the agreed service can still be provided at a later point in time or whether the purpose of the service can no longer be achieved due to the failure to meet the deadline plays a significant role. If the debtor is released from his obligation to perform, according to Article 326.1 of the German Civil Code, the contractual partner is also not obliged to provide the consideration – e.g. the remuneration for the service or the purchase price.

4 Commercial and Regulatory

4.1 How does your jurisdiction approach and regulate joint ventures between airline competitors?

Joint ventures between airline competitors are subject to merger control if the joint venture is designed as a merger.

If the joint venture is created on the basis of a cooperation agreement, German cartel law can be relevant.

4.2 How do the competition authorities in your jurisdiction determine the 'relevant market' for the purposes of mergers and acquisitions?

Much like European law, under German law, to avoid dominant market positions, the cartel authority can control company growth in respect of the merging of companies. The essential authority with regard to mergers and acquisitions is the Federal Cartel Office (*Bundeskartellamt*).

The relevant legal framework in this regard is the German Act against Restrictions on Competition (*Gesetz gegen Wettbewerbsbeschränkungen*). German cartel law fully applies to aviation-related companies (e.g. airlines).

4.3 Does your jurisdiction have a notification system whereby parties to an agreement can obtain regulatory clearance/anti-trust immunity from regulatory agencies?

According to Article 35 and the following of the Act against Restraints in Competition (*Gesetz gegen Wettbewerbsbeschränkungen*

– *GWB*), parties can obtain regulatory approval for mergers from the *Bundeskartellamt*.

4.4 How does your jurisdiction approach mergers, acquisition mergers and full-function joint ventures?

Article 37 of the *GWB* legally defines a merger as an acquisition of assets, acquisition of joint or sole control, acquisition of shares (50% or at least 25%) or an exercise of competitively significant influence.

4.5 Please provide details of the procedure, including time frames for clearance and any costs of notifications.

Once the *Bundeskartellamt* has received the complete notification, the examination procedure begins. The authority then has one month to assess whether the project needs to be examined more closely or whether it can be approved (so-called “first phase”). The vast majority of the more than 1,000 merger control proceedings per year can be concluded with a clearance in the first phase.

If there are indications of competition problems that cannot be resolved within the preliminary examination procedure, a formal main examination procedure is initiated (so-called “second phase”), which can take a total of four months from the date of notification.

The notification of mergers is subject to charges. The amount of the notification proceeding is determined on the basis of the personnel and material expenditure of the cartel authority under consideration of the economic significance of the concentration. According to Article 80 para. 2 sentence 2 No. 1 of the *GWB*, the fee may not exceed €50,000; in exceptional cases it may be double (Article 80 para. 2 sentence 3 of the *GWB*).

4.6 Are there any sector-specific rules which govern the aviation sector in relation to financial support for air operators and airports, including (without limitation) state aid?

Sector-specific rules do not exist but there are diverse forms of support, e.g. tax relief regarding kerosene and VAT, and also state aid for airlines.

4.7 Are state subsidies available in respect of particular routes? What criteria apply to obtaining these subsidies?

The state subsidies are regulated under the so-called “public service obligations” according to Article 16 and the following of Regulation (EC) No. 1008/2008. The single criteria are determined in the public tender procedure (Articles 16 paras 10 and 17 of Regulation (EC) No. 1008/2008).

4.8 What are the main regulatory instruments governing the acquisition, retention and use of passenger data, and what rights do passengers have in respect of their data which is held by airlines and airports?

The main regulatory instruments governing the acquisition, retention and use of passenger data are the General Data Protection Regulation (Regulation (EU) 2016/679), the German Federal Data Protection Act (*Bundesdatenschutzgesetz* – *BDSG*) and the German Passenger Data Act (*Fluggastdatengesetz*).

The GDPR and the BDSG apply to the protection of personal data of an individual, thus also passenger data. According to Article 6 of the GDPR, personal data may only be collected, saved, used and processed if:

- (a) the data subject has given consent to the processing of his or her personal data for one or more specific purposes;
- (b) processing is necessary for the performance of a contract to which the data subject is party or in order to take steps at the request of the data subject prior to entering into a contract;
- (c) processing is necessary for compliance with a legal obligation to which the controller is subject;
- (d) processing is necessary in order to protect the vital interests of the data subject or of another natural person;
- (e) processing is necessary for the performance of a task carried out in the public interest or in the exercise of official authority vested in the controller; or
- (f) processing is necessary for the purposes of the legitimate interests pursued by the controller or by a third party, except where such interests are overridden by the interests or fundamental rights and freedoms of the data subject which require protection of personal data, in particular where the data subject is a child.

The German Passenger Data Act is the transposition of Directive 2016/681 on the use of passenger name record (PNR) data for the prevention, detection, investigation and prosecution of terrorist offences and serious crime into German law.

This law stipulates that the Federal Criminal Police is the Passenger Information Unit that maintains a Passenger Data Information System and regulates the transmission of passenger data to this unit, the processing and transmission by this unit as well as data protection.

The processing of passenger data is intended to prevent and prosecute terrorist offences and serious crime.

Passenger data are checked by the Passenger Information Unit to determine whether, for example, a person is searched for by the police or if there are indications that police action is necessary to prevent or prosecute terrorist offences or serious crime. If this is the case, the Federal and state security authorities responsible for further measures are informed. If not, the data will remain exclusively with the Passenger Information Unit.

The data that are transmitted to the Passenger Information Unit are the data indicated in the PNR in respect of bookings for flights departing from Germany and landing in another country, or departing from another country and landing in Germany.

After transmission by the air carrier, the passenger data are saved in the Passenger Information System of the Federal Police for five years. Data elements enabling identification are made unrecognisable (depersonalised) six months after their transmission.

4.9 In the event of a data loss by a carrier, what obligations are there on the airline which has lost the data and are there any applicable sanctions?

In the event of a data loss by a carrier, the airline must notify such data loss immediately (without undue delay), and not later than 72 hours after having become aware of it, to the competent supervisory authority, unless the personal data breach is unlikely to result in a risk to the rights and freedoms of natural persons.

The loss of data must also be reported to the data subject concerned.

The sanction for non-compliance with the reporting obligations is a fine of up to €10 million or up to 2% of the annual worldwide turnover of the preceding financial year in case of an enterprise, whichever is greater.

4.10 What are the mechanisms available for the protection of intellectual property (e.g. trademarks) and other assets and data of a proprietary nature?

Intellectual property refers to creations of the mind: inventions; literary and artistic works; and symbols, names and images used in commerce. Intellectual property is divided into two categories: industrial property, which includes patents for inventions, trademarks, industrial designs and geographical indications; and copyright, which covers literary works (such as novels, poems and plays), films, music, artistic works (e.g. drawings, paintings, photographs and sculptures) and architectural designs.

In Germany, intellectual property is protected by industrial property rights against the unauthorised use of such signs, which could mislead consumers, and against misleading practices in general.

The German Patent and Trademark Office (*Deutsches Patent- und Markenamt*) is the administrative body dealing with industrial property rights.

German copyright law protects works of literature, science and art, provided such works are the intellectual creation of the author.

The most important requirement for copyright protection under German law is the creative and individual nature of the work. The level of originality required for protection under the German Copyright Act (*Urheberrechtsgesetz*) is to be determined in accordance with the type of work.

German copyright is not subject to any registration proceeding. In fact, copyright protection arises automatically with mere creation of the work. Thus, neither any registration nor any publication is required.

A breach of an industrial property right can be pursued in court proceedings.

4.11 Is there any legislation governing the denial of boarding rights and/or cancelled flights?

In Germany, passenger rights are mainly governed by EU Regulations, especially Regulation (EC) No. 261/2004 regarding flight cancellations and delays, as well as denied boarding and overbooking. Further, the Montreal Convention applies in respect of passenger rights.

4.12 What powers do the relevant authorities have in relation to the late arrival and departure of flights?

Please see question 3.5 above.

4.13 Are the airport authorities governed by particular legislation? If so, what obligations, broadly speaking, are imposed on the airport authorities?

Airport operators are subject to German and EU legislation and the international agreements signed by Germany.

Under the LuftVG, the construction and operation of an airport is subject to the permission of the relevant authority. Environmental law and construction law requirements have to be taken into account.

Airport coordination is based on EU law. The airports of Berlin (Schönefeld and Tegel), Bremen, Dresden, Düsseldorf, Erfurt, Frankfurt/Main, Hamburg, Hannover, Cologne/Bonn, Leipzig/Halle, Munich, Münster/Osnabrück, Nuremberg, Saarbrücken and Stuttgart are coordinated airports as per Regulation (EC) No. 95/93. The slots are allocated by Airport Coordination Germany (*FHKD*), which is an independent non-profit organisation financed by German airlines and airports.

4.14 To what extent does general consumer protection legislation apply to the relationship between the airport operator and the passenger?

Consumer protection law is a very broad field of law which appears as a cross-sectional subject in a wide variety of areas. Consumer protection regulations can be found in various fields of law and legal codes; there is no independent set of regulations.

The aim of consumer protection law is to protect consumers, who can regularly find themselves in a weaker negotiating and knowledge position than the companies. Consumers should be protected when concluding a contract or making a purchase. That is why transparency and consumer information are very important for the German market.

The consumer protection regulations protect the general interests of consumers with regard to unfair commercial practices, misleading and comparative advertising, price indications and labelling, unfair contract terms, distance selling and doorstep selling, time sharing and package tours and rights of holiday or business travellers.

As a general rule, however, there is no contractual relationship between passengers and airport operators. Passengers normally enter into air carriage contracts with airlines or tour operators. The airlines, in turn, enter into agreements with airport operators for the provision of services to passengers. Therefore, passengers and airport operators do not have a direct contractual relationship and many consumer protection rules are therefore not directly applicable between these parties.

Special transparency is required with regard to airport charges payable by passengers. There are also many general public regulations relating to safety and security in Germany in order to protect customers in airports. As an example, Regulation (EC) No. 1107/2006 concerning the rights of disabled persons and persons with reduced mobility when travelling by air provides that passengers with a disability or reduced mobility must be appropriately assisted by airport operators.

4.15 What global distribution suppliers (GDSs) operate in your jurisdiction?

After several consolidations, there are essentially only three global systems left: Amadeus; Galileo/Travelport; and Sabre.

4.16 Are there any ownership requirements pertaining to GDSs operating in your jurisdiction?

No. In Germany, there are no ownership requirements pertaining to GDSs.

4.17 Is vertical integration permitted between air operators and airports (and, if so, under what conditions)?

Vertical integration is permitted between airport operators and airports, i.e. it would be possible for an air operator to buy shares in an airport. However, potential restrictions could apply under the relevant laws.

4.18 Are there any nationality requirements for entities applying for an Air Operator's Certificate in your jurisdiction or operators of aircraft generally into and out of your jurisdiction?

The general requirements for the application of an AOC are as follows:

- The undertaking's principal place of business must be in the Member State in which the application for an operating licence is made.
- The main activity is the provision of air services, either alone or in conjunction with any other form of commercial operation of aircraft or repair and maintenance of aircraft.
- The air carrier must be owned directly or through majority ownership by Member States and/or nationals of Member States.
- It must at all times be effectively controlled by those States or their nationals.
- Air carriers must have at least one aircraft either as owner or under a dry lease contract.
- The aircraft to be used by an air carrier shall be listed in the relevant national registers or within the Community.
- German approval authorities generally require registration in the German Aircraft Register.

5 In Future

5.1 In your opinion, which pending legislative or regulatory changes (if any), or potential developments affecting the aviation industry more generally in your jurisdiction, are likely to feature or be worthy of attention in the next two years or so?

In Germany, government elections took place in September 2021. During their election campaign, the Green Party claimed that they would prohibit domestic flights. They are of the opinion that these flights are especially harmful to the environment and the atmosphere as they are unnecessary, considering that such rather short distances could be covered by train instead. The Green Party will – which is now clear after the elections – definitely be part of the new German government which has recently been formed. It therefore remains to be seen whether they will uphold their claim and whether they will be able to convince their coalition partners within the government to carry out this prohibition.



Rainer Amann joined Urwantschky Dangel Borst in 2000 and has been a partner since 2006. The firm has specialised in aviation law since 1955. Mr. Amann has extensive experience in German and international aviation law. He mainly acts for airlines, aircraft manufacturers, insurers and reinsurers.

He has considerable expertise in many extra-judicial and litigation matters on passenger, hull, cargo and baggage claims and subrogation claims for airlines and their insurers. He is regularly involved in the negotiation and drafting of air transport agreements and terms and conditions of carriage. He also advises on product liability claims, airports, ground handling, regulatory matters and financing. His clients have the benefit of his links with aviation law experts throughout the world.

Mr. Amann studied at the University of Constance from 1993 to 1998 and worked with the Regional Court in Ulm from 1998 to 2000. He was admitted to the German Bar in 2000.

He was awarded a specialist degree in transportation law from the Bar Association.

Mr. Amann is an active member of the Aviation Insurance Association, the European Air Law Association and the Transportation Lawyers Association.

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Claudia Hess joined Urwantschky Dangel Borst in April 2007. She graduated from the law school of the University of Passau and completed a law and language education in English, French and Chinese law. She completed her legal traineeship at the Higher Regional Court Nuremberg. Moreover, she has studied at Sichuan University in Chengdu, China, and has worked in Beijing for a German-Chinese law firm and a German automobile manufacturer, as well as for the Sichuan-American Chamber of Commerce in Chengdu, China.

Ms. Hess has been a partner in the firm since 2012. She handles cases for airlines and their insurers worldwide related to both German and EU law. She provides advice and assistance out of court and represents her clients in court proceedings and proceedings initiated by administrative bodies.

She deals with cases and queries involving liability and regulatory issues, compliance, commercial and contractual matters, consumer protection claims against airlines, as well as claims related to EU Regulations and international treaties. She drafts and reviews terms and conditions as well as data protection policies, and assists airlines in complying with the requirements of the EU's emissions trading system (ETS).

Ms. Hess is a member of the European Air Law Association (EALA), the International Aviation Women's Association (IAWA) and the French Society of Air and Space Law (SFDAS). Ms. Hess is fluent in German, English, French and Chinese (Mandarin).

She is regularly invited as a speaker and panellist to international air law conferences. She is recommended in various legal publications such as *Who's Who Legal*, *The Legal 500*, etc.

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The law firm Urwantschky Dangel Borst PartmbB acts for clients nationally and internationally and has offices in Neu-Ulm and Ulm.

We are active in specialist fields of law and we attach great importance to the comprehensive and personal support of our clients. We act for our clients both in litigation and out of court. Experience, expertise and commitment are necessary prerequisites with which we successfully counsel and represent our clients.

We have very good professional and personal contacts in other law firms worldwide, as well as with tax advisors, authorities, institutions and experts. In the international field, we are active in commercial law, aviation law and Chinese law. Our clients profit from our comprehensive knowledge, our 50 years' experience in the international legal business, as well as our close cooperation with law firms all over the world.

Since 1955, we have been active in the field of German and international aviation law.

We consult and represent German and foreign air carriers and their insurers and reinsurers in all fields of aviation law and we have acted on almost all major air crash disasters involving Germany and/or German nationals.

Our aviation law team advise on all aspects of national and international aviation liability cases, including legal matters arising out of air crashes, injuries

onboard aircraft, passenger claims, damage and loss of cargo, and damage to aircraft. Moreover, we also deal with regulatory and financing matters and advise on product liability claims and airport and ground handling issues.

We also assist our clients in reviewing and designing contracts. For instance, we are involved in the negotiation and drafting of air transport agreements and General Conditions of Carriage. With regard to the increasing number of EU Regulations and Directives in the aviation field, we assist and consult air carriers in complying with European provisions.

Our experienced and specialist lawyers provide qualified and skilled advice by tailoring our range of services to our clients' needs.

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1 General

1.1 Please list and briefly describe the principal legislation and regulatory bodies which apply to and/or regulate aviation in your jurisdiction.

The Ministry of Civil Aviation (“**MoCA**”) is the nodal Ministry responsible for the formulation of policy and regulation of civil aviation in India. It oversees the planning and implementation of schemes for the growth and expansion of civil air transport, airport facilities, air traffic services and carriage of passengers and goods by air. The principal regulatory authorities functioning under MoCA are:

1. The Directorate General of Civil Aviation (“**DGCA**”) enforces civil aviation regulations and regulates air transport services, air safety and airworthiness standards.
2. The Airports Authority of India (“**AAI**”) creates, upgrades, maintains and manages civil aviation infrastructure both on the ground and in the Indian airspace.
3. The Airport Economic Regulatory Authority (“**AERA**”) determines the tariff for aeronautical services and Passenger Service Fees to monitor performance standards relating to quality, continuity and reliability of service.
4. The Bureau of Civil Aviation Security (“**BCAS**”) ensures that the aviation security standards follow national and international obligations/treaties on air safety, to which India is a signatory.

Based on the activity concerned within the aviation sector, the applicability of regulatory laws may also differ. Some of the principal legislations are as follows:

1. The Aircraft Act, 1934 (“**Aircraft Act**”) and the Aircraft Rules, 1937 (“**Aircraft Rules**”): (i) regulate the manufacture, possession, use, operation, sale, and import and export of aircraft; and (ii) stipulate the parameters for determining air worthiness, maintenance of aircraft, general conditions for flying and safety, registration of aircraft and the conduct of investigations.
2. The Airports Authority of India Act, 1994 (as amended) (“**AAI Act**”): establishes the AAI and makes the AAI responsible for the development, finance, operation and maintenance of all airports in India.
3. The Civil Aviation Requirements (“**CAR**”): as issued by the DGCA provide standards expected to be met before a licence, certificate, approval or permission is granted/accorded. The DGCA also issues Aeronautical Information Circulars (“**AIC**”) which contain explanatory or advisory information concerning flight safety, air navigation, technical, administrative or legislative matters.

4. The Carriage by Air Act, 1972 (as amended) (“**Carriage Act**”): governs the rights and liabilities of air carriers and is applicable to both domestic and international carriage by air, irrespective of the nationality of the aircraft performing the carriage.
5. Airports Economic Regulatory Authority of India Act, 2008 (as amended) (“**AERA Act**”) provides for: (i) the establishment of AERA; (ii) regulates tariff and other charges for services rendered at airports; and (iii) establishes an appellate tribunal for the adjudication of disputes.
6. Aircraft (Security) Rules 2011 (as amended): deals with the air safety and security regulations for aerodromes and aircraft.

1.2 What are the steps which air carriers need to take in order to obtain an operating licence?

Rule 134 of the Aircraft Rules provides that no person shall operate any scheduled air transport service from, to, in, or across India except with the permission of the Central Government, granted in accordance with the provisions of Schedule XI of the Aircraft Rules.

The aforesaid permit is equivalent to an Air Operator’s Certificate that is required to be issued by a Member State of the International Civil Aviation Organization (“**ICAO**”). Besides other requirements, the issuance of a permit shall depend on the applicant demonstrating adequate organisation, method of control and supervision of flight operations, training programme and maintenance arrangements consistent with the nature and extent of the operations specified.

The Air Operators Certification Manual (CAP 3100), issued by the DGCA, provides guidance to an applicant seeking an Air Operator’s Permit (“**AOP**”) on the systematic procedures to be followed during the certification process which has been classified and divided into different phases as follows:

1. **Pre-application phase** – The applicant is required to submit a letter of intent to the DGCA outlining its proposal and apply to the MoCA for issuance of a No-Objection Certificate upon examining its proposal from financial, economic and legal perspectives, which may also include a pre-application meeting. Upon being satisfaction of these aspects, MOCA may issue the No-Objection Certificate.
2. **Formal application** – The applicant is required to submit a complete application in the prescribed form to the DGCA, along with prescribed fees and relevant supporting documents; upon completing the assessment of the applicant’s proposal, the DGCA may invite the applicant for a formal meeting to discuss further details relating to the certification process.

3. **Document evaluation** – The DGCA shall conduct a series of discussions to assess the applicant's capability to conduct aircraft transport operations by verifying the documents submitted by the applicant. The documents should reflect precisely the mode and way the applicant intends to conduct the proposed operations, and, upon approval, they shall form a part of the understanding between the DGCA and the applicant regarding future functioning of the applicant as the operator.
4. **Demonstration and inspection** – The applicant is then required to demonstrate to the DGCA its capability of conducting the proposed operations in accordance with the procedures detailed in the documents reviewed during the previous phase. All information provided by the applicant shall be scrutinised in detail, including inspection of facilities and sufficiency of resources. In the event the DGCA is satisfied with the authenticity of the documents and the inspection process, approved flight(s) will be conducted to destinations of intended operations, as determined by the DGCA. In the event the DGCA requires the applicant to make operational changes, the same shall be carried out by the applicant prior to moving on to the next phase.
5. **Certification** – Upon completion of the procedure stated in the previous phases and the fulfilment of criteria stipulated by the DGCA to the DGCA's satisfaction, an AOP shall be issued by the DGCA along with the associated operations specifications.

Once certified, the operator is responsible for continued compliance with the initial conditions of certification and applicable legislative requirements including DGCA's requirements promulgated from time to time.

1.3 What are the principal pieces of legislation in your jurisdiction which govern air safety, and who administers air safety?

India follows the ICAO guidelines on Safety and Standards and Recommended Practices ("SARPs"). The DGCA regulates the safety requirements to be observed by aircraft, including foreign aircraft operating in India. The Aircraft Rules in Part II (General Conditions of Flying), Part III (General Safety Conditions) and Part VI (Airworthiness) stipulate the conditions of safety that an aircraft is required to be compliant with in order to be operated in Indian airspace. The DGCA issues a Certificate of Airworthiness (prior to the flying of aircraft) confirming that it conforms to the design standards, is safe for operation, and meets minimum requirements with respect to engineering, inspection and maintenance. Each aircraft either manufactured in India or imported into India for which a Certificate of Airworthiness is issued must conform to the design standards and be in a condition for safe operation. To be eligible for issuance of a Certificate of Airworthiness, an aircraft must be Type Certified, *viz* its type certificate validated or its type accepted by the DGCA.

Section 5 of the CAR dealing with Air Safety provides mechanisms for reporting air accidents/incidents and the procedure for accident/incident investigation. Further, it requires every aircraft operator to formulate a flight safety manual (as approved by the DGCA) which should clearly lay down the operator's safety policies as well as its Flight Safety Awareness and Accident/Incident Prevention Programme. Additionally, the Flight Data Analysis Program ("FDAP") contained under Section 5 of the CAR provides a systematic tool for proactive identification of hazards in aircraft operations before they result in accidents or serious incidents and requires all scheduled and

non-scheduled operators to establish the FDAP to determine hazards/shortcomings in the operation of aircraft, as part of their safety management system.

The DGCA had released a five-year National Aviation Safety Plan (2018–2022), which incorporated the Safety Enhancement Initiatives contained in the Regional Safety Plan of the Regional Aviation Safety Group – Asia Pacific and is in line with ICAO's Global Aviation Safety Plan.

1.4 Is air safety regulated separately for commercial, cargo and private carriers?

The safety of commercial, cargo and private carriers are not regulated by different safety conditions. However, the application processes for obtaining an AOP for commercial, cargo and private carriers are different.

1.5 Are air charters regulated separately for commercial, cargo and private carriers?

No air transport service, other than a scheduled air transport service, can be operated by any undertaking except with the special permission of the Central Government or under a non-scheduled operator's permit granted by the Central Government.

Air charter operations are regulated for passenger services which only apply to twin-engine aeroplanes with seating capacity of not more than nine seats, single-engine aeroplanes and single-piston engine aeroplanes. Cargo operations can only be undertaken by non-scheduled air transport operators which operate multi-engine fixed-wing aircraft (freighter version) and single or multi-engine helicopters.

The DGCA also regulates the operation of tourist charter flights to and from India as part of an Inclusive Tour Package under the AIC dated February 6, 2020.

1.6 As regards international air carriers operating in your jurisdiction, are there any particular limitations to be aware of, in particular when compared with 'domestic' or local operators? By way of example only, restrictions and taxes which apply to international but not domestic carriers.

The DGCA and AAI regulate foreign aircraft operating in India and Indian airports. As per the Bilateral Air Services Agreements entered into between India and other foreign countries, every such foreign country is required to designate airline(s) for operating the agreed services on specified routes and to withdraw or alter such designations.

However, as per CAR (Section 3 – Air Transport Series 'F' Part I Issue II) dated 7th December, 2017 international flights are not permitted to pick up passengers/cargo at any place in India for disembarkation at any other place in India, i.e. "cabotage" is not permitted.

AIC 09/2020 dated June 12, 2020 on "Requirements for grant of Operating Authorisation to Foreign Airlines under the Bilateral Air Services Agreements" ("AIC No. 9") imposes conditions on ownership, effective control and the safety qualifications of foreign airlines.

The Airports Authority of India (Ground Handling Services) Regulations, 2018 (as amended) ("GH Regulations") and the AVSEC Order No. 03/2009 dated August 21, 2009 (as amended), also contain certain restrictions on foreign airlines undertaking self-handling in respect of passenger- and baggage-handling activities.

1.7 Are airports state or privately owned?

Airports in India can be owned, developed and operated by State entities, such as the AAI under the AAI Act, as well as private parties after they have obtained a licence to operate airports from the DGCA and by entering into operation, management and development agreements (“**OMDAs**”) with the AAI. All airports, whether managed by AAI or private parties, must be operated according to the provisions of the AAI Act as well as the Aircraft Act.

In line with the Government’s open-skies policy, the AAI has collaborated with private entities for operation, management and development under the public-private partnership model (“**PPP model**”). The airports of Ahmedabad, Bengaluru, Cochin, Delhi, Guwahati, Hyderabad, Jaipur, Lucknow, Mangalore Mumbai and Thiruvananthapuram are currently operated under the PPP model by way of entering into OMDAs with the AAI. As on June, 2020, the AAI manages a total of 137 airports which include 24 International airports, 10 Custom Airports and 103 Domestic airports. Further, as at the time of writing this chapter, the Government of India (“**GoI**”) has granted “in principle” approval for setting up about 21 greenfield airports in the country, to be developed by private parties, State Government or other Government agencies.

1.8 Do the airports impose requirements on carriers flying to and from the airports in your jurisdiction?

The Aircraft Rules and the AAI Act restrict and qualify access to airports in India. Further, AIC No. 9 imposes certain requirements such as conditions on ownership, effective control and safety qualifications of foreign airlines.

1.9 What legislative and/or regulatory regime applies to air accidents? For example, are there any particular rules, regulations, systems and procedures in place which need to be adhered to?

The SARPs contained in the 19 Technical Annexes to the Convention on International Civil Aviation are applied universally and produce a high degree of technical uniformity which has enabled international civil aviation to develop in a safe, orderly and efficient manner. According to the provisions laid down in Annex 13 to the Chicago Convention on Aircraft Accident and Incident Investigation, Contracting States are required to investigate or delegate the investigation of accidents which have occurred in their territory.

The Aircraft (Investigation of Accidents and Incidents) Rules, 2017 (“**Accident Rules**”), provide for the establishment of the Aircraft Accident Investigation Bureau of India (“**AAIB**”), which is responsible for the investigation of accidents or incidents arising out of, or during, navigation in or over India of any aircraft, and prescribes a list of powers and functions of the investigating body, procedure of investigation, reporting of incidents and powers of the inquiry officer. The Schedules to the said Rules also lists out guidance on damage to the aircraft and enlists various instances of serious accidents.

Section 5 of the CAR dealing with Air Safety also provide for implementing Flight Safety Awareness, and an Accident/ Incident Prevention Programme for all operators engaged in scheduled or non-scheduled air transport services.

Further, AIC No. 16/2021 issued on September 23, 2021 provides for a voluntary reporting system of anyone who witnesses or is involved in or has knowledge of a situation which may possess a potential hazard/threat to flight safety and provides for maintenance of confidentiality of the reporter.

1.10 Have there been any recent cases of note or other notable developments in your jurisdiction involving air operators and/or airports?

1. Go First Airlines (“**Go First**”) filed for voluntary bankruptcy under the Insolvency and Bankruptcy Code, 2016 (“**IBC**”) amidst arbitral proceedings with an engine supplier. Subsequently, the NCLT imposed a moratorium. The DGCA stated that due to the moratorium it was unable to deregister the Aircraft under the Irrevocable De-Registration and Export Request Authorisations (“**IDERA**”) invoked by the lessors. Several aircraft lessors of Go First approached both the NCLT (against Go First) and the Delhi High Court (against the DGCA) seeking the court’s intervention to regain possession of the aircraft and to deregister their aircraft with the DGCA. The Delhi High Court has passed directions to Go First in its order dated October 12, 2023 (i) to provide the lessors with aircraft technical records, (ii) permit the lessors to contract security services and access various airports in the country where the aircraft are lying parked, and (iii) to continue to maintain the aircraft. The insolvency proceedings are underway under the IBC. 2. Jet Airways (India) Limited (“**Jet**”) entered into a corporate insolvency process on June 20, 2019. The NCLT, Mumbai by its order dated June 22, 2021 (“**Order**”) has accepted the Resolution Plan of the consortium of Jalan-Kalrock Capital as approved by the Committee of Creditors in the Jet bankruptcy proceeding under the IBC. As per the Order, the bankruptcy proceeding has now ceased to exist. Jet is currently under the control of a monitoring committee consisting of representative of the lenders and the consortium of Jalan-Kalrock Capital. However, the resolution of Jet has faced subsequent delays due to myriad disputes regarding implementation of the resolution plan. In August 2023, Jet lost its IATA airline code “9W”, for being non-operational for more than four years. The dispute regarding implementation of resolution plan remains sub-judice in Indian courts.
2. Tata Group owned Air India has signed purchase agreements to buy 470 aircraft from Airbus and Boeing. Air India successfully completed the acquisition of its first A350-900 aircraft through a finance lease agreement with HSBC, structured through GIFT-City. This marked the first instance of a wide-body aircraft being leased through GIFT City. Additionally, the Tata Group has received CCI approval for the proposed merger of its airlines viz Vistara and Air India. With this consolidation, Air India will be India’s leading domestic and international carrier. As part of the merger transaction, Singapore Airlines Limited (“**SIA**”) will also invest INR 2,059 crore in Air India. Post the consolidation, SIA shall hold 25.1% shareholding in Air India.
3. SpiceJet Limited (“**SpiceJet**”) is facing a series of legal issues in courts. Contempt petitions have been filed by creditors in the Supreme Court alleging wilful, intentional and deliberate disobedience of an earlier order by Court wherein the Consent Terms contemplating a settlement of the winding up proceedings and enforcement proceedings of a foreign arbitral award executed between the parties was taken on record. The Supreme Court directed SpiceJet to make certain payments and furnish proof before the Court. Proceedings have also been initiated against SpiceJet by multiple aircraft lessors, under Section 9 of the IBC before the NCLT seeking initiation of corporate

insolvency resolution process and the NCLT has, *inter alia*, suggested SpiceJet to consider settling its dues by allotting shares to the aircraft lessors and the matter remains sub-judice.

4. IndiGo has placed an order of 500 Airbus A320 family aircraft which provide it with a steady stream of deliveries between 2030 and 2035.
5. FLY91, a new, Goa-based airline, has received its no-objection certificate from MoCA and has been allocated its first set of routes under the UDAN Scheme. It proposes to operate in Tier 2 and Tier 3 towns across India.
6. Noida International Airport, also known as “Jewar Airport” is set to become operational by 2024 and is being developed through a PPP model by the international bidder Zurich Airport International A.G, as concessionaire, in close partnership with the GoI. Once operational, Jewar Airport will become India’s largest airport.
7. India Infrastructure Finance Company Limited, a major financier of airports in India has sanctioned a loan of INR 8,800 crore for the development of airports and civil aviation infrastructure in India. Development of several upcoming airports including Purandar Airport in Pune and Dhalbhumgarh Airport in Jamshedpur are proposed to further elevate India’s aviation profile. Manohar International Airport in Goa (operated by the GMR Group) has commenced commercial operations in January 2023. The Navi Mumbai International Airport (joint venture of the Adani Group and CIDCO) is set to start operations in 2024 to alleviate the traffic at the present CSMIA airport in Mumbai. The expansion of the Indira Gandhi International Airport in Delhi includes a new terminal, advanced facilities, an additional runway and improved capacity to handle more passenger is expected to be completed in December 2023.

1.11 Are there any specifically environment-related obligations or risks for aircraft owners, airlines, financiers, or airports in your jurisdiction, and to what extent is your jurisdiction a participant in (a) the EU Emissions Trading System (EU ETS) or a national equivalent, and (b) ICAO’s Carbon Offsetting and Reduction Scheme for International Aviation (CORSIA)?

India is not a participant in the EU ETS. However, the below mentioned regulations/circulars imposed on airlines and airports for environmental protection in India are noteworthy:

- i. CAR (Section 10 – Aviation Environmental Protection, Series “B”, Part I, Issue I, August 5, 2015) as updated from time to time (“**Climate Change CAR**”) provides for “Climate Change Initiatives and Local Air Quality Monitoring in Civil Aviation” and is applicable to the following:
 - a. Indian airports that have more than 50,000 aircraft movements per calendar year; and
 - b. all Indian scheduled and non-scheduled passenger and cargo airline operators except: a) flights of all small aircraft with MTOW <5,700 kg; b) flights engaged in search & rescue, patrolling or fire-fighting activities; c) flights engaged in humanitarian grounds and emergency medical service; d) flights engaged in carrying VVIP, Head of States and other eminent personalities; and e) all foreign registered airlines operating to/from India.
- As per the Climate Change CAR, airport operators and airline operators are required to develop an annual

emission management report. It provides for various other compliances for airport operators and airline operators including, fuel management by airline operators and emission management and Local Air Quality Monitoring by airport operators.

- ii. The DGCA also issued a circular on September 16, 2009 for the creation of an Aviation Environment Cell in airlines, aerodrome operators and air navigation service provider organisations in order to address aviation environmental issues.

India has not volunteered to participate in ICAO’s Carbon Offsetting and Reduction Scheme for International Aviation (“**CORSIA**”). However, the CAR (Section 10 – Aviation Environment Protection, Series “C”, Part I- CORSIA) which govern the rules and regulations towards monitoring, reporting and verifying annual CO₂ emissions of aeroplane operators and offsetting requirements from international flights and is based on ICAO’s SARPs, as contained in Annex-16, Environmental Protection, Volume-IV: CORSIA.

The GoI, issued a “White Paper on National Green Aviation Policy” in 2019 in order to create a simplified regime for sustainable and inclusive growth of the Indian civil aviation sector and align it with ICAO’s vision and mission. As of today, the MoCA has not published any National Green Aviation Policy.

2 Aircraft Trading, Finance and Leasing

2.1 Does registration of ownership in the aircraft register constitute proof of ownership?

An aircraft in India is registered in terms of Rule 30 of the Aircraft Rules. The register of the DGCA is merely a “notation” register; courts in India would accept the certificate of registration, issued by the DGCA, as *prima facie* evidence of lessor, lender or owner interest in the aircraft. It would be difficult to defend a case in the courts against third parties if the owner has no title or a defective title as per the records of the DGCA.

2.2 Is there a register of aircraft mortgages and charges? Broadly speaking, what are the rules around the operation of this register?

There is no separate register of aircraft mortgages in India. However, the CAR require the owner of an aircraft to file a notarised and apostilled copy of the mortgage documents evidencing the creation of the charge with the DGCA, which will endorse the name of the mortgagee on the certificate of registration.

As per Indian company law, if the mortgagor is an Indian company or a company with a registered place of business in India, the mortgagor must, within 30 days of its creation, register such charge (which includes a mortgage) created with the relevant Registrar of Companies in the prescribed form along with the complete particulars of the charge, including the instrument creating such charge.

2.3 Are there any particular regulatory requirements which a lessor or a financier needs to be aware of as regards aircraft operation?

India has ratified Article 83 *bis* of the Chicago Convention and therefore, prior to an Indian operator leasing an aircraft to/from a foreign operator, it is mandatory to obtain permission from the

DGCA. There is no specific requirement for a lease to be in any specified form/format or in any particular language. However, the terms of the lease must be in compliance with the CAR ((Section 3, Air Transport, Series “C”, Part 1, dated March 24, 2017, as revised from time to time) in respect of criteria for leasing of aircraft by Indian Operators) and such other CARs as may be issued by the DGCA from time to time. Further, the lessor/financier should also ensure compliance with the Aircraft Leasing Manual (CAP 3200) issued by the DGCA, relevant taxation laws, contract laws, foreign exchange laws and stamp duty laws.

2.4 As a matter of local law, is there any concept of title annexation, whereby ownership or security interests in a single engine are at risk of automatic transfer or other prejudice when installed ‘on-wing’ on an aircraft owned by another party? If so, what are the conditions to such title annexation and can owners and financiers of engines take pre-emptive steps to mitigate the risks?

No, there is no concept of automatic “title annexation” of engines in India. An aircraft in India is registered wholly with its engines, spare parts and other components attached to the aircraft. As mentioned earlier, the Aircraft Registry of India is only a notation register and does not confer title upon registration, and in the event of dispute, title will have to be evidenced through relevant transfer of title documentation. The DGCA does not maintain a separate register for aircraft engines.

In our experience, provisions in relation to title, security and obligations or restrictions in relation to spare parts are set out in the lease agreement, which also records evidence of the owner’s title and beneficial interest in relation to the parts (present and future) and also on the spare parts (present and future), whether such spare parts are repaired or replaced. Title of replacement parts would not automatically transfer to the aircraft owner where the replacement part is annexed, and specific title transfer documentation would have to be entered in order to transfer title.

2.5 What (if any) are the tax implications in your jurisdiction for aircraft trading as regards a) value-added tax (VAT) and/or goods and services tax (GST), and b) documentary taxes such as stamp duty; and (to the extent applicable) do exemptions exist as regards non-domestic purchasers and sellers of aircraft and/or particular aircraft types or operations?

Indirect tax

- a. GST is applicable on taxable supply of goods or services in India. For a transaction of supply of goods or services to be taxable under GST, its place of supply should be located in India.
- b. Under GST, the place of supply of goods, *inter alia*, would be as follows:
 - i. If the supply of goods involves the movement of goods, then the place of supply would be the location of goods at the time at which the movement of goods terminates for delivery to the recipient.
 - ii. In case where the supply does not involve movement of goods, then the place of supply would be the location of such goods at the time of delivery to the recipient.

Based on the above, if the place of supply or delivery of the aircraft is determined to be outside India, then in our view, GST would not apply to such a transfer of aircraft.

Further, import of aircraft into India is subject to customs duty and integrated goods and services tax (“IGST”). The applicability of customs duty and IGST on the import of aircraft is subject to any exemption provided under the relevant law.

It may be noted that subject to certain conditions, the GST law provides for IGST exemption on the import of leased aircraft into India. One of the prescribed conditions is that the importer undertakes to pay IGST on lease rentals.

Stamp duty

Under Indian laws, stamp duty differs from State to State; some States have enacted their own stamp duty laws, whilst other States have adopted the Indian Stamp Act, 1899 (with State amendments in respect of the rates of the prescribed stamp duty). The liability to pay stamp duty in a particular State arises: (i) if the instrument is executed in that State; (ii) if it is executed outside that State, such instrument is brought into the State and relates to a matter or thing done or to be done in that State; or (iii) if it relates to property located in that State. Any instrument that is not duly stamped is not admissible in evidence for any purpose, nor shall it be acted upon unless it bears the stamp prescribed by law.

In some States such as Maharashtra (where the city of Mumbai is located) copies of instruments relating to a property situated therein or in relation to a thing done or to be done must also be stamped with the same duty as the original.

2.6 Is your jurisdiction a signatory to the main international Conventions (Montreal, Geneva and Cape Town)?

India is a party to the Warsaw Convention (1929), the Hague Protocol (1955) and the Montreal Convention (1999); the provisions provided therein, subject to the provisions of the Carriage Act, have the force of law in India in relation to any carriage by air irrespective of the nationality of the aircraft performing the carriage.

India ratified the Cape Town Convention on International Interests in Mobile Equipment (“**Cape Town Convention**”) and the Protocol to the Cape Town Convention on International Interests in Mobile Equipment (“**Cape Town Protocol**”) on March 31, 2008 (collectively “**CTC**”).

India has not ratified the Geneva Convention.

2.7 How are the Conventions applied in your jurisdiction?

Although India acceded to the CTC on March 31, 2008, only specific provisions of the same became effective from July 1, 2008. From February 2015, the Aircraft Rules were amended to give the Central Government the power to cancel the registration of an Indian-registered aircraft, to which the provisions of the CTC apply by way of an application from the IDERA holder, prior to the expiry of the lease.

2.8 Does your jurisdiction make use of any taxation benefits which enhance aircraft trading and leasing (either in-bound or out-bound leasing), for example access to an extensive network of Double Tax Treaties or similar, or favourable tax treatment on the disposal of aircraft?

The Income Tax Act, 1961 (“**ITA**”) provides that a person who is eligible to avail benefits under a Double Taxation Avoidance Agreement (“**DTAA**”) signed by India has the option to be governed by the provisions of the ITA or the DTAA, whichever are more beneficial to him. Lease rentals payable to a non-resident for use of aircraft for the purpose of a business carried on in

India by the payer (whether resident or non-resident) are taxable in India as royalties under the domestic tax law and are subject to withholding tax at the rate of 10% (plus applicable surcharge and cess) on a gross basis. Availability of DTAA benefits will be subject to the general anti-avoidance rule (“GAAR”) contained in the ITA. GAAR applies to “impermissible avoidance arrangements”, which means an arrangement whose main purpose is to obtain a “tax benefit” (i.e. a reduction or avoidance of tax that would be payable under the ITA), and, amongst other things, such arrangement “lacks” or is “deemed to lack” commercial substance in whole or in part. This could, if alleged by the tax authorities as applicable and successfully invoked by them, result in denial of a tax benefit, including denial of DTAA benefits. There is an exemption from applicability of GAAR; however, the same applies only to income arising from a transfer of investments made prior to April 1, 2017.

Please also refer to our observations at question 5.1 in relation to International Financial Services Centres (“IFSCs”).

2.9 To what extent is there a risk from the perspective of an owner or financier that a lessee of aircraft or other aviation assets in your jurisdiction may acquire an economic interest in the aircraft merely by payment of rent and thereby potentially frustrate any rights to possession or legal ownership or security?

Please refer to our response at question 2.4.

An operating lease does not give rise to any equitable or other similar interest in an aircraft. However, in case of a finance lease, while the law does not specify the interest of lessee in the aircraft, the Supreme Court in the matter of *Association of Leasing and Finance Companies v. Union of India* (2010 (20) STR 417) explained that a finance lease “is a form of long term financing. In a finance lease, it is the lessee who selects the equipment to be supplied by the dealer or the manufacturer, but the lessor [finance company] provides the funds, acquires the title to the equipment and allows the lessee to use it for its expected life. During the period of the lease the risk and rewards of ownership are transferred to the lessee who bears the risk of loss, destruction, and depreciation or malfunctioning. The bailment which underlies the finance leasing is only a device to provide the finance company with a security interest [its reversionary right]. If the lease is terminated prematurely, the lessor is entitled to recoup its capital investment [less the realizable value of the equipment at the time] and its expected finance charges [less an allowance to reflect the return of the capital]”. In light of this judgment of the Supreme Court, if the lessee has made a considerable amount of rental payments towards the aircraft under a finance lease, it may be able to argue that it has obtained an equitable interest in the aircraft, and that the interest of the lessor is only a security interest. However, this argument in respect of aircraft lease transactions is yet to be tested in courts, therefore adequate contractual safeguards should be provided in the lease to protect the proprietary interest of the lessor.

3 Litigation and Dispute Resolution

3.1 What rights of detention are available in relation to aircraft and unpaid debts?

The DGCA is expressly empowered under Section 8(1) (b) of the Aircraft Act to detain any aircraft if it is of the opinion that such detention is necessary to secure compliance with any provisions of the Aircraft Act or rules framed thereunder, or to implement an order made by any court.

3.2 Is there a regime of self-help available to a lessor or a financier of an aircraft if it needs to reacquire possession of the aircraft or enforce any of its rights under the lease/finance agreement?

Typically, the lease agreement should set out the powers and responsibilities as well as the recourse in case of disputes, etc. There is no specific statutory provision for self-help in India.

Reaching an amicable settlement for repayment or rescheduling of payment deadlines with the lessee/borrower is, perhaps, the only self-help available to a lessor or a financier. Alternatively, contractual rights can be enforced by approaching the courts or initiating deregistration and repossession proceedings with the DGCA.

Rule 30(6)(iv) and 30(7) of the Aircraft Rules govern the process of deregistration of an aircraft prior to the expiry of the lease agreement on receipt of an application from the IDERA holder by the DGCA. The DGCA must accept a valid and recorded IDERA (in the prescribed format) and deregister the aircraft within a time frame of five days when accompanied with a certificate stating that all registered interests ranking in priority have been discharged, or that the holders of such interest have consented to such deregistration and export.

3.3 Which courts are appropriate for aviation disputes? Does this depend on the value of the dispute? For example, is there a distinction in your jurisdiction regarding the courts in which civil and criminal cases are brought?

The subject matter of the dispute determines the forum for adjudication, for instance: disputes with respect to the Competition Act, 2002 (as amended) (“CA02”) are dealt with by the Competition Commission of India (“CCI”); individual consumer complaints are dealt with by consumer courts under the Consumer Protection Act, 2019 (“CPA”); accidents in the aircraft are looked into by the AAIB as per the Accident Rules; and payment of compensation related matters under Section 9B of the Aircraft Act are dealt with as per the existing agreement or by an arbitrator appointed by the Central Government. Further, the value and nature of the dispute (civil or criminal) also determines which court shall have jurisdiction in the matter.

The Supreme Court of India is the final court of appeal concerning all forms of disputes. The High Courts under their Writ Jurisdiction are a preferred forum for adjudication of aviation disputes. Lessors have taken to the High Courts for lodging winding-up petitions against defaulting lessees, or praying for issuance of writs directing the DGCA to act upon their deregistration request in time. Petitions of lessees requesting delay in the de-registration process so that they could reach settlements with financiers/lessors are not unheard of at the High Courts.

Aviation disputes concerning consumers *vis-à-vis* airlines and airports authorities are preferred in the three-tier consumer disputes redressal forums established under the CPA, with appeals lying before the Supreme Court.

Furthermore, the AERA Appellate Tribunal was established under Section 17 of the AERA Act to adjudicate any dispute between service providers and consumers. Appeals against the orders of the said Appellate Tribunal lie before the Supreme Court under Section 31(1) of the AERA Act.

Criminal proceedings shall be initiated by the Regional Director/Head of Directorate as per the procedure laid down in the Code of Criminal Procedure, 1973. In view of the fact that offences under the Aircraft Act and Aircraft Rules (except violation of Rule 91 of the Aircraft Rules) are non-cognisable

and bailable, a criminal complaint can be filed in the court of a Magistrate of competent jurisdiction depending on the Police Station where the offence was committed. In case of violation of Rule 91 of the Aircraft Rules (which is a cognisable offence dealing with the prohibition of slaughtering and flaying of animals and depositing of rubbish and other polluted or obnoxious matters in the vicinity of aerodrome), a First Information Report may be registered with the Police, who will prosecute the offenders directly.

3.4 What service requirements apply for the service of court proceedings, and do these differ for domestic airlines/parties and non-domestic airlines/parties?

Section 27 and Order V of the Code of Civil Procedure, 1908 govern the applicable service requirements for service of court proceedings. Summons are issued by civil courts and served to the defendant in person or to his/her legal representative, by way of paper publication, or are posted to his/her last known place of residence or work, for the defendant to appear and answer the claim within 30 days of the institution of the suit.

Additionally the Hague Convention, 1965 (to which India is a signatory) governs the procedure to be followed in case of domestic action against a non-domestic airline/party and provides that the civil court hearing the suit must forward a summons request to the central authority of the State concerned, along with the document to be served.

3.5 What types of remedy are available from the courts or arbitral tribunals in your jurisdiction, both on i) an interim basis, and ii) a final basis?

Interim injunctions, *ex parte* decrees, final injunctions and final orders/awards covering aspects such as damages, compensation, repossession or sale of aircraft are available.

3.6 Are there any rights of appeal to the courts from the decision of a court or arbitral tribunal and, if so, in what circumstances do these rights arise?

Rights of appeal exist and may arise as a matter of right or upon exercise of discretion by the courts. For example, a judgment of a court may be challenged before a superior court if it is certified by the inferior court as involving a substantial question of law of general importance; or an arbitral award may be challenged on the ground that it suffers from legal *mala fides*, where enforcement would be contrary to public policy or that the arbitral tribunal did not have jurisdiction over the matter.

3.7 What rights exist generally in law in relation to unforeseen events which might enable a party to an agreement to suspend or even terminate contractual obligations (in particular payment) to its contract counterparties due to *force majeure* or frustration or any similar doctrine or concept?

The doctrine of frustration is incorporated under Section 56 of the Indian Contract Act, 1852. A contract is treated as frustrated if the substratum of a contract is lost due to impossibility of performance. If the entire performance of the contract becomes substantially impossible or useless without fault on either side, then such contract is *prima facie* dissolved by the doctrine of frustration. The principles of frustration apply only if the contract does not have an express or implied “*force majeure*” clause.

The Supreme Court in the case of *Energy Watchdog v. CERC* [(2017) 14 SCC 80] held that Section 56 of the Indian Contract Act, 1852 must be considered to be exhaustive of the law relating to frustration of contracts in India and the courts cannot travel outside the terms of the section in the matter. *Force majeure* clauses are to be interpreted narrowly – unless a particular event clearly falls within the ambit and scope of a *force majeure* clause in the contract, courts may not accept the invocation of “*force majeure*”. The Bombay High Court in the case of *Standard Retail Pvt. Ltd. v. M/s G.S. Global Corp & Ors. (Commercial Arbitration Petition [(L) No. 404 OF 2020])* held that the COVID-19 pandemic cannot be used as an excuse from performance of contract since the *force majeure* clause did not include any pandemic event. Commercial unviability to perform a contract cannot be the basis to trigger the *force majeure* clause.

4 Commercial and Regulatory

4.1 How does your jurisdiction approach and regulate joint ventures between airline competitors?

The CA02 is the principal statute that governs the anti-trust regime in India. The CA02 is a general legislation and does not provide any rules or regulations specific to the airline sector. A joint venture between two competing airlines may require assessment under the following two provisions under the CA02:

- a. The CA02 prohibits any anti-competitive agreement between competing enterprises, including cartels (“**Horizontal Agreements**”). Such anti-competitive agreements include price-fixing, bid-rigging, limiting production, supply, etc. A limited exception to Horizontal Agreements is the agreements entered into between competing enterprises, which are in the nature of a joint venture (“**JV Exemption**”). However, the JV Exemption applies only when such an arrangement demonstrably increases efficiency in production, supply, distribution, storage, or acquisition of control of goods or services.
- b. The CA02 prescribes for a mandatory notification requirement for acquisition of shares, voting rights, control, assets or merger (including, in certain circumstances, JVs) (“**Combination**”) if the asset value and turnover of the parties involved breaching the jurisdictional thresholds prescribed under the CA02 and no other statutory exemption is applicable. In case of a JV, a merger control notification requirement may be triggered only in case of brownfield JVs, or JVs which involve transfer of assets by JV parents. The CA02 provides for a suspensory regime. As such, in case of a notifiable Combination, parties are required not to complete or close the transaction until receipt of the CCI approval or the lapse of 210 calendar days (subject to statutory exclusions) from the date of filing of the notification, whichever is earlier. As per a recent amendment of the CA02, the time period for the review of Combinations has been reduced to a period of 150 calendar days. However, this amendment was not enforced as at the time of writing this chapter. That said, a typical JV arrangement in the airline sector which involve commercial cooperation or joint business development on certain sectors do not typically qualify for merger control notification requirement.
- c. Further, as per the recent amendment to the CA02 (which was not enforced at the time of writing this chapter) which deals with “Combinations” provides for a deal value threshold and stipulates that any transaction in connection with acquisition of any control, shares, voting

rights or assets of an enterprise, merger or amalgamation, the deal value of which exceeds INR 2,000 crore and if such enterprise (i.e. the one being acquired/merged/amalgamated) has “substantial business operations in India”, will require an approval from the CCI.

The CCI will in due course be issuing regulations to determine the modalities of what will constitute “substantial business operations in India”.

Further the CA02 as recently amended has also introduced a limitation period of three years for filing information/reference for anti-competitive agreements and abuse of dominant position. However, this amendment was also not enforced at the time of writing this chapter.

4.2 How do the competition authorities in your jurisdiction determine the ‘relevant market’ for the purposes of mergers and acquisitions?

While assessing a pre-merger notification, the CCI is required to determine the relevant market with reference to the relevant product market (“RPM”) and relevant geographic market (“RGM”). For the purposes of determining (a) the RPM, the CCI is required to consider various factors including physical characteristics, price, consumer preference, industrial classifications, etc. to map potential overlaps between products/services, and (b) the RGM, the CCI is required to make its determination based on factors such as regulatory trade barriers, transport costs, language, local specifications, etc.

4.3 Does your jurisdiction have a notification system whereby parties to an agreement can obtain regulatory clearance/anti-trust immunity from regulatory agencies?

As stated above, the CA02 provides for a mandatory suspensory regime whereby all notifiable Combinations that meet the jurisdictional thresholds and do not benefit from any statutory exemption are required to be notified to and approved by the CCI. The CCI (procedure in regard to the transaction of business relating to combinations) Regulations, 2011 prescribe the thresholds/exemptions (“**Combination Regulations**”), which are now proposed to be replaced by the CCI.

However, there is no other anti-trust immunity or any other approval mechanism under the CA02 for any agreement entered into between competing enterprises: (a) that are not in the nature of a Combination; or (b) that do not entail a notifiable transaction to the CCI.

4.4 How does your jurisdiction approach mergers, acquisition mergers and full-function joint ventures?

The CA02 creates no distinction between the assessment of any notifiable Combination, i.e. a merger, acquisition or full-function joint venture. Irrespective of the type of transaction, the assessment of the CCI is based on whether the proposed Combination would potentially cause an appreciable adverse effect on combination in India.

As stated above, in case of a non-notifiable combination or a commercial framework arrangement between competitors that may, in substance, act as a full-function JV, the parties would need to self-assess if the JV results in any of the efficiencies set out in question 4.1 above, in order to ensure compliance with the provisions of Section 3 of the CA02, which seek to prohibit Horizontal Agreements.

Besides the CA02, the Companies Act, 2013 and Securities Exchange Board of India (Substantial Acquisition of Shares and Takeover) Regulations, 2011 (the “**Takeover Code**”) also govern mergers and acquisitions of unlisted and listed companies, respectively. The NCLT is the adjudicating authority in case of unlisted companies, whereas the Securities Exchange Board of India is the nodal agency when it comes to mergers and acquisitions of listed companies as well as companies proposing to be listed on the stock exchange. The Takeover Code specifies situations where any acquisition may trigger open offer requirements.

Further, the exchange control-related aspects of mergers and acquisitions are regulated by the Reserve Bank of India under the extant Foreign Exchange Management regulations, which prescribe strict reporting and pricing requirements. Foreign investment-related aspects are dealt with by the Ministry of Commerce.

4.5 Please provide details of the procedure, including time frames for clearance and any costs of notifications.

As stated in response to question 4.3 above, all notifiable Combinations are required to be notified to and pre-approved by the CCI before coming into effect. A brief overview of the timelines, costs and procedure is set out below:

- a. **Form of the notification** – The Combination Regulations specify that a Combination may either be notified in the shorter “Form-I” or a longer “Form-II” depending on the combined market shares of the parties to the Combination in the relevant market for overlapping business activities and in the markets that are vertically linked to each other. The parties may choose to notify a Combination in Form-II if their combined market share is (i) more than 15% in the relevant market for overlapping business activities, or (ii) more than 25% in the markets that are vertically linked to each other.
- b. **Obligation to notify** – In the case that a Combination involves an acquisition of shares, voting rights or assets, the acquirer is required to notify the Combination to the CCI. However, in case of a merger, the merging parties collectively are required to notify the Combination to the CCI. The recent CA02 amendment (which was not enforced at the time of writing this chapter), creates an exception for on-market purchases (through open offer or acquisition of shares through a series of transactions on a regulated stock exchange). Through this amendment, parties can compete on-market purchases and submit a *post-facto* notification to the Commission.
- c. **Timing of the notification** – A Combination can be notified to the CCI at any time after the binding transaction documents have been executed between the parties.
- d. **Timeline for the approval** – The CA02 mandates that the CCI should form its *prima facie* opinion on actual or likely appreciable adverse effect on competition (“**AAEC**”) of a Combination within 30 days from the date of notification. In the event that the CCI *prima facie* observes that a Combination either has or is likely to have an AAEC in a relevant market in India, it has an additional 180 days to investigate further into the likely anti-competitive impact of the Combination on the relevant market, and either disallow or approve the same with necessary modifications if any, which may either be proposed by the CCI or the parties themselves. Upon expiry of 210 days (150 calendar days when the recent amendment to the CA02 is enforced) from the date of notification, the Combination will be deemed to be approved by the CCI.

The CCI has introduced a deemed approval mechanism process which is called the Green Channel approval as notified on August 13, 2019. The parties may avail of Green Channel approval only if they are not engaged in providing any similar/substitutable products, vertically linked products, or complementary products either directly or through any of their controlling or non-controlling stakes in any entity. In the case that a Combination is notified pursuant to the Green Channel, CCI's Deemed Approval will be considered as having been granted once the Combination has been notified in Form-I and the CCI has acknowledged the receipt of the notification.

With regard to the costs of notification, Form-I must be accompanied with a filing fee of INR 20 lakhs (approximately USD 24,200) while a Form-II will have to be accompanied with a filing fee of INR 65 lakhs (approximately USD 78,600). However, these filing fees are proposed to be revised by the CCI for Form – I and INR 90 Lakhs for Form – II.

4.6 Are there any sector-specific rules which govern the aviation sector in relation to financial support for air operators and airports, including (without limitation) state aid?

There are no sector-specific rules that prescribe financial support or aid to air operators and airports. The Central Government may, at its discretion, grant such aid or other financial support and facilities to the aviation sector as a matter of State policy, keeping in mind the growth and development of the aviation sector.

The current pattern of financing is predominantly based on internally generated resources of the AAI. Funding through external assistance, external commercial borrowings, loans and equity has been negligible. The allocation of budgetary grants is limited to certain airports in remote and inaccessible areas.

The National Civil Aviation Policy, 2016 (“**NCAP**”) introduced the Regional Connectivity Scheme (“**RCS**”) that, *inter alia*, seeks to provide various concessions and support to air operators, airports and other stakeholders; for example, an excise duty of 2% is levied on aviation fuel, no airport charges are levied for operations under the RCS, etc.

Under the UDAN Scheme, efforts have been made to provide support to Selected Airline Operator(s) in the form of Viability Gap Funding (“**VGF**”) and other concessions/support offered by the Central Government, State Governments and airport operators, including: reduction of VAT to 1% or less on ATF at RCS airports located within a particular State for a period of 10 years; provision of minimum land, if required, free of cost and free from all encumbrances for development of RCS airports; providing multi-modal hinterland connectivity (road, rail, metro, waterways, etc.) as required; providing security and fire services free of cost at RCS airports; provision of, electricity, water and other utility services at substantially concessional rates at RCS airports; and provision of a certain share (20%) towards VGF for respective RCS routes (pertaining to the State), provided the share of States in the North-Eastern region of India and Union Territories would be 10%.

4.7 Are state subsidies available in respect of particular routes? What criteria apply to obtaining these subsidies?

The NCAP seeks to sustain and nurture a competitive market environment in the civil aviation sector, including enhancement of regional connectivity through fiscal support and infrastructure development, providing for an RCS. The operation of the scheme is proposed to be through a market mechanism where

operators will: assess demand on routes; submit proposals for operating/providing connectivity on such route(s); seek VGF, if any, while committing to certain minimum operating conditions; and the same shall be finalised in interaction with other market participants.

Further, the RCS scheme provides that: for up to 10 years from the date of commencement of flight operations under the RCS, there will be no airport charges levied for operations under the RCS; landing, parking and Terminal Navigation Landing Charges shall be waived; and Route Navigation and Facilitation Charges will be levied on a nominal basis. Prioritisation of routes will be carried out and reviewed from time to time so that there is balanced growth of regional connectivity in different parts of the country. The UDAN Scheme provides for the eligibility criteria, such as having a valid air operating permit, including the minimum performance specifications for an RCS flight.

As per the scheme, a State will identify international routes for which the AAI will determine a subsidy amount per seat and invite bids from domestic carriers. This will be followed by airlines submitting their proposals, which will include the routes they wish to connect as well as the subsidy needed by them. The GoI will grant financial aid only for the actual number of passenger seats that are unsold, even if the airline had sought subsidy for a higher percentage of seating capacity at the time of bidding.

4.8 What are the main regulatory instruments governing the acquisition, retention and use of passenger data, and what rights do passengers have in respect of their data which is held by airlines and airports?

In India, data privacy and protection are governed by the provisions of the Information Technology Act, 2000 (“**IT Act**”), which provides legal recognition to transactions carried out by means of electronic data interchange. Sensitive personal data includes, *inter alia*, information relating to: passwords; credit/debit card information; biometric information; and condition of physical, physiological and mental health, etc.

The transfer of personal data (defined as sensitive personal data or information) is presently governed by the Information Technology (Reasonable Security Practices and Procedures and Sensitive Personal Data or Information) Rules, 2011 (“**SPD Rules**”). The SPD Rules were issued under Section 43A of the IT Act, which holds a body corporate liable for compensation for any negligence in implementing and maintaining reasonable security practices and procedures while dealing with sensitive personal data or information. The SPD Rules expand on the scope of these reasonable practices and procedures. They define sensitive personal data and mandate the implementation of a policy for dealing with such data. Further, various conditions such as consent requirement, lawful purpose, purpose limitation, subsequent withdrawal of consent, etc. have been imposed on the body corporate collecting such information.

The SPD Rules also require the prior consent of the provider of the information while disclosing sensitive personal data to a third party. Transfer of sensitive personal data outside India is permitted on the condition that the same level of data protection is adhered to in the country, which is applicable to the body corporate under the SPD Rules.

Section 43A of the IT Act is proposed to be replaced with the Digital Personal Data Protection Act, 2023 (“**DPDPA**”) which has received assent from the President of India but is yet to be implemented. Upon implementation, DPDPA will govern the processing of “digital” personal data. For more details on DPDPA, please refer to our responses to question 5.1 below.

4.9 In the event of a data loss by a carrier, what obligations are there on the airline which has lost the data and are there any applicable sanctions?

The Information Technology (Indian Computer Emergency Response Team and Manner of Performing Functions and Duties) Rules, 2013 impose an obligation on all corporate entities, which includes airlines, to notify the Indian Computer Emergency Response Team in case of a cybersecurity breach.

Additionally, upon implementation of the DPDPA, in the event of a personal data breach, data fiduciaries (such as airlines) will be required to notify the Data Protection Board of India and the data principal of such breach.

4.10 What are the mechanisms available for the protection of intellectual property (e.g. trademarks) and other assets and data of a proprietary nature?

Since India has acceded to the Agreement on the Trade Related Aspects of Intellectual Property Rights, various other pieces of legislation have been enacted over the years to protect Intellectual Property Rights (“IPRs”). The following statutes provide protection and remedies available to the following IPRs:

- The Trade Marks Act, 1999 (as amended): Remedies available are in the form of damages, account of profits, injunction, search and seizure, and forfeiture. Trademark infringement and counterfeiting are cognisable offences. False entries, applications or trade descriptions are offences and are punishable by way of imprisonment or fine.
- The Copyright Act, 1957 (as amended): Remedies available under the said Copyright Act are similar to those under the Trademarks Act; furthermore, infringement of copyright is punishable with imprisonment that may extend up to three years, or a fine of up to INR 200,000.
- The Patents Act, 1970 (as amended) also provides for remedies pertaining to patent infringement.
- The Designs Act, 2000: Remedies available for the infringement of copyright are also available for the infringement of registered design owners.

In addition to the above-mentioned remedies, criminal remedies are also available for offences such as false entries in the register, false claims and false information given to the GoI.

In recent times, the courts in India have been strictly enforcing IPRs and protecting the rights lying therein. While injunctions still remain a prominent and effective remedy, courts have in exceptional cases awarded punitive damages. Recently, IPR owners have increasingly been recording their IPRs, especially trademarks, before the relevant customs authorities to prevent counterfeit products from entering the Indian market.

4.11 Is there any legislation governing the denial of boarding rights and/or cancelled flights?

The CAR (Section 3, Series “M”, Part IV – Facilities to be provided to passengers by airlines due to denied boarding, cancellation of flights and delays in flights dated August 6, 2010 (as revised from time to time) (“**Passenger CAR**”), governs the rules and regulations relating to denial of boarding rights and/or cancelled flights. The CAR in question provides for the refund of the ticket fare amount and compensation in the event of denied boarding, even though the passenger has been given a confirmed booking for travel on the flight and has checked in for the flight well within the specified time ahead of the departure of the flight.

Airlines are required to inform the passenger of the cancellation at least two weeks before the scheduled time of departure and arrange an alternate flight/refund as acceptable to the passenger. In case the passengers are informed of the cancellation less than two weeks before and up to 24 hours of the scheduled time of departure, the airline shall offer an alternate flight or refund the ticket, as acceptable to the passenger. Additionally, the airline shall provide passengers with facilities at the airport in accordance with the Passenger CAR in the event the passengers have already reported for their original flight and whilst they are waiting for the alternate flight.

In case of foreign airlines, the amount of compensation paid to the passengers can be made in accordance with the regulations of their country of origin or as prescribed by the Passenger CAR.

Further, the airlines are required to display their policies in regard to compensation, refunds and the facilities that will be provided by the airline in the event of denied boarding, cancellations and delays on their respective websites as part of their passenger Charter of Rights.

4.12 What powers do the relevant authorities have in relation to the late arrival and departure of flights?

As per the Passenger CAR, in the event of delay, the airlines are required to provide facilities such as meals, refreshments and/or hotel accommodation depending on the number of hours of delay of the flight. An exception to the above has been provided for delays caused due to extraordinary circumstances (as defined in the Passenger CAR) which could not have been avoided even if all reasonable measures had been taken.

4.13 Are the airport authorities governed by particular legislation? If so, what obligations, broadly speaking, are imposed on the airport authorities?

The AAI is the nodal authority controlling all airports in India. It was established under the AAI Act, which includes a legal framework for airport privatisation, the functions of the AAI and provides guidance on the efficient management of airports, civil enclaves and aeronautical communication stations. Further, it states that it is the duty of the AAI to provide an air traffic service and air transport service at any airport and civil enclave. In the discharge of its functions, the AAI shall have due regard to the development of the efficiency, economy and safety of the air transport service.

4.14 To what extent does general consumer protection legislation apply to the relationship between the airport operator and the passenger?

In case of airline operators and passengers, the DGCA has launched the “AirSewa” web-portal/mobile application to deal with travel-related passenger grievances. The Passenger CAR also provides for passengers to file for grievance related to delays, cancellations, etc., on the AirSewa App or through the portal. The AirSewa portal provides a facilitative platform for passengers to file complaints with the respective airline. The CPA also provides an additional remedy for passengers to claim compensation for any deficiency in service provided by airlines.

In case of airport operators and passengers, there is no specific legislation and the general consumer protection legislation, i.e. the CPA shall apply. In the case of *Geeta Jethani v. Airport Authority of India* (2004 (2) C.P.C. 428), the National

Consumer Disputes Redressal Commission (“NCDRC”) held the AAI liable for deficiency in service in maintaining an escalator, resulting in the death of a young child at the Indira Gandhi International Airport. The NCDRC, while holding that a complaint was maintainable under the CPA, stated that maintenance of the airport is a statutory function of the AAI. It is the duty of the AAI to manage the airports, to provide air traffic service, air transport service and air safety service, to regulate the entry and exit of passengers and visitors at the airports, to provide transport facilities to the passengers travelling by air and to have due regard for the safety of such service. The quantum of penalty in this case was decided on the basis of the criteria set out under the Carriage Act, as the complainants were non-residents.

4.15 What global distribution suppliers (GDSs) operate in your jurisdiction?

Computer Reservation Systems (“CRSs”) or GDSs are computerised systems that contain information about air carriers’ schedules, availability, fares and fare rules, through which reservations can be made or tickets may be issued. In India, GDSs are not governed by specific legislation. However, the DGCA has issued CARs (Section 3 – Air Transport Series M- Part III dated 31st July, 2010) to regulate and promote fair competition in the airline sector and to ensure that consumers do not receive inaccurate or misleading information on airline services. The said CAR prescribes obligations on system vendors and participating carriers, as well as subscribers.

4.16 Are there any ownership requirements pertaining to GDSs operating in your jurisdiction?

The CAR are applicable to all CRS and GDSs, and to their essential elements operating in India displaying or selling air services, irrespective of: (i) the legal status or nationality of the system vendor; (ii) the source of the information used; or (iii) the location of the relevant data processing centre, and irrespective of where the air services are provided. There are no specific ownership restrictions.

4.17 Is vertical integration permitted between air operators and airports (and, if so, under what conditions)?

A vertical integration which is in the nature of a combination between an air operator and an airport is not specifically governed under the provisions of the CA02. Accordingly, such a combination, if permitted under other applicable laws, would be assessed by the CCI for any appreciable adverse effect on competition in India.

The AAI entering into an OMDA with private parties for the development and modernisation of airports is one such example. The OMDA sometimes prescribes restrictions on vertical integration between airline operators and airport operators.

To date, only horizontal mergers have taken place between airline operators in India, such as Air India and Indian Airlines, Jet Airways and Sahara Airlines, Kingfisher Airlines and Deccan Airlines, etc. and more recently the merger between Air India and Vistara is proposed to take effect in March 2024.

4.18 Are there any nationality requirements for entities applying for an Air Operator’s Certificate in your jurisdiction or operators of aircraft generally into and out of your jurisdiction?

The DGCA has prescribed conditions for effective control of airlines in the following manner:

1. A scheduled or non-scheduled operator’s permit can be granted to:
 - a. a citizen of India; or
 - b. a company:
 - that is registered and has its principal place of business in India;
 - whose chairman and at least two-thirds of its directors are Indian citizens; and
 - that is substantially owned and effectively controlled by Indian nationals.
2. An air cargo operator’s permit can be granted to:
 - a. a citizen of India;
 - b. a group of individuals of Indian nationality or a registered trust or society;
 - c. a non-resident Indian or overseas corporate body; or
 - d. an Indian-registered company having its principal place of business in India with or without foreign equity participation (excluding non-resident Indian equity).

5 In Future

5.1 In your opinion, which pending legislative or regulatory changes (if any), or potential developments affecting the aviation industry more generally in your jurisdiction, are likely to feature or be worthy of attention in the next two years or so?

The amendments to Aircraft Rules, 1937 (notified on October 10, 2023) have brought about some key changes to reduce the administrative burden in the aviation industry whereby the validity of licences in relation to Airline Transport Pilot License and Commercial Pilot License holders has now been increased from five years to 10 years. Rule 118 with respect to validation of foreign licences has been removed as being redundant. The erstwhile Rule stipulated that licences that were granted by the competent authority of a contracting state would be conferred with the same validity in India.

On October 3, 2023, the GoI issued a notification (“**Notification**”) whereby the provisions of Section 14(1) of the IBC relating to moratorium will not apply to transactions, arrangements or agreements under the CTC relating to aircraft, aircraft engines, airframes, and helicopters. The Notification has significant implications for repossession of aircraft and engines in India since such assets are now exempt from moratorium and place aircraft, engine owners and lessors in a better position to repossess assets from defaulting lessees. Under the CTC Protocol, India has issued a general declaration under Article XI dated March 31, 2008 providing for the application of Alternative A in its entirety to all types of insolvency proceedings, and that the waiting period for the purposes of Article XI (3) of that Alternative is two calendar months. Considering this, one could argue that the waiting period under the CTC Protocol may apply.

The Aircraft Bill, 2023 introduced by MoCA is intended to be replaced with the Aircraft Act (a pre-independence era legislation having several archaic provisions) and aims to eliminate existing redundancies and provide for provisions that meet the current needs for regulation of civil aviation in India. Further, under the

Aircraft Bill, the DGCA, AAIB and the BCAS are empowered to discharge the regulatory and oversight function entrusted for implementation of the SARP's under the Chicago Convention.

The DPDPA governs the rights and duties of data principals (i.e., individuals to whom personal data relates) and data fiduciaries (i.e., persons who determine the purpose and means of processing personal data). DPDPA applies to digital personal data that is processed outside India only if such processing is in connection with any activity related to offering goods or services to data principals in India. The DPDPA also seeks to protect personal data collected prior to the implementation of the DPDPA. It also provides for (i) the constitution of the Data Protection Board of India as an enforcement body which will have several powers such as to direct any urgent remedial or mitigation measures on receipt of intimation of breach of personal data, and impose penalties for non-compliances, (ii) the roles of Consent Managers and Data Processors, and (iii) penalties up to INR 250 crore for non-compliance of the DPDPA.

The GH Regulations have been amended in April 2023 to include the following key amendments:

- (i) a ground handling company owned by an airline is prevented from providing ground handling services to third party airlines;
- (ii) airport operators can now appoint as the ground handling agency ("**GHA**") (a) itself or its joint venture or its 100% owned subsidiary only if a transparent bidding process has been carried out and no bidder is selected; and (b) a subsidiary or joint venture of a public sector undertaking and if there is no subsidiary or joint venture of a public sector undertaking, a GHA shall be selected through a transparent bidding process; and
- (iii) no GHA or person(s) controlling such GHA shall have significant influence in any other GHA operating as such at the same airport. If a GHA has significant influence due to an acquisition from a public sector enterprise, then: (a) the two GHAs shall be deemed to be a single GHA at the relevant airport; (b) airport operator shall promptly appoint another GHA through a transparent bidding process; and (c) such GHA/person(s) controlling the GHA shall restructure their ground handling business to ensure that on completion of 24 months of acquisition of significant influence, only one of the two GHAs operates at the relevant airport. On expiry of 24 months, the GHA (of the two involved GHAs) with the shorter outstanding concession period shall be deemed to have surrendered its concession at the relevant airport.

The National Air Sports Policy, 2022 has been formulated by the GoI with the key objective of the promotion of air sports culture in India to include air sports such as drones, parachuting, paragliding, etc. It is proposed that there would be a four-tier governing structure for air sports in India of which the Air Sports Federation of India, an autonomous body under MoCA, would be the apex governing body. MoCA has also issued draft National Air Sports Guidelines, 2023 for comments whose key objectives, *inter alia*, include adoption of international safety practices, development of a stakeholder-friendly and effective governance

structure, enhancing participation of Indian sportspersons in global air sports events and promoting design, development and manufacturing of air sports equipment in India.

The International Financial Services Centres Authority ("**IFSCA**") issued a circular dated May 18, 2022, the "Framework for Aircraft Leases", which, *inter alia*, provides guidelines for the establishment of a lessor entity in GIFT City. Further, the DGCA amended the Air Transport Circular No. 02/2017 dated September 19, 2022 (as revised from time to time) to include the requirement in relation to the import of aircraft and acquisition of Indian registered aircraft in GIFT-City.

In order to bring uniformity with tax deduction provisions, the Central Board of Direct Taxes under notification dated July 20, 2023 granted exemption from tax deduction at source under Section 194 of the ITA from dividend income paid by a unit of IFSC engaged in aircraft leasing business to a unit of IFSC engaged in the same business, subject to certain conditions.

Willis Lease Finance were among the first lessors to set up and structure multiple engine leases out of GIFT-City. This year has seen an increase in registrations by Indian and foreign banks with the IFSCA as banking units. Air India has also registered its subsidiary as a finance company in GIFT-City and is the first scheduled commercial airline in India to structure a commercial aircraft lease through GIFT-City. It has successfully completed acquisition of India's first wide-body A350-900 aircraft through a finance lease agreement with HSBC, structured through Air India's GIFT-City subsidiary. The MoCA published the Protection and Enforcement of Interests in the Aircraft Objects Bill, 2022 (the "**CTC Bill**") on April 16, 2022 (revised on July 20, 2022) in order to implement the CTC in India with a view to discharging the treaty obligations and to avail benefits of the Indian accession to the treaty. The CTC Bill also contains provisions that will accord primacy to the provisions of the CTC Bill in case of conflict with any other law in force in India, permit self-help remedies, and give effect to applicable insolvency provisions of the CTC. Irrespective of whether the parties to an agreement have chosen India as the place of jurisdiction or not, the remedies under the CTC Bill will be applicable to all transactions that have a connection to India unless the same has been specifically excluded under the relevant transaction documents. Presently, the CTC Bill is undergoing public consultations and it is difficult to ascertain when it will be promulgated as legislation by the Parliament.

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AZB & Partners is a leading law firm in India having offices in Mumbai, Delhi, Bangalore Pune and Chennai. Our greatest strength is an in-depth understanding of the legal, regulatory and commercial environment in India as well as on cross-border transactional work which enables us to provide bespoke counsel to help our diverse clients negotiate any dynamic or volatile business environment.

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1 General

1.1 Please list and briefly describe the principal legislation and regulatory bodies which apply to and/or regulate aviation in your jurisdiction.

The Department of Transport (“**DOT**”) is the Government department responsible for aviation policy in Ireland. It is assisted in carrying out its functions by the following public bodies:

- The Irish Aviation Authority (“**IAA**”).
- The Air Accident Investigation Unit (“**AAIU**”), which is responsible for air accidents that take place in Ireland and air accidents that occur outside Ireland involving Irish registered aircraft.
- The Environmental Protection Agency (“**EPA**”), which is responsible for the implementation of the European Union (“**EU**”) emissions trading scheme.
- AirNav Ireland, which is responsible for air navigation and air traffic management.

The Commission for Aviation Regulation (“**CAR**”) merged with the IAA on 30 April 2023 as part of the Irish Government’s regulation reform to establish a single national civil aviation regulator.

The air navigation functions of the IAA have moved to a separate commercial semi-state company, AirNav Ireland, which now provides air traffic control services at the State airports of Dublin, Cork and Shannon and air space covering 455,000 square kilometres.

The key functions of the IAA include:

- registering aircraft in Ireland;
- certifying and registering aircraft airworthiness;
- licensing personnel and organisations involved in aircraft maintenance;
- licensing pilots, air traffic controllers and aerodromes;
- approving and monitoring air carrier operating standards;
- registering drone operators;
- scheduling coordination/slot allocation at Irish airports;
- licensing the travel trade in Ireland;
- licensing airlines and approval of groundhandling services providers;
- monitoring and regulation of EU legislation covering Air Passenger Rights and the provision of assistance to Passengers with Reduced Mobility; and
- oversight of civil aviation security.

Principal legislation

The principal aviation legislation applicable in Ireland is as follows:

1. the Air Navigation and Transport Acts 1936–2022;
2. the Irish Aviation Authority Act 1993 (as amended);
3. the Package Holidays and Travel Trade Act 1995 (as amended);
4. the Aviation Regulation Act 2001 (as amended);
5. the Air Navigation and Transport (International Conventions) Act 2004 (as amended);
6. the International Interests in Mobile Equipment (Cape Town Convention) Act 2005 (as amended);
7. the Aviation Act 2006;
8. the Air Navigation (Notification and Investigation of Accidents, Serious Incidents and Incidents) Regulations 2009;
9. the State Airports Act 2004 (as amended);
10. the State Airports (Shannon Group) Act 2014;
11. EC (Access to the Ground Handling Market at Community Airports) Regulations 1998 (S.I.505/1998);
12. EC (Common Rules for the Operation of Air Services in the Community) Regulations 2008 (S.I.426/2008);
13. EC (Rights of Disabled Persons and Persons with Reduced Mobility when Travelling by Air) Regulations 2008 (S.I.299/2008);
14. Regulation EC/95/93 (as amended by Regulation (EC) 793/2004) on common rules for the allocation of slots at community airports;
15. Regulation EC/261/2004 establishes common rules on compensation and assistance to passengers in the event of denied boarding and of cancellation or long delay of flights;
16. Regulation EC/1107/2006 concerning the rights of disabled persons and persons with reduced mobility when travelling by air;
17. Regulation EC/1008/2008 (as amended by Regulations (EU) 2018/1139, 2019/2 and 2020/696) on common rules for the operation of air services in the community;
18. Regulation EU/373/2017 (as amended by Regulation (EU) 2020/469) – the Air Traffic Management Common Requirements Implementing Regulation (ATM/IR);
19. Commission Delegated Regulation (EU) 2019/945 (as amended by Commission Delegated Regulation (EU) 2020/1058) on unmanned aircraft systems and on third-country operators of unmanned aircraft systems, and Commission Implementing Regulation (EU) 2019/947 (as amended by Commission Implementing Regulations (EU) 2020/639 and 2020/746) on the rules and procedures for the operation of unmanned aircraft; and
20. Irish Aviation Authority (Standardised Rules of the Air) Order 2019 (S.I.266/2019).

1.2 What are the steps which air carriers need to take in order to obtain an operating licence?

An aircraft operator involved in commercial air transport must be the holder of a valid Air Operator Certificate (“AOC”) issued by the IAA and a valid Air Carrier Operating Licence (“ACOL”) issued by the IAA.

In order to qualify for an ACOL, an applicant must satisfy all of the conditions for granting an operating licence set out in Article 4 of principal regulation EC1008/2008.

The applicant must, among other things, have its principal place of business and registered office (if any) in Ireland, and its main occupation must be air transport, in isolation or combined with any other commercial operation of aircraft or repair and maintenance of aircraft.

The applicant must also meet the ownership and control requirements of the legislation (i.e. EU Member States and/or nationals of EU Member States must own more than 50% of the undertaking and effectively control it).

In addition, applicants must meet requirements regarding financial fitness and insurance cover.

1.3 What are the principal pieces of legislation in your jurisdiction which govern air safety, and who administers air safety?

The IAA is responsible for administering Ireland’s international aviation safety obligations and agreements in accordance with standards set by the International Civil Aviation Organisation (“ICAO”), the European Aviation Safety Agency (“EASA”), EUROCONTROL and the European Civil Aviation Conference (“ECAC”).

The Safety Regulation Division of the IAA ensures specific compliance with safety objectives set down under section 14 of the Irish Aviation Authority Act 1993 (as amended) and the annexes to the Chicago Convention, which are implemented through a combination of EU and domestic Irish legislation.

The IAA’s remit with respect to safety includes certification and registration of aircraft airworthiness, licensing personnel and organisations involved in aircraft maintenance, incident reporting and management, the protection, storage and collection of information, licensing pilots, air traffic controllers and aerodromes, and approving and monitoring air carrier operating standards.

There are EU safety regulations relating to initial and continuing aircraft airworthiness that are directly effective in the EU (including Ireland), for example: Regulation (EU) 2018/1139 on common rules in the field of civil aviation and establishing a European Union Safety Agency; Regulation (EU) 748/2012 regarding the implementation of essential requirements for airworthiness and environmental protection; Regulation (EU) 2015/640 on additional airworthiness specifications; and Regulation (EU) 1321/2014 (as amended and updated by EU Commission Implementing Regulations 2019/1383, 2019/1384, 2020/270, 2020/1559 and 2021/700), relating to the continuing airworthiness of aircraft and aeronautical products, parts and appliances, and on the approval of organisations and personnel involved in these tasks.

In April 2019, the European Commission adopted performance targets in respect of the level of effectiveness of safety management to be achieved by air navigation service providers for the period 2020–2024 pursuant to Commission Implementing Decision (EU) 2019/903 of 29 May 2019.

1.4 Is air safety regulated separately for commercial, cargo and private carriers?

No, the IAA regulates commercial, cargo and private carriers.

1.5 Are air charters regulated separately for commercial, cargo and private carriers?

No, the IAA regulates the sector.

1.6 As regards international air carriers operating in your jurisdiction, are there any particular limitations to be aware of, in particular when compared with ‘domestic’ or local operators? By way of example only, restrictions and taxes which apply to international but not domestic carriers.

The creation of the EU single market for aviation in the 1990s removed all commercial restrictions on airlines flying within the EU. Under the single market, all EU carriers can operate services on any intra-EU route.

Outside the EU single market, access to the air transport market is still heavily regulated under the framework set down in the Chicago Convention. Under the Chicago Convention, Ireland has negotiated bilaterally with a wide range of States to agree market access rights for both passenger and cargo services. A list of States with which Ireland has a bilateral air transport agreement is available on the DOT’s website: <https://www.gov.ie/en/publication/baedcc-air-services-market/>. Following the “Open Skies” judgment in the European Court of Justice in 2002, all market access rights negotiated by each of the EU Member States in their bilateral agreements must be equally available to all EU carriers.

Furthermore, under the EU’s external aviation policy, the European Commission has been mandated to negotiate air transport agreements on behalf of the EU and its Member States with certain third countries. Under this process, so-called “Open Skies” agreements have been negotiated, removing restrictions on capacity, routing and other limits, creating a free market for services between the parties to that agreement.

Most bilateral air transport agreements require that substantial ownership and effective control be maintained by nationals of each party to the agreement. Within the EU, Community airlines are required to be at least 50% owned by EU nationals. The EU has indicated its willingness to negotiate these current ownership and control limitations with States prepared to similarly waive the requirement on a reciprocal basis.

1.7 Are airports state or privately owned?

The three main airports (Cork, Dublin and Shannon) are publicly owned commercial airports. These airports are owned by State-owned commercial companies, with Dublin and Cork airports owned by daa plc and Shannon Airport owned by Shannon Airport Authority DAC.

1.8 Do the airports impose requirements on carriers flying to and from the airports in your jurisdiction?

Aviation terminal services charges are levied by the IAA on users at Cork, Dublin and Shannon airports. Dublin airport is the only Irish airport currently subject to economic regulation of the charges it imposes on airlines. Economic regulation of

charges at Dublin airport is based on the Aviation Regulation Act 2001 and is implemented by the IAA.

1.9 What legislative and/or regulatory regime applies to air accidents? For example, are there any particular rules, regulations, systems and procedures in place which need to be adhered to?

The AAIU is responsible for conducting technical investigations into air accidents in Ireland, as well as incidents outside of Ireland involving Irish-registered aircraft.

The Air Navigation (notification and investigation of accidents, serious incidents and incidents) Regulations 2009 (“**2009 Regulations**”) give effect to the requirements of Annex 13 of the Chicago Convention and give the AAIU the powers it needs to carry out full and detailed technical investigations.

EU Regulation 996/2010 on the Investigation and Prevention of Accidents and Incidents in Civil Aviation (as amended by Regulations (EU) 376/2014 and 2018/1139) is directly applicable in Ireland.

Following an investigation, the AAIU will issue safety recommendations to the appropriate aviation authority. The AAIU does not purport to apportion blame or liability in respect of an accident.

1.10 Have there been any recent cases of note or other notable developments in your jurisdiction involving air operators and/or airports?

The airline industry has recovered substantially from the COVID-19 pandemic during 2023 and according to the IATA traffic globally is now at 95.7% of pre-COVID levels and airline profitability is beating expectations. According to the Irish Central Statistics Office, in the first quarter of 2023, 7.6 million passengers passed through the five main Irish airports, up 62% compared with 2022 and up 29% when compared with the same period in 2020, with an increase in the number of flights of 15,700 when compared to the same period in 2022.

Impact of EU Sanctions on Russia on EU Aviation

Since 2014, the EU has imposed a series of sanctions on Russia and these measures were significantly escalated following commencement of the war in Ukraine in February 2022. The sanctions imposed severely curtailed the ability of Irish aviation lessors to provide any type of service to any natural or legal person, entity or body in Russia and prohibited the sale, supply, transfer or export of aircraft or aircraft parts to Russia. This includes a prohibition on leasing aircraft to Russian entities, with all Irish lessors being obligated to terminate existing aircraft leases to Russian entities by 28 March 2022. In addition, Russian operated air-carriers are prohibited from overflying the territory of the EU and technology can no longer be supplied to the aviation industry in Russia. This prohibition also applies to the provision of related services such as insurance and reinsurance of Russian connected aircraft.

In October 2022, the EU announced further sanctions against Russia, including section 5n of Regulation 833/2014 (as amended) the prohibition of, *inter alia*, providing direct or indirect legal advisory services to the Government of Russia or legal persons, entities or bodies established in Russia. This means that any non-contentious legal advice may no longer be provided to in-scope entities, except for some limited exceptions. In terms of the Irish aviation and leasing industry, it means that law firms can no longer: give advice on commercial transactions involving the application or interpretation of law; participate

with or on behalf of clients in commercial transactions, negotiations and other dealings with third parties; or prepare, execute or verify legal documents to the above-referenced Russian entities. Inclusion of “indirect” advice within the ambit of the Regulation brings legal entities owned or controlled by Russian parties into scope.

In June 2023, the transit prohibition for certain goods including aviation-related materials was extended to goods exported from the EU to third countries via Russia. In August 2023, measures were introduced which amend Regulation (EC) 765/2006 and seek to align the restrictive sanctions against Belarus with those imposed against Russia to ensure that Russian sanctions cannot be circumvented through Belarus. This includes an additional export ban on goods and technology suitable to use in the aviation industry.

The Irish High Court has seen a number of cases being lodged by several Irish lessors with respect to insurance claims arising from the estimated 400 aircraft that these lessors have been unable to recover from Russia following termination of the leases as mandated by EU sanctions. The cases have been subject to appeals during 2023 regarding jurisdiction of the Irish Courts and the discovery of insurance documentation. The cases are ongoing and will continue into 2024.

In a recent decision of the Irish High Court, the Court considered the effect of the sanctions regulations on two Irish domiciled companies in liquidation, GTLK Europe DAC and GTLK Europe Capital DAC. The companies formed part of the GTLK international transport leasing business and its parent company, Joint Stock Company GTLK, was incorporated in the Russian Federation. The Russian parent company was added to Annex 1 of EU Regulation 269/2014 of 17 March 2014 (the “**Asset Freeze Regulation**”). The High Court found that the presumption of control of the Irish companies by its Russian parent company contained in the Asset Freeze Regulation was rebutted by virtue of the appointment of the joint liquidators to the Irish companies.

The ongoing liquidation of GTLK Europe DAC and GTLK Europe Capital DAC is understood to be the largest liquidation in the history of the State.

1.11 Are there any specifically environment-related obligations or risks for aircraft owners, airlines, financiers, or airports in your jurisdiction, and to what extent is your jurisdiction a participant in (a) the EU Emissions Trading System (EU ETS) or a national equivalent, and (b) ICAO's Carbon Offsetting and Reduction Scheme for International Aviation (CORSIA)?

Irish environmental legislation generally implements EU environmental policies or directives. EU environmental regulations are also part of national law in Ireland and are enforceable. There is a significant body of environmental legislation which includes general environment-related obligations with which businesses operating in Ireland are required to comply. The legislation includes obligations relating to waste management, chemicals, water, air quality and noise emissions. A financier would be responsible for ensuring compliance with such obligations where a financier takes possession of an asset located in Ireland through appointing a receiver or otherwise. It is important for owners and financiers to be able to monitor environmental compliance of lessees particularly with respect to EU ETS and CORSIA obligations.

The EPA is the primary body tasked with implementing and enforcing environmental obligations in Ireland. The IAA also plays an important role in the context of the aviation sector with

a view to maintaining environmental standards that comply with the requirements of the ICAO, the EU and EASA, among others. The IAA is responsible for the issue of noise certificates for Irish registered aircraft in compliance with EASA noise certification levels.

EU ETS

The EU ETS Directive 2003/87/EC (as amended) (the “**EU ETS Directive**”) has been implemented into national law in Ireland through various statutory instruments. Aircraft operators operating in Ireland are required to monitor, report and verify their CO₂ emissions and to surrender allowances against those emissions. Any shortfall between the allocated sum of free emissions allowances and their actual emissions require the purchase of additional allowances. The EU has limited the scope of the EU ETS to flights within the European Economic Area until 31 December 2023. The EPA is responsible for administering the EU ETS obligations for aircraft operators assigned to Ireland.

CORSIA

Ireland has volunteered to participate in CORSIA for its pilot phase which commenced on 1 January 2021 and ran through to 1 January 2023. The first phase will then take place from 2024 to 2026, in which Ireland will participate. Unlike EU ETS which is a “cap and trade” scheme that sets an upper limit for the total amount of emissions, CORSIA is an “offsetting scheme”, implying that emissions can grow but must be compensated by offsets. CORSIA requires aircraft operators to offset a part of their emissions through the purchase and cancellation of CORSIA eligible emissions units. CORSIA applies to international (not domestic) flights.

In June 2022, the EU Parliament and the European Council agreed on a joint proposal to incorporate CORSIA into the EU ETS monitoring, reporting and verification (“**MRV**”) framework and to gradually phase out free aviation emissions allowances to airlines by 2027. A meeting between the Parliament, Council and Commission is to agree on a final Directive. The Council dismissed the Parliament’s proposal to include all extra-territorial flights into and out of EU airspace within the EU ETS framework (though it may reconsider this if the ICAO Assembly does not set a long-term carbon reduction goal for aviation).

2 Aircraft Trading, Finance and Leasing

2.1 Does registration of ownership in the aircraft register constitute proof of ownership?

The Irish aircraft register is operated and maintained by the IAA. It is a registry of nationality and not of title. Registration of an aircraft in the name of a person does not establish that person’s title to the aircraft and it cannot be regarded as giving notice (whether actual or constructive) of a person’s interest in an aircraft.

In order to register an aircraft in Ireland, the aircraft must have a connection to Ireland and, save in the rare case where the IAA grants a specific exemption, the applicant must demonstrate that the aircraft is either: wholly owned by an Irish citizen or EU citizen having a place of residence or business in Ireland; or owned by a company registered in and having its principal place of business in Ireland or the EU, with not less than two-thirds of the directors also being Irish or EU citizens. Notwithstanding the foregoing, an aircraft may also be registered in Ireland if it is “chartered by demise, leased or on hire to, or is in the course of being acquired under a lease-purchase or hire-purchase

agreement by a citizen or company” where such charter, lease or hire is to an individual or corporate satisfying the requirements set out above with respect to Irish or EU citizenship. When relying on the operator as a connection to Ireland, the IAA may impose any conditions on such registration as it deems fit.

The IAA has concluded a number of arrangements with foreign civil aviation authorities which serve to delegate the responsibility for regulation and safety oversight for Irish registered aircraft from the IAA to the aviation authority in the operator’s home State. These agreements are entered into pursuant to Article 83*bis* of the Chicago Convention, which permits bilateral agreements between two aviation authorities located in Chicago Convention contracting States.

2.2 Is there a register of aircraft mortgages and charges? Broadly speaking, what are the rules around the operation of this register?

Historically, the IAA did not operate a register of aircraft mortgages or third-party rights or interests in aircraft or engines, and would not agree to requests to note a mortgage or third-party interest on the aircraft register or related file. However, since April 2022, the IAA has implemented a new system for the notification of mortgages, charges and liens over aircraft registered with the Irish Civil Register (the “**Register**”). Initially, this new system was meant to apply only to certain aircraft, in particular, those not covered by the Cape Town Convention. The IAA has now clarified that it applies also to larger commercial aircraft. Through the filing of Form G17, the registered owner of the aircraft can note a mortgage, charge or lien against the aircraft on the Register and the relevant lender can obtain a corresponding deregistration power of attorney. The G17 form only evidences the existence of a charge against the aircraft, it does not perfect the created security or name the charge-holder referred to on the register. This will assist lenders with the export of aircraft from Ireland in the event of a repossession and serves as notification to the public of the existence of security over an aircraft.

The IAA acknowledges the Irrevocable De-Registration and Export Request Authorisation Register (“**IDERA**”) pursuant to its obligations under the Cape Town Convention as enacted by the International Interests in Mobile Equipment (Cape Town Convention) Act 2005 (the “**CTC Act 2005**”), but this does not serve to notify third parties or perfect any security interest in an aircraft.

Aircraft mortgages and other “charges” (as defined in the CA2014) over aircraft granted by Irish companies and Irish registered branches of foreign companies are registrable with the Companies Registration Office (the “**CRO**”) in Ireland within 21 days of the creation of the charge. The register maintained by the CRO operates as a priority register, with priority based on the time of filing, not the time of the interest being granted. Under the CA2014, priority interests can be filed up to 21 days prior to the date on which the charge is actually granted, with a full filing being made upon the charge actually being granted. Parties may elect to make a single filing upon the charge actually being entered into (it is this latter option that is generally chosen). If the charge is not registered within 21 days of the date on which it is granted, the charge becomes void against a liquidator and any creditor of the party granting the charge.

The CTC Act 2005 provides for the registration of certain interests in airframes and engines with the International Registry of Mobile Assets to ensure priority. Aircraft mortgages are among the interests which constitute “International Interests” (as defined in the Cape Town Convention) to the extent the mortgage is granted by an owner in a Contracting State or (in respect of the airframe) the aircraft is registered in a Contracting

State. The International Registry is an online register but, due to it being located in Dublin, disputes over registrations are heard or enforced in the Irish High Court (and in particular the Commercial Court which is a division of the High Court), regardless of the country in which the claim originates.

The decision in the English law case of *Blue Sky One and Ors v. Mahan Air* remains relevant. There, the courts of England and Wales considered the impact on perfection of an English law aircraft mortgage when the asset was located outside of England and Wales at the time the mortgage interest was granted, and concluded that a mortgage granted in such circumstances would not serve to create a right *in rem* in the aircraft. Although this is an English law judgment, unless or until the Irish courts hand down a judgment which takes a different position, it is likely that the decision of the English court will continue to be viewed as persuasive by any Irish court should the same issue involving an Irish law mortgage come before the Irish courts.

2.3 Are there any particular regulatory requirements which a lessor or a financier needs to be aware of as regards aircraft operation?

Strict liability is imposed on owners under section 21 of the Air Navigation and Transport Act 1936 (as amended) where material damage or loss is caused by any item falling from an aircraft in-flight. Lessors and financiers, unless holding an interest akin to an owner, will be unlikely to be held to be liable under section 21 and, in any event, owners can be indemnified against the risks under section 21 by a third party. Section 21(2) of the Air Navigation and Transport Act 1936 (as amended) also provides that an owner will not be liable where the aircraft is subject to a charter or lease arrangement for 14 days or more and the pilot and crew are not in the employ of the owner.

Save as set out above, liability for financiers, owners and lessors is based in negligence and a failure on the part of the relevant party to discharge a duty of care. Thus, lessors, owners and financiers are unlikely to be held responsible for losses resulting from the operation of an aircraft, unless they are actually aware of a defect or issue and failed to take reasonable action in respect of such defect or issue in order to prevent loss.

2.4 As a matter of local law, is there any concept of title annexation, whereby ownership or security interests in a single engine are at risk of automatic transfer or other prejudice when installed 'on-wing' on an aircraft owned by another party? If so, what are the conditions to such title annexation and can owners and financiers of engines take pre-emptive steps to mitigate the risks?

Under Irish law, there is no concept of title annexation, therefore title to an engine remains with the engine owner, even where such engine is installed temporarily or otherwise on another aircraft. Title to such engine needs to be expressly transferred by the owner.

2.5 What (if any) are the tax implications in your jurisdiction for aircraft trading as regards a) value-added tax (VAT) and/or goods and services tax (GST), and b) documentary taxes such as stamp duty; and (to the extent applicable) do exemptions exist as regards non-domestic purchasers and sellers of aircraft and/or particular aircraft types or operations?

The Irish VAT treatment of the acquisition of aircraft will depend on the location of the aircraft at the time of the transfer.

In cases where the aircraft is physically located outside Ireland at the time of the transfer, it will be outside the scope of Irish VAT.

If the aircraft is supplied while within the territory of Ireland, Irish VAT at the standard rate of 23% would apply. However, the supply of aircraft can be zero-rated for VAT purposes where either (i) the aircraft is used by an airline operating for reward chiefly on international routes, or (ii) the aircraft is used and enjoyed outside the EU.

Irish companies are generally liable to stamp duty on certain instruments that transfer ownership of property (such as aircraft). However, Irish tax law provides an exemption from Irish stamp duty on the acquisition, lease or disposal of aircraft or part of an aircraft (e.g. an aircraft engine).

Therefore, a charge to Irish stamp duty will not arise on the purchase, disposal or leasing of aircraft even where the documents relating to these transactions are executed in Ireland.

2.6 Is your jurisdiction a signatory to the main international Conventions (Montreal, Geneva and Cape Town)?

Ireland is a signatory to the following conventions (as amended and updated) in relation to international airline operations:

1. The 1929 Warsaw Convention for the Unification of Certain Rules Relating to International Carriage by Air, as amended by the Hague Protocol of 28 September 1955 – ratified 20 September 1935 and 12 October 1959.
2. The 1944 Chicago Convention on International Civil Aviation – ratified 31 October 1946.
3. The 1956 Geneva Agreements on the Joint Financing of Certain Air Navigation Services in Greenland/Iceland – ratified 3 June 1960.
4. The 1962 Rome Protocol Relating to an Amendment to the Convention on International Civil Aviation – ratified 14 February 1963.
5. The 1971 New York Protocol Relating to an Amendment to the Convention on International Civil Aviation – ratified 15 June 1971.
6. The 1971 Vienna Protocol relating to an amendment to the Convention on International Civil Aviation – ratified 11 July 1972.
7. The 1963 Tokyo Convention on Offences and Certain Other Acts Committed on Board Aircraft – ratified 14 November 1975.
8. The 1970 Hague Convention for the Suppression of Unlawful Seizure of Aircraft – ratified 24 November 1975.
9. The 1999 Montreal Convention for the Unification of Certain Rules for International Carriage by Air – ratified 29 April 2004.
10. The 2001 Cape Town Convention on International Interests in Mobile Equipment – ratified 29 July 2005.
11. The 2001 Protocol to the Convention on International Interests in Mobile Equipment on matters specific to Aircraft Equipment – ratified 23 August 2005.

Ireland has also signed, but has not yet ratified, the 1948 Geneva Convention on the International Recognition of Rights in Aircraft.

As of 10 April 2018, Ireland has ratified the 2016 Montreal Protocol relating to an Amendment to the Convention on International Civil Aviation Article 50(a) and the 2016 Montreal Protocol relating to an Amendment to the Convention on International Civil Aviation Article, which are not yet in force.

2.7 How are the Conventions applied in your jurisdiction?

The Cape Town Convention became law in Ireland on 1 March 2006, following the passing of the CTC Act 2005. The application of the Cape Town Convention was further extended to introduce a bespoke insolvency regime for assets covered by the Cape Town Convention following the granting of an order in May 2017 pursuant to the State Airports (Shannon Group) Act 2014. The court system, and in particular the Commercial Court in Ireland, is the appropriate means of enforcing the Cape Town Convention. The Commercial Court has exclusive jurisdiction to hear any proceedings in connection with any function of the International Registrar under the Cape Town Convention or the Aircraft Protocol as defined in the 2005 Act and the State Airport (Shannon Group) Act 2014.

The Montreal Convention was implemented in Ireland by the Air Navigation and Transport (International Convention) Act 2004. The court system in Ireland is the suitable forum for enforcement of the Montreal Convention. The IAA, which has a significant consumer protection role, is the national enforcement body tasked with the monitoring and regulation of EU legislation covering air passenger rights and the provision of assistance to passengers with reduced mobility.

2.8 Does your jurisdiction make use of any taxation benefits which enhance aircraft trading and leasing (either in-bound or out-bound leasing), for example access to an extensive network of Double Tax Treaties or similar, or favourable tax treatment on the disposal of aircraft?

Ireland has a comprehensive double tax treaty network (as of November 2023, 76 treaties have been signed, 74 of which are in force). The vast majority of Ireland's double tax treaties result in a reduction in withholdings (often to zero) on lease rentals and/or debt service costs.

In addition, Ireland's tax regime allows for the disposal of aircraft to be free from Irish stamp duty and Irish VAT in certain cases. For further detail see question 2.5 above, which sets out the tax treatment of aircraft disposals as regards Irish stamp duty and VAT.

2.9 To what extent is there a risk from the perspective of an owner or financier that a lessee of aircraft or other aviation assets in your jurisdiction may acquire an economic interest in the aircraft merely by payment of rent and thereby potentially frustrate any rights to possession or legal ownership or security?

Provided an Irish law governed lease is properly drafted, there is no risk for an owner or financier that a lessee of an aircraft or other aviation asset may acquire an economic interest in such aircraft or other aviation asset by payment of rent under such lease. Irish law recognises that the lease rentals paid by a lessee for the lease of an aircraft or aviation asset are not payments to acquire ownership of the aircraft or aviation asset. In the case of an Irish law governed operating lease, the lease provisions should clearly provide that ownership remains vested in the owner. In the case of an Irish law governed finance lease, the provisions regarding any purchase option should clearly provide that the owner retains title to the aircraft or aviation asset until certain conditions are met. Under an Irish law hire-purchase agreement, where a hirer has paid an amount equal to or more than one-third of the total amount payable under the hire-purchase agreement, the owner must seek a court order to enforce any right to recover possession.

3 Litigation and Dispute Resolution

3.1 What rights of detention are available in relation to aircraft and unpaid debts?

Irish law recognises certain liens and rights of detention for unpaid debts or charges. The rights may arise in law, equity, or under contract or statute.

At common law, the third-party liens available are similar to other common law jurisdictions such as England and Wales. An unpaid seller may seek to exercise a seller's lien, although typical aircraft finance structures mean that aircraft manufacturers are not in a position (and in most instances do not need) to exercise such rights. A possessory lien may be exercised, for example, where aircraft are subject to a claim for unpaid repairs. In order to exercise such a lien, the aircraft must be, and remain, in the possession of the party who carried out the repairs, and the specific aircraft over which the lien is sought to be exercised must have been improved through the labour of that party, with the knowledge and authorisation of the owner (note that maintenance is probably insufficient), resulting in an unpaid debt. Such a lien would only extend to the cost of unpaid repairs to the specific aircraft in question, and would not allow for a right of sale without court intervention. Contractual liens can also be created, and if provided for in the agreement between the airport user and the owner or operator of an airport, aircraft can be detained, and sold, for non-payment of certain airport charges.

The Air Navigation and Transport (Amendment) Act 1998 (section 40) (as amended) affords certain airports operated by specified airport authorities the right to detain and, if necessary, to sell aircraft in respect of certain unpaid airport charges. This power to detain extends beyond the particular aircraft in respect of which the charges were incurred to any other aircraft of the operator or registered owner. This can cause problems for new operators assuming liability for pre-existing debts. If the owner or operator disputes the charges and offers sufficient security pending determination of the dispute, the power to detain is limited. As regards the power of sale, it can only be exercised with leave of the Irish High Court.

Parties in possession of judgments may also be entitled to exercise certain rights against an aircraft or shares in an aircraft holding company, provided appropriate judgment enforcement procedures have been followed, but an Irish court will have regard to prior and superior interests in granting any such reliefs.

3.2 Is there a regime of self-help available to a lessor or a financier of an aircraft if it needs to reacquire possession of the aircraft or enforce any of its rights under the lease/finance agreement?

Ireland is generally seen as a creditor-friendly jurisdiction, allowing self-help repossession and interim relief and other self-help remedies provided the contractual arrangements between the parties provide for the same. Standard default remedies under leasing and security agreements often include powers to take possession or control of the aircraft in order to: sell or grant a new lease of the aircraft; receive income or profits that result from the management or use of the aircraft; and/or procure the deregistration, export and physical transfer of the aircraft from the territory in which it is located. In Ireland, provided the requirements of the Convention are met, it is not necessary to make an application to the High Court for leave to exercise that remedy unless the terms agreed between the parties expressly require the creditor to make such an application.

While self-help remedies may be available, there are risks for the lessor associated with non-consensual repossession without ancillary judicial relief, such as a lessee claiming breach of lease terms for quiet enjoyment and use of the aircraft. It is often considered prudent for the lessor to institute recovery proceedings where the lessee is considered uncooperative, or where a liquidator or examiner has been appointed to the lessee.

As a member of the EU, the relevant Declaration pursuant to Article 55 of the Convention and the application of Council Regulation (EC) 1215/2012 on jurisdiction and enforcement of judgments applies to interim relief under the Convention. Consideration should be given to the impact of Brexit, and the status of the UK following its exit from the EU on 31 December 2020, in considering any potential enforcement scenario.

Ireland is a signatory of and has ratified the Cape Town Convention and has given effect to the Aircraft Protocol. In May 2017, the Irish Government made an order giving immediate effect to Article XI (Alternative A) of the Aircraft Protocol, which further enhances Ireland's position as a leading jurisdiction for aircraft finance as it allows creditors to gain access to their aircraft assets in the event of insolvency of a debtor after a 60-day waiting period.

3.3 Which courts are appropriate for aviation disputes? Does this depend on the value of the dispute? For example, is there a distinction in your jurisdiction regarding the courts in which civil and criminal cases are brought?

Aviation disputes in Ireland will typically be dealt with in the civil courts, in particular the Commercial Court division of the High Court which deals with commercial disputes where, among other things, the quantum of the claim exceeds €1 million, and enjoys enhanced case management procedures. This Court also deals exclusively with proceedings in connection with any function of the Registrar under the Cape Town Convention or the Aircraft Protocol.

3.4 What service requirements apply for the service of court proceedings, and do these differ for domestic airlines/parties and non-domestic airlines/parties?

As most significant aircraft disputes, or enforcement scenarios, will invoke the High Court jurisdiction, the Rules of the Superior Courts prescribe the relevant methods of service. Personal service on individuals may be effected in the State. Service on a company in the State must be effected in accordance with section 51 of the Companies Act 2014, by leaving the proceedings at or sending it by prepaid post to the registered office of the company. Where the company has not notified the Registrar of Companies of its registered office, the documents may be served on the Registrar.

For parties located outside the State but within the EU, Council Regulations (EC) 1215/2012 (Brussels Recast Regulation) on jurisdiction and 1393/2007 on effecting service may apply. For parties outside the EU, leave of the Irish court to issue and serve proceedings may be required, with service thereafter effected pursuant to the Hague Service Convention. As matters stand, the Hague Convention addresses the service abroad of judicial and extrajudicial documents in civil and commercial matters, and is now the applicable instrument for the service of Irish legal proceedings in the UK.

3.5 What types of remedy are available from the courts or arbitral tribunals in your jurisdiction, both on i) an interim basis, and ii) a final basis?

In general, the Irish courts have jurisdiction to order and direct the full range of common law and equitable remedies to include making orders providing for interim and interlocutory relief, together with final orders including declaratory orders, injunctions and associated damages and costs awards.

The Arbitration Act 2010, which adopted the UNCITRAL Model Law, as amended in 2006 (the “**Model Law**”), with some minimal amendments, applies to all arbitrations, both domestic and international, commenced in Ireland after 8 June 2010. Unlike England and Wales, Ireland deliberately avoided wholesale amendments and additions to the Model Law. Therefore, Articles 9 and 17 in respect of interim measures apply.

3.6 Are there any rights of appeal to the courts from the decision of a court or arbitral tribunal and, if so, in what circumstances do these rights arise?

Appeals of High Court decisions as the court of first instance may be made to the Court of Appeal, and thereafter, on certain limited grounds, to the Irish Supreme Court.

Ireland ratified the New York Convention in 1981 and no reservations have been entered. The relevant legislation is now the Arbitration Act 2010, which does not provide for a right of appeal against an arbitral award.

The grounds for challenging an arbitral award before the High Court under the 2010 Act are limited to those expressly enumerated under Article 34(2) of the Model Law (which mirrors the grounds on which recognition and enforcement might be refused under the New York Convention as per Article 36 of the Model Law). Challenges must be brought within three months from the date of receipt of the award. Section 12 of the 2010 Act, however, requires that any challenge on the basis of public policy must be brought within 56 days of the date from which the circumstances giving rise to the application became known or ought reasonably to have become known. The jurisprudence suggests Irish courts will construe the ground of public policy as extending only to breaches of the most fundamental notions of morality and justice.

3.7 What rights exist generally in law in relation to unforeseen events which might enable a party to an agreement to suspend or even terminate contractual obligations (in particular payment) to its contract counterparties due to *force majeure* or frustration or any similar doctrine or concept?

Force majeure or frustration may provide a defence for breach of contractual obligations due to unforeseen events, whether in respect of performance obligations in full or otherwise. Whether a particular event or circumstance gives rise to an entitlement to relief as a *force majeure* event is contract-dependent. *Force majeure* clauses tend to be interpreted strictly. Frustration may be available in limited circumstances beyond the parties' actual agreement.

Where the agreement contains a *force majeure* clause:

The drafting of the specific contract is crucial; there is no standard definition of what constitutes *force majeure*. The wording of the clause will need to be examined to determine whether the event is within its scope. The party relying on the clause must establish that the precise circumstances of the event have caused the failure or inability to perform. The clause will generally

set out steps to be complied with to allow a party to claim *force majeure*, such as notice and mitigation provisions. While the effect of successfully relying on *force majeure* will depend on the terms of the specific clause, the relevant party may be exempt from performing certain obligations or have certain obligations under a contract suspended for a period of time.

Where there is no *force majeure* clause:

There is no legal presumption of *force majeure* in Irish law, and it seems unlikely that a court would imply a *force majeure* clause where one has not been expressly provided. In the absence of such clause, a party may be able to claim that the contract has been frustrated. Frustration allows a contract to be set aside where unforeseen exceptional circumstances cause performance of the contract to become impossible, illegal or result in a party's obligations in performing the contract becoming radically different to what was originally intended. There is a very high threshold to be met and it is insufficient to show that performance of the contractual obligations has become significantly more difficult or expensive. If successful, a claim for frustration normally results in the termination of the entire contract; unlike a *force majeure* contract claim which normally provides for the suspension of, or relief from, performance.

4 Commercial and Regulatory

4.1 How does your jurisdiction approach and regulate joint ventures between airline competitors?

Joint ventures between airlines are subject to Irish competition law which implements and complies with EU competition law. Therefore, joint ventures are subject to sections 4 and 5 of the Irish Competition Act 2002 (as amended) which implement Articles 101 (anti-competitive agreements) and 102 (abuse of a dominant position) of the Treaty on the Functioning of the European Union. Mergers and acquisitions are subject to a merger notification regime to the Irish Consumer and Competition Protection Commission (“CCPC”).

There are no particular Irish rules on highly integrated airline alliances, codeshare agreements or similar arrangements. The CCPC follows EU precedent in relation to such alliances and will not block them unless in the specific instance it will lead to a substantial lessening of competition for consumers in Ireland.

4.2 How do the competition authorities in your jurisdiction determine the ‘relevant market’ for the purposes of mergers and acquisitions?

The relevant body is the CCPC (<https://www.ccpc.ie>).

There is no statutory definition of “relevant market” and the market may be defined broadly or narrowly in the context of the particular case.

Market sectors used in EU case law such as origin and destination city pairs, premium and non-premium passengers, non-stop and one-stop flights and airport substitution will equally be considered by the CCPC in Ireland, using EU case law as precedent.

4.3 Does your jurisdiction have a notification system whereby parties to an agreement can obtain regulatory clearance/anti-trust immunity from regulatory agencies?

All mergers and acquisitions of legal entities, including airlines that fall within the remit of the Competition Act 2002 (as amended) and satisfy certain financial thresholds require mandatory pre-clearance by submitting a notification to the CCPC.

The commencement of the Competition (Amendment) Act 2022 (the “2022 Act”) on 27 September 2023, giving effect to Directive (EU) 2019/1, now also gives the CCPC the power to compel parties to notify mergers and acquisitions that do not meet the applicable financial thresholds if the CCPC deems the transaction may have “an effect on competition in markets for goods or services in the State”.

4.4 How does your jurisdiction approach mergers, acquisition mergers and full-function joint ventures?

Ireland's competition policy is closely aligned with EU principles of competition law. The test is whether the merger, acquisition or joint venture will substantially lessen competition in the market for consumers in Ireland.

The CCPC is responsible for enforcing Irish and European competition law in Ireland. They can enforce by way of criminal or civil proceedings in the Irish courts, with heavy fines and prison sentences available. However, the CCPC has applied these sparingly. The 2022 Act significantly strengthens the CCPC's investigative and disciplinary powers, including giving the CCPC its own powers to issue civil fines of up to a maximum of €10 million or 10% of a party's worldwide turnover, whichever is greater.

In the case of a merger or acquisition, the transaction does not become effective until the CCPC has either cleared the transaction, refused to clear it or imposed conditions to the merger or acquisition, the aim of which will be to prevent a substantial lessening of competition in the market as a result of the merger or acquisition.

4.5 Please provide details of the procedure, including time frames for clearance and any costs of notifications.

A merger notification application is lodged by the parties involved in the relevant transaction to the CCPC in relation to the merger, acquisition or joint venture. The application describes the transaction proposed and the roles of each party within the market in question; and gives a breakdown of the horizontal and vertical overlaps of the parties within the market, and the impact of the transaction on such overlaps.

The CCPC then has 30 working days to give a Phase I clearance or to determine that the issues are sufficiently complex to require a Phase II clearance, for which the CCPC has 120 working days. These timelines can be extended by the CCPC by requesting further information. If it does this, the clock stops ticking until such time as the CCPC has received satisfactory replies to all questions, at which point time starts to run from the start again, i.e. it has 30 working days.

In general, however, the CCPC deals with the majority of cases in Phase I without extending the timeline, so the system works efficiently. The CCPC will try to agree conditions or changes with the proposed parties to the merger, rather than refuse to clear it.

In addition to the standard merger notification procedure, the CCPC introduced a simplified merger notification procedure in July 2020. The procedure is designed for mergers and acquisitions that require merger clearance because they reach the statutory financial thresholds but clearly do not raise substantive competition concerns; for example, parties that operate in entirely different sectors with no horizontal or vertical crossover. The CCPC has published guidance on what transactions may fall within the scope of such procedure, available at <https://www.ccpc.ie/business/wp-content/uploads/sites/3/2020/05/Simplified-Merger-Notification-Procedure-Guidelines.pdf>

For mergers and acquisitions that fall within the scope of the simplified merger notification procedure, the review period will be shorter and less burdensome for notifying parties. Upon receipt of a complete notification, the CCPC will publish a public notice of the proposed merger. Third parties have 10 days from the publication of the notice to make any submission(s), after the expiry of which, the CCPC will endeavour to make a decision as soon as practically possible.

During the course of 2022, the CCPC issued 70 determinations, with 39 of them (56%) under the simplified merger notification procedure.

The fee charged by the CCPC for a merger notification is €8,000 (S.I. No. 623 of 2002).

4.6 Are there any sector-specific rules which govern the aviation sector in relation to financial support for air operators and airports, including (without limitation) state aid?

Ireland applies EU law on State Aid.

With reference particularly to the aviation sector, Ireland adheres to the EU Commission Guidelines on State Aid to airports and airlines (2014/C 99/03) (the “**State Aid Guidelines**”).

The State Aid Guidelines set out the conditions under which Member States can grant State Aid to airports and airlines and provide for flexibility in exceptional circumstances, including COVID-19, as recently confirmed by the EU in non-Irish cases.

Adopted in 2014, these guidelines were originally scheduled to expire in April 2024. However, they have recently been prolonged until April 2027 due to mounting pressure on the European Commission to address the challenges faced by the European aviation sector since the guidelines’ adoption, including the impact of the COVID-19 pandemic and the energy crisis resulting from the Russia-Ukraine conflict.

Key features of the State Aid Guidelines are:

- State Aid for investment in airport infrastructure is permitted if there is a genuine transport need and the public support is necessary to ensure the accessibility of a region. The State Aid Guidelines define maximum permissible aid intensities depending on the size of an airport, in order to ensure the right mix between public and private investment. The possibilities to grant aid are therefore higher for smaller airports than for larger ones.
- Operating aid to regional airports (with fewer than three million passengers a year) will be permitted for a transitional period of 10 years under certain conditions, in order to give airports time to adjust their business model. To receive operating aid, airports need to work out a business plan paving the way towards full coverage of operating costs at the end of the transitional period. Airports with an annual passenger traffic of below 700,000 may face increased difficulties in achieving full cost coverage during the transitional period; the guidelines include a special regime for those airports, with higher aid intensities and a reassessment of the situation after five years.
- Start-up aid to airlines to launch a new air route is permitted, provided it remains limited in time. The compatibility conditions for start-up aid to airlines have been streamlined and adapted to recent market developments.

In 2021 the Regional Airports Programme for 2021–2025 (“**RAP**”) was published with the aim to provide funding to Ireland’s smallest airports (i.e., which handle fewer than one million passengers annually). The RAP was designed to comply

with EU guidelines and regulations such as the General Block Exemption Regulation (“**GBER**”) and is administered by the DOT. To date under this scheme, €6 million has been allocated to regional airports at Donegal, Ireland West (Knock) and Kerry, and over €10 million has been allocated to regional State airports at Shannon and Cork. A mid-term review of the scheme is currently ongoing, with a possibility mentioned of its expansion to include airports of up to three million passengers annually.

The RAP is administered by the DOT through the following schemes:

Category of Investment	Scheme	Aid Intensity / Levels of Support
Economic	Capital Expenditure (“ CAPEX ”)	Up to 75% support for investment projects in line with GBER
Non-Economic	Public Policy Remit Capital (“ PPR-C ”)	Up to 90% support for projects in line with national policy
	Public Policy Remit Operational (“ PPR-O ”)	Up to 100% support for activities in line with national policy

Non-economic activities, such as air traffic control, police, customs, security and fire services are supported by the PPR-C and PPR-O schemes. Funding for such activities and investments will fall within Ireland’s “Public Policy Remit” and will not constitute State Aid.

The Irish Government maintained strong support to the aviation sector throughout the COVID-19 pandemic and has continued to do so as recovery across the sector continues. This included €116 million under an EU state aid approved COVID-19 supplementary support scheme for Irish airports.

All funding of regional airports by the State must comply with the State Aid Guidelines referred to above.

4.7 Are state subsidies available in respect of particular routes? What criteria apply to obtaining these subsidies?

State subsidies are available to regional airports that provide connectivity. The DOT’s Regional Airports Programme 2021–2025 provides for a Public Service Obligation (“**PSO**”) air service scheme, in compliance with Regulation (EC) No. 1008/2008, on the common rules for the operation of air services in the Community. This Regulation provides that Member States may impose a PSO in respect of scheduled air services between an airport in the Community and an airport serving a peripheral or development region in its territory, or on a thin route to any airport on its territory, any such route being considered vital for the economic and social development of the region which the airport serves.

The PSO services are supported by the Irish Government on the basis that these services are considered necessary for the economic development of their regions and that they would not be provided on a commercial basis.

In June 2022, Aer Arann Islands (Connemara) won a four-year PSO worth €4.9 million from the Irish Government to provide air services to the Aran Islands, off Western Ireland. Additionally, a new PSO air services contract was awarded to Emerald Airlines to operate air service between Donegal and Dublin airports, from February 2022 until February 2025, which may be extended for a further one-year period. The

award of the contract to Emerald Airlines followed an EU public tendering process conducted by the DOT in accordance with the requirements of EU Regulation 1008/2008.

4.8 What are the main regulatory instruments governing the acquisition, retention and use of passenger data, and what rights do passengers have in respect of their data which is held by airlines and airports?

The Data Protection Act 2018 came into force in Ireland on 25 May 2018. That Act (as amended) and the directly effective EU General Data Protection Regulation (2016/679) (“**GDPR**”) are currently the primary pieces of legislation governing data protection in Irish law. In keeping with the relevant EU principles, data collectors and processors in the airline industry must adhere to the core requirements of: fairly obtaining and fairly processing personal data; keeping collected data only for one or more specified lawful purposes; processing such data only in ways compatible with the purpose for which it was given; keeping the data safe and secure; and ensuring that it is kept accurate and up to date.

The GDPR has far reaching extra-territoriality; non-EU carriers will be subject to the GDPR, if their marketing is targeted at travellers within the EU or where they engage in monitoring the behaviour of data subjects in the EU. Data processors will also be directly caught by specific obligations under GDPR S.I.336/2011 European Communities (Electronic Communications Networks and Services) (Privacy and Electronic Communications) Regulations 2011, giving effect to Directive 2002/58 (the “**E-Privacy Directive**”), which also apply to the airline industry, and in particular, the collection and use of passenger data in electronic marketing.

The EU Passenger Name Record (“**PNR**”) Directive (2016/681) was transposed into Irish legislation on 25 May 2018 (the same date as the GDPR became effective) by Statutory Instrument S.I.177 2018. That Directive provides for the collection by air carriers of PNR data for all extra-EU flights entering or departing from the EU, as well as the transfer of such data to EU Member States and sharing mechanisms across borders. Note that under Article 2 it can be extended in the future to intra-EU flights.

Under Article 15 of the GDPR, individuals have the right to request a copy of any of their personal data which is being “processed” by “controllers”, as well as other relevant information. If personal data is inaccurate, individuals have the right to have the data rectified by the controller without undue delay. If personal data is incomplete, individuals have the right to have data completed (this right is restricted in certain circumstances, for example, under Section 60 of the Data Protection Act 2018, which provides for restrictions that are necessary for important objectives of public interest). Individuals have the right to have their data erased without undue delay by the data controller if one of the specified grounds apply (Articles 17 and 19 of GDPR); this includes, for example, where data has been unlawfully processed or the data is no longer necessary for the purpose collected.

Personal data transfers to third countries or international organisations outside the European Economic Area (“**EEA**”) must be done in full compliance with the GDPR to ensure individuals’ rights and freedoms are protected. Following the decision of the Court of Justice of the European Union (the “**CJEU**”) on 16 July 2020 in the *Schrems II* case (C-311/18), CJEU invalidated the EU-US Privacy Shield on the basis that the access and use of personal data of EU citizens by US public authorities

were not sufficiently limited to what was strictly necessary, and lacked an adequate right to an effective legal remedy, as required by the GDPR and the EU Charter of Fundamental Rights. However, the CJEU clarified that transfers of passengers’ personal data outside of Ireland to a non-EU country remain valid under Standard Contractual Clauses (“**SCCs**”) subject to the qualifications set out in the judgment. This includes the requirement for data exporters and importers, when relying on SCCs, to verify that there is no reason to believe that any laws or practices applicable to the data importer hinder the data importer in fulfilling its obligations under the SCCs.

On 4 June 2021, the European Commission adopted two new sets of SCCs to replace the privacy shield data transfer scheme. These include a set for controllers and processors as well as another for transferring personal data to third countries. The new SCCs must be used for any new transfer agreements concluded on and from 27 September 2021, while previously executed SCCs were required to be replaced with new SCCs by 27 November 2022.

In response to the Schrems II decision, the European Commission and the US Government entered into discussions on a new EU-US framework that would address the issues raised by the CJEU. A new framework was approved in principle on 25 March 2022. Subsequently, on 7 October 2022 a US executive order was signed on “Enhancing Safeguards for United States Signals Intelligence Activities” which introduced new protections for access to, and use of, personal data by US intelligence agencies. Following these developments, the European Commission prepared and adopted its Adequacy Decision for the EU-US Data Privacy Framework in July 2023, restoring EU-US data transfers to a solid legal foundation. As a result, personal data can now flow from the EU to the US without the need for additional safeguards.

With effect from 1 January 2021, the UK became a “third country” to EU Member States for data protection purposes. On 28 June 2021, the Commission adopted two Adequacy Decisions for the UK, meaning that personal data can flow freely from the EU to the UK where it benefits from an essentially equivalent level of protection to that guaranteed under EU law. It must be noted that the Commission’s adequacy decisions in respect of the UK will automatically expire in four years, after which they may be renewed. The Commission continues to monitor the legal situation in the UK and could intervene at any point, if the UK deviates from the level of protection currently in place.

4.9 In the event of a data loss by a carrier, what obligations are there on the airline which has lost the data and are there any applicable sanctions?

Irish data protection law includes obligations to notify affected data subjects in the event of a data breach and a requirement to report breaches to the Data Protection Commission, pursuant to Article 33 of the GDPR and section 86 of the Data Protection Act 2018. The notification and reporting requirements vary based upon the specific circumstances of the data loss/breach. Breach notifications are made by way of an online form on the Data Protection Commission’s website (<https://dataprotection.ie>). The breach notification form was updated in November 2021. The Irish Data Protection Commission has approved a personal data security breach Code of Practice as a guide for organisations dealing with breaches of security involving customer or employee personal information. The timeframes for reporting and notification are extremely limited (24 hours in certain instances), and a failure to adhere to the required reporting requirements can lead to regulatory sanction. Irish law also includes a requirement to notify the Irish

police where the data breach potentially involves the commission of a crime, i.e. a cybersecurity attack or fraud.

4.10 What are the mechanisms available for the protection of intellectual property (e.g. trademarks) and other assets and data of a proprietary nature?

Registration of intellectual property in Ireland is carried out at the Irish Patents Office.

Registration of **trademarks** is governed by the Trade Marks Act 1996 (as amended). A trademark is usually registered for an initial 10-year period but can be renewed indefinitely. Unregistered trademarks may also be protected by the common law tort of passing-off.

Applications for an EU-wide trademark can be made through the EU Intellectual Property Office (“**EUIPO**”). Applications for international trademarks can be made under the Madrid Protocol and are administered by the World Intellectual Property Organisation (“**WIPO**”).

Patent registration is governed by the Patents Act 1992 (as amended). Irish patents are protected for a maximum of 20 years. Short-term, 10-year patents can also be obtained. Protection can be sought for other countries in Europe by an application for a European Patent through the European Patent Office which includes 40 countries, or throughout the world under the Patent Cooperation Treaty administered by WIPO, which covers 145 countries.

Registration of **designs** is governed by the Industrial Designs Act 2001 (as amended). Protection is granted initially for five years, which can be renewed four times, giving a maximum protection of 25 years. Protection throughout the EU can be obtained by applying for a Community Design through EUIPO. Protection in additional countries can be obtained under the Hague Convention operated by WIPO. Protection is also available for unregistered designs for up to a maximum of three years.

Copyright protection in Ireland is governed by the Copyright and Related Rights Act 2000 (as amended). There is no system of registration. Copyright protection for literary works lasts for 70 years after the death of the author. Copyright protection for computer-generated works lasts for 70 years after the date they are first made available to the public.

Other non-registrable intellectual property such as confidential information, trade secrets, knowhow and the like are normally protected by non-disclosure agreements or other forms of contract.

4.11 Is there any legislation governing the denial of boarding rights and/or cancelled flights?

Ireland complies with Regulation (EC) 261/2004 in relation to denied boarding rights.

Where a flight is overbooked and an air carrier reasonably expects to deny boarding, it shall first call for volunteers in exchange for benefits to be agreed. If there is an insufficient number of volunteers, the airline may deny boarding to passengers against their will but must compensate them and offer the following assistance:

- Information: the air carrier shall provide a written notice setting out the rules for assistance in line with Regulation 261/2004. In addition, a sign must be displayed at the check-in area referring to air passenger rights under Regulation 261/2004.
- Passengers shall be offered the choice between: reimbursement of the cost of their ticket if they decide not to travel; and rerouting to their final destination at the earliest opportunity.

Passengers may choose to travel at a later date at their convenience, subject to the availability of seats.

- Meals and refreshments shall be offered free of charge and in reasonable relation to the waiting time.
- Hotel accommodation shall be provided where a stay of one or more nights becomes necessary, as well as transport between the hotel and the place of accommodation.
- Two free telephone calls, telex or fax messages, or emails shall be offered.
- Compensation as set out below. The amount of compensation payable may be reduced by 50% if the rerouting offered allows the passenger to arrive at his/her final destination close to the original planned arrival time.

Compensation amounts related to denied boarding

- For flights with a distance of 1,500km or less: €250.
- For Intra-Community flights of more than 1,500km and all other flights between 1,500km and 3,500km: €400.
- For all flights with a distance of 3,500km or more: €600.

4.12 What powers do the relevant authorities have in relation to the late arrival and departure of flights?

Ireland complies with Regulation 261/2004 in relation to late arrival and departure of flights.

Whether a delay comes within the terms of Regulation 261/2004 depends upon the distance of the route involved and the delay itself must be at least two hours. The Regulation shall apply to:

- (a) delays of two hours or more in the case of flights of 1,500km or less;
- (b) delays of three hours or more in the case of all Intra-Community flights of more than 1,500km, and of all other flights between 1,500km and 3,500km; and
- (c) delays of four hours or more in the case of all other flights.

The operating air carrier must provide care and assistance in the event of such delays. This must consist of the following:

- Information: the air carrier shall provide a written notice setting out the rules for assistance in line with the Regulation. In addition, a sign must be displayed at the check-in area referring to air passenger rights under the Regulation.
- Meals and refreshments shall be offered free of charge and in reasonable relation to the waiting time.
- Hotel accommodation shall be provided where a stay of one or more nights becomes necessary, as well as transport between the hotel and the place of accommodation.
- Communications: passengers shall be offered free of charge two telephone calls, telex or fax messages, or emails.
- Reimbursement: where the flight delay is at least five hours, passengers shall be offered reimbursement within seven days of the full cost of the ticket at the price at which it was bought for the part or parts of the journey not completed. If, however, the purpose of the journey is no longer attainable, then reimbursement must be offered for the part of the journey already made, e.g. a flight from Cork to Dublin will be reimbursed if the purpose of the flight was to travel on a connecting flight to London for a function at which attendance is no longer possible due to the delay. In addition, there is a right to a return flight to the original point of departure where relevant. The right to reimbursement applies where the passenger decides not to travel as a result of the delay – it is not possible to travel and also claim reimbursement under the Regulation.

If the airline is unable to provide the above provisions free of charge, the airline should reimburse passengers for expenses incurred.

Compensation

Although the Regulation itself does not expressly state that compensation is payable in cases of delay, the ruling delivered by the European Court of Justice in the cases of *Sturgeon v. Condor Flugdienst GmbH* and *Bock and Others v. Air France SA* maintains that compensation may be payable to passengers who arrive at their destinations three hours or more after the scheduled arrival time.

The amount of compensation which may be payable in the aforementioned circumstances depends on the distance of the flight, the reason for the delay and, in the case of point (c) above, it may be reduced by 50% where the delay on arrival was less than four hours.

If an airline can prove that the delay was caused by an extraordinary circumstance which could not have been avoided even if all reasonable measures were taken, no compensation will be payable.

The amount of compensation payable depends on the distance of the flight. If the flight is classed as:

- short haul, the amount payable is €250 per person;
- medium haul, the amount payable is €400 per person; and
- long haul, the amount payable is €600 per person.

Section 45 of the Aviation Regulation Act 2001 (as amended) gives the IAA the right to issue a direction to any airline in breach of Regulation 261/2004 requiring compliance. If the airline fails to comply, it is guilty of an offence. Whilst an airline can make representations to IAA during the process, it can only challenge its decision by way of judicial review in the High Court.

4.13 Are the airport authorities governed by particular legislation? If so, what obligations, broadly speaking, are imposed on the airport authorities?

The airport authority for Dublin and Cork Airports is daa plc.

The airport authority for Shannon Airport is the Shannon Airport Authority DAC. The relevant legislation is the State Airports Act 2004 (as amended) and the State Airports (Shannon Group) Act 2014.

This legislation dictates that the airports are owned by the State and the policy position is that this will not change in the foreseeable future. Governance and structure of the airport authorities is set out in the legislation as well as detailed provision on operation of the airports.

4.14 To what extent does general consumer protection legislation apply to the relationship between the airport operator and the passenger?

Ireland implements EU consumer law. The general legislation applicable in Ireland is the Sale of Goods and Supply of Services Act 1980 (as amended). This applies to aviation-related matters also.

The CCPC is responsible for the enforcement of consumer protection laws.

4.15 What global distribution suppliers (GDSs) operate in your jurisdiction?

Many of the major GDSs operate in Ireland, including Amadeus, Sabre, Travelport, etc.

4.16 Are there any ownership requirements pertaining to GDSs operating in your jurisdiction?

No, there are no ownership requirements specific to GDSs operating in Ireland.

4.17 Is vertical integration permitted between air operators and airports (and, if so, under what conditions)?

There is no particular prohibition on vertical integration between air operators and airports, though competition law will be relevant.

4.18 Are there any nationality requirements for entities applying for an Air Operator's Certificate in your jurisdiction or operators of aircraft generally into and out of your jurisdiction?

Currently, there are no nationality requirements imposed by the IAA for entities applying for an AOC.

However, Regulation (EC) 1008/2008 is enforced and implemented in Ireland by Statutory Instrument 426 of 2008. This requires an applicant for an ACOL to have its principal place of business and registered office in Ireland. It also requires that the applicant is owned and controlled by EU Member States or EU nationals.

5 In Future

5.1 In your opinion, which pending legislative or regulatory changes (if any), or potential developments affecting the aviation industry more generally in your jurisdiction, are likely to feature or be worthy of attention in the next two years or so?

The most noteworthy developments are as follows:

The ongoing OECD/G20 Base Erosion and Profit Shifting Project ("BEPS") is likely to result in changes to international tax treatment of certain tax practices. On 7 June 2017, Ireland and over 70 countries signed up to a multilateral convention (the "MLI") in order to implement a number of BEPS-related measures. Ireland deposited its instrument of ratification with the OECD on 29 January 2019 and the MLI came into force in respect of Ireland on 1 May 2019. As a general rule, it took effect for Ireland's tax treaties:

- with respect to taxes withheld at source, from 1 January 2020; and
- with respect to all other taxes levied by Ireland, for taxes levied with respect to taxable periods beginning on or after 1 November 2019.

The date on which the MLI modifies each treaty depends on when Ireland's treaty partners deposit their own instruments of ratification.

The effect of the MLI is that countries (including Ireland) will transpose certain provisions relating to the BEPS project into their existing networks of bilateral tax treaties without the requirement to re-negotiate each treaty individually. The MLI implements a series of measures to update Ireland's existing network of bilateral tax treaties, with the intention of reducing opportunities for tax avoidance by multinational enterprises. However, the impact on the Irish aviation industry is expected to be minimal due to the robust legislative framework already in place in Ireland and the tax treatment of the aviation industry in

Ireland. In fact, the OECD's recommendation may well serve to enhance the appeal of Ireland as an attractive jurisdiction for the owning, financing and leasing of aircraft as compared to competing jurisdictions.

One aim of the OECD BEPS project is to address the tax challenges arising from the digitalisation and globalisation of the economy. The global minimum tax, together with related measures, constitutes the second pillar of the Two-Pillar Solution intended to address those challenges. The minimum tax is intended to ensure large multinational enterprises pay a minimum level of tax on the income arising in each of the jurisdictions where they operate. Under the OECD BEPS 2.0 plan, Ireland committed to amending its corporation tax regime to achieve a 15% effective rate for multinational groups within the scope of Pillar 2. The 15% minimum effective rate will only apply to multinational groups with turnover in excess of €750 million. Ireland will continue to apply the 12.5% corporation tax rate to companies with global turnover below this threshold.

On 15 December 2022, the Council of the EU unanimously adopted the EU Minimum Tax Directive (Council Directive (EU) 2022/2523 of 15 December 2022 on ensuring a global minimum level of taxation for multinational enterprise groups and large-scale domestic groups in the Union). The Irish Finance Bill (No.2) 2023 contains draft legislation to implement the EU Minimum Tax Directive into Irish law and which will take effect from 1 January 2024. An Irish aircraft holding company may be within the scope of the rules if it is regarded as part of a consolidated accounting group which has revenues of more than EUR 750 million a year. Guidance on the operation of Pillar 2 (including the effective 15% rate) is expected from the Irish Revenue Commissioners as to how certain aspects of Pillar 2 will operate.

The Government legislation programme for autumn 2023 includes reference to a new Bill in the area of Aviation law, the Air Navigation and Transport (Internal Aviation Agreements) (Amendment) Bill which will make legal provision for the Beijing Convention 2010 and the Montreal Protocol 2014 in Ireland.

The EU Proposal Anti-Tax Avoidance Directive III aims to limit the availability of the benefit of double-taxation agreements entered into between EU Member States and certain EU tax directives for legal entities that have limited substance and economic activity in the jurisdiction of residence. This means that companies will be encouraged to centralise the economic activity in the jurisdiction they operate from in order to continue benefitting from the double taxation agreements. Ireland, as a leader in the aircraft leasing field, is uniquely positioned to offer companies the resources they need to substantially increase their substance and economic activity in the jurisdiction. It is expected that the entry into effect of the Directive will be from 1 January 2025 with a look-back period of two years.

The Irish Finance Act 2022 included a change to a VAT exemption commonly relied on by Irish section 110 companies that hold plant and machinery assets (which includes aircraft). The effect of this change is that from 1 March 2023, where such companies receive services from a corporate administrator, investment manager or servicer, those services may now become

chargeable to VAT. If those services are received from within Ireland, such as corporate administration services from an Irish corporate service provider, the section 110 company may have to pay VAT on its fees. If, on the other hand, those services are received from outside Ireland, for example investment management services received from US or UK managers, the section 110 company will be required to operate the "reverse charge" mechanism and account for VAT on fees to Irish Revenue. Whether this constitutes an absolute cost to the section 110 company will depend on its VAT recovery position.

In October 2023, the Irish Government published Finance (No.2) Bill 2023, which contained draft legislation on new taxation measures to apply to outbound payments. Outbound payments for these purposes include payments of interest by Irish companies. The proposed measures apply to transactions between entities that are associated where the recipient of the payment is resident in, or established under the laws of, a jurisdiction on the EU list of non-cooperative jurisdictions, or a "zero-tax" jurisdiction (referred to as "specified territories"). Where a company makes relevant payments of interest to associated entities in specified territories, withholding tax will apply at the standard Irish rate applicable to that payment. Non-Irish resident entities should not be associated with an Irish aircraft holding company merely by virtue of holding notes issued by that company. An entity will be associated with a company if it has a direct or indirect majority share (i.e., more than 50%) of the voting rights, capital ownership or profits of the other entity. Entities will also be associated if one entity has control of another entity through the board of directors or equivalent governing body. Even if a non-Irish resident entity is associated with an Irish aircraft holding company, payments which are subject to tax at a nominal rate greater than 0%, or which are within the charge to a supplemental tax such as a controlled foreign company charge or the proposed OECD GloBE rules (i.e. where the payments are not in fact subject to zero tax) are excluded from the rules, as are payments to exempt pension funds and similar bodies.

Acknowledgments

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Omer Shalev

1 General

1.1 Please list and briefly describe the principal legislation and regulatory bodies which apply to and/or regulate aviation in your jurisdiction.

The principal legislation in Israel which regulates aviation is as follows:

- The Aviation Law – 2011, which is the primary legislation for the aviation industry in Israel. The Aviation Law is relatively new and is therefore modern and up to date, providing the legal framework for aviation operation in Israel.
- The Air Transport Law – 1980, which adopts the Montreal Convention – 1999 into Israeli law. The Air Transport Law provides that the liability of a carrier, its employees and agents for any damage, including the death of a passenger, shall be determined solely pursuant to the provisions of this law and there will be no claim for compensation according to any other cause of action. The Air Transport Law also refers to a limitation period, as stated in the relevant treaties (i.e. two years).
- The Aviation Services Law (Compensation and Assistance due to Cancellation of a Flight) – 2012 (ASL), which states the rights of passengers to compensation and assistance due to the cancellation of a flight or a change in its conditions. The ASL is a local version of EU Regulation 261/2004, but it contains specific provisions regarding Israel.

The ASL determines the conditions for entitlement to benefits, types of benefits, entitlement in case of cancellation of flight, delay in flight or early flight.

The ASL establishes a special limitation period of four years.

The principal regulatory bodies in Israel for aviation matters are:

- The Ministry of Transportation (MoT): the MoT regulates the aviation industry and has the authority to initiate new laws and enact regulations.
- The Israel Civil Aviation Authority (CAAI), which establishes and maintains procedures and regulations for domestic and international aviation, grants licences and permits in accordance with the Aviation Law (including for aircraft, air personnel, airports and aircraft manufacturers), supervises aviation operations regarding transport safety and efficiency, and implements international agreements and treaties.
- The Israel Airport Authority (IAA), which holds, manages and operates Israel's airports, and acts as necessary to maintain the security of the airports, passengers and aircraft within airport premises.

1.2 What are the steps which air carriers need to take in order to obtain an operating licence?

An Israeli air carrier needs to obtain a commercial operating licence from the Ministry of Transportation.

An Israeli carrier must be a natural person who is a permanent resident in Israel or an Israeli citizen who has a major place of business in Israel, or a corporation which was established in Israel, has no other main business place outside of Israel and the control of such corporation is within the hands of an Israeli citizen or permanent resident in Israel. "Control" is defined as meaning at least 50% of the control measures, equity or voting rights.

The Minister of Transportation may determine conditions for an operating licence, which may include, *inter alia*:

- Anything related to operation of aircraft and services required for such operation.
- Types of services, which may be offered through the aircraft.
- Approved destinations to which the carrier is permitted to operate.
- Fares, tariffs, transportation costs and other relevant fees.
- The ways and means by which the licensee will ensure the payment of compensation for damages, including damage to a third party, caused by the operation of the aircraft.
- Conditions to maintain reciprocity with other countries.

An Israeli carrier or a foreign carrier will not operate any aircraft for commercial purposes unless they have an operational permit granted by the General Manager of the CAAI. The operational permit will be limited to a certain time for each permitted destination (a permit may include conditions).

The CAAI manager may also establish conditions for:

- Aircraft which the carrier can operate.
- Types of services, which may be offered through the aircraft.
- Number of passengers or cargo which the carrier can take, capacity of seats, frequencies of operation.
- Any other condition that the CAAI manager determines.

A foreign carrier will not be granted any operational permit unless the carrier has appointed a local representative in Israel, which will be authorised to act on behalf of the carrier in all matters relating to the relevant aviation laws.

1.3 What are the principal pieces of legislation in your jurisdiction which govern air safety, and who administers air safety?

The principal legislation in Israel which governs air safety is the Aviation Law – 2011.

Israel has adopted the Chicago Convention to ensure that air navigation equipment and operations comply with the standards of the International Civil Aviation Organization (ICAO).

The CAAI supervises aviation operations regarding safety.

The air carrier must prove its maintenance and technical abilities and provide an operational and technical manual for the approval of the CAAI. The carrier must also have an approved safety management system.

The CAAI issues and renews airworthiness certificates and air operator certificates, approves the maintenance programmes and carries out inspections of aircraft operated within Israel.

The air carrier must prove its professional and technical ability, appoint relevant officers (including the safety officer), provide an operational and technical manual for the approval of the CAAI and provide a safety management system.

Specific regulations apply to maintenance facilities, which also require relevant licences.

An amendment to the Aviation Regulations (Operating Aircraft and Flight Guidelines) – 2016 came into effect, regarding flight and duty time limitations and a rest scheme for crew members to ensure that pilot fatigue does not endanger flight safety. This amendment is in accordance with the US Flight Time Limitations (FTL) regulations, and it applies only to commercial operation of large aircraft.

1.4 Is air safety regulated separately for commercial, cargo and private carriers?

No. The CAAI regulates all aspects of the aviation industry. Though the same regulator is in charge for commercial, cargo and private carriers, there are different regulations and standards which must be adhered to.

1.5 Are air charters regulated separately for commercial, cargo and private carriers?

No. The CAAI regulates all aviation activity.

1.6 As regards international air carriers operating in your jurisdiction, are there any particular limitations to be aware of, in particular when compared with 'domestic' or local operators? By way of example only, restrictions and taxes which apply to international but not domestic carriers.

In principle, there are no particular limitations for international air carriers operating in Israel in comparison to local carriers.

As Israel has adopted many international aviation agreements, including the EU-Israel Open Skies Agreement, the US-Israel Open Skies Agreement and various bilateral agreements, most of the above agreements are based on the principle of reciprocity.

An example of a requirement from a foreign carrier is the Aviation Services Licensing Law – 1963, which states that for the purpose of obtaining an operating permit, the foreign operator must appoint a representative in Israel who is authorised to act on its behalf in proceedings under this law and under the Aviation Law. The CAAI publishes on its website the details of representatives of foreign operators.

1.7 Are airports state or privately owned?

The airports in Israel are state-owned. The IAA is the governmental company which oversees the operation of airports.

1.8 Do the airports impose requirements on carriers flying to and from the airports in your jurisdiction?

Yes – there are requirements in respect of the hours of operation of the airports, e.g. the closure of Ben Gurion International Airport to take-offs for several hours during the night ("night curfew"). In addition, there are special security requirements which are imposed on carriers flying from Israel, which are being enforced at international airports in Israel.

1.9 What legislative and/or regulatory regime applies to air accidents? For example, are there any particular rules, regulations, systems and procedures in place which need to be adhered to?

The relevant legislation which applies to air accidents is as follows:

- Aviation Law – 2011.
- Air Transportation Law – 1980 (Montreal Convention – 1999).
- Aviation Regulations (Aircraft Accident and Incident Investigation) – 1984.
- Chicago Convention – 1944.
- Civil Aviation Authority Law – 2005.
- Aviation Regulations (Types of Severe Incidents) – 2014.

According to the Aviation Law, the Minister of Transportation will appoint the Chief Investigator within the Ministry of Transportation to investigate.

The Chief Investigator is responsible for:

- Collection, documentation and analysis of all relevant information regarding safety incidents or accidents.
- Determination of the reasons for an incident or accident.
- Preparation of the final accident report with recommendations.
- Follow-up on the fulfilment of recommendations and drawing conclusions.

The Aviation Law, the Aviation Regulations (Aircraft Accident and Incident Investigation) and the Aviation Regulations (Types of Severe Incidents) set out the following main subjects:

- Procedures in case of an accident.
- The Chief Investigator's authority, which includes his right to visit any relevant place and act in any manner to preserve the site of the accident for the completion of the investigation.
- The possibility of the CAAI manager to suspend the licence of a person involved in an accident until the investigation is finalised, for reasons of flight safety.
- Types of incidents which will be considered "severe incidents" for the purpose of the law.

1.10 Have there been any recent cases of note or other notable developments in your jurisdiction involving air operators and/or airports?

Further to the Open Skies Agreement signed between Israel and the European Union, which influenced Israel's aviation sector by strengthening competition and prompting many new airlines to begin operating in Israel, in October 2020, Israel and the UAE (United Arab Emirates) signed an historic air traffic agreement between the two countries.

An additional air traffic agreement was signed between Israel and Bahrain in October 2020, which enables the two countries to operate 14 weekly direct flights between both countries. Additionally, in January 2021, Israel and Morocco signed an air traffic agreement according to which the two countries operate flights between both countries.

In July 2020, an important amendment to the ASL was enacted regarding flight cancellations in view of the COVID-19 pandemic. The amendment included several important matters to assist airlines with the effects of flight cancellations due to COVID-19.

The provisional amendment had a retroactive validity as of 1 March 2020 and was in force and valid for flights (to and from Israel) until 6 July 2021.

Due to the recent security events in Israel and the war which was forced on Israel by Hamas, and further to the Israeli Government's declaration of war, as of 7 October 2023, there is an outstanding proposal for an amendment to the ASL, which will reflect new provisions to assist airlines with the effects of flight cancellations due to the war, and will include, *inter alia*, a waiver to pay the statutory compensation due to cancellation of a flight.

1.11 Are there any specifically environment-related obligations or risks for aircraft owners, airlines, financiers, or airports in your jurisdiction, and to what extent is your jurisdiction a participant in (a) the EU Emissions Trading System (EU ETS) or a national equivalent, and (b) ICAO's Carbon Offsetting and Reduction Scheme for International Aviation (CORSIA)?

Israel has signed the Paris Agreement and therefore has a commitment, as part of the collective effort, to reduce greenhouse gas emissions. Accordingly, in July 2021, the Israeli Government approved a plan for greenhouse gas emission pricing, mainly by taxing different gases, starting from 2023, and by mid-century it would reduce its greenhouse gas emissions by 85% in comparison to 2015 levels (the year when the global climate accords were agreed in Paris), as part of an international push to limit global warming. The decision also set an interim target of 2030 to reduce emissions by 27% from 2015 levels. This will apply for domestic aviation. Israel is not a participant in the EU ETS. Israel volunteered to participate in CORSIA from 2022.

2 Aircraft Trading, Finance and Leasing

2.1 Does registration of ownership in the aircraft register constitute proof of ownership?

The Register of Aircraft, maintained by the CAAI, is not a register of legal ownership, and therefore registration of ownership in the Register of Aircraft does not constitute proof of ownership of a particular aircraft.

The Register of Aircraft may provide non-binding evidence of ownership, as the conditions established by the CAAI for the registry of aircraft include relevant documentation.

In order to register the aircraft in the Register of Aircraft, an application should be filed along with the bill of sale and purchase agreement, and fees should be paid.

2.2 Is there a register of aircraft mortgages and charges? Broadly speaking, what are the rules around the operation of this register?

The procedure for registration of aircraft mortgages, encumbrances and other interests is in accordance with the Aviation Regulations (Aircraft Registration and Marking) – 1973.

Any mortgages on the aircraft shall be registered under the Register of Aircraft, administered by the CAAI. However, as such registry is declarative, the mortgages or pledges are registered within the relevant general registry, i.e. the Companies Registrar or Pledge Registrar.

Deeds and actions pertaining to any imposed restraints or encumbrances on the ownership title of the aircraft shall be reported to the CAAI.

The Register of Aircraft is open to the public and information on mortgages and charges may be provided to any interested person upon request.

Any change or amendment to the registration of the aircraft shall only be made with the consent of the mortgagee and relevant documentation from the general registry.

2.3 Are there any particular regulatory requirements which a lessor or a financier needs to be aware of as regards aircraft operation?

There are no specific regulatory requirements which a lessor or a financier needs to be aware of as regards aircraft operation in Israel.

2.4 As a matter of local law, is there any concept of title annexation, whereby ownership or security interests in a single engine are at risk of automatic transfer or other prejudice when installed 'on-wing' on an aircraft owned by another party? If so, what are the conditions to such title annexation and can owners and financiers of engines take pre-emptive steps to mitigate the risks?

According to Israeli law, there is no concept of title annexation whereby ownership or security interests in a single engine are at risk of automatic transfer or other prejudice when installed "on-wing" on an aircraft owned by another party.

The engines may not be registered independently.

Any mortgage on the engines may be registered within the relevant general registry, i.e., Companies Registrar or Pledge Registrar.

The practical solution for such risk may be through contractual liability of the relevant parties, i.e. it is often agreed by all relevant lessors and financiers to recognise their sole ownership of their own engine and thereby mutually waive their rights to claim any title for other engines installed on their aircraft, such as a pool agreement and/or name plates affixed on the engines detailing the rights of the lessor or the financier.

2.5 What (if any) are the tax implications in your jurisdiction for aircraft trading as regards a) value-added tax (VAT) and/or goods and services tax (GST), and b) documentary taxes such as stamp duty; and (to the extent applicable) do exemptions exist as regards non-domestic purchasers and sellers of aircraft and/or particular aircraft types or operations?

There is no tax liability in Israel for aircraft sale to a merchant whose practice is scheduled aviation service for passengers or cargo, or for the import of aircraft by such merchant.

The above-zero value-added tax also applies to service provided in connection with the entry or exit of aircraft to/from Israel or for the transportation of goods.

It should be mentioned that other fees may apply, mostly for the use of airport facilities, and in addition, air operators are entitled to establish certain surcharges on ticket fares.

No stamp duty is applicable.

2.6 Is your jurisdiction a signatory to the main international Conventions (Montreal, Geneva and Cape Town)?

Israel has signed the main international Conventions – the Montreal Convention and the Geneva Convention. The Montreal Convention was ratified in Israel in March 2011.

Israel has ratified the Cape Town Convention on International Interests in Mobile Equipment and the related Aircraft Protocol in 2006 by a government decision. No declaration in respect of the scope of application of the Convention or the Protocol was made.

2.7 How are the Conventions applied in your jurisdiction?

In general, the local law should ratify the Conventions and apply them to local legislation. For example, the Air Transport Law adopted the Montreal Convention (and before that, the Warsaw Convention) into the local legislation.

2.8 Does your jurisdiction make use of any taxation benefits which enhance aircraft trading and leasing (either in-bound or out-bound leasing), for example access to an extensive network of Double Tax Treaties or similar, or favourable tax treatment on the disposal of aircraft?

There are no taxation benefits which enhance aircraft trading and leasing.

2.9 To what extent is there a risk from the perspective of an owner or financier that a lessee of aircraft or other aviation assets in your jurisdiction may acquire an economic interest in the aircraft merely by payment of rent and thereby potentially frustrate any rights to possession or legal ownership or security?

Generally, there are several laws which emphasise the rights of legal ownership, while ensuring that the legal owner may secure its ownership, including by using reasonable measures (sections 17–18 of the Real Estate Law – 1969 and section 8 of the Chattels Law – 1971).

According to the Israeli Rental and Borrowing Law – 1971 (the R&B Law), which sets the rights and obligations between an owner and a lessee, the owner is permitted to grant his proprietary rights during the lease period (section 21(b) of the R&B Law) and, in such case, the new owner will obtain the full rights and obligations towards the lessee, according to the lease agreement, even if the new owner did not know of its existence prior to the purchase.

Accordingly, any allegation/claim that the lessee might have towards the original owner regarding non-fulfilment of any obligations by the original owner under the lease agreement shall apply also towards the new owner (section 21(c) of the R&B Law).

On the other hand, the lessee cannot transfer its right to hold and use, or any of its other obligations in accordance with the lease agreement (including sub-lease), unless the consent of the lessor was received. If the lessor does not agree to a transaction due to unreasonable excuses or provided his approval subject to unreasonable terms, then the court may approve the transaction and set the reasonable terms thereof. Regarding monetary disputes, the R&B Law states that any obligations that the parties have towards each other may be set off (section 25 of the R&B Law).

3 Litigation and Dispute Resolution

3.1 What rights of detention are available in relation to aircraft and unpaid debts?

Israeli law acknowledges detention as a legal right of possession in goods until payment of debt. The right of detention will be provided only in specific matters which are stated in the law or agreed upon by the parties.

In theory, detention is a self-remedy without the requirement to approach legal instances and carries with it the exemption from tort liability for damages incurred by the operation of a detention.

Israeli law does not state when such right is applicable but requires a few conditions for its exercise. Such conditions include, *inter alia*: that the debt should be from a specific transaction, on which date payment arrived; and that the exercise of detention should be made *bona fide*.

Although a creditor may seize the aircraft according to the said legal right, the practical exercise of such right may be difficult due to several reasons (such as the fact that the aircraft is located in a place that the owner of the detention right cannot independently reach). In such case, the creditor will have to apply to court.

3.2 Is there a regime of self-help available to a lessor or a financier of an aircraft if it needs to reacquire possession of the aircraft or enforce any of its rights under the lease/finance agreement?

A regime of self-help may be available to a lessor or a financier of an aircraft in case it needs to reacquire possession of the aircraft or enforce its rights under a lease or finance agreement. In practice, the lessor or financier may exercise the De-Registration Power of Attorney which provides them with the option for self-remedy.

In the case that the self-remedy may not be exercised and an application to court must be made, it is a relatively fast procedure, as a declarative injunction will usually suffice for the lessor or financier, and this does not require a long procedure.

3.3 Which courts are appropriate for aviation disputes? Does this depend on the value of the dispute? For example, is there a distinction in your jurisdiction regarding the courts in which civil and criminal cases are brought?

Israel is a unitary state with a single system of general law courts. In general, the Judiciary system in Israel establishes three levels of courts: the Magistrate's Court (first instance); the District Court (second instance); and the Supreme Court (third instance).

All of these courts are appropriate for aviation disputes and therefore the matter will be handled at the relevant court, based on the distinctions specified hereunder.

The Magistrates' Court is a trial court; the District Court serves as a trial court as well as an appellate court; and the Supreme Court is essentially an appellate court, which also operates as the High Court of Justice.

There are no juries in Israel and the courts are served by professional Judges.

Magistrates' Courts

The Magistrates' Court is the basic trial court of the Israeli system. These courts have jurisdiction in criminal matters

where the accused is charged with an offence that carries with it a potential punishment of up to seven years' imprisonment. In civil matters, these courts have jurisdiction in matters up to NIS 2.5 million. These Courts also have jurisdiction over the use and possession of real property. Magistrates Courts also act as traffic courts, municipal courts, family courts and small claims courts.

Generally, a single Judge presides in each case unless the President of the Magistrates' Court directs that the case will be heard by a panel of three Judges. There are 29 Magistrates' Courts in Israel. The jurisdiction of a Magistrates' Court extends to the locality in which it sits and the district where it is situated.

District Courts

District Courts are the middle-level courts of the Israeli judiciary system. The District Courts have jurisdiction in any matter that is not within the sole jurisdiction of another court. In criminal matters, District Courts have jurisdiction for cases where the potential punishment is more than seven years' imprisonment. In civil cases, District Courts have jurisdiction in matters where the amount of claim exceeds NIS 2.5 million. District Courts also have unique jurisdiction over several issues – the economic division of the District Court in Tel Aviv, which was established in 2010, is a good example of special jurisdiction for financial and capital market matters. The District Courts also handle appeals against judgments of the Magistrates Courts.

Generally, a single Judge presides in trials; however, a panel of three Judges is established when the court hears an appeal of a Magistrates Court's judgment, when the accused is charged with an offence punishable by imprisonment of 10 years or more, or when the President or Deputy President of the District Court so directs. There are six District Courts in Israel: Jerusalem; Tel Aviv; Haifa; Lod (Central District); Beersheba; and Nazareth.

The Supreme Court

The Supreme Court has jurisdiction to hear criminal and civil appeals from judgments of the District Courts. Cases that begin in the District Court are appealable, as of right, to the Supreme Court. Other matters may be appealed only with the Supreme Court's permission.

The Supreme Court is also the High Court of Justice (BAGATZ) for special motions against the State of Israel and government bodies. The Supreme Court also has special jurisdiction for various other matters such as the elections to the Parliament (Knesset), civil rights matters and others.

The Supreme Court serves as an appellate court for rulings of the District Court.

The Supreme Court is based in Jerusalem.

3.4 What service requirements apply for the service of court proceedings, and do these differ for domestic airlines/parties and non-domestic airlines/parties?

Pursuant to the Regulations of Civil Procedures, service of documents within the jurisdiction of Israel may be processed by various methods including personal service, postal delivery, service to the defendant's lawyer (if known), by facsimile or other electronic communication.

According to the above Regulations, the address for service shall be the place of residence or place of business of a person who was nominated to accept service of court proceedings.

Service of documents to a defendant which is an entity shall be done to the company's formal office address.

The Court may approve service of proceedings outside the jurisdiction of Israel in several cases, and for these matters, the claimant must file a request for Court.

These requirements do not differ for domestic airlines/parties and non-domestic airlines/parties.

3.5 What types of remedy are available from the courts or arbitral tribunals in your jurisdiction, both on i) an interim basis, and ii) a final basis?

There are various remedies which depend on the nature of the dispute. In general terms, there are both (for historical reasons) legal and "equitable" remedies, and the following may be available:

- On an interim basis, the remedies may be an injunction order to prevent the other party from an action until final judgment is given and also damages may be applied.
- On a final basis, the remedies may be damages, an injunction preventing a certain action or stating that the other party should undertake a certain action. The final judgment may also include orders (based on the original requests) for sale, register or possession of an asset.

3.6 Are there any rights of appeal to the courts from the decision of a court or arbitral tribunal and, if so, in what circumstances do these rights arise?

There are rights to appeal to the courts from the decision of a "lower" court. Therefore, the Supreme Court is essentially an appellate court for the District Courts for criminal and civil appeals from judgments of the District Courts.

The Supreme Court has special jurisdiction to hear appeals in matters of Knesset elections, rulings of the Civil Service Commission, and disciplinary rulings of the Israel Bar Association.

District Courts hear appeals of judgments of the Magistrates' Courts.

If an appeal was heard by the District Court (on a Magistrates' Court judgment), there is an option to file a request for another appeal to the Supreme Court, which will be heard only after the Supreme Court's special approval (such method is also relevant for appeals for small claims courts which may be filed to the District Courts).

In respect of arbitration, in general, there should be no appeal against an arbitrator's ruling. However, the Arbitration Law notes that there are several causes for annulment of an arbitrator's ruling, and enables an appeal before an arbitrator if such condition was agreed within the arbitration agreement.

3.7 What rights exist generally in law in relation to unforeseen events which might enable a party to an agreement to suspend or even terminate contractual obligations (in particular payment) to its contract counterparties due to *force majeure* or frustration or any similar doctrine or concept?

The Israeli Contracts Law (Remedies for Breach of Contracts) – 1970 sets out the right of a party to be exempted from its contractual obligation, if the breach of the contract was the result of circumstances that a party did not know and should not have known about or should not have seen in advance, and could not have been prevented, and the existence of the contract under the same circumstances is impossible or fundamentally different from what was agreed upon between the parties.

In light of the recent events caused by the COVID-19 pandemic, an amended legislation was initiated in order to address these unforeseen events, thus contractual obligations

have been overcome by specific legislation in a timely manner. Another example is in respect of the security situation in Israel following the war initiated on 7 October 2023.

An important example for the application of force majeure circumstances on local regulation can be found in the amendments to the ASL, as detailed in the answer to question 1.10 above.

4 Commercial and Regulatory

4.1 How does your jurisdiction approach and regulate joint ventures between airline competitors?

Joint ventures between airline competitors are subject to the Competition Law.

The Competition Authority (formerly known as the Antitrust Authority) is the authority responsible for promoting competition in Israel and for preserving existing competition in the economy.

The Competition Authority is authorised to enforce different rules, which it does in accordance with the policies that it has formulated over the years and with the guidelines that it publishes.

The Competition Authority uses criminal enforcement tools to investigate and prosecute cartel crimes and tender coordination. The Competition Authority was also granted the authority to impose monetary sanctions, which it uses in accordance with its manifesto that emphasises how violation of the law interferes with competition. In addition to these tools, the Competition Authority may issue declarative orders, including to the monopoly owner, as well as to define terms for mergers and exemptions.

For joint ventures, each case will be decided in accordance with the Israeli competition rules, which will take into account, inter alia, the market share and the turnover of the parties.

The specific legislation for joint ventures between air carriers in Israel is the Antitrust Rules for Agreements between Air Carriers – 2008, which set out the types of arrangements that are exempted from the prior approval of the Competition Commissioner and therefore shall not be regarded as restrictive arrangements.

In respect of code-sharing agreements and air carrier joint ventures, until few years ago only specific code-sharing agreements did not require the Commissioner's prior approval and could be approved after self-assessment of the parties and notification to the Commissioner, as specified in the Antitrust Rules for Arrangements Regarding Marketing Flights between Air Carriers in Destinations Governed by Open Skies Agreements – 2012.

In November 2018, the Competition Commissioner amended the Antitrust Rules for Agreements between Air Carriers. The amendment enabled, in addition to technical and operational agreements which were already exempted from the Commissioner's prior approval, the same legal regime of "self-assessment" to be applied to Frequent Flyer Program agreements, interline agreements and Code Share agreements (with several exclusions), as long as the essence of such agreements do not decrease competition.

In January 2019, the Israeli Parliament approved an amendment to the Restrictive Trade Practices Law, which was renamed within the framework of the Amendment to the "Economic Competition Law". Likewise, the name of the Israeli Antitrust Authority was changed to the "Competition Authority" and the Antitrust Commissioner was changed to the "Competition Commissioner".

The reform introduces broad and significant changes regarding restrictive arrangements, monopoly and merger control.

As part of the said amendment to the Law, the Competition Authority's powers were increased, and it now may impose a monetary payment of up to NIS 111 million (approximately USD 30 million).

4.2 How do the competition authorities in your jurisdiction determine the 'relevant market' for the purposes of mergers and acquisitions?

The Competition Authority will define the relevant market for the purposes of mergers and acquisitions based on the specific matter.

The Competition Authority will look specifically at the aviation sector and even more narrowly at the specific type of aviation sector in which the transaction occurred (passenger or cargo transportation).

In recent aviation cases (mostly for code-sharing agreements), the Competition Authority has defined the relevant market regarding the aviation sectors as Origin and Destination (O&D) City Pairs.

This evaluation considers a demand-side perspective, whereby customers consider all possible alternatives of travelling from a city of origin to a city of destination, for business and leisure passengers (time-sensitive and price-sensitive). The above also considers direct (non-stop) flights and one-stop flights (subject to a certain period of connection time).

The relevant tribunal for competition matters is the special Antitrust Court which is part of the District Court in Jerusalem. Hearings are held in front of a tribunal of three persons: a Judge (of the District Court); and two representatives of the public. Appeals against the judgments of this court are made to the Supreme Court.

4.3 Does your jurisdiction have a notification system whereby parties to an agreement can obtain regulatory clearance/anti-trust immunity from regulatory agencies?

According to the Israeli Competition Law, agreements which may include restrictive arrangements are required to be approved, in advance, by the Israel Competition Authority. There are several exceptions, which are usually governed by a specific exemption or "type exemption", where no pre-approval is required (there might be reporting and notification duties after signing the agreement).

4.4 How does your jurisdiction approach mergers, acquisition mergers and full-function joint ventures?

All mergers and acquisitions of legal entities, including airlines, that fall within the conditions of the Israeli Competition Law and satisfy certain financial thresholds, require mandatory pre-approval by submitting a "Notification of a Merger" to the Israel Competition Authority.

The financial thresholds may include the joint share of the parties after the merger, a minimum amount of the annual turnover of the companies, and whether one of the entities is a monopoly.

According to the recent amendment to the Competition Law, a company which holds a market share of under 50% may be deemed a monopoly if such company holds significant market power. This amendment will require many companies with a significant market standing to review their business position in order to ensure whether such companies would be considered as monopolies (unlike the previous legal status where only a company holding more than 50% market share was considered a monopoly).

4.5 Please provide details of the procedure, including time frames for clearance and any costs of notifications.

According to the Israeli Competition Law, companies may not merge unless a pre-merger notification has first been filed and the consent of the Competition Commissioner to the merger has been obtained, and – if such consent is conditional – in accordance with the conditions stipulated.

Each of the companies intending to merge shall give notice thereof, providing all relevant details. The Commissioner may request further information if he deems it necessary for the examination of the application.

Within 30 days of the date on which the Commissioner receives a pre-merger notification from all of the companies seeking to merge, the Commissioner shall notify the companies as to whether he consents or objects to the merger, or stipulate conditions for it, as shall be provided in such notification; failure to give such notification within the 30 days provided shall be deemed to constitute a notice of consent, unless the period is extended.

Submitting a pre-merger notification to the Commissioner is conditioned upon the payment of a fee, as determined in the Regulations.

The Commissioner shall object to a merger of companies or stipulate conditions for it if, in his opinion, there is a reasonable risk that, as a result of the merger as proposed, the competition in that sector would be significantly harmed or the public would be harmed in one of the following regards:

- (1) The price level of an asset or a service.
- (2) The low quality of an asset or of a service.
- (3) The quantity of the asset or the scope of the service supplied, or the constancy and conditions of such supply.

The Commissioner shall publish a notice of his decision to consent to a merger of companies, to object to it or to stipulate conditions for it, in the Official Gazette and in two daily newspapers.

Should the Commissioner object to a merger of companies or stipulate conditions for it, each of the companies seeking to merge may appeal to the Tribunal (Antitrust Court, which is part of the District Court in Jerusalem) within 30 days of the date on which the Commissioner's decision is received.

Should the Commissioner consent to a merger of companies, whether conditionally or unconditionally, any person who is liable to be harmed by the merger, any trade association and any consumers' association, may appeal to the Tribunal against the Commissioner's decision, within 30 days of the date on which notice of the Commissioner's decision was published in two daily newspapers.

The Tribunal may affirm the Commissioner's decision, revoke it or amend it.

4.6 Are there any sector-specific rules which govern the aviation sector in relation to financial support for air operators and airports, including (without limitation) state aid?

In Israel, there are no sector-specific rules which govern the aviation sector in relation to financial support for air operators and airports.

The only matter which may be considered state aid is the Israeli government's decision to participate in a specific portion of the security expenses of the Israeli carriers. Such obligation was re-affirmed due to the signing of the Israel-EU Open Skies Agreement.

4.7 Are state subsidies available in respect of particular routes? What criteria apply to obtaining these subsidies?

In general, there are no state subsidies available for particular routes.

The Israeli Ministry of Tourism issued a directive detailing the criteria for some participation in the costs of operating direct flights to the new "Ramon" airport near the city of Eilat (in south Israel), as it wishes to encourage direct international flights to Eilat in order to increase the number of tourists visiting the city.

4.8 What are the main regulatory instruments governing the acquisition, retention and use of passenger data, and what rights do passengers have in respect of their data which is held by airlines and airports?

The Protection of Privacy Law includes rules for the safety of personal data, which are also relevant in respect of passenger data.

The Privacy Protection Authority is the Israeli regulatory and enforcing authority for personal digital information, in accordance with the Privacy Protection Law. The Privacy Protection Authority is responsible for the protection of all personal information held in digital databases.

According to the Privacy Protection Law and the Protection of Privacy Regulations (Data Security) 5777-2017, the main duties of the data holder are:

- Prohibition from using data other than for the purpose for which the information is intended. The Law prohibits the use of information about a person's private affairs for purposes other than the purpose for which the information was provided.
- Duty of information safety – the database owner, database holder and database administrator are obligated to ensure the security of the data contained in the database.
- Duty of secrecy – the owner of the database and whoever holds it must preserve the confidentiality of the information to which they are exposed while performing their work.
- Obligation to give notice – notice must be given to the subject of the information (the person to whom the information pertains). Such notice will include whether there is a legal duty to provide the information, the purpose for which the information is requested, to whom the information will be provided, and for what purposes.
- Obligation to document every case in which an event was discovered, raising concern regarding a breach of the data integrity, unauthorised use thereof or deviation from authorisation.
- Restrict or deny the option to connect portable devices to the database systems in a manner which is compatible with the information security level applicable to the database, data sensitivity, and the special risks to the database systems or to the data, stemming from connecting portable devices and with the existence of appropriate safeguards against such risks.
- In some cases, there is a duty to appoint a data security officer who is responsible for various security matters, such as preparing a plan for regular monitoring in regard to compliance with the regulations.

The Law further requires a database owner to register the database before it is used. The registration requirements apply to databases meeting one of the following criteria:

- The number of subjects of information which is found in the database exceeds 10,000.
- The database contains sensitive information.
- The database includes information that was not provided by the subjects of the information.
- The database is owned by a public body.
- The database is used for direct mail services.

In May 2018, the General Data Protection Regulation (GDPR) came into effect and applied enhanced obligations as to the retention and use of data of passengers in the EU. As a result, airlines and airports have to adhere to the GDPR with regard to data of passengers in the EU.

4.9 In the event of a data loss by a carrier, what obligations are there on the airline which has lost the data and are there any applicable sanctions?

Generally, air carriers in Israel, similar to other entities which collect data, are required by law to protect the data. The relevant laws are the Privacy Protection Law – 1981 and the Protection of Privacy Regulations (Data Security) 5777-2017.

According to the Regulations, any database owner is responsible for documenting every case in which an event was discovered which raised concern regarding a breach of data integrity, unauthorised use thereof or deviation from authorisation. In some cases, depending on the severity of the case, the database owner is obligated to immediately notify the Registrar and report on the measures he took following the incident. In addition, the database owner may be obligated to inform the subjects of such incident. The Privacy Protection Authority is the Israeli regulatory and enforcing authority for personal digital information, in accordance with the Privacy Protection Law. The Privacy Protection Authority is responsible for the protection of all personal information held in digital databases.

The legislation includes administrative and criminal enforcement, and applies to all entities in Israel – private, business and public – that hold or process personal digital information.

4.10 What are the mechanisms available for the protection of intellectual property (e.g. trademarks) and other assets and data of a proprietary nature?

In Israel, intellectual property rights are protected under several laws which apply to patents, trademarks and other IP rights.

The Israel Patent Office (ILPO) is the authority in Israel which provides legal protection of industrial intellectual property, through the registration of Patents, Designs and Trademarks. The office is part of the Ministry of Justice.

The granting of a right is subject to the examination of an application, which ensures that the exclusivity of the protection will not harm the legal rights of the public.

The ILPO provides free bilingual databases, both in Hebrew and in English, regarding patents, trademarks and designs:

- The Patents Department handles the examination of national and international patent applications, using e-filing capabilities. The ILPO receives international patent applications according to the Patent Cooperation Treaty (PCT).
- The Trademarks Department handles national and international trademark registration applications under its capacity as a Receiving Office and an Office of Origin in accordance with the Madrid Protocol, using e-filing capabilities.

- The Designs Department handles the registration of national design applications following a formal and substantive examination.

The courts which deal with these matters are the ordinary courts in Israel; there are no special courts established for such matters.

4.11 Is there any legislation governing the denial of boarding rights and/or cancelled flights?

The ASL is the legislation governing the denial of boarding rights. The ASL offers assistance, reimbursement and compensation for flight delays and cancellations, as well as denial of boarding for flights to and from Israel.

The ASL is based on EU Regulation 261/2004, with adaptations made specifically for Israel.

The ASL provides passengers with remedies for delays of more than two hours, flight cancellations and denied boarding.

In case of overbooking or any other case of denial of boarding, passengers are entitled to the following benefits:

- Assistance services without payment, which include meals and refreshments in reasonable relation to the waiting time; hotel accommodation if an overnight stay (or longer) is required; transportation between the airport and the hotel; and two telephone calls and the sending of a fax or email, at the election of the passenger.
- Reimbursement of the cost of the flight ticket if the passenger decides not to travel, or a replacement flight ticket to the final destination.
- Compensation as detailed in the schedule to the ASL.

The ASL further authorises the court to award exemplary damages in an amount that shall not exceed NIS 11,120 in several cases, including where the operator has not given the required benefits to a passenger.

4.12 What powers do the relevant authorities have in relation to the late arrival and departure of flights?

The ASL states the rules for compensation and assistance to be given to passengers in case of late arrival or departure of flights. Under the said Law, the Minister of Transportation is responsible for the execution of the ASL.

In addition, the Aviation Services Licensing Law enables the CAAI not to grant an operating licence unless the applicant has undertaken to appoint a representative to assist passengers to realise their rights under the ASL on any flight which is operated by the applicant.

4.13 Are the airport authorities governed by particular legislation? If so, what obligations, broadly speaking, are imposed on the airport authorities?

Yes. The IAA Law – 1977 is a specific law which applies to the operation of airports in Israel. According to this Law, the obligations imposed on the IAA are as follows:

- to hold, manage and operate Israel's airports; and
- to act as necessary to maintain the security of the airports, passengers, equipment, buildings and aircraft within airport premises.

The Law further clarifies that while fulfilling its duties, the IAA will be governed by the principles of development of air transportation, efficiency of operation of the airports, as well as providing and maintaining the proper level of flight safety.

It should be noted that the IAA has the authority to cease the operation of an airport for a period to be determined in advance or until the conditions and dates to be determined by the IAA are fulfilled, all of which is subject to the approval of the Minister of Transportation.

4.14 To what extent does general consumer protection legislation apply to the relationship between the airport operator and the passenger?

The Consumer Protection Law – 1981 also applies to aviation-related matters. The Consumer Protection Law sets out the duties of a merchant, mainly in respect of prohibition of deception, prohibition of acting using unfair influence, disclosure duties, and more.

The Consumer Protection Law states the duties in case of cancellation of a transaction (distinguishing between the different types of transactions) and includes, in certain circumstances, the right to cancel transactions made “at a distance” (e.g. transactions by telephone, email and others) with a minimum cancellation fee of 5% of the transaction amount and not more than NIS 100, whichever is lower.

Senior (65+) or disabled persons are entitled to the same reduced cancellation fees with an extended period of four months from booking (if the original transaction was made remotely and included a conversation – by phone or electronically – with the consumer).

The Consumer Protection Law provides the Consumer Protection and Fair-Trade Authority with powers of enforcement in relation to consumer legislation, which include, *inter alia*, financial sanctions and criminal sanctions in various matters.

4.15 What global distribution suppliers (GDSs) operate in your jurisdiction?

All the major GDSs operate in Israel.

4.16 Are there any ownership requirements pertaining to GDSs operating in your jurisdiction?

No, there are no ownership requirements specific to GDSs operating in Israel.

The regular rules and requirements relating to non-Israeli companies which operate in Israel shall apply to GDSs, e.g. the requirement to have a registered address (office or local representative) in Israel. No specific requirement for a percentage of local shareholders is required for such operation.

4.17 Is vertical integration permitted between air operators and airports (and, if so, under what conditions)?

As airports in Israel are owned by the State of Israel, the above question of vertical integration between air operators and airports is not relevant.

Legally, there is no prohibition on vertical integration between air operators and airports; however, the relevant competition rules shall apply, including prohibition on the abuse of a dominant position and the monopoly rules (if such party may be considered a monopoly).

4.18 Are there any nationality requirements for entities applying for an Air Operator's Certificate in your jurisdiction or operators of aircraft generally into and out of your jurisdiction?

Under the Aviation Law – 2011, the manager of the CAAI shall grant an applicant an Air Operator's Certificate only to: (a) a natural person who is a permanent resident in Israel and does not have a major place of business outside of Israel or an Israeli citizen who has a major place of business in Israel; or (b) a corporation which was established in Israel, has no other main place of business outside of Israel and the control of such corporation is within the hands of an Israeli citizen or permanent resident in Israel. “Control” shall mean at least 50% of the control measures, equity or voting rights.

5 In Future

5.1 In your opinion, which pending legislative or regulatory changes (if any), or potential developments affecting the aviation industry more generally in your jurisdiction, are likely to feature or be worthy of attention in the next two years or so?

In the next years, the regulatory changes will be affected by the risks involved in business and specifically in the aviation industry. The growing number of cyber-events will create additional regulatory attention from the business community, and specifically from the aviation and travel industry, and may include requirements for data security, data protection of passengers' personal data and more. In October 2020 the Israeli government acknowledged cyber-attacks as a potential threat on civil aviation systems considering its highly developed technological characteristics and the fast-growing digitisation in that field. In order to manage this potential threat, it was decided to establish a steering committee which will be responsible for drafting a national policy regarding cyber-defence and will assist in its implementation.

As shown in recent years, consumer rights legislation will continue to be a substantial part of new regulations, including consumer cancellation rights and fees, the duty of call centres to promptly reply to consumers, and additional revisions to consumer legislation.

Another dynamic area for future legislation is the Privacy Protection Law. In November 2021, the Privacy Protection Law (Protection of Privacy Bill) (Amendment 14), 2021 was approved in its first reading by the Israeli Parliament. The Bill constitutes another step in adapting the Privacy Protection Law to advanced technology and includes expanding the administrative enforcement measures of the Privacy Protection Authority, reducing the scope of duty for database registration and adapting terms relating to the protection of personal data to technological developments.

Moreover, potential legislative and regulatory developments may apply to ESG (Environment, Social and Governance) initiatives in the business sector, and specifically in the aviation industry.



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GOS has a solid reputation in representing foreign companies doing business in Israel, as well as local companies operating internationally.

Apart from GOS's best-known practice for insurance and reinsurance matters (mostly Directors & Officers, Financial Institutions, Professional Indemnity & Cyber Insurance), for which GOS was rated by *The Legal 500* as a "Top Tier Insurance Firm in Israel", GOS has expertise and reputation in aviation law and also represents international pharmaceutical companies in Israel.

GOS provides legal services to airlines and travel-related companies in matters of aviation and tourism law, which include, *inter alia*, legal consulting on various aviation law, aviation security, purchase and finance agreements and aviation regulatory issues.

GOS also specialises in aviation litigation and represents airlines and insurers of air carriers in claims (litigation) filed in the relevant courts in Israel.

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1 General

1.1 Please list and briefly describe the principal legislation and regulatory bodies which apply to and/or regulate aviation in your jurisdiction.

The principal regulator of aviation is the Ministry of Land, Infrastructure, Transport and Tourism (“**MLIT**”). Separate MLIT bureaus regulate specific areas relating to transportation, such as by air, road, railway and water. The MLIT bureau regulating aviation is the civil aviation bureau (*Koukuu Kyoku*).

The principal laws regulating aviation in Japan are described below.

A. The Civil Aeronautics Act (*Koukuu Hou*)

The purpose of the Civil Aeronautics Act is to ensure the safety of aircraft and develop aviation by establishing order in the aviation business. This law is based on the Convention on International Civil Aviation (Chicago Convention) and its Annexes.

The Civil Aeronautics Act, following its recent amendment, now comprises 13 chapters. Chapters 1 to 6 and 11 to 13 apply to both commercial aviation and general aviation. Their provisions include: aircraft registration (Chapter 2); aviation safety, such as airworthiness (Chapter 3); qualifications of airmen (Chapter 4); designation, permission and management of airways and establishment of airports and air navigation facilities (Chapter 5); requirements for operating aircraft (Chapter 6); requirements for operating unmanned aircraft vehicles (Chapter 11); and penalties for violations of this law (Chapter 13). Chapter 7 regulates commercial aviation, such as the aviation transport business and businesses using aircraft (please see question 1.2 below). Chapter 8 regulates aircraft registered outside Japan and businesses conducted by foreign entities. The new Chapter 9 provides for the basic policy of preventing aircraft hijacking and intentional damage to and destruction of airport facilities in order to ensure the safety of aviation. Meanwhile, the new Chapter 10 stipulates the basic policy of promoting zero carbon emissions in the aviation sector. Certain provisions of the Civil Aeronautics Act do not apply to aircraft used by airmen employed by airports and air navigation facilities established by the Japan Self Defence Forces (*Jieitai*) (Act on Self Defence Forces, Article 107). Similarly, there is an exception for U.S. forces stationed in Japan (Agreement under Article VI of the Treaty for Mutual Cooperation and Security between Japan and the United States of America, regarding Facilities and Areas and the Status of United States Armed Forces in Japan).

B. The Airport Act (*Kuukou Hou*)

Under the Airport Act, the MLIT is in charge of policy-making for establishing and managing airports in Japan. With a few exceptions, airports in Japan were built and are owned and managed directly by either the national government or the local governments. Airports mean basic aeronautical facilities such as runways, aprons and navigation facilities, and do not include airport terminals and car parks. A unique aspect in Japan is that, in many airports, airport terminals and car parks were constructed and are owned and managed by a private entity or a “third sector” entity, i.e., a company jointly owned by a local government and private entities. This is one reason for the enactment of the Airport Concession Act. Please also see question 1.10.

The airport operator (*kuukou kanrishu*) under the Airport Act is essentially the national government or local government which owns and manages airports. It must submit to the MLIT prior notification of the landing fees and other fees to use the runways or relevant facilities. If the MLIT determines that such fees are (i) discriminatory, or (ii) extremely inappropriate, and the use of the airport is likely to be extremely limited, the MLIT may issue an order to the airport manager to change the fees (Airport Act, Article 13).

C. The Aircraft Mortgage Act (*Koukuuki Teitou Hou*)

Under the Aircraft Mortgage Act, certain aircraft registered pursuant to the Civil Aeronautics Act can be subject to security interests. Please see question 2.2.

D. The Aircraft Manufacturing Industry Act (*Koukuuki Seizou Jigyou Hou*)

The Aircraft Manufacturing Industry Act provides that the manufacture and repair of certain aircraft and aircraft apparatuses requires a permit for each factory from the Ministry of Economy, Trade and Industry (“**METI**”), and must be carried out by methods approved by the METI.

E. Others

The Act for the Establishment of the Japan Transport Safety Board (*Unyu Anzen Inkai Secchi Hou*) established the said Board to investigate aircraft accidents, including their causes. The Board also implements measures necessary to prevent such accidents. Please see question 1.9.

The Act on the Prevention of Damage caused by Aircraft Noise in Areas around Public Airports regulates noise problems caused by aircraft.

1.2 What are the steps which air carriers need to take in order to obtain an operating licence?

A. Aviation Transport Business (*Koukuu Unsou Jigyou*)

The aviation transport business is the business of transporting persons or cargo by aircraft for a fee (Civil Aeronautics Act, Article 2, Item 18).

A permit from the MLIT is required to start an aviation transport business (*Id.*, Article 100, Paragraph 1). The application for a permit must state the applicant's name and address, the name of its representative director, items to be transported by aircraft, maintenance, and the total amount and details of funding and financing (*Id.*, Article 100, Paragraph 2). The MLIT will examine whether the business plan is suitable to ensure transport safety, whether the applicant is competent to conduct the aviation transport business and whether the applicant is disqualified on grounds listed in the Civil Aeronautics Act (*Id.*, Article 101, Paragraph 1). This business is closed to foreign entities and persons. Please see question 1.6.

The application fee is JPY 150,000 and the standard processing period is two to four months after the MLIT has received all necessary documents.

The holder of an aviation transport business permit is referred to as a domestic air carrier (*bonpou koukuu unsou jigyousha*). It is subject to mandatory inspection by the MLIT in connection with its facilities to control, operate and maintain its aircraft and air transport business; it cannot operate or maintain the aircraft if it fails the inspection (*Id.*, Article 102, Paragraph 1).

As regards international carriers, please see question 1.6 below.

B. Business to Use Aircraft (*Koukuuki Shiyon Jigyō*)

A "business to use aircraft" to provide services, other than transporting persons or cargo by aircraft for a fee, is also regulated (*Id.*, Article 2, Item 21). An example of this business is enabling the taking of photographs by using an aircraft.

A permit from the MLIT is necessary to start a business using aircraft (*Id.*, Article 123, Paragraph 1). The application for the permit must state the applicant's name and address, the name of its representative director, and the total amount and details of funding and financing (*Id.*, Article 123, Paragraph 2). The MLIT will examine whether the business plan is suitable to ensure safety, whether the applicant is competent to conduct the business and whether the applicant is disqualified on grounds set forth in the Civil Aeronautics Act (*Id.*, Article 123, Paragraph 2).

The application fee is JPY 90,000 and the standard processing period is two months after the MLIT has received all necessary documents.

The business operator is subject to inspection by the MLIT in connection with its facilities to control, operate and maintain its aircraft; it cannot operate or maintain the aircraft if it fails the inspection (*Id.*, Article 124).

1.3 What are the principal pieces of legislation in your jurisdiction which govern air safety, and who administers air safety?

A. Legislation

The principal legislation governing air safety is the Civil Aeronautics Act, which is primarily based on the Chicago Convention.

- i. *Requirements regarding aircraft and the operation of aircraft*
The law imposes requirements to ensure the safety of aircraft and their operation. These include verification of airworthiness before an aircraft may be used, and restricting the use of aircraft to the purpose and scope stated in the verification of airworthiness. The task of verifying the airworthiness of aircraft registered in Japan falls on the MLIT (Civil Aeronautics Act, Articles 10 and 11). The MLIT also issues certificates of competency which are required by anyone to fly

an aircraft. Only persons with such a certificate can operate an aircraft, and must do so within the scope of the certificate (*Id.*, Articles 22, 28, 65 and 67). Other requirements under the law cover restricted fly zones, minimum safety altitudes and speed limits.

- ii. *Requirements regarding the aviation business*

In addition to permits to start an aviation transport business or a business using aircraft, the conduct of an aviation business is subject to requirements. Any domestic air carrier and any operator of a business using aircraft must pass the MLIT's inspections on its facilities to ensure the safety of its aircraft operation, including facilities to manage, operate and maintain its aircraft (*Id.*, Articles 102 and 124). Any domestic air carrier must have a manual regarding the operation and maintenance of its aircraft, which must stipulate the matters specified by applicable MLIT ordinances and be approved by the MLIT (*Id.*, Article 104).

- iii. *Enforcements*

The MLIT may: (i) request persons engaging in the manufacture or maintenance of aircraft, airmen, domestic air carriers and operators of businesses using aircraft to submit reports; and (ii) enter aircraft, airports, places where aircraft are located and business offices when it deems it necessary for the enforcement of the Civil Aeronautics Act (*Id.*, Article 134).

Violation of the Civil Aeronautics Act is subject to criminal penalties. A person engaging in an aviation transport business without the MLIT's permission may be imprisoned for up to three years or fined up to JPY 3,000,000, or both.

Other than the Civil Aeronautics Act, there are other laws such as: (i) the Act on the Punishment of Acts that Cause Danger in the Air, which penalises any person who damages airports or air navigation facilities, destroys aircraft or causes aircraft to crash; and (ii) the Act on the Punishment of an Unlawful Seizure of Aircraft, which penalises any person who hijacks or plans to hijack any aircraft while in operation.

B. Administrator

The civil aviation bureau of the MLIT administers air safety. It established an aviation safety programme which became effective on 1 April 2014, pursuant to ICAO's policy to introduce State Safety Programmes. The programme applies to general aviation and commercial aviation by a person or a company. It has also started to operate VOICES (Voluntary Information Contributory to the Enhancement of Safety), through which any person may voluntarily report any incident which could have caused accidents by an aircraft, in order to prevent the occurrence of actual accidents.

1.4 Is air safety regulated separately for commercial, cargo and private carriers?

Air safety is regulated by the Civil Aeronautics Act, which regulates aviation generally; however, Chapter 7 regulates only commercial aviation such as the aviation transport business and businesses using aircraft. Please see question 1.1.

1.5 Are air charters regulated separately for commercial, cargo and private carriers?

Yes, as discussed in question 1.2 on aviation transport businesses. Regulations on aviation transport businesses do not distinguish between cargo and persons.

1.6 As regards international air carriers operating in your jurisdiction, are there any particular limitations to be aware of, in particular when compared with 'domestic' or local operators? By way of example only, restrictions and taxes which apply to international but not domestic carriers.

A foreign entity or person cannot be a domestic air carrier (*bonpou koukoku unson jigyousha*) (please see question 1.2). However, it may obtain the MLIT's permission to conduct an international aviation transport business (Civil Aeronautics Act, Articles 129 and 126).

A foreign entity or person who invests in Japan is subject to the Act of Foreign Exchange and Foreign Trade. Under that law, a foreign entity which wants to invest in the business of manufacturing aircraft, conducting air transport or using aircraft must give prior notification, through the Bank of Japan, to the Ministry of Finance, as well as the ministry with specific jurisdiction over the business (i.e., the METI or the MLIT). The foreign entity must wait for 30 days before making the investments; however, this period may generally be shortened to two weeks.

1.7 Are airports state or privately owned?

As described in question 1.1, with a few exceptions, airports in Japan were constructed and are owned and managed directly by either the national government or local governments. As of 1 April 2016, airports in Japan are classified as: (i) national airports established and managed by the national government (19 airports); (ii) special regional airports established by the national government but managed by local governments (five airports); (iii) incorporated airports established and managed by corporations under special laws (Narita, Kansai, Osaka (Itami) and Chubu airports) (four airports); (iv) regional airports established and managed by local governments (54 airports); (v) airports for joint use managed by either the Japan Self Defence Forces or the U.S. forces stationed in Japan jointly with the national government (eight airports); and (vi) other minor airports. Among those airports, Sendai Airport, Kansai International Airport, Osaka (Itami) International Airport, Fukuoka Airport, Takamatsu Airport, Kumamoto Airport, seven airports in Hokkaido and Hiroshima Airport are currently being operated by private companies through concessions. Please see question 1.10.

1.8 Do the airports impose requirements on carriers flying to and from the airports in your jurisdiction?

An airport operator must establish rules for the operation of the airport and publish them online or via other appropriate methods (Airport Act, Article 12). The rules must cover the airport's operating hours, other services it is providing, landing and parking fees and requirements for airport users, among other things.

1.9 What legislative and/or regulatory regime applies to air accidents? For example, are there any particular rules, regulations, systems and procedures in place which need to be adhered to?

The Act for the Establishment of the Japan Transport Safety Board created the Japan Transport Safety Board (*Unyu Anzen*

linkai). The Board is one of the MLIT's administrative organs, although the National Government Organization Act gave it some independence from the MLIT.

The Board is responsible for investigating: accidents involving aircraft, railroads and vessels; any situation which is likely to cause those accidents; the causes and extent of damage surrounding those accidents; and for requesting the MLIT or relevant parties to implement necessary measures in response to such accidents. Accidents involving unmanned aircraft vehicles are included within the Board's investigative authority, pursuant to the amendment of the Act for the Establishment of the Japan Transport Safety Board which took effect on 5 December 2022. This law is based on Annex 19 of the Chicago Convention. The Board's investigative powers must meet the standards, methods and procedures set by the Chicago Convention and Annex 19 (Act for the Establishment of the Japan Transport Safety Board, Article 18, Paragraph 1).

1.10 Have there been any recent cases of note or other notable developments in your jurisdiction involving air operators and/or airports?

There are two notable developments in connection with regulations on flights by unmanned aircraft vehicles ("UAVs") and the privatisation of airports in Japan.

A. Regulations on flights by UAVs – amendments to the Civil Aeronautics Act

The Japanese public and government turned their attention to drones after a drone landed on the roof of the Prime Minister's office on 22 April 2015. The Civil Aeronautics Act was amended to introduce safety rules for UAVs, and the amended Act took effect on 10 December 2015. A further amendment was made in September 2019 to expand prohibited airspace and operation conditions. In addition, the Act was amended in 2020 to include a registration system for drones and in 2021 to require the certification of the functions and performance data of UAVs in accordance with safety standards and a licence to operate UAVs. The amendments relating to the registration system took effect on 20 June 2022, and the rest of the amendments took effect on 5 December 2022. The amended Act introduced restrictions on (i) areas for flight, and (ii) operation.

(i) Prohibited airspaces for flight

The amended Civil Aeronautics Act requires a person who intends to operate a UAV in the following airspaces to obtain the MLIT's permission:

(a) airspace which is likely to affect the safe operation of aircraft; and

(b) airspace which is above densely populated areas.

An "airspace which is likely to affect the safe operation of aircraft" refers to (i) airspaces above airports and their vicinity, (ii) airspaces designated by the MLIT in cases where the safety of aircraft used by the MLIT or other administrative organs for rescue work during emergencies must be secured, and (iii) airspaces 150 metres above ground level or water surface level. A "densely populated area" is defined as a densely inhabited district (*jinkou shuuchuu chiku*) ("DID"), designated based on the results of the national census. A DID is, in principle, an area with a population density of 5,000 people or more per square kilometre.

(ii) Operational limitations

The amended Civil Aeronautics Act lists the following operational conditions.

Operators of UAVs must:

- (a) not operate UAVs while under the influence of alcohol or medication, including illegal drugs;
- (b) confirm that all necessary preparations have been completed, including confirming the externals (e.g., batteries, propellers and cameras being firmly installed onto the drones) and functions of UAVs, weather and other flight conditions prior to operation;
- (c) operate UAVs in a manner that prevents any collisions with aircraft or other UAVs;
- (d) not operate UAVs in a manner that causes any issues with third parties, including by making unnecessary noise or causing UAVs to nosedive;
- (e) operate UAVs only in the daytime;
- (f) operate UAVs within the visual line of sight of the operator;
- (g) maintain a certain operating distance (30 metres) between UAVs and persons or properties on the ground or water surface;
- (h) not operate UAVs over event sites where many people gather;
- (i) not transport hazardous materials specified in the Ordinance by UAVs; and
- (j) not drop any object from UAVs except for the goods specified in the Ordinance.

Any person who intends to operate UAVs beyond the limitations of items (e) through (j) must have approval from the MLIT. As for items (a) through (d), these conditions are absolute without exception.

With the MLIT's permission or approval, it is possible to operate UAVs in prohibited airspaces or without meeting operational conditions. An operator must submit the application for permission or approval, in general, 10 business days before the flight of a UAV.

Violations are subject to penalties that vary depending on the severity of the violation and at the maximum can be imprisonment for up to two years or a fine of up to JPY 1 million. Any person who operates UAVs while under the influence of alcohol or medication, including illegal drugs, above any public areas (e.g., roads, parks, public squares and stations) may be subject to imprisonment for up to one year or a fine of up to JPY 300,000.

UAV technology continues to advance rapidly. Hence, although the new regulations were created as an urgent response to the landing of a drone on the roof of the Prime Minister's office, government regulations will continue to evolve to ensure the sound development of the UAV business in Japan, as affirmed in a supplemental provision of the amended Civil Aeronautics Act.

B. Introduction of concessions for operating airports

The Act for the Operation of Government Controlled Airports by Private Sector Entities (the "Airport Concession Act"), which took effect on 25 July 2013, allows the private sector to operate airports through concessions under the Act on the Promotion of Private Finance Initiative (the "PFI Act Concession").

The need to reform airport management efficiently led to the PFI Act Concession. Under the current system, income from airport charges, such as landing fees, at all national airports is managed within a single national pool (i.e., the airport development sub-account under the social infrastructure development special account). In principle, airport charges are the same in all national airports in Japan, and each airport cannot set its own airport charges. Under the Airport Concession Act, however, the airport

concessionaire of a specific airport may set its own airport charges and collect them as income.

Further, the separation between aeronautical and non-aeronautical operations in terms of ownership and management has also been criticised as being inefficient. As mentioned above, in many airports in Japan, the government owns and operates basic aeronautical facilities, such as runways, aprons and navigation facilities, while private or third sector entities own and operate non-aeronautical facilities such as airport terminals and car parking facilities. Accordingly, the government cannot offer lower airport charges to airlines by generating income from non-aeronautical operations. By introducing the Airport Concession Act, the government aims to have one concessionaire manage both aeronautical and non-aeronautical operations under its concession.

A concession under the Airport Concession Act covers: (i) national airports; (ii) regional airports; (iii) civil aviation facilities at airports for joint use; and (iv) other minor airports established and managed by local governments. The operation of Sendai Airport, Fukuoka Airport, Takamatsu Airport, Kumamoto Airport and seven airports in Hokkaido by private companies through concessions has started.

Incorporated airports are not subject to the Airport Concession Act. However, the government has enacted another special law for the concession to operate Kansai International Airport and Osaka (Itami) International Airport. The operation of both airports by private companies, which include Vinci Airports and Orix Corporation, through concessions, started in April 2016.

1.11 Are there any specifically environment-related obligations or risks for aircraft owners, airlines, financiers, or airports in your jurisdiction, and to what extent is your jurisdiction a participant in (a) the EU Emissions Trading System (EU ETS) or a national equivalent, and (b) ICAO's Carbon Offsetting and Reduction Scheme for International Aviation (CORSIA)?

Although the Japanese government declared in October 2020 that Japan aims to accomplish zero emissions by 2050, the emissions trading system has not yet been introduced. International airline operators of aircrafts of maximum take-off weight exceeding 5,700 kilograms are required to confirm the annual volume of greenhouse gas emissions, and a carbon-offsetting scheme based on CORSIA is provided under the Enforcement Rule of the Civil Aeronautics Act. In addition, the Civil Aeronautics Act was amended in 2021 to include the basic policy of promoting zero carbon emissions in the aviation sector. The relevant amendments took effect on 1 December 2022.

2 Aircraft Trading, Finance and Leasing

2.1 Does registration of ownership in the aircraft register constitute proof of ownership?

At the owner's application, the MLIT will register its ownership of an aircraft in the Aircraft Register (Civil Aeronautics Act, Article 3). The registration fee is JPY 30,000 multiplied by the weight (in tons) of the aircraft.

Any third party may request to see or have a copy of the Aircraft Register. Hence, the buyer of an aircraft can check whether the seller is registered as the aircraft's owner. Further, as for a registered aeroplane (*bikouki*) or rotorcraft (*kaitenyoku koukunku*), the buyer or transferee of that aircraft may assert its

ownership by registering the acquisition or transfer (*Id.*, Article 3-3). However, if the registration is false and there is a true owner who is not registered in the Aircraft Register, the buyer cannot acquire ownership. In this sense, the Aircraft Register is a very important piece of evidence to prove ownership, but it does not protect a third party who relies on a false registration.

As for other types of aircraft, such as gliders or airships, even if they are registered, the mere delivery of the aircraft to the buyer or transferee enables the said buyer or transferee to assert ownership.

2.2 Is there a register of aircraft mortgages and charges? Broadly speaking, what are the rules around the operation of this register?

There is a register of aircraft mortgages under the Aircraft Mortgage Act (*Koukanki Teitou Hou*).

Aircraft mortgages shall be made in the Aircraft Register in which the ownership is registered (please see question 2.1). To register an aircraft mortgage, the mortgagee and the mortgagor must jointly apply for registration and submit the document verifying the existence of the mortgage, such as the mortgage agreement, and other necessary documents. The aircraft mortgage registration fee is JPY 0.003 multiplied by the loan amount. It is customary to make a provisional registration of the mortgage and pay only JPY 2,000 as a registration fee. As for the enforcement of the mortgage, please see question 3.1.

2.3 Are there any particular regulatory requirements which a lessor or a financier needs to be aware of as regards aircraft operation?

Please see question 2.4.

2.4 As a matter of local law, is there any concept of title annexation, whereby ownership or security interests in a single engine are at risk of automatic transfer or other prejudice when installed 'on-wing' on an aircraft owned by another party? If so, what are the conditions to such title annexation and can owners and financiers of engines take pre-emptive steps to mitigate the risks?

The Civil Act has a concept similar to title annexation. Under this concept, if a property (whether real property or movable property) is attached to another property such that it is impossible to separate them without damage, the owner of the primary property acquires ownership of the non-primary property. In that case, the owner of the minor property loses ownership of, and any other right on, that property. However, because an engine can be generally separated from an aircraft without damaging either the engine or the aircraft, the ownership or security interests on the engine would not be at risk of annexation. In addition, in a precedent case regarding the annexation of buildings, the court decided that security interests on the annexed buildings continue to exist on each annexed building *pro rata* based on the value of each building.

2.5 What (if any) are the tax implications in your jurisdiction for aircraft trading as regards a) value-added tax (VAT) and/or goods and services tax (GST), and b) documentary taxes such as stamp duty; and (to the extent applicable) do exemptions exist as regards non-domestic purchasers and sellers of aircraft and/or particular aircraft types or operations?

If a business provider transfers or lends any property or provides services to a third party for consideration within Japan, a

consumption tax will be basically levied on the transaction. The current rate of consumption tax is 10%. If the transaction is considered an export under the Consumption Tax Law (*Shouhizei Hou*) and the business provider has an export permit, the transaction may be exempt from consumption tax. In the case of an aircraft which delivers people or cargoes outside Japan, the transfer of that aircraft may be exempted if certain requirements under the Consumption Tax Law are met.

The Stamp Tax Law (*Insbizei Hou*) requires that stamps be affixed to certain documents, including an agreement to sell and purchase an aircraft. The amount of the stamp depends on the purchase price. For example, if the price is more than JPY 100 million but not more than JPY 500 million the amount is JPY 100,000; and if the price is more than JPY 5 billion the amount is JPY 600,000.

2.6 Is your jurisdiction a signatory to the main international Conventions (Montreal, Geneva and Cape Town)?

Japan is a signatory to (i) the Hague Convention, and (ii) the Montreal Convention, but is not a signatory to the ICAO Geneva Convention or the Convention on International Interest in Mobile Equipment, Cape Town, 2001.

2.7 How are the Conventions applied in your jurisdiction?

Japan essentially applied the Hague Convention through the Law on the Punishment of the Unlawful Seizure of an Aircraft. Japan essentially also applied the Montreal Convention through the Law on the Punishment of Acts that Endanger Aviation.

2.8 Does your jurisdiction make use of any taxation benefits which enhance aircraft trading and leasing (either in-bound or out-bound leasing), for example access to an extensive network of Double Tax Treaties or similar, or favourable tax treatment on the disposal of aircraft?

Yes. For example, if a Japanese company leases an aircraft from a company established in the U.S., generally, under the tax treaty between Japan and the U.S., there is no withholding tax on the lease payments which the Japanese company will make to the U.S. company.

2.9 To what extent is there a risk from the perspective of an owner or financier that a lessee of aircraft or other aviation assets in your jurisdiction may acquire an economic interest in the aircraft merely by payment of rent and thereby potentially frustrate any rights to possession or legal ownership or security?

Payment of rent under an ordinary lease agreement would not cause the risk to frustrate any rights to possession, legal ownership or security of the aircraft from the perspective of the owner or financier.

3 Litigation and Dispute Resolution

3.1 What rights of detention are available in relation to aircraft and unpaid debts?

Under the Civil Aeronautics Act, the compulsory execution and the execution of provisional seizure of registered aircraft

are governed by rules issued by the Supreme Court (Civil Aeronautics Act, Article 8–4, Paragraph 2), and the Civil Execution Rules (*Minji Shikkou Kisoku*) and Civil Provisional Remedies Rules (*Minji Hozen Kisoku*) apply to the compulsory execution, and the execution of provisional seizure, of registered aircraft (Civil Execution Rules, Article 84 and Civil Provisional Remedies Rules, Article 34).

If a court starts the procedures for a compulsory execution, it must order a public auction of the aircraft, get the documents which are necessary to fly the aircraft, including verification of the aircraft's nationality, and prohibit the aircraft's departure (Civil Execution Law, Article 114 and Civil Execution Rules, Article 84).

The execution of a provisional seizure is carried out by (i) making an entry of the provisional seizure in the registration, or (ii) getting what is necessary to fly the aircraft, including the verification of the aircraft's nationality (Civil Provisional Remedies Law, Article 48 and Civil Provisional Remedies Rules, Article 34).

Because aircraft without any registration certification cannot be used for aviation, they will be detained through the procedures for compulsory execution and execution of provisional seizure.

If it is likely that a compulsory execution will become significantly unfeasible unless the aircraft is in detention, a party may file an application with the district court with jurisdiction over the aircraft's home base (*teichijou*) before starting the compulsory execution procedures to request a court order for the delivery of the registration certification. If there are pressing circumstances, a party may file the application with the district court with jurisdiction over where the aircraft is located (Civil Execution Law, Article 115 and Civil Execution Rules, Article 84). Even if the certification of registration is delivered, the possession of the aircraft is not deemed delivered to the party or the court. The party may file an application to appoint a custodian to maintain the aircraft until the compulsory execution starts (Civil Execution Law, Article 116).

3.2 Is there a regime of self-help available to a lessor or a financier of an aircraft if it needs to reacquire possession of the aircraft or enforce any of its rights under the lease/finance agreement?

A lessor or a financier of aircraft is basically required to carry out a compulsory execution, which needs to be filed with the court, to reacquire the possession of the aircraft or enforce any of its rights under the lease/finance agreement. If a lessor or financier has security interests on the aircraft or lease receivables, and the agreement has a provision that it may exercise the security interests against a debtor upon the occurrence of an event of default, it may enforce the rights without a court filing, unless the provision is terminated upon the filing of bankruptcy.

3.3 Which courts are appropriate for aviation disputes? Does this depend on the value of the dispute? For example, is there a distinction in your jurisdiction regarding the courts in which civil and criminal cases are brought?

A. Civil Cases

Applications for compulsory execution and the execution of provisional seizure of aircraft must be filed with the district court with jurisdiction over where the aircraft is located when the procedures of such executions start (Civil Aeronautics Act, Article 8–4, Paragraph 2). This district court is not necessarily the same as the district court with jurisdiction over the aircraft's home base.

A contractually agreed court to settle disputes between an aircraft financier and the borrower is valid (Civil Procedure Law, Article 11) and the court will be determined pursuant to such provision. If no jurisdiction has been agreed, the competent court will be determined pursuant to the Civil Procedure Law. Depending on the kind of lawsuit, the competent court may be one with jurisdiction over the defendant's address, where the defendant should perform its obligation, or where the aircraft exists (*Id.*, Articles 4 and 5).

B. Criminal Cases

The jurisdiction over criminal cases is where the crime was committed or where the criminal resides (Criminal Procedure Law, Article 2, Paragraph 1). However, if the crime was committed in an aircraft registered in Japan at a time when it was outside Japan, the jurisdiction, in addition to the place where the crime was committed and the criminal's residence, could be the place where the aircraft lands (including on water) after the crime (*Id.*, Paragraph 3).

C. Summary Court

If (i) a plaintiff seeks damages of up to JPY 1.4 million, and (ii) the crime is punishable by fines or lighter penalties, the lawsuit can be filed with the Summary Court (*Kan'i Saibansho*) (Court Law, Article 33, Paragraph 1).

3.4 What service requirements apply for the service of court proceedings, and do these differ for domestic airlines/parties and non-domestic airlines/parties?

A. Civil Cases

Generally, the service of court proceedings should be made at the address or business office of the person being served. If a foreign company has a representative to do business in Japan or a branch in Japan, the service of court proceedings to a foreign company can be made at the representative's address or the branch's address (Civil Procedure Law, Article 103, Paragraph 1).

If the service needs to be made outside Japan, the presiding judge will delegate the service of court proceedings to the competent governmental agency of the foreign jurisdiction, or the ambassador, minister or council of Japan in such jurisdiction (*Id.*, Article 108). Japan is a signatory to the Convention Regarding Civil Procedures and the Convention on the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters.

B. Criminal Cases

Service should be made in the way described in Article 108 of the Civil Procedure Law (Criminal Procedure Law, Article 54).

3.5 What types of remedy are available from the courts or arbitral tribunals in your jurisdiction, both on i) an interim basis, and ii) a final basis?

If an obligor does not perform its obligation, the obligee may file a lawsuit for performance. The obligee may also seek payments to force the obligor to perform the obligation, or may use a third party to perform the obligation and make the obligor pay the relevant costs. If the obligee obtains the court's final and binding decision, and that decision is given with a declaration of provisional execution, or an arbitration award to which the competent court has issued an execution order, it can start the compulsory execution against the obligor's properties (Civil Execution Law, Article 22).

The court can issue an interim decision with respect to specific or separate issues (Civil Procedure Law, Article 245); however, the obligee cannot start the compulsory execution based on an interim decision.

3.6 Are there any rights of appeal to the courts from the decision of a court or arbitral tribunal and, if so, in what circumstances do these rights arise?

A party who does not agree with the final decision of the district court at the first instance can appeal to the high court (Civil Procedure Law, Article 281, Paragraph 1). A party who does not agree with the final decision of the high court at the second or first instance can appeal to the Supreme Court. Further, a party who does not agree with the final decision of the district court at the second instance can appeal to the high court. An appeal to the Supreme Court requires specific grounds under the Civil Procedure Law; for example, if the high court's decision violates the Constitution or other laws (*Id.*, Articles 311 and 312).

As to the arbitration procedure, the award is binding on the parties and an appeal is basically unavailable.

3.7 What rights exist generally in law in relation to unforeseen events which might enable a party to an agreement to suspend or even terminate contractual obligations (in particular payment) to its contract counterparties due to *force majeure* or frustration or any similar doctrine or concept?

It is customary in agreements negotiated and agreed between sophisticated parties to have a provision which relieves a party from contractual obligations due to *force majeure*. The Supreme Court recognised a similar principle involving a change of situation (*jijou-benkou-no-gensoku*) where the change (i) could not have been predicted, (ii) is not attributable to the contractual party whose obligations are affected, and (iii) caused that party to fail to perform its obligations in good faith. However, it is very rare for the courts to actually apply this principle to justify a party's suspension or termination of contractual obligations.

4 Commercial and Regulatory

4.1 How does your jurisdiction approach and regulate joint ventures between airline competitors?

The Civil Aeronautics Act grants Antitrust Immunity (“**ATTI**”) if a domestic aviation carrier obtains the MLIT's approval of the following items (Articles 110 and 111):

- (i) a joint management agreement between a domestic air carrier and another air carrier, in case two or more domestic air carriers operate air transport services to ensure passenger transport that is necessary for local residents' lives, in a route inside Japan where continuing the service is expected to be difficult due to a decreased demand for air transport service; and
- (ii) an agreement between a domestic air carrier and another air carrier on joint carriage, a fare agreement and other agreements relating to transportation to promote public convenience in a route between a point in Japan and a point in a foreign country or foreign countries.

The MLIT will not grant the approval unless the subject agreement conforms to the following standards:

- (i) it does not unfairly impair the interests of users;
- (ii) it is not discriminatory;

- (iii) it does not unfairly restrict participation and withdrawal; and
- (iv) the contents of the agreement are kept to the minimum necessary for the purpose of the agreement.

Before granting any approval, the MLIT will first discuss this with the Japan Fair Trade Commission (“**JFTC**”).

Since 2010, the signing or amendment of a joint venture agreement needs the approval of the MLIT. However, as of the end of March 2021, there are no joint venture agreements involving Japanese air carriers requiring such approval.

4.2 How do the competition authorities in your jurisdiction determine the ‘relevant market’ for the purposes of mergers and acquisitions?

Under the Act on the Prohibition on Private Monopolization and on the Maintenance of Fair Trade (the “**Antitrust Law**”), consolidations of businesses, such as mergers and business transfers, are prohibited if (i) such consolidations will eventually restrict competition in any particular field of trade, or (ii) the consolidations involve unfair trade practices (Articles 14 to 17).

In 2004, the JFTC issued a guideline on how it assesses potential restrictions on competition, and this guideline has been continually amended. The guideline provides that a particular field of trade (*ittei no toribiki bunya*) is determined from the perspective of whether users have alternative goods or services to the subject of the trade, in terms of geographical area where such goods or services are traded. If necessary, the perspective of whether suppliers have an alternative is taken into account. The scope of goods or services is generally determined by examining whether goods or services, similar to those subject to the anti-competition assessment, are available to users. In evaluating similarity, the JFTC will consider, among other things, the uses and the cost of the goods or services.

The geographical area is also generally determined by whether users can have similar goods or services. In evaluating similarity, the JFTC will consider, among other things, where users can avail themselves of goods or services based on accessibility to users, available distribution networks, ability of suppliers to satisfy demand, whether the goods or services are easily deliverable, and delivery fees or costs.

4.3 Does your jurisdiction have a notification system whereby parties to an agreement can obtain regulatory clearance/anti-trust immunity from regulatory agencies?

A party planning a business consolidation can have a prior official consultation with the JFTC, by providing the JFTC with concrete details of the proposed consolidation, the relevant parties consenting to the disclosure of the details of the consultation, and the JFTC's response.

The standard period for the JFTC to deal with any application for consultation is 30 days starting from the day after the JFTC has received the required documents. This period may be shortened pursuant to the acquirer's request and if the JFTC does not see any issue under the Antitrust Law.

It is customary to have an unofficial consultation with the JFTC, which is different from the official consultation mentioned above, before the party planning any business consolidation submits all necessary competition clearance documents to the JFTC.

4.4 How does your jurisdiction approach mergers, acquisition mergers and full-function joint ventures?

Please see questions 4.1 and 4.2.

4.5 Please provide details of the procedure, including time frames for clearance and any costs of notifications.

If a party plans a business consolidation which exceeds certain criteria, it must obtain the JFTC's clearance, which may take 30 days (but may be shortened) from the filing of the application for clearance and before any consolidation can proceed (please see question 4.3). The criteria depends on the type of acquisition. For example, in a share purchase, if: (i) the sales of the acquirer's group in Japan exceeds JPY 20 billion; (ii) the sales of the target company and its subsidiaries in Japan exceeds JPY 5 billion; and (iii) the resulting voting rights of the acquirer will exceed 20% or 50% after the acquisition, the acquirer must file for JFTC clearance and submit the acquisition agreement, or its draft, the balance sheet, profit and loss statement and business report of the acquirer, a shareholders' resolution to approve the transaction (if any is required) and the financial condition of the acquirer's group.

It is customary to have an unofficial consultation prior to the application. The length of consultation depends on the transaction but, if the necessary information such as sales and market shares of the consolidated businesses is submitted properly, the JFTC will receive the application for consultation promptly.

If the JFTC finds any material problem under the Antitrust Law, the examination process will start. The JFTC will consider whether a cease-and-desist order should be issued to solve the problem until the later of either the lapse of 120 days after the receipt of the application or the lapse of 90 days after the receipt of the documents that the JFTC additionally requested from the acquirer.

4.6 Are there any sector-specific rules which govern the aviation sector in relation to financial support for air operators and airports, including (without limitation) state aid?

A. Air operators

Air transportation to and from small local airports and isolated islands generally faces financial difficulties, but it is necessary to enable residents to have an ordinary life. To keep such air transportation active, air operators providing such transportation services are subsidised in relation to the purchase price of aircraft and equipment and landing charges, and may avail themselves of tax reductions in terms of fuel aviation tax and property tax.

B. Airports

Income from airport charges, such as landing fees, at all national airports is managed within a single national pool (i.e., the airport development sub-account under the social infrastructure development special account) (please see question 1.10). The pool provides airports with financial support for maintenance and operation.

4.7 Are state subsidies available in respect of particular routes? What criteria apply to obtaining these subsidies?

Please see question 4.6.

4.8 What are the main regulatory instruments governing the acquisition, retention and use of passenger data, and what rights do passengers have in respect of their data which is held by airlines and airports?

The following laws and regulations are the basic legislation in Japan for the protection of personal information:

- (i) the Act on the Protection of Personal Information (Act No. 57 of 30 May 2003, as amended – the “APPI”); and
- (ii) local regulations (*jourei*) legislated by local governments.

The APPI is the principal data protection legislation which regulates the use of personal information by private businesses and sets forth the obligations of business operators handling personal information, which apply to all business operators using a personal information database for their businesses. In addition, regulations on the handling of personal information by administrative organs and independent administrative agencies which were regulated separately were incorporated into the APPI on 1 April 2022. Under the APPI, a passenger may request an airline or the operator of an airport to correct, add or delete his retained personal data, and the airline or the operator of the airport must comply. The MLIT also issued a guideline regarding data protection to business operators conducting a business under the jurisdiction of the MLIT, including airlines and operators of airports.

4.9 In the event of a data loss by a carrier, what obligations are there on the airline which has lost the data and are there any applicable sanctions?

Please see question 4.8.

4.10 What are the mechanisms available for the protection of intellectual property (e.g. trademarks) and other assets and data of a proprietary nature?

The Basic Act on Intellectual Property provides the framework for promoting measures for the creation, protection and exploitation of intellectual property. This Act defines intellectual property as a patent right, a utility model right, a plant breeder's right, a design right, a copyright, a trademark right, a right that is stipulated by laws and regulations on other intellectual property or a right pertaining to an interest that is protected by acts. Each of (i) a patent right, (ii) a utility model right, (iii) a plant breeder's right, (iv) a design right, (v) a copyright, and (vi) a trademark right is protected under (i) the Patent Act, (ii) the Utility Model Act, (iii) the Plant Variety Protection and Seed Act, (iv) the Design Act, (v) the Copyright Act, and (vi) the Trademark Act. Each law has its own mechanism to protect intellectual property, although each basically protects registered intellectual property. For example, under the Trademark Act, a person holding a trademark may register it, and such registration is effective for 10 years and is renewable. A trademark holder basically has an exclusive right to use the registered trademark in connection with the designated goods or services.

The unfair acquisition or use of know-how or trade secrets, and the unfair creation or use of trademarks or trade names which are similar or identical to others that are well known by consumers, is prohibited by the Unfair Competition Prevention Act.

4.11 Is there any legislation governing the denial of boarding rights and/or cancelled flights?

The MLIT issued a guideline on the necessary measures to prevent acts which may make passengers uncomfortable, embarrassed or unsafe, and in 2002 requested air operators to comply with the guideline. Under the guideline, air operators must not allow passengers who are drunk to excess to board.

Air operators generally lay down their terms and conditions which passengers of domestic and international flights are required to follow. Such terms and conditions typically provide that the operator may deny boarding if a passenger is late.

Further, the operator may deny boarding to passengers or may make passengers disembark if the operator finds it necessary to ensure air safety, to comply with laws and requests from administrative bodies, to deal with any act which is making other passengers uncomfortable, embarrassed or unsafe, or to deal with any mental or physical conditions. In addition, the terms and conditions typically provide that the operator may cancel flights based on certain reasonable grounds, and must take appropriate measures for passengers whose flights were cancelled.

Further, a pilot of the aircraft may, during taxiing, order a passenger to disembark if he has reasonable grounds to believe that the passenger has committed or will commit an act that may impede safety, to the extent that it is necessary to ensure the safety of the aircraft, to protect other passengers and property, and to keep order and discipline inside the aircraft (Civil Aeronautics Act, Article 73–4, Paragraph 1). The Civil Aeronautics Act does not explicitly deal with the cancellation of flights.

4.12 What powers do the relevant authorities have in relation to the late arrival and departure of flights?

The Civil Aeronautics Act does not explicitly impose sanctions directly due to the late arrival and departure of flights. However, the MLIT gathers and publishes information on the frequency of late arrivals and flight cancellations. Further, the MLIT may issue an order to improve the operation of aircraft or the business of air carriers if, for example, the technical ability of the airmen or pilots does not meet the standards of the Civil Aeronautics Act (Articles 20, 29 and 72).

4.13 Are the airport authorities governed by particular legislation? If so, what obligations, broadly speaking, are imposed on the airport authorities?

Please see questions 1.1 and 1.10.

4.14 To what extent does general consumer protection legislation apply to the relationship between the airport operator and the passenger?

The Consumer Contract Act provides for the protection of consumers who enter into contracts with business operators. For example, any contractual provision which requires a consumer to pay a cancellation fee at an amount which exceeds the average amount of damages that a business operator would suffer in connection with the cancellation is null and void (Consumer Contract Act, Article 9).

4.15 What global distribution suppliers (GDSs) operate in your jurisdiction?

Japanese companies and foreign companies such as FedEx, DHL and UPS operate in Japan as global forwarders. Further, Japan has an association which includes international freight forwarders as members (Japan International Freight Forwarders Association Inc.).

4.16 Are there any ownership requirements pertaining to GDSs operating in your jurisdiction?

As a general rule, a foreign person, a foreign entity (whether private or governmental) or an entity of which one-third or more of the directors are foreigners, or one-third or more of the

voting rights are held by foreign persons or entities, is prohibited from engaging in the freight forwarding business in Japan (Consigned Freight Forwarding Business Act, Articles 6 and 22), unless they are registered with or permitted by the MLIT (*Id.*, Articles 35 and 45).

4.17 Is vertical integration permitted between air operators and airports (and, if so, under what conditions)?

The JFTC will consider whether the vertical integration is an issue with regard to fair trade in the aviation business, pursuant to the Antitrust Law. There is no precedent regarding such vertical integration. The government has set certain standards for airport concessionaires, such as the disqualification of an aviation transport business operator, and any of its parent companies, subsidiaries and other affiliates, from being an airport concessionaire.

4.18 Are there any nationality requirements for entities applying for an Air Operator's Certificate in your jurisdiction or operators of aircraft generally into and out of your jurisdiction?

Please see questions 1.2 and 1.6.

5 In Future

5.1 In your opinion, which pending legislative or regulatory changes (if any), or potential developments affecting the aviation industry more generally in your jurisdiction, are likely to feature or be worthy of attention in the next two years or so?

Attention should be given to three possible changes or developments:

A. Development of a Business Using UAVs

The Council for Improvement of the Environment to Operate Drones which consists of governmental authorities and private companies annually publishes a roadmap regarding the future development of drones. According to the roadmap published in August 2022, the goal is to be able to operate UAVs “beyond visual line of sight” in urban areas by the end of the fiscal year 2022. To achieve this goal, the Civil Aeronautics Act was amended in 2020 to require the certification of the functions and performance data of UAVs in accordance with safety standards and a licence to operate UAVs, and the amendments took effect on 5 December 2022.

B. Discussion of Legal Framework of Suborbital Flights

Considering that several start-ups have been developing suborbital spaceplanes that are intended for flights reaching altitudes of around 100 kilometres that then return to Japan, the MLIT, the National Space Policy Secretariat of the Cabinet Office, which is in charge of space activities, and related private operators established a public-private council for suborbital flights in 2019 to discuss the legal framework pertaining to suborbital flights. However, no laws have been enacted yet.

Acknowledgment

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1 General

1.1 Please list and briefly describe the principal legislation and regulatory bodies which apply to and/or regulate aviation in your jurisdiction.

The Ministry of Transport has an Aviation Division which is responsible for civil aviation affairs including policy formulation, licensing aviation infrastructure, safety and security, and promoting legislation and regulations to regulate aviation in Malaysia.

The principal Regulatory Bodies under the auspices of the Ministry of Transport are as follows:

1. Civil Aviation Authority of Malaysia (CAAM)
CAAM is the primary technical regulator broadly regulating safety, maintenance and security of Malaysian civil aviation as well as its enforcement.
2. Malaysian Aviation Commission (MAVCOM)
This entity regulates and oversees the economic and commercial matters relating to civil aviation in Malaysia.
3. Air Accident Investigation Bureau
The Air Accident Investigation Bureau is an independent investigation entity under the Ministry of Transport and is responsible for the safety investigation of all air accidents and incidents.

The core pieces of legislation regulating the civil aviation industry are as follows:

1. Civil Aviation Act 1969.
2. Carriage by Air Act 1974.
3. Aviation Offences Act 1984.
4. Airport and Aviation Services (Operating Company) Act 1991.
5. International Interests in Mobile Equipment (Aircraft) Act 2006.
6. Malaysian Aviation Commission Act 2015.
7. Civil Aviation Authority of Malaysia Act 2007.

Subsidiary pieces of legislation and regulations related to the primary pieces of legislation have been enacted to facilitate and aid the operations and enforcement of the primary pieces of legislation. These include:

1. Civil Aviation Regulations 2016.
2. Civil Aviation (Aerodrome Operations) Regulations 2016.
3. Civil Aviation (Fees and Charges) Regulations 2016.
4. Malaysian Aviation Consumer Protection Code 2016.
5. Malaysian Aviation Commission (Aviation Services Charges) Regulations 2016.
6. Malaysian Aviation Commission (Code of Conduct) Regulations 2018.

7. Malaysian Aviation Commission (Regulatory Services Charges) Regulations 2018.
8. Ministry of Transport Directives 2016.
9. Civil Aviation (Security) Regulations 2019.

1.2 What are the steps which air carriers need to take in order to obtain an operating licence?

Before an air carrier is permitted to operate the carriage of passengers, mail or cargo to or from Malaysia for hire or reward, both scheduled and unscheduled, the air carrier must first obtain the requisite licence/permit and the Air Operating Certificate (AOC).

The Air Services Licence (ASL) for scheduled air services or the Air Services Permit (ASP) for unscheduled air services is to be obtained from the Malaysian Aviation Commission whilst the AOC is issued by CAAM.

The brief steps required to be taken are as follows:

1. The air carrier must make the necessary application for an ASL or ASP, as the case may be, to MAVCOM using the prescribed forms.
The air carrier must also make an application to CAAM for the issuance of the AOC to enable it to operate a Malaysian Registered Aircraft for commercial air transport.
2. After an application for an ASL or ASP is made to MAVCOM, MAVCOM will first conduct an economic evaluation and if satisfied, it will issue a Conditional Approval to allow the air carrier to apply to CAAM for the AOC.
3. MAVCOM will assess and evaluate the application and will only issue the ASL or ASP after a valid AOC is issued by CAAM.
4. The application form will necessarily be supported by details including the organisation structure, financial status and projection, air carrier business plan, aircraft, finance and leasing, maintenance, insurance and complaints management.
5. An ASL/ASP application requires a minimum of 90 days to process.
6. MAVCOM's award of the ASL or ASP would usually be for a period of 10 years.

1.3 What are the principal pieces of legislation in your jurisdiction which govern air safety, and who administers air safety?

CAAM regulates and administers the safety and security of civil aviation in Malaysia. This is provided for under the Civil Aviation Authority of Malaysia Act 2017. Pursuant to the powers conferred by CAAM, a National Civil Aviation Security

Authority was established in 2019, the primary responsibility of which is to safeguard and regulate civil aviation safety in Malaysia in compliance with Annex 17 of the Chicago Convention. Under the National Civil Aviation Security Authority, programmes relating to the security of civil aviation have been established such as:

- The National Civil Aviation Security Programme (NCASP).
- The National Civil Aviation Security Training Programme (NCASTP).
- The National Civil Aviation Security Quality Control Programme (NQCP).

The principal pieces of legislation governing and regulating air safety in Malaysia are as follows:

1. Civil Aviation Act 1969
This Act, *inter alia*, provides for the regulation of civil aviation and gives effect to the Chicago Convention and any Annex to it.
2. Civil Aviation Regulations 2018
These regulations, made under the powers conferred by the Civil Aviation Act 1969, regulate matters concerning, *inter alia*, the operation and maintenance of aircraft, air traffic control, licensing, and accident investigation.
3. Civil Aviation (Security) Regulation 2019
Under these regulations, the National Civil Aviation Security Authority is in charge of establishing various security programmes which all air carriers, aerodrome operators and ground handlers are required to comply with. These regulations also include provisions on the usage of security screening and security controls by air carriers, aerodrome operators and ground handlers, and on matters relating to aircraft security.
4. Aviation Offences Act 1984
This Act gives effect to various International Conventions, including the Tokyo Convention 1963, the Montreal Convention on the Suppression of Unlawful Acts against the Safety of Civil Aviation 1971, and the Montreal Convention on Suppression of Unlawful Acts of Violence at Airports Serving International Civil Aviation 1988.

1.4 Is air safety regulated separately for commercial, cargo and private carriers?

Apart from the Civil Aviation Act 1969 and the Civil Aviation (Security) Regulations 2019 therein, there are no separate pieces of legislation or regulations which regulate air safety for commercial, cargo and private carriers.

1.5 Are air charters regulated separately for commercial, cargo and private carriers?

Air charterers are regulated under the Civil Aviation Act 1969 and Civil Aviation Regulations 2016, and the Aeronautical Information Circulars issued by CAAM from time to time.

1.6 As regards international air carriers operating in your jurisdiction, are there any particular limitations to be aware of, in particular when compared with ‘domestic’ or local operators? By way of example only, restrictions and taxes which apply to international but not domestic carriers.

For scheduled services, limitations could be in the bilateral/multilateral service agreements and approvals by CAAM and MAVCOM.

For unscheduled services, foreign carriers are not permitted to carry out selected operations including:

- a. Uplifting cargo and/or mail from Malaysia to any part beyond Malaysia unless they are able to provide a no-obligation letter from Malaysian ASL or ASP (cargo) operators.
- b. Uplifting any passenger, cargo and/or mail within parts of Malaysia.
- c. Carry passengers, cargo and/or mail from Malaysia that differs from the passenger/cargo manifest.
- d. Uplifting any passenger/cargo and/or mail on the positioning sector.

1.7 Are airports state or privately owned?

The majority of airports in Malaysia are owned by the state-controlled entity known as Malaysia Airports Holdings Berhad, whilst at least one is owned by private entities.

1.8 Do the airports impose requirements on carriers flying to and from the airports in your jurisdiction?

There are numerous charges and requirements imposed by airports which are regulated by MAVCOM. These requirements and charges include obtaining the requisite Foreign AOC, slot allocation, loading charges, passenger service charges (PSCs), parking charges and security charges.

Airport requirements and charges are also found in Malaysia Airports Holdings Berhad’s Conditions of Use of Designated Airports.

1.9 What legislative and/or regulatory regime applies to air accidents? For example, are there any particular rules, regulations, systems and procedures in place which need to be adhered to?

The principal regulatory requirements applicable to air accidents are found in the Civil Aviation Regulations 2016 and the Air Accident Investigation Bureau and Procedure Manual.

Air accident investigation is regulated under Part XXVI of the Civil Aviation Regulations 2016, which adopts and gives effect to Annex 13 of the Chicago Convention which relates to Aircraft Accident and Incident Investigation.

Under the Civil Aviation Regulations 2016 and the Air Accident Investigation Bureau, the Air Accident Investigation Bureau Policy and Procedural Manual as well as the International Civil Aviation Organization (ICAO) Manual of Aircraft Accident and Incident Investigation provide the reporting procedure and investigation guidance in the case of air accidents.

The Pilot in command or the owner/operator of the aircraft is responsible for reporting an accident/incident. The Air Accident Investigation Bureau Reporting Procedure is *via* its Public Notification Prescribed Form, which needs to be filed and lodged with the Ministry of Transport.

The Ministry of Transport will then appoint investigators, and among them an investigator-in-charge, to conduct the investigation of the incident. The investigation is conducted in accordance with Annex 13 of the Chicago Convention 1944.

1.10 Have there been any recent cases of note or other notable developments in your jurisdiction involving air operators and/or airports?

In a recent High Court decision of *Malaysia Airlines Sdn Bhd & Anor v Airasia Com Travel Sdn Bhd* [2023] MLJU 1414, an action was

brought by Malaysia Airlines (MAS) against Airasia for damages for infringement of intellectual property in respect of Malaysia Airlines' trademarks appearing on Airasia's mobile application (Airasia Super App) whereby Airasia sells MAS' tickets on the said application (with price discrepancies compared to MAS' website). MAS applied for an interim injunction to restrain such conduct from continuing which was permitted by the Court since there is no dispute as to the ownership of the trademarks and that over 70 complaints from disgruntled customers who purchased their tickets from the mobile application have been received by MAS. Therefore, the continuation of the selling of the tickets (despite being requested to cease and desist) will adversely affect and destroy the value and reputation of Malaysia Airlines' value and reputation. The trial was scheduled in August 2023 but no decision has been delivered by the Court.

In another recent case of *Malaysia Airports Sdn Bhd v MY Jet Xpress Airlines Sdn Bhd* [2023] MLJU 2236, the High Court struck out the action brought by Malaysia Airports for the payment of outstanding parking, landing and late payment charges for all the airports where Malaysia Airports provides aviation and airport services. The Judge struck out the action on the basis that the procedure for dispute resolution under Sections 74–78 Malaysian Aviation Commission Act 2015 was not duly complied with in that the statutory obligation to mediate the dispute was not observed (since MAVCOM is the only entity possessing the comprehensive knowledge of aviation matters to deal with the dispute). This may indicate that Sections 74–78 of the Act are mandatory as long as the matters concerned between the parties fall within the purview of the Act.

1.11 Are there any specifically environment-related obligations or risks for aircraft owners, airlines, financiers, or airports in your jurisdiction, and to what extent is your jurisdiction a participant in (a) the EU Emissions Trading System (EU ETS) or a national equivalent, and (b) ICAO's Carbon Offsetting and Reduction Scheme for International Aviation (CORSIA)?

Malaysia is not a participant in the EU ETS as it is not a Member State. Nonetheless, there are plans by the Malaysian Government to implement a domestic ETS in phases.

Malaysia had voluntarily signed up to the first phase of ICAO's CORSIA through the Global Market-Based Measures (GMBM) and had reaffirmed its commitment to the Scheme by initiating flights operated using sustainable aviation fuel.

In the first quarter of 2023, Malaysia Airlines had, as part of its Group's Sustainability Blueprint introduced a carbon offsetting programme by partnering with CHOOSE (a Norwegian climate tech company) to address their carbon emissions through verified carbon offsetting projects whereby its passengers can see the CO₂ impact of their flights and take the initiative to reduce their carbon footprint by purchasing verified carbon offsets in accordance with the United Nations Sustainable Development Goals.

In addition, the main legislation relating to environmental obligation is the Environmental Quality Act 1974 (EQA). Under the EQA, aircraft owners and airline operators are required to ensure proper maintenance of the aircraft and are prohibited from emitting pollutants. There are general provisions under the EQA restricting noise pollution and pollution of the atmosphere from environmentally hazardous substances and pollutants which would apply to aircraft owners and airline operators. An offence under the EQA will result in fines, imprisonment and/or the aircraft being seized and forfeited. The sanctions imposed under the EQA may affect some rights of the financiers.

The general provisions under the EQA will apply to airports in the prohibition against disposal of hazardous waste and pollution of the environment.

2 Aircraft Trading, Finance and Leasing

2.1 Does registration of ownership in the aircraft register constitute proof of ownership?

No, the registration of ownership in the Aircraft Register that is kept and maintained by CAAM under Regulation 10 Civil Aviation Regulations 2016 is only non-conclusive, *prima facie* evidence of ownership and the registration is a procedural requirement before an aircraft can be legally operated in the country. Under Civil Aviation Directive 7101 issued by CAAM in relation to application for registration of aircraft, evidence or proof of ownership is the bill of sale or other evidence of ownership as accepted by the Director-General of the Civil Aviation Authority of Malaysia.

2.2 Is there a register of aircraft mortgages and charges? Broadly speaking, what are the rules around the operation of this register?

CAAM keeps a register of aircraft mortgages. The entry of the aircraft mortgage into the Aircraft Register under Civil Aviation Directive 7301 made pursuant to the Civil Aviation Regulations 2016 is made by way of form submission to the Civil Aviation Authority of Malaysia by the mortgagor and signed by the mortgagee in duplicate. The fee for such an entry is MYR2,000. Removal of the mortgage in the Aircraft Register would also need to be made by way of form submission. Pursuant to the International Interests in Mobile Equipment (Aircraft) Act 2006, an aircraft mortgage already previously registered in the international registry is recognised under Malaysian law without there being a requirement for re-registration.

2.3 Are there any particular regulatory requirements which a lessor or a financier needs to be aware of as regards aircraft operation?

The main regulatory requirements as regards to aircraft operation are the following:

- If the aircraft is owned by a foreign entity, the aircraft will first need to be leased to a qualified person under the Civil Aviation Act 1969 before the ownership of the aircraft can be registered in the Aircraft Register. An aircraft can only be operated upon registration of the aircraft.
- The Civil Aviation Directive 6014 made pursuant to Civil Aviation Regulations 2016 regulates and make definitive and clear provisions involving operations intending to act as a lessor or lessee.
- As Malaysia has ratified the Cape Town Convention 2001 under the International Interests in Mobile Equipment (Aircraft) Act 2006, a lessor who has registered its interest in the international registry has rights in the event of default through the Court process by obtaining a "speedy relief" of preserving, obtaining possession, control and custody or immobilising the aircraft or by the administrative route of submitting the IDERA issued by the lessee to CAAM pursuant to the Cape Town Convention read together with the Aircraft Protocol.

2.4 As a matter of local law, is there any concept of title annexation, whereby ownership or security interests in a single engine are at risk of automatic transfer or other prejudice when installed 'on-wing' on an aircraft owned by another party? If so, what are the conditions to such title annexation and can owners and financiers of engines take pre-emptive steps to mitigate the risks?

A separate title or ownership rights of aircraft engines distinct from the ownership of an aircraft is recognised by Malaysian law under the International Interests in Mobile Equipment (Aircraft) Act 2006, when such ownership/security interests in aircraft engines have been registered in the international registry.

However, CAAM does not keep a registry of ownership/security interests in aircraft engines and registration of such ownership/security interests is not available in Malaysia.

The pre-emptive steps that owners/financiers can take to mitigate risks relating to their ownership/security interests would be to register a charge over the single engines as is statutorily required under the Companies Act 2016. This will ensure that the owners/financiers are given priority on the value of the single engines over other creditors.

2.5 What (if any) are the tax implications in your jurisdiction for aircraft trading as regards a) value-added tax (VAT) and/or goods and services tax (GST), and b) documentary taxes such as stamp duty; and (to the extent applicable) do exemptions exist as regards non-domestic purchasers and sellers of aircraft and/or particular aircraft types or operations?

- Sales & Services Tax (SST)/VAT (Under the Sales Tax Act 2018)
SST would not be imposed for the sale and purchase of aircraft for both domestic and non-domestic purchasers and sellers. For certain sales and purchases of goods relating to the operations of the aircraft, non-domestic airlines can enjoy exemptions from sales tax if the sales and purchases fall under Schedule A of the Sales Tax (Goods Exempted from Tax) Order 2022. There is no service tax applicable for the operations of non-domestic air transport services.
- Stamp Duty (Under the Stamp Act 1949)
Stamp duty can be imposed for the sale and purchase of aircraft by non-domestic purchasers and sellers if the execution of the transfer instrument was made within the Malaysian jurisdiction or if the aircraft to be transferred is within Malaysian jurisdiction. The stamp duty is calculated *ad valorem* whereby the duty imposed is based on the purchase price or market value of the aircraft, whichever is higher, at a rate provided for under the First Schedule of the Stamp Act 1949.

2.6 Is your jurisdiction a signatory to the main international Conventions (Montreal, Geneva and Cape Town)?

Yes, Malaysia is a signatory to the Montreal Convention 1999, the Geneva Convention 1949, the Cape Town Convention 2001 and the Chicago Convention 1944.

2.7 How are the Conventions applied in your jurisdiction?

The Conventions have been applied and integrated into Malaysian law following the ratification of the Conventions

through the passing of the Acts detailed below by the Malaysian Parliament:

- Montreal Convention 1999 – Carriage by Air Act 1974
The Malaysian courts, in applying the provisions of the Montreal Convention 1999, have affirmed the principles in international jurisprudence on the interpretation and construction of the Convention.
- Geneva Convention 1949 – Geneva Conventions Act 1962
It is believed that Malaysia would follow and affirm international jurisprudence on the interpretation and construction of the Convention.
- Cape Town Convention 2001 – International Interests in Mobile Equipment (Aircraft) Act 2006
The applicability of the Cape Town Convention 2001 in Malaysia is made with some reservations, whereby Malaysia declares that the provisions of the Convention shall not affect its rights or any entity thereof, or any intergovernmental organisation in which Malaysia is a member, or private provider of public services in Malaysia, to arrest or detain an aircraft under Malaysian laws for outstanding payments due to the Government of Malaysia.
- Chicago Convention 1944 – Civil Aviation Act 1969 (as amended by the Civil Aviation (Amendment) Act 2017)
Part II of the Civil Aviation Act 1969 (as amended by the Civil Aviation (Amendment) Act 2017) gives effect to the provisions of the Chicago Convention 1944. However, the Malaysian Minister of Transport is conferred with the authority to make additional regulations relating to the administration and regulatory affairs of the civil aviation industry without prejudice to the provisions of the Chicago Convention 1944 and the Civil Aviation Act 1969 (as amended by the Civil Aviation (Amendment) Act 2017).

2.8 Does your jurisdiction make use of any taxation benefits which enhance aircraft trading and leasing (either in-bound or out-bound leasing), for example access to an extensive network of Double Tax Treaties or similar, or favourable tax treatment on the disposal of aircraft?

Malaysia is a signatory to over 70 Double Tax Treaties/Agreements with other countries, and is in the midst of negotiations with 25 more countries. These Double Tax Treaties/Agreements generally reduce the payable rates of withholding taxes for asset leasing and reduced tax for profits gained through the disposal of property.

In the Federal Territory of Labuan, Malaysia, a separate taxation regime is applicable under the Labuan Business Activity Tax Act 1990 and the Labuan Business Activity Tax (Requirement for Labuan Business Activity) Regulations 2018 for businesses registered in Labuan under the Labuan Companies Act 1990. Some of the taxation benefits under the Labuan Business Activity Tax (Requirement for Labuan Business Activity) Regulations 2018 are as follows:

- Withholding tax is not applicable for rentals, fees, interests or royalties paid to a lessor registered under the Labuan Companies Act 1990 by a Malaysian company.
- Tax deductions are available for lease rental paid by a Malaysian company to a Labuan company.
- No tax is imposed for capital gains, wealth, stamp duty or import duty.

There is no specific tax provision on the disposal of aircraft.

2.9 To what extent is there a risk from the perspective of an owner or financier that a lessee of aircraft or other aviation assets in your jurisdiction may acquire an economic interest in the aircraft merely by payment of rent and thereby potentially frustrate any rights to possession or legal ownership or security?

As operating and finance leases are governed solely by the terms of the lease agreement, a lessor's right to possession and its legal title and ownership of an aircraft or aviation assets are secured and provided by the terms of such an agreement. Further statutory reliefs and remedies are provided under the International Interests in Mobile Equipment (Aircraft) Act 2006 which ratified the Cape Town Convention 2001. Payment of contractual rental by a lessor under the lease does not create rights capable of overriding the lessor's contractual rights or ownership in the aircraft or aviation assets.

3 Litigation and Dispute Resolution

3.1 What rights of detention are available in relation to aircraft and unpaid debts?

The rights of a creditor to detain an aircraft or create a lien over the aircraft due to unpaid debts can be found in both aviation-specific legislation/regulation and also under common law.

1. Civil Aviation Regulations 2016 (read together with the Civil Aviation (Amendment) Regulations 2018)
Part XXV of the Civil Aviation Regulations 2016 provides the right of the detention of aircraft by the Director-General of CAAM if there are payment defaults on any fees or charges imposed by CAAM. Apart from detention of aircraft, the Director-General of CAAM also has the authority to deregister or sell an aircraft with leave of court if the outstanding amount remains unpaid more than six months after the detention.
2. International Interests in Mobile Equipment (Aircraft) Act 2006
Malaysia ratified the Convention on International Interests in Mobile Equipment (Cape Town Convention 2001) under the First Schedule of the International Interests in Mobile Equipment (Aircraft) Act 2006. Article 39 of the Cape Town Convention 2001 provides the following non-consensual rights having priority without the need of registration which allows for the lien of aircraft:
 - Liens in favour of airline employees for unpaid wages.
 - Liens or other rights of an authority of Malaysia relating to taxes or other unpaid charges connected to the use of the aircraft, and owed by the owner or operator of the aircraft.
 - Liens in favour of repairers of the aircraft in their possession to the extent of service or services performed on and value added to that aircraft object.
 Malaysia has made a further declaration in that the Cape Town Convention 2001 shall not affect its rights or any entity thereof, or any intergovernmental organisation in which Malaysia is a member, or private provider of public services in Malaysia, to arrest or detain an aircraft under Malaysian laws for outstanding payments due to the Government of Malaysia.
3. Income Tax Act 1967
Under Section 105 of the Income Tax Act 1967, the Director-General of the Malaysian Inland Revenue Board, with the approval of the Ministry of Finance, has the authority to direct customs authorities to refuse clearance of any aircraft wholly or partly owned or chartered by persons whose income tax remains due.

4. Sale of Goods Act 1957
Chapter V of the Sale of Goods Act provides a seller the right to retain any goods, which would include aircraft, until payment for the purchase has been made.
5. Specific Relief Act 1950
An aircraft can be enjoined under Part III of the Specific Relief Act 1950 in order to restrain any disposal of the aircraft pending the execution or enforcement of a judgment debt obtained by a creditor.
6. Rules of Court 2012
Writ of Seizure and Sale is a mode of enforcement/execution that is available to a creditor whereby an aircraft, as a movable property, can be seized and sold by way of an auction to satisfy a judgment debt.

3.2 Is there a regime of self-help available to a lessor or a financier of an aircraft if it needs to reacquire possession of the aircraft or enforce any of its rights under the lease/finance agreement?

With the ratification of the Cape Town Convention 2001 under the First Schedule of the International Interests in Mobile Equipment (Aircraft) Act 2006, a self-help remedy is available to a lessor/financier of an aircraft, without a prior court order being obtained, mandating or authorising the repossession of the aircraft. This self-help remedy, however, requires the consent of the debtor/aircraft owner before it can be exercised through the issuance of the Irrevocable Deregistration and Export Request Authorisation (IDERA) by the lessee addressed to CAAM.

Apart from the provisions under the Cape Town Convention 2001, a self-help remedy is not available to a lessor/financier in enforcing its rights under whatever lease or finance agreement, as such enforcement is subject to an action being brought in the Malaysian courts.

3.3 Which courts are appropriate for aviation disputes? Does this depend on the value of the dispute? For example, is there a distinction in your jurisdiction regarding the courts in which civil and criminal cases are brought?

The Malaysian court structure comprises: the Federal Court – being the apex court; the intermediary Court of Appeal; two High Courts of coordinate jurisdiction – one for West Malaysia (the High Court of Malaya) and one for East Malaysia (the High Court of Sabah and Sarawak); and the subordinate courts (the Sessions and Magistrates' Courts).

For civil actions, the jurisdiction of the courts is based on monetary jurisdiction whereby the monetary jurisdiction of the Magistrates' and Sessions' Courts is limited to MYR100,000 and MYR1 million, respectively. There is no limit on the jurisdiction of the High Courts as far as the monetary amount and subject matter are concerned. For criminal actions, the jurisdiction of the courts is dependent on the penal offence and punishment. The Magistrates' Courts have jurisdiction to hear criminal offences with fines and imprisonment of less than MYR10,000 and five years' imprisonment, respectively, whilst the Sessions Court can hear all criminal offences where the offence is not subject to the death penalty. Where the offence is punishable by death, the High Court has jurisdiction.

Both civil and criminal actions may be initiated in the Magistrates' Court, the Sessions Court or the High Court wherein appeals would be heard in the High Court or Court of Appeal (as the case may be) and finally by the Federal Court upon the granting of leave to appeal if the threshold requirements for leave are met.

There are no special courts that specifically deal with aviation disputes.

3.4 What service requirements apply for the service of court proceedings, and do these differ for domestic airlines/parties and non-domestic airlines/parties?

The Malaysian Rules of Court 2012 provide the requirement and procedural aspects of service of court proceedings and distinguish the requirements and procedures for service on both domestic airlines/parties and non-domestic airlines/parties.

For service of court proceedings to domestic airlines/parties, the Malaysian Rules of Court 2012 provide that service is to be made either by way of personal service or through prepaid A.R. registered post to the last known address, if it is an individual, or to the registered address, if it is a company or by means of an electronic communication in accordance with any practice direction issued for this purpose.

For service of court proceedings to non-domestic airlines/parties, the first essential requirement is to determine whether the non-domestic airline/party has a branch office in Malaysia. If there exists a branch office within Malaysian jurisdiction, service of court proceedings would be similar to that of a domestic airline/party. In a situation where there exists no Malaysian branch office, the service of court proceedings outside of Malaysian jurisdiction requires leave of court, and is subject to the following requirements:

1. The cause of action, subject matter or parties to the suit is related and connected to Malaysia in any way.
2. Enforcement of an arbitral award/judgment is subject to the Reciprocal Enforcement of Judgments Act 1958.

3.5 What types of remedy are available from the courts or arbitral tribunals in your jurisdiction, both on i) an interim basis, and ii) a final basis?

The courts or arbitral tribunals in Malaysia are vested with the authority to make a myriad of common law and civil remedies that are provided under the Rules of Court 2012, Subordinate Courts Act 1948, Courts of Judicature Act 1964, Specific Relief Act 1950 and the Arbitration Act 2005.

- Interim orders such as orders for interim payment and interim injunctions to preserve the subject matter of a suit.
- Final judgments, such as judgments made through a summary judgment process, arbitration or full trial, the remedies of which can range from arbitral awards, damages, declaratory reliefs, specific performance and injunction.

3.6 Are there any rights of appeal to the courts from the decision of a court or arbitral tribunal and, if so, in what circumstances do these rights arise?

Magistrates' Court

For matters which the Magistrates' Court had original jurisdiction, an appeal can be made to the High Court. A second and final right to appeal can be made to the Court of Appeal, but this right can only be exercised after leave is granted by the Court of Appeal due to the threshold monetary limit of MYR250,000 for subject matters in dispute.

Sessions Court

For matters which the Sessions Court had original jurisdiction, the first appeal is to be made to the High Court. A second and final right to appeal can be made to the Court of Appeal, but this

right can only be exercised without leave first being obtained from the Court of Appeal if the threshold monetary limit of MYR250,000 has been satisfied.

High Court

For matters which the High Court had original jurisdiction, an appeal can be made to the Court of Appeal. For the second and final right to appeal to the Federal Court, the subject matter appeal must satisfy the threshold appeal requirements under Section 96 of the Courts of Judicature Act 1964 before leave to appeal is granted by the Federal Court.

Under the Malaysian Arbitration Act 2005, there is no right of appeal for an aggrieved party against a decision of an arbitral tribunal. However, a limited right does exist for parties to set aside the arbitral award by way of application to the High Court, and only on specific appeal grounds as provided for under Section 37 of the Arbitration Act 2005.

3.7 What rights exist generally in law in relation to unforeseen events which might enable a party to an agreement to suspend or even terminate contractual obligations (in particular payment) to its contract counterparties due to *force majeure* or frustration or any similar doctrine or concept?

Contractual terms and clauses

There are several boilerplate clauses that usually exist in a commercial contract between parties that can be relied on for the suspension or termination of parties' contractual obligations. One such clause is the *force majeure* clause, which is a contractual provision that anticipates non-performance of the contract due to a specific event occurring that is beyond the parties' control. Though a *force majeure* clause, on the face of it, can allow parties to be free of their contractual obligations once it has been triggered, there are, however, several factors that must first be established before it is used to terminate parties' contractual obligations:

- The trigger event that caused the non-performance of the contract is specifically listed as a *force majeure* event. For example, if a party wishes to rely on the COVID-19 pandemic as a *force majeure* event, the word "epidemic" or "health pandemic" should be included as a trigger event.
- The trigger event prevented, hindered, stopped or delayed the performance of the contract.
- Reasonable steps have been taken to avoid or mitigate the event and all anticipated consequences.

Generally, for leasing agreements, a standard "Net Lease" or a "Hell or Highwater" clause is included as part of a leasing agreement. A Net Lease obliges a lessee to continue with lease payments unconditionally throughout the agreed leasing period, irrespective of any event or circumstances. There are limited exceptions to the Net Lease clause and any suspension of payment relies on the negotiations of the parties.

Contracts Act 1950

Under Section 57(2) of the Contracts Act 1950, an agreement to do something which later becomes impossible or unlawful to do can be deemed as frustrated and become void. The following are the requirements that must first be met before reliance can be made on Section 57(2):

- The event relied on that rendered the contract impossible or illegal was not contemplated between the parties and is not provided for under the contract.
- The event relied on was not due to the actions or responsibility of the party.

- The event relied on has now rendered the contractual obligations radically different than what was initially undertaken.

4 Commercial and Regulatory

4.1 How does your jurisdiction approach and regulate joint ventures between airline competitors?

Antitrust law in Malaysia is governed by the Competition Act 2010, which prohibits anti-competitive agreements and conduct that amounts to abuse of dominant position. Merger control, however, was not provided for under the Competition Act 2010.

Part IV of the Malaysian Aviation Commission Act 2015 generally adopts and incorporates the antitrust provision under the Competition Act 2010 and additionally provides for merger control rules.

Section 49 of the Malaysian Aviation Commission Act 2015 prohibits anti-competitive agreements which have the objective or effect of lessening, preventing or distorting competitors in any aviation service market.

Merger control provisions are found in Section 54 of the Malaysian Aviation Commission Act 2015, which prohibits mergers resulting (or may be expected to result) in a substantive lessening of competitors in any aviation service market.

MAVCOM has also published the Guidelines on Substantive Assessment of Mergers and the Guidelines on Notification and Application Procedure for an Anticipated Merger or a Merger to regulate such mergers.

In essence, a party involved in a merger or anticipated merger is not compelled to notify the Commission of the merger. MAVCOM's notification procedures are voluntary.

The notification provisions are set out in Sections 55 and 56 of the Malaysian Aviation Commission Act 2015 and the Guidelines on Substantive Assessment of Mergers and the Guidelines on Notification and Application Procedure for an Anticipated Merger or a Merger.

If a merger or anticipated merger is not notified to MAVCOM and such merger raises competition concerns, MAVCOM is empowered under Section 83 of the Malaysian Aviation Commission Act 2015 to investigate to determine whether the prohibition in Section 54 of the Malaysian Aviation Commission Act 2015 is infringed.

Under the Notification Guidelines, MAVCOM has general powers to investigate anticipated mergers and mergers which they have reason to suspect has or may result in a substantial lessening of competition (SLC) in any aviation service market whether or not this falls within the threshold set under the pertinent Guidelines.

4.2 How do the competition authorities in your jurisdiction determine the 'relevant market' for the purposes of mergers and acquisitions?

One of the Guidelines issued pursuant to Section 65 of the Malaysian Aviation Commission Act 2015 is the Guidelines of Aviation Source Market Definition. Under these Guidelines, the "*relevant aviation source market*" is identified and defined by adopting and applying the hypothetical Monopolist Test to determine the service market and the geographical market.

4.3 Does your jurisdiction have a notification system whereby parties to an agreement can obtain regulatory clearance/anti-trust immunity from regulatory agencies?

The Malaysian Aviation Commission Act 2015 provides for a notification system whereby any party involved in a merger either notifies the Commission or applies to seek its clearance. This is provided under Sections 55 and 56 of the Malaysian Aviation Commission Act 2015.

The Guidelines on Notification on Application Procedure are issued by MAVCOM under Section 65 of the Malaysian Aviation Commission Act 2015 and it also regulates the notification process.

As for antitrust immunity, or relief of liability where the merger agreement is prohibited under Section 49 of the Malaysian Aviation Commission Act 2015, such relief or immunity is prescribed by Section 50 of the Malaysian Aviation Commission Act 2015.

The relief to liabilities and immunities may be granted through:

- An individual exemption under Section 51.
- Block exemption under Section 52.
- Invoking Section 50 as a defence to infringement proceedings if:
 - there are significant identifiable technological, efficiency or social benefits directly arising from the agreement;
 - the benefits could not reasonably have been provided by the parties to the agreement without the agreement having the effect of preventing, restricting or distorting competition;
 - the detrimental effect of the agreement on competition is proportionate to the benefits provided; and
 - the agreement does not allow the enterprise concerned to eliminate competition completely in respect of a substantial part of the aviation services.

4.4 How does your jurisdiction approach mergers, acquisition mergers and full-function joint ventures?

As indicated earlier, the Competition Act 2010 provides no statutory rules on merger control, particularly those that will impact or unwind the merger agreement.

However, merger activities in two industries have statutory merger control provisions, namely: the aviation sector (provided by the Malaysian Aviation Commission Act 2015); and the Communication and Multimedia sector (provided by the Communications and Multimedia Act 1998).

4.5 Please provide details of the procedure, including time frames for clearance and any costs of notifications.

The notification regime under the Malaysian Aviation Commission Act 2015 for a merger or anticipated merger is voluntary. The parties to the merger would self-assess to determine whether the merger would result in SLC.

Under the Guidelines on Notification and Application Procedure for an Anticipated Merger or a Merger, the notification and application on an anticipated merger or merger is to be made to MAVCOM together with information and supporting documents detailed in the notification and application form. Some of the details required are:

- Details of the parties to the merger.
- Details of the merger.
- Details of the relevant aviation service market.
- Analysis of the competitive effects of the merger.

Notification to MAVCOM on anticipated mergers can be made when parties to the merger have a *bona fide* intention to proceed with the anticipated merger, the details of the anticipated merger are available and news of the anticipated merger has been, or may be, made public.

For mergers that have already been made, notification can be made by parties to the merger at any time but they are encouraged to make the notification as soon as possible after the merger has been completed. Although there are no specific sanctions under the Malaysian Aviation Commission Act 2015, if merger parties fail to notify and file the merger, MAVCOM has the right to impose a fine if, in their final decision, they find that there is an intentional or negligent infringement.

Currently, there are no charges or fees imposed for filing of a notification of an anticipated merger or merger to MAVCOM. The time frame for any clearance of mergers by MAVCOM is on a case-by-case basis.

Although the merger regime under the Malaysian Aviation Commission Act 2015 is non-suspensory and parties to a merger can choose to proceed on the merger before clearance is given by MAVCOM, MAVCOM nevertheless has the power to unwind mergers and impose fines if the merger is found to have infringed the relevant Act.

4.6 Are there any sector-specific rules which govern the aviation sector in relation to financial support for air operators and airports, including (without limitation) state aid?

There are no sector-specific rules in relation to financial support for air operators and airports in Malaysia. However, direct financial aid/bailout has been provided in the past to state-owned airlines.

4.7 Are state subsidies available in respect of particular routes? What criteria apply to obtaining these subsidies?

Through the Rural Air Services agreement entered between the Malaysian government and MASwings Sdn Bhd, a subsidiary of Malaysia Airlines Berhad, air services are operated and carried out for particular routes in West Malaysia. The costs of the flight operations for these routes are fully subsidised by the Malaysian government in the form of subsidies and aircraft lease rental.

As the Rural Air Services provided by MASwings are non-economic, national services provided to the rural and remote communities in West Malaysia, these subsidies are privately awarded by the Malaysian government and are not open for any public application.

4.8 What are the main regulatory instruments governing the acquisition, retention and use of passenger data, and what rights do passengers have in respect of their data which is held by airlines and airports?

The main regulatory instrument for the acquisition, retention and use of personal data is the Personal Data Protection Act 2010. It governs the collection, retention and use of personal data and it applies to entities established in Malaysia, and entities that are not established in Malaysia but process relevant personal data in Malaysia.

There is no specific provision under this Act concerning retention of passengers' data by both airlines and airports and, as such, the general provisions concerning personal information

of individuals would apply. The rights available to an individual under this Act are, *inter alia*, as follows:

- The right to access personal data stored.
- The right to correct misinformation of personal data stored.
- The right to withdraw consent or limit the processing or retention of personal data.

4.9 In the event of a data loss by a carrier, what obligations are there on the airline which has lost the data and are there any applicable sanctions?

There is no specific provision under the Personal Data Protection Act 2010 on obligations of airlines in the event of data loss and the general provisions under the Act would apply to airlines.

This Act provides that a Data User (any person which processes, has control over, or authorises the processing of any personal data) is to take reasonable steps to ensure, *inter alia*, that the data processed is protected from loss. Failure of a Data User to maintain sufficient technical and organisational security in the processing of the data resulting in data loss would result in fines and imprisonment.

4.10 What are the mechanisms available for the protection of intellectual property (e.g. trademarks) and other assets and data of a proprietary nature?

Intellectual property and data in Malaysia are governed by the following statutes:

- Trade Marks Act 2019.
- Patents Act 1983.
- Industrial Designs Act 1996.
- Copyright Act 1987.
- Geographical Indications Act 2000.
- Layout Designs of Integrated Circuits Act 2000.

With the ratification of the Madrid Protocol by Malaysia under the Trade Marks Act 2019, a trademark owner who has filed an application under the Madrid System would enjoy trademark protection in Malaysia and in other jurisdictions which have similarly acceded to the Madrid Protocol.

Apart from the Madrid System for the protection of trademarks, the Intellectual Property Corporation of Malaysia provides protection for patents, industrial designs and geographical indications. For the protection of copyright and layout designs, these protections are automatic under the Copyright Act 1987 and Layout Designs of Integrated Circuits Act 2000, respectively, and no formal application is required to be made to the Intellectual Property Corporation of Malaysia.

4.11 Is there any legislation governing the denial of boarding rights and/or cancelled flights?

The sole consumer protection law specific to the commercial airline industry, which includes boarding rights and cancellation of flights, is the Malaysian Aviation Commission Act 2015 and its accompanying Malaysian Aviation Consumer Protection Code 2016, which has been amended by the Malaysian Aviation Consumer Protection (Amendment) Code 2019.

For denial of boarding, a passenger's rights can be found in paragraph 11 and the First Schedule of the Malaysian Aviation Consumer Protection Code 2016. The rights accorded are as follows:

- The right to meals, limited telephone calls and internet access.

- The right to hotel accommodation.
- The right to transport between the airport and accommodation.
- The right to choose between reimbursement/refund of the ticket price or re-routing of the flight.

For cancellation of flights, paragraph 12 and the First Schedule of the Malaysian Aviation Consumer Protection Code 2016 provide a passenger the right to choose between reimbursement/refund of the ticket price or re-routing of the flight.

4.12 What powers do the relevant authorities have in relation to the late arrival and departure of flights?

For late arrival and departure of flights, MAVCOM has the right to impose a financial penalty for non-compliance with paragraph 12 of the Malaysian Aviation Consumer Protection Code 2016, which relates to flight delays and cancellation. The penalty imposed would be a fine not exceeding MYR200,000 for the first non-compliance, and an amount 10 times the financial penalty imposed for the first non-compliance for subsequent non-compliance.

4.13 Are the airport authorities governed by particular legislation? If so, what obligations, broadly speaking, are imposed on the airport authorities?

Airport authorities in Malaysia are governed by the Civil Aviation Act 1969, the Civil Aviation (Aerodrome Operations) Regulations 2016 and the Civil Aviation (Security) Regulations 2019. The Civil Aviation (Aerodrome Operations) Regulations 2016 detail the obligations and responsibilities of airport authorities in the establishment, maintenance and operations of aerodromes. This includes adherence to Annex 14 of the Chicago Convention on the technical standards and specifications relating to the establishment of an aerodrome, whilst Part IV of the Civil Aviation (Aerodrome Operations) Regulations 2016 details the obligations of airport authorities with regard to the standard of operations and maintenance of airports. Pursuant to the Civil Aviation (Security) Regulations 2019, aerodrome operators are required to comply with National Security Programmes implemented by the National Civil Aviation Security Authority and on the screening and security controls at airports.

4.14 To what extent does general consumer protection legislation apply to the relationship between the airport operator and the passenger?

The general consumer protection legislation in Malaysia is the Consumer Protection Act 1999. However, with the coming into force of the Malaysian Aviation Consumer Protection Code 2016, as amended by the Malaysian Aviation Consumer Protection (Amendment) Code 2019, passengers can directly lodge complaints relating to an airport operator's services to MAVCOM.

Any complaints relating to aviation services will need to be made to MAVCOM.

4.15 What global distribution suppliers (GDSs) operate in your jurisdiction?

Malaysian air carriers use the following GDSs platforms:

- Sabre Corporation.

- Amadeus/Navitaire.
- Travelport/Worldspan.

4.16 Are there any ownership requirements pertaining to GDSs operating in your jurisdiction?

There are no specific ownership requirements for GDSs to operate in Malaysia. The general provisions of the Companies Commission of Malaysia Act 2001 and Companies Act 2016 would apply.

4.17 Is vertical integration permitted between air operators and airports (and, if so, under what conditions)?

Vertical integration between air operators and airports is permitted in the form of common ownership. Some notable examples would be the Malaysian Aviation Group and AirAsia Group which own several aviation-related enterprises such as air transportation services, ground and engineering services, aircraft leasing services, and talent development services.

Though vertical integration is permitted and is commonly practised between air operators and airports, certain conditions precedent are applicable. (See question 4.1 above.)

4.18 Are there any nationality requirements for entities applying for an Air Operator's Certificate in your jurisdiction or operators of aircraft generally into and out of your jurisdiction?

In Malaysia, local operators would have to apply for the Air Operator Certificate with CAAM before commencing their operations in which they are also required to hold a valid Air Service Licence (ASL) or Air Service Permit (ASP) (both issued by MAVCOM) before the AOC would be granted. The ASL or ASP holder must maintain its principal place of business (head office/registered office) in Malaysia at all times.

For foreign operators, they would have to apply for a Foreign Air Operator Certificate.

5 In Future

5.1 In your opinion, which pending legislative or regulatory changes (if any), or potential developments affecting the aviation industry more generally in your jurisdiction, are likely to feature or be worthy of attention in the next two years or so?

National Transport Policy (2019–2030)

The Malaysia National Transport Policy was completed and launched on 17 October 2019 and covers a range of policies intended to increase and enhance the transport industry through economic competitiveness, inclusivity and accessibility to the public, and balancing these aims with reducing the negative impact of the transport industry on the environment for the next 10 years.

The policies detailed in the National Transport Policy serve as a guide to the relevant ministries, agencies, state governments and local authorities to develop and implement the relevant laws, regulations and rules that achieve a common goal. Some policies related to the aviation industry are as follows:

- Ensuring that safety and security for aviation users is in accordance with international standards such as the Standards and Recommended Practices (SARPS) that have been set by ICAO.

- Creating a common database for all transport-related data in order to develop an integrated and market-driven aviation expansion plan.
- Implementing a GMBM scheme in the form of CORSIA to address any annual increase in total CO₂ emissions from international civil aviation.
- Strengthening the governance of the aviation sector to create a more conducive environment.
- Optimising, building and maintaining the use of transport infrastructure to maximise efficiency.
- Promoting a green transport ecosystem.
- Expanding the global footprint for local transportation companies.

Malaysian Aviation Commission Economic Master Plan

The Malaysian Aviation Commission has proposed to the Ministry of Transport an Economic Master Plan on the development of an economically sustainable civil aviation sector. The proposal was made in line with the areas of the aviation sector that fall within the purview of the Malaysian Aviation Commission, which are passenger and cargo air transport, airport operations and ground handling services.

The Economic Master Plan provides several recommendations to the Malaysian Aviation Commission – the main strategic points are, *inter alia*, as follows:

- Reducing governmental interference in commercial decision-making in the aviation sector.
- Greater commercialisation of the airport industry.
- Enforcing a sound and updated aviation-related competition law, i.e. applying competition law based on fair and free competition principles, and revising the Competition-related Guidelines.
- Improving airport infrastructure to improve service, delivery and air connectivity.
- Improving human capital base to support the development of the aviation sector.

Proposed Climate Change Act

Malaysia will be tabling a Climate Change Act in the near future to address global warming and to implement Malaysia's commitments to the United Nations Framework Convention on Climate Change (UNFCCC). Though it is unclear how the Act will affect the aviation industry, it is believed that issues such as carbon and gas emissions will be addressed which will have a direct impact on airlines' responsibilities with regard to its operations in the future.

Proposed Malaysian Drone Technology Action Plan 2022–2030 (MDTAP30)

In September 2022, the Malaysian Government announced that the MDTAP30 is planned to be developed to support the drone ecosystem and to increase the country's GDP based on the fact it is a growing industry. Therein, the Traffic Management for Unmanned Aircraft System (UAS-TM) is also planned to be developed with the view to improve the efficiency of the Drone Operator Registration Process. This is to ensure an increase in Unmanned Aircraft System registration by 2030.

It is also intended to assist and boost the economy particularly in relation to agriculture, telecommunications together with oil and gas that would greatly benefit from the usage of drones to overcome the issue of manpower shortages and high-risk situations.

Enhancement of the Malaysian Aviation Consumer Protection Code 2016

In September 2022, MAVCOM announced that it is working towards the enhancement of the Malaysian Aviation Consumer Protection Code 2016 with the view to protect air travellers and to empower them in exercising their right by inserting new provisions on key issues that frequently arise such as refunds, advertisements, flight delays and cancellation. The implementation is targeted to be carried out in the first quarter of 2024.

Safety Information 13/2022

Through the issuance of Safety Information 13/2022 dated 21 September 2022, CAAM has provided guidelines to airlines as far as the mitigation of medical incapacitation risks are concerned. Its purpose is to ensure that operators of flight and air control traffic are medically fit to carry out their duties to avoid any unwanted accident/incidents in flight.

CAAM-MAVCOM Merger

On 23 October 2023, it was announced that the Ministry of Transport is expecting to table a bill for the merger between CAAM and MAVCOM into a single entity to carry out the tasks of regulating and govern both technical and economic related matters in the aviation industry. In this regard, the Malaysian Aviation Commission Act 2015 would be repealed and the Civil Aviation Authority of Malaysia Act 2017 would be amended to combine the powers into CAAM. It is targeted to be carried out in 2024.



Saranjit Singh was called to the Malaysian Bar in 1993 and is the Founder and Managing Partner of Saranjit Singh, Advocates & Solicitors. Saranjit has over 25 years of experience in the aviation sector acting for airlines and insurers on a wide range of contentious matters involving major aviation accidents including both MH370 and MH17, commercial contract and aviation product-liability, carriage of cargo, passenger claims and ground handling contracts and disputes as well as other legal regulatory issues concerning the aviation and logistics industry. Saranjit also advises several domestic and international aviation entities on conditions of carriage, risk management, human resources contracts and bonds and regulatory matters concerning the aviation industry. Saranjit has appeared at all levels and tiers of the Malaysian courts.

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1 General

1.1 Please list and briefly describe the principal legislation and regulatory bodies which apply to and/or regulate aviation in your jurisdiction.

Domestic legislation in the Netherlands is mainly based on international treaties (for example, the Chicago Convention and Montreal Convention) and European regulations (for example, the Basic Regulation 2018/1139) and directives on aviation. Some of the principal pieces of national legislation include:

- Aviation Act (*Luchtvaartwet*); regulating permits for air transport, the Air Operator's Certificate (AOC) and safety and security of civil aviation.
- Act on Aviation (*Wet Luchtvaart*); regulating crew, nationality and registration of aircraft, airworthiness of aircraft, air traffic control, airports, military aviation and oversight and enforcement.
- Part V Book 8 Dutch Civil Code (Air Law) containing provisions on the contract of carriage of cargo and passengers.
- Various other acts such as (but not limited to): Civil aerodrome Decree (*Besluit burgerluchthaven*); Regulation Air Traffic services (*Regeling luchtverkeersdienstverlening*); Aviation licensing Decree (*Bewijzen van bevoegdheid voor de luchtvaart*); Flight operations Decree (*Besluit vluchtuitvoering*); Transport of hazardous substances by air Decree (*Vervoer gevaarlijke stoffen door de lucht*); Slotallocation Decree (*besluit slotallocatie*); and Working Hours Decree Transport (*Arbeidstijdenbesluit vervoer*).

Civil aviation falls within the responsibility of the Ministry of Infrastructure and Water Management (I&W). Supervision and enforcement is carried out by the Human Environment and Transport Inspectorate (*Inspectie Leefomgeving en Transport* (ILT)), the Dutch Civil Aviation Authority). Air Traffic Services (ATS) are provided by Air Traffic Control Netherlands (LVNL). Investigations on incidents and accidents are carried out by the Dutch Safety Board (*Onderzoeksraad voor veiligheid*). Incidents are also analysed by the Civil Aviation Incident Analysis Department (ABI). The regulatory body for allocation of airport slots is Airport Coordination Netherlands (ACNL). The oversight authority for competition and consumer affairs is ACM (*Autoriteit Consument en Markt*).

1.2 What are the steps which air carriers need to take in order to obtain an operating licence?

Air carriers require a valid AOC and operating licence to operate in the Netherlands. Requirements for obtaining an AOC are

laid down in EC Regulation 965/2012 (as amended) and the flight operations decree (*Besluit vluchtuitvoering*). The following requirements apply for obtaining an operating licence:

- The airline is established in the Netherlands.
- The airline holds an AOC issued by the Dutch authorities.
- The airline owns or (dry) leases one or more aircraft.
- The main activity of the airline is the operation of air services.
- The airline has a transparent company structure.
- The airline is majority owned and controlled by EU Member States or residents thereof.
- The airline complies with financial, insurance and good governance requirements.

1.3 What are the principal pieces of legislation in your jurisdiction which govern air safety, and who administers air safety?

Safety

Aviation safety is mainly governed by international and European law (ICAO and EASA standards and recommended practices). The principal pieces of national legislation are the Aviation Act and the Act on Aviation (see also question 1.1). Also worth mentioning are the following national regulations and decrees:

- Regulation for reporting incidents in civil aviation (*Regeling melden voorvallen in de burgerluchtvaart*).
- Regulation on reporting and information obligations for the transport of dangerous substances by air (*Regeling meldings- en informatieplicht vervoer gevaarlijke stoffen door de lucht*).
- Safety Investigation Board Kingdom Act (*Rijkswet Onderzoeksraad voor veiligheid*).

Aviation safety fall under the responsibility of I&W.

1.4 Is air safety regulated separately for commercial, cargo and private carriers?

The safety standards may differ.

1.5 Are air charters regulated separately for commercial, cargo and private carriers?

Flights of air charters are generally regarded as non-scheduled air transport and can be divided into intra-EU flights performed by EU operators that are permitted under EC Regulation No. 1008/2008 and flights that are not governed by this Regulation.

The latter are governed by the Decree on Non-scheduled Air Transport, which stipulates that the performance of charter flights requires permission from the minister. The assessment criteria for the granting of this permission are: (1) the potential negative effects on the profitability of scheduled air services; (2) the interests of users in the non-scheduled air services against the lowest possible price; and (3) the application of reciprocity by the authorities of the state where the air carrier has its domicile.

1.6 As regards international air carriers operating in your jurisdiction, are there any particular limitations to be aware of, in particular when compared with ‘domestic’ or local operators? By way of example only, restrictions and taxes which apply to international but not domestic carriers.

No, there are not.

1.7 Are airports state or privately owned?

All major (coordinated) airports in the Netherlands are majority owned by the state and municipalities. No specific rules apply in relation to private or public ownership of other airports.

1.8 Do the airports impose requirements on carriers flying to and from the airports in your jurisdiction?

Airports may impose certain requirements on its users, such as a requirement to make use of ground handling services or the requirement of obtaining a slot or prior permission. Airport charges are also imposed.

1.9 What legislative and/or regulatory regime applies to air accidents? For example, are there any particular rules, regulations, systems and procedures in place which need to be adhered to?

Occurrences as set out in art. 4 EU Regulation 376/2014 must be reported by the persons listed in art. 6 of that regulation to the Civil Aviation Incident Analysis Department (ABL), part of ILT. Anyone can voluntarily report an incident or other safety-related information to the ABL.

In order to learn from accidents and incidents, it is mandatory to report certain incidents and accidents to the Dutch Safety Board (*Onderzoeksraad voor Veiligheid*; see also question 1.9). Accidents and certain severe incidents are investigated by the OVV. All other incidents may be investigated by the OVV. The OVV conducts investigations independently and are performed in accordance with the provisions and principles of Annex 13 of the Chicago Convention and Regulation 996/2010.

Accidents, incidents and occurrences involving the carriage of dangerous goods or substances must be reported to ILT.

1.10 Have there been any recent cases of note or other notable developments in your jurisdiction involving air operators and/or airports?

IATA and various individual airlines initiated summary proceedings against Schiphol Airport and the Dutch state to challenge temporary legislation that aimed to reduce the capacity of Schiphol Airport with 40,000 aircraft movements. This reduction was presented as a first step towards a more permanent reduction of 60,000 movements. The government

considered both steps necessary for addressing noise issues. IATA and the airlines successfully argued before the court of first instance that the reduction was in violation of balanced approach principles. The court of appeal reversed the judgment in July 2023, allowing for the temporary capacity reduction. However, in November 2023, the Dutch government decided to suspend the temporary regulation following strong opposition of the European Commission and the US government. A decision of the Dutch Supreme Court is expected in the first half of 2024.

1.11 Are there any specifically environment-related obligations or risks for aircraft owners, airlines, financiers, or airports in your jurisdiction, and to what extent is your jurisdiction a participant in (a) the EU Emissions Trading System (EU ETS) or a national equivalent, and (b) ICAO’s Carbon Offsetting and Reduction Scheme for International Aviation (CORSIA)?

Various environmental laws and regulations apply such as regulations on noise and air pollution restrictions. The Netherlands participates in both EU ETS and CORSIA.

2 Aircraft Trading, Finance and Leasing

2.1 Does registration of ownership in the aircraft register constitute proof of ownership?

In the Netherlands, a so-called negative system applies in relation to the registration of ownership, meaning that registration is necessary to effect the transfer of ownership of registered aircraft. The actual situation regarding ownership may, however, differ from what is stated in the public register. In practice, the registered owner will be presumed to be the owner of a Dutch registered aircraft, but any other party may challenge the registration through the court system and bring evidence against the registration by any means. Third parties are largely protected by law if they have relied on incomplete or incorrect registrations. Also, ownership of aircraft registered in other Geneva Convention Member States will be respected in the Netherlands (see question 2.6 below).

2.2 Is there a register of aircraft mortgages and charges? Broadly speaking, what are the rules around the operation of this register?

Similar to ownership of aircraft, mortgages and charges are registered in the public register, which is held in Rotterdam by an independent government body referred to as “Kadaster”. This register is maintained in accordance with the Geneva Convention on the International Recognition of Rights in Aircraft 1948. Registration of an aircraft in the public register requires that:

- the aircraft is registered with the Dutch nationality register;
- the aircraft is not also registered with any foreign nationality register;
- the aircraft has a maximum take-off weight of at least 450kg; and
- the request for registration of the aircraft with the public register has been approved by the court.

Unregistered aircraft may be subject to a right of pledge only. Mortgages require a notarial deed of mortgage created by a Dutch notary, and subsequent registration in the public register. With regard to (precautionary) arrest of aircraft, registration

thereof in the public register is also required. The public register in relation to aircraft is not searchable online, however, extracts from the register can be obtained in an expedient manner.

2.3 Are there any particular regulatory requirements which a lessor or a financier needs to be aware of as regards aircraft operation?

Both financial and dry leases are subject to prior approval of ILT. Approval will be granted if the relevant provisions of Community law have been fulfilled. ILT grants its approval with the addition of the aircraft to the AOC of the airline. ILT follows the basic principle that the aircraft must be registered in the Dutch national register in order to ensure the effective performance of oversight obligations. In the case of a temporary dry lease-in of an aircraft registered in another Member State, the two authorities must make agreements with regard to the oversight. Leasing of aircraft registered in non-EU countries is only permitted in exceptional circumstances and for a limited time, subject to compliance of the aircraft with safety standards, equivalent to those of Community and national legislations.

2.4 As a matter of local law, is there any concept of title annexation, whereby ownership or security interests in a single engine are at risk of automatic transfer or other prejudice when installed 'on-wing' on an aircraft owned by another party? If so, what are the conditions to such title annexation and can owners and financiers of engines take pre-emptive steps to mitigate the risks?

Pursuant to section 10:127(3) of the Dutch Civil Code, the competent court in the Netherlands will apply the property laws of the country in which the aircraft has been registered. Dutch courts will therefore only apply Dutch property law when the aircraft has been registered in the Netherlands. Dutch property law employs the principle of accession, which means that the owner of a good also becomes the owner of all the good's component parts. There is a debate on whether the doctrine of accession should be applied to aircraft engines. On the one hand, it is argued that aircraft engines are distinct objects for which the doctrine of accession does not apply. On the other hand, it is argued that under Dutch law an engine can become a "component part" of the aircraft, which would lead to application of the doctrine of accession.

The latter view appears to better correspond with section 8:3a(2) of the Dutch Civil Code. If an engine becomes a component part of an aircraft, it will also be subject to any security interests in the aircraft, such as mortgages. In legal literature it is argued that "intended for use with the aircraft" implies that the engines must be installed with a certain permanence. According to this view, an engine installed to temporarily replace another engine currently under maintenance will not qualify as a component part of the aircraft, and therefore it is argued that the doctrine of accession, in any event, does not apply to engines installed on a temporary basis.

2.5 What (if any) are the tax implications in your jurisdiction for aircraft trading as regards a) value-added tax (VAT) and/or goods and services tax (GST), and b) documentary taxes such as stamp duty; and (to the extent applicable) do exemptions exist as regards non-domestic purchasers and sellers of aircraft and/or particular aircraft types or operations?

The supply or lease of an aircraft is subject to Dutch VAT at a rate of 21% if the seller/lessor qualifies as an entrepreneur for

VAT purposes and the aircraft is located in the Netherlands at the time of delivery (i.e., title transfer) or lease. The seller or lessor of the aircraft would be liable for the payment of Dutch VAT if it either resides or has a permanent establishment in the Netherlands, to which the supply/lease of the aircraft is attributable. If the seller/lessor is neither a resident nor has a permanent establishment in the Netherlands, the purchaser/lessee is liable for the payment of VAT (reverse charge) if he qualifies as an entrepreneur for Dutch VAT purposes and is registered in the Netherlands (resident or permanent establishment). Non-EU lessors may also be liable for Dutch VAT if the lessor is not a VAT entrepreneur.

The transfer in relation of the sale or lease will be exempt from VAT (zero-rated in Dutch VAT law) if it can be demonstrated that buyer qualifies as an airline operating for reward predominantly ("chiefly", in the words of the CJEU) on international routes. In determining whether that is the case, all information may be considered which indicates the relative importance of the type of operations concerned, turnover in particular. Note that aircrafts that are used wholly or partly for purposes, other than for the supply of passenger or freight transport against remuneration, cannot be considered qualifying aircraft (see also below). For lease-companies purchasing or importing an aircraft in the Netherlands for the lease to qualifying airlines, special arrangements may apply.

From a general VAT perspective, an airline is generally defined as an undertaking which provides services for carriage by air or passengers or cargo. This undertaking can be performed as a sole proprietor, partnership, corporate body or any other entity. The airline must be providing either passenger or freight transportation (or both) in return for a consideration of that supply. An international route is any route that is not a domestic route within the Dutch Airspace, although currently there are no standards airline routes within the Netherlands. Chiefly means that the international route operation of an airline must exceed its Dutch domestic route operations. In this context it is required that 70% or more of the transport operations consist of international transportation for a consideration. International transportation means flights through the airspace of difference EU Member States and where appropriate, through international airspace. Based on the above, it is necessary for an airline to be able to demonstrate that it meets this test in order to get zero-rated supplies. For an airline to know whether it operates chiefly on international routes it must conduct a test of its activities from time to time. This test can be based, for example, on the value of turnover/relative number of passengers carried/miles flown, etc.

Import into the Netherlands of the aircraft not yet in use for international transport of passengers or cargo may also be subject to (import) VAT and/or duties if no exemptions can be claimed. (Re) exporting the aircraft for trade abroad is also zero-rated for VAT, note that in that case Dutch Customs needs to be informed separately, as the documents obtained in this respect prove the ability to zero rate this export supply. Also note that if an once EU-imported aircraft is sold or delivered outside the EU, the "EU VAT paid" status is lost, and this is not dependent on whether the aircraft is officially exported via an EU customs procedure. An exported aircraft can be placed back into free circulation within the EU if it has never been outside the EU for more than three years straight, but the free circulation status only refers to the possible customs duty payable and not the (import) VAT, which must be charged again. The new owner or operator can use either a full importation or a temporary admission if the aircraft shall be used within the EU again. The VAT imposed during the importation will never be automatically reimbursed when an aircraft is exported but may be recoverable in a separate procedure.

Any VAT that is due in connection with the lease or purchase of an aircraft would not necessarily constitute costs for the purchaser, because it may be entitled to claim a refund of the VAT to the extent it will use the aircraft for the supply of goods or services that are subject to VAT (VAT taxable activities).

2.6 Is your jurisdiction a signatory to the main international Conventions (Montreal, Geneva and Cape Town)?

The Netherlands is a signatory to the Chicago Convention 1944, Montreal Convention 1999, and the Geneva Convention 1948. The Cape Town Convention on International Interests in Mobile Equipment and the Aircraft Protocol entered into force on 1 September 2010, but it only applies in certain parts of the Kingdom of the Netherlands. It entered into force for Aruba, Curacao, St Maarten and the Caribbean Netherlands (Bonaire, St. Eustatius and Saba), however, not in the Netherlands (in Europe).

2.7 How are the Conventions applied in your jurisdiction?

The conventions are directly applicable in the jurisdiction. The SARPs in the annexes to the Chicago convention are implemented in national law.

Regular competent courts have jurisdiction. There is no special body or court dedicated to matters governed by the Conventions.

2.8 Does your jurisdiction make use of any taxation benefits which enhance aircraft trading and leasing (either in-bound or out-bound leasing), for example access to an extensive network of Double Tax Treaties or similar, or favourable tax treatment on the disposal of aircraft?

The Netherlands has an extensive tax treaty network to avoid double taxation, amongst others, in light of profits derived from aircrafts in international traffic and leasing activities. Furthermore, various benefits may apply to lower the respective Dutch corporate tax liability, for example, an environmental investment tax credit and additional/accelerated depreciation for environmentally friendly investments may apply to (specific parts of) aircrafts.

2.9 To what extent is there a risk from the perspective of an owner or financier that a lessee of aircraft or other aviation assets in your jurisdiction may acquire an economic interest in the aircraft merely by payment of rent and thereby potentially frustrate any rights to possession or legal ownership or security?

The lessee has a right of use under the terms of the aircraft lease agreement. There is no risk that payment of rent creates any property rights in relation to an aircraft registered with the Public Registry, except where a right to possession of an aircraft or a right to acquire an aircraft by purchase has been registered in accordance with the Geneva Convention 1948.

3 Litigation and Dispute Resolution

3.1 What rights of detention are available in relation to aircraft and unpaid debts?

If the registered aircraft has the nationality of a state party to

the Rome Convention 1933 (including Dutch nationality), the following regime applies for a precautionary arrest.

First, leave must be obtained from the district court. The competent court is the court where the aircraft is located or expected. Leave will not be granted if security has been provided for the total sum of the debt or for the value of the aircraft. Furthermore, the Rome Convention stipulates that certain aircraft cannot be arrested (art. 3).

In case the aircraft does not have the nationality of a party to the aforementioned Rome Convention 1933, the regime for arrest is slightly different. The main differences are:

- that precautionary arrest can be levied on any aircraft; and
- leave will only be granted if fear of embezzlement is demonstrated.

Second, main proceedings need to be initiated.

In general, creditors have a right to withhold the aircraft, but this right does not come with any privileges in relation to the proceeds of a sale by execution. However, in such an event, claims regarding salvage costs, preservation costs and costs of the sale by execution are privileged.

3.2 Is there a regime of self-help available to a lessor or a financier of an aircraft if it needs to reacquire possession of the aircraft or enforce any of its rights under the lease/finance agreement?

Repossession of the aircraft

The party entitled to the aircraft can file a claim for repossession of the aircraft in summary proceedings or in substantive proceedings at the competent district court. Although only provisional measures may be requested in summary proceedings, it is not necessary to initiate proceedings on the merits at a later stage. However, the provisional measure will only be awarded if an “urgent interest” is demonstrated, which will generally be the case. It is highly recommended to obtain leave for arrest of the aircraft for the purpose of surrender before filing the claim for repossession (see also question 3.1). After the judgment for repossession has been obtained, the debtor must first be served with an order to comply with the judgment. Subsequently, the bailiff will take possession of the aircraft and deliver it to the party entitled to it.

Mortgage holders

Mortgage holders cannot claim repossession of the aircraft but can – if the aircraft is registered in the public register or the Geneva Convention Register – have the aircraft arrested in execution. After the arrest has been entered in the register, the aircraft will be sold by Dutch auction.

3.3 Which courts are appropriate for aviation disputes? Does this depend on the value of the dispute? For example, is there a distinction in your jurisdiction regarding the courts in which civil and criminal cases are brought?

The competent court in Civil disputes with an interest up to EUR 25,000, and all disputes concerning employment contracts, or rental, lease, and agency agreements is the sub-district sector of the district court (*kantonrechter*). Proceedings before the sub-district sector of the court do not require legal representation. All other civil cases are brought before the civil law sector of the district court.

For all disputes against government authorities, including the civil aviation authority, the competent court is the administrative law sector of the district court.

Criminal cases are brought before the criminal sector of the competent district court.

3.4 What service requirements apply for the service of court proceedings, and do these differ for domestic airlines/parties and non-domestic airlines/parties?

The vast majority of legal proceedings are initiated by the service of a writ of summons on the defendant. The bailiff is responsible for such service. The service of a writ of summons on an airline or party that does not have domicile or a branch office in the Netherlands is governed by EU-Regulation 1393/2007 on the service in the Member States of judicial and extrajudicial documents in civil or commercial matters, or the Hague Convention of 1965 on the Service Abroad of Judicial and Extrajudicial Documents in Civil and Commercial Matters. The Dutch legal system is not familiar with service of a writ *in rem*.

3.5 What types of remedy are available from the courts or arbitral tribunals in your jurisdiction, both on i) an interim basis, and ii) a final basis?

The claimant can request provisional relief for preliminary injunctions in summary proceedings. The preliminary injunction may only be awarded if – all interests taken into account – an urgent interest is demonstrated and it is likely that the claim will be awarded in the substantive proceedings as well. Interim measures generally come in the form of a court order to act or to refrain from acting. The court can also order that penalties will become due to the claimant if the defendant does not respect the judgment. In certain circumstances the court can also order a party to make an (advance) payment as an interim measure.

Available final remedies are (compensatory) damages, restitution, surrender of goods, orders to act or to refrain from certain acts and declaratory judgments (declaring agreements null and void).

If the parties have so agreed, the arbitral tribunal may award preliminary injunctions as well. The available final remedies are, in principle, the same as the available remedies in court.

3.6 Are there any rights of appeal to the courts from the decision of a court or arbitral tribunal and, if so, in what circumstances do these rights arise?

Judgments of civil courts may only be appealed if the (financial) interest is higher than EUR 1,750.

Judgments of the Courts of Appeal may be appealed to the Supreme Court. The only grounds of appeal to the Supreme Court are breach of the law and breach of procedural rules.

Decisions from arbitral tribunals are only subject to appeal if the parties have agreed on the right of appeal.

3.7 What rights exist generally in law in relation to unforeseen events which might enable a party to an agreement to suspend or even terminate contractual obligations (in particular payment) to its contract counterparties due to *force majeure* or frustration or any similar doctrine or concept?

In general *force majeure* may relieve a party to a contract of its obligation to perform and of liability for the non-performance of obligations that are affected by the *force majeure* event. *Force majeure* may also enable a party to terminate the contract.

Force majeure as a Dutch law concept is restricted to situations in which it is impossible (in the absolute sense) to perform a contract or part thereof. Alternatively, a party may seek to escape from its obligations under a contract by relying on the Dutch law concept of unforeseen circumstances. This requires special circumstances that emerged after the conclusion of the contract and that have not expressly or impliedly been taken into account at the time the agreement was concluded. Furthermore, the circumstances should be of such a nature that the other party cannot reasonably expect the (unaltered) performance or continuation of the agreement. In general, Dutch courts apply high standards for allowing a party to rely on unforeseen circumstances.

4 Commercial and Regulatory

4.1 How does your jurisdiction approach and regulate joint ventures between airline competitors?

There is no specific regulation for competition law assessment regarding joint ventures between airline competitors. The regular merger control rules are applicable to the acquisition of joint control in existing undertakings. In respect of newly created joint ventures, only those performing, on a lasting basis, all the functions of an autonomous economic entity (full-function joint venture) are subject to Dutch merger control rules. If a joint venture is not caught by the merger control rules, self-assessment must be carried out to ensure compliance with the rules applicable for the prohibition of cartels and the abuse of a dominant position.

4.2 How do the competition authorities in your jurisdiction determine the 'relevant market' for the purposes of mergers and acquisitions?

The determination of the relevant geographical market and product market generally requires a case-by-case analysis.

4.3 Does your jurisdiction have a notification system whereby parties to an agreement can obtain regulatory clearance/anti-trust immunity from regulatory agencies?

Parties themselves are held responsible for a proper self-assessment following the competition rules of proposed agreements, more specifically if their agreements are in conformity with art. 6.3 of the Dutch Competition Act. Art. 6.3 holds an exemption to the cartel prohibition.

Furthermore, if a party discovers it is involved in an agreement prohibited by the competition rules, it can apply for leniency to the ACM to obtain immunity from possible fines, or at least a reduction of fines.

4.4 How does your jurisdiction approach mergers, acquisition mergers and full-function joint ventures?

Mergers, acquisitions and full functional joint ventures are subject to merger filings in the Netherlands if the combined aggregate worldwide turnover of the undertakings concerned is more than EUR 113.45 million and the net turnover of two or more of the undertakings concerned is at least EUR 30 million in the Netherlands. The obligation to file, and the turnover thresholds, are applicable to foreign-owned undertakings. It is prohibited to complete the transaction before clearance by

the ACM. Sanctions apply if the parties neglect filing prior to the transaction. Sanctions can be as high as EUR 900,000 per violation or 10% of the (worldwide) turnover, if that is higher. Individuals can also be fined up to EUR 900,000.

4.5 Please provide details of the procedure, including time frames for clearance and any costs of notifications.

The procedure before the ACM consists of two phases. In the first phase, the ACM decides if a permit for the concentration is required. This phase can take up to four weeks (plus additional time for questions) and costs EUR 17,450. If a proposed concentration does require a permit, the second phase is introduced. In this phase, which takes up to 13 weeks (plus additional time for questions), the ACM decides whether a permit is granted. The costs for the second phase are EUR 34,900.

4.6 Are there any sector-specific rules which govern the aviation sector in relation to financial support for air operators and airports, including (without limitation) state aid?

In the Netherlands, there are no national competition rules that specifically govern financial support to the aviation sector. However, EU (state aid) rules do apply also in the Netherlands. Beneficiaries of possible state aid can be affected in case of unlawful state aid too because governments and public bodies are obliged to recover financial benefits from those beneficiaries. State aid cases can come to the fore, e.g. on financing of airports or in start-up situations of airlines departing from regional airports.

4.7 Are state subsidies available in respect of particular routes? What criteria apply to obtaining these subsidies?

EU Member States may impose public service obligations in accordance with EC Regulation No. 1008/2008 in respect of scheduled air services between a European airport and an airport serving a peripheral or development region in its territory or on a thin route to any airport on its territory. These public service obligations can only be imposed after consultation with other Member States concerned and after informing the Commission. In relation to airports in the Netherlands, no public service obligations exist.

4.8 What are the main regulatory instruments governing the acquisition, retention and use of passenger data, and what rights do passengers have in respect of their data which is held by airlines and airports?

The main regulatory instruments in the Netherlands are the EU general Data Protection Regulation (GDPR) and the Dutch General Data Protection Regulation (Implementation) Act (in Dutch: *Uitvoeringswet Algemene verordening gegevensbescherming*). These instruments jointly govern the acquisition, retention, use and other forms of processing of personal data which generally tends to include passenger data. The GDPR and the Implementation Act lay down a legal framework with regard to the processing of data. For instance, on the basis of this framework, personal data can only be processed fairly and lawfully for specified, explicit and legitimate purposes. Further, data processing can only take place lawfully if the processing activity can be based on a legal basis – the GDPR contains a limited set of six legal

bases. Moreover, the data subject – the natural person of whom the personal data are processed – has specific rights, such as the right to information regarding the processing of its personal data. Subsequently, the data subject has the right to rectification and erasure of personal data. The data protection legislation is enforced in the Netherlands by the Dutch Data Protection Authority (in Dutch: *Autoriteit Persoonsgegevens*).

As to passenger data, there is specific legislation in place as well. The EU Directive on Passenger Name Record Data (Combating of Terrorist Offences and Serious Crime) (PNR) (in Dutch: *Wet gebruik van passagiersgegevens voor de bestrijding van terroristische en ernstige misdrijven*), came into force in June 2019. This law obliges the airlines to provide passenger details of every flight that departs or arrives in the Netherlands to the Passenger Information Unit Netherlands (Pi-NL). The Pi-NL is allowed to collect data under this law solely for the purpose of prevention, detection investigation and prosecution of terrorist offences and serious crimes.

4.9 In the event of a data loss by a carrier, what obligations are there on the airline which has lost the data and are there any applicable sanctions?

The airline, generally assumed to be a data controller in the sense of the GDPR, has the general obligation to implement appropriate technical and organisational measures to protect personal data for instance against accidental or unlawful destruction or accidental loss, unauthorised access, etc. Loss of personal data will most likely be considered a data breach. The data controller has the obligation to inform the relevant data protection authority about data breaches as soon as possible and in any case within 72 hours after discovery of said breach. The data controller can only be exempt from notifying the authority if the data breach is unlikely to result in a risk for data subjects. In case the data breach is likely to result in a high risk for data subjects, the data controller should also inform the data subjects.

Failing to (timely) notify the relevant authority and/or data subjects could lead to fines of up to EUR 20 million or in the case of an undertaking, up to 4% of the total worldwide annual turnover of the preceding financial year, whichever is higher. Failing to implement relevant security measures could also lead to fines. In the Netherlands, the Dutch Data Protection Authority has for instance issued a fine of EUR 400,000 to an airline in this regard. Fines are calculated on the basis of the Guidelines 04/2022 on the calculation of administrative fines under the GDPR.

In case the loss of data has occurred while no (sufficient) appropriate technical and/or organisational measures were in place, data subjects may very well be able to seek damages against the data controller.

4.10 What are the mechanisms available for the protection of intellectual property (e.g. trademarks) and other assets and data of a proprietary nature?

There is no national trademark and design protection that covers only the Netherlands. Trademark and design protection is available for the Benelux territory and can be applied for at the Benelux Office for Intellectual Property (BOIP). Design and trademark protection is, of course, also available for on a European Union level, at the EU Intellectual Property Office (EUIPO) in Alicante one can apply for a European Union trademark as well as a Community Design. Copyrights comes into existence by operation of law, without any formalities

required such as registration. Use of a © sign and/or deposit of works may be useful for evidential purposes. In 1999, a *sui generis* database right was introduced based on EC Directive 1996/9. National patent protection is available, Dutch patents can be filed at the Dutch Patent Office (NL Octrooiencentrum). In 1999, a *sui generis* database right was introduced based on EC Directive 1996/9. Under the Trade Secrets Act information can be protected as a trade secret ((i) the information is secret, (ii) the information has commercial value because it is secret, and (iii) reasonable steps have been taken to keep it secret) which allows action against misappropriation of a trade secret.

The district court of The Hague has exclusive jurisdiction with regard to matters concerning European Union trademark, Community designs, and patents.

4.11 Is there any legislation governing the denial of boarding rights and/or cancelled flights?

Regulation (EC) 261/2004 on compensation and assistance to passengers in the event of denied boarding and cancellation or long delay of flights is directly applied in the Netherlands.

4.12 What powers do the relevant authorities have in relation to the late arrival and departure of flights?

The Slot Allocation Decree (*Besluit Slotallocatie*) allows ILT to impose penalties for slot time violations. The following categories of slot abuse exist under the Slot Allocation Decree: (i) operation of air services repeatedly and intentionally at times significantly deviating from the allocated slot; (ii) the usage of a slot in a fundamentally different way than was declared at the time of allocation of the slot; (iii) repeatedly and intentionally not using an allocated slot; and (iv) operating an air service without a slot.

In the above situations, ILT will start generally start discussions with the airline on a remedy plan to prevent further abuse of slots. If the gentle hand approach does not work, the ILT imposes penalties and may temporarily ground an aircraft to prevent its departure outside the allocated slot time.

4.13 Are the airport authorities governed by particular legislation? If so, what obligations, broadly speaking, are imposed on the airport authorities?

Airports are regulated by the Act on Aviation and subordinate legislation. The airport operator requires a safety certificate and is responsible for the proper operation of the airport in accordance with the law. In relation to Schiphol Airport, the Act on Aviation contains specific rules on the establishment of airport charges and appeal possibilities for airlines.

4.14 To what extent does general consumer protection legislation apply to the relationship between the airport operator and the passenger?

The same data protection legislation applies to airports regarding passenger data.

4.15 What global distribution suppliers (GDSs) operate in your jurisdiction?

All major GDS operate in the Netherlands.

4.16 Are there any ownership requirements pertaining to GDSs operating in your jurisdiction?

There are none, except for the restrictions deriving from general competition law.

4.17 Is vertical integration permitted between air operators and airports (and, if so, under what conditions)?

There are no examples of vertical integration between air operators and airports in the Netherlands. No specific regulation exists for competition law assessment regarding vertical integration between air operators and airports. The regular merger control rules are applicable. If vertical integration is not caught by the merger control rules, self-assessment must be carried out to ensure compliance with the rules applicable for the prohibition of cartels and the abuse of a dominant position.

4.18 Are there any nationality requirements for entities applying for an Air Operator's Certificate in your jurisdiction or operators of aircraft generally into and out of your jurisdiction?

Yes, see question 1.2 above.

5 In Future

5.1 In your opinion, which pending legislative or regulatory changes (if any), or potential developments affecting the aviation industry more generally in your jurisdiction, are likely to feature or be worthy of attention in the next two years or so?

Under the Balanced Approach rules of Regulation EU No 598/2014, the Dutch government notified an initiative for noise measures at Schiphol Airport to the European Commission. The plans of the Dutch government for addressing the assumed noise problems include a reduction of the yearly capacity for aircraft movements at Schiphol Airport from 500,000 to 452,000.

The Dutch government also announced plans to restrict the number of ground handlers at Schiphol Airport. Opinions have been gathered through a public consultation in 2023. It is anticipated that draft legislation and selection criteria will be published in 2024.



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Linda Osuagwu

1 General

1.1 Please list and briefly describe the principal legislation and regulatory bodies which apply to and/or regulate aviation in your jurisdiction.

The Constitution of the Federal Republic of Nigeria 1999 (as amended) (“Constitution”) places aviation matters within the exclusive jurisdiction of the National Assembly. The principal legislation governing the aviation industry is the Civil Aviation Act which was recently re-enacted by the National Assembly of Nigeria, to the Civil Aviation Act 2022 (“CAA 2022”). The CAA 2022 repealed the CAA 2006 which was in use prior to the enactment of the CAA 2022.

The CAA 2022 recognises that the Federal Ministry of Transportation is responsible for the formulation of policies and strategies for the industry. In addition, the CAA 2022 retained the Nigerian Civil Aviation Authority (“NCAA”), which was originally established by Decree 49 of 1999, as the regulator for technical and safety issues in the industry. The NCAA is empowered under the CAA 2022 to make regulations on various issues, including aircraft registration, air navigation services, airworthiness standards, aviation safety and security, commercial air transport, personnel licensing, aerodrome and airspace standards, and the provision of allied aviation services-Section 8 CAA 2022.

The Nigeria Civil Aviation Regulations 2023 (“NCARs 2023”) was introduced recently as a fourth amendment to the NCARs since its initial promulgation in November 2006.

The CAA 2022 did not retain the Accident Investigation Bureau (“AIB”) initially provided for under Part viii and contained under Section 29 of the repealed CAA 2006. The CAA 2022, however, retains that contributions would be made to the AIB from 5% of airfare, contract, charter & cargo fares and charges. The AIB has now been re-established and renamed the National Safety Investigation Bureau (“NSIB”) under Section 3 of the National Safety Investigation Bureau Act 2022 (“NSIB Act”). Unlike the AIB which could only investigate accidents and incidents arising out of or during air navigation in or over Nigeria, or occurring to Nigerian-registered aircraft elsewhere, and/or where the interest of Nigeria is involved, the NSIB has a broader scope and can additionally investigate accidents and incidents in the maritime, rail, and road industries.

Other legislation includes:

- The Federal Airport Authority of Nigeria Act 2022 (“FAAN Act”), which creates the Federal Airport Authority of Nigeria (“FAAN”) that is responsible for the development, provision and maintenance of airports and associated services.
- The Nigerian Airspace Management Agency (Establishment) Act 2022 (“NAMA Act”), which establishes the Nigerian Airspace Management Agency (“NAMA”) that is responsible for air traffic services, airspace management, aeronautical telecommunications, etc. The Act repeals the Nigerian Airspace Management Agency Act, 1999 (Cap N90, Laws of the Federation of Nigeria, 2004).

1.2 What are the steps which air carriers need to take in order to obtain an operating licence?

A written application must be made to the Director General of the NCAA and signed by the authorised representative of the applicant for either an Air Transport Licence (“ATL”) or Airline Operating Permit (“AOP”), with the required documentation and information specified in the NCARs 2023 on or before a date not less than six months prior to the expected date of utilisation.

1.3 What are the principal pieces of legislation in your jurisdiction which govern air safety, and who administers air safety?

The CAA 2022 and the NCARs 2023 govern air safety in Nigeria, which is administered by the NCAA. Part 20 of the NCARs 2023 addresses the safety management requirements in conformity with the standards and recommended practices of the International Civil Aviation Organisation (“ICAO”).

The NAMA Act is the regulatory framework that guides the provision of air navigation services in Nigeria and any other place where Nigeria has the responsibility of providing air navigation services. The NAMA Act is administered by the Nigeria Airspace Management Agency (“NAMA”). Part of the functions of NAMA is “generally secure the safety, efficiency, and regularity of air navigation in Nigeria”.

Nigeria also subscribes to the standards and recommended practices of the Banjul Accord Group Aviation Safety Oversight Organisation for regional safety.

1.4 Is air safety regulated separately for commercial, cargo and private carriers?

No. Air safety for commercial, cargo and private carriers is not regulated separately. Parts 8 and 20 of the NCARs 2023 respectively stipulate the regulatory requirements for operation and safety management of aircraft in Nigeria, based upon the requirements of ICAO Annexes 2, 6 and 19.

1.5 Are air charters regulated separately for commercial, cargo and private carriers?

No. Air charters in Nigeria are regulated by the relevant provisions of the CAA 2022 and the NCARs 2023.

1.6 As regards international air carriers operating in your jurisdiction, are there any particular limitations to be aware of, in particular when compared with 'domestic' or local operators? By way of example only, restrictions and taxes which apply to international but not domestic carriers.

Generally, no. The Foreign Carriers' Operating Permit issued to international carriers depends on the terms of their Air Services Agreements.

1.7 Are airports state or privately owned?

Airports are licensed by the NCAA and owned by state entities as well as private parties. In Nigeria, most of the airports are owned by the Federal Government of Nigeria ("FGN") and operated by the FAAN.

Several sub-national state governments have built and now operate airports licensed by the NCAA.

1.8 Do the airports impose requirements on carriers flying to and from the airports in your jurisdiction?

Yes, principally safety and security requirements. The carriers also must meet commercial terms. Generally, carriers flying to and from FAAN-managed airports are required to pay for various services including slots, landing fees, parking fees, passenger service charges and fuel charges.

For carriers flying to and from international airports, they are also expected to meet the formalities incident to customs, immigration, public health, animal and plant quarantines.

1.9 What legislative and/or regulatory regime applies to air accidents? For example, are there any particular rules, regulations, systems and procedures in place which need to be adhered to?

Yes. The CAA 2022, the NSIB Act, and the Civil Aviation (Investigation of Air Accidents and Incidents) Regulations 2016 regulate air accidents in Nigeria, and prescribe the investigative powers and procedures for investigation, as well as for reporting of accidents and incidents.

1.10 Have there been any recent cases of note or other notable developments in your jurisdiction involving air operators and/or airports?

The National Assembly has passed and the President of the Federal Republic of Nigeria has assented to the new Civil Aviation Act which has now been published in the Federal Republic of Nigeria Official Gazette as the CAA 2022. The CAA 2022 repealed the CAA 2006.

The CAA 2022 has introduced some innovations into the aviation industry, some of which include:

- a consolidation of all the laws regarding the regulation of civil aviation in Nigeria making the NCAA the sole regulator of the industry;
- an emphasis on the independence of the NCAA from any other body or institution except as provided by the Act;
- enlarging the functions and powers of the NCAA in the regulation of civil aviation in Nigeria;
- making the failure to remit 5% of airfare, contract, charter, and cargo fares by an air operator within the stipulated time, an offence punishable with a fine or imprisonment or both; and
- mandating the NCAA to establish a State Safety Programme ("SSP") to promote aviation safety. Under the SSP, the NCAA is required to ensure that airline operators and aviation service providers implement a Safety Management System ("SMS").

Some other notable developments in the Nigerian aviation sector include:

- a. the redesignation of the AIB as the NSIB under the NSIB Act;
- b. the formulation of a national civil aviation policy; and
- c. proposed concession of some of the airports.

The Nigerian Airspace Management Agency Act 1999, Cap. N90, LFN 2004 was repealed and re-enacted as the NAMA Act. The NAMA Act establishes NAMA which is responsible for air traffic services, airspace management, aeronautical telecommunications, etc.

The NCARs 2023 amended certain provisions in the NCARs 2015 and makes provisions for Remotely Piloted Aircraft, Environmental Protection Regulations solely on Carbon Offsetting and Reduction Scheme for International Aviation ("CORSIA").

The NSIB Act was enacted to provide an effective legal and institutional framework for the prevention, regulation and administration in safety investigation of transportation occurrences in Nigeria.

The Federal Airport Authority Act, Cap. F5, LFN 2004 was repealed and re-enacted as the FAAN Act.

1.11 Are there any specifically environment-related obligations or risks for aircraft owners, airlines, financiers, or airports in your jurisdiction, and to what extent is your jurisdiction a participant in (a) the EU Emissions Trading System (EU ETS) or a national equivalent, and (b) ICAO's Carbon Offsetting and Reduction Scheme for International Aviation (CORSIA)?

Part 16 of the NCARs 2023 contains the environmental protection obligations applicable to air carriers in Nigeria. This part of the NCARs 2023 is applicable to aircrafts registered and operating in Nigeria and prescribes: (a) noise standards for the issuance of the noise certificate; (b) fuel venting standards for the issuance of the fuel venting certificate; and (c) emission standards for the issuance of the emission certificate. The

certificates issued pursuant to this Part by the NCAA shall be granted or validated by the NCAA when satisfactory evidence is shown that the aircraft complies with requirements that are at least equal to the applicable requirements specified by the following: (a) Nigeria is not a participant in the EU Emissions Trading Systems and does not have a national equivalent; and (b) Nigeria is a voluntary participant in ICAO's CORSIA.

2 Aircraft Trading, Finance and Leasing

2.1 Does registration of ownership in the aircraft register constitute proof of ownership?

The NCAA is an owner/operator registry. Registration of an aircraft at the registry does not serve as conclusive/sole proof of ownership.

2.2 Is there a register of aircraft mortgages and charges? Broadly speaking, what are the rules around the operation of this register?

There is currently no formal separate register of aircraft mortgages and charges. The CAA 2022 and Part 4 of the NCARs 2023, however, stipulate that the NCAA should provide a legal interest in aircraft registry showing proprietary rights, interests, liens and other dealings of legal interest for every aircraft registered in Nigeria. In practice, mortgages, charges or other encumbrances are recorded in the aircraft file at the civil aviation aircraft registry.

Individuals may access the register of legal interests by applying in writing to the NCAA and paying the prescribed search fees.

2.3 Are there any particular regulatory requirements which a lessor or a financier needs to be aware of as regards aircraft operation?

Yes. Paragraph 8.3.1.10 of the NCARs 2023 provides that the lessor of an aircraft must transfer the maintenance records of the aircraft in a manner acceptable to the NCAA at the time of the lease. It is advisable that the lessor or financier retains in its possession/control the original certificates of registration and airworthiness, as these documents are required to be produced in order to be cancelled before deregistration.

Lessors or financiers also need to be aware that, as owners, they are liable for damages, injuries or losses arising from the activities and operations of the aircraft without proof of negligence.

2.4 As a matter of local law, is there any concept of title annexation, whereby ownership or security interests in a single engine are at risk of automatic transfer or other prejudice when installed 'on-wing' on an aircraft owned by another party? If so, what are the conditions to such title annexation and can owners and financiers of engines take pre-emptive steps to mitigate the risks?

There is no law on title annexation in Nigeria. Nigeria is a party to both the Cape Town and Geneva Conventions, and it recognises the interest and rights created in respect of aircraft and engines.

2.5 What (if any) are the tax implications in your jurisdiction for aircraft trading as regards a) value-added tax (VAT) and/or goods and services tax (GST), and b) documentary taxes such as stamp duty; and (to the extent applicable) do exemptions exist as regards non-domestic purchasers and sellers of aircraft and/or particular aircraft types or operations?

Value-Added Tax ("VAT") – the Federal Inland Revenue Service, in Information Circular No: 9701, provides for the exemption of aircraft, aircraft spare parts and ancillary equipment from payment of VAT.

Also, interest earned by a lessor on a finance lease is a return on investment and is thus not liable to a charge of VAT.

- **Capital Gains Tax ("CGT")** – CGT is a tax imposed on capital gains arising from the sale or disposal of chargeable assets at a rate of 10 per cent. Sale of an aircraft would attract CGT. It should be noted, however, that where the sale of aircraft is done with such frequency as to be classified as a source of income rather than the disposal of an asset, then income tax rather than CGT may apply in that instance.
- **Stamp Duty** – stamp duty is payable on documentation and instruments including sale and lease agreements. For example, the rate of the duty payable on a lease agreement depends on the term of the lease. For a lease with a term of one to seven years, the applicable stamp duty is 0.78 per cent; although in some cases, the Commissioner for stamp duty has assessed stamp duty at 1.5 per cent.
- **Withholding Tax ("WHT")** – income on a property (rent, hire or lease payments or rights (royalties)) situated in Nigeria is liable to tax, notwithstanding the place of payment. Where rent is to be paid to an individual or company, WHT at a rate of 10 per cent is applicable. It applies also to lease and loan payments. Grossing up is not unlawful.

2.6 Is your jurisdiction a signatory to the main international Conventions (Montreal, Geneva and Cape Town)?

Yes. Nigeria is a signatory to the Montreal Convention, the Geneva Convention and the Cape Town Convention. In addition, it is a signatory to the Yamoussoukro Decision, the SAATM and the AfCFTA.

2.7 How are the Conventions applied in your jurisdiction?

The Conventions are ratified and domesticated as Nigerian law, which ensures their applicability and enforceability in Nigeria.

2.8 Does your jurisdiction make use of any taxation benefits which enhance aircraft trading and leasing (either in-bound or out-bound leasing), for example access to an extensive network of Double Tax Treaties or similar, or favourable tax treatment on the disposal of aircraft?

Yes. Nigeria has Double Taxation Treaties ("DTT") which apply to aviation business on the basis of reciprocity. Where a country has a DTT with Nigeria, it reduces the WHT payable by a company incorporated in such country from 10 per cent to 7.5 per cent. Countries that have entered into a DTT with Nigeria include Belgium, Canada, China, France, Kenya, Pakistan, Romania, Sweden and the United Kingdom.

2.9 To what extent is there a risk from the perspective of an owner or financier that a lessee of aircraft or other aviation assets in your jurisdiction may acquire an economic interest in the aircraft merely by payment of rent and thereby potentially frustrate any rights to possession or legal ownership or security?

A lessee of aircraft or other aviation assets will only acquire an economic interest in the aircraft or other asset in the manner specified under the lease agreement and after all regulatory preconditions have been fulfilled. As a general principle, the parties are bound by their contracts. The NCAA, other regulators, and the court will generally give effect to such agreements. Operators/lessees have only been able to legitimately prevent a proposed export or repossession where the operator has been able to establish to the satisfaction of the court or the regulators that there has been no default or breach of the underlying agreement. The mere payment of rent shall not create or grant economic rights in the aircraft.

3 Litigation and Dispute Resolution

3.1 What rights of detention are available in relation to aircraft and unpaid debts?

Section 78 (3) of the CAA 2022 empowers the NCAA to ground any aircraft and take all steps reasonably necessary to ensure compliance with the CAA and any regulations, guidelines or rules made pursuant to the Act.

In addition, the NCAA has the power to detain an aircraft involved in a violation for which a civil penalty has been imposed on its owner or operator.

3.2 Is there a regime of self-help available to a lessor or a financier of an aircraft if it needs to reacquire possession of the aircraft or enforce any of its rights under the lease/finance agreement?

Self-help is available and permitted in Nigeria, provided it is consistent with agreed contractual terms and the parties obey all applicable laws and regulations relating to deregistration and export of the aircraft. A special declaration was made pursuant to Article 54(2) of the Cape Town Convention and associated protocol which came into force in Nigeria on 14 November 2006, to the effect that any remedies available to a creditor under any relevant provision under the Cape Town Convention that do not require application to the court may be exercised without court action and without leave of court.

A court order is not necessarily required before a creditor can exercise their right of repossession or sale of an aircraft in the event of default, provided it is specifically indicated in the agreement. It is, however, advisable to involve the NCAA, the police and other enforcement agencies.

3.3 Which courts are appropriate for aviation disputes? Does this depend on the value of the dispute? For example, is there a distinction in your jurisdiction regarding the courts in which civil and criminal cases are brought?

By the combined reading of Section 251(k) of the Constitution and Section 86 of the CAA 2022, the Federal High Court ("FHC") has the exclusive jurisdiction to hear civil and criminal suits on aviation disputes – except where the matter in dispute is a labour matter, in which case the National Industrial Court is the court with jurisdiction to hear the suit.

3.4 What service requirements apply for the service of court proceedings, and do these differ for domestic airlines/parties and non-domestic airlines/parties?

The guidelines for the service of court processes are provided for in the Federal High Court (Civil Procedure) Rules 2019 ("FHCR") and the Sheriff and Civil Processes Act ("SCPA").

For domestic airlines/parties, by virtue of Order 6 Rules 2 and 8 of the FHCR, service is effected when the process is served personally on the principal officers or by leaving it at the office of the company. Where personal service cannot be conveniently effected, Order 6 Rule 5 of the FHCR provides for substituted service through various means including publication in the FGN Gazette, delivery at the last place of business and delivery to an agent of the airline.

Service on non-domestic airlines/parties can be effected in the same manner as above. However, where such airline is outside the jurisdiction and does not have an office within the country, Order 6 Rule 14 of the FHCR provides that leave of court must be obtained. Such leave is obtained by way of an application to the FHC supported by an affidavit disclosing that the plaintiff has a good cause of action, the country in which the defendant can be located, and the grounds upon which the application is made. Also, Section 97 of the SCPA provides that where a writ of summons is to be served outside the jurisdiction, it must be endorsed, on the face of it, with a notice to that effect.

3.5 What types of remedy are available from the courts or arbitral tribunals in your jurisdiction, both on i) an interim basis, and ii) a final basis?

Generally, all civil remedies are available to the parties in a court or arbitration. With respect to arbitration, parties may contractually agree to exclude interim reliefs from the jurisdiction of the tribunal.

On an interim basis, the remedies available include interim injunctions, prohibitory injunctions and interlocutory injunctions; whereas on a final basis, the remedies are damages, specific performance, perpetual injunctions, etc.

3.6 Are there any rights of appeal to the courts from the decision of a court or arbitral tribunal and, if so, in what circumstances do these rights arise?

Rights of appeal from the decision of a court are governed by the Constitution and the Rules of Court. Section 251(1) and (2) of the Constitution provides that appeal from a decision of the FHC is either as of right or with leave of court. Appeal as of right exists in the following circumstances:

- a final decision of the FHC;
- where the ground of appeal involves questions of law alone;
- where the decision is on the interpretation or application of the Constitution; or
- where the breach of fundamental human rights is being or likely to be contravened.

Generally, in all other circumstances except the above-mentioned, appeals are permitted only with the leave of court. Section 241(2) of the Constitution specifically states that where parties enter into consent judgment, or a judgment is made as to costs only by the FHC, an appeal must be with the leave of court. However, in the case of the FHC granting unconditional leave to defend an action, Section 241(2) of the Constitution provides that a party cannot appeal against a decision of the FHC granting unconditional leave to defend an action.

Awards from arbitral tribunals are not appealable. The remedy available to the losing party is to make an application to court to set aside the award on one or more of the statutory specified grounds, which includes misconduct of the arbitrator and improper procurement of the award.

3.7 What rights exist generally in law in relation to unforeseen events which might enable a party to an agreement to suspend or even terminate contractual obligations (in particular payment) to its contract counterparties due to *force majeure* or frustration or any similar doctrine or concept?

Force majeure clauses are strictly interpreted in accordance with the terms of the agreement. The effect of a successful plea of *force majeure* is dependent on the rights specified under the agreement. Depending on the terms, a party may be entitled to cancel or be excused from either part or complete performance of the agreement. However, where there is no *force majeure* clause in an agreement, or where the agreement becomes impossible by reason of an unspecified act, a party can rely on the doctrine of frustration to discharge its obligation under such agreement.

4 Commercial and Regulatory

4.1 How does your jurisdiction approach and regulate joint ventures between airline competitors?

The NCAA, as the regulator of the aviation industry, is notified of any business combination between airlines. Part 18 of the NCARs 2023 provides that the NCAA should be notified where there are mergers, takeovers, joint ventures or other acquisitions of control in the aviation industry, including interlocking directorships, whether of a horizontal, vertical or conglomerate nature, when:

- i. at least one of the joint venture companies is established in Nigeria;
- ii. the resultant market share in the aviation industry or any substantial part of it, relating to any product or service, is likely to create market power; and
- iii. at least one of the joint venture companies derives income in or from Nigeria arising from the sale and rendering of services in the civil aviation industry, or there exists use of the firm's assets in a manner that yields interest, royalties and dividends.

Furthermore, upon the receipt of a notification, the NCAA will conduct an investigation into the proposed arrangement. Depending on the outcome of the investigation, the NCAA may prohibit the proposed business combination where it substantially increases the “ability to exercise market power either by giving the ability to a company or group of companies acting jointly to profitably maintain prices above competitive levels for a significant period of time or by any other anti-competitive means”.

No company shall effect a merger until the expiration of the 60-day waiting period from the date of the issuance of the receipt of the notification, unless the NCAA shortens the said period of time not exceeding 30 days with the consent of the company concerned.

The Federal Competition and Consumer Protection Commission Act (“FCCPA”) also has provisions that regulate joint ventures.

It is noteworthy that, where there is a conflict between the powers of the NCAA and those of the Federal Competition and Consumer Protection Commission (“FCCPC”) with regard to consumer protection, the powers of the FCCPC will take precedence. The FCCPC is an agency established by the FCCPA to administer and enforce the provisions of the FCCPA and any other law with respect to competition and protection of consumers.

4.2 How do the competition authorities in your jurisdiction determine the ‘relevant market’ for the purposes of mergers and acquisitions?

“Relevant market” is defined under the interpretation within Part 18 of the NCARs 2023 at Paragraph 18.2.1.1 as “the area of effective competition within which an airline or service provider operates and includes geographic area, route, substitutability, close competitors and such other factors that may affect consumer choice”.

4.3 Does your jurisdiction have a notification system whereby parties to an agreement can obtain regulatory clearance/anti-trust immunity from regulatory agencies?

Yes, it does. Part 18 of the NCARs 2023 at Paragraph 18.23.1.1 provides that the NCAA “can grant conditional leniency, concessions and immunity for cooperation to persons who offer significant assistance in detecting and proving unfair methods of competition and anti-competitive conduct”.

Also, parties can obtain regulatory clearance from the FCCPC in respect of any anti-competitive agreement among undertakings which ordinarily would be unlawful. To authorise such an agreement, the FCCPC must be satisfied that:

- the agreement improves the production or distribution of goods, services or the promotion of technical or economic progress and customers will be permitted a fair share of the resulting benefit;
- in relation to the undertakings concerned, the agreement only imposes restrictions that are indispensable to the attainment of the objectives above; and
- the possibility to eliminate competition in a substantial part of the goods or services concerned is not given to the undertakings by the agreement.

4.4 How does your jurisdiction approach mergers, acquisition mergers and full-function joint ventures?

Please refer to our response to question 4.1.

It should be noted that merger control provisions for both public and private companies that used to be within the regulatory purview of the NCAA is now under the regulatory powers of the FCCPC.

4.5 Please provide details of the procedure, including time frames for clearance and any costs of notifications.

Part 18 of the NCARs 2023 at paragraph 18.20.1.2 provides for a 60-day waiting period from the date of receipt of the notification by the NCAA. This timeframe may, however, be shortened or extended by the NCAA for a period not exceeding 30 days.

4.6 Are there any sector-specific rules which govern the aviation sector in relation to financial support for air operators and airports, including (without limitation) state aid?

Yes. The CBN provides for a Power and Airline Intervention Fund (“PAIF”) for the refinancing of existing leases and loans for airline projects undertaken by airlines incorporated and operating in Nigeria.

4.7 Are state subsidies available in respect of particular routes? What criteria apply to obtaining these subsidies?

We are not aware of state subsidies for particular routes.

4.8 What are the main regulatory instruments governing the acquisition, retention and use of passenger data, and what rights do passengers have in respect of their data which is held by airlines and airports?

There is no primary designated regulation governing the acquisition of passenger data in Nigeria. However, the Nigeria Data Protection Act 2023 (“the NDPA”) which was recently passed into law governs transactions involving the exchange of personal data.

The NDPA defines personal data as “any information relating to an individual, who can be identified or is identifiable...”. Therefore, passengers as natural persons have the following rights to:

- any information relating to the processing of their data in a concise, transparent, intelligible and easily accessible form in writing or orally where requested by the passenger; and
- request the deletion of any personal data that is either no longer necessary, has been unlawfully processed or for which consent has been withdrawn.

Also, the NCAA mandates operators in Part 17 of the NCARs 2023 to develop security programmes which provide for the safety of passengers, crew and their property. In addition, Part 20 of the NCARs 2023 provides for mandatory as well as non-punitive voluntary incident reporting on data collection by carriers. The NCARs 2023 also indicate the need for balance between the protection of safety information in order to improve aviation safety, and the need for the proper administration of justice.

4.9 In the event of a data loss by a carrier, what obligations are there on the airline which has lost the data and are there any applicable sanctions?

Please refer to our response to question 4.8.

4.10 What are the mechanisms available for the protection of intellectual property (e.g. trademarks) and other assets and data of a proprietary nature?

Nigeria is a signatory to the Agreement on Trade-Related Aspects of Intellectual Property Rights (“TRIPS”). Various domestic statutes also exist to protect Intellectual Property Rights (“IPRs”) including the Trade Mark Act and the Patents and Design Act, and the Copyrights Act which protect trademarks, patents, and copyrights, respectively. Each statute also provides for the procedure for registration and protection of IPRs, mechanisms and procedure for filings, and also the action that can be taken against an alleged or actual infringement.

4.11 Is there any legislation governing the denial of boarding rights and/or cancelled flights?

Yes, the CAA 2022, Part 19 of the NCARs 2023, and the Montreal Conventions as domesticated in Nigeria, govern denial of boarding rights and cancelled flights.

4.12 What powers do the relevant authorities have in relation to the late arrival and departure of flights?

The NCAA prescribes the obligations of carriers to passengers under Part 19 of the NCARs 2023 for delays in domestic and international flights. For domestic flights, carriers are expected to inform passengers of the reason(s) for the delay within 30 minutes after the scheduled time of departure. In addition, depending on the length of delay, they are required to provide some form of compensation including refreshments, telephone calls, reimbursement and hotel accommodation.

Similarly, for international flights, when an operating air carrier reasonably expects a flight to be delayed beyond its scheduled time of departure, it shall provide compensation to the passengers.

In addition, the Montreal Convention domesticated in Nigeria by virtue of the CAA 2022 provides for monetary compensation for delays.

4.13 Are the airport authorities governed by particular legislation? If so, what obligations, broadly speaking, are imposed on the airport authorities?

The FAAN is the statutory manager of Federal airports, and is governed by the FAAN Act. The FAAN Act imposes the following obligations on the FAAN:

- a. to develop, provide and maintain at airports and within the Nigerian airspace all necessary services and facilities for the safe, orderly, expeditious and economic operation of air transport;
- b. to provide adequate conditions under which passengers and goods may be carried by air and under which aircraft may be used for other gainful purposes and for prohibiting the carriage by air of goods of such classes as may be prescribed;
- c. to prohibit the installation of any structure which, by virtue of its high position, is considered to endanger the safety of air navigation;
- d. to charge for services provided by the Authority at airports; and
- e. to provide accommodation and other facilities for the effective handling of passengers and freight.

4.14 To what extent does general consumer protection legislation apply to the relationship between the airport operator and the passenger?

The FCCPA is the main legislation for consumer protection in Nigeria. Under the FCCPA, consumers/passengers have the right to enforce their rights or resolve any dispute in respect of services provided by airport operators either by engaging such airport operator, or the relevant industry sector regulator, or the FCCPC.

Furthermore, the FCCPA specifies various rights of consumers including timely performance of services, disclosure of prices and the display of information accurately and plainly.

Whilst general consumer protection powers are exercised by the FCCPC as the airport operators are regulated and licensed by the NCAA, they also must comply with the NCAA consumer protection standards.

4.15 What global distribution suppliers (GDSs) operate in your jurisdiction?

Sabre Travel Network, Travelport, Amadeus Nigeria, Galileo, Worldspan, and Apollo are the global distribution suppliers (“GDSs”) operating in Nigeria.

4.16 Are there any ownership requirements pertaining to GDSs operating in your jurisdiction?

There are no specific ownership requirements for GDSs operating in Nigeria, other than registration as a Nigerian company with the Corporate Affairs Commission (“CAC”). GDSs can, therefore, be fully owned by foreign shareholders provided they meet the minimum capital requirement of N10 million.

4.17 Is vertical integration permitted between air operators and airports (and, if so, under what conditions)?

Please refer to the response provided to question 4.1.

4.18 Are there any nationality requirements for entities applying for an Air Operator’s Certificate in your jurisdiction or operators of aircraft generally into and out of your jurisdiction?

There are nationality requirements for applicants for an Air Operator’s Certificate (“AOC”). Paragraph 9.1.1.6 of the NCARs 2023 specifies that the NCAA may issue an AOC if, after investigation, it finds that the applicant:

- is a citizen of Nigeria;

- has its principal place of business and its registered office, if any, located in Nigeria;
- meets the applicable regulations and standards for the holder of an AOC;
- is properly and adequately equipped for safe operations in commercial air transport and maintenance of the aircraft; and
- holds the economic authority issued by Nigeria under the provisions of this Regulation.

5 In Future

5.1 In your opinion, which pending legislative or regulatory changes (if any), or potential developments affecting the aviation industry more generally in your jurisdiction, are likely to feature or be worthy of attention in the next two years or so?

We are not aware of any pending legislative or regulatory changes that may be worthy of attention in the next two years because all the principal aviation legislations in Nigeria, i.e, the CAA 2022, FAAN Act, NAMA Act, NiMET Act, and the NCARS have all been amended. We do not envisage that there will be further amendments to these legislations in the next two years. However, the issue of the establishment of a national carrier, Nigeria Air, which has been suspended by the government and which is currently a subject of litigation before the Nigerian Courts will continue to draw attention in the next two years.



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AELEX has significant experience in advising on aero-political, regulatory, competition and privatisation and aviation finance & lease matters. We act for airlines in respect of passenger, cargo and baggage claims and insurance disputes. Our experience includes: representing export credit agency lenders in a USD 4 million aircraft acquisition transaction involving

the sale, lease, mortgage and registration of an aircraft, advising on a tax-efficient structure for the transaction; and assisting a US airline in establishing operations in Nigeria and Ghana.

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Portugal

EDGE – INTERNATIONAL LAWYERS



Geoffrey Graham

1 General

1.1 Please list and briefly describe the principal legislation and regulatory bodies which apply to and/or regulate aviation in your jurisdiction.

The aviation sector in Portugal is governed by international, EU and national regulations.

On an international level, Portugal is a signatory party to and has ratified international conventions, as further detailed in question 2.6 below. On an EU level, the EU treaties and regulations are applicable in Portugal, providing most of the relevant and more recent civil aviation rules. Lastly, the Portuguese State has also enacted its own legislation, that although residuary, provides for specific regulation of aviation matters and of competent authorities, such as Decree-Laws 19/82 of 28 January 1982, Decree-Law 321/89 of 25 September 1989, and Decree-Law 116/2012 of 29 May 2012.

Moreover, the Portuguese Civil Aviation Authority (“*Autoridade Nacional da Aviação Civil*” or “ANAC”) is the regulatory body for civil aviation in Portugal. ANAC is an independent administrative entity with financial and management autonomy, and it is responsible for the regulation, inspection and supervision of the civil aviation sector, being governed in accordance with the provisions of international, EU and domestic law.

Besides ANAC, there are other entities that regulate and operate within limited scopes in the aviation industry. The Portuguese Air Navigation (“NAV Portugal”), for example, is the body responsible for providing air navigation services in compliance with international, EU, and national regulations. Furthermore, pursuant to Decree-Law 7/2020, NAV Portugal is also competent for the process of granting and coordinating slots.

It is also worth mentioning that the investigation of aviation accidents is performed by the Office for Prevention of Accidents with Aircraft and Rail Accidents (“GPIAAF”).

1.2 What are the steps which air carriers need to take in order to obtain an operating licence?

Air carriers are subject to the issuing of a licence granted under Regulation (EC) No. 1008/2008 of the European Parliament and of the Council of 24 September (amended by Regulation (EU) No 2018/1139 of the European Parliament and of the Council of 4 July 2018, and by the Delegated Regulation (EU) 2020/2115 of the Commission of 16 December, 2020).

The main requirements include the following:

- a. the main activity of the applicant being the operation of air services;

- b. EU Member States or their nationals holding, directly or indirectly, more than 50% of the share capital of the applicant and exercising effective control over the applicant;
- c. compliance with financial, insurance and reputational requirements; and
- d. the carrier holding a valid air operator certificate (“AOC”), and the application for the licence being made in Portugal where the applicant has its head office/registered office in Portugal.

The main legislation that applies to air safety in Portugal is Regulation (EU) No. 2018/1139 of the European Parliament and of the Council of 4 July 2018 concerning common rules in the field of civil aviation and establishing a European Union Aviation Safety Agency.

The principal objective of this Regulation is to establish and maintain a high uniform level of civil aviation safety within the Union.

Under that regulation, the Agency shall draw up, adopt, publish and subsequently update, at least annually, a European Aviation Safety Plan. Based on the evaluation of relevant safety information, the European Aviation Safety Plan identifies major safety risks affecting the European aviation security system and defines the measures required to mitigate them. Each Member State shall establish and maintain a national programme for civil aviation safety management in respect of aviation activities under its responsibility. The Agency shall conduct, on its own accord or through national competent authorities or qualified entities, investigations necessary for the performance of its activities relating to certification, oversight and enforcement.

This is complemented by Decree-Law No. 142/2019 of 19 September approved the National Civil Aviation Security Program. This programme establishes the National System of Civil Aviation Security and sets out the responsibilities of the various aviation stakeholders for implementing the common basic standards on civil aviation security set out in Regulation (EC) No. 300/2008 of the European Parliament and of the Council of March 11, 2008, its implementing measures, and other detailed measures for civil aviation security as determined or to be determined by the National Civil Aviation Security Authority (“NCASA”). In Portugal, the NCASA is the President of NCAA Board of Directors. The National System of Civil Aviation Security is a subsystem of the Internal Security System, which aims to safeguard and protect people and property against acts of unlawful interference in civil aviation security, by defining and implementing standards, procedures, and actions to deter, detect, delay, respond to and neutralise such acts.

1.4 Is air safety regulated separately for commercial, cargo and private carriers?

As a general rule, air safety regulations apply equally to commercial, cargo and private carriers.

1.5 Are air charters regulated separately for commercial, cargo and private carriers?

As a general rule, air charters are regulated collectively for commercial, cargo, and private carriers, being subject to Decree-Law No. 274/77 of 4 July 1977, Decree-Law No. 109/2008 of 26 June 2008, Ordinance No. 302/84 of 19 May 1984, as well as to the rules of the Chicago Convention and EU Regulations.

1.6 As regards international air carriers operating in your jurisdiction, are there any particular limitations to be aware of, in particular when compared with 'domestic' or local operators? By way of example only, restrictions and taxes which apply to international but not domestic carriers.

There are differences between domestic/EU air transport, scheduled air transport outside the EU, and non-scheduled air transport.

Domestic air transport is considered any intra-EU routes or air services, and it is subject to the provisions of Regulation (EC) No. 1008/2008 of the European Parliament and of the Council of 24 September 2008, by which EU air carriers are entitled to operate intra-EU air services (including air carriers) and the territories of Iceland, Liechtenstein and Norway with which the EU forms the European Economic Area ("EEA").

Programmes of scheduled air services for passengers and cargo on extra-EU routes (to/from territories other than the EU, the EEA and Switzerland), as well as non-scheduled air services to some third countries and subsequent amendments, are considered in the light of the requirements under the respective Air Service Agreements, notably with regard to the designation of carriers and the capacity to be offered in/at the services. Moreover, air carriers must obtain a specific operation licence from the Civil Aviation Authority in order to fly scheduled flights outside of the EU.

In accordance with Decree-Law 116/2012 of 29 May 2012, entities may submit an application to ANAC when a number of requirements are met, for instance, having an operating licence under Regulation (EC) 1008/2008, as well as having an adequate insurance policy and sufficient technical, economic, and financial capacity for the in-demand air services. The entity is also required to comply with the designation requirements outlined in the relevant air transport agreements, and it must be free from any outstanding debts with the Portuguese tax and social security authorities.

Non-scheduled international air services to be operated between Portugal and countries not covered by the above are regulated by Decree-Law 274/77 of 4 July and Ministerial Order 129/79 of 22 March and are subject to notification or application for authorisation.

1.7 Are airports state or privately owned?

In Portugal, airports are state-owned but are subject to a concession for the management and commercial operation by

Airports of Portugal ("ANA"), as regulated by Decree-Law 254/2012. Under this concession regulatory framework, ANA is the company responsible for the management of 10 airports in Continental Portugal (Lisbon, Porto, Faro and Beja Civil Terminal), in the Autonomous Region of the Azores (Ponta Delgada, Horta, Santa Maria and Flores) and in the Autonomous Region of Madeira (Madeira and Porto Santo), which includes the possibility of licensing the use of the public domain of these airports. ANA was 100% state-owned until 2012 when it was sold to VINCI Airports.

1.8 Do the airports impose requirements on carriers flying to and from the airports in your jurisdiction?

As mentioned above (*see question 1.7*), airports in Portugal are managed by ANA, which determines the rate of the charges and fees that each airport can impose on carriers flying to and from Portugal, including but not limited to landing and take-off charges, aircraft parking fees, and security fees.

1.9 What legislative and/or regulatory regime applies to air accidents? For example, are there any particular rules, regulations, systems and procedures in place which need to be adhered to?

The applicable legislative and regulatory regimes to air accidents in Portugal are the following:

- i. International regulation: the Chicago Convention, particularly Articles 25 and 26;
- ii. EU regulations: Regulation No. 2027/97, of 9 October 1997, later amended by the Regulation No. 889/2002, of 13 May 2002 of the European Parliament and the Council, and Regulation 996/2010 of 20 October 2010 on the investigation and prevention of accidents in civil aviation; and
- iii. National regulation: Decree-Law 318/99 of 11 August 1999, as amended, on the principles governing the investigation of air accidents and incidents, and Decree-Law 36/2017 of 28 March 2017, on the creation of GPIAAF.

As mentioned above (*see question 1.1*), GPIAAF is the authority that investigates civil aircraft accidents and incidents, in accordance with Article 26 of the Chicago Convention and the rules of Regulation EU 996/2010, participating in accident and incident prevention programmes and policies. GPIAAF also publishes accidents and incidents reports on its website.

1.10 Have there been any recent cases of note or other notable developments in your jurisdiction involving air operators and/or airports?

Regarding recent legislation developments, Portugal has enacted the Decree-Law 25/2022 of 15 March 2022 that implements the legal regime contained in the Council Directive 2000/79/EC of 27 November 2000 concerning the European Agreement on the Organisation of Working Time of mobile staff in civil aviation.

In relation to airports and air operators, two key governmental decisions have been impacted due to new elections being called on 10 March 2024.

- The Portuguese government had announced that the definitive decision on the location for the construction or expansion of the new Lisbon airport would be based on the results of the Strategic Environmental Assessment, currently being produced by a designated technical committee, by the end of 2024. The location of the new airport will be decided by the new government, which will take office in March 2024. In any event, in the current

circumstances, the Chairman of the Board of Directors of ANA – Aeroportos de Portugal has already confirmed that Portugal should not have a new airport infrastructure before 2035/2040.

- As for commercial and economic developments involving air operators, the privatisation of TAP Air Portugal was initially scheduled for 2023 so the privatisation plan will now be transferred to the new government. The new government will have the option to proceed with the privatisation, or potentially reverse the decision, maintaining TAP as a state-owned company.

In terms of recent case law, the Lisbon Court of Appeal issued a judgment on 24 May 2022 in which an air carrier was held liable for a flight cancellation despite the arguments submitted on the exclusion of liability for cancellations caused by extraordinary circumstances as provided for by Article 5.3 of Regulation (EC) 261/2004. In this particular case, the court decided that the air carrier had not presented sufficient evidence that the appropriate measures had been taken by utilising all human, material and financial resources available to prevent the event that caused the cancellation of the flight.

1.11 Are there any specifically environment-related obligations or risks for aircraft owners, airlines, financiers, or airports in your jurisdiction, and to what extent is your jurisdiction a participant in (a) the EU Emissions Trading System (EU ETS) or a national equivalent, and (b) ICAO's Carbon Offsetting and Reduction Scheme for International Aviation (CORSIA)?

Portugal is a participant in both (a) the EU Emissions Trading System ("EU ETS") and, from January 2022, (b) the ICAO's Carbon Offsetting and Reduction Scheme for International Aviation ("CORSIA").

Apart from the international and EU regulations, there is also a national rule, provided by Order Ordinance 38/2021 of 16 February 2021, that established a Carbon Tax which is a domestic charge on air travel for commercial flights passengers.

2 Aircraft Trading, Finance and Leasing

2.1 Does registration of ownership in the aircraft register constitute proof of ownership?

Portugal has a National Aeronautical Registry operated by the national civil aviation authority ANAC. It is possible to submit a request to register an aircraft or the transfer of aircraft ownership before the National Aeronautical Registry, and both procedures require the presentation of an original or certified copy of the Bill of Sale, or the Purchase and Sale Agreement of the aircraft as proof of ownership. Therefore, once the registration is concluded, it constitutes proof of title and it is enforceable against third parties.

2.2 Is there a register of aircraft mortgages and charges? Broadly speaking, what are the rules around the operation of this register?

Yes, there is a register of aircraft mortgages and charges in Portugal operated by the National Aeronautical Registry, operated by ANAC. The registration application of interests and charges (including mortgages) on aircraft or autonomous equipment (engine, rotor, propeller, APU, etc.) shall be made by request under the available form provided by ANAC.

This request shall be accompanied by the original or certified copy of the document constituting the mortgage or charge, and an aeronautical tax must be paid. Documents issued in foreign countries shall have the signatures of the intervening parties duly notarised and legalised with an apostille or duly notarised and legalised by a Portuguese diplomatic or consular agent in that country.

The registered mortgage or charge on aircraft must be governed by Portuguese law, and the constituting document must include the total amount secured. Although it does not constitute the transfer of ownership of the affected goods, nor grants any right of use, the registration of a mortgage or charge under Portuguese law grants a preferential right to be paid out of the proceeds of sale of aircraft and it is enforceable against third parties.

2.3 Are there any particular regulatory requirements which a lessor or a financier needs to be aware of as regards aircraft operation?

In terms of regulatory requirements regarding aircraft operation, the Portuguese Regulation No. 32/2003 of 1 July 2003 (revised by Regulation No. 832/2010 of 8 November 2010) and Regulation (EU) 2018/1139, of 23 August 2018, are relevant.

According to these rules, except for the wet lease-out agreement that only requires prior notification, all other leases shall be approved by ANAC.

Requests for approval/notification of wet lease-out contracts shall be submitted to ANAC at least 15 working days prior to the date scheduled for the start of the operation.

As a general rule, the operator is the liable entity for operating the aircraft, and, consequently, lessors or financiers are usually excluded from liabilities arising from the aircraft operation during the term of the lease agreement.

2.4 As a matter of local law, is there any concept of title annexation, whereby ownership or security interests in a single engine are at risk of automatic transfer or other prejudice when installed 'on-wing' on an aircraft owned by another party? If so, what are the conditions to such title annexation and can owners and financiers of engines take pre-emptive steps to mitigate the risks?

The Portuguese civil law provides for the accession doctrine, which is a form of acquisition of ownership over goods and presupposes the inseparability of assets that are physically joined. If the attached or joined goods are in fact separable, the acquisition of property by accession does not apply, and each of the goods remains under the ownership of its respective owner. There is no specific case law on this subject, but considering that in the case of an aircraft the engine usually can be separated from it, the accession doctrine shall not be applicable.

In any case, it is possible to register the assignment of contractual position, leasing, or pledge agreement on autonomous equipment, such as engines, rotors, propellers, etc. before the National Aeronautical Registry, which will grant enforceability against parties and third parties. As an additional step to mitigate risks, it is also advisable to include specific provisions to regulate this matter under the agreements entered into between owners and financiers of engines.

2.5 What (if any) are the tax implications in your jurisdiction for aircraft trading as regards a) value-added tax (VAT) and/or goods and services tax (GST), and b) documentary taxes such as stamp duty; and (to the extent applicable) do exemptions exist as regards non-domestic purchasers and sellers of aircraft and/or particular aircraft types or operations?

Under Portuguese law, a value-added tax (“VAT”) at the rate of 23% is generally applicable to the domestic sale or lease of an aircraft or parts. However, pursuant to the Portuguese VAT Code, an exemption is granted to the definitive importation of aircraft used by air navigation companies principally engaged in international traffic and of objects incorporated in them or used for their operation.

The transformation, repair, maintenance, freight and lease operations of the aircraft used by air navigation companies operating mainly in international traffic, as well as the transfer, repair, maintenance and lease operations of objects incorporated in such aircraft or used for their operation also benefit from this VAT exemption.

Moreover, no stamp duty is due.

2.6 Is your jurisdiction a signatory to the main international Conventions (Montreal, Geneva and Cape Town)?

Portugal is a signatory party to (i) the Warsaw Convention of 1929 for the Unification of Certain Rules Relating to the International Carriage by Air, (ii) the Chicago Convention of 1944 on International Civil Aviation, (iii) the Geneva Convention of 1948 on the International Recognition of Rights in Aircraft, and (iv) the Montreal Convention of 1999 for the Unification of Certain Rules for International Carriage by Air.

Portugal is not a signatory party to the Cape Town Convention of 2001.

2.7 How are the Conventions applied in your jurisdiction?

The Conventions bind the Portuguese State and its courts. As the Conventions were ratified by Portugal, they have the same legal validity and are enforced by Portuguese courts as domestic legislation.

2.8 Does your jurisdiction make use of any taxation benefits which enhance aircraft trading and leasing (either in-bound or out-bound leasing), for example access to an extensive network of Double Tax Treaties or similar, or favourable tax treatment on the disposal of aircraft?

Under Portuguese law, the general rule for taxation of aircraft trading and leasing provides for a withholding 25% flat rate on the Portuguese corporate income tax applicable to aviation-related lease payments in which the lessee is a Portuguese tax resident and the lessor is a non-tax resident in Portugal, that is, the lessor does not have a permanent establishment in Portugal to which the lease income is due.

This general rule is not applicable when there is a Double Tax Treaty or similar entered into by Portugal and other contracting-State, in which case the withholding 25% rate may be reduced.

Moreover, as provided for by EU Council Directive 2003/49/EC of 3 June 2003, an exemption to the withholding of tax may

apply to interest and royalty payments performed by companies or entities of different Member States when the lessor has a direct minimum holding of 25% in the capital of the lessee or *vice versa* for a period of at least two years, or when the lessor and lessee's capitals are both held in at a minimum participation of 25% by the same entity for a period of at least a period of two years.

Finally, a tax exemption may also be applicable, *ad hoc*, when granted by the Portuguese Minister of Finance on public services grounds.

2.9 To what extent is there a risk from the perspective of an owner or financier that a lessee of aircraft or other aviation assets in your jurisdiction may acquire an economic interest in the aircraft merely by payment of rent and thereby potentially frustrate any rights to possession or legal ownership or security?

Under Portuguese law, a lease agreement does not affect the ownership of assets or goods. Therefore, as a general rule in operating or finance leases, the ownership of an aircraft may only be transferred to the lessee by acquisition, and the payment of rent does not grant any economic interest to the lessee, which is considered a custodian of the aircraft.

3 Litigation and Dispute Resolution

3.1 What rights of detention are available in relation to aircraft and unpaid debts?

Under Portuguese law, a creditor may exercise the right of detention in respect of an aircraft in relation to unpaid debts if its credits result from expenses or from damage caused to the aircraft, by which the direct relation between the credit and the object is characterised. This retention right can be exercised independently from registration.

Moreover, Decree-Law 254/2012 grants priority to airport authorities over the debtor's goods and assets which are located within the airport area, meaning that the goods/assets may be seized by them until the debt is fully paid or a court ruling on the matter is issued.

3.2 Is there a regime of self-help available to a lessor or a financier of an aircraft if it needs to reacquire possession of the aircraft or enforce any of its rights under the lease/finance agreement?

There is no regime of self-help available under Portuguese law. If a lessor or a financier of an aircraft needs to reinstate possession or enforce any provisions of the lease or finance agreement, court intervention is required.

3.3 Which courts are appropriate for aviation disputes? Does this depend on the value of the dispute? For example, is there a distinction in your jurisdiction regarding the courts in which civil and criminal cases are brought?

There are no specific courts for aviation disputes that shall be submitted to civil, criminal, administrative or competition courts, depending on the nature of the dispute. In case of a civil dispute which does not fall under the jurisdiction of the competition court, the case will be decided in the local or central civil court depending upon whether the claim amount exceeds

€50,000 or not. Contractual and liability disputes, as a general rule, can be submitted to an arbitration proceeding when there is an arbitration agreement between the parties.

3.4 What service requirements apply for the service of court proceedings, and do these differ for domestic airlines/parties and non-domestic airlines/parties?

Under Portuguese law, the common means of service of the defendant in legal proceedings is by way of notification sent by post, which must be accepted by the defendant (or a third party on its behalf). In the absence of this, service is performed in person by an enforcement officer. If neither of the approaches succeed, the judge can direct service by public notice and extends the filing deadline for the defence by 30 days.

When the defendant is not a resident in Portugal, courts will apply the procedures provided by international treaties or conventions. If the service fails, the court will, after hearing the claimant, order service through the nearest Portuguese consulate if the defendant is a Portuguese national or by rogatory letter, if the defendant is a foreign national.

Furthermore, the deadline for filing a defence can be extended for another 30 days if the defendant is served abroad. The same deadline may also be extended for another 30 days when the location of the defendant is unknown, and the court must order service through public notice.

3.5 What types of remedy are available from the courts or arbitral tribunals in your jurisdiction, both on i) an interim basis, and ii) a final basis?

In terms of available interim remedies, parties can obtain injunctions from the courts to protect their rights and contractual position by proving the existence of such rights and the urgency of obtaining a remedy to protect them. When the dispute is submitted to arbitration proceedings, the arbitration rules must provide for emergency arbitrators.

The available remedies are the (i) recognition of the existence or inexistence of a certain right or fact by declaration, (ii) creation, extinction, or modification of a legal transaction, and (iii) orders to perform or fulfil certain obligations.

3.6 Are there any rights of appeal to the courts from the decision of a court or arbitral tribunal and, if so, in what circumstances do these rights arise?

The Portuguese court system is characterised by three degrees or levels of courts, including courts of first instance, intermediate courts of appeal, and final courts of appeal. Regarding civil cases, the admissibility of an appeal is conditioned to certain thresholds of the amount of the claim.

As a general rule, the decisions issued from a court of first instance can be appealed if:

- i. the amount of the claim exceeds €5,000; and
- ii. the amount decided by the court, and which is unfavourable to the appellant, exceeds €2,500.

Decisions rendered by an intermediate court of appeal can be appealed if:

- i. the amount of the claim exceeds €30,000; and
- ii. the amount decided by the court, and which is unfavourable to the appellant, exceeds €15,000.

Concerning criminal cases, given the issues at stake, the appeal is normally permitted at least once.

In arbitration, there is no right to appeal decisions issued by an arbitral tribunal, unless otherwise provided for in the arbitration agreement.

3.7 What rights exist generally in law in relation to unforeseen events which might enable a party to an agreement to suspend or even terminate contractual obligations (in particular payment) to its contract counterparties due to *force majeure* or frustration or any similar doctrine or concept?

The Portuguese legal system provides the termination or modification of the contract caused by a change in circumstances. Pursuant to Article 437 of the Portuguese Civil Code, if the circumstances on which the parties based their decision to enter into a contract have changed substantially, the aggrieved party is entitled to terminate the contract, or to have it modified according to an equitable assessment, provided that the unforeseen event in question is not covered by the contractual inherent risks and the maintenance of performance would constitute a breach of good faith. If the aggrieved party requests the termination of the contract, the counterparty may present a claim to modify the contractual terms.

In terms of supervening and unforeseen events, Portuguese law also provides for an impossibility of performance doctrine. Pursuant to Article 790 of the Portuguese Civil Code, contractual obligations may be extinguished when performance becomes impossible (and not just impracticable) for a cause which was not attributable to the performing party. When the supervening impossibility is temporary, the performing party is not liable for the delay in performance. However, this doctrine is usually not applicable to contractual obligations of payment.

4 Commercial and Regulatory

4.1 How does your jurisdiction approach and regulate joint ventures between airline competitors?

The Portuguese legal system does not specifically regulate joint ventures between airlines competitors. However, joint ventures between airlines must abide by all applicable national and European antitrust and general competition rules, and they might be considered a concentration if they intend to perform all the functions and duties of an autonomous economic entity on a regular basis. The Portuguese Competition Authority ("PCA") is the competition authority at the national level responsible for enforcing the general competition laws.

4.2 How do the competition authorities in your jurisdiction determine the 'relevant market' for the purposes of mergers and acquisitions?

According to Commission Notice 97/C 372/03, the product and geographic markets are combined to determine the appropriate market to evaluate a specific competition situation. The "relevant product market" includes any goods and services that, given their features, costs, and intended applications, the customer considers interchangeable or substitutable. The area (i) where the concerned undertakings supply and demand goods or services, (ii) where competition conditions are sufficiently homogeneous, and (iii) which can be distinguished from surrounding areas because the conditions of competition are noticeably different there, is referred to as the "relevant geographic market".

4.3 Does your jurisdiction have a notification system whereby parties to an agreement can obtain regulatory clearance/anti-trust immunity from regulatory agencies?

Parties to an agreement that wish to obtain regulatory clearance/anti-trust immunity from regulatory agencies are required to notify the PCA prior to the intended transaction that satisfies specific conditions or circumstances, pursuant to Article 37 of the domestic Competition Law.

4.4 How does your jurisdiction approach mergers, acquisition mergers and full-function joint ventures?

Mergers, acquisition mergers and full-function joint ventures that meet the requirements provided for by Article 27 of the domestic Competition Act are subject to a compulsory notification.

For the purposes of the regulation, an act of concentration is deemed to exist when there is a lasting change of control over the whole or part of one or more companies as a result of a merger of two or more previously independent companies or of a direct or indirect acquisition of control of all or part of the share capital of one or more companies or by one or more persons already controlling at least one company. A joint venture may also be considered an act of concentration when it performs the functions of an autonomous economic entity on a lasting basis.

The PCA must then approve the specific operation after determining whether it will significantly impede effective competition in the domestic market or a sizable portion of it. Before receiving clearance from the PCA, the operation cannot be carried out.

4.5 Please provide details of the procedure, including time frames for clearance and any costs of notifications.

The details of the procedure to submit a notification before the PCA is provided in the PCA Regulation 60/2013 of 14/02.

The notification submitted should include the name, postal address, Portuguese tax identification and telephone number of the entity for the purposes of payment of the tax and publication of the notice.

Furthermore, in terms of time frames, the discovery phase must be completed within 30 days of notification. After that, the PCA can decide if the specific operation meets the requirements for the prior notification obligation. It can also include the obligations to be performed by the notifying party to guarantee compliance with the undertaking. Finally, if the transaction raises substantial suspicions in light of the submitted evidence, the PCA may start a thorough inquiry.

4.6 Are there any sector-specific rules which govern the aviation sector in relation to financial support for air operators and airports, including (without limitation) state aid?

Although there are no domestic sector-specific state aid rules in Portugal, the aviation sector is subject to the provisions of Articles 107 to 109 of the Treaty on the Functioning of the European Union. According to Article 107, any aid provided by a Member State or through state resources in any form that distorts or threatens to distort competition by favouring particular undertakings or the production of certain goods,

to the extent that it affects trade between Member States, is incompatible with the internal market, unless the applicable Treaties provide otherwise.

Further information is contained in the Guidelines issued by the European Commission on state aid in the aviation sector (2014/C 99/03 OJ C 99, 04.04.2014) as well as the European Commission's Working Paper on the interpretation of State aid and public service obligations in the aviation sector, of 14 May 2020.

4.7 Are state subsidies available in respect of particular routes? What criteria apply to obtaining these subsidies?

State subsidies in respect of particular national routes are regulated by Decree-Law No. 138/99 of 23 April 1999. According to this Decree-Law, the State may use public service obligation schemes in respect of regular air services between the mainland and the Autonomous Regions of Madeira and the Azores, between these regions, within each Autonomous Region, or to any other peripheral or developing region in the national territory, as well as on air connections with low traffic density. This occurs when: the route is considered vital to the economic development of the region; and the conditions in the air transport market do not ensure the existence of regular air services satisfying adequate standards of continuity, regularity, quality, quantity, or pricing. The aid to be granted by the State to air transport resulting from the imposition or contracting of public service obligations may take the form of a ticket price subsidy, which consists of the payment of a percentage share of the ticket sales price, for certain categories of air service passenger, and financial compensation, to be paid to the air carrier.

4.8 What are the main regulatory instruments governing the acquisition, retention and use of passenger data, and what rights do passengers have in respect of their data which is held by airlines and airports?

Law No. 58/2019 of 8 August 2019 implements the requirements under Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data.

4.9 In the event of a data loss by a carrier, what obligations are there on the airline which has lost the data and are there any applicable sanctions?

In the event of a data loss by a carrier, the General Data Protection Regulation (GDPR – Regulation (EU) 2016/679) sets out the obligations and procedures to be complied with by the data controller. In this case, the data controller of the airline carrier must notify any personal data breach to the applicable supervisory authority ("CNPd") within 72 hours after the controller has become aware of it, as a general rule.

The GDPR also provides for the applicable sanction, which may differ depending on the infringement, such as a reprimand, a temporary or definite ban on processing data, or even the application of a monetary fine of up to 4% of the total annual worldwide turnover of the business.

4.10 What are the mechanisms available for the protection of intellectual property (e.g. trademarks) and other assets and data of a proprietary nature?

Intellectual Property rights in Portugal are regulated and protected by the Industrial Property Code, the Copyright Code and Related Rights, Decree-Law 122/200, and Decree-Law 252/94. Together, these pieces of legislation govern the protection of patents, trademarks, designs, utility models, trade secrets, copyrights, databases, and computer programmes.

Industrial or intellectual property rights are granted by the Portuguese Institute for Industrial Property (“INPI”) regarding patents and trademarks. However, copyright and related rights do not require a formal registration procedure before the INPI in order to obtain protection, which may also include databases and computer programs.

Finally, in terms of enforcement of intellectual property rights, Portugal has a specific court, known as the Intellectual Property Court, with jurisdiction to judge civil cases involving industrial property, copyright, and related rights, trade secrets, and unlawful acts of competition in industrial property. As such, criminal courts can hear criminal proceedings based on the violation or infringement of intellectual property rights. Moreover, with exception to the disputes involving criminal matters and annulment or declaration of invalidity of rights, it is possible to submit the conflict to arbitration before the Arbitration Centre for Industrial Property, Domain Names, Trade Names and Corporate Names (“ARBITRARE”).

4.11 Is there any legislation governing the denial of boarding rights and/or cancelled flights?

In the event of denied boarding, long delays and/or cancelled flights, the applicable regulations that govern compensation and assistance rules are Regulation (EC) 261/2004 and the Montreal Convention.

4.12 What powers do the relevant authorities have in relation to the late arrival and departure of flights?

ANAC is the competent authority in Portugal in relation to late arrivals or departures of flights.

Within its powers, ANAC can decide whether a time slot violation is legitimate or amounts to an administrative offence.

4.13 Are the airport authorities governed by particular legislation? If so, what obligations, broadly speaking, are imposed on the airport authorities?

As mentioned above (*see question 1.7 above*), ANA is the authority responsible for the management and commercial operation of 10 airports in Portugal, pursuant to Decree-Law 254/2012, which regulates the airports’ concession in Portugal.

Under this regulation framework, ANA is obliged to perform the activities and services under concession in a regular, continuous and efficient manner, adopting for this purpose the public service parameters set by the aviation industry and the quality, availability and safety standards required by law, the applicable regulations and the concession contract for each airport.

Furthermore, ANA is also subject to more specific obligations, such as providing each airport with the sectorial public services parameters and observing the principle of non-discrimination in the treatment of airport users.

4.14 To what extent does general consumer protection legislation apply to the relationship between the airport operator and the passenger?

Under Portuguese law, the general consumer protection legislation may apply to the relationship between a passenger and the airport operator to the extent it can be characterised by an individual who purchases services or goods for its own private use or consumption from a professional engaged in an economic activity.

4.15 What global distribution suppliers (GDSs) operate in your jurisdiction?

The main global distribution suppliers (“GDSs”) that operate in Portugal are Amadeus, Sabre and Travelport.

4.16 Are there any ownership requirements pertaining to GDSs operating in your jurisdiction?

There are no ownership requirements pertaining to GDSs operating in Portugal. Their operation, however, is governed by Regulation (EC) 80/2009 of the European Parliament and of the Council of 14 January 2009.

4.17 Is vertical integration permitted between air operators and airports (and, if so, under what conditions)?

Although there is not an explicit and *a priori* permission or prohibition under Portuguese law, the analyses of whether a vertical integration is permitted between air operators and airports will depend on the circumstances of the specific case, considering that the relevant competition rules may apply, for instance, to cases of abuse of a dominant position, concentration or monopoly.

4.18 Are there any nationality requirements for entities applying for an Air Operator’s Certificate in your jurisdiction or operators of aircraft generally into and out of your jurisdiction?

Pursuant to Regulation (EC) 1008/2008, Member States and/or nationals of Member States must own more than 50% of the undertaking and effectively control it, whether directly or indirectly through one or more intermediate undertakings, except as provided for in an agreement with a third country to which the EU is a party, and the carrier’s head office or registered office must be located in a Member State of the EU.

5 In Future

5.1 In your opinion, which pending legislative or regulatory changes (if any), or potential developments affecting the aviation industry more generally in your jurisdiction, are likely to feature or be worthy of attention in the next two years or so?

The revision of Regulation (EC) 1008/2008 may be concluded in the next two years considering that the European Commission has received the results of the public consultation on the regulation of air services in June 2022.

Additionally, further regulations or clarifications on the existing rules on reducing aviation emissions in Europe are likely to continue to evolve in the next two years.

In this respect, Portugal will extend the implementation of the Carbon Tax (*see question 1.11*) to air travel consumers on aircraft with a maximum capacity of up to 19 seats from July 2023. Nevertheless, Portugal facilitates private aviation, and this industry sector is expected to expand in the country during the next two years.

Finally, the restrictions and travel bans related to COVID-19 are not expected to be readopted by Portugal in the near future, which should encourage the civil aviation industry recovery. However, in terms of supply chain shortages, the impacts of the war in Ukraine are likely to continue to affect the industry in the next year.

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1 General

1.1 Please list and briefly describe the principal legislation and regulatory bodies which apply to and/or regulate aviation in your jurisdiction.

Regulatory bodies

In the Kingdom of Saudi Arabia's jurisdiction, the regulatory body that regulates aviation is the General Authority of Civil Aviation (GACA).

The GACA is the regulatory, legislative, and governing entity of the aviation industry in the KSA. Its mission is to guarantee the aviation industry activities according to the GACA guidelines by implementing an effective safety oversight system. It is responsible for granting certificates of airworthiness and operating licences. It is the competent authority for aircraft registrations and entry permissions. It furthermore deals with environmental issues, aviation safety and security as well as aviation personnel.

This Authority appeared from the Presidency of Civil Aviation (PCA) that was created when the institution governing aviation was split into a civil department and the Royal Saudi Air Force. Furthermore, the PCA was in charge of Saudi Arabia Airlines and the Meteorology Department. In 1977, the name of the PCA was changed to General Authority of Civil Aviation, and in 2011 the GAVA was detached from the Ministry of Defence. The GACA currently operates four international and 23 domestic airports in KSA.

The GACA emerged from the Presidency of Civil Aviation in 2006 and is organisationally linked to the Minister of Transport. The Kingdom has achieved unprecedented growth over the years and has made qualitative leaps in civil aviation, whose growth has helped to drive development at airports across Saudi Arabia, covering major developments in passenger transportation, air cargo, airport construction and equipment, air navigation and control.

AIB is an independent governmental entity under the direct supervision of Chairman for Board of Directors of the GACA. The idea was initially as a result of the Board of Directors' Resolution No. 76-6 dated 05/11/1431H – 22/12/2009 and later was effective due to resolution number T-160 dated 29/05/1433H–28/03/2012G. The AIB is financially, administratively, and operationally independent from the Regulator (GACA) and the industry as a whole. AIB does not apportion blame, nor provide the means to determine liability in aviation incidents or accidents, in compliance to ICAO Convention, Chicago 1944. On November 4, 2013 (01-01-1435h), regulations establishing the Aviation Investigation

Bureau (AIB) for the Kingdom of Saudi Arabia went into full effect. On this date, the AIB assumed sole authority for the conduct of aviation incidents and accidents in the Kingdom of Saudi Arabia. The AIB is located on the northern side of King Abdulaziz International Airport "KAIA" in Jeddah and is facilitated with state-of-the-art aviation investigative equipment. The AIB performs its functions around the clock, receiving all kinds of notifications for various occurrences and taking actions.

Legislation

The principal legislation in Saudi Arabia which regulates aviation is as follows:

- GACA law – 2005, which is the primary legislation for the regulatory, legislative, and governing entity of the aviation industry in the KSA.
- The Civil Aviation Law – 2005, which is the primary legislation for the aviation industry in Saudi Arabia, providing the legal framework for aviation operation in Saudi Arabia.
- The Civil Aviation Tariff Law and Implementing Regulations thereof – 2005.
- Finally, Saudi Arabia is also a party to the Chicago Convention on International Civil Aviation since 1962 and the 1999 Montreal Convention for the unification of certain rules for international carriage by air, which sets out the liability regime of air carriers in the case of an accident.

1.2 What are the steps which air carriers need to take in order to obtain an operating licence?

The types of certificates issued by the GACA, including Air Operator Certificates (AOC) for commercial operators, and Operator Certificates (OC) for non-commercial operators. The GACA is the competent licensing authority in the KSA in almost all matters relating to the granting of operating licences.

There are multiple steps and requirements set out by the GACA for each type of air carrier in order to obtain an operating air carrier licence. The air carrier must first identify which type of licence most fitted to it depending on its type, then submit all information/requirements to the GACA. The Economic Regulation for Air Transport Services issued by the GACA has established three types of air carriers licences as follows: Economic License for a National Air Carrier; Economic License for an Air Carrier Upon Request; and Economic License for a Foreign Air Carrier. Each of the aforementioned types has a list of requirements that must be submitted to the GACA, and are mentioned in the second chapter of The Economic Regulation for Air Transport Services.

- General Authority of Civil Aviation Regulation (GACAR) Part 119 – Certification: Saudi commercial; and Non-commercial operators.
- GACAR Part 129 – Operations: Foreign Air Carriers.

1.3 What are the principal pieces of legislation in your jurisdiction which govern air safety, and who administers air safety?

Air safety is regulated by the International Civil Aviation Organisation (ICAO) as KSA is a signatory to the Chicago Convention 1944 and must therefore ensure that air navigation equipment and operations comply with ICAO standards.

The first aviation safety regulatory approach implemented in the Kingdom of Saudi Arabia was to adopt the aviation safety regulations published by the United States of America. Eventually the Kingdom of Saudi Arabia promulgated its own set of civil aviation regulations, but these regulations were still based, in large measure, on the regulations of the United States of America. For example, the adoption by reference of 14 CFR Part 23 includes previous amended versions of the regulation as cited in the GACAR. For example, a reference to GACAR § 23.1 effective 12 March 1980 is equivalent to 14 CFR § 23.1 effective 12 March 1980. On the other hand, GACAR Part 25 stated that Special Federal Aviation Regulation No. 13 regarding approval by the Administrator of modifications of individual Douglas DC-3 and Lockheed L-18 airplanes are not applicable in the Kingdom of Saudi Arabia.

With the publication of the GACAR, the Kingdom of Saudi Arabia now has civil aviation regulations covering all aspects of civil aviation activity in the Kingdom.

Moreover, the AIB extensively cooperates with the Regulator and the industry on issues relating to aviation safety and promoting its awareness. It also cooperates with international agencies and other States' investigation authorities under the agreements and memorandums of understandings to which the Kingdom of Saudi Arabia is signatory to, in the interest of improving aviation safety.

1.4 Is air safety regulated separately for commercial, cargo and private carriers?

The regulatory body that regulates all categories of aviation is the GACA. Moreover, in general, air safety regulations apply to all categories of transport. However, there is regulation that applies to the transport category only, for example, GACAR regulates Part 26 – continuing improvements to airworthiness and safety of transport category aircraft. GACAR Part 26 establishes requirements for support of the continued airworthiness of and safety improvements for transport category airplanes. These requirements may include performing assessments, developing design changes, developing revisions to Instructions for Continued Airworthiness (ICA), and making necessary documentation available to affected persons. Requirements of this part that establish standards for design changes and revisions to the ICA are considered airworthiness requirements.

1.5 Are air charters regulated separately for commercial, cargo and private carriers?

All types of air charters are subject to the GACA's regulations (apart from military). However, there may be certain requirements which vary depending on the type of carriage. For example, no pilot may operate an aircraft in scheduled commercial air transportation – (a) over any route or route

segment unless it is specified in the certificate holder's operations specifications, or (b) other than under the limitations in the operations specifications.

Other specifications are mentioned in GACAR (part 121, 125, 135).

1.6 As regards international air carriers operating in your jurisdiction, are there any particular limitations to be aware of, in particular when compared with 'domestic' or local operators? By way of example only, restrictions and taxes which apply to international but not domestic carriers.

Under Article 18 of the Civil Aviation Law, no foreign operator may carry passengers, cargo or mail for a fee or consideration between two points within the territory of the Kingdom. Nonetheless, the Authority may authorise such carriage to cater for exceptional or special circumstances or to finish an incoming international flight. On the other hand, international air carriers must oblige with the bilateral agreement made between Saudi Arabia and the country in which the international air carrier originally belongs to. Such agreements contain limitations such as the number of trips made from and to Saudi Arabia.

As KSA has adopted many international aviation agreements, including the Open Skies Agreement, the US-KSA Open Skies Agreement 2013, EU-KSA agreement and various bilateral agreements, most of the above agreements are based on the principle of reciprocity. On the other hand, Aircraft ground services may not be provided in civil aerodromes in the Kingdom without obtaining a licence from the Authority. Such licences may only be issued to foreign air carriage companies and establishments on a reciprocal basis.

1.7 Are airports state or privately owned?

Saudi Arabia airports are mainly state-owned by way of operating companies organised under private law. The Airports in Saudi Arabia are privately owned as follows:

MATARAT Holding Company – an affiliate of the GACA – owns (Riyadh Airports Company (RAC), Jeddah Airports Company (JEDCO), Dammam Airports Company (DACO), and Cluster 2). MATARAT manages the operation of 27 of the Kingdom's airports through its subsidiaries (RAC, JEDCO, DACO, and Cluster 2).

1.8 Do the airports impose requirements on carriers flying to and from the airports in your jurisdiction?

Charges of use and services are imposed, and national and foreign air transport institutions and companies must pay the fees for civil aviation services that are due for their operations and flights within, from, to and through the airspace of the Kingdom in accordance with the provisions of Aviation Tariff Law and its implementation regulation.

1.9 What legislative and/or regulatory regime applies to air accidents? For example, are there any particular rules, regulations, systems and procedures in place which need to be adhered to?

Saudi Arabia is a party to the Chicago Convention 1944. Article 26 and Annex 13 to that Convention make provisions for the investigation of air accidents. Saudi Arabia implements the relevant requirements by way of the legislation discussed below.

- GACAR Safety regulations.

- AIB Regulation which is in accordance with ICAO Annex (13 and 19).
- Saudi Civil Aviation Law.
- GACAR part (4) stipulates how and who is responsible for accident notification to AIB and the President of the GACA.

The AIB has primary authority to investigate all civil transportation accidents, including aviation accidents under Saudi regulations. In its role, the AIB determines probable cause for the accident and issues safety recommendations, and as a practical matter for consideration by carriers and manufacturers.

The Civil Aviation law on article 108 obliges any regulated actor to report to the aviation authorities any event which has or is likely to have affected the safety of air operations.

Taking into account the provisions of Annex (13) of the Chicago Treaty regarding the investigation of aircraft accidents and after learning of an accident involving a foreign aircraft in the territory of the Kingdom, the office shall report it as soon as possible to the following:

- The country in which the aircraft is registered or the public trademark registration authority.
- The country of the operator if it is other than the country of registration of the aircraft.
- The manufacturing country.
- The country that suffered damage from the accident.
- The International Civil Aviation Organization.

Moreover, when an accident occurs involving a foreign aircraft operated by a foreigner in the territory of the Kingdom, each of the countries and entities specified in the regulations has the right to appoint an accredited representative to participate in the investigation, and he may seek the assistance of one or more advisors.

1.10 Have there been any recent cases of note or other notable developments in your jurisdiction involving air operators and/or airports?

The GACA announced that the new passenger rights protection guidelines are applicable as of November 20, 2023, under the slogan “Passenger First”. The new regulations encompass 30 new provisions that cover ticketing, boarding, inflight services, and baggage handling, as well as provisions for passengers with special needs, including those with reduced mobility. Compensation provisions have been strengthened and extended. Recompense in some cases will increase to 150%–200% of the original ticket price, while compensation for lost baggage could be as much as SAR6,568 (\$1,750). These compensations were given primarily to address issues such as delays, loss of luggage, flight cancellations and delays.

Moreover, GACA launched operations at its Special Integrated Logistic Zone (SILZ) in Riyadh on October 31, 2022. The Special Integrated Logistics Zone is being designed to combine best in practice regulations, technologies, and infrastructure from around the world. Located directly next to King Khalid International Airport (KKIA) following the issuance of Royal Order (A/17) dated 10 October 2018. The GACA has now issued the Special Tax Rules (the “Tax Bylaws”) setting out the tax and customs incentives (and the associated conditions) that apply to entities established in ILBZ to carry out specific activities.

The following incentives are offered to the Zone entities:

- 50 years tax holiday, including VAT;
- customs suspension;
- no requirement to withhold tax;
- payments to non-residents subject to certain conditions;

- 100% foreign ownership;
- 100% suspension of customs and import restrictions;
- no restrictions on capital repatriation; and
- non-residents undertaking activities.

Further guidance will be issued by the General Authority of Zakat and Tax (GAZT) to specify the conditions and the procedures that ILBZ entities will need to follow to access these tax and customs incentives.

1.11 Are there any specifically environment-related obligations or risks for aircraft owners, airlines, financiers, or airports in your jurisdiction, and to what extent is your jurisdiction a participant in (a) the EU Emissions Trading System (EU ETS) or a national equivalent, and (b) ICAO's Carbon Offsetting and Reduction Scheme for International Aviation (CORSIA)?

Saudi Arabia joined the United Nations Framework Convention on Climate Change (UNFCCC) in 1994 and, in 2016, ratified the Paris Climate Agreement, which was adopted in 2015. The GACA has adopted several initiatives and programmes that guarantee environment friendly operational processes, in line with the Kingdom of Saudi Arabia's commitment to reducing carbon emissions. This is being carried out in cooperation with the competent authorities in Saudi Arabia and international organisations around the world such as the International Civil Aviation Organization (ICAO) and Airports Council International (ACI).

Currently, the GACA is developing the (State Action Plan) to reduce greenhouse gas emissions, including carbon dioxide, emitted from civil aviation activities, by improving flight paths and operating procedures at airports and ground movement, as well as programmes to improve aircraft efficiency and engines with operating companies, inventory and pinpointing the sources and quantities of emissions, and the adoption of the best international practices to reduce those emissions.

The GACA worked on developing and publishing the executive regulations of GACAR PART 157 of the Carbon Offsetting and Reduction Scheme for International Aviation (CORSIA) on the authority's website, with the aim of reducing carbon emissions from international flights by monitoring and investigating the amount of emissions issued by national air carriers for international flights that are subject to the plan.

The GACA's own Environmental Department has begun to work with a package of initiatives, programmes, systems and recommendations to preserve the environment from civil aviation activities such as signing a memorandum of understanding with the National Centre for Environmental Compliance for the purpose of joint cooperation, and for commitment to the application of local regulations at airports and the implementation of campaigns to raise awareness of the need to preserve the environment. Moreover, Prince Mohammed bin Abdulaziz International Airport in Madinah has become partially dependent on renewable energy.

2 Aircraft Trading, Finance and Leasing

2.1 Does registration of ownership in the aircraft register constitute proof of ownership?

The GACA shall prepare a registry for the registration of national civil aircraft called (the Saudi National Registry for Aircraft Registration), and the regulations shall specify the data that must be included in the registry and the conditions that must be met to register aircraft in it. The Saudi National Registry for Aircraft

Registration, maintained by the GACA, is not a register of legal ownership, and therefore registration of ownership does not constitute proof of ownership of a particular aircraft. The aim of registering an aircraft in the Saudi Arabia Aircraft Register is so that the aircraft is authorised to operate in Saudi Arabia.

In GACAR part (47), it is stated registration of aircraft is not evidence of ownership in any proceeding in which ownership by a particular person is in issue. The President of the GACA does not issue any certificate of ownership or endorse any information with respect to ownership on an aircraft certificate of registration (CR). The President issues an aircraft CR to the person who appears to be the owner on the basis of the evidence of ownership submitted under GACAR (47.13) or recorded at the Saudi National Aircraft Register (“Register”).

2.2 Is there a register of aircraft mortgages and charges? Broadly speaking, what are the rules around the operation of this register?

The Commercial Mortgage Law regulates any non-real estate mortgage in the Kingdom, and it stipulates in Article 39 that: mortgage of ships, aircraft, commercial papers, securities traded in the financial market, shares of companies not traded in the financial market, and goods deposited in public warehouses are subject to trademarks, and other funds whose mortgage is subject to the provisions of their own regulations; the provisions stipulated for it in those systems, and the provisions of this system apply unless stipulated therein.

The Saudi Civil Aviation Law stipulates in Article 56 that the right of official mortgage and every right similar to it that is agreed to be created on the aircraft is permissible to satisfy a debt.

On the other hand, Saudi Arabia joined the Cape Town Convention and related Protocol on Aircraft Equipment is an international treaty that recognises an international registry for registering ownership and security interests. Moreover, the Government of the Kingdom of Saudi Arabia declared that: all remedies available to the creditor under any provision of the Convention shall be exercised only with leave of the Court if there is no express provision requiring the submission of an application to the Court.

2.3 Are there any particular regulatory requirements which a lessor or a financier needs to be aware of as regards aircraft operation?

The specific regulatory requirements which a lessor or a financier needs to be aware of as regards aircraft operation in Saudi Arabia is the Saudi Civil Aviation law stated on Article (69) that: “The owner of a leased aircraft shall remain jointly liable with the lessee for all legal obligations of the investor with respect to the aircraft and flight crew thereof pursuant to the provisions of this Law if said lease term does not exceed fourteen days. If the lease term exceeds fourteen days or in the case of sale-type lease, the lessee operating the aircraft shall be solely liable for obligations referred to in paragraph (1) of this Article, unless otherwise stated in the lease contract.”

In addition, article (60) stated: “Any legal disposition of national aircraft may be made to any person by means of sale, lease, pledge or any other form of disposition based on Sharia or law. Said disposition shall come into effect only upon entry thereof in the Register.”

As Saudi Arabia has ratified the Cape Town Convention 2001, a lessor who has registered its interest in the international registry has a right to detain an aircraft upon default payment of

the lease, and the judicial procedures related to rights on aircraft are subject to the system of the court that has jurisdiction to consider these procedures.

Moreover, both lessor and lessee must comply with GACAR part (119) – Certification: Saudi Arabian Commercial and Noncommercial Operators, as it states that unless authorised by the GACA’s President, no air operator certificated under the aforementioned part may conduct operations involving either a wet or dry lease arrangement. The part mentioned several requirements for Leasing of Aircraft. For example – and not limited to – prior to conducting lease in operations, the lessee must provide the President with: (1) a copy of the lease to be executed; (2) the names of the parties to the agreement and the duration thereof; and (3) the nationality and registration markings and aircraft serial number of each aircraft involved in the agreement.

2.4 As a matter of local law, is there any concept of title annexation, whereby ownership or security interests in a single engine are at risk of automatic transfer or other prejudice when installed ‘on-wing’ on an aircraft owned by another party? If so, what are the conditions to such title annexation and can owners and financiers of engines take pre-emptive steps to mitigate the risks?

It is permissible to mortgage part of movable property even if it is impossible to divide or separate it according to Saudi Commercial mortgage law (article 10/3). We are not aware of any existing case law that would resolve this issue, and the GACA does not maintain a separate register for aircraft engines. Moreover, the Cape Town Convention, to which Saudi Arabia is a signatory, defines aircraft engines and airframes as distinct and separate aircraft objects. Pursuant to Article XIV(3) of the Aircraft Equipment Protocol, “ownership of or another right or interest in an aircraft engine shall not be affected by its installation on or removal from an aircraft”.

2.5 What (if any) are the tax implications in your jurisdiction for aircraft trading as regards a) value-added tax (VAT) and/or goods and services tax (GST), and b) documentary taxes such as stamp duty; and (to the extent applicable) do exemptions exist as regards non-domestic purchasers and sellers of aircraft and/or particular aircraft types or operations?

In Saudi Arabia, Value-Added Tax (VAT) is applicable to the supply of goods and services, including aircraft trading at a rate of (15%).

For aircraft trading, VAT is typically imposed on the sale or lease of aircraft, both domestic and non-domestic purchasers and sellers are subject to VAT unless specific exemptions or relief measures apply. For example, countries exempted due to double taxation.

However, Aircraft, vessels and other qualifying means of transportation may also be subject to the zero rate on their supply or import into KSA. The zero-rate applies any qualified means of transport used principally for international transportation of passengers and goods, provided that all the following conditions are met:

- Any vehicle, vessel or aircraft.
- Designed or adapted to carry at least 10 people (crew and passengers) OR designed to carry Goods on a commercial basis.
- Used or intended for use predominantly for international transportation.
- NOT designed, adapted for or intended for recreation or private use.

The main purpose “to be used predominantly for international transportation” means that the operator of the means of transport must have evidence stating that each individual means of transport are used for international transport purposes for a minimum of at least 75% of all flights. To achieve this condition, international transport suppliers must verify that each means of transport reaches 75% or more of the simple average from combining the four following factors:

- Percentage of the number of international flights/voyages compared to the total flights/voyages by each means of transport.
- Percentage of the distance travelled (miles/km) for international flights compared to the total distance travelled for all trips by each means of transport.
- Percentage of the Revenue generated by the international trips compared to the total trips by each means of transport.
- Percentage of the Operating costs for carrying out international trips compared to the total operating costs for each means of transport.

The test should be carried out based on the actual data related to the previous 12 months if relating to an existing used means of transport, or on the expected and planned data for the up-coming six months if relating to a new means of transport which will be purchased and has not yet been used in the operations.

Based on that, if an airline company operating in KSA intends to import three new aircraft from USA in order to increase its operating capacity, upon importation, the airline company requests Saudi Customs to apply the zero rate to the import of these aircrafts as they are intended for use in international transport. In order for Saudi Customs to apply the zero rate to the import, the airline company must issue a self declaration based on the four criteria tests.

Some international transport providers may have a mixed fleet of vehicles or aircraft which are used for both domestic and international transport. Where possible, it must certify whether individual supplies are provided in respect of the qualifying means of transport (i.e. one which is predominantly used for international transportation – GAZT considers this as using the means of transport in international transportation with a certain percentage of flights, e.g., 75% of flights). Any other criteria may be used to satisfy the purpose of proving the use of the means of transport predominantly for international transport. If a supplier has a periodic contract to provide services across a fleet of vehicles or transport types, the transport supplier should give details of which vehicles are qualifying means of transport and which are not. The supplier must allocate the portion of the goods and services provided to qualifying means of transport and apply the zero-rate to this portion of the supply.

2.6 Is your jurisdiction a signatory to the main international Conventions (Montreal, Geneva and Cape Town)?

Yes, Saudi Arabia is a signatory of the Geneva Convention since 1963, and of the Montreal Convention since 2003, and of the Cape Town Convention since 2008.

2.7 How are the Conventions applied in your jurisdiction?

In general, according to Article (70) of the Saudi Constitution, regulations, treaties, international agreements, and privileges are issued and amended by royal decrees and it enjoys equally hierarchical status compared to domestic legislation. The Saudi courts regularly apply international treaties when those are applicable.

Moreover, the Chicago Convention is integrated into Saudi law and is applicable in the jurisdiction, article (4) of Saudi Arabia's Civil Aviation Law stated that: “The provisions of the Chicago Convention and its annexes and all other international civil aviation Conventions to which the Kingdom has agreed are an integral part of this Law.” Also, Guadalajara Convention article (133) stated that: “Air Carrier: The contracting or actual carrier, as the case may be, under the Air Carriage Contract and the Guadalajara Convention of 1961.”

2.8 Does your jurisdiction make use of any taxation benefits which enhance aircraft trading and leasing (either in-bound or out-bound leasing), for example access to an extensive network of Double Tax Treaties or similar, or favourable tax treatment on the disposal of aircraft?

Saudi Arabia is signatory to a number of Double Tax Treaties with other nations, the effect of which varies. The treaties contain provisions to allocate taxing rights between countries and reduce tax burdens. The specific terms and benefits available under each treaty depend on the terms negotiated between Saudi Arabia and the respective treaty partner such as the convention between the Kingdom of Saudi Arabia and the Kingdom of Spain for the avoidance of double taxation and the prevention of tax evasion with respect to taxes on income and on capital – 2008 which stated “[p]rofits from the operation of ships or aircraft in international traffic shall be taxable only in the Contracting State in which the place of effective management of the enterprise is situated” (article 8).

2.9 To what extent is there a risk from the perspective of an owner or financier that a lessee of aircraft or other aviation assets in your jurisdiction may acquire an economic interest in the aircraft merely by payment of rent and thereby potentially frustrate any rights to possession or legal ownership or security?

Saudi Civil Aviation law deemed the aircraft lease contract as a right established on civil aircraft (article 56). However, it depends on the wording of the leasing contract. As operating and finance leases are governed solely by the terms of the lease agreement, a lessor's right to possession and its legal title and ownership of an aircraft or aviation assets are secured and provided by the terms of such an agreement. Payment of contractual rental by a lessor under the lease does not create rights capable of overriding the lessor's contractual rights or ownership in the aircraft or aviation assets.

3 Litigation and Dispute Resolution

3.1 What rights of detention are available in relation to aircraft and unpaid debts?

Generally, the GACA is expressly empowered to detain any aircraft if it is of the opinion that such detention is necessary to secure compliance with any provisions of the Aircraft Act or rules framed thereunder, or to implement an order made by any court.

The National and foreign air transport institutions and companies must pay the fees for civil aviation services that are due for their operations and flights within, from, to and through the airspace of the Kingdom in accordance with the provisions of this law and its regulations (article 2 – Civil Aviation Tariff Law). Moreover, no aircraft is permitted to leave the airport if it

lands before it has paid all the wages it is owed, unless the entity to which that aircraft belongs has an agent or a responsible representative in the Kingdom and approved by the Authority who will pay all the wages due in accordance with the provisions of this system and its regulations (article 6 – Civil Aviation Tariff Law). The air services unit at the airport must ensure that an authorised agent is present for the aircraft before take-off, or the pilot must pay the fees incurred (article 12 – Civil Aviation Tariff Law).

3.2 Is there a regime of self-help available to a lessor or a financier of an aircraft if it needs to reacquire possession of the aircraft or enforce any of its rights under the lease/finance agreement?

There is no specific statutory regime of “self-help” remedies to reacquire possession of the aircraft or enforce their rights under lease or finance agreements. However, self-help remedies are available, and their application generally depend on the terms of the lease or finance agreement and the applicable laws and regulations. Therefore, if the operator refuses to cooperate during the termination/de-registration/repossession process, a lessor/owner would have to seek court assistance to enforce its rights. Moreover, Clause (d) of article (53) of the Saudi Civil Aviation law govern the process of deregistration of an aircraft prior to the expiry of the lease agreement on receipt of an application from if the owner or lessee thereof requests that said aircraft be stricken off the Register.

3.3 Which courts are appropriate for aviation disputes? Does this depend on the value of the dispute? For example, is there a distinction in your jurisdiction regarding the courts in which civil and criminal cases are brought?

In Saudi Arabia, a special committee for aviation exists. A committee shall be formed, pursuant to a decision by the Board, of five members, one of whom at least shall have a degree in law to serve as chairman. Said committee shall have the power to decide all violations of the provisions of Saudi Civil Aviation Law and its Regulations. Its decisions shall be issued by majority vote and shall be approved by the Board’s Chairman or his delegate. Said decisions may be appealed before the Board of Grievances within 60 days from the date of notification of the parties concerned.

Commercial courts have jurisdiction on all commercial claims or other disputes related to trade, finance and commerce. As such, commercial courts have jurisdiction for claims between a lessor and a lessee, or between an airline and a repair company, etc.

Criminal cases are heard by criminal courts and civil matters are heard by civil courts.

Disputes with the Saudi administration is heard by the Board of Grievances.

3.4 What service requirements apply for the service of court proceedings, and do these differ for domestic airlines/parties and non-domestic airlines/parties?

Saudi Civil Procedure govern the applicable service requirements for service of court proceedings. If both parties to the dispute are in Saudi Arabia, the notification procedures are carried out via electronic message according to the person registered in the commercial registration.

In the event that the defendant is established outside of Saudi Arabia, the notification is sent through the formal diplomatic channels in the defendant’s country.

The procedure of service depends on whether service is made in the League of Arab States or a non-League of Arab States country. Service in the League of Arab States countries can be made by the Riyadh Arab Agreement for Judicial Cooperation – 1983, whereas service in non-League of Arab States countries must be affected in compliance with the relevant bilateral agreements between the sending and the receiving state. Service to certain non-League Arab States countries must be affected via formal diplomatic channels.

3.5 What types of remedy are available from the courts or arbitral tribunals in your jurisdiction, both on i) an interim basis, and ii) a final basis?

Final remedies are available both in courts and arbitral tribunals when a judgment/award becomes final and definitive in favour of the remedy claiming party, and such remedy is received through the enforcement court or by an agreement between the parties to execute the judgment outside the enforcement court. On the other hand, parties to the arbitration may agree that the arbitration panel – upon the request of one of them – may order either of them to take whatever temporary or precautionary measures it deems necessary as required by the nature of the dispute. The arbitral tribunal may oblige the party requesting to take these measures to provide an appropriate financial guarantee for the implementation of this measure. Moreover, the court competent to hear the case before it shall rule temporarily on urgent matters for which are related to the dispute itself. This ruling shall not affect the merits of the case, whether the request for a temporary ruling is filed directly or as a result of the original case.

3.6 Are there any rights of appeal to the courts from the decision of a court or arbitral tribunal and, if so, in what circumstances do these rights arise?

From a Court decision

When a primary court issues a judgment with regards to financial rights above (50,000) SAR, it is considered a primary judgment that can be appealed.

Based on Article (177) of the Saudi’s Sharia Pleading Law, rights to appeal a primary court judgment arise when one of the lawsuits’ parties for whom all of his requests have not been granted in the primary judgment, and the convict, may object (appeal) to the judgment, unless the Saudi’s Sharia Pleading Law stipulates otherwise.

After a decision from the Court of Appeal, or if there was no right to appeal, the parties can appeal to the Supreme Court. The Supreme Court only rules on matters of law: it merely ensures that the lower court correctly applied the law to the facts, without contradicting the Court of Appeal as to what the facts are (with the exception of a clear misrepresentation or distortion of the facts).

From an arbitral tribunal

As a general rule, an arbitrator has the same powers as any court, and an arbitral tribunal’s decision is binding. There is no right of appeal to the courts on a question of fact except for filing a claim to invalidate the arbitration award in accordance with the provisions set forth in the Saudi Arbitration Law.

Article (50) of the Saudi Arbitration Law – 2013 stated cases in which parties of the arbitration may file a lawsuit for

invalidation of the arbitration award, for example, if there is no arbitration agreement or if this agreement is invalid, voidable, or lapses upon expiration of its term.

3.7 What rights exist generally in law in relation to unforeseen events which might enable a party to an agreement to suspend or even terminate contractual obligations (in particular payment) to its contract counterparties due to *force majeure* or frustration or any similar doctrine or concept?

Articles 94 of the Saudi Civil Transactions Law – June 2023 set out the rules pertaining to the performance of contracts, contracts of adhesion, *force majeure* and the creation of third-party rights.

There is not a statutory definition of a *force majeure* event, but contractual clauses typically include provisions for issues such as the weather (flood, drought, earthquake, or other natural disaster), terrorist attacks and war, governmental acts, and more recently given the recent global shutdowns, pandemics and epidemics. *Force majeure* provisions are typically contained in US commercial agreements to address events beyond the parties' control that would frustrate one or both parties' performance. The provision typically enumerates the following qualifying events: epidemics, pandemics and quarantines, such as COVID-19; natural disasters, such as earthquakes or floods; violence, such as war, hostilities, terrorist acts or civil unrest; government action (i.e., changes in laws, regulations, order, and embargoes); and organised labour activities, such as strikes and work slow-downs, and shortages of power, supplies, infrastructure, or transportation. *Force majeure* provisions also usually include a "catch-all" clause such as "acts of god" to protect a party against unforeseen events that are not specifically enumerated. *Force majeure* clauses vary by events, conditions, subject matter, industry, and relative bargaining power.

Considering the recent events caused by the COVID-19 pandemic, in December 2020, the General Assembly of the Saudi Supreme Court issued a decision setting out a series of legal principles in relation to COVID-19 and its effects on contractual commitments and obligations, granting courts the power to adapt contractual obligations, taking into account the circumstances resulting from the pandemic.

4 Commercial and Regulatory

4.1 How does your jurisdiction approach and regulate joint ventures between airline competitors?

When it comes to joining ventures, there are no sector-specific competition law rules that apply to the aviation sector. However, Saudi Arabia has issued its "Competition Law" in 2019 which regulates any action that results in a total or partial transfer of ownership of assets, rights, shares, stakes, or obligations of an establishment/entity to another establishment/entity, or the bringing together of two or more managements into one joint management, in accordance with the controls and standards specified by the Law, whether it be airlines or not. Thus, for any actions that might result in "Economic Concentration", the entities involved in these activities must first obtain a No Objection Certificate (NOC) from the General Authority for Competition (GAC).

Competition Law aims to protect and encourage fair competition in Saudi Arabia, and to combat and prevent monopolistic practices that affect legitimate competition or the interest of the consumer, which leads to improving the market environment and developing the economy.

The Competition Authority is the authority responsible for promoting competition in Saudi Arabia and for preserving existing competition in the economy. The Competition Authority is authorised to enforce different rules, which it does in accordance with the policies that it has formulated over the years and with the guidelines that it publishes.

4.2 How do the competition authorities in your jurisdiction determine the 'relevant market' for the purposes of mergers and acquisitions?

It is difficult to provide a general rule in this regard because the criteria depend on the type of transaction under analysis. When it comes to the review of potential state subsidies or actions against free competition, the criteria are fixed and assessed on a case-by-case basis, considering, of course, existing precedents and guidelines. However, in the implementing regulations of the Competition Law, it clearly states that the "Relevant Market" is based on two elements which are (1) the relevant goods that are substitutable among themselves to meet a specific need of the consumer, and (2) the geographical scope in which the conditions of competition for the goods in question are similar. As mentioned in question 4.1 above, Economic Concentration includes any act that results in a total or partial transfer of ownership of an establishment's assets, rights, shares, stakes, or obligations to another establishment through merger, acquisition, ownership, or combining two or more managements into a joint management, or any other form that leads to control of an establishment – or more – including influencing its decisions, forming its administrative body, or its voting mechanism.

4.3 Does your jurisdiction have a notification system whereby parties to an agreement can obtain regulatory clearance/anti-trust immunity from regulatory agencies?

According to the Saudi Competition Law, agreements which may include restrictive arrangements are required to be approved, in advance, by the GAC. Moreover, Saudi Arabia has a notification system through which parties to an agreement can seek regulatory clearance from GAC. If parties to an agreement believe that their transaction may raise competition concerns or require regulatory approval, they can voluntarily notify the GAC and seek clearance by obtaining a NOC. The GAC is responsible for reviewing mergers, acquisitions, and other agreements to ensure compliance with Competition Laws and regulations in Saudi Arabia.

4.4 How does your jurisdiction approach mergers, acquisition mergers and full-function joint ventures?

The approach to mergers, acquisitions, and full-function joint ventures in Saudi Arabia is primarily governed by the Saudi's Competition Law, enforced by the GAC. For mergers and acquisitions and full-function joint venture, parties involved in a merger or acquisition, or joint venture are required to notify the GAC of the proposed transaction. The thresholds may vary based on factors such as market share, turnover, or asset value. The GAC assesses the proposed transaction to determine if it could potentially harm competition in the relevant market. Factors considered include market concentration, potential anti-competitive effects, and impact on pricing, service quality, and consumer choice.

If the GAC identifies potential anti-competitive effects, it may require the parties to propose remedies or conditions to mitigate those concerns.

On the other hand, any entity intending to participate in an economic concentration must notify the Authority prior to completing the transaction where the total annual value of sales of the participating entities exceeds one hundred million Saudi Riyals (SAR 100 million) during the last complete fiscal year. Saudi Competition Law stated, “[e]ntities seeking to join an economic concentration transaction must notify the Authority at least (90) days prior to the completion of such transaction if the total value of the entities’ annual sales exceeds the amount determined by the Regulations” (article 7).

Finally, according to the Saudi Competition Law, a company which holds a market share of 40% or more may be deemed a monopoly if such company holds significant market power. The general definition of dominance as a situation where an entity or a group of entities is controlling and/or is able to influence a certain percentage of the market in which it exercises its activity. The Implementing Regulations are more specific and define dominance by reference to the two following alternative criteria according to the implementing regulation (article 10):

- a market share in the relevant market amounting to 40% or more; or
- the ability to influence the Relevant Market, including controlling prices, production or offering.

4.5 Please provide details of the procedure, including time frames for clearance and any costs of notifications.

According to the Saudi Competition Law, companies may not merge unless a pre-merger notification has first been filed and the consent of the Competition Commissioner to the merger has been obtained, and – if such consent is conditional – in accordance with the conditions stipulated. According to article (11) from Saudi Competition law, concentrations shall be notified to the GAC prior to their implementation. The Authority must then respond within (90) working days.

According to article (14) from the implementing regulation, the notification and application on an anticipated merger or merger is to be made to the GAC together with information and supporting documents detailed in the notification and application form. Some of the details required are:

- Basic information about the economic concentration process, and compliments.
- Relevant sectors and markets.
- The potential impact of economic concentration on competition in general.
- Major clients.
- The most prominent competitors.
- Submitting any other data, information or documents required by the Authority to study economic concentration.

To determine the financial consideration for the economic concentration examination it is 0.0002 of the total annual sales value fees for establishments wishing to participate in economic concentration, provided that the financial consideration does not exceed the amount specified in this clause is SAR 250,000.

4.6 Are there any sector-specific rules which govern the aviation sector in relation to financial support for air operators and airports, including (without limitation) state aid?

Yes, with regard to financial support, article (15) of the Civil Aviation Tariff Law has given the GACA’s Board of Directors the authority to review charges and rents and their categories

mentioned in the aforementioned Law, and amend and approve them, whenever necessary. Such article clearly shows that the GACA has authority over aviation related charges. Though Saudi’s Council of Ministers can also issue a decision for a “state aid” to air operators, the GACA and the General Corporation of Saudi Arabian Airlines alongside the Ministry of Finance collaborate to implement such decisions.

4.7 Are state subsidies available in respect of particular routes? What criteria apply to obtaining these subsidies?

In general, there are no state subsidies available for particular routes.

4.8 What are the main regulatory instruments governing the acquisition, retention and use of passenger data, and what rights do passengers have in respect of their data which is held by airlines and airports?

Saudi Arabia seeks to implement the best international practices with regard to the policies and controls of personal data protection and national data management and governance, in addition to enhancing the data’s value in making strategic decisions, foreseeing the future, and achieving the highest levels of responsibility and transparency.

The main regulatory instrument for the acquisition, retention and use of personal data is the Personal Data Protection Law 2021. The Personal Data Protection Law 2021 governs the collection, retention and use of personal data and it applies to entities established in Saudi Arabia. Generally, there is no specific provision under the Personal Data Protection Law concerning retention of passengers’ data by both airlines and airports and, as such, the general provisions concerning personal information of individuals would apply.

The rights available to an individual under the Personal Data Protection Law are, *inter alia*, as follows:

- Right to Know: includes the knowledge of the legal or practical justification for data processing (article 4 – implementing regulation of Personal Data Protection).
- Right to Access Personal Data: includes access to personal data and obtaining a copy of them free of charge (articles 5 and 6 – implementing regulation of Personal Data Protection).
- Right to Request Personal Data Correction: the data subject has the right to request correction of their personal data that they deem to be inaccurate, incorrect, or incomplete (article 7 – implementing regulation of Personal Data Protection).
- Right to Request Personal Data Destruction: the data subject has the right to request the destruction of their personal data as stipulated in the Law (article 8 – implementing regulation of Personal Data Protection).

4.9 In the event of a data loss by a carrier, what obligations are there on the airline which has lost the data and are there any applicable sanctions?

There is no specific provision under the Personal Data Protection Law 2021 on obligations of airlines in the event of data loss and the general provisions under the Personal Data Protection Law 2021 would apply to airlines. Air carriers in Saudi Arabia, similar to other entities which collect data, are required by law to protect the data.

Saudi implementing regulation of Personal Data Protection has enhanced notification provisions around data losses and breaches. According to the article (24) – Saudi implementing regulation of Personal Data Protection, the controller of the data is responsible for reporting a personal data breach without undue delay (and in any case within 72 hours after first becoming aware of the breach) to the relevant data protection authority unless the breach is unlikely to result in a risk to the rights and freedoms of the data subject(s). A processor must notify any data breach to the controller without undue delay. The notice shall include the following:

- A description of the personal data leakage incident, including its time, date, and how it occurred and the time to inform the controlling party.
- Categories and actual or approximate numbers of personal data subjects concerned, and the type of data Personal.
- A description of the risks that may result from the incident, including the level of actual or potential impact that it may include personal data, personal data holders, and the actions and measures taken. by the controller to prevent or reduce or mitigate the effects of those risks, and future measures that the control authority will take action to prevent a recurrence of the incident.
- A statement if the personal data subject has been or will be notified of a leak of his or her personal data, in accordance with the text.
- Contact information for the controller or its personal data protection officer – if any – or any other official has information regarding the incident being reported.

In the case where any of the provisions of the law and regulations are violated, the sanction is a fine of up to SAR 5 million.

4.10 What are the mechanisms available for the protection of intellectual property (e.g. trademarks) and other assets and data of a proprietary nature?

There are no specific provisions relating to intellectual property rights in relation to aircraft. All available mechanisms are provided for by the Saudi law of Intellectual Property. Intellectual property and data in Saudi Arabia are governed by the following statutes:

- Patents Law 2001.
- Trademarks Law 2002.
- Copyright Law 2003.
- Law of Patents, Layout Designs of Integrated Circuits.
- Plant Varieties, and Industrial Designs 2004.

Saudi Arabia joined WIPO in 1982. It has since acceded to the following international treaties administered by WIPO:

- The Berne Convention for the Protection of Literary and Artistic Works.
- The Locarno Agreement Establishing an International Classification for Industrial Designs.
- The Marrakesh Treaty to Facilitate Access to Published Works For Persons Who Are Blind, Visually Impaired, Or Otherwise Print Disabled.
- The Paris Convention for the Protection of Industrial Property.
- The Patent Cooperation Treaty.
- The Patent Law Treaty.
- The Vienna Agreement Establishing an International Classification of Figurative Elements of Marks.

For the protection of intellectual property, the party that wishes to protect any intellectual property must first register the intellectual property through the Saudi Authority for Intellectual Property, whether it be a trademark, copyright, or a patent. As

an example, for trademark protection, in Article (21) of the Trademark Law it is stated that: “[t]he person who registered the trademark is considered its owner alone, and any person’s use of a registered trademark is conditional on the approval of its owner. The owner of a registered trademark has the right to file a lawsuit seeking to prevent others from using it or using any other sign similar to it that would mislead the public regarding the products or services for which the trademark was registered, as well as regarding similar products or services. The fair use of signs, phrases, and descriptive drawings devoid of the distinctive character contained in the registered mark is excluded from the rights arising from the registration of a mark.”

The Saudi Authority for Intellectual Property receives complaints related to violations of property rights.

4.11 Is there any legislation governing the denial of boarding rights and/or cancelled flights?

In Saudi Arabia, passenger rights are mainly governed by a regulation called “Regulation for the Protection of Travelers’ (Passengers’) Rights” that has come into effect on November 20, 2023. This regulation includes eight mandatory rights and 30 articles that guarantee the traveller/passenger’s access to support and compensation in cases of advance, delay, or cancellation of flights and denial of boarding due to overbooking or downgrading. Some compensation amounts to 150% and 200% of the value of the flight ticket. Moreover, the Montreal Convention applies in respect of passenger rights.

The passenger’s rights in the cases of denied boarding are:

- The Air Carrier shall not deny boarding to any Customer if there is a seat available in a higher class on the same flight. In such a case, the Air Carrier shall upgrade the Customer to a higher class without any additional payments.
- In case boarding is denied to any Customer since alternative seats are not available on the same flight, the air carrier must act immediately as follows:
 - Provide the Customer with sufficient clear information in writing regarding his/her rights if boarding has been denied and provide the necessary guidance in this regard.
 - Afford the Customer the right to choose between travelling on a different flight operated by the same Air Carrier, or to travel with another Air Carrier. The difference in cost, if any, shall be borne by the Air Carrier.

If the Customer is denied boarding by the Air Carrier and the Customer decides to terminate the contract, the Air Carrier shall refund the ticket price for any unused sector(s) and provide compensation equal to (100%) of that value.

4.12 What powers do the relevant authorities have in relation to the late arrival and departure of flights?

For late arrival and departure of flights, the GACA is empowered to pursue enforcement proceedings against an airline for non-compliance with the rules.

Air carrier obligations

- The air carrier shall commit to the announced flight schedule and the flight times shown in the Reservation, unless such delay is for security and safety reasons, based on reports approved by the GACA.
- The air carrier shall notify the passenger about the flight delay at least 45 minutes prior to take-off time, and the notice shall contain the new take-off time.
- The air carrier shall update the flight status and any additional delays every 30 minutes, and the consecutive

delay periods for the same flight shall be treated as a continuous period.

- Taking into consideration the provisions stipulated in Paragraph (3-C) of Article Seventeen of the Regulations, the air carrier shall be responsible for the cost of extending the passenger's accommodation until the new flight time in case the flight delay occurs while the passenger is in a paid accommodation location, whether a hotel or any other residential unit with the same purpose, and the passenger shall be informed of the new departure time and given the necessary support.
- Cases of delays in departure and their duration are dealt with by offering care and support services based on the time difference between the actual and the scheduled departure time.
- The compensation resulting from flight delays is calculated based on the actual arrival time of the passenger compared to the arrival time specified in the Reservation. The compensation is provided as follows:
 - The equivalent of 50 Special Drawing Rights Units if the total flight delay duration is three to six hours.
 - The equivalent of 150 Special Drawing Rights Units if the total flight delay duration is more than six hours.
 - The passenger has the right to request the termination of the contract with the air carrier in case the flight is delayed for a period exceeding two hours, and the passenger is entitled to a full refund of the ticket price only, without the deduction of any fees.
 - In case the flight delay extends to over five hours, the passenger has the right to consider the flight cancelled and the passenger is entitled to compensation as per the cancellation provisions specified in the Regulations.

4.13 Are the airport authorities governed by particular legislation? If so, what obligations, broadly speaking, are imposed on the airport authorities?

Since airports are companies established in accordance with the Saudi's Companies Law, it is organisationally governed by the Companies Law. However, since their activities are the operation of the aviation field, they are governed by the GACA's regulations in applying the provisions related to aviation regulation and related safety regulations.

4.14 To what extent does general consumer protection legislation apply to the relationship between the airport operator and the passenger?

Generally, there is no contractual relationship between passengers and airport operators. Passengers normally enter air carriage contracts with airlines or tour operators. Article (4) – Regulation for the Protection of Travelers' (Passengers') Rights stated that: "[t]he contractual relationship between the air carrier and the traveller is established and is subject to the provisions of these regulations as soon as the reservation is issued." The airlines, in turn, enter into agreements with airport operators for the provision of services to passengers. Therefore, passengers and airport operators Regulation for the Protection of Travelers' (Passengers') Rights directly applicable between these parties.

4.15 What global distribution suppliers (GDSs) operate in your jurisdiction?

All the major GDSs operate in Saudi Arabia.

4.16 Are there any ownership requirements pertaining to GDSs operating in your jurisdiction?

There are no specific ownership requirements for GDSs. Please check <https://misa.gov.sa/ar/> for any updates.

4.17 Is vertical integration permitted between air operators and airports (and, if so, under what conditions)?

There is no express prohibition, although the general competition rules would come into play, notably those relating to the potential abuse of a dominant position.

4.18 Are there any nationality requirements for entities applying for an Air Operator's Certificate in your jurisdiction or operators of aircraft generally into and out of your jurisdiction?

GACAR (119.35) sets out certification requirements and prescribes the content of operations specifications and certain other requirements for commercial operations.

It states that a person may not operate as a commercial operator unless that person is (a) a citizen of the Kingdom of Saudi Arabia, (b) maintains a principal base of operations in the Kingdom of Saudi Arabia, and (c) obtains an AOC.

The general requirements for the application of an AOC in Saudi are as follows:

- (a) A person applying to the President for an AOC under this part must submit an application as follows:
 - (1) in a form and manner prescribed by the President of the GACA; and
 - (2) containing any information the President of the GACA requires the applicant to submit.
- (b) Each applicant must submit the application to the President at least 90 working days before the date of intended operation.
- (c) Each applicant for a certificate under this part and each applicant for operations specifications authorising a new kind of operation subject to GACAR Parts 121 or 135 must conduct proving tests as authorised by the President of the GACA during the application process. All proving tests must be conducted in a manner acceptable to the President of the GACA and under the appropriate operating and maintenance requirements of GACAR Parts 121 or 135 that would apply if the applicant were fully certificated. The President of the GACA must issue a letter of authorisation to each person stating the various authorities under which the proving tests will be conducted.

GACAR (129.7) sets out application requirements for foreign air carriers to operate in Saudi as follows:

- (a) a person applying to the President for an authority to operate under this part (applicant) must submit an application (1) in a form and manner prescribed by the President of the GACA, and (2) containing any information the President of the GACA requires the applicant to submit;
- (b) each applicant must submit its application for authorisation to the President at least 30 working days before beginning operations to or from or within the Kingdom of Saudi Arabia; and
- (c) the GACA may issue authorising documents to an applicant if the President finds that the applicant (1) meets the applicable requirements of part (129), (2) is properly and adequately equipped to conduct the operations

described in the authorising documents, and (3) holds a valid air operator certificate issued by a contracting state to the Convention on International Civil Aviation.

5 In Future

5.1 In your opinion, which pending legislative or regulatory changes (if any), or potential developments affecting the aviation industry more generally in your jurisdiction, are likely to feature or be worthy of attention in the next two years or so?

There is a newly approved regulation called “Regulation for the Protection of Travelers’ (Passengers’) Rights” that came into effect on November 20, 2023. This regulation is more likely to be worthy of the attention of more people due to its inclusion for all travellers, and their rights, travelling from or to the Kingdom of Saudi Arabia – without prejudice to the provisions of the international treaties/conventions to which the Kingdom is a party of.

With regard to developments, His Royal Highness Prince Mohammed bin Salman bin Abdulaziz, Crown Prince, Prime Minister and Chairman of the Supreme Committee for Transport and Logistics, has launched the Master Plan for Logistics Centers, which aims to develop the infrastructure of the Kingdom’s logistical sector, diversify the local economy, and enhance the status of the Kingdom of Saudi Arabia as a leading investment destination and a global logistical hub. The plan is part of a package of ongoing initiatives set as targets by the National Transport and Logistics Strategy (NTLS) with the

aim of developing the logistical sector to support the economy, increase the local, regional and international connections of the international trade networks and global supply chains, boost the partnership with the private sector, and thus increase the opportunity to generate jobs, and make of the Kingdom of Saudi Arabia a global logistical hub, given its geographical location among three important continents: Asia; Europe; and Africa. The Master Plan for Logistics Centers stipulates 59 centres with a total area of more than 100 million square metres, including 12 in the Riyadh Region, 12 in the Makkah Region, 17 in the Eastern Region, and 18 distributed in the rest of the Kingdom. There are currently 21 centres being worked on. All centres will be completed by 2030.

The centres will also enable local industries to export Saudi products with high efficiency, support e-commerce by facilitating a rapid link between logistics centres and distribution centres in the Kingdom’s various regions, cities and governorates, provide high traceability and facilitate the issuance of licences to practice logistic activity, especially after the launch of the unified logistics license and the licensing of more than 1,500 local, regional and international logistics companies, and the launch of the Fasah initiative (an E-system integrated in Saudi customs), in cooperation with the concerned government agencies.

Moreover, there is a proposed international airport project, the “King Salman International Airport”, which will be in the capital of Saudi Arabia, Riyadh. The airport will span 57 sq.km. (22 sq.mi.), and will have six parallel runways. The airport aims to have a capacity for 120 million annual passengers by 2030, and 185 million annual passengers by 2050. It is expected to be one of the world’s largest airports.



Hamad Khalifa AlDossary is the founder of Dossary Law Firm, and practises in the area of corporate law as well as arbitration and trade disputes expertise. He advises foreign investors and private companies. Prior to establishing Dossary law firm, Hamad served as Counsel for many years at Blake, Cassels & Graydon LLP.

Hamad is a litigator specialising in corporate and commercial cases across several industries including oil and gas, manufacturing, construction and intellectual property. He has appeared before all levels of courts in Saudi Arabia. His experience has been acquired working on numerous cases in various areas of litigation including labour, banking, competition, securities, intellectual property and complex commercial. Many of these cases have been multi-party.

Hamad has extensive experience in all areas of corporate law such as due diligence, corporate transactions, and corporate and reorganisations. His duties include the incorporation and ongoing maintenance of new businesses in Saudi Arabia, due diligence reviews and summaries of corporate records, preparation of corporate documents for corporate transactions, and reorganisations.

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Spain

AUGUSTA ABOGADOS



Sergi Giménez

1 General

1.1 Please list and briefly describe the principal legislation and regulatory bodies which apply to and/or regulate aviation in your jurisdiction.

The main bodies that regulate aviation in Spain are the Directorate General of Civil Aviation (*Dirección General de Aviación Civil*, “DGAC”) and the State Agency for Aviation Safety (*Agencia Estatal de Seguridad Aérea*, “AESA”), both of which are under the umbrella of the Ministry for Development (*Ministerio de Fomento*). The DGAC is governed mainly by Royal Decree 953/2018 and is responsible for the preparation of industrial and strategic policies and proposals for the aviation sector, representation and coordination with other public administrations and with the European Union (“EU”) in matters of air transport policy, and the approval of aeronautical circulars. AESA was created following the mandate of Act 28/2006, whereby state agencies were created with the aim of modernising the Spanish administration, and is mainly regulated by Royal Decree 184/2008; it has responsibility for exercising inspection and penalisation authority in civil aviation matters, and it takes the initiative to approve provisions in matters of aviation safety and passenger protection, among other topics.

In addition to international treaties to which Spain is a party and EU legislation, the main Spanish domestic provisions applicable to aviation are:

- The 1954 Act on Pledges over Movable Assets and Mortgage without Displacement.
- The 1960 Air Navigation Act (*Ley de Navegación Aérea*, “LNA”).
- Act 28/1988 on Instalment Sales of Movable Assets.
- The Air Safety Act 21/2003 (*Ley de Seguridad Aérea*, “LSA”).
- Royal Decree 384/2015 – Regulations for the granting of registration marks.

1.2 What are the steps which air carriers need to take in order to obtain an operating licence?

AESA is the competent licensing authority in Spain relating to the granting of an operating licence. Given Spain’s membership of the EU, the main requirements are those set out in Regulation 1008/2008 (as amended from time to time) and are identical to those of other Member States:

- The applicant must decide whether it desires a Type A or Type B licence, depending on the operations to be undertaken.

- To obtain a Spanish licence, the operator’s principal place of business must be located in Spain.
- The operator must also obtain a valid air operator certificate (“AOC”) issued by AESA, which in turn requires having at least one aircraft at its disposal through ownership or a dry lease agreement – wet lease agreements are not acceptable for the purposes of obtaining an operator’s licence.
- The principal activity of the applicant must be the operation of air services, although ancillary activities such as repair or maintenance of aircraft are also admissible.
- EU Member States or their nationals must own more than 50% of the operator and exercise, directly or indirectly, effective control.
- Regulation 1008/2008 also stipulates certain financial, insurance and reputational requirements that the applicant must meet.

1.3 What are the principal pieces of legislation in your jurisdiction which govern air safety, and who administers air safety?

As a member of the EU, Spain is bound by all Regulations, Directives, legal provisions and jurisprudence approved by the EU’s legislative bodies and courts. From a domestic perspective, the main provisions are embodied in the LNA and the LSA, although – as with EU legislation – there are detailed regulations on many specific aspects of aviation operations. Air safety is essentially under the control of AESA, although other governmental agencies (such as police bodies) cooperate with AESA as well.

1.4 Is air safety regulated separately for commercial, cargo and private carriers?

The LSA imposes a number of rules that apply to all parties which are in any way involved in aviation: personnel; flight schools; aeroclubs; designers; manufacturers; maintenance and service providers; air operators; commercial airlines; aerial works; air navigation service providers; handling agents; airport and aerodrome managers, etc. – including passengers. In addition to those general provisions, the LSA then sets out rules which specifically apply to specific participants or categories of participants. The International Civil Aviation Organization’s (“ICAO”) definition, whereby general aviation is deemed to be “*all civil aviation operations other than scheduled air services and non-scheduled air transport operations for remuneration or hire*”, is also applicable in Spain and is used to distinguish general aviation from commercial and public transport.

1.5 Are air charters regulated separately for commercial, cargo and private carriers?

Leaving aside military activities, all aviation issues are regulated by AESA. Charter services are regulated in accordance with the Chicago Convention and EU Regulations, and present no special characteristics in respect of those. We should point out, however, that AESA considers that all airlines which are interested in carrying out a “series of commercial air operations” within Spanish airspace must submit their programmes for review (community carriers only in respect of their extra-EU flights). In this respect, AESA considers that charter flights which constitute an evident systematic series also fall under the category of a “series of commercial air operations”, and therefore that non-EU carriers should obtain the relevant licences before starting this type of operation. Where charter operations are only of an “occasional” nature, AESA has created a specific procedure.

1.6 As regards international air carriers operating in your jurisdiction, are there any particular limitations to be aware of, in particular when compared with ‘domestic’ or local operators? By way of example only, restrictions and taxes which apply to international but not domestic carriers.

Like in the rest of the EU Member States, the provisions of Regulation (EC) 1008/2008 on common rules for the operation of air services (along with all related rules and regulations) apply in Spain. Although the provisions of this Regulation are directly applicable, some follow-up and detailed provisions were approved in Spain, presently through Order TMA/105/2020. Thus, to the extent that interested parties comply with the requirements of Regulation 1008/2008 (as amended), access to the Spanish market – and thereby to the EU market – will be granted.

Intra-EU routes are, in general terms, automatically authorised pursuant to Regulation 1008/2008, so that no specific commercial licences must be obtained. As an exception, certain routes which are classified as being of public interest, as well as operations between the Canary Islands and Gibraltar, are subject to certain restrictions.

To operate extra-EU routes commercially, Community carriers must ask AESA to issue the relevant air traffic licence. Normally this will require the existence of an air transport agreement between Spain or the EU and the country in question. Most of these agreements demand that the airlines chosen to operate air services must have been formally designated by the Spanish aeronautical authority. Airlines from third countries will also need to be designated by their respective aviation authority and, before performing any scheduled flights, become accredited by AESA in accordance with the requirements set forth in Royal Decree 1392/2007.

Non-scheduled commercial operations are subject to different rules under the Chicago Convention 1944. Generally speaking, the Spanish authorities allow such operations to be carried out by air carriers belonging to signatory states of the Chicago Convention if the state concerned applies reciprocal treatment to Spanish air carriers.

AESA has published the various procedures and forms of documents (in Spanish and English) on its website: <https://www.seguridadaerea.gob.es/es/ambitos/operaciones-aereas/permisos-comerciales>

1.7 Are airports state or privately owned?

Most Spanish airports are state-owned, however, following a privatisation process, they are being managed by a private company named “AENA, S.A.”, in which the state also has a stake. Additionally, there is a small number of privately owned airports and airports owned by the Autonomous Regions or private institutions.

1.8 Do the airports impose requirements on carriers flying to and from the airports in your jurisdiction?

There are no particular requirements imposed on carriers other than those arising from EU legislation relating to security, safety and operational requirements, as well as slot availability.

1.9 What legislative and/or regulatory regime applies to air accidents? For example, are there any particular rules, regulations, systems and procedures in place which need to be adhered to?

In line with ICAO guidelines and EU legislation (mainly embodied in Regulation (EU) 996/2010 on the investigation and prevention of accidents and incidents in civil aviation), Spain has created the Commission for the Investigation of Accidents and Incidents in Civil Aviation (*Comisión de Investigación de Accidentes e Incidentes de Aviación Civil*, “CIAIAC”, <https://www.mitma.gob.es/organos-colegiados/ciaiac>). Domestic legislation has developed in some detail the international provisions (mainly laid out in the Chicago Convention 1944 and EU Regulation 376/2014) through Royal Decree 389/1998, the LSA, Royal Decree 1088/2020 and certain other Royal Decrees which periodically publish the State Program of Operational Safety for Civil Aviation. In line with the legislative framework, the CIAIAC’s investigations are exclusively technical in nature, with the ultimate aim to prevent future accidents and incidents, and are not directed towards allocating any kind of liability.

Pursuant to the LSA and Royal Decree 389/1998, “any person” who becomes aware of an accident or incident in civil aviation must “immediately” report it to the closest authorities, who then must urgently contact the CIAIAC. Obviously, special reporting obligations are imposed upon pilots, operators, aircraft owners, aviation authorities, airport directors, air traffic controllers and all other related services and bodies.

The detailed reporting system is set forth in Royal Decree 1088/2020, which applies to all events occurring in Spanish territory or where Spanish-registered aircraft or those operated by Spanish citizens are involved. All reports are directed to the DGAC, which then coordinates its activities with the CIAIAC and other relevant agencies.

1.10 Have there been any recent cases of note or other notable developments in your jurisdiction involving air operators and/or airports?

After the COVID-19 pandemic, the number of passengers has gradually increased to pre-pandemic levels. However, the armed conflict between Russia and Ukraine has introduced a new element of uncertainty for European aviation.

The merger between Iberia and Air Europa announced in December 2019, which had been cancelled due to the adverse effects of the altered economic environment caused by the COVID-19 pandemic, was reinstated some months ago. It is presently under scrutiny by the European competition authority.

At a domestic level, the new alternative dispute resolution mechanism for passenger claims came into force in May 2023 once AESA became certified as the arbitration body in charge. The industry is still analysing the effects of the system because under the new rules airlines are forced to comply with AESA rulings even if they can be challenged in court, whereas passengers are not bound by AESA's decisions relating to their claims for compensation. This is likely to create an unbalanced situation, potentially with an impact on airline profits and on the judicial system.

1.11 Are there any specifically environment-related obligations or risks for aircraft owners, airlines, financiers, or airports in your jurisdiction, and to what extent is your jurisdiction a participant in (a) the EU Emissions Trading System (EU ETS) or a national equivalent, and (b) ICAO's Carbon Offsetting and Reduction Scheme for International Aviation (CORSIA)?

Like in all other EU member countries, the EU ETS scheme is fully applicable in Spain and, as a matter of fact, Spanish airlines have been implementing internal procedures over the years to be compliant. Similarly, AESA is cooperating with ICAO and other aviation authorities to implement CORSIA in Spain.

2 Aircraft Trading, Finance and Leasing

2.1 Does registration of ownership in the aircraft register constitute proof of ownership?

In Spain there is a dual registration system. Its main features can be summarised as follows.

- **Aircraft Matriculation Registry**
First, there is an aircraft registry, the Aircraft Matriculation Registry (*Registro de Matricula de Aeronaves*, "RMA"), (<https://www.seguridadaerea.gob.es/es/ambitos/aeronaves/registro-de-matriculas-de-aeronaves-civiles/registro-de-matriculas>). The RMA falls under the jurisdiction of AESA (<https://www.seguridadaerea.gob.es>), a body of the Ministry of Development. The RMA is an administrative registry of aircraft, but not a registry of title or ownership of aircraft. It is operator-based. The main effect of registration is that an aircraft is provided with a Spanish registration number (beginning with the letters EC, followed by a hyphen and a combination of three letters, e.g. EC-XXX) and thus becomes a Spanish aircraft.
- **Central Movable Assets Registry**
Second, there is the Central Movable Assets Registry (*Registro de Bienes Muebles*, "RBM"), under the jurisdiction of the Directorate General of Registries and Notaries, a body of the Ministry of Justice. The RBM is a register of title, ownership and encumbrances over movable assets, including aircraft. The main effect of registration is that evidence is provided in respect of the status of ownership and liens over assets.

Historically, the LNA established that only Spanish individuals or companies were permitted to register their ownership title over aircraft. Upon Spain's entry into the European Economic Community ("EEC") in 1986, this provision began to be interpreted to include EU citizens. However, this has not yet been expressly stated in any legal provision relating to the RBM. Article 185 of the 1956 Commercial Registry Regulations (which is still in force pursuant to the 13th Additional Provision of Royal Decree 1784/1996) merely states that foreign legal entities may record their ownership title over aircraft at the Commercial Registry, subject to international treaties, the principle of

reciprocity and legal provisions. For these purposes, the Commercial Registry has since been replaced by the RBM. So far, no express legal provision, reciprocity plan or international treaty has been enacted or published whereby foreign owners would be permitted to register their ownership title in aircraft at the RBM. Nevertheless, Royal Decree 384/2015, which contains the RMA Regulations (presently under review), is being interpreted in practice to allow (and actually oblige) non-Spanish aircraft owners (including non-EU citizens) to register their ownership title in all aircraft that are to bear Spanish registration marks. While this seems to be a commonly accepted practice, some legal authors question this interpretation of the law and consider that such recordation of aircraft transactions at the RBM is not mandatory. In practice though, and but for a few exceptions, most transactions involving Spanish-registered aircraft must be recorded at both the RMA and the RBM.

2.2 Is there a register of aircraft mortgages and charges? Broadly speaking, what are the rules around the operation of this register?

As indicated above, the RBM is a registry of title and, hence, mortgages and charges over aircraft are to be recorded there. In accordance with the provisions of Regulation (EC) 593/2008, of 17 June 2008, on the Law Applicable to Contractual Obligations (the Rome I Regulation), Spanish law follows the principle of *lex rei sitae* (i.e., place of location of an asset) to determine which law is applicable to securities and guarantees created over assets, such as mortgages and pledges. Thus, where the security relates to assets or rights located in Spain at the time of creating the assignment, Spanish material legal provisions on pledges over assets or mortgages would become applicable. Article 10.2 of the Spanish Civil Code states that mortgages over aircraft are governed by the law of the country of their registration. Thus, a non-Spanish law mortgage created over an aircraft while such aircraft is registered in the RMA would not be considered a valid mortgage by the Spanish courts.

Given the formalities and costs involved in setting up a Spanish law aircraft mortgage, these are created only occasionally. Such mortgages must be set up in a public deed executed before a notary public, which must include certain essential information (parties, detailed description of the charged assets, title of the mortgagor, secured amount, valuation of the assets, etc.). This document must be executed in Spanish, although there is no obstacle to attaching an English translation. The mortgage must be recorded at the RBM. Mortgages are subject to stamp duty tax, at a rate that varies between 1% and 1.5% on the value of the charged asset. Further, the fees of the notary public and of the RBM should also be taken into account, since they also depend on the value of the charged asset. Finally, where there is an international element to the transaction, often translation costs are to be paid.

2.3 Are there any particular regulatory requirements which a lessor or a financier needs to be aware of as regards aircraft operation?

Other than those arising from the prohibition of self-help in Spain (see question 3.2 below), there are no specific regulatory requirements. In most situations, aircraft are returned to their owners or lessors by executing a termination agreement, a possibility that is expressly contemplated under the RMA Regulations. It should be borne in mind, however, that given the dual-registry situation in Spain, the entire process may be more time-consuming than in other jurisdictions.

2.4 As a matter of local law, is there any concept of title annexation, whereby ownership or security interests in a single engine are at risk of automatic transfer or other prejudice when installed 'on-wing' on an aircraft owned by another party? If so, what are the conditions to such title annexation and can owners and financiers of engines take pre-emptive steps to mitigate the risks?

Spanish law recognises the concept of “accession” (derived from Roman law), and it is particularly relevant when an engine owned by one party is affixed to an airframe owned by another party. We are not aware of any existing case law that would resolve this issue, but it is common practice for the parties to enter into rights recognition agreements in these situations. Also, since the entry into force of the Cape Town Convention 2001 in 2016, rights over aircraft engines can now be recorded as “international interests” at the International Registry of Mobile Assets, which provides for enhanced protection.

2.5 What (if any) are the tax implications in your jurisdiction for aircraft trading as regards a) value-added tax (VAT) and/or goods and services tax (GST), and b) documentary taxes such as stamp duty; and (to the extent applicable) do exemptions exist as regards non-domestic purchasers and sellers of aircraft and/or particular aircraft types or operations?

Although the tax aspects of aircraft trading transactions must be analysed on a case-by-case basis, in general terms lease payments, loan repayments and transfers of aircraft are usually tax-exempt when they relate to aircraft that are chiefly operated for international commercial flights or by commercial airlines. However, despite being tax-exempt, the parties are still obliged to submit certain tax filings with the Spanish tax authorities before such transactions can be recorded. Furthermore, particular attention should be paid when an aircraft is transferred while being in Spanish territory, because value-added tax at a rate of 21% could be triggered under certain circumstances. In any case, when privately-owned aircraft are involved, a thorough tax analysis is advisable.

2.6 Is your jurisdiction a signatory to the main international Conventions (Montreal, Geneva and Cape Town)?

The Kingdom of Spain is a state party to the following air law treaties (all of them in effect), among others:

- Warsaw Convention 1929 (as subsequently amended by the Montreal and Hague Protocols).
- Rome Convention 1933.
- Chicago Convention 1944.
- Rome Convention 1952.
- The Hague Convention 1970.
- Montreal Convention 1971.
- Montreal Convention 1999.
- Cape Town Convention 2001.

2.7 How are the Conventions applied in your jurisdiction?

In accordance with Article 94 of the Spanish Constitution, once an international treaty has been approved by the Parliament, ratified by the King and published in the State Official Gazette, it enjoys a higher hierarchical status than domestic legislation;

consequently, its provisions prevail over any conflicting internal rules or provisions. Spanish judges regularly apply international treaties when those are applicable.

2.8 Does your jurisdiction make use of any taxation benefits which enhance aircraft trading and leasing (either in-bound or out-bound leasing), for example access to an extensive network of Double Tax Treaties or similar, or favourable tax treatment on the disposal of aircraft?

Spain is bound by EU legal provisions concerning taxation relating to the trading and leasing of aircraft and, consequently, there are no particular tax benefits foreseen for this industry. However, Spain has entered into Double Tax Treaties with some 90 countries, which facilitate international trade, including the leasing, acquisition and disposal of aircraft.

2.9 To what extent is there a risk from the perspective of an owner or financier that a lessee of aircraft or other aviation assets in your jurisdiction may acquire an economic interest in the aircraft merely by payment of rent and thereby potentially frustrate any rights to possession or legal ownership or security?

Spanish law makes a clear distinction between possession, legal ownership and security “*in rem*”. Where the terms of an aircraft lease agreement are clear, Spanish courts would generally not recharacterise the transaction as having a different nature just based on the payment of rent. However, in addition to the contract between the parties, a Spanish court might take into account external circumstances (such as the actual behaviour of the parties, exchange of correspondence, etc.) to identify the parties’ actual intent and the true nature of the transaction.

3 Litigation and Dispute Resolution

3.1 What rights of detention are available in relation to aircraft and unpaid debts?

The main liens and detention rights to be considered are the following:

- Maintenance providers have a right of retention over those pieces of equipment which are in their possession until payment in full for the works undertaken. The nature of this right is sometimes disputed, but certain regional codes clearly state that it is a right *in rem*.
- Expenses which are necessary for the rescue and maintenance of an aircraft have priority over a registered mortgage over the aircraft under certain circumstances.
- Salary debts towards employees have priority over debts owed to creditors secured by registered mortgages and pledges.
- Under the LNA, the preferential credits on an aircraft would be: (i) tax credits owed to states; (ii) last month's wages owed to the crew; (iii) credits of insurers for the last two years; (iv) payments owed as compensation for damages; and (v) rescue costs.
- In insolvency situations, holders of privileged credits over an aircraft have a separation right of the aircraft from the “assets of the insolvency’s estate” (*masa activa del concurso*) of the relevant debtor.
- Although not expressly contemplated in legal provisions, in practice AENA exercises a *de facto* detention right when airport charges and similar items have not been paid in full. Under applicable law, AENA is entitled to request

a seizure of assets to collect payments arising from “public services” (e.g. use of airport runways, aviation meteorological services, etc.) if such payments have been resolved upon within a “forced recovery procedure” (*procedimiento de apremio*) initiated by AENA. If the debtor does not pay when requested to do so, its assets will be seized through the Spanish tax authorities. Spanish law establishes an order of precedence to seize assets (i.e., firstly cash and bank accounts, then marketable securities and instruments, etc.).

3.2 Is there a regime of self-help available to a lessor or a financier of an aircraft if it needs to reacquire possession of the aircraft or enforce any of its rights under the lease/finance agreement?

As a general rule, self-help is not permitted under Spanish law and is, in fact, considered to be against Spanish public order unless specifically permitted by an express legal provision. Therefore, if the Spanish operator refuses to cooperate during the termination/de-registration/repossession process, a lessor/owner would have to seek court assistance to enforce its rights. The specific procedure to be followed will depend on the type of remedy which the lessor is seeking. Only where self-help is expressly permitted by Spanish law or international treaties can such remedies be used. When ratifying the Cape Town Convention, Spain expressly declared that all remedies contemplated under the Convention would require leave of court, with the exception of Irrevocable De-registration and Export Request Authorisations (“IDERAs”).

3.3 Which courts are appropriate for aviation disputes? Does this depend on the value of the dispute? For example, is there a distinction in your jurisdiction regarding the courts in which civil and criminal cases are brought?

The Spanish judiciary is basically organised into three branches: civil; criminal; and contentious-administrative. Broadly speaking, and since criminal cases are unusual in the aviation industry, most aviation disputes are handled in the civil courts (when they arise between private individuals) or in the contentious-administrative courts (when public authorities are involved). The commercial courts have the authority to make decisions where the dispute relates to transportation issues (although passenger claims for delayed or cancelled flights will be transferred to the civil courts). When deciding where to bring an action, the nature of such action needs to be analysed.

3.4 What service requirements apply for the service of court proceedings, and do these differ for domestic airlines/parties and non-domestic airlines/parties?

Service requirements in international disputes are governed by either Regulation (EU) 2020/1784 or the 1965 Hague Convention on the service of documents abroad. When neither of these instruments is applicable, and in the absence of a specific bilateral treaty, the domestic provisions are embodied in the International Legal Cooperation Act 2015, which essentially follows the principles of the European Regulation. Thus, rather than making a distinction between domestic and non-domestic parties, it should be analysed whether the parties involved are bound by the aforementioned international instruments.

3.5 What types of remedy are available from the courts or arbitral tribunals in your jurisdiction, both on i) an interim basis, and ii) a final basis?

Remedies available to the parties depend on the nature of the dispute, and are numerous. In general terms, a party seeking interim relief will have to show a *prima facie* right for its request (*fumus bonum iuris*) and a risk that, if the relief is not granted, it may be prevented from achieving an effective result (*periculum in mora*). Parties may ask the courts for the seizure of assets of the other party (such as bank accounts, movable assets including aircraft, real estate, etc.), for an order to be put in possession of certain assets, injunctions to prevent the other party from taking certain actions, or ordering certain actions to be taken, etc. It should be noted that interim relief remedies can be requested even before filing the main claim on the merits.

3.6 Are there any rights of appeal to the courts from the decision of a court or arbitral tribunal and, if so, in what circumstances do these rights arise?

A distinction should be made between court decisions and arbitral awards:

- In general terms, rulings of the Courts of First Instance can usually be appealed to the Provincial Audience. Under certain circumstances, judgments of the Provincial Audiences can then be elevated to the Regional Superior Court of Justice or the Spanish Supreme Court.
- On the other hand, arbitral awards are generally not subject to appeal, unless one of the few exceptional circumstances set forth in the 2003 Arbitration Act applies (such as lack of existence of an arbitration clause, breach of public order, etc.). In such case, the award would be voided.

3.7 What rights exist generally in law in relation to unforeseen events which might enable a party to an agreement to suspend or even terminate contractual obligations (in particular payment) to its contract counterparties due to *force majeure* or frustration or any similar doctrine or concept?

Force majeure is an implied term in contracts which are governed by Spanish law pursuant to Article 1105 of the Civil Code and long-standing case law at all jurisdictional levels. This concept is often combined with the “*rebus sic stantibus*” principle or clause when exceptional situations arise (such as the COVID-19 pandemic) which prevent the parties from performing their contractual obligations. The Spanish legal system does not allow a general or automatic application of these principles, but rather requires that the courts assess the specific circumstances of each case and the actual impact of the supervened circumstances on the contractual relationship. As far as international contracts are concerned, similar principles can be found in several international treaties (such as the 1980 UN Convention on Contracts for the International Sale of Goods) or documents (such as the 2016 UNIDROIT Principles of International or the Principles of European Contract Law). In this type of contract, often “material adverse change clauses” can be found, which are generally upheld in Spain.

4 Commercial and Regulatory

4.1 How does your jurisdiction approach and regulate joint ventures between airline competitors?

There is no specific policy in Spain concerning airline access or competition, since all these matters are to be handled in line with EU policies and rules (essentially Article 101 TFEU). The CNMC uses the same criteria as the European competition defence authorities. However, since most transactions in the aviation industry have an EU dimension, they are normally assessed by the European Commission rather than the Spanish authorities.

4.2 How do the competition authorities in your jurisdiction determine the ‘relevant market’ for the purposes of mergers and acquisitions?

No domestic sector-specific competition rules have been published, but given Spain’s membership of the EU, Spanish competition authorities are bound by and follow the legislation and guidelines which emanate from the EU and particularly from the European Court of Justice (city pairs, airport substitution, premium *vs.* non-premium passengers, etc.). These are abundant as far as the aviation industry is concerned and focus mostly on state subsidies, concentrations of undertakings and fostering free competition.

The main body in charge of supervising competition rules in Spain is the National Commission for Markets and Competition (*Comisión Nacional de Mercados y Competencia*, “CNMC”), which has jurisdiction over all economic areas. However, the CNMC is organised internally into various directorates, one of which is specifically in charge of transportation matters. The CNMC follows, in general terms, the definitions, methods and criteria established by the European competition authorities, including the European Court of Justice, to define the relevant market.

It is difficult to provide a general rule in this regard because the criteria depends on the type of transaction under analysis. When it comes to the review of potential state subsidies or actions against free competition, the criteria are fixed and assessed on a case-by-case basis, taking into account, of course, existing precedents and guidelines.

When it comes to concentrations of undertakings, such as mergers between enterprises and company acquisitions, Spanish domestic competition legislation provides more detailed thresholds (see question 4.4).

4.3 Does your jurisdiction have a notification system whereby parties to an agreement can obtain regulatory clearance/anti-trust immunity from regulatory agencies?

After the entry into force of European Regulation 1/2003, the notification system was abolished for agreements with a community dimension. However, the 2007 Competition Defence Act contemplated a system of compulsory prior notification of concentrations of undertakings, which includes joint venture agreements.

4.4 How does your jurisdiction approach mergers, acquisition mergers and full-function joint ventures?

Economic concentrations are governed by the 2007 Competition Defence Act when they fall outside the thresholds of the EU Merger Control Regulation 139/2004. Mergers are defined

broadly and include the actual merger of two or more previously independent companies, the acquisition of control over an undertaking by another, the creation of a joint venture or the acquisition of joint control over an undertaking. As a general rule, concentrations of undertakings must be notified to the CNMC, in order to obtain approval when, as a consequence of the transaction, a share of 30% or more is acquired in the “relevant market”. Such market can be either the entire territory of Spain or a smaller, geographically defined market (e.g. a certain region). The communication is also mandatory when the turnover of the participants in Spain exceeds €240 million and at least one of them has a turnover of more than €60 million. However, no notification is needed if the turnover of the acquired company is less than €10 million, unless a market share of 50% or more is achieved (*de minimis* exception).

4.5 Please provide details of the procedure, including time frames for clearance and any costs of notifications.

In merger transactions, the CNMC has a period of one month from receipt of the notice to decide whether or not it wishes to pursue the investigations any further (“first phase”). If no decision is made within this time period, the transaction is deemed to be approved. If the CNMC decides to deepen the analysis, it opens the so-called “second phase” and then has an additional period of two months to issue a decision. This timing is often extended to take into account delays arising from the receipt of any information requested additionally. A final decision is then taken by the Council of Ministers within one more month.

4.6 Are there any sector-specific rules which govern the aviation sector in relation to financial support for air operators and airports, including (without limitation) state aid?

Since its entry into the EEC in 1986, Spain has attempted to comply with European legislation on state aid and implemented policies to make existing aid compliant with the rules. Presently, Spain complies with EU legislation as regards exemptions and exonerations, such as the EU’s 2014 Guidelines on State Aid to Airports and Airlines.

As indicated above, no domestic sector-specific state aid rules have been published, however, EU legislation is fully applicable in Spain. The most recent piece of legislation is Regulation (EU) 2019/712, which is aimed at levelling the playing field between EU carriers and non-EU carriers in certain areas such as subsidies and the provision of air services into non-EU countries.

4.7 Are state subsidies available in respect of particular routes? What criteria apply to obtaining these subsidies?

In accordance with Article 16 of Regulation 1008/2008, public service obligations apply in Spain. Those obligations relate mostly to certain islands which form part of the Spanish territory, such as the Balearics and the Canaries, as well as to the Spanish cities in North Africa (Ceuta and Melilla). However, due to the substantial reduction of domestic flights caused by the COVID-19 crisis, the government dictated temporary public service obligations in respect of airports in mainland Spain, such as Almería or Badajoz. These obligations have now mostly been lifted. The Spanish government regularly publishes updates about such routes, including pricing.

In fact, the CNMC acts only *ex post* where state aid is concerned, either by launching investigations into specific persons or industries or by publishing studies on certain types of aid. Given the large variety of potential aid that may be deemed unlawful and the large number of potential “producers” of such aid (including regional governments, municipalities, public enterprises, etc.), *ex ante* control is not foreseen. However, interested parties have the possibility of liaising with the CNMC to gather its opinion before adopting any steps in this regard.

4.8 What are the main regulatory instruments governing the acquisition, retention and use of passenger data, and what rights do passengers have in respect of their data which is held by airlines and airports?

Like in all other EU countries, the GDPR is directly applicable in Spain. In December 2018, the Spanish Parliament approved the Organic Act on Protection of Personal Data 3/2018, which develops and clarifies some aspects of the GDPR. Most recently, the Spanish Parliament passed the Organic Act 1/2020 on the use of passenger name record (“PNR”) data for the prevention, detection, investigation and prosecution of terrorist offences and serious crime. This provision implements the related Directive (EU) 2016/681, of the European Parliament and of the Council dated 27 April 2016, and regulates the transfer by air carriers of PNR data of passengers, the processing of such data, the period of data retention, etc.

4.9 In the event of a data loss by a carrier, what obligations are there on the airline which has lost the data and are there any applicable sanctions?

There are no specific obligations under Spanish aviation legislation relating to data losses by air carriers. These types of incident are covered by the GDPR and by the Organic Act on Protection of Personal Data. Pursuant to the rules set out in these pieces of legislation, all data controllers are obliged to notify the data protection authorities and all interested parties of data loss incidents, and must demonstrate that all adequate security and protection measures had been taken. Failure to comply with data protection laws entails the imposition of fines which, under the GDPR, can amount to 4% of the carrier’s worldwide turnover. Additionally, failure to transfer PNR data to the relevant authorities (for instance, due to a data loss) can be regarded as a breach of the obligations under the Organic Act 3/2020 and is also subject to specific fines.

4.10 What are the mechanisms available for the protection of intellectual property (e.g. trademarks) and other assets and data of a proprietary nature?

The 1996 Intellectual Property Act and the 2015 Patents Act incorporate the principles of IP protection embodied in international treaties.

4.11 Is there any legislation governing the denial of boarding rights and/or cancelled flights?

As part of the EU, Spain applies the entire set of European legislation, Directives and guidelines relating to the protection of passengers, along with the provisions contained in international treaties such as the 1999 Montreal Convention where applicable. The provisions of Regulation 261/2004, establishing common

rules on compensation and assistance to passengers in the event of denied boarding and of cancellation or long delay of flights, are fully applicable in Spain, and AESA and the Spanish courts regularly enforce this body of law.

4.12 What powers do the relevant authorities have in relation to the late arrival and departure of flights?

AESA has been designated as the national enforcement body pursuant to Regulation 261/2004. In that capacity, AESA has the power to make enquiries relating to the protection of passengers in all the situations covered by the said Regulation, as well as to give opinions and impose penalties upon airlines for failure to comply with the Regulation. AESA has also been designated as an arbitration tribunal to solve claims filed by passengers under Regulation 261/2004, whose rulings will be binding upon the airlines. As mentioned above, this new alternative dispute resolution system was implemented in May 2023.

4.13 Are the airport authorities governed by particular legislation? If so, what obligations, broadly speaking, are imposed on the airport authorities?

The basic text governing airport authorities is the LNA. After the management of most Spanish airports was privatised to AENA, a new system of economic regulation was set up, and has proved to be controversial. Nevertheless, airport managers must ensure that public airports are open to all interested parties on equal terms (subject to slot availability and operational requirements), and must also ensure that the general legislation relating to health, safety, disability discrimination, employment, etc. is complied with.

4.14 To what extent does general consumer protection legislation apply to the relationship between the airport operator and the passenger?

Spanish consumer protection laws, embodied mainly in Royal Legislative Decree 1/2007 on the Protection of Consumers and Users, apply to all transactions which are considered to be “consumer transactions”. Thus, to the extent that an airport operator engages in these kinds of transaction, it will be caught by this legislation.

4.15 What global distribution suppliers (GDSs) operate in your jurisdiction?

The main GDS operating in Spain is Amadeus, with a share of about 90%. Travelport/Galileo and Sabre have also made some attempts to enter the market.

4.16 Are there any ownership requirements pertaining to GDSs operating in your jurisdiction?

There are no specific ownership requirements for GDSs.

4.17 Is vertical integration permitted between air operators and airports (and, if so, under what conditions)?

There is no express prohibition, although the general competition rules would come into play, notably those relating to the potential abuse of a dominant position.

4.18 Are there any nationality requirements for entities applying for an Air Operator's Certificate in your jurisdiction or operators of aircraft generally into and out of your jurisdiction?

As in the other EU Member States, the provisions of Regulation (EC) 1008/2008 on common rules for the operation of air services (along with all related rules and regulations) apply in Spain. Given the direct applicability of Regulation 1008/2008 in Spain, the requirements are identical to those of other EU Member States. Financial fitness is regulated under Article 5 of the Regulation, and basically requires that applicants provide evidence that they can meet their financial obligations for a period of 24 months from the start of operations and their fixed and operational costs for a period of three months from the start of operations, without taking into account any income. Lower thresholds apply to operators with aircraft of less than 10 tonnes MTOW or less than 20 seats. AESA closely analyses and monitors the business plans submitted by interested parties to ensure that they are realistic and in line with the EU Regulation. AESA has particular regard to past experiences where financial troubles have led to the demise of a number of Spanish airlines.

Shortly after Spain's entry into the European Community in 1986, nationality, ownership and control requirements were interpreted as referring to European citizens rather than only Spanish nationals, despite domestic legislation to the contrary. This topic is nowadays covered by the provisions of Regulation 1008/2008, whose Article 4 states that, as a general rule, only Member States and/or nationals of Member States that own more than 50% of the airline and effectively control it, whether directly or indirectly, can obtain a Community carrier licence,

and then only if the airline's principal place of business is established inside the EU. These provisions have become the subject of intense scrutiny within the context of the United Kingdom's exit from the EU. In June 2016, AESA published certain interpretative criteria relating to the term "ownership and control" which must, however, be read in connection with the Interpretative Guidelines published by the European Commission in June 2017 and the Notice to Stakeholders of January 2019.

5 In Future

5.1 In your opinion, which pending legislative or regulatory changes (if any), or potential developments affecting the aviation industry more generally in your jurisdiction, are likely to feature or be worthy of attention in the next two years or so?

In addition to the issues mentioned under question 1.10, the next immediate significant development will likely be the long-awaited review of Regulation 261/2004. Also, the aviation industry is coping with a large number of new legal provisions that generally aim at reducing carbon emissions and have a "green aviation" industry. In this context, the Spanish Government has announced that it intends to follow the French model and ban domestic flights where the same destination can be reached by train within a reasonable period of time. The real effect of such a ban is being questioned, but a Bill of Act was submitted to the Spanish Parliament in January 2023. Due to a general election, the parliamentary process will need to start again, but the Government has stated its commitment to approving this measure.



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1 General

1.1 Please list and briefly describe the principal legislation and regulatory bodies which apply to and/or regulate aviation in your jurisdiction.

The Swiss Federal Office of Civil Aviation (FOCA) is the supervision authority responsible for safety (aircraft, flight operations, and infrastructure) and for aviation policy and strategy issues.

Civil aviation is regulated by two sources: domestic law; and international treaties.

Domestic law

The main enactments are:

- The Federal Civil Aviation Act (FCAA). The FCAA is the “basic law” concerning civil aviation in Switzerland. Based on the FCAA, many Ordinances have been enacted by the government, i.e., the Swiss Federal Council, and the Department of the Environment, Transport, Energy and Communication (DETEC).
- The Federal Act on the Aircraft Records Register. See question 2.2 below.

International law

There are about 180 bilateral and multilateral treaties. The main sources are:

- The Convention on International Civil Aviation (Chicago Convention).
- The Agreement between the European Community and the Swiss Confederation on Air Transport (EU-CH Agreement), which entered into force on 1 June 2002.

Based on the EU-CH Agreement, Switzerland has adopted the relevant civil aviation regulation of the European Union.

Federal legislative texts are freely available in French, German and Italian on <https://www.admin.ch/gov/de/start.html> (Federal law/Classified compilation).

1.2 What are the steps which air carriers need to take in order to obtain an operating licence?

The prerequisites for obtaining an operating licence for the commercial transport of people and goods are, in particular, a Swiss Air Operator’s Certificate (AOC) and proof of sufficient economic viability. Applications must be sent in written form to the FOCA. Initially, FOCA Form 44.20 and EASA Form 4 are the main documents to be filed with the FOCA. Following

the application, an application meeting with the FOCA takes place, the documents provided by the applicant are evaluated and inspections are carried out. In practice, the application for an operating licence often fails because the aforementioned proof of sufficient economic viability is not provided as required. An air carrier applying for an operating licence must, in particular, provide credible evidence that (i) the current and potential obligations determined under realistic assumptions will be met at all times during a period of 24 months after the start of operations, and (ii) the fixed and variable costs determined under realistic assumptions can be covered in accordance with the budget for a period of three months after the start of operations without taking operating income into account. Furthermore, several documents must be filed by the applicant for the examination of the economic viability. These include, among others, the most recent balance sheet and profit and loss account and, if available, the audited accounts for the previous financial year and information on existing and planned financing sources.

EU/EFTA air carriers (i.e., foreign air carriers based in the EU or the EFTA) do not need a permit for flights between the European Economic Area (EEA) and Switzerland. Therefore, a separate application or notification is not necessary.

Non-EU/EFTA carriers (see Form 49.07) are subject to further disclosure duties as set out in Form 49.12 (Operating Permit Questionnaire).

1.3 What are the principal pieces of legislation in your jurisdiction which govern air safety, and who administers air safety?

Switzerland has adopted Regulation (EU) 2018/1139 of the European Parliament and of the Council of 4 July 2018 on common rules in the field of civil aviation and establishing a European Aviation Safety Agency (EASA). It is the main source of Swiss aviation safety legislation. EASA Rules on Air Operations (OPS) and Implementing Rules (IR) are applicable in Switzerland. Furthermore, Switzerland has implemented safety management systems as provided for in International Civil Aviation Organization (ICAO) Annexes 6, 11, 14 and 19.

The FOCA administers air safety in Switzerland.

1.4 Is air safety regulated separately for commercial, cargo and private carriers?

No, it is not.

1.5 Are air charters regulated separately for commercial, cargo and private carriers?

No. The Swiss Federal Administrative Court has, however, accepted that the operational regulation of Zurich Airport stipulates a departure prohibition after 10 pm, solely applicable to air charters (DEAC 2011/19).

1.6 As regards international air carriers operating in your jurisdiction, are there any particular limitations to be aware of, in particular when compared with 'domestic' or local operators? By way of example only, restrictions and taxes which apply to international but not domestic carriers.

No. Airport concession holders are obliged to grant access to all national and international airlines entitled to fly to Switzerland (Art. 36a FCAA). Any restrictions must be detailed in the operational regulation of the airport and must not be discriminatory. The operational regulation is subject to FOCA approval.

1.7 Are airports state or privately owned?

Both models exist. Zurich Airport is owned by a publicly traded company (the canton of Zurich is legally bound to hold more than 1/3 of the voting capital), whereas EuroAirport Basel-Mulhouse-Freiburg and Geneva Airport are owned by public corporations.

1.8 Do the airports impose requirements on carriers flying to and from the airports in your jurisdiction?

Yes. The most notable requirement is the payment of airport charges (Art. 39 FCAA). In addition, every airport has its own operational regulation, which can contain certain requirements regarding safety, environmental issues, noise protection, slots, etc.

1.9 What legislative and/or regulatory regime applies to air accidents? For example, are there any particular rules, regulations, systems and procedures in place which need to be adhered to?

The Swiss Transportation Safety Investigation Board (STSB) is the state authority of the Swiss Confederation having a mandate to investigate accidents and serious incidents involving, *inter alia*, aircraft. The sole objective of such safety investigation is to gain insight by means of which future accidents and hazardous situations can be prevented. The results of such investigation, however, are not intended to clarify questions of blame and liability.

The principal legislation relating to the investigation of air accidents includes:

- Art. 26 and Annex 13 of the Chicago Convention;
- Regulation (EU) No 996/2010 of the European Parliament and of the Council of 20 October 2010 on the investigation and prevention of accidents and incidents in civil aviation;
- Regulation (EU) No 376/2014 of the European Parliament and of the Council of 3 April 2014 on the reporting, analysis and follow-up of occurrences in civil aviation;
- Art. 22 *et seq.* FCAA; and
- Ordinance on Aviation Accidents and Serious Incidents.

Any accident or serious incident must be reported to the STSB reporting office (i.e., the Swiss Air Rescue (REGA)) immediately.

Accidents and serious incidents falling under Art. 4 of Regulation (EU) No 376/2014 must be reported via the reporting portal to the FOCA within 72 hours of becoming aware of the occurrence.

1.10 Have there been any recent cases of note or other notable developments in your jurisdiction involving air operators and/or airports?

Recently, Switzerland has seen several cases of air carriers once again being temporarily or permanently relieved of their operating licence, due to their inability to show sufficient economic viability.

In late August 2018, SkyWork Airlines Ltd (SkyWork) announced its bankruptcy and ceased its operations. Insolvency proceedings were initiated on 6 September 2018. The FOCA had already declared in October 2017 that the operating licence of SkyWork would only remain valid until the end of October 2017, as SkyWork had not been able to guarantee the financing for its winter flight plan for 2017/2018. The liquidation proceedings are now completed, and SkyWork has been deleted from the Swiss Commercial Register on 10 August 2023.

The second case concerned the air carrier Darwin Airline Ltd (Darwin) that – after takeover by Slovenian carrier Adria Airways following Etihad's exit in summer 2017 – operated under the name Adria Airways Switzerland. After Darwin had filed for a moratorium (*Nachlassstundung*) on 27 November 2017, the FOCA annulled Darwin's operating licence on 28 November 2017. As the annulment only concerns the operating licence, Darwin was still permitted to operate flights on behalf of other air carriers (wet lease). However, on 12 December 2017, Darwin was declared bankrupt. The liquidation proceedings are still pending.

On 15 June 2022, Skyguide decided to close off the Swiss airspace due to technical errors. Aircraft operations were thus put on hold for five hours. As a consequence, the DETEC commissioned an external investigation which was completed on 19 December 2022. It was concluded that Skyguide had acted adequately by closing off the airspace.

At the end of 2019, the ICAO increased the maximum liability regarding the loss of baggage, delays of flights or deaths of passengers. As of 1 January 2023, Switzerland has adopted these regulations.

On 9 June 2023, the Swiss-EU Joint Aviation Committee has resolved to adopt a number of EU regulations, the most important of which is the adaptation of Commission Implementing Regulation (EU) 2023/203 and Commission Delegating Regulation (EU) 2022/1645, both on requirements for the management of information security risks with a potential impact on aviation safety, which require the FOCA to implement an information security and management system (ISMS).

Further, on 7 July 2023, Switzerland and China signed a Bilateral Aviation Safety Agreement. This is of particular significance for Swiss development and manufacturing companies of EASA-certified products.

At the end of October 2017, Belair Airlines Ltd (Belair) followed its bankrupt parent company, Air Berlin, after the main shareholder, Etihad, had withdrawn financial support. Apparently, insolvency-related legal issues effectively prevented Belair from being sold to an investor. As it ceased operations and was finally put into liquidation, Belair had to return its operating licence to the FOCA. On 20 August 2018, Belair was declared bankrupt. The liquidation proceedings are still pending.

On 20 August 2019, Pilatus, a Swiss aircraft manufacturer, filed an appeal against a ruling of the Federal Department of Foreign Affairs (FDFA) banning Pilatus from providing logistical support to the air forces of Saudi Arabia and the United

Arab Emirates in relation to supplied PC-21 training aircraft and simulators. The FDFA based its ruling on the Federal Act on Private Security Services Provided Abroad (PSSA). On 7 January 2021, the Swiss Federal Administrative Court granted the appeal by Pilatus; it annulled the contested ruling on the grounds of violation of federal law and referred it back to the lower instance without making a decision on the merits.

On 6 November 2019, the FOCA issued a decree against Zurich Airport to reduce the airport charges due to violation of the cost-covering principle. Zurich Airport has appealed against this decree. It appears that the matter was settled in July 2020 following the COVID-19 pandemic outbreak.

In September 2019, the FOCA announced that it was combining the following procedures and continuing them under the designation “Operating Regulations 2017”:

- the application for approval of the operating regulations of Zurich Airport (*Betriebsreglement 2017*);
- the new definition of permissible aircraft noise emissions at night; and
- the review of the report of Zurich Airport which identifies and assesses the operational feasibility, economic viability, and impact on noise exposure of bringing the last start and landing slots forward in the evening.

A number of objections were submitted during the public consultation period in autumn 2019 and throughout the process. Following a ruling by the Swiss Federal Administrative Court of 7 September 2021 on the previous (2014) version of the operating regulations (which were rejected), the FOCA proceedings on the operating regulations 2017 were stayed on 7 December 2021 to first implement the court decision.

In addition, the operating regulations of Geneva Airport were amended. On 25 November 2022, the new operation regulations were approved by the DETEC. These new operating regulations are concerned, in particular, with redefining the permissible noise pollution and introducing a quota system for delayed flights after 10 pm.

After years of fruitless discussions about the future use of the Dübendorf Air Base, the Swiss Federal Council decided in October 2020 to discontinue the sectoral plan procedure (*Sachplanverfahren*). At the same time, it instructed the DETEC and the Federal Department of Defence, Civil Protection and Sport (DDPS) to participate in the new planning process initiated by the canton of Zurich for the airfield site. Following a Swiss Federal Court decision of November 2021 finally approving the respective cantonal zoning plan, the Zurich Government Council announced in April 2022 its revised (downsized) plans for the future of the large-scale Innovation Park Dübendorf project.

Zurich Airport is considering extending two runways. A narrow majority of the Zurich cantonal council approved this runway extension. A referendum was lodged against this decision. The runway extension will be put to public vote in 2024. The main reason for the runway extension are safety aspects. An extension of the runways could reduce the complexity of the approach and departure regime. Opponents, however, fear, that the extension will result in more flight movements.

On 13 January 2023, Airlines for Humanity filed a lawsuit against Swiss International Air Lines AG on behalf of the cabin crew. The cause of action is alleged unjustified abusive dismissal (pursuant to Art. 336a para. 2 of the Swiss Code of Obligations). The reason for the dismissal was that the affected cabin crew members were not themselves vaccinated against COVID-19 despite an obligation to do so. Airlines for Humanity expects a first-instance ruling to be handed down by the end of 2023.

1.11 Are there any specifically environment-related obligations or risks for aircraft owners, airlines, financiers, or airports in your jurisdiction, and to what extent is your jurisdiction a participant in (a) the EU Emissions Trading System (EU ETS) or a national equivalent, and (b) ICAO's Carbon Offsetting and Reduction Scheme for International Aviation (CORSIA)?

On 13 June 2021, the Swiss voters rejected the Federal Act on the Reduction of Greenhouse Gas Emissions (CO₂ Act) amendment proposed by the Federal Council and Parliament. The CO₂ Act amendment, among other things, envisaged a flight ticket levy of between CHF 30 and CHF 120 (depending on booking class and travel distance) for any passenger on a commercial passenger flight departing from Switzerland, as well as a flight ticket levy ranging between CHF 500 and CHF 3,000 for private jets with a maximum take-off mass of 5,700 kg. On 16 September 2022, the Swiss Federal Council proposed a new amendment to the CO₂ Act which addresses the concerns raised during the last revision and does not contain any new or higher levies. Instead, it relies on targeted subsidies to steer investments into climate-friendly solutions and takes up the idea of a “blending quota” of sustainable fuel in line with developments in the EU.

In contrast, a new climate law was passed on 22 August 2021 in France. The new bill provides, among other things, for a ban on domestic flights when there is a train alternative of less than 2½ hours, except for a limited number of connections. So far, it appears that this new bill has not adversely affected the bi-national Euro-Airport Basel-Mulhouse which is located on French soil and has both a French and a Swiss terminal.

Swiss law provides for an emissions trading system (Swiss ETS) based on the “cap-and-trade” principle which sets a maximum amount of emissions that can be emitted (cap). Companies that achieve greater reductions in their emissions can sell their unused emission allowances and companies that need more emission allowances can purchase them. A treaty aimed at linking the Swiss ETS and the EU ETS was ratified by Switzerland and the EU on 6 December 2019 and entered into force on 1 January 2020. Since the entry into force of the treaty, and as emissions generated by aviation will be included under the joint ETS system, the linkage offers Swiss aviation companies which operate flights from Switzerland to the EEA and/or within Switzerland the possibility to trade with the corresponding emissions throughout the EU ETS system. The linking of both emissions trading systems further required adjustments to the Swiss CO₂ Ordinance, which falls under the responsibility of the Swiss Federal Council. The public consultation of the amended Ordinance took place until July 2019. The proposed amendments – containing a “Swiss Finish” – were controversial since the administrative burden on Swiss aircraft operators is higher than in EU jurisdictions. The Swiss Federal Council finally amended the Swiss CO₂ Ordinance on 13 November 2019, enabling civil aviation and any fossil-thermal power plants to be included in the Swiss ETS. The amended Swiss CO₂ Ordinance and the partially revised Swiss CO₂ Act both entered into force on 1 January 2020.

Further, Switzerland has committed to implement CORSIA from the beginning of the pilot phase, which will last from 2021 to 2023.

2 Aircraft Trading, Finance and Leasing

2.1 Does registration of ownership in the aircraft register constitute proof of ownership?

No. The Swiss Aircraft Register (*Luftfahrzeugregister*) relates to the administrative registration of the aircraft (permit to fly,

airworthiness certificate, noise-type certificate, nationality of ownership, call sign, etc.). Although the owner is registered in the Aircraft Register, the certificate of registration does not constitute proof of ownership. In addition, aircraft can be registered in the Swiss Aircraft Record (*Luftfahrzeugenbuch*), which constitutes proof of ownership.

2.2 Is there a register of aircraft mortgages and charges? Broadly speaking, what are the rules around the operation of this register?

Yes; ownership and mortgages can be registered in the Aircraft Record. In respect of ownership, the registration is voluntary.

Registration of any right will only be made upon application by the owner and is only permissible for aircraft already registered in the Aircraft Register. Mortgages can only be set up, and will only become effective, upon registration in the Aircraft Record. Any entry will first be published in the Swiss Official Gazette of Commerce (SOGC) and is subject to an objection period of 30 days. This 30-day period must be borne in mind in any aircraft financing project. The Swiss FOCA, which runs the Aircraft Record, is relatively swift in handling applications. Requests are usually handled within a few days.

Once a right is registered in the Aircraft Record, it can only be altered or deleted by amending the respective registration. In other words, once registered in the Aircraft Record, any transfer of ownership by necessity requires an amendment of the registration.

2.3 Are there any particular regulatory requirements which a lessor or a financier needs to be aware of as regards aircraft operation?

Mortgages

Certain claims are granted priority over a registered mortgage, although Swiss legislation is more restrictive than foreign law when it comes to accepting preferred security rights (see Art. 47 of the Federal Act on the Aircraft Records Register). There are no maintenance or mechanic's priority rights.

Leases

The lessee of an aircraft can be registered in the Aircraft Register, assuming that all the other requirements for a registration in the Aircraft Register (apart from legal ownership) are fulfilled. In the case of long-term lease agreements under which a Swiss lessee operates the aircraft, a non-Swiss owner may also be registered in the Aircraft Register. Furthermore, lease agreements with a period of validity of more than six months can be registered in the Aircraft Record. Such registration gives the lessor and the lessee priority over all rights and agreements recorded subsequently (except for statutory liens). However, the lessor may unilaterally allow the registration of a mortgage, unless this is explicitly excluded in the lease agreement.

2.4 As a matter of local law, is there any concept of title annexation, whereby ownership or security interests in a single engine are at risk of automatic transfer or other prejudice when installed 'on-wing' on an aircraft owned by another party? If so, what are the conditions to such title annexation and can owners and financiers of engines take pre-emptive steps to mitigate the risks?

Pursuant to Art. 22 para. 1 of the Federal Act on the Aircraft Records Register, engines that are specifically designated as such and registered jointly with an aircraft in the Aircraft Record

are deemed to be part of such aircraft, regardless of whether they are installed "on-wing" or not. Furthermore, there is the possibility of specifically excluding an engine from a registration, which will render its fate independent from that of the aircraft. Consequently, if an engine is registered along with an aircraft in the Aircraft Record, a mortgage on the aircraft will also affect the engine. If this is not desired, the engine must be specifically excluded when registering the aircraft in the Aircraft Record.

2.5 What (if any) are the tax implications in your jurisdiction for aircraft trading as regards a) value-added tax (VAT) and/or goods and services tax (GST), and b) documentary taxes such as stamp duty; and (to the extent applicable) do exemptions exist as regards non-domestic purchasers and sellers of aircraft and/or particular aircraft types or operations?

The key question with respect to VAT handling of aircraft transactions in Switzerland (sale/purchase/lease) is whether the aircraft in question is imported into Switzerland and, if so, whether an exemption based on Art. 23 para. 2 no. 8 and Art. 53 para. 1(e) of the Federal Law on Value Added Tax (VATL) applies. If a Swiss-registered aircraft is imported into Switzerland by a Swiss-domiciled international air-carrier who professionally operates transportation or chartered air traffic, and whose turnover from international flights exceeds that of domestic air traffic, the sale, purchase, or lease as well as a list of other services provided to such air-carrier may be exempt from VAT pursuant to Art. 53 para. 1(e) in connection with Art. 23 para. 2 no. 8 VATL. The Federal Tax Administration maintains a list of carriers domiciled in Switzerland who qualify for such exemptions. Foreign air-carriers who are able to demonstrate that they comply with the requirements of Art. 23 para. 2 no. 8 VATL may also, under certain circumstances, apply for VAT exemptions on certain services. If an aircraft is imported by any other person/company who is not exempted, VAT is applied to any sale, purchase, or lease transaction involving the aircraft. The same applies for any aircraft imported into Switzerland and sold, purchased, or leased to a party (other than a commercial carrier exempted from VAT pursuant to Art. 23 para. 2 no. 8 VATL), regardless of whether the parties involved in the transaction are foreign parties and the aircraft is situated outside of Switzerland. Aircraft that are not imported into Switzerland (e.g., when staying under customs supervision in connection with maintenance and repair) are generally not subject to Swiss VAT on imports. Due to various multilateral agreements (e.g., GATT or the Free Trade Agreement with the EU and EFTA), similar rules apply to customs duty; accordingly, the import of aircraft or of spare parts is exempted from customs duty if such an agreement is applicable.

2.6 Is your jurisdiction a signatory to the main international Conventions (Montreal, Geneva and Cape Town)?

Chicago Convention 1944

Switzerland ratified the Convention on 6 February 1947, prior to its effective date of 4 April 1947.

Geneva Convention 1948

Switzerland ratified the Convention on 3 October 1960, prior to its effective date of 1 January 1961.

Montreal Convention 1999

Switzerland ratified the Convention on 7 July 2005, prior to its effective date of 5 September 2005.

Cape Town Convention 2001

The Convention has so far not been ratified by Switzerland.

2.7 How are the Conventions applied in your jurisdiction?

As Switzerland follows the so-called “monistic system”, international treaties are incorporated into the Swiss legal order without further legislation. A treaty can be directly applicable (“self-executing”) provided that its provisions are litigable, i.e., its content must be sufficiently precise and clear to constitute the basis for a decision in a specific case.

2.8 Does your jurisdiction make use of any taxation benefits which enhance aircraft trading and leasing (either in-bound or out-bound leasing), for example access to an extensive network of Double Tax Treaties or similar, or favourable tax treatment on the disposal of aircraft?

There is no specific benefit available to profits achieved by way of aircraft trading or leasing. Under the previous tax legislation, however, a company that trades in aircraft abroad, i.e., whose turnover is basically achieved abroad, could qualify for the mixed company privilege; as a result, the profits from aircraft trading were taxed at less than 10%, depending on the canton of domicile. This tax status has been abolished in the course of the termination of the existing ring-fencing schemes, as part of the Federal Act on Tax Reform and AHV Financing (TRAF) that entered into force on 1 January 2020. A company that currently benefits from a special tax status is eligible for a tax-neutral step-up on its assets in the difference between book value and fair market value. Any such hidden reserves will benefit from a preferred tax rate if realised within five years after the new law had entered into force. Whether or not an aircraft trading or leasing company will be eligible for such a step-up, i.e., whether or not it has such hidden reserves, must be determined in any specific case, based on a state of the art valuation report.

2.9 To what extent is there a risk from the perspective of an owner or financier that a lessee of aircraft or other aviation assets in your jurisdiction may acquire an economic interest in the aircraft merely by payment of rent and thereby potentially frustrate any rights to possession or legal ownership or security?

Under Swiss law, there is no such risk.

3 Litigation and Dispute Resolution

3.1 What rights of detention are available in relation to aircraft and unpaid debts?

Pursuant to Art. 80 *et seq.* FCAA, a creditor, a mortgagee, or the owner (e.g., the lessor) of an aircraft can apply for seizure of the aircraft even if the claimant cannot produce an enforceable title. However, the following aircraft shall not be subject to seizure:

1. governmental aircraft (which are designated or actually used by public authorities on an exclusive basis);
2. aircraft actually in service on scheduled flights of a public carrier (and its reserve aircraft); and
3. any other passenger or cargo aircraft ready to depart in such transportation, unless the debt for which the seizure is requested was incurred for, or has become due in the course of, that specific leg.

3.2 Is there a regime of self-help available to a lessor or a financier of an aircraft if it needs to reacquire possession of the aircraft or enforce any of its rights under the lease/finance agreement?

No, this is not admissible under Swiss law (other than under the Cape Town Convention).

3.3 Which courts are appropriate for aviation disputes? Does this depend on the value of the dispute? For example, is there a distinction in your jurisdiction regarding the courts in which civil and criminal cases are brought?

There are no special courts (of any type) for aviation disputes.

Civil proceedings

Civil claims in relation to aviation disputes must be brought before the ordinary civil courts. Four cantons (Aargau, Bern, St. Gallen, and Zurich) have specialised commercial courts competent if (i) the dispute is to be considered a commercial dispute, and (ii) the value threshold of CHF 30,000 is exceeded, which will, in aviation disputes, almost invariably be the case.

Debt enforcement

Enforcement of mortgages is carried out by the competent Debt Enforcement and Bankruptcy Office (*Betreibungsamt*). The same applies to the enforcement of financial claims if the creditor is in possession of an enforceable title. If he does not hold such title, he may still initiate the enforcement procedure; however, in such cases the debtor may raise an objection against the enforcement, and the creditor will then have to obtain a court order before being able to proceed with the enforcement procedure.

Criminal proceedings

Criminal charges are handled by the competent public prosecutors and criminal courts, respectively.

Administrative proceedings

Rulings (*Verfügungen*) by a federal authority (e.g., FOCA) can be challenged in administrative proceedings before the Swiss Federal Administrative Court.

3.4 What service requirements apply for the service of court proceedings, and do these differ for domestic airlines/parties and non-domestic airlines/parties?

Service on domestic (Swiss) defendants is made via post (registered mail) or in person by court bailiffs. Defendants in jurisdictions with which Switzerland has concluded a treaty dealing with the service of documents (in particular, the Hague Conventions) are served according to the standards provided for in the respective treaty. Defendants in all other jurisdictions will be served with documents via consular or diplomatic channels.

However, only the document instituting the proceedings (or its equivalent) must be served upon foreign defendants via these channels (and, thus, usually in a translated version). Foreign defendants are invited, according to Art. 140 of the Civil Procedure Rules, to appoint a Swiss-domiciled recipient – usually a law firm – for all future communications. Defendants who fail to do so are served via publication in newspapers or the SOGC, which often results in default judgments. Communications from courts must therefore invariably be taken seriously.

3.5 What types of remedy are available from the courts or arbitral tribunals in your jurisdiction, both on i) an interim basis, and ii) a final basis?

Interim basis

Seizure of aircraft pursuant to Art. 80 *et seq.* FCAA (see question 3.1): even if the court is *ex officio* held to take all the necessary precautions to make sure that the seizure will have effect, it may still be advisable to explicitly request the court to deliver a notice of seizure to the Aircraft Register (FOCA), to Skyguide, to the airport where the aircraft is currently positioned, and to the owner of the aircraft (if the seizure was not directed against him, but, e.g., against a lessee). On the rare occasion that the rules on the seizure of aircraft are not applicable, a freezing injunction (“*arrest*”), as provided for in the Debt Enforcement and Bankruptcy Act, may be obtainable.

Arbitral tribunals: if a dispute is subject to arbitration, the creditor may choose to apply for seizure at the state court or at the arbitral tribunal. The arbitral tribunal is only competent to grant injunctions such as a seizure once it has been constituted; the Swiss Rules on International Arbitration therefore provide for the appointment of an Emergency Arbitrator.

Final basis

A court judgment or arbitral award can order specific performance of contractual or other duties, award compensation for damages, or be a declaratory judgment.

3.6 Are there any rights of appeal to the courts from the decision of a court or arbitral tribunal and, if so, in what circumstances do these rights arise?

Yes, decisions from a court of first instance can be appealed. A brief overview (exceptions are not mentioned):

Civil proceedings

Decisions of state courts in civil proceedings can be challenged. The appeal must be filed with the upper cantonal court, whose decision can then be appealed before the Swiss Federal Supreme Court. However, decisions of commercial courts (see above, question 3.3) are not subject to appeal before an upper cantonal court; they can only be appealed before the Swiss Federal Supreme Court.

Criminal proceedings

Decisions of state courts in criminal proceedings can be challenged. The appeal must be filed with the upper cantonal court, whose decision can then be appealed before the Swiss Federal Supreme Court.

Administrative proceedings

Decisions rendered by the Federal Administrative Court can be appealed before the Swiss Federal Supreme Court.

Arbitral proceedings

Arbitral awards can only be appealed on the basis of very limited grounds, e.g., if certain procedural rights such as the right to equal treatment, the right to be heard, or the Swiss *ordre public* have been violated.

Switzerland is a Member State of the New York Convention on the Enforcement of Arbitral Awards.

3.7 What rights exist generally in law in relation to unforeseen events which might enable a party to an agreement to suspend or even terminate contractual obligations (in particular payment) to its contract counterparties due to *force majeure* or frustration or any similar doctrine or concept?

Under Swiss law, there is no general right of suspension or termination of contractual obligations due to *force majeure* or frustration (the parties are free to stipulate these concepts in their particular contract). Only in the case of impossibility does the obligation to perform lapse. In addition, as a rule, if the counterparty does not perform its obligations, the other party generally has the right to refuse its own performance, including payment, as well. Furthermore, a permanent contract can be terminated for good cause if, for example, its continuation has become unreasonable for one party.

The parties are free to stipulate, or alter, these concepts in their contractual agreement.

Absent a right to terminate, a party may still be entitled to a contract modification if the circumstances have changed fundamentally (doctrine of *clausula rebus sic stantibus*). The change must have occurred after the conclusion of the contract, it must not have been foreseeable or avoidable by the parties, and it must result in an obvious imbalance.

4 Commercial and Regulatory

4.1 How does your jurisdiction approach and regulate joint ventures between airline competitors?

All agreements between undertakings, decisions by associations of undertakings, and concerted practices, including joint ventures, which may affect trade between Switzerland and the EC and which are aimed at, or result in, the prevention, restriction or distortion of competition within the territory covered by the EU-CH Agreement are prohibited. Contravening decisions or agreements are null and void. Exemptions are possible under the conditions foreseen by the EU-CH Agreement.

This wording, as provided for in Art. 8 of the EU-CH Agreement, corresponds to the applicable EU competition law (Arts 101 and 102 of the Treaty on the Functioning of the European Union (TFEU)). Switzerland has therefore, in fact, adopted the EU competition law.

On 1 December 2014, the Agreement between the European Union and the Swiss Confederation concerning cooperation on the application of their competition laws came into force. It facilitates and strengthens cooperation between European and Swiss authorities.

4.2 How do the competition authorities in your jurisdiction determine the ‘relevant market’ for the purposes of mergers and acquisitions?

According to the EU-CH Agreement, the European Union institutions and not the Swiss competition authorities are competent to control concentration between undertakings (the “one-stop-shop principle”). The Swiss authorities only remain competent if the thresholds, as defined in the EC Merger Regulation, are not reached (i.e., generally, a combined aggregate worldwide turnover of EUR 5 billion and an aggregate EU-wide turnover of each of at least two of the undertakings concerned of more than EUR 250 million).

Therefore, in most cases, the relevant market is not to be determined by Swiss authorities but by the EU institutions.

In the rare cases that remain within the Swiss competence, the relevant market is determined based upon the “O&D” approach (“point of origin/point of destination”) as applied by the EU Commission. This approach is applied both to charter and scheduled airlines (see LPC 2008/4, p. 677).

4.3 Does your jurisdiction have a notification system whereby parties to an agreement can obtain regulatory clearance/anti-trust immunity from regulatory agencies?

Again, in most cases the EC Merger Regulation will apply (see above, question 4.2). However, if Swiss law applies, the answer is yes and the Swiss Cartel Act provides for a notification system.

4.4 How does your jurisdiction approach mergers, acquisition mergers and full-function joint ventures?

See above, question 4.1.

4.5 Please provide details of the procedure, including time frames for clearance and any costs of notifications.

Notification of a planned concentration of undertakings must be made to the Swiss Competition Commission (COMCO). The Commission then must decide within one month whether an examination is to be initiated. During that month, the concentration must not be implemented. After expiration of the one-month period, the applicant will receive either a clearance or the information that an investigation will be initiated. If no such notice is given within that time period, the concentration may be implemented without reservation.

In the event of an investigation being initiated, the COMCO must decide within a four-month period whether the concentration will be cleared.

The legal effect of a concentration that must be notified is suspended.

For the preliminary investigation of one month, the Secretariat of the COMCO charges a flat fee of CHF 5,000. For the in-depth investigation, filing fees are charged on a time-spent basis. The hourly rates are between CHF 100 and CHF 400, depending on the urgency of the case and the level of seniority of the case-handlers.

4.6 Are there any sector-specific rules which govern the aviation sector in relation to financial support for air operators and airports, including (without limitation) state aid?

Yes. The EU-CH Agreement stipulates an aviation-specific aid scheme (Art. 13). This scheme corresponds almost literally to the regulation in the EU (Art. 107 TFEU).

As a general rule, the EU-CH Agreement prohibits state aid which distorts or threatens to distort competition. Exceptions are provided for in the EU-CH Agreement.

The decision as to whether state aid is permissible under the aforementioned regulations lies with the Swiss authorities, who are obliged to inform the EU authorities on such aid. Although not expressly provided for in the Agreement, the Swiss authorities are likely to follow the recent practice of the European Union (see the 2014 Aviation Guidelines of the EU Commission, OJ C 99, 4 April 2014, pp 3 to 34).

The EU Commission adopted, in spring 2020, new temporary rules for state aid allowing the EU Member States to support the economy under pressure due to the COVID-19 pandemic. Under these new rules, the German Lufthansa Group received state aid, which was approved by the EU Commission. Amid the COVID-19 crisis and liquidity shortfalls, the Swiss Confederation provided financial support to Swiss and Edelweiss (which are members of the Lufthansa Group) by means of so-called “COVID-19 plus” credits secured by federal guarantees subject to certain conditions. The COMCO approved such rescue package for Swiss and Edelweiss and declared it compatible with the EU-CH Agreement. In June 2022, Swiss and Edelweiss made a full early repayment of the credits.

4.7 Are state subsidies available in respect of particular routes? What criteria apply to obtaining these subsidies?

The criteria are set out in Regulation (EC) No 1008/2008 of the European Parliament and of the Council of 24 September 2008 on common rules for the operation of air services in the Community, which is also applicable in Switzerland.

Subsidies for particular routes may be granted to an undertaking carrier operating a particular route under a public service obligation, as provided for in Art. 16 *et seq.* of the Regulation. Before deciding on such a public service obligation, the other Member States, the EU Commission, the airports concerned, and other air carriers operating on that particular route must be consulted.

4.8 What are the main regulatory instruments governing the acquisition, retention and use of passenger data, and what rights do passengers have in respect of their data which is held by airlines and airports?

General rules

The main regulatory instrument in Switzerland governing the acquisition, retention and use of (passenger and other) data is the Federal Act on Data Protection (FADP). The FADP embodies fundamental rules concerning the processing of personal data by both the public and the private sector. The revision of the FADP was completed in September 2020, and the new law came into force in September 2023. The purpose of the new law is to adapt the FADP to a large extent to the level of protection provided by Regulation (EU) 2016/679 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data (GDPR), which entered into effect on 25 May 2018. The GDPR is not only directly applicable in the EU, but has extraterritorial application to any entity outside the EU that is either established within the EU or that targets data subjects in the EU. Furthermore, as of 1 March 2019, Switzerland has implemented the requirements of EU Directive 2016/680 of 27 April 2016, which regulates the specific protection of personal data in the prevention, investigation, detection, and prosecution of criminal offences as well as the enforcement of criminal penalties within the Schengen area. The new FADP does not go beyond the GDPR, but there are some practically relevant deviations which concern the obligation to provide information, the rights of data subjects, the obligation to report data breaches, and the appointment of a data protection officer or representative.

Under these regulations, the data subject generally has the right to access and to correct false, incomplete, or erroneous data. Under certain circumstances, the data subject can also request deletion of his or her personal data. The collection of

the data and the purpose for which it is processed must be readily identifiable by the person concerned and the data subject must be actively informed if particularly sensitive personal data is involved. With the new FADP, the rights of data subjects are somewhat extended, as it will become easier for them to request their own data from a company. However, companies are also able to reject abusive requests for access with new arguments. Violations of the FADP and the GDPR can lead to criminal proceedings and high fines. Furthermore, the data subject enjoys all remedies generally available under civil procedure rules (i.e., injunctions, right to restitution, or the right to claim damages).

Aviation-specific rules

Aviation-specific rules are, for one, incorporated in the Federal Act on Foreign Nationals and Integration (FNIA). According to the Schengen and Dublin Association Agreements, Council Directive 2004/82/EC of 29 April 2004 on the obligation of carriers to communicate passenger data is applicable in Switzerland. The Directive was implemented in the FNIA, which was significantly revised in 2014. The State Secretariat for Migration (SEM) determines the flights for which air carriers are required to transmit the personal data of the passengers (see Art. 104 FNIA). The affected carriers must transmit the Advance Passenger Information (API) of all passengers to the Swiss authorities. Details on how and where the data is to be delivered can be found under <https://www.sem.admin.ch/dam/data/sem/eu/schengen-dublin/api-schnittstellenspezi-e.pdf>

Further, the Federal Customs Administration can oblige the carriers and airport operator to transmit personal data of the passengers for up to six months after the transport was carried out (see Art. 151 of the Customs Ordinance). The affected carriers or airport operators are obliged to transmit the name, first name, address, date of birth, passport number, places of origin, transit and final destination of the passengers as well as the name of the travel agency who booked the flights (if applicable).

Art. 21f FCAA stipulates that passenger data must be made available by carriers to the competent prosecution authorities, upon their request, for up to six months after the transport has been carried out. The personal data concerned encompasses the first name, last name, address, date of birth, nationality, travel document number, date, time and number of the flight, places of origin, transit and final destination of the passengers, data on any accompanying persons, information on the payment method used as well as the name of the travel agency who booked the flight (if applicable).

4.9 In the event of a data loss by a carrier, what obligations are there on the airline which has lost the data and are there any applicable sanctions?

The FADP (see question 4.8 above) imposes the obligation on any entity which collects data to put in place adequate security measures against data loss. If the loss of data is caused by insufficient security measures, the carrier may become liable for damages.

Unauthorised access to sensitive data can be prosecuted.

4.10 What are the mechanisms available for the protection of intellectual property (e.g. trademarks) and other assets and data of a proprietary nature?

Intellectual property rights are enforced by court action. Each of the 26 cantons of Switzerland has a single cantonal instance with overall jurisdiction for intellectual property and related disputes. In the cantons of Aargau, Bern, St. Gallen, and Zurich, competence lies with the commercial court.

A separate, exclusive jurisdiction has been granted to the Federal Patent Court, as the first instance for patent disputes, including action for infringement and claims concerning the existence or validity of a patent. For other civil actions related to patents, the cantonal courts have concurrent jurisdiction.

An important and effective tool to efficiently prevent acts of infringement under intellectual property law is injunctive relief. If certain conditions can be demonstrated, a court injunction can be obtained relatively quickly. The claimant must demonstrate a valid cause of action, an infringement, a resulting disadvantage that cannot be readily remedied, and urgency. Injunctive relief must be confirmed in the framework of subsequent ordinary court proceedings unless the parties settle.

Furthermore, intellectual property infringements may constitute a criminal offence.

4.11 Is there any legislation governing the denial of boarding rights and/or cancelled flights?

Switzerland has adopted Regulation (EC) No 261/2004 regarding passenger rights in the event of denied boarding and of cancellation or long delay of flights.

In the event of overbooking, the carrier may first determine whether passengers are willing to offer their seat against an indemnification to be agreed upon. If no such volunteers can be found, the carrier must compensate those passengers denied boarding with a payment of up to EUR 600, depending on the distance of the flight. The Regulation requires airlines to offer the relevant passenger meals, refreshments, and hotel accommodation as appropriate whilst waiting for a rearranged flight. They must also cover any costs of transport between the hotel and the airport.

The passenger rights under Regulation (EC) No 261/2004 must be enforced before the ordinary civil courts.

In 2012, a civil court of first instance ruled that Regulation (EC) No 261/2004 does not apply to a flight from Zurich to a non-EU country.

4.12 What powers do the relevant authorities have in relation to the late arrival and departure of flights?

It is possible to file a passenger report with the FOCA, which can initiate administrative fine proceedings and impose fines of up to CHF 20,000 (Art. 91 para. 4 FCAA).

The passenger report form is available under <https://www.bazl.admin.ch/bazl/de/home.html> (Air Passenger Rights).

4.13 Are the airport authorities governed by particular legislation? If so, what obligations, broadly speaking, are imposed on the airport authorities?

Airports (*Flughäfen*), i.e., aerodromes serving public transport, can only be run based on a concession by the federal government. Such concessions are based on the FCAA and the Ordinance on the Aviation Infrastructure. The airport operators are licensed either for 50 years in the case of national airports, or 30 years in the case of regional airports.

The concession entails the right to run an airport commercially and to raise fees. On the other hand, the airport operator is obliged to open the airport to all aircraft, as provided for in the operational regulation of the airport (see question 1.6 above), and to maintain an infrastructure guaranteeing safe operations.

The operation of the airport must be in line with the Sectoral Aviation Infrastructure Plan (SAIP), and the applicant must

have the management skills, technical knowledge, and funds necessary for the operation of the airport, as provided for in the operational regulation.

For the operation of an airfield (*Flugfeld*), i.e., an aerodrome not serving public transport, an operating licence (*Betriebsbewilligung*) is required. It is issued by the FOCA.

All details regarding the operation of the aerodrome (i.e., the airport or airfield) are then to be specified in the operational regulation (*Betriebsreglement*), which is subject to FOCA approval. Typical contents of the operational regulation are the organisation of the aerodrome, operational hours, departure/arrival procedures, ground handling, slots coordination, further commercial and non-commercial use of the aerodrome, environmental issues, an aerodrome design and operational manual according to ICAO standards, and a safety management system.

4.14 To what extent does general consumer protection legislation apply to the relationship between the airport operator and the passenger?

There is no consumer protection legislation specifically governing the relationship between airport operators and passengers.

As regards the general consumer protection legislation (e.g., the Unfair Competition Act), it must be noted that there is typically no contractual relationship between passengers and airport operators.

4.15 What global distribution suppliers (GDSs) operate in your jurisdiction?

All the major GDSs operate in Switzerland, e.g., Travelport, Amadeus, Sabre, etc. (not taking into account the many suppliers of “front-end tools”).

4.16 Are there any ownership requirements pertaining to GDSs operating in your jurisdiction?

No. However, Switzerland has adopted Regulation (EC) No 80/2009 of the European Parliament and of the Council of 14 January 2009 on a Code of Conduct for computerised reservation systems. According to this Regulation, a system vendor shall publicly disclose, unless this is otherwise made public, the existence and extent of a direct or indirect capital holding of an air carrier or rail-transport operator in a system vendor, or of a system vendor in an air carrier or rail-transport operator.

4.17 Is vertical integration permitted between air operators and airports (and, if so, under what conditions)?

This is not specifically regulated in Switzerland. As long as the competition rules are respected and all the conditions for the approval of the airport operational regulation are fulfilled (especially, in this sphere, non-discrimination), integration between air operators and airports should be permissible.

4.18 Are there any nationality requirements for entities applying for an Air Operator's Certificate in your jurisdiction or operators of aircraft generally into and out of your jurisdiction?

In order for it to qualify as a commercial operator under Swiss law and to obtain a licence for commercial flights in Switzerland, a carrier must be registered in the Swiss commercial register

with the purpose of operating commercial air traffic. Further, it must be controlled and majority-owned by Swiss citizens. Exceptions can be granted to foreigners or foreign companies that are treated as Swiss citizens or Swiss companies based on intergovernmental agreements (see Art. 27 FCAA and Art. 103 of the Federal Civil Aviation Ordinance (FCAO)).

5 In Future

5.1 In your opinion, which pending legislative or regulatory changes (if any), or potential developments affecting the aviation industry more generally in your jurisdiction, are likely to feature or be worthy of attention in the next two years or so?

The war in Ukraine affects all fields of economy in Europe and worldwide, including civil aviation in Switzerland, and will likely have further impacts over the coming years. On 28 February 2022, the Swiss Federal Council took the decision to adopt the EU sanctions against Russia to avoid circumventions via Switzerland. Further, in line with airspace closures in other European countries, Swiss airspace is closed to all flights from Russia and all movements of aircraft with Russian markings from 28 February 2022, with the exception of flights for humanitarian, medical, or diplomatic purposes.

Switzerland is, and remains, at the forefront of the development of Unmanned Aerial Vehicles (UAVs), also known as (civil) drones, and as with many other fields, regulations in this field follow the fast-paced and dynamic technological developments of this topic. In principle, Swiss regulations in this domain are expected to follow the developments in the European Union, where the EASA created a comprehensive drone regulation framework for all EASA Member States. On 11 June 2019, the Commission Delegated Regulation (EU) 2019/945 on unmanned aircraft systems and on third-country operators of unmanned aircraft systems, and the Commission Implementing Regulation (EU) 2019/947 on the rules and procedures for the operation of unmanned aircraft, were published to ensure the safety and security of drone operations across Europe. The new EU regulations have been applicable since 31 December 2020. Since that date, users of drones – both professional pilots and those flying drones for leisure – are obliged to register. Switzerland adopted this set of rules with effect from the beginning of 2023 following the approval by the Swiss-EU Joint Aviation Committee on 24 November 2022.

In addition to the abovementioned new rules for drone operations, a U-Space is currently being implemented in Switzerland. In simple terms, U-Space is a set of services and specific procedures enabling a safe and efficient integration of drones into airspace. These services rely on a high level of digitalisation and automation of functions, which enable complex operations with little human labour. Since the implementation of U-Space is also gaining momentum in the EU, and several EU regulations on this topic have been published recently, the Swiss-EU Joint Aviation Committee has resolved to adopt these regulations on 24 November 2022 as it is essential that Switzerland and its related legislation are EU-compatible, in particular because UAV operations will increasingly take place across borders in the future. The EU has identified the three cornerstones of U-Space being (i) registration, (ii) geo-sensitisation, and (iii) remote identification, and is currently working on their implementation.

Due to the ongoing war between Israel and the Hamas, multiple carriers have cancelled at least some of their flights to Israel. So far, no airline has announced a permanent suspension of all services to Israel. It is still unclear how these developments will unfold in the region in both the near and far future.



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In the 2019 edition of *Bilanz*, VISCHER's Transport/Aviation team was honoured as one of the five top teams in the field of aviation law in Switzerland.

In 2021, VISCHER was again named in the new edition of *The Legal 500* as one of the leading Swiss law firms in the field of transport.

Various VISCHER Transport/Aviation team members (including, *i.a.*, Urs Haegi, Thomas Weibel, Christoph Niederer, and Peter Kühn) are regularly named in *The Legal 500* and/or *Who's Who Legal Switzerland* in the field of transport.

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1 General

1.1 Please list and briefly describe the principal legislation and regulatory bodies which apply to and/or regulate aviation in your jurisdiction.

The principal legislation to be applied to the carriage of goods and passengers by air in domestic carriage should be divided into two: for principal legislation for domestic carriage, the Turkish Civil Aviation Code (TCAC); and for international carriage, the 1999 Montreal Convention should be applied.

The main regulatory body is the Turkish Directorate General of Civil Aviation (DGCA) acting under the Ministry of Transport and Infrastructure.

1.2 What are the steps which air carriers need to take in order to obtain an operating licence?

Air carriers should at first apply to the Ministry of Transport and Infrastructure with their projects for obtaining permission.

After obtaining permission, they need to realise their project (the project could be for instance lease or buy of some aircrafts).

After realisation of their project, air carriers should apply once again to the Ministry for obtaining their Aircraft Operator's Certificate (AOC).

Therefore, further requirements exist according to the Regulations on Commercial Air Carriage Enterprises (the "SHY-6A") for obtaining AOC.

1.3 What are the principal pieces of legislation in your jurisdiction which govern air safety, and who administers air safety?

The principal legislation is again the Turkish Civil Aviation Code alongside with ICAO legislations.

Being also a member of the European Civil Aviation Conference (ECAC), EU legislation could also be cited as a source.

Air safety is administered by State Airports Authority and DGCA acting under the supervision of the Ministry of Transport and Infrastructure. Furthermore, Eurocontrol, European Aviation Safety Agency and European Civil Aviation Conference may also be cited as administrators.

1.4 Is air safety regulated separately for commercial, cargo and private carriers?

The distinction between commercial, cargo and private carriers is made by regulations and circulars, whereas the main air safety

rules are regulated under the general TCAC. That is why, even though there exists a distinction, the main rules should be applied for all of them.

1.5 Are air charters regulated separately for commercial, cargo and private carriers?

The regulation of air charters in general are regulated under the Turkish Civil Aviation Code, whereas distinctions and different regulations are made by Regulations and especially DGCA's Circulars.

1.6 As regards international air carriers operating in your jurisdiction, are there any particular limitations to be aware of, in particular when compared with 'domestic' or local operators? By way of example only, restrictions and taxes which apply to international but not domestic carriers.

In order to operate under Turkish jurisdiction, foreign operators should obtain flight permits that are granted by taking into consideration bilateral and multilateral treaties to which Türkiye and foreign operator's country are part of and the principle of reciprocity.

1.7 Are airports state or privately owned?

Even though the airports may be privatised according to legislation, they are actually state-owned. However, with the formula of build-operate-transfer, the builder/renovator legal entity obtains the operating rights of the airports for a period of time.

1.8 Do the airports impose requirements on carriers flying to and from the airports in your jurisdiction?

The system in Turkish aviation law is centralised. It means that all the requirements and/or charges could only be imposed by the Directorate's and General Directorate's acting under the Ministry of Transport and Infrastructure. Accordingly, airports could not impose any further requirements and/or different charges without the approval of the DGCA and State Airports Authority.

1.9 What legislative and/or regulatory regime applies to air accidents? For example, are there any particular rules, regulations, systems and procedures in place which need to be adhered to?

There are specific rules regulated under Regulations to be

followed in case of accidents that are based on ICAO and Chicago Convention's rules alongside with TCAC.

According to Article 10 of the TCAC, that is in harmony with ICAO Annex 13, and provides that any civil aircraft accident must be reported to the Ministry of Transport by the responsible pilot or, where this is not possible, one of the crew members, the operator or the local authorities by the most rapid means. Furthermore, an investigative board should be selected for investigating the causes of the accident by the Ministry of Transport. The accident investigation reports' copies should also be sent to the ICAO by the Ministry.

1.10 Have there been any recent cases of note or other notable developments in your jurisdiction involving air operators and/or airports?

The DGCA issued the Instruction on Unmanned Aerial Vehicles which has been amended several times in order to regulate the use of the unmanned aerial vehicles including but not limited to their registry, pilotage licences, etc.

Furthermore, for the carriage of passengers, the State apply a maximum ticket price rule. It means that the air carrier could not sell the tickets with a price higher than the State's fixed amount.

1.11 Are there any specifically environment-related obligations or risks for aircraft owners, airlines, financiers, or airports in your jurisdiction, and to what extent is your jurisdiction a participant in (a) the EU Emissions Trading System (EU ETS) or a national equivalent, and (b) ICAO's Carbon Offsetting and Reduction Scheme for International Aviation (CORSIA)?

There are not any specific environment-related obligations imposed on air carriers via legislation. However, as being part of the ICAO CORSIA, in order to comply with it, DGCA created and still continues to create projects (such as green airport) on the one hand and Turkish Standards Institute started to work on the licensing programmes on the carbon emissions on the other. Therefore, legislative obligations have not been created yet.

2 Aircraft Trading, Finance and Leasing

2.1 Does registration of ownership in the aircraft register constitute proof of ownership?

According to TCAC article 66, ownership that is not registered to the Aircraft Registry does not have any effect on third persons. In other words, the ownership should be registered in order to be recognised by the third person.

Accordingly, the registration of the ownership constitutes an important proof for the third parties.

2.2 Is there a register of aircraft mortgages and charges? Broadly speaking, what are the rules around the operation of this register?

The aircraft mortgages and charges should also be registered in the same Aircraft Registry.

The Aircraft Registry is kept by the Ministry of Transport and Infrastructure according to TCAC article 50.

Mortgage agreements must be in writing and notarised. Contingent rights can also be subject to a mortgage agreement.

The registration request should also be carried out in writing by the owner or owner's authorised person.

2.3 Are there any particular regulatory requirements which a lessor or a financier needs to be aware of as regards aircraft operation?

In order to assert any rights of the lessor or financier to the third parties, the lease agreement or mortgages and charges should be registered to the Aircraft Registry.

2.4 As a matter of local law, is there any concept of title annexation, whereby ownership or security interests in a single engine are at risk of automatic transfer or other prejudice when installed 'on-wing' on an aircraft owned by another party? If so, what are the conditions to such title annexation and can owners and financiers of engines take pre-emptive steps to mitigate the risks?

According to the TCAC, the ownership of an aircraft should be regulated in accordance with the rules of the Turkish Civil Code.

Accordingly, the ownership of the integral parts is included in the ownership of the main goods. This rule is also valid for the accessory unless otherwise expressly stipulated in the Aircraft Registry.

According to the Civil Code, a component part is defined by local custom as an essential element of the main thing, which cannot be separated from it unless it is destroyed, damaged or altered. The engine of an aircraft is considered to be a component part, and the owner of the aircraft will also have the right of ownership over the engine. In the transfer of ownership, accessories may be excluded but component parts cannot be excluded.

In the event that the Cape Town Convention on International Guarantees on Movable Equipment conflicts with the Turkish Civil Code, the Convention takes precedent.

2.5 What (if any) are the tax implications in your jurisdiction for aircraft trading as regards a) value-added tax (VAT) and/or goods and services tax (GST), and b) documentary taxes such as stamp duty; and (to the extent applicable) do exemptions exist as regards non-domestic purchasers and sellers of aircraft and/or particular aircraft types or operations?

Registered aircraft and helicopters are subject to motor vehicle tax. Stamp tax is charged on the papers listed in table (1) attached to the Stamp Tax Law.

Special Consumption Tax applies on imports to Türkiye as a one-time tax during their registration. The fact that these vehicles have been registered or used in the country of origin does not prevent the application of the tax at the time of importation.

2.6 Is your jurisdiction a signatory to the main international Conventions (Montreal, Geneva and Cape Town)?

Türkiye is a signatory state to the Chicago Convention, 1999 Montreal Convention (also part of the Warsaw Convention amended with Hague and Montreal Protocols) and the Cape Town Convention but not the Geneva Convention.

2.7 How are the Conventions applied in your jurisdiction?

International treaties signed under the competence granted by the Constitution come into force after being ratified by the Parliament and published in the Official Gazette. Such treaties prevail over domestic Turkish law.

Furthermore, according to article 106 of the TCAC, domestic flights should be governed by Turkish law, whereas international flights may be subjected to international conventions.

Therefore, in case of any lacuna in the TCAC, instead of other domestic legislations, international conventions signed by Türkiye would be applied primarily.

2.8 Does your jurisdiction make use of any taxation benefits which enhance aircraft trading and leasing (either in-bound or out-bound leasing), for example access to an extensive network of Double Tax Treaties or similar, or favourable tax treatment on the disposal of aircraft?

Companies that have civil aviation as their main business activity are exempt from VAT on the importation of aircraft that will mainly be used for transportation or charter purposes.

Türkiye has signed bilateral Double Tax Treaties with a number of countries. Each specific case is to be reviewed under such treaties' stipulations.

2.9 To what extent is there a risk from the perspective of an owner or financier that a lessee of aircraft or other aviation assets in your jurisdiction may acquire an economic interest in the aircraft merely by payment of rent and thereby potentially frustrate any rights to possession or legal ownership or security?

As the governing law of the aircraft lease agreement is Turkish Civil Code, the lessee of the aircraft may only obtain the right to use the aircraft in accordance to the terms and conditions agreed in the lease agreement. Civil Code and any other related legislation do not give any further right to the lessee risking the owner's ownership right nor the financier's right obtained on the ownership of the aircraft.

3 Litigation and Dispute Resolution

3.1 What rights of detention are available in relation to aircraft and unpaid debts?

In accordance with Article 68/A of the TCAC, the Cape Town Convention on International Guarantees on Movable Equipment prevails over Turkish domestic law in relation to the right of detention of the debtor's assets.

3.2 Is there a regime of self-help available to a lessor or a financier of an aircraft if it needs to reacquire possession of the aircraft or enforce any of its rights under the lease/finance agreement?

There are not any specific rules establishing a regime of self-help for the lessor or financier. The lessor or financier may only apply to the courts or enforcement offices for the protection of their rights on the aircraft.

3.3 Which courts are appropriate for aviation disputes? Does this depend on the value of the dispute? For example, is there a distinction in your jurisdiction regarding the courts in which civil and criminal cases are brought?

First of all there is a distinction between civil and criminal courts under the Turkish legal system.

The aviation disputes that are not crime related would most of time be judged by the commercial court. Therefore, if the claimant is a consumer (in case of the passenger's claim for instance) it would then be the consumer court or consumer arbitration committee who would be competent. If both of the parties are not a merchant, the civil court may also be competent.

3.4 What service requirements apply for the service of court proceedings, and do these differ for domestic airlines/parties and non-domestic airlines/parties?

Upon receiving the claim petition, the court serves the documents on the defendant.

Any service to the registered office address of a Turkish company is valid.

Türkiye is a party to the 1954 HCCH Convention on Civil Procedures and the 1965 HCCH Convention on the Service Abroad of Judicial and Extrajudicial Documents in Civil and Commercial Matters. Therefore, in case of a claim between domestic and non-domestic parties, the service of court documents is to be made in accordance with such conventions.

3.5 What types of remedy are available from the courts or arbitral tribunals in your jurisdiction, both on i) an interim basis, and ii) a final basis?

The provisional measures such as grounding the aircraft (as a provisional measure), the provisional advance payment could be the interim basis remedies, whereas indemnity of damages and/or deregistration of the owner/financier's right/aircraft could be cited as final basis remedies.

3.6 Are there any rights of appeal to the courts from the decision of a court or arbitral tribunal and, if so, in what circumstances do these rights arise?

The right of appeal to the Court of Appeal exists if the Court of Primary Instance gives a judgment open to appeal. Furthermore, if the Court of Appeal gives a judgment open to appeal, this judgment may also be appealed in front of the Court of Cassation. Therefore, arbitral tribunal decisions may only be subject to cancellation proceedings.

3.7 What rights exist generally in law in relation to unforeseen events which might enable a party to an agreement to suspend or even terminate contractual obligations (in particular payment) to its contract counterparties due to *force majeure* or frustration or any similar doctrine or concept?

Türkiye, as a continental law country (civil law) has a *force majeure* doctrine alongside with the impossibility of performance doctrine.

4 Commercial and Regulatory

4.1 How does your jurisdiction approach and regulate joint ventures between airline competitors?

If such joint ventures do not create a dominant position preventing other new entrances to the sector or do not abuse their created dominant position to the detriment of their competitors, Türkiye's jurisdiction do not interfere with the joint ventures.

The supervision of the competition would be made in accordance with the stipulations of the Turkish Code on the Prevention of Unfair Competition by the Competition Board.

4.2 How do the competition authorities in your jurisdiction determine the 'relevant market' for the purposes of mergers and acquisitions?

The relevant market should be determined as the market where the companies to be merged (or acquired) are conducting their commercial activities in conjunction with the products and geographical boundaries.

4.3 Does your jurisdiction have a notification system whereby parties to an agreement can obtain regulatory clearance/anti-trust immunity from regulatory agencies?

The applications for regulatory clearance/anti-trust immunity for mergers and acquisitions are accepted by the Turkish Competition Board.

Therefore, for giving such clearance/immunity, the Competition Board should obtain the opinion of the DGCA.

4.4 How does your jurisdiction approach mergers, acquisition mergers and full-function joint ventures?

As already explained under question 4.1, Türkiye does not interfere with the mergers, acquisition mergers and full function joint ventures unless such mergers/acquisitions/joint ventures do not interfere with fair competition in the market.

However, the size of the mergers/acquisition may oblige the Parties to obtain the approval of the Turkish Competition Board.

4.5 Please provide details of the procedure, including time frames for clearance and any costs of notifications.

Once the application is made to the Competition Board, it reviews and decides either to approve or to further investigate the mergers/acquisitions/joint ventures.

In case of deciding further investigation, the Competition Board shall notify the parties within 30 days of the filing.

A fast-track procedure was introduced by Communiqué No. 2010/4 to accelerate the clearance process.

4.6 Are there any sector-specific rules which govern the aviation sector in relation to financial support for air operators and airports, including (without limitation) state aid?

The Decision on State Subsidies for Investment stipulates a list of investments or first priority where general investment subsidies and/or regional investment subsidies may be accorded. Accordingly, the investments to the airports and ground operations are listed within this first priority investments where some VAT exemptions and even insurance premium aids may be accorded.

4.7 Are state subsidies available in respect of particular routes? What criteria apply to obtaining these subsidies?

The subsidies to be accorded differs according to time and region. However, the main criteria to be applied is to bring economic and social contribution to the region within the specific time period.

4.8 What are the main regulatory instruments governing the acquisition, retention and use of passenger data, and what rights do passengers have in respect of their data which is held by airlines and airports?

Paragraph (1) of Article 12 of Law No. 6698 on the Protection of Personal Data (Law) stipulates the prevention of unlawful processing of personal data, prevention of unlawful access to personal data and protection on personal data.

In order to ensure that the appropriate level of security is applied for all kinds of technical and administrative measures, paragraph 5 of the abovementioned law provides that, if processed personal data is obtained by third parties by illegal means, the data officer in question must notify the affected person and the Personal Data Protection Board as soon as possible. The Board may declare this situation on its website or by any other method it deems appropriate, if necessary. The purpose of notification of data infringement to the Board and the affected person is to ensure that measures can be taken to prevent or minimise the negative consequences of such infringement.

4.9 In the event of a data loss by a carrier, what obligations are there on the airline which has lost the data and are there any applicable sanctions?

The airline losing the data should at first indemnify the parties damaged from such loss. Furthermore, if such lost is distributed or seized intentionally by a person, this person may be sentenced to imprisonment for two to four years according to article 136 of the Turkish Penal Code.

4.10 What are the mechanisms available for the protection of intellectual property (e.g. trademarks) and other assets and data of a proprietary nature?

Türkiye has a special code, namely the Turkish Intellectual Property Code, which is prepared on the basis of EU legislation for the protection of intellectual property.

4.11 Is there any legislation governing the denial of boarding rights and/or cancelled flights?

The main regulation on denial of boarding and cancelled flights is the Regulation on the Rights of Passengers Travelling by Airline ("SHY-YOLCU"), which has been prepared in the light of the stipulations of the EU Regulation 261/2004.

4.12 What powers do the relevant authorities have in relation to the late arrival and departure of flights?

In case of delay, the airline operator should offer some services (such as meals, refreshments, etc.). If such services are not offered, the DGCA may impose an administrative fine on the airline operator.

4.13 Are the airport authorities governed by particular legislation? If so, what obligations, broadly speaking, are imposed on the airport authorities?

The main authority in Turkish civil aviation is the DGCA whose duties and powers are stipulated under Code No. 5431.

Another important authority is the State Airports Authority whose duties and powers are stipulated under its Status regulated according to the by law numbered 233.

The ground services to be given within the airport is also regulated under the Airport Ground Services Regulation (SHY-22).

4.14 To what extent does general consumer protection legislation apply to the relationship between the airport operator and the passenger?

As passengers are treated as a consumer, consumer protection legislation should be applied to every dispute arisen between passengers and airport operator.

4.15 What global distribution suppliers (GDSs) operate in your jurisdiction?

All IATA-recognised global distribution suppliers, such as Amadeus, Galileo and Sabre, operate in Türkiye.

4.16 Are there any ownership requirements pertaining to GDSs operating in your jurisdiction?

There are not any ownership requirements pertaining to GDSs operating in Türkiye.

4.17 Is vertical integration permitted between air operators and airports (and, if so, under what conditions)?

The vertical integration has not been banned by any legislation meaning that it might be permitted. However, such integration should also conform to the rules of the Code on the Prevention of Unfair Competition as such integration may distort the competition.

4.18 Are there any nationality requirements for entities applying for an Air Operator's Certificate in your jurisdiction or operators of aircraft generally into and out of your jurisdiction?

The requirements for obtaining an AOC has been cited within the Regulations on Commercial Air Carriage Enterprises (the "SHY-6A"). Accordingly, Turkish citizens must hold the majority of the shares, and voting and management rights of the company who would apply for the Certificate and the Certificate would be granted by DGCA.

That is why, in order to obtain an AOC from the DGCA, the nationality requirement exists.

5 In Future

5.1 In your opinion, which pending legislative or regulatory changes (if any), or potential developments affecting the aviation industry more generally in your jurisdiction, are likely to feature or be worthy of attention in the next two years or so?

There is an urgent need of a review of TCAC in order to harmonise it with the 1999 Montreal Convention.

Furthermore, the necessary amendment in the Code should also be realised for regulating possible future use of unmanned aerial vehicles in the carriage of goods and passengers by air.



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1 General

1.1 Please list and briefly describe the principal legislation and regulatory bodies which apply to and/or regulate aviation in your jurisdiction.

Regulatory bodies

There are a number of bodies which have the authority to regulate, administer and control civil aviation. The UK bodies are chiefly: the Secretary of State for Transport; and the Civil Aviation Authority (“CAA”).

The Secretary of State for Transport

The Department for Transport (“DfT”) (in exercising the authority of the Secretary of State for Transport) is the governmental body responsible for civil aviation. The Secretary of State has a general responsibility for organising, carrying out and encouraging measures for the development of civil aviation and the related aviation industry, for setting national aviation policy, for working with the CAA, NATS (the UK’s national air traffic service), airlines and airports, for the promotion of aviation safety and efficiency, for research into questions relating to air navigation, and for the safeguarding of the health of persons on board aircraft.

The Secretary of State has statutory powers relating to aviation security (see, for example, the Aviation and Maritime Security Act 1990).

Furthermore, the Secretary of State has responsibility for advising on, and where appropriate, implementing Orders of Council (made by the Crown) to effect international obligations and standards in UK domestic legislation.

The CAA

The CAA is an independent body responsible for the regulation of aviation safety in the UK, determining policy for the use of airspace, the economic regulation of London’s Heathrow, Gatwick and Stansted airports, the licensing and financial fitness of airlines and the management of the ATOL financial protection scheme for holidaymakers. In addition, the CAA advises the UK Government on aviation issues, represents consumer interests, conducts economic and scientific research and produces statistical data. The CAA acts in the regulation of aviation without detailed supervision by the Government. Under current legislation, policy formation in route and air transport licensing is the responsibility of the CAA, although the Secretary of State retains specified powers both of direction and of guidance. The CAA also has concurrent powers with the Competition and Markets Authority (“CMA”) to enforce competition law in relation to air traffic services and airport operation services.

Legislation

As with its EU neighbours, legislation is a mix of local law, international treaties, and EU Regulations and Directives which have been retained in UK law by virtue of the European Union (Withdrawal) Act 2018. Some of the principal pieces of domestic UK legislation are:

- Civil Aviation Act 1982 (as amended).
- Civil Aviation Authority Regulations 1991 – Statutory Instrument No 1672 1991.
- Operation of Air Services in the Community Regulations 2009 – Statutory Instrument No 41 2009.
- Air Carrier Liability (No 2) Regulations 2004 – Statutory Instrument No 1974 2004.
- Community Air Carrier Liability Order 2004 – Statutory Instrument No 1418 2004.
- Civil Aviation (Denied Boarding, Compensation and Assistance) Regulations 2005 – Statutory Instrument No 975 2005.
- Civil Aviation (Insurance) Regulations 2005 – Statutory Instrument No 1089 2005.
- Civil Aviation Act 2006.
- Civil Aviation (Provision of Information to Passengers) Regulations 2006 – Statutory Instrument No 3303 2006.
- Civil Aviation (Access to Air Travel for Disabled Persons and Persons of Reduced Mobility) Regulations 2007 – Statutory Instrument No 1895 2007.
- Civil Aviation (Allocation of Scarce Capacity) Regulations 2007 – Statutory Instrument No 3556 2007.
- Air Passenger Rights and Air Travel Organisers’ Licensing (Amendment) (EU Exit) Regulations 2019 (formerly, EU Regulation 261/2004).

His Majesty’s (“HM”) Government, from time to time, appoints commissions to investigate certain aspects of the aviation industry, the most recent and highly publicised being the Airports Commission into the expansion of London’s airport capacity, which was chaired by Sir Howard Davies and issued its final report in July 2015.

As the UK is no longer a member of the EU, EU legislation as it applied to the UK on 31 December 2020 is now part of UK domestic legislation, under the control of the UK’s Parliaments and Assemblies. By virtue of sections 2 and 3 of the European Union (Withdrawal) Act 2018, EU legislation which applied directly or indirectly to the UK before 11.00 p.m. on 31 December 2020 (the date of “Brexit”) has been retained in UK law as a form of domestic legislation known as “retained EU legislation”. Section 4 of this Act ensures that any remaining EU rights and obligations, including directly effective rights within EU treaties, continued to be recognised and available in domestic UK law after Brexit. Two useful resources for finding

out what EU legislation applies in the UK after Brexit are <https://legislation.gov.uk> and <https://webarchive.nationalarchives.gov.uk/eu-exit/>

The Retained EU Law (Revocation and Reform) Act received Royal Assent on 29 June 2023 and, in its final form, did not go as far as the initial drafts of the Bill had proposed in revoking EU legislation. The Act does, however, provide Parliament with significant powers to amend and replace EU-derived legislation, and the courts are given greater freedom to depart from retained (EU based) case law. The Act does create an element of uncertainty as it is not yet known how Parliament will exercise the powers given to it under by the Act or how the courts will apply the new test for departing from retained case law. The main features of the Act are:

- The sunset clause: whilst reduced in scope from that originally tabled in the Bill, section 1 of the Act revokes only the EU-derived legislation that is expressly set out in Schedule 1 to the Act, much of which is already redundant.
- The removal of certain features of EU law, with effect from the end of 2023, most notably the supremacy of EU law principle, and the principles of EU law (for example, the principles of effectiveness, fundamental rights and non-discrimination).
- The introduction of new tests which give the Supreme Court and Court of Appeal greater freedom to depart from CJEU decisions and from their own previous decisions on retained EU law.
- The power of Parliament to modify retained EU law (now called, under the Act, “assimilated law”), with ministers being given fairly wide powers to amend, restate, revoke, replace and update EU derived legislation.

1.2 What are the steps which air carriers need to take in order to obtain an operating licence?

The CAA is the competent licensing authority in the UK in almost all matters relating to the granting of operating licences. There are two types of operating licence: Type A; and Type B. Type B operating licences are for operators of aircraft with 19 or fewer seats, and Type A operating licences are for operators of aircraft with 20 or more seats. Type B operating licences may also be granted to operators of larger aircraft with a limited scope of activity.

In order for the licence to be granted, the CAA must be satisfied that the applicant fulfils the conditions set out in EU Regulation 1008/2008, including that:

- the operator is based and registered in the UK, which does not include the Channel Islands or the Isle of Man;
- the main occupation of the licence holder is either air transport alone or air transport combined with other aviation activities;
- it holds a valid air operator certificate issued by a national authority of an EEA Member State;
- it has one or more aircraft at its disposal through ownership or a dry lease agreement;
- its main occupation is to operate air services in isolation or combined with any other commercial operation of aircraft or the repair and maintenance of aircraft;
- its company structure allows the competent licensing authority to implement the relevant provisions of the Regulation;
- Member States and/or nationals of Member States own more than 50% of the undertaking and effectively control it directly or indirectly through one or more intermediate undertakings, except as provided for in an agreement with a third country to which the European Community is a party;

- it meets the financial conditions specified in Article 5 of the Regulation;
- it complies with the insurance requirements specified in Article 11 of the Regulation and in EU Regulation 785/2004; and
- it complies with the provisions on good repute as specified in Article 7 of the Regulation.

1.3 What are the principal pieces of legislation in your jurisdiction which govern air safety, and who administers air safety?

UK legislation is contained in the Civil Aviation Act 1982 and the Air Navigation Order 2009 (as amended). Historically, and up until 31 December 2020, another important source of law was European legislation, which had direct application in the UK concerning safety aspects of aircraft, operators, maintenance and design organisations, and personnel in commercial transport. See, for example: the EU Regulations: 216/2008 (as amended; “Basic Regulation”); 7/2013 (rules for airworthiness of aircraft and products and certification of design and production organisations); 1321/2014 (continuing airworthiness and approval of involved organisations and personnel); 2015/445 (aircrew); and 859/2009 (“EU-OPS” – operating safety requirements and standards). EU legislation, as it applied to the UK on 31 December 2020, is a part of UK domestic legislation (but see note in relation to question 1.1 above), under the control of the UK’s Parliaments and Assemblies, and is published on <https://legislation.gov.uk>. The CAA is responsible for administering air safety on a day-to-day basis.

1.4 Is air safety regulated separately for commercial, cargo and private carriers?

The CAA regulates all aspects of the UK aviation industry. Whilst the regulator is the same in all three cases, there are different regulations and standards which must be adhered to by operators in these different sectors.

1.5 Are air charters regulated separately for commercial, cargo and private carriers?

The CAA regulates all aviation activity (apart from military).

1.6 As regards international air carriers operating in your jurisdiction, are there any particular limitations to be aware of, in particular when compared with ‘domestic’ or local operators? By way of example only, restrictions and taxes which apply to international but not domestic carriers.

The UK is a party to the Chicago Convention 1944, which provides for availability, so far as practicable, of aerodromes in its territory (Article 28) and equality of conditions for use of aerodromes for international and domestic aircraft (Article 15). Article 15 of the Convention further provides for equality of charges for use of aerodromes.

Under the Air Navigation Order 2009, an aircraft registered in a State other than the UK must not take on board or discharge any passengers or cargo in the UK for valuable consideration without an operating permit granted by the Secretary of State. Such permit will only be granted if the necessary traffic rights exist (under a bilateral international agreement or otherwise)

and is also subject to satisfying the Department for Transport of compliance by the operator with administrative requirements relating to the carrier's aircraft and its insurance arrangements.

1.7 Are airports state or privately owned?

They are privately owned. For example: London Heathrow is owned by Heathrow Airport Holdings Limited (formerly BAA) which is owned by FGP Topco Limited, a consortium led by Ferrovial SA; Aberdeen, Glasgow and Southampton airports are owned by AGS Airports Limited which is jointly held by Ferrovial SA (via Faero UK Holding Limited) and AGS Ventures Airports Limited; Manchester Airport is owned by Manchester Airports Group plc; and London Gatwick is owned by French VINCI Airports (majority shareholder) and Global Infrastructure Partners. London City Airport is owned by a Canadian consortium which comprises AIMCo, OMERS, Ontario Teachers' Pension Plan and Wren House Infrastructure Management. They are licensed and regulated by the CAA.

1.8 Do the airports impose requirements on carriers flying to and from the airports in your jurisdiction?

Conditions of use are imposed, as well as charges. Users of airports are subject to airport charges, which are regulated by the CAA under the Civil Aviation Act 2012 and the Airport Charges Regulation 2011. "Airport charges" means: "charges levied on operators of aircraft in connection with the landing, parking or taking off of aircraft at the airport (including charges that are to any extent determined by reference to the number of passengers on board the aircraft) but excluding excepted charges".

Excepted charges are defined as being:

- (a) penalties payable by virtue of section 38C of the Civil Aviation Act 1982 (breach of noise control scheme);
- (b) penalties payable by virtue of section 78A of the Civil Aviation Act 1982 (penalty schemes established by managers of aerodromes);
- (c) charges payable for services provided for airport users as described in the Annex to Council Directive 96/67/EC of 15th October 1996 on access to the ground handling market at Community airports;
- (d) charges payable by virtue of section 73 of the Transport Act 2000 (charges for chargeable air services); and
- (e) charges referred to in Regulation (EC) No. 1107/2006 of the European Parliament and of the Council of 5th July 2006 which are levied for the funding of assistance to disabled passengers and passengers with reduced mobility."

In terms of the Civil Aviation Act 2012, an airport operator that has, or is likely to acquire, substantial market power requires a licence from the CAA. London's Heathrow and Gatwick currently hold licences, which include conditions relating to price controls, service quality and operational resilience. London's Stansted had previously been required to hold a licence but since April 2014, the CAA has held that it no longer meets the market power requirements and is no longer required to hold a licence.

1.9 What legislative and/or regulatory regime applies to air accidents? For example, are there any particular rules, regulations, systems and procedures in place which need to be adhered to?

The UK is a party to the Chicago Convention 1944. Article 26 and Annex 13 to that Convention make provisions for the investigation of air accidents. The UK implements the relevant requirements by way of the legislation discussed below.

The Air Accidents Investigations Branch ("AAIB") is responsible for the investigation of civil aircraft accidents and serious incidents in the UK. The AAIB is an independent part of the Department for Transport.

The principal legislation relating to investigation of air accidents includes:

- EU Regulation 376/2014 on the investigation and prevention of accidents and incidents in civil aviation.
- UK Civil Aviation (Investigation of Air Accidents and Incidents) Regulations 2018.

The AAIB has the power to require the detention and preservation of evidence and has powers of enquiry. Assistance of the local police is routinely available to AAIB investigators to secure an accident site. The AAIB reports to the CAA and other civil aviation authorities having responsibility for oversight of any aspect of the accident. Reports of civil air accidents are published.

1.10 Have there been any recent cases of note or other notable developments in your jurisdiction involving air operators and/or airports?

There have been recent developments in relation to Regulation 261 (now known in the UK as the Air Passenger Rights and Air Travel Organisers' Licensing (Amendment) (EU Exit) Regulations 2019) in case law. As outlined in question 1.1 above, this Regulation protects passengers in the event of cancellation or long delay. In *LE v Transport Aereos Portugueses SA*, where a violent and unruly passenger caused a flight delay, the defendant successfully argued that they were not liable to pay compensation and sought to rely on Article 5(3), which is the extraordinary circumstances defence. The Court of Justice of the European Union ("CJEU") ruled that the defence could be relied upon because the circumstances could not have been avoided even if all reasonable measures were taken. They did note that if the passenger had displayed this behaviour before or during boarding, it should not be classified as an extraordinary circumstance, as the pilot has authority to refuse a passenger from boarding or to ask them to disembark.

In *Lipton & Anor v BA City Flyer Ltd* [2021] EWCA Civ 454, the English Court of Appeal detailed how Regulation 261 claims will operate in the UK following Brexit. The airline sought to defend a claim for compensation for delay on the basis that the captain was unexpectedly unwell, and this amounted to extraordinary circumstances. The Court of Appeal found that availability of airline crew was inherent in the airline's operations and absence for sickness, regardless of whether that occurred before or whilst on duty, did not amount to an "extraordinary circumstance". The Court went on to state that Regulation 261 takes effect in English law (as amended by the changes to Regulation 261 by the Air Passenger Rights and Air Travel Organiser's Licensing (Amendment) (EU Exit) Regulations 2019) as follows:

- it is to be given a purposive construction taking recitals into account;
- the process of interpretation includes provisions of international law incorporated into Regulation 261 by reference; and
- the meaning and effect of Regulation 261 is determined by reference to European case law made before 31 December 2020, but the English courts are able to depart from retained CJEU case law and general principles where they consider it appropriate to do so.

In *Varano v Air Canada* [2021] EWHC 1336 (QB), the High Court looked at the issue of delays to connecting flights, and

the obligations of non-Community carriers where operations outside the EU are disrupted. In this case, a non-EU carrier was operating services from the UK to the USA via Canada, where the passenger was to make a connection. The leg from Canada to the USA was delayed because of a delay to a previous leg of the aircraft's journey, which was not the one on which the passenger travelled: the passenger's flight from the UK to Canada was unaffected. The delay therefore occurred wholly outside the UK. Air Canada submitted that Regulation 261 was extra-territorial in effect and that the EU did not have jurisdictional competence in relation to flights taking place wholly outside the EU. The Court analysed the position under English law and overruled the defendant's submission that *Lipton v BA City Flyer* was wrongly decided insofar as claims decided after the end of the transition period should be decided on the basis of Regulation 261 as amended by the 2019 Amendment Regulations. The Court held that the claimant was entitled to compensation.

On 27 June 2023, the DfT published its response to the aviation consumer policy reform consultation, which sought views on a range of air passenger rights issues and focused on enhancing consumer protection and improving the consumer experience. HM Government has committed to introduce legislation to grant additional powers to the CAA, remove the cap on compensation for wheelchairs or mobility aids damaged on domestic UK flights, and impose mandatory alternative dispute resolution (or ADR) on airlines. That said, HM Government has provided no timeline as to when this will happen.

In December 2023, HM Government launched its first consultation on airport slots in over 30 years. The Consultation states that:

The objectives for slot reform are:

- stimulating a competitive environment by creating a more efficient, transparent, and dynamic slot market; and
- establishing a framework for the allocation of new slots.

What is a "slot"? The Consultation (available at: <https://assets.publishing.service.gov.uk/media/656f58ec0f12ef070e3e02ab/dft-airport-slot-allocation-reform.pdf>) defines a "slot" as *the permission given to an airline operator to use the full range of airport infrastructure (runway, terminal, gates, etc.) at a specific date and time for landing or take-off at an airport. The number of slots available at an airport are intrinsically linked to the airport's infrastructure capacity and the number of flights that can operate from it. Slots are allocated in series, i.e., sequences of at least five slots at the same time on the same day of the week, which are distributed regularly in the same scheduling season. So, a slot series would for example be a 09:15 departure slot over at least five consecutive Mondays in the summer season.*

The consultation will only apply to "Level 3" slot coordinated airports, i.e. the most congested airports in the UK. These are:

- London Heathrow.
- London Gatwick.
- London City.
- London Stansted.
- London Luton.
- Manchester.
- Birmingham.
- Bristol.

The consultation aims to gather feedback on a variety of ideas to increase the efficiency of existing airport operations to make the best use of the infrastructure in place.

At the busiest airports, such as Heathrow, slots are lucrative in themselves and can fetch millions of pounds. For example, in 2017 Oman Air paid \$75m for an early morning slot at Heathrow.

To operate a flight, an airline needs two slots: one for landing; and one for take-off. Slots only become an issue when more

airlines want to operate into an airport than the airport can handle. This is the result of a number of factors, including terminal and runway capacity, as well as regulatory restrictions such as flight caps.

Currently, there are two criteria for awarding slots:

- Under so-called "historic rights" or "grandfathering". This means that if an airline has a slot in the previous IATA summer or winter flying season it gets to keep it for the next season.
- To retain a slot, the airline must abide by the 80:20 "use it or lose it" rule which requires the slot to be used at least 80% of the time. As long as it does so, the airline can keep the slot in perpetuity.

Slot coordination was introduced in 1993. Prior to that, the flag carrier of a country was responsible for allocating slots. Pre-empting the introduction of regulatory slot coordination, British Airways split out its slot coordination department in 1991 to create Airport Coordination Limited (or ACL), now the world's largest airport slot coordinator, working with 72 airports.

In the UK, as a result of various mergers and buy-outs, British Airways now owns 51.8% of all Heathrow slots with Virgin Atlantic coming in second with just 4.3%. The situation is similar with Gatwick and easyJet. As the consultation notes:

"However, the combination of airport capacity being congested and the majority of slots at an airport being held by one or two airlines can inhibit competition and lead to the slot allocation system becoming undynamic If an airline loses a slot at a capacity constrained airport it can be very difficult, or take many years, for the airline to acquire a new one. It is often only when an airline becomes insolvent that significant numbers of slots become available at a capacity constrained airport. The impact of this is that there are fewer opportunities for new airlines to commence services at an airport or for existing airlines at the airport to grow, limiting choice and connectivity for businesses and passengers."

The consultation document proposes several options that it could consider, for example:

- Increasing slot utilisation and the "use it or lose it" rule. This involves requiring an airline to increase the number of flights in order to retain its slots. Presently, this is 80% (which means that, if an airline had slots for a flight every single day of the year, it would only have to operate flights on 292 days to meet this threshold) and the consultation suggests increasing this to 90%.
- Slot routing restrictions and retiming.

At the moment there are a number of slot rules that give incumbent airlines preferential treatment over new entrants. This includes the fact that new slots allocated to incumbents can be used for any route whilst new entrants must use their slots for the allocated route for at least two flying seasons (one year) before they can use them for other destinations. In addition, incumbent airlines are able to re-time their slots during the coordination process before any remaining slots are re-allocated. This means that existing airlines have a competitive advantage over new airlines, particularly when an airline goes insolvent or ceases operations at an airport, creating a void. Existing airlines are thus in a position to select the more preferable slots.

In both cases, HM Government is seeking to level the playing field between incumbent and new airlines, and is proposing that all new slots be treated the same, with a moratorium of four flying seasons (two years) until airlines can fly to alternate destinations. HM Government further proposes that the re-timing advantage be removed and that re-timing requests and new slot requests be considered at the same time.

HM Government is also seeking greater control of the slot coordinator, ACL. Currently, HM Government has no control over slot coordination beyond regulatory and policy framework, and it wishes to change this by creating a new power for the Secretary of State:

“to issue a direction to the coordinator requiring it to undertake a certain action. Any direction would need to be in keeping with Regulation (for example a direction could not require the coordinator to do something which is not within its remit). We do not believe that it would be appropriate for the Government to have the ability to direct the coordinator on the allocation of individual slots or to take action which would unfairly benefit a particular airport, airline or country.”

HM Government is also proposing the establishment of a compulsory public slot register for airports as well as a mandatory trading platform, and also wants to give ACL regulatory oversight to review and approve all slot trades. A related issue is the leasing of slots, often used by airlines to retain their slot portfolio until such a date as they need them. Of course, this also means that some slots are retained by airlines for no other reason than they can make money by leasing them to other airlines. The consultation document proposes that:

“It is the Government’s view that an airline should not use leasing to hold on to a slot for an extended period which it has no use for. Leasing should not be used as a long-term operational solution and slots should instead be returned to the pool for reallocation. We are proposing that slot leasing is limited to a set period after which the slot will have to either be returned to the pool or flown by the original slot holder.”

The consultation runs until 9 February, 2024.

1.11 Are there any specifically environment-related obligations or risks for aircraft owners, airlines, financiers, or airports in your jurisdiction, and to what extent is your jurisdiction a participant in (a) the EU Emissions Trading System (EU ETS) or a national equivalent, and (b) ICAO’s Carbon Offsetting and Reduction Scheme for International Aviation (CORSIA)?

Several different international and UK Government bodies have a role in the environmental regulation of aviation in the UK. Different issues are addressed by different bodies, and, in the UK, the following laws and standards apply:

- international standards developed by ICAO, such as and including ICAO’s Carbon Offsetting and Reduction Scheme for International Aviation (“CORSIA”);
- legislation from the EC, although following expiry of the Brexit transition period, a new UK Emissions Trading System (“UK ETS”) came into force replacing the UK’s participation in the EU ETS such that both now have relevance to aviation operations in the UK;
- national legislation from Parliament and administered by government departments such as the Department for Trade, the Department for the Environment, Food and Rural Affairs (“DEFRA”), and the Department for Energy and Climate Change. In addition, local authorities play a role at the local level, as do various governmental agencies and bodies such as the Environment Agency and Natural England; and
- the planning framework operated by local authorities.

The EU ETS and CORSIA are of particular relevance to aircraft owners and financiers in addition to the operators of aircraft affected as they may give rise to certain rights of UK regulators to detain and sell aircraft for failure to comply with the regulations, although it appears that the previous statutory right to do so for failure to pay EU ETS penalties appears to have been removed under the UK ETS. In the meantime, the

UK ETS, EU ETS and CORSIA regimes all run in parallel and give rise to increased compliance issues given their overlapping requirements in places.

Airports have a responsibility for managing the noise impact of aircraft. There are various pieces of legislation that must be adhered to in relation to noise. These are:

- national laws in relation to how airspace is managed, together with additional legislation around noise which apply to nationally designated airports;
- various European Directives and Regulations which were incorporated into the UK’s legislative framework by the Withdrawal Act of 2018; and
- local planning conditions.

Under the Climate Change Act 2008, the Department for Business, Energy and Industrial Strategy is responsible for setting carbon budgets for different industries. It has set one for domestic aviation, however, it is worth noting that international aviation is excluded from these.

DEFRA has the overall responsibility for ensuring local air quality meets European and international standards. However, air quality policy and regulation are devolved, with individual strategies for England, Scotland, Wales and Northern Ireland. Much of the domestic legislation originates from European legislation, and there is no aviation-specific policy (presumably on the basis that there are a number of contributors to poor air quality). If national air quality objectives are not likely to be met in an area, the local authority must declare it an Air Quality Management Area and then take active steps to improve air quality in that area.

As with all other UK businesses, airports must meet legislative standards in relation to water quality, waste and protecting the natural environment. The Environment Agency and Natural England are the two bodies with responsibilities in these areas.

2 Aircraft Trading, Finance and Leasing

2.1 Does registration of ownership in the aircraft register constitute proof of ownership?

The United Kingdom Register of Civil Aircraft, maintained by the United Kingdom CAA, is not a register of legal ownership, and therefore registration of ownership does not constitute proof of ownership of a particular aircraft. However, it often provides non-conclusive *prima facie* evidence.

To register aircraft on the United Kingdom Register of Civil Aircraft, a Form CA1 (see <https://caa.co.uk>) is submitted either by the owner or by the so-called “charterer by demise” (by virtue of a relevant loan, lease, hire or hire purchase) eligible to register in accordance with the Air Navigation Order 2009 as follows.

Under Part 1 Article 4(3) of the Air Navigation Order 2009, an aircraft must not be registered or continue to be registered in the United Kingdom if it appears to the CAA that:

- (a) the aircraft is registered outside the United Kingdom and that such registration does not cease by operation of law when the aircraft is registered in the United Kingdom;
- (b) an unqualified person holds any legal or beneficial interest by way of ownership in the aircraft or any share in the aircraft;
- (c) the aircraft could more suitably be registered in some other part of the Commonwealth; or
- (d) it would not be in the public interest for the aircraft to be, or to continue to be, registered in the United Kingdom.

Pursuant to Part 1 Article 5(1), only the following persons are qualified to hold a legal or beneficial interest by way of ownership in an aircraft registered in the United Kingdom or a share in such an aircraft:

- (a) the Crown in right of HM Government in the United Kingdom and the Crown in right of the Scottish Administration;
- (b) Commonwealth citizens;
- (c) nationals of any EEA State;
- (d) British protected persons;
- (e) bodies incorporated in some part of the Commonwealth and having their principal place of business in any part of the Commonwealth;
- (f) undertakings formed in accordance with the law of an EEA State which have their registered office, central administration or principal place of business within the EEA; or
- (g) firms carrying on business in Scotland; in this sub-paragraph “firm” has the same meaning as in the Partnership Act 1890 (c39).

Under Part 1 Article 5(4) of the Air Navigation Order 2009, if an aircraft is chartered by demise to a person qualified under paragraph (1), the CAA may, whether or not an unqualified person is entitled as owner to a legal or beneficial interest in the aircraft, register the aircraft in the United Kingdom in the name of the charterer by demise if it is satisfied that the aircraft may otherwise be properly registered. There is also a discretion for the CAA to register an aircraft which is owned by a person not qualified under Part 1 Article 5(1) where the owner resides or has a place of business in the United Kingdom, but such aircraft must not be used for commercial air transport, public transport or aerial work (Part 1 Articles 5(2) and (3)).

As part of the application procedure, the CAA may request additional information in order to process an application for registration (for example, a certified copy of a bill of sale evidencing the ownership of the aircraft to be registered).

Further guidance on the requirements for registration of aircraft on the United Kingdom Register of Civil Aircraft is available at <https://caa.co.uk>

2.2 Is there a register of aircraft mortgages and charges? Broadly speaking, what are the rules around the operation of this register?

The CAA maintains the United Kingdom Aircraft Mortgage Register (pursuant to the Mortgaging of Aircraft Order 1972). There are no restrictions as to who can be registered as a mortgagee, and any mortgage charging a UK-registered aircraft by way of security may be registered (and indeed, from a mortgagee’s perspective, should be, so as to confirm the security priority referred to in the section headed “Priority” below). Leases and other charges not constituting *in rem* rights in a “G”-registered aircraft (such as mortgages) cannot be registered, and there is no separate register maintained by the CAA for the registration of ownership rights in engines or parts.

Mortgage registration

Applicants for registration of a mortgage must complete and provide to the CAA a Form CA1577 (see <https://caa.co.uk>), together with a complete copy of the related aircraft mortgage deed (provided it has been certified as a true copy by the applicant). The CAA will then confirm, in writing, to the applicant once an aircraft mortgage registration application is successful.

The registration fees for an aircraft mortgage by the CAA vary according to the maximum take-off weight (“MTOW”) of the subject aircraft. They are currently as follows (and are subject to revision annually):

MTOW	CAA Charge
5,700kg and under	£207
5,701kg–15,000kg	£411
15,001kg–50,000kg	£683
50,000kg	£1,230

For aircraft mortgages which attach to a number of aircraft, the CAA registration fee is levied on the heaviest aircraft by MTOW, plus £184 for each additional aircraft attached.

Priority

An aircraft mortgage registered on the United Kingdom Aircraft Mortgage Register will take priority over all other non-registered or subsequently registered mortgages. It constitutes notice of the relevant mortgage being given to all relevant third parties, and all persons are thereby deemed to have express notice of all of the details appearing in the United Kingdom Aircraft Mortgage Register.

If the relevant mortgagor is a company registered in England and Wales, in order to obtain all the protections conventionally afforded to a mortgagee, it will be necessary to also register the relevant mortgage at Companies House pursuant to the provisions of the Companies Act 2006, as it will become void against an appointed insolvency agent of the mortgagor (whether an administrator, a liquidator or a secured creditor).

It should be noted, however, that this priority position of an aircraft mortgage is nevertheless subject to certain other *in rem* rights (“liens”) of third parties to retain or detain the relevant aircraft until a claim for payment (e.g. in respect of maintenance or repair of the aircraft or in respect of an unpaid purchase price for the aircraft) has been satisfied. These liens are created both by statute and under common law, and they are also capable of creation by a contract between parties. In addition, certain specific rights are created by statute for relevant regulatory authorities to detain the aircraft (e.g., the CAA for unpaid airport and air navigation charges, the UK Environment Agency for unpaid penalties under the European Emissions Trading Scheme, and HM Revenue & Customs in respect of unpaid taxes). In certain circumstances, these rights of detention will also include a power of sale of the relevant aircraft or attach to the rest of the operating fleet of which the aircraft is a part despite different ownership.

The limited case law in English law, which applies as precedent to the matter of the priority of aircraft liens and statutory detention rights, suggests strongly that an aircraft lien or statutory detention right will take priority over a registered aircraft mortgage.

Liens are not registrable. However, in dealing with the concerns of mortgagees, it is possible to seek to manage the risks of detention and sale of a registered aircraft by way of contractual obligations of owners and operators limiting the creation of liens to “permitted liens”. These obligations are generally complemented by contractual monitoring rights, established in the relevant loan or lease agreements, which include requirements to provide “statement of account” letters, authorising information regarding relevant payments giving rise to liens, to be provided directly to the mortgagee by the relevant regulatory authority. This is generally effective in providing an early warning of any potential detention or retention of a relevant aircraft, and in ensuring the timely termination of the relevant operating agreement before liens are enforced.

Priority notices

A potential mortgagee of a registered aircraft can “pre-register” a mortgage with the CAA by entering a priority notice, utilising CAA Form CA1330 (obtained from <https://caa.co.uk>). The

priority notice remains valid for 14 working days from and including the date of entry, and during this period either the relevant aircraft mortgage must be registered, or a further priority notice entered. The relevant aircraft mortgage, once registered with the CAA, will then take its priority from the date of registration of the original priority notice. The registration fees for such priority notices vary according to the MTOW of the subject aircraft, and are currently as follows (subject to revision annually):

MTOW	CAA Charge
15,000kg and under	£61
Over 15,000kg	£122

The relevant registration fee is applied by the CAA on a “per aircraft” basis.

Mortgage searches

A search of the United Kingdom Aircraft Mortgage Register for entries registered against relevant aircraft can be made by submitting a CAA Form CA350 (obtained from <https://caa.co.uk>) to the CAA. Search fees are currently £35 per aircraft and are revised on an annual basis. Certified copies of the entries on the Mortgage Register are available at £35 per aircraft.

2.3 Are there any particular regulatory requirements which a lessor or a financier needs to be aware of as regards aircraft operation?

As regards the lessor of an aircraft registered with the CAA, theoretically it is permitted to take enforcement action to repossess the aircraft following a default by the lessee concerned on the relevant lease terms, without enforcing through the courts, i.e., as a “self-help” remedy. To that end, lease terms and conditions conventionally contain an indemnification of the owner/lessor of a relevant aircraft against losses and/or claims it incurs as a result of a repossession action. Similarly, the mortgagee of an aircraft registered with the CAA may take peaceful possession of an aircraft following a similar default and it will then, in addition, have the power to sell the relevant aircraft if such power is properly and expressly described in the relevant mortgage agreement.

Nevertheless, in practice, it is generally advisable for the lessor or the mortgagee of a relevant aircraft registered with the CAA to pursue an application for repossession of the aircraft in court, particularly if there is any question as to whether a default has actually occurred and/or the relevant mortgagor or lessee of the aircraft concerned resists or is likely to resist repossession. A court order obtained in this way reduces any risk of liability of the lessor or the mortgagee (as the case may be) of the relevant aircraft to third-party claims for compensation for losses due to a repossession (in the case of aircraft in scheduled operation in particular, such losses can be substantial), assists with ensuring the cooperation of the CAA with their issuing of necessary permissions for the continued flight of the aircraft affected, and is also presentable to any prospective third-party purchaser of the aircraft as proof of the right of the mortgagee, or indeed the owner, to sell the aircraft with good title, free of any trailing interests of the relevant mortgagor or lessee (subject to any other third-party rights over the relevant aircraft).

In addition, and by way of further potential protections, if it can be demonstrated to the court that a risk exists or that the relevant aircraft is treated in a way which frustrates the rights of a mortgagee or lessor (for example, removal by an operator of the aircraft from the jurisdiction or by a clear and material degradation of the condition of the aircraft in the circumstances),

it is possible to apply to the court, on an expedited basis, for an interim injunction ordering detention of the aircraft by the mortgagor/lessee until judgment regarding repossession of the aircraft has been given by the court. This type of application may be made without notice to the operator of the relevant aircraft if the mortgagee or the lessor (as the case may be) can demonstrate the urgency of the matter to the court in accordance with the applicable Civil Procedure Rules. In these circumstances, the mortgagee or the lessor (as the case may be) will be required to provide a cross-indemnity for any third-party claims arising from a sudden detention of the aircraft (not, however, in favour of the relevant mortgagor, lessee or operator of the relevant aircraft, on the basis that it is assumed that an appropriate indemnity from such party has already been given in respect of, among other things, losses arising from the repossession of the relevant aircraft following a default).

It should nevertheless be noted that a right to repossess the relevant aircraft would always be subject to any liens and other statutory detention or retention rights of third parties (as described more fully in “Priority” under question 2.2 above).

2.4 As a matter of local law, is there any concept of title annexation, whereby ownership or security interests in a single engine are at risk of automatic transfer or other prejudice when installed ‘on-wing’ on an aircraft owned by another party? If so, what are the conditions to such title annexation and can owners and financiers of engines take pre-emptive steps to mitigate the risks?

English law as a rule recognises the concept of accession, which is similar to the nature of an annexation of title, for example, by the owner of an aircraft to which an engine owned by another party is affixed. Nevertheless, limited case law on the subject is exclusively related to real estate (that is, immovable assets) and there is perceived to be little or no risk legally as a matter of English law to loss of or prejudice to title when aircraft engines are installed on a different airframe.

Nevertheless, practical risks abound and, as a result, it is common market practice (also in order to manage certain risks arising due to conflicts of law and legal systems as they apply to these most mobile assets) for engine owners and financiers to require entry into a contractual “recognition of rights” agreement governed by English law between the relevant parties as a condition to installing an engine on a different airframe. In addition, while aircraft engines are not capable of being registered (and thereby providing constructive notice of ownership to third parties) in the United Kingdom, ratification of the Cape Town Convention (“CTC”) affords the opportunity for engine owners and financiers to register an “international interest” in the asset with the International Registry of Mobile Assets.

2.5 What (if any) are the tax implications in your jurisdiction for aircraft trading as regards a) value-added tax (VAT) and/or goods and services tax (GST), and b) documentary taxes such as stamp duty; and (to the extent applicable) do exemptions exist as regards non-domestic purchasers and sellers of aircraft and/or particular aircraft types or operations?

In relation to (a), the supply, charter or hire of “qualifying aircraft” are zero-rated for VAT purposes. The definition of “qualifying aircraft” was narrowed in January 2011 to bring the United Kingdom more in line with the rest of Europe. Since then, a qualifying aircraft must be: (i) used by an airline operating for reward chiefly on international routes; or (ii) used by a state institution and of a weight of not less than 8,000kg and neither designed nor adapted for use for recreation or pleasure.

This is also broadly the position in relation to VAT applicable to the importation of aircraft into the United Kingdom, except

where (pursuant to arrangements in place in connection with the end of the Brexit transition period which saw the United Kingdom become a “third country” for EU VAT purposes) the aircraft has been imported previously into a Member State of the EU and is classified to be in “free circulation” for customs purposes.

In relation to (b), there are no documentary taxes (e.g., stamp duty) applicable to the buying and selling (i.e., trading) of aircraft in England and Wales.

2.6 Is your jurisdiction a signatory to the main international Conventions (Montreal, Geneva and Cape Town)?

Chicago Convention 1944

The United Kingdom was a signatory to the Chicago Convention in 1944 and it was ratified on 1 March 1947 prior to its effective date of 4 April 1947.

Geneva Convention 1948

The United Kingdom was a signatory to the Geneva Convention in 1948 but has not ratified it.

Montreal Convention 1999

The Montreal Convention has legal effect in the United Kingdom through the Carriage by Air Acts (Implementation of the Montreal Convention 1999) Order 2002/263. The limits of liability for air carriers pursuant to the Montreal Convention have been subsequently amended by way of the Carriage by Air (Revision of Limits of Liability under the Montreal Convention) Order 2009.

CTC

The CTC entered into force in the United Kingdom and thereby became effective as United Kingdom national law on 1 November 2015 following its ratification on 27 July 2015, as implemented by the International Interests in Aircraft Equipment (Cape Town Convention) Regulations 2015 and several declarations.

2.7 How are the Conventions applied in your jurisdiction?

The Chicago Convention is integrated into English law and applicable in the jurisdiction as a matter of international law. Any dispute as to its implementation by the United Kingdom would be heard through the International Court of Justice. As a practical matter, the principles of the Chicago Convention are implemented at the national level in the United Kingdom by the CAA.

As detailed above, the Montreal Convention became effective in the United Kingdom pursuant to the Carriage by Air Acts (Implementation of the Montreal Convention 1999) Order 2009 and it can be applied in the UK courts, without particular limitation, on that basis.

The CTC is effective in the United Kingdom but will not be applied retrospectively, i.e., any rights and interests existing prior to ratification of the CTC will retain their priority without the need for registration. This avoids additional administrative hurdles resulting from the ratification of the CTC, but at the same time means that it is not possible to register such pre-existing interests.

It is worth noting that, although it does not change any relevant provisions of English law as regards the creation of *in rem* security interests generally, that law will not apply to determine whether an international interest under the CTC is validly created. This will depend entirely on the CTC and its requirements in the case

of an aircraft, debtor location or aircraft registration in a “CTC country” (and compliance with the formalities set out in Article 7 of the CTC), and an aircraft mortgagee may be able to rely on the rights and remedies available under the CTC for such international interest in the relevant aircraft.

It is also worth noting that by adopting the Alternative A insolvency regime (with a 60-day waiting period for the asset to be returned to the creditor), the UK has furthermore decided to grant additional protection to financiers and lessors in a debtor insolvency scenario.

2.8 Does your jurisdiction make use of any taxation benefits which enhance aircraft trading and leasing (either in-bound or out-bound leasing), for example access to an extensive network of Double Tax Treaties or similar, or favourable tax treatment on the disposal of aircraft?

The United Kingdom is signatory to a number of Double Tax Treaties with other nations, the effect of which varies but which (as regards aviation finance) typically reduces the rate of withholding taxes payable in various jurisdictions of tax residency on outbound operating lease and finance lease rentals, as well as loan repayment interest, connected with the financing of aircraft assets. As regards favourable tax treatment on the disposal of aircraft, no particular tax rules or regulations apply at present, although the effects of such taxation can actually be optimised by thoughtful tax planning strategies.

2.9 To what extent is there a risk from the perspective of an owner or financier that a lessee of aircraft or other aviation assets in your jurisdiction may acquire an economic interest in the aircraft merely by payment of rent and thereby potentially frustrate any rights to possession or legal ownership or security?

There is very limited risk indeed that such a consequence will arise, subject to any considerations of a general nature which might arise as a result of the application of a “reasonableness” test under the Unfair Contract Terms Act 1977 (which would in turn be almost unheard of given the wide body of historical transacting and knowledge of terms and conditions which typify the aviation sector). The principles of financing and leasing (whether operating or finance leasing) are well established under English law and particularly in the case of clearly drafted agreements setting out the basis for acquisition of title in an aircraft or other aviation assets. This includes what is intended to happen with the aircraft or aviation asset following a default by the lessee, and there is little prospect of a lessee successfully arguing that it has inadvertently obtained an interest in the property of a third party. Even in the case of a conditional sale where rental payments are effectively instalment payments of the purchase price, it is well understood in law that a seller is protected if the lessee defaults and that a seller maintains ownership of the asset and can claim repossession and all the other benefits of ownership notwithstanding many months or even years of possession and payment by the lessee beforehand.

3 Litigation and Dispute Resolution

3.1 What rights of detention are available in relation to aircraft and unpaid debts?

An unpaid seller in possession of the aircraft may retain possession of the aircraft until payment is received (Sale of Goods Act 1979).

The Civil Aviation Act 1982 provides for a salvage lien on an aircraft where “any services are rendered in assisting, or in saving life from, or in saving the cargo or apparel of, an aircraft in or over the sea or any tidal water, or on or over the shores or any tidal waters”, according to the national and international regulatory framework of the law of maritime salvage.

In common law, under specific conditions, a possessory lien arises in favour of a person who has expended labour and skills on the improvement of a chattel. The requirement for “improvement” is now uncertain under English law. Liens in favour of maintenance organisations are widely considered to arise in common law; however, in the majority of cases, the right of lien is expressed contractually and there is no requirement for “improvement”.

Under the Civil Aviation Act 1982, the person managing or owning an aerodrome may detain an aircraft where its operator has not paid the applicable airport charges in respect of that aircraft, or of any other aircraft, which that operator operates. Customs and excise authorities may detain an aircraft to enforce their charges against an operator.

The Transport Act 2000 provides that an aircraft may be detained and sold where its operator has not paid charges relating to air navigation services provided by the CAA, the Secretary of State or Eurocontrol.

Of less frequent application, a creditor may obtain a freezing injunction, restraining an aircraft pending judgment and execution of the judgment debt. The creditor will have to demonstrate, *inter alia*, that there is a real risk of “dissipation” of the debtor’s assets other than in the usual course of the debtor’s business, and that the value of the debt is commensurate with that of the aircraft. The remedy is equitable and discretionary; a court will exercise considerable caution before granting it.

There is no domestic legislation prohibiting the detention of commercial transport aircraft.

3.2 Is there a regime of self-help available to a lessor or a financier of an aircraft if it needs to reacquire possession of the aircraft or enforce any of its rights under the lease/finance agreement?

Subject to the limited exceptions mentioned below, there is no statutory regime of “self-help” rights as a matter of English law. It does allow the exercise of “extant” (or existing) rights to repossess chattels such as aircraft and aviation assets without the need for a court order, however, there are conditions to that and a person seeking to exercise rights on this basis can only do so peaceably and lawfully. There are no collateral rights of enforcement as a matter of law without a court order, and accordingly the exercise of such rights on a self-help basis usually requires the person in possession or control of the aircraft (or aviation asset) to cooperate with that exercise. The rights must be extant (under the relevant security documents or lease) and clearly demonstrable to third parties if required.

The more usual course of action from a practical point of view is therefore to obtain a court order notwithstanding the rest. For the sake of completeness, it should be noted that the Bills of Sale Acts 1878 and 1882 allow seizure of an aircraft (or aviation asset) on the occurrence of certain events of default (as specified in the Acts) relating to a security bill of sale. Those Acts do not, however, apply to a registered mortgage of an aircraft (or aviation asset).

3.3 Which courts are appropriate for aviation disputes? Does this depend on the value of the dispute? For example, is there a distinction in your jurisdiction regarding the courts in which civil and criminal cases are brought?

Civil disputes concerning personal injury or property damage

may be pursued in the Queen’s Bench Division of the High Court or in the County Court in accordance with the criteria summarised below. “Commercial claims” (see below) should be pursued in the Commercial Court of the Queen’s Bench Division of the High Court, or in the County Court.

Civil proceedings for damages or a specified sum may not be started in the High Court unless the value of the claim exceeds £100,000; if not, proceedings should be started in the County Court.

Civil proceedings, which include a claim for damages in respect of personal injuries, must not be started in the High Court unless the value of the claim is £50,000 or more.

Subject to the above, pursuit of a claim in the High Court is appropriate where:

- there is a degree of complexity of the facts, legal issues, remedies or procedures involved; and/or
- the outcome of the claim is of importance to the public in general.

A case may be started in the Commercial Court only if it fulfils the characteristics of a “commercial claim”; namely any claim arising out of the transaction of trade and commerce, including any claim relating to a business document or contract, the export or import of goods or the carriage of goods by land, sea, air or pipeline.

Although there is no rigid financial limit, a claim for less than £200,000 is likely to be transferred out of the Commercial Court unless it involves a point of special commercial interest. The majority of cases arising out of the finance or lease of aircraft will be heard by the Commercial Court. The majority of cases concerning death, serious injury or serious property damage claims arising out of air accidents will be heard by a Court of the Queen’s Bench Division of the High Court.

Civil and criminal cases will be heard in separate courts.

3.4 What service requirements apply for the service of court proceedings, and do these differ for domestic airlines/parties and non-domestic airlines/parties?

Pursuant to Part 6 (*Service of Documents*) of the Civil Procedure Rules, where the claim form is being served in the “jurisdiction” (defined as England and Wales and any part of the territorial waters of the United Kingdom adjoining England and Wales), a claim may be served by a number of methods including (without limitation) by personal service, first-class post, or by service on the defendant’s solicitors, fax or other means of electronic communication.

The court will serve the claim form (subject to certain exceptions, for example, where the claimant has notified the court that the claimant wishes to serve it).

In the event that the defendant is established out of the jurisdiction, the court may permit a claim form to be served on the defendant’s agent provided that an agent for service of process has been appointed and that agent’s authority has not been terminated. For agreements entered into with companies or persons based outside the UK, it is thus important to obtain the UK details in the agreement of an agent for the purposes of the service of court process. This may be a branch office of the contract counterparty which is not established in the UK.

It may be necessary for the claimant to obtain the court’s permission in certain circumstances, e.g., where no agent for service of process is appointed, to serve a claim form on a defendant located outside the court’s jurisdiction. The claimant must file at court a notice with the claim form, containing a statement of the grounds on which it is entitled to serve the claim form out of the jurisdiction.

3.5 What types of remedy are available from the courts or arbitral tribunals in your jurisdiction, both on i) an interim basis, and ii) a final basis?

Remedies vary depending on the nature of the dispute. In general terms, there are both (for historical reasons) legal and “equitable” remedies, and the following may be available:

- On an interim basis:
 - an injunction order to prevent the other party from doing something until final judgment is reached; and
 - damages.
- On a final basis:
 - damages;
 - injunctions to prevent the other side from doing something or requiring the other party to do something;
 - an order for specific performance to compel a party to perform a specific action or otherwise to adhere to the terms of an agreement;
 - possession orders to take control of an aircraft and other aviation assets; and
 - orders for the sale of an aircraft.

3.6 Are there any rights of appeal to the courts from the decision of a court or arbitral tribunal and, if so, in what circumstances do these rights arise?

From a Court decision

A party requires permission to appeal from a County Court or High Court decision.

A request for permission to appeal can (and if appeal is to be sought, should) be made to the lower court at the hearing at which the decision to be appealed is made. Thereafter, permission may be sought directly from the appeal court.

Permission to appeal will only be given where the court considers that the appeal would have a real prospect of success or there is some other compelling reason why the appeal should be heard. In most instances, the trial judge will be considered best placed to judge the facts of the case. An appeal from factual findings is usually difficult to pursue. The category and level of court to which an appeal is to be made depends on the level of the court making the decision which is being appealed. There is no automatic stay of execution of a judgment or order while appeal is pursued.

A route of appeal lies from the Court of Appeal to the Supreme Court. Again, permission to appeal is required.

From an arbitral tribunal

As a general rule, an arbitrator has the same powers as any court, and an arbitral tribunal's decision is binding. There is no right of appeal to the courts on a question of fact. There are narrow exceptions to this general rule.

A party may challenge an arbitral award for lack of jurisdiction (section 67 of the Arbitration Act 1996). It is also possible to challenge the arbitrator's award on the basis of a serious irregularity (section 67 of the Arbitration Act 1996). The definition of a “serious irregularity” includes exceeding the arbitrator's powers, failure to comply with the general duties imposed on the arbitrator or failure to deal with all the issues.

A party may appeal to the High Court on a question of law arising out of the arbitral award. The Court will only intervene if the arbitrator's decision is obviously wrong or “the question is one of general public importance and the decision of the tribunal is at least open to serious doubt”.

3.7 What rights exist generally in law in relation to unforeseen events which might enable a party to an agreement to suspend or even terminate contractual obligations (in particular payment) to its contract counterparties due to *force majeure* or frustration or any similar doctrine or concept?

Force majeure clauses are designed for an event that may occur, that are outside a party's control and which result in a party no longer being able to perform its obligations under the contract. These clauses usually suspend the obligation rather than terminate it completely. However, there is often a provision for the contractual obligations to be terminated if a *force majeure* event continues for a certain amount of time.

There is not a statutory definition of a *force majeure* event, but contractual clauses typically include provisions for issues such as the weather (flood, drought, earthquake or other natural disaster), terrorist attacks and war, governmental acts, and more recently given the recent global shutdowns, pandemics and epidemics. The party seeking to rely on the clause must demonstrate that they have been engaged in the particular event (*Channel Island Ferries Ltd v Sealink UK* [1998]). Brexit, as well as the recent COVID-19 pandemic, have given rise to a number of cases relating to the application and interpretation of *force majeure* clauses as well as the doctrine of contractual frustration as many people and businesses endeavoured to rely on these clauses in order to suspend or terminate their contractual obligations. What is clear from all the cases is that careful wording of a *force majeure* clause is essential as the UK courts tend to construe these narrowly and in line with a plain reading of the language used in the clause.

See:

- *European Professional Club Rugby v RDA Television LLP* [2022] EWHC 50 (Comm).
- *Football Association Premier League Limited v PPLive Sports International Limited* [2022] EWHC 38 (Comm).
- *Canary Wharf (BP4) T1 LTD v European Medicines Agency* 2019 EWHC 335 (Ch.).

Some types of aviation contracts, such as operating leases and aircraft charter agreements, are more likely to contain *force majeure* clauses although including, as a result of the volume of cases and therefore uncertainties arising from Brexit and the pandemic, this may well start to change as regards a market-based approach to the issue. In the meantime and in any case, these clauses must be read extremely closely in order to determine whether they enable a party to suspend their obligations. For example, the continued effects of coronavirus may not be seen as “unforeseeable” for new contracts made after the initial pandemic outbreak, therefore, if the events defined in a *force majeure* clause must be unforeseeable, it could be argued that any COVID-19-related issues do not suspend obligations. Any catch-all phrases such as “any other cause beyond the party's reasonable control” must be read in the context of the entire clause, and it has been held that an economic downturn does not necessarily fall under this (*Tandrin Aviation Holdings Ltd and Aero Toy Store LLC and others* [2010]).

Issues regarding payment depend entirely on the drafting of the clause. If the clause does not explicitly address costs being recoverable in the occurrence of a triggering event, the general common law position is that costs are not recoverable.

The concept of *force majeure* is closely linked to the concept of frustration. The significant distinction between the doctrines of *force majeure* and frustration is that frustration terminates the contract absolutely, whereas *force majeure* may discharge a party from a standalone obligation, usually for the period of time that the *force majeure* event exists. If there is not a *force majeure* clause in a contract, a party can argue that they are unable to meet

contractual obligations due to the contract being “frustrated”. In English law, frustration of a contract will only occur if:

- A change in circumstances has occurred after the contract was formed.
- The change was outside the parties’ control.
- The change is fundamental to the root of the contract (*Denny Mott & Dickson Ltd v James Fraser & Co Ltd* [1944]) and is beyond what was contemplated by the parties when they entered the contract.
- As a result, performance of the contract would be illegal, impossible, or radically different (*Davis Contractors v Fareham Urban DC* [1956]) from that contemplated by the parties at the time of the contract.

If frustration is proven, it results in the contract ending immediately and all outstanding obligations being discharged. In practice, this is not a commonly used doctrine as there is a very high threshold to prove it. It is also not clear how long parties must wait before being able to rely on frustration – does a few months delay in being able to perform a duty render the contract impossible or must they wait longer?

In 2020, the UK Financial Conduct Authority brought a business interruption insurance test case in order to clarify issues of contractual uncertainty for policyholders and insurers during the COVID-19 pandemic. Eight insurers had some of their policy wording considered by the court. An appeal to the Supreme Court followed, and the judgment to that appeal was delivered on 15 January 2021. The judgment provides much-needed clarity on which contractual wording covers losses resulting from the pandemic.

Recently, the Law Reform (Frustrated Contracts) Act of 1943 was used by a litigant in person to claim a full refund from British Airways after she had accepted travel vouchers (in March 2020) for flights to Japan, which were cancelled when Japan closed its borders during the pandemic. However, when Japan failed to reopen its borders to visitors as quickly as other nations (they were eventually opened in November 2022), the applicant argued that it rendered the vouchers useless because she could not travel when she had originally intended. BA declined the applicant’s repeated requests for a refund (instead of the vouchers), but the Redditch Magistrates’ Court found in her favour, awarding her a full refund, interest and costs.

4 Commercial and Regulatory

4.1 How does your jurisdiction approach and regulate joint ventures between airline competitors?

UK competition law in its own right reproduces in virtually identical form EU competition law and systems of competition law enforcement, sections 2 and 9 of the UK Competition Act 1998 (“CA 1998”) setting out provisions similar to the prohibition of anticompetitive agreements and the exemption criteria (Articles 101(1) and 101(3) of the Treaty on the Functioning of the European Union (“TFEU”). A joint venture between airline competitors would, therefore, have to satisfy the four exemption criteria of section 9 CA 1998 and (save for where such venture relates to exclusively UK routes or operations) Article 101(3) TFEU. In summary:

- (a) the agreement should generate efficiency gains for the parties or promote economic progress (e.g., costs savings through joint operations or improved services);
- (b) consumers should receive a fair share of those benefits (e.g., including the passing on of savings through lower prices);
- (c) the agreement should not impose on the undertakings concerned restrictions which are not indispensable to the attainment of these objectives;
- (d) restrictions should be proportionate; and

- (e) the agreement should not eliminate effective competition. This is a market power test, requiring that there should be effective competition outside of the joint venture.

Neither the EC and the European National Competition authorities (“EU regulators”) nor the UK’s Competition & Market’s Authority (“CMA”) have blocked **airline alliances** yet, which are usually considered to produce substantial efficiencies and consumer benefits, but have, often following lengthy investigations and negotiations with the parties, required commitments from the parties, to be satisfied that the alliance qualifies for exemption and, in particular, that competition is not significantly affected or eliminated.

In May 2013, the EC cleared a revenue-sharing joint venture focusing on transatlantic passenger routes (in particular, Frankfurt-New York), accepting binding commitments from Star Alliance members Air Canada, United and Lufthansa (COMP/39595 *Continental/United/Lufthansa/Air Canada*).

Similarly, in May 2015, the EC accepted binding commitments offered by Air France/KLM, Alitalia and Delta – all members of the SkyTeam airline alliance – to address concerns over their transatlantic joint ventures with respect to capacity, schedules, pricing and revenue management and sharing of profit and losses, which have the object and effect of restricting competition on three routes, namely: (i) Amsterdam-New York; (ii) Rome-New York; and (iii) Paris-New York (COMP/39964 *AF-KL/DL/AZ*).

In relation to **codeshare agreements**, neither national nor European competition laws provide specific rules; the legal test applied being based on the exemption criteria of Article 101(3) TFEU and/or the corresponding provisions of the competition laws of the EU Member States.

The current EU case law is limited. In the *SAS/Maersk Air* case, in which the parties notified a codeshare agreement to the EC for clearance, with an underlying cartel agreement in the form of a broad market-sharing agreement between the parties, the EC concluded that this agreement was a serious infringement of competition and fined the parties a total of €52.5 million, which was confirmed by the EU Court of First Instance (see COMP/37.444 – *SAS/Maersk Air* and COMP/37.386 – *SUN Air/SAS and Maersk Air*, 18 July 2001 (2001/716 EG) confirmed by CFI decision T-241/01, 18 July 2005). At the national level, codeshare cases were investigated by the Italian National Competition Authority (see the *Alitalia/Volare* case and the *Alitalia/Meridiana* case). In the *Alitalia/Volare* case, the Italian Competition Authority considered the codeshare agreement restrictive, but the decision was reversed by the court (both first instance and second instance), and in the *Alitalia/Minerva* case, the Authority considered the codeshare agreement not to be restrictive.

In addition, on 27 October 2016 the Commission closed an investigation it had opened in February 2011 on free-flow parallel hub-to-hub codeshare arrangements between Lufthansa and Turkish Airlines, finding that: Lufthansa and Turkish Airlines did not have full marketing rights to each other’s seat inventory; they applied differing pricing strategies; and the codeshare accounted for only a marginal share of the parties’ sales on the relevant routes. In February 2011, the EC also opened an investigation on the codeshare arrangement between Brussels Airlines and TAP Air Portugal, which is still ongoing.

With regard to non-overlapping block space and interlining agreements, these are viewed by EU regulators as pro-competitive and have been accepted subject to commitments by the EC in several merger clearance decisions pursuant to Regulation 139/2004 (please see: *Air France/KLM*, Case COMP/M. 3280, paragraph 158 (j); *Lufthansa/SN Airboldings*, Case COMP/M. 5335, paragraph 441; and *Lufthansa/Swiss*, Case COMP/M. 3770, paragraph 196).

Finally, and notwithstanding the foregoing, it is important to acknowledge that Brexit has granted the UK some autonomy

to apply its own rules and regulations independent of the EC. Led by the CMA and the courts, the UK will need to develop its own regime in due course with the ability to decide to diverge from those areas where similarities continue to be in place, in particular, as regards EU competition law developments and case law. This will in any event and inevitably increase the prospect of parallel investigations, while both the CMA and the courts will be at liberty to determine the extent to which they follow the EU approach (or not).

4.2 How do the competition authorities in your jurisdiction determine the 'relevant market' for the purposes of mergers and acquisitions?

The UK competition authorities in all likelihood at the present time will follow an analysis similar to that of the CJEU and the EC. These have defined the relevant market in decisions regarding the aviation sectors as follows:

Origin and Destination ("O&D") city pairs

This evaluation considers a demand-side perspective, whereby customers consider all possible alternatives of travelling from a city of origin to a city of destination, i.e., an O&D city pair (which generally are considered non-substitutable by a different city pair).

Premium and non-premium passengers

The different services appeal to different passenger groups with varying travel needs and price sensitivities. First and Business Class ticket passengers are less price-sensitive than Economy ticket users. The EC considers that Business and First Class tickets on one hand, and Economy on the other, are two different product markets.

Non-stop and one-stop flights

EU regulators (and therefore in all likelihood the UK competition authorities at the present time) consider that the degree of competitive constraint imposed by one-stop services varies according to the route and assesses the precise impact of competing one-stop flights on the parties' joint venture on a route-by-route basis.

Airport substitution

Where more than one airport in a city at one end of the route offers passenger air transport services, this must be assessed for market definition purposes. The market definition for airports is based on a catchment area of airports considered substitutable by passengers. The relevant market may vary according to the type of passengers: premium and non-premium passengers; or time-sensitive and non-time-sensitive passengers.

4.3 Does your jurisdiction have a notification system whereby parties to an agreement can obtain regulatory clearance/anti-trust immunity from regulatory agencies?

No. The notification system was abolished by Regulation 1/2003, which entered into force on 1 May 2004, and since then it has no longer been possible to notify agreements to the CMA (or indeed the EC) for clearance. Parties now also need to ensure that their agreement satisfies the exemption criteria of section 9 CA 1998 and (save for where the agreement relates to wholly-UK matters only) Article 101(3) TFEU, on which section 9 is closely based.

4.4 How does your jurisdiction approach mergers, acquisition mergers and full-function joint ventures?

The legislation applicable to UK merger control is the Enterprise Act 2002 (the "Act"). Mergers (including, acquisitions and full-function joint ventures) are not subject to a system of mandatory notification in the UK. However, where a merger falls outside the turnover thresholds of the EU Merger Control Regulation 139/2004, but falls within the definition of "relevant merger situation" within the Act (see below), the CMA will have jurisdiction to investigate it within four months of completion or the date it was made public, whichever is later (discussed below).

UK merger control

Relevant Merger Situation

A relevant merger situation under the UK merger rules arises where:

- two or more enterprises "cease to be distinct" – in essence, the transfer from one party to another of an "enterprise", which is broadly defined to include business activities of any kind; and either: as a result of the merger, the combined enterprises will supply or acquire 25% or more of any goods or services in the UK or a substantial part of the UK; or an existing share of supply of 25% or more will be enlarged (section 23 of the Enterprise Act 2002) (it should be noted that the "share of supply" test is not a market share test but, rather, focuses on the share of supply of the most narrow reasonable description of goods or services); or
- where the value of the turnover in the UK of the enterprise being taken over exceeds £70 million.

Obligation to Notify

With the exception of special cases of mergers involving newspapers, broadcasters or water companies, there is no obligation to notify proposed or completed mergers. However, it is possible, and will in many cases be advisable, to notify the CMA, since if a merger may result in a "substantial lessening of competition" in the UK market, failure to obtain prior clearance risks a reference to a more in-depth investigation and analysis by the CMA (known as a "Phase 2 investigation"), with the possible consequences described below, which may include a requirement that the purchaser divests.

4.5 Please provide details of the procedure, including time frames for clearance and any costs of notifications.

UK merger control timing and fees

The CMA has an administrative (non-binding) timetable, to which it usually adheres, to take a decision on a notified merger within 40 working days of receiving a complete notification. The waiting time for a decision will be greater if the CMA has serious concerns or if undertakings by the parties to address competition difficulties have to be explored.

A fee is payable to the CMA in respect of relevant merger situations. The fees payable are, since August 2012:

- £40,000, where the UK turnover is less than £20 million;
- £80,000, where the UK turnover is between £20 million and £70 million;
- £120,000, where the UK turnover is between £70 million and £120 million; and
- £160,000, where the UK turnover is over £120 million.

A merger fee is not payable if the merger involves the acquisition of an interest that is less than a controlling interest

and the CMA has investigated the acquisition on its own initiative. This exception does not apply if the merger parties notified the acquisition by submitting a merger notice.

Furthermore, a person or corporate body acquiring an interest is exempt from paying a merger fee if, in its most recent financial year before the time the fee would become payable, it meets the criteria for small or medium-sized enterprises, as defined by reference to certain provisions in the Companies Act 2006. For financial years beginning on or after 1 January 2016 and, if the directors of the acquirer so decided, financial years beginning on or after 1 January 2015, the acquirer qualifies as small or medium-sized if it, or the group of which it is a member (as defined in section 474 of the Companies Act 2006), has satisfied certain criteria laid down by the CMA (which is more fully detailed in the relevant section of the government website: <https://gov.uk>).

If the CMA believes that a merger has resulted or may be expected to result in a substantial lessening of competition, and satisfactory undertakings cannot be agreed with the parties, the CMA will evaluate the competitive effects of the merger and may, where it believes the merger has or may result in a substantial lessening of competition in the UK market, refer the merger for an in-depth “Phase 2 investigation”. The CMA has a wide range of powers, including to prevent the merger proceeding or divestment if the proceeding has already taken place.

4.6 Are there any sector-specific rules which govern the aviation sector in relation to financial support for air operators and airports, including (without limitation) state aid?

No, there are no sector-specific rules applying to aviation.

The general competition rules (principally those contained in the CA 1998 and closely modelled on Articles 101 and 102 TFEU) apply fully to aviation as they do to other sectors.

4.7 Are state subsidies available in respect of particular routes? What criteria apply to obtaining these subsidies?

Yes. *Ad hoc* funding by the UK Government for domestic flight routes is available to UK airlines where it can be demonstrated that it will boost regional links across the UK and create a positive economic impact in terms of employment and supply chain dynamics and structured as public service obligations (“PSOs”).

In addition, the Airport and Ground Operations Support Scheme (“AGOSS”) to fund certain essential payments is available to:

- (a) a commercial airport situated within England with a valid commercial licence from no later than 27 October 2021 that operated at least 12 scheduled commercial passenger flights in 2019; and
- (b) a ground handling company providing, as its primary function, any of the handling services listed in EU Directive 96/67/EC directly to an airport user for scheduled commercial flights at a commercial airport in England for a site or sites located in England.

4.8 What are the main regulatory instruments governing the acquisition, retention and use of passenger data, and what rights do passengers have in respect of their data which is held by airlines and airports?

The General Data Protection Regulation (Regulation 2016/679) (the “GDPR”), the UK GDPR (as incorporated into UK law via

the European Union (Withdrawal) Act of 2018) and the UK Data Protection Act 2018 (“DPA 2018”) govern the collection and use of personal data in the UK. The GDPR came into force in each Member State on 25 May 2018. As a Regulation, it has direct effect in each EU Member State as well as the Member States of the European Economic Area (“EEA”). Among the changes to data protection legislation implemented via the GDPR, some key points include: (i) requiring freely given, specific, informed and unambiguous consent from a data subject which must be as easy to withdraw as it is to give; (ii) the provision of clear and unambiguous information regarding what the data is to be used for, how long it is to be used for and the requirement to set out exactly what the data subject’s rights are in relation to the personal data they provide; (iii) maximum fines for breach of the GDPR are the higher of 4% of annual global turnover or £17.5 million; (iv) requiring organisations which engage in “regular and systematic monitoring” of data subjects “on a large scale” to appoint a data protection officer (also known as a “DPO”); and (v) the requirement for those processing personal data to be accountable and provide adequate technical and organisational measures to protect any personal data held.

The DPA 2018 repealed the UK Data Protection Act 1998 (the “DPA 1998”). Broadly, the DPA 2018 applies to the processing (such as obtaining, recording, holding, using, disclosing or erasing) of personal data. The obligations under the DPA 2018 are on the “data controller”, who is the person that determines how personal information can be processed, however, in certain circumstances are also placed on the “data processor” (a marked deviation from the previous UK legislation). A “data processor” is a person who processes data on behalf of the data controller. The data controller remains legally responsible for the processing of personal data by the data processor. The DPA 2018 further sets out derogations and exemptions to the GDPR that will apply in the UK.

The DPA 2018’s jurisdictional scope includes persons who:

- (a) are incorporated in the UK;
- (b) have an office, branch or agency in the UK; or
- (c) have a regular practice in the UK.

Data controllers must ensure that data is processed in accordance with six data protection principles in the DPA 2018; namely that personal data is:

- (a) fairly and lawfully processed;
- (b) obtained only for specified, explicit and legitimate purposes;
- (c) adequate, relevant and not excessive for the purposes;
- (d) accurate and up to date;
- (e) not kept for longer than is necessary; and
- (f) protected by ensuring that appropriate technical and organisational measures are taken against the unauthorised or unlawful processing of the personal data, as well as against accidental loss or destruction of, or damage to, personal data.

Whilst there is no longer a principle for individuals’ rights in the DPA 2018, this is dealt with separately in Chapter III of the GDPR and states that personal data must be processed in accordance with the rights of data subjects. Similarly, the principle for international transfers of personal data previously contained in the DPA 1998 is now dealt with separately in Chapter V of the GDPR.

Furthermore, there is a new accountability principle in the GDPR which specifically requires data controllers and processors to take responsibility for complying with the principles and to have appropriate processes and records in place to demonstrate that they comply.

Data subjects, such as individual passengers, now have further rights under the UK GDPR, including the right to:

- (a) access a copy of the information comprising their personal data;
- (b) object to processing that is likely to cause them damage or distress;

- (c) prevent processing for direct marketing;
- (d) object to decisions being taken by automated means;
- (e) have inaccurate personal data rectified, blocked, released or destroyed;
- (f) have personal data deleted where continued processing is unnecessary (the “right to be forgotten”);
- (g) request that certain data, which is processed by automated means, is transferred to a different controller; and
- (h) claim compensation for damage caused by a breach of the DPA 2018.

There is no minimum period for which controllers must hold personal information; rather, they must securely delete personal data when that personal data is no longer necessary for the purposes for which it was collected.

On 8 March 2023, HM Government published the Data Protection and Digital Information (No.2) Bill, the second version of the bill which was first published in July 2022. This new draft of the Bill has as its stated aims the reform of the UK’s data protection regime and the maximisation of the benefits of Brexit. At the time of writing, the Bill was carried over to the 2023–24 Parliamentary session and was still proceeding through the legislative process within HM Government (it is now back in the House of Commons), during which further revisions and amendments are anticipated.

On 2 December 2015, a provisional deal was reached by the European Parliament and Council on an EU Directive regulating the use of Passenger Name Record (“PNR”) data for the prevention, detection, investigation and prosecution of terrorist offences and serious crime, and was endorsed by the Civil Liberties, Justice and Home Affairs Committee on 10 December 2015. The Directive was approved by Parliament as a whole on 14 April 2016 and by the Council of the EU on 21 April 2016.

The PNR Directive obliges airlines to hand EU countries their passengers’ data in order to help the authorities fight terrorism and serious crime. It requires more systematic collection, use and retention of PNR data on air passengers, and therefore has an impact on the rights to privacy and data protection. On 21 June 2022, the Court of Justice delivered a judgement on a series of preliminary reference questions raised by the Belgian Constitutional Court (Case C-817/19, *Ligue des droits humaines v. Council of Ministers*). The Court confirmed the validity of the PNR Directive and considered that a PNR system set up in accordance with the PNR Directive is justified, necessary, and proportionate to the aim of combatting terrorism and serious crime. At the same time, the Court provided a restrictive interpretation to some of the Directive’s provisions.

The Passenger Name Record Data and Miscellaneous Amendments Regulations 2018, which came into force on 25 May 2018, implemented the PNR Directive in the UK. The UK was permitted by the Council of the EU to derogate from certain safeguards for the automated surveillance and profiling of all air passengers arriving from the EU. The *UK-EU Trade and Cooperation Agreement* allows the UK to derogate from applying those safeguards while it tries to align its systems with the requirements of Court of Justice jurisprudence. This derogation expires on 31 December 2023.

It is also worth noting that EU countries have bilateral PNR agreements with third countries. Each of the agreements sets out the use of PNR data collected by airlines for law enforcement purposes.

4.9 In the event of a data loss by a carrier, what obligations are there on the airline which has lost the data and are there any applicable sanctions?

The UK GDPR has enhanced notification provisions around data losses and breaches, as well as allowing the relevant data

protection regulators the authority to levy significantly increased fines for non-compliance with the provisions of the Regulation.

Under the UK GDPR there is now a mandatory obligation for an airline to notify the Information Commissioner’s Office (“ICO” – the regulatory body in charge of the DPA) of a data breach under Article 33. The data controller must notify the relevant authority without undue delay and, where feasible, not later than 72 hours after having become aware of a breach.

Where an individual has suffered material or non-material damage due to a data controller’s breach of the UK GDPR, that individual is entitled to claim compensation from the data controller or processor.

The ICO has the power to fine data controllers up to £17.5 million or 4% of annual worldwide turnover (whichever is higher) for breaches of the UK GDPR and DPA 2018. The data controller may appeal the imposition of a fine to the Information Rights Tribunal. The ICO utilised this power to full effect in July 2019 when it announced its biggest fine to date of £20 million over a personal data breach by British Airways that involved the theft of around 400,000 passengers’ data (see also question 5.1 below). The fine was originally set to be £183 million but was reduced by £150 million as the ICO undertook further research into the events leading to the data attack and attributed less blame to British Airways than had initially been done. A further £6 million was removed due to British Airways’ response to the breach, and a £4 million reduction due to the ICO’s updated regulatory approach in response to coronavirus, which aims to take into consideration “the impact of the coronavirus pandemic and the present economic situation on the economic situation on the organisation”.

The DPA 2018 creates several criminal offences, including (amongst others) unlawfully obtaining personal data, selling personal data obtained unlawfully, altering personal data to prevent disclosure to the data subject, failing to comply with an enforcement notice and making a false statement in response to an information notice.

The ICO’s other coercive powers include issuing information notices requiring organisations to provide it with information and issuing binding undertakings to organisations with which they must comply.

4.10 What are the mechanisms available for the protection of intellectual property (e.g. trademarks) and other assets and data of a proprietary nature?

The UK has an Intellectual Property Office (“IPO”). Trademarks, patents and designs are registrable with the IPO.

Copyright protection applies to original works upon creation of the work, without the need for registration (copyright is not registrable in the UK). The UK has a relatively low threshold of originality for a work to be considered an original work which is protected by copyright. Databases may be protected by copyright and/or database rights.

A patent may be filed online or in hard copy. A patent application should include a full description (including drawings) of the invention, the claims defining the invention, an abstract summarising the invention’s technical features and the relevant IPO forms.

Some intellectual property disputes may be heard initially by the IPO. The Intellectual Property Enterprise Court (“IPEC”) is a specialist court that deals with lower-value or lower-complexity intellectual property disputes. There is a £500,000 cap on the amount of damages that can be claimed (although this can be waived if agreed by the parties). There is a small claims track within the IPEC which is appropriate if the claim has a value of £10,000 or less. More complex or valuable cases will be heard in the Chancery Division of the High Court.

When the Brexit transition period ended on 31 December 2020, European trademark-holders were automatically granted “cloned” UK registrations. They had until the end of September 2021 to apply for equivalent national UK trademark protection.

4.11 Is there any legislation governing the denial of boarding rights and/or cancelled flights?

Regulation 261 (as incorporated into UK law via the European Union (Withdrawal) Act of 2018 and now known in the UK as the Air Passenger Rights and Air Travel Organisers’ Licensing (Amendment) (EU Exit) Regulations 2019) provides rules concerning compensation for denied boarding and/or cancelled or delayed flights. Airlines must ensure that a clearly legible and visible notice containing prescribed wording is displayed to passengers at check-in and must provide passengers affected by denied boarding with a notice setting out the rules for compensation.

Under the Civil Aviation (Denied Boarding, Compensation and Assistance) Regulations 2005, the CAA is responsible for enforcement of the operators’ compliance with these rules; the Air Transport Users Council is the body to receive complaints. It is an offence, subject to a defence of due diligence, for an operating air carrier to fail to comply with the obligations imposed under the above.

4.12 What powers do the relevant authorities have in relation to the late arrival and departure of flights?

The Air Passenger Rights and Air Travel Organisers’ Licensing (Amendment) (EU Exit) Regulations 2019 establishes common rules on compensation and assistance to be given to passengers in the event of cancellation or long delay. Pursuant to the UK domestic legislation – the Civil Aviation (Denied Boarding, Compensation and Assistance) Regulations 2005 – the CAA is empowered to pursue enforcement proceedings against an airline for non-compliance with the European rules. If proved, an airline will be liable to a fine not exceeding £5,000 for each offence.

4.13 Are the airport authorities governed by particular legislation? If so, what obligations, broadly speaking, are imposed on the airport authorities?

The Civil Aviation Act 1982 and the Air Navigation Order 2016 stipulate that where an aerodrome is open for public use, the aerodrome must be available to all, on equal terms, whether they are foreign or domestic carriers. There are numerous other obligations imposed upon an airport operator by law of application not limited to aviation; for example, concerning employment, health and safety and disability discrimination.

The Civil Aviation Act 2012 has introduced a new system of economic regulation of airport operators. Certain airports will require a licence to levy airport charges, and the CAA can impose such conditions on that licence as it deems necessary to promote competition (e.g. capping the percentage by which charges at a particular airport may be increased, by a certain percentage or by reference to a particular index (such as the Retail Price Index)).

The Transport Act 2000 requires airport operators to keep records of aircraft movements in order to facilitate the assessment and calculation of charges. The Civil Aviation (Chargeable Air Services) (Records) Regulations 2001 govern the format and content of the aircraft movement log, which must be kept at any airport pursuant to section 88 of the Civil Aviation Act 1982. Pursuant to the Air Navigation Order 2016, the aerodrome licence-holder must ensure that the messages and

signals between an aircraft and the air traffic control unit at the aerodrome are recorded, complete and preserved.

The airport operator is responsible for ensuring that the landing ground and runway remain clear of unmarked and unlit obstructions pursuant to the Air Navigation Order 2016.

There is also a statutory duty for an airport operator to take care, in all reasonable circumstances, to see that a visitor shall be safe in using the premises for the purposes for which (s)he is invited, or permitted, by the operator, to be there. Failure to install, maintain and use the proper equipment to enable aircraft to take off and land safely will attract liability, and there may be liability to passengers of aircraft which crash if there is a failure to have or to use adequate rescue equipment.

Airport operators have also been held liable where there was a known hazard and no effective system to discover and disperse birds, leading to bird strikes.

Drone-related disruption has been a consistent theme at UK and Irish airports in the last few years, with delays and cancellations reported at Dublin, Gatwick, Heathrow, Leeds, East Midlands and Bradford airports. In the UK, it is against the law to fly a drone within 5km of any UK airport, and drones are prohibited from being operated within 400ft above an airport (approximately 120m). The most notable recent example occurred at Gatwick in May 2023, when operations were suspended for almost an hour after a suspected drone was seen close to the airfield. Twelve inbound aircraft were diverted to other airports during the incident. This follows a more disruptive incident, again at Gatwick, in December 2018 when drone sightings caused the cancellation or diversion of around 1,000 flights in the space of 36 hours, affecting over 140,000 passengers. In the wake of recent drone incidents at airports, the UK Government has published amendments to the UK Air Navigation Order 2016 (“ANO”) so that:

- (1) Any drone weighing over 250g must be registered with the CAA and labelled with an operator ID. Individuals wishing to fly drones must also pass an online test once every three years. These requirements came into force on 30 November 2019 and this registration must be renewed annually. A failure to do so can incur a fine of up to £1,000.
- (2) The “runway protection zone” (in which no drones may be flown) has been extended around aerodromes to within 5km of runway ends, and up to a height of 2,000ft.
- (3) Drones weighing more than 20kg must comply with all rules within the ANO as if they are a manned aircraft, subject to any exemptions from the CAA. If an exemption is sought, specific details of the drone (including photographs and schematic diagrams) should be submitted to the CAA.

Drone-related offences are punishable by up to five years’ imprisonment.

To summarise, in order to fly a drone in the UK:

- the drone must weigh under 20kg;
- the drone cannot be flown above 400ft in altitude or 500m horizontally from the pilot;
- the drone must always be in sight;
- a drone weighing more than 250g must be registered with the CAA and the drone pilot must complete an online safety test, obtaining a Flyer ID and an Operator ID that should be attached to the drone;
- the drone must not be flown within 50m of people, vehicles, buildings or vessels (unless the drone weighs less than 250g); and
- the drone must not be flown within 150m of any large group of people such as a concert or sporting event.

If the drone has a camera and the pilot intends to record in an area where people are (except a public area), the group of people must:

- be informed prior to recording commencing;
- not be flown within 50m of people, vehicles, buildings or vessels or within 150m of a congested area or any large group of people such as a concert or sporting event; and
- be utilised for commercial purposes and permission must first be obtained from the CAA.

4.14 To what extent does general consumer protection legislation apply to the relationship between the airport operator and the passenger?

The Consumer Protection Act 1987 and the Consumer Rights Act 2015 apply to aviation-related matters, providing a cause of action to a passenger against a manufacturer. The Enterprise Act 2002 is also applicable to aviation: it gives the CMA powers of enforcement in relation to consumer legislation.

4.15 What global distribution suppliers (GDSs) operate in your jurisdiction?

All the major GDSs operate in the UK, e.g., Travelport, Amadeus, Sabre, etc.

4.16 Are there any ownership requirements pertaining to GDSs operating in your jurisdiction?

No, there are no ownership requirements specific to GDSs operating in the UK, beyond the general UK company law applicable to all companies. Foreign-domiciled companies may operate in the UK without registering a UK company or branch. UK-registered companies are not required to have a local shareholder or director; they just need to have a registered address in the UK.

4.17 Is vertical integration permitted between air operators and airports (and, if so, under what conditions)?

There is no prohibition of vertical integration between air operators and airports. In such a case, however, competition rules particularly prohibiting abuse of a dominant position (section 18 CA 1998 and/or Article 102 TFEU) will prohibit any discriminatory charges for access to airport infrastructure, or denial of access where this affects trade and is not objectively justified.

4.18 Are there any nationality requirements for entities applying for an Air Operator's Certificate in your jurisdiction or operators of aircraft generally into and out of your jurisdiction?

At this time, EU Regulation 1008/2008 applies, which sets out at Article 4 (conditions for granting an operating licence) that an undertaking shall be granted an operating licence by the competent licensing authority of a Member State provided

that “Member States and/or nationals of Member States own more than 50% of the undertaking and effectively control it, whether directly or indirectly through one or more intermediate undertakings, except as provided for in an agreement with a third country to which the community is a party”.

5 In Future

5.1 In your opinion, which pending legislative or regulatory changes (if any), or potential developments affecting the aviation industry more generally in your jurisdiction, are likely to feature or be worthy of attention in the next two years or so?

It is clear that developments in the data protection space involving the collection, retention, processing and use of personal (including PNR) data will continue to feature as a major area of concern and focus for airlines and airports in the near future. With the current passage of the Data Protection and Digital Information (No. 2) Bill through the UK legislative process, changes in this area are expected by the early part of 2024 which will require that operators review and monitor the mechanisms, processes and procedures they have in place to ensure compliance with new legislative requirements around the collection and provision of data and the secure handling, retention and use of it.

It is also worth being mindful of the role that Artificial Intelligence (“AI”) may play in the future of the aviation industry. Given the pace at which AI technology is developing, it is feasible that it may begin to be implemented by airlines and airport operators commercially within the next few years to streamline parts of the “passenger experience”; for instance, scanning passengers through departures to their designated seats. Trials in this regard have already taken place at various UK airports and the implementation of AI in scanning passengers and getting them on board as quickly as possible is starting to take place. AI may also have a use in the future management of security in airports, although this will need to be balanced by the protections afforded by privacy and human rights legislation. That said, subject to airport security implementing sufficiently rigorous safeguards and complying with relevant standards, it is not outside the realms of possibility that this technology could be used in a similar fashion within commercial airports and by commercial operators in the near future.

Perhaps the most significant anticipated development in aviation is going to be around unmanned aircraft, or UAVs, Also more colloquially known as air taxis or eVTOLS (electric vertical take-off and landing). Developments are already underway to see air taxis implemented in Paris in 2024, in time for the Olympic Games, and various metropolises in the UAE are making great strides in implementing UAV networks. Indeed, it is anticipated that by the first quarter of 2026, the UAE is set to experience all-electric air taxis, ready to take flight in its skies. In October 2023, the China-based company, Ehang, became the world's first company to receive airworthiness certification for its fully autonomous, passenger-carrying air taxis when it received its certification for passenger-carrying eVTOL aircraft from the Civil Aviation Administration of China.



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Philip acts for a broad range of significant aviation businesses across the world and he has an impressive track record of successful transactions, some being landmark deals in the industry. He has successfully concluded literally hundreds of transactions involving commercial and business aircraft, aero-engines and other aviation assets in jurisdictions in every continent. Philip is a regular contributor at industry events, and is often sought after to comment on developments in a variety of segments of the aviation sector and the aviation finance market, where his insight as a commentator is highly valued.

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1 General

1.1 Please list and briefly describe the principal legislation and regulatory bodies which apply to and/or regulate aviation in your jurisdiction.

- The US Department of Transportation (“DOT”) was established by the Department of Transportation Act in 1996 and is a federal cabinet-level department of the US government. The DOT comprises multiple agencies and is tasked with providing an efficient network of national transportation systems and services.
- The Federal Aviation Authority (“FAA”), created in 1958, is a national agency within the DOT, and is the largest transportation agency in the US. The FAA regulates all aspects of US civil aviation, including commercial space transportation, airspace over the US surrounding international waters, and unmanned aircraft systems (“UAS”), often referred to as drones. The US government is currently in the process of “reauthorising” the FAA through the FAA Reauthorization Act of 2023, also known as the Securing Growth and Robust Leadership in American Aviation Act (H.R. 3935), which proposes to extend the FAA authorisation until 2028. *See* question 5.1.
- The National Transportation Safety Board (“NTSB”), a fully independent US government agency that investigates and reports on civil transportation accidents, including aviation accidents and incidents. The NTSB also makes safety recommendations aimed at preventing future accidents.
- The US Department of Homeland Security (“DHS”) is a federal department responsible for ensuring public security in the US including, but not limited to, border security, immigration, cyber security, and customs.
- The Transportation Security Administration (“TSA”), Customs and Border Protection (“CBP”), and Cybersecurity and Infrastructure Security Agency (“CISA”) are three agencies under DHS jurisdiction. TSA is responsible for airport security and works in conjunction with CBP to screen airline passengers and employees at airports traveling to and from the US. CISA develops strategies to protect physical and cyber infrastructure, including airports, from cyberattacks.
- Title 49 of the United States Code (“USC”), “Transportation”, is legislation enacted by the US Congress, which provides laws regulating all forms of transportation in the US and, in particular, Subtitle VII aviation programmes, which include air commerce, safety

and airport development. The FAA Reauthorization Act of 2023 proposes to amend certain portions of Title 49. *See* question 5.1.

- Title 14 of the Code of Federal Regulations (“CFR”), “Aeronautics and Space”, issued by the DOT and FAA, concerns aeronautics, air transportation (including large and small aircraft, helicopters, balloons and gliders) and space exploration.
- Title 49 of the CFR, “Transportation”, issued by the DHS and DOT, regulates transportation and its related security issues, including the transportation of hazardous materials and civil aviation security.

1.2 What are the steps which air carriers need to take in order to obtain an operating licence?

Prior to obtaining an operating licence, air carriers must obtain economic authority from the DOT and safety authority from the FAA.

Economic authority. Economic authorisation is acquired in the form of a certificate for interstate or foreign passenger and/or cargo operations. 49 USC § 41101. For US air carriers, economic authority may consist of either (1) a certificate for interstate or foreign passengers and/or cargo and mail authority, (2) a certificate for interstate or foreign all-cargo authority, or (3) authorisation as a commuter air carrier. All air carriers must file an application on the public docket at: <https://www.regulations.gov>, which then makes the applications available for public comment. Air carriers must file separate applications for interstate and foreign authority.

The DOT’s Air Carrier Fitness Division evaluates the new applications for economic authority and determines if the applicant is “fit, willing, and able” to conduct commercial airline operations. *See* 49 USC § 41738 and 14 CFR § 298.21. Specifically, US air carrier applications are analysed for: (1) US citizenship (49 USC § 40102(a)(15)); (2) managerial competence; (3) financial fitness; and (4) legal compliance.

Foreign air carrier applications are analysed for: (1) foreign citizenship; (2) operational and financial fitness; and (3) whether the carrier is covered by a bilateral agreement (14 CFR Parts 211 and 302). Foreign carriers must hold either a valid permit issued by the DOT (49 USC § 41301) or a valid exemption (49 USC § 40109). The DOT may grant exemptions for a maximum of two years at any one time, and foreign air carriers, pursuant to 49 USC § 40109(g)(3), may request renewal of exemption authority. The President of the US has the power to review and overturn the DOT’s final decision to grant or deny a foreign air carrier’s application. The DOT created an exception to this formal application process when it simplified the licencing procedure

for Canadian charter air taxi operators due to the size and scope of such aircraft. 14 CFR Part 294. Separately, an agreement between the US and EU Joint Committee allows for the reciprocal recognition of regulatory determinations concerning airline fitness and citizenship, meaning that applicants from EU Member States, Iceland, and Norway are entitled to file abbreviated applications.

Notably, air carriers cannot operate until their application is approved, however, an exemption may be sought permitting commencement of operations prior to DOT decision. After approval, an air carrier must comply with the requirements of 49 USC 4110(e), which provide that the carrier must remain “fit” to retain its authority to provide air transportation services.

Safety authority. US carriers must hold an Air Carrier Certificate and Operations Specifications (“OpSpecs”) (14 CFR Parts 121 and 135). US carriers undergo a five-stage certification process: (1) pre-application, (2) formal application, (3) document compliance, (4) demonstration and inspection, and (5) certification. Similarly, foreign carriers must hold an OpSpecs (14 CFR Part 129), and the FAA evaluates the foreign air carrier for compliance with certain safety regulations and standards.

1.3 What are the principal pieces of legislation in your jurisdiction which govern air safety, and who administers air safety?

The FAA administers air safety within four major areas:

1. Airports – responsible for optimising the safety, capacity, and condition of airports in the US. 14 CFR Part 139.
2. Air Traffic Organization – responsible for controlling air traffic routes and airspace safety. 14 CFR Parts 71 and 77.
3. Aviation Safety – responsible for ensuring the certification, approval and airworthiness of aircraft, including UAS – the FAA does not require small drones (defined as less than 55 pounds) to comply with current agency airworthiness standards or obtain aircraft certification – and the certification of crew, including pilots, mechanics, and other air safety-related professionals. 14 CFR Parts 21, 25, 33, 61, 91, 107, 121, 125, and 135. As a part of its oversight of aviation safety, the FAA provides public access to its Dynamic Regulatory System (“DRS”), a comprehensive, searchable repository of aviation safety guidance addressing multiple aspects of US aviation safety. *See* <https://drs.faa.gov/browse>
4. Office of Commercial Space Transportation – responsible for regulating the US commercial space transportation system, including rocket and satellite launches. 51 USC § 50921.

As discussed below in question 5.1, the US government is in the process of passing the FAA Reauthorization Act of 2023, which aims to create a safer, cleaner, greener, and more accessible aviation system in the US. The proposed law would require airlines to use more sustainable fuels, encourage investment in airports, implement key safety measures, and bolster accessibility and consumer protection for all passengers. In addition to the FAA, the TSA (established under the DHS in response to the 9/11 terrorism acts) is responsible for developing and implementing policies to ensure the safety and security of transportation systems at airports.

1.4 Is air safety regulated separately for commercial, cargo and private carriers?

Aviation safety regulations differ based upon aircraft size, measured by the number of passenger seats and payload

capacity, and whether the operation involves common carriage of passengers and/or cargo. Regulations may differ within the Parts of the CFR dependent upon aircraft type and operation:

- Operation and certification requirements for aircraft operators involved in scheduled common carriage, such as airlines and cargo carriers. 14 CFR Part 121.
- Operators of larger aircraft being operated for non-common carriage purposes. 14 CFR Part 125.
- Commuter or on-demand operations of air carriers or commercial operators. 14 CFR Part 135.

These Parts set forth varying operational requirements relating to, for example, equipment, maintenance, pilot qualifications, and training. The operating standards applicable to foreign air carriers operating in the US are set forth in 14 CFR Parts 91 and 129.

1.5 Are air charters regulated separately for commercial, cargo and private carriers?

Regulation of air charters in the US is dependent on the size and type of aircraft:

- On-demand commuter and cargo operations have various restrictions including, but not limited to, the number of seats and size of the aircraft, recordkeeping requirements, staffing and training of pilots and crews, and restrictions on the number of trips made per week. 14 CFR Parts 135 and 298.
- Large aircraft carrying charter passengers or cargo, in interstate and/or foreign air transportation. 14 CFR Part 212.
- Public charters for both small and large aircraft, with varying restrictions, must submit a charter prospectus to the DOT prior to flying. 14 CFR Part 380.

1.6 As regards international air carriers operating in your jurisdiction, are there any particular limitations to be aware of, in particular when compared with ‘domestic’ or local operators? By way of example only, restrictions and taxes which apply to international but not domestic carriers.

Foreign and US carriers that are parties to bilateral air transport or service agreements are generally treated similarly. International Aviation Safety Assessment Program (“IASA”), established by the FAA, evaluates whether a foreign country’s aviation authority over its carriers operating in the US or under codeshare with US carriers complies with international safety standards recommended by International Civil Aviation Organisation (“ICAO”) – the agency established to promote the safe and orderly development of civil aviation around the world by setting standards, regulations, and procedures necessary for aviation safety, security, efficiency, regularity, and environmental protection. *See* <https://www.faa.gov/about/initiatives/iasa>

Airlines and passengers pay many taxes and fees to various governmental authorities, both in the US and abroad, for national security, environmental protection, agriculture inspection, infrastructure enhancement, airport operation, and agency financing. Taxes that passengers traveling internationally pay include the International Departure and Arrival Taxes, both \$21.10. A complete list of the applicable taxes are found at: <https://www.airlines.org/dataset/government-imposed-taxes-on-air-transportation/>

The FAA also considers the existence of an effective aviation security agreement between the US and the foreign country before granting a licence to operate in the US.

1.7 Are airports state or privately owned?

Commercial airports are almost exclusively publicly owned in the US, whether local, regional, state or bi-state authorities. These public authorities enter into long-term contractual arrangements with private entities to operate the airport or one or more terminals at an airport with multiple terminals. As an example, in New York and New Jersey, the Port Authority of New York and New Jersey (the “Port Authority”) is an interstate compact that operates several airports in New York and New Jersey. In turn, the Port Authority enters into contracts with sophisticated, primarily privately owned airport operators and/or US airlines to design, build, manage and/or operate terminals. Most recently, in August 2022, the Tweed New Haven Airport Authority approved a 43-year lease and management agreement with Avports LLC at the Tweed New Haven Airport, Avelo Airlines’ first East Coast hub, and the Connecticut Airport Authority is currently advertising leasing and development opportunities at Bradley International Airport, outside of Hartford, Connecticut’s capital.

In 1997, Congress enacted the Airport Investment Partnership Program (“AIPP”) (formerly the Airport Privatization Pilot Program) to explore and support the privatisation of US airports. Privatised airports under the AIPP are subject to different requirements and regulations than privatisation outside the AIPP such as, standards for use of sale/lease proceeds, rates or charges on airlines, and charges on passengers. Generally, all proceeds and revenue generated by the airport must be used for its capital or operating costs, although the AIPP grants an exception upon approval by 65% of the air carriers operating at the airport (based on the number of carriers and by landed weight). There are currently two privatised airports in the AIPP: the Luis Muñoz Marín International Airport in San Juan, Puerto Rico, which was privatised in 2013, and the Airglades International Airport in Clewiston, Florida, which is currently being developed as a logistics hub to transport perishable goods from Latin American producers. Most recently, on July 7, 2023, Avon Park Executive Airport in central Florida submitted a final application for privatisation, which the FAA is reviewing and is open for public comment. Other AIPP applications have included:

- St. Louis Lambert International Airport in St. Louis, MO – Preliminary application withdrawn May 28, 2020.
- Westchester County Airport in White Plains, NY – Preliminary application accepted December 2, 2016; Application withdrawn March 1, 2019.
- Chicago Midway International Airport in Chicago, IL – Preliminary application withdrawn September 9, 2013.
- Gwinnett County Briscoe Field in Lawrenceville, GA – Application withdrawn June 11, 2012.
- Louis Armstrong New Orleans International Airport in New Orleans, LA – Application withdrawn October 21, 2010.
- New Orleans Lakefront Airport in New Orleans, LA – Application terminated 2008.
- Stewart International Airport in Newburgh, NY – While the first commercial service airport to participate in the FAA’s privatisation programme from March 2000 to October 2007, it reverted to public ownership and is being operated by the Port Authority.
- Brown Field Municipal Airport in San Diego, CA – Application withdrawn 2001.
- Niagara Falls International Airport in Niagara Falls, NY – Application withdrawn 2001.

- Rafael Hernández Airport in Aguadilla, PR – Application withdrawn 2001.

1.8 Do the airports impose requirements on carriers flying to and from the airports in your jurisdiction?

Rather than airports, it is the FAA and the FAA Airport Safety Program that addresses general aviation airport safety, runway safety, and safety management systems. For example, the FAA Passenger Facility Charge (“PFC”) Program permits the collection of PFC fees of up to \$4.50 for every eligible passenger at commercial airports controlled by public agencies. Revenue generated from PFC must be used for eligible projects that either preserve or enhance capacity, safety, or security of the national air transportation system; reduce noise resulting from an airport that is part of such system; or provide an opportunity for enhanced competition between or among domestic and foreign air carriers. PFCs are capped at \$4.50 per flight segment, with a maximum of two PFCs charged on a one-way trip or four PFCs on a round trip, for a maximum of \$18 total. A 2020 study from the RAND Corporation, which was commissioned by Congress in 2018, recommended increasing the PFC to \$7.50 and index it to inflation moving forward. Consistent with this recommendation, in 2021, members of the House of Representatives introduced proposed legislation, H.R. 2719, which would have raised the federal cap on PFCs up to \$8.50 by January 1, 2025, but it never went to a vote. The FAA Reauthorization Act of 2023 does not include any changes to the cap on PFCs, although there have been efforts to amend the proposed law to include a PFC increase.

Because airport operators are commercial enterprises subject to regulation by the FAA, airport operators seek to maximise profits, where possible, including when entering into leases with airlines and retail operators, allocating gate assignments, supporting exclusive ground handling arrangements, determining whether to contract or subcontract maintenance and cleaning operations, and the like.

1.9 What legislative and/or regulatory regime applies to air accidents? For example, are there any particular rules, regulations, systems and procedures in place which need to be adhered to?

The NTSB holds the authority to investigate all civil transportation accidents, including aviation accidents under federal regulations. The NTSB determines “probable cause” and issues safety recommendations to the FAA and for consideration by air carriers, manufacturers, and airports. For general aviation accidents, the responsible NTSB field office may delegate authority to the FAA pursuant to Section 304(a)(1) of the Independent Safety Board Act of 1974. The Department of Defence and the respective branches of the US military investigate military aircraft crashes, however, the US military may authorise the NTSB to jointly investigate aviation accidents involving both military and civilian or certain public aircraft (*i.e.*, government owned aircraft). 49 CFR § 831. Upon request, the NTSB frequently assists foreign governments with accident investigations, typically conducted in accordance with ICAO Annex 13. Recent prominent examples include the Boeing 737 Max crashes in Ethiopia and Indonesia and the disappearance of Malaysia Airlines Flight MH370.

Federal regulations require operators of any civil aircraft to immediately notify the NTSB local field office of an aircraft accident (49 CFR § 830.5) and to ensure the preservation of

aircraft wreckage, cargo, and data recorders and all records, reports, internal documents, and memoranda dealing with the accident (49 CFR § 830.10(a)). Federal regulations also require that, as soon as practicable after being notified of a fatal accident, family members are to be provided with counselling, communication, and assistance (49 CFR § 1136). The Aviation Disaster Family Assistance Act of 1996 (49 USC §§ 1136 and 41113) and Foreign Air Carrier Family Support Act of 1997 (49 USC § 41313) require US and foreign carriers to have a Family Assistance Plan in place, which identifies how the carrier will address the needs of families and passengers involved in any accident resulting in a major loss of life. The NTSB must be permitted to inspect all relevant records (49 CFR § 830.10(d)).

The investigation of an accident begins with the NTSB creating a “go-team” comprising of experts who possess wide-ranging accident investigation skills. The “go-team” consists of an investigator-in-charge, and specialists trained in areas such as aircraft systems and structures, witness interviews, maintenance, operations, air traffic control, and meteorology. The NTSB generally issues a “preliminary” report on its online accident database shortly after an accident (*See* <https://www.ntsb.gov/Pages/AviationQuery.aspx>). At the conclusion of the NTSB’s investigation, the NTSB prepares a public “final” report (49 CFR Parts 831 and 845) that typically includes: (1) a factual report of the accident; (2) the probable cause of the accident; (3) whether mechanical or human error contributed to the accident; (4) the presence of design flaws or structural failures of the aircraft and its components; and (5) the impact of environmental or atmospheric interference. If appropriate, the NTSB report may also include safety recommendations based upon its factual findings.

If criminal conduct is suspected or implicated, local police authorities, the Federal Bureau of Investigation (“FBI”) and/or the Department of Justice (“DOJ”) will become involved. A criminal investigation may delay certain aspects of the NTSB’s accident investigation and could create a conflict with the authority of the NTSB.

The FAA and the NTSB signed an agreement dated September 9, 2022, memorialising that the NTSB and FAA will work together to investigate commercial space mishaps, with the NTSB acting as the lead investigative agency for FAA permitted, licenced, or otherwise FAA approved commercial space launch or re-entry mishaps that result in: (1) a fatality or serious injury to any person, regardless of whether the person was on board the commercial space launch or re-entry vehicle; or (2) damage to property not associated with the commercial space launch or re-entry activities or the launch site, from debris that could reasonably be expected to cause death or serious injury. The FAA will be the lead investigative agency for all other commercial space mishaps.

1.10 Have there been any recent cases of note or other notable developments in your jurisdiction involving air operators and/or airports?

On May 19, 2023, the court in *US v. American Airlines Group Inc.*, No. 1:21-cv-11558 (D.Mass. 2021) entered an order granting DOJ’s request to permanently enjoin the Northeast Alliance as a violation of US antitrust laws, because the “benefits of American and JetBlue of becoming more powerful...arise from a naked agreement not to compete with one another” against the Sherman Act. The court found that the Northeast Alliance was a “sea change in the relationship between two airlines” who were previously direct and aggressive competitors, however, there was no evidence that the two airlines are continuing to treat themselves as competitors. Given the court’s ruling,

the Northeast Alliance began unwinding on July 21, 2023. American Airlines appealed the court’s ruling, which remains pending. JetBlue did not appeal, instead, focusing on its proposed merger with Spirit Airlines. The DOJ filed a separate 2023 antitrust lawsuit seeking to block JetBlue’s pending \$3.8 billion acquisition of Spirit Airlines pursuant to Section 7 of the Clayton Act, arguing that JetBlue’s acquisition of Spirit, together with the Northeast Alliance, would be the last step for the consolidation of the airline industry. *US v. JetBlue Airways Corp.*, No. 1:23-cv-10511 (D.Mass. 2023). The DOJ opposes JetBlue’s Spirit acquisition as anti-competitive, with potential for higher travel prices, however, the impact of the Northeast Alliance’s dissolution on the DOJ’s lawsuit remains to be seen. Trial began on October 31, 2023.

The ongoing conflict following Russia’s invasion of Ukraine in February of 2022 impacts the aviation industry in numerous ways. The US, United Kingdom, and the European Union (“EU”) imposed various sanctions and economic restrictions on Russia, its companies, financial institutions, and oligarchs. Among other things, the US sanctions included the closure of US airspace to Russian-operated aircraft, blocking assets or prohibiting transactions with certain Russian companies and individuals, and export controls prohibiting the export or reexport of aircraft and components to Russia or for use in Russia. As of February 2022, it is estimated that approximately 400 to 500 foreign-owned aircraft, with an asserted value in excess of \$10 billion, and insurance claims estimated at between \$10 billion and \$35 billion are in dispute. There are more than 30 Russian aviation insurance-related lawsuits pending around the world, including the US, claiming all-risk and/or war-risk coverage. In the first major ruling, the Florida state court in *Zephyrus Aviation Capital, LLC v. Berkshire Hathaway International Insurance Limited*, No. CACE-23002230 (17th Jud. Cir., June 30, 2023) granted the Hull Policy defendants’ motion to dismiss, holding as a matter of law “physical loss” requires “some physical change to the insured property”, and the policy “did not contemplate the complete ‘physical loss’ of an aircraft due to wartime conflict”, which was in essence the plaintiffs’ allegation – their aircraft were stranded in Russia, not physically damaged. The Court agreed with the all-risk insurers that the policy’s requirement of “physical loss or damage” could not be satisfied because there was no tangible alteration of the aircraft, which apparently continue to operate in Russia. The decision has been appealed to the Florida court of appeal.

Following the crashes of Lion Air Flight 610 and Ethiopian Air Flight 320 resulting in the deaths of 346 people, without admitting any wrongdoing, Boeing agreed to pay a \$200 million penalty to the Securities and Exchange Commission (“SEC”) on charges that the company misled investors and the public about the safety of the 737 Max, while its former CEO paid a \$1 million penalty to the SEC. In addition, the US government charged Boeing under 18 USC § 371 with conspiracy to defraud the FAA during the 737 Max approval process. The DOJ – the US Attorney’s Office in the Northern District of Texas – entered into a \$2.5 billion deferred prosecution agreement with Boeing, requiring the payment of a \$243.6 million criminal penalty, \$1.77 billion in compensation to airline customers that could not fly the 737 Max due to groundings from March 2019 until December 2020, and a \$500 million fund to compensate the families of the two plane crashes. The deferred prosecution agreement immunised Boeing, not its employees, from criminal prosecution, and criminal charges would be dismissed if Boeing complied with the terms of the agreement. Although the Texas district court previously had accepted the families’ argument that they were “crime victims” as defined by the Crime Victims’ Rights Act, 18 USC § 3771, in February 2023, the court rejected the families’ request to set aside the deferred

prosecution agreement. The court found that the Speedy Trial Act does not authorise a court to modify, substantively review or reject the government's agreement given the separation of powers between the US government and judiciary, nor could the families establish that the government acted in bad faith in entering the agreement, which requires more than legal error. Approximately 15 families petitioned for a writ of mandamus to the Fifth Circuit Court of Appeals seeking to force the DOJ to consult with the families and to eliminate the immunity provision in the deferred prosecution agreement. The deferred prosecution remains in effect during the appeal, including the \$2.5 billion restitution payment.

Boeing also continues to defend civil lawsuits filed by families of passengers and by LOT Polish Airlines, and Czech carrier Smartwings AS seeking damages due to the grounding of the 737 MAX fleet.

The use of firefighting foams containing per- and polyfluoroalkyl substances ("PFAS") at airports continues to be a hotly litigated issue. More than 75 class actions were consolidated into a multidistrict litigation ("MDL") in the District of South Carolina, where the MDL court rejected an assertion of the government contractor defence on the basis that the defendant withheld information from the government about the potential health risks of the aqueous film-forming foam. *In Re Aqueous Film-Forming Foams Product Litigation*, 2:18-mn-02873-RMG, ECF No. 2601 (D.S.C. Sept. 16, 2022). The first bellwether test trial (*City of Stuart v. 3M Company*, (2:18-cv-3487)) was scheduled to begin in June 2023, however, prior to trial, DuPont, Chemours, and Corteva settled with approximately 300 local water systems for \$1.185 billion, and shortly thereafter, 3M settled with 300 water providers for \$10.3 billion. Although the water utility claims have been resolved, there are thousands of claims in the MDL that have not been resolved, and it is anticipated that a settlement of the PFAS claims will be larger than the \$206 billion Big Tobacco settlement.

Airline carbon offsetting is the subject of recent litigation. On May 30, 2023, a class action complaint was filed against Delta Air Lines alleging that the airline is "carbon neutral" and environmentally friendly representations are false and misleading. *Berrin v. Delta Air Lines Inc.*, No. 2:23-cv-04150 (C.D.Cal. 2023). The lawsuit claims that Delta was "grossly misrepresenting the total environmental impact of its business operation in its advertisements, corporate announcements, and promotional materials, thereby attaining undeserved market share and extracting higher prices from consumers". The complaint sets forth three causes of action under California's consumer protection statutes: (1) the Consumers Legal Remedies Act, California Civil Code § 1750, *et seq.*; (2) the False Advertising Law, Business and Professions Code § 17500, *et seq.*; and (3) the Unfair Competition Law, Business and Professions Code § 17200, *et seq.* The complaint alleges that the carbon offset markets are unreliable and that Delta's use of carbon offset markets to claim it is "carbon neutral" is not reducing its carbon emissions and, instead, Delta is buying largely fabricated carbon offsets. Similar alleged "greenwashing" lawsuits have been filed in Europe and Brazil.

Plaintiffs have filed an increasing number of class action lawsuits against airlines. On September 21, 2023, a class action lawsuit was filed against Archer Aviation, Inc. on behalf of all persons or entities who purchased or acquired Archer securities between September 17, 2021 and August 15, 2023. *Cenderelli v. Archer Aviation, Inc.*, No. 23-cv-04844 (N.D.Cal. 2023). Archer manufactures electric vertical takeoff and landing ("eVTOL") aircraft. The complaint alleges that Archer: overstated and misrepresented its financial position, profitability, and partnerships; exaggerated its flight-testing record; was unlikely to secure FAA certification in the represented time frame; and

that this would all result in significant financial and reputational harm. After Archer filed a motion to dismiss arguing that the plaintiff's claims are frivolous and fail to meet the heightened pleading requirements of the Private Securities Litigation Reform Act ("PSLRA"), Cenderelli voluntarily dismissed the action personally. Pursuant to the court's standing orders, because the class was not certified at the time of the plaintiff's voluntary dismissal, the dismissal does not prejudice the unnamed class members; however, if there are investors who wish to pursue a class action, they must file a new complaint.

On October 22, 2023, an off-duty Alaska Airlines pilot, who allegedly had taken psychedelic mushrooms days before the incident and claimed to be severely depressed for months, was seated in the cockpit jump seat and attempted to cut fuel to the plane's engine mid-flight. The off-duty pilot was eventually subdued, the plane safely landed, and the off-duty pilot was charged with numerous crimes. Thereafter, in November 2023, passengers aboard the flight filed a class action lawsuit, *Dolan v. Alaska Airlines, Inc., et al.*, No. 23-2-21460-9-KNT (Wash. Super. Ct. 2023) against Alaska Airlines alleging that the airline did not properly screen its pilots before flights, there is pervasive mental illness among the pilots, and the airline concealed this information. The complaint also raises security issues regarding an off-duty pilot being seated in the cockpit jump seat.

Another notable class action development occurred in *In re Domestic Airline Travel Antitrust Litigation*, No. 1:15-mc-01404-CKK (D.D.C. 2015) – a class action against Delta Air Lines, United Airlines, American Airlines and Southwest Airlines (American and Southwest have already settled for \$45 million and \$15 million, respectively), alleging the airlines conspired to increase profits by limiting capacity on flights to drive up fares from January 2009 to mid-2015. In September 2023, the court denied the airlines' summary judgment motion, finding that plaintiffs presented enough evidence to demonstrate a conspiracy amongst the defendants to restrict capacity in order to drive up profits.

Hartsfield v. Frontier Airlines Inc., No. 1:23-cv-02093 (D.Colo. 2023) – an August 2023 lawsuit claiming Frontier Airlines "All You Can Fly Pass" is a bait-and-switch scheme; *Cook v. Spirit Airlines, Inc.*, No. 1:17-cv-5172-WFK-VMS (E.D.N.Y. 2017) – in August 2023, Spirit Airlines agreed to pay \$8.25 million to settle this class action lawsuit regarding surprise bag fees allegedly designed to bait-and-switch consumers; and *Dusko v. Delta Air Lines, Inc.*, No. 1:20-cv-01664-ELR (N.D.Ga. 2020) – in October 2023, Delta agreed to pay approximately \$30 million to settle this class-action lawsuit from customers who said Delta refused to refund their cancelled flights in the beginning of the COVID-19 pandemic.

On October 3, 2023, the New England Patriots, a professional NFL football team, filed *02/25/94 LLC v. Eastern Airlines, LLC*, No. 1:2023cv08692 (S.D.N.Y. 2023) alleging breach of contract as the airline attempted to change the terms of a six-year contract signed in 2020, by demanding in July 2023 that the Patriots pay a higher than agreed price for services. Instead of complying with Eastern Airlines' demand, the Patriots terminated the contract and filed a lawsuit seeking \$22.8 million, grounding the Patriots' two aircraft and travelling instead on American Airlines.

1.11 Are there any specifically environment-related obligations or risks for aircraft owners, airlines, financiers, or airports in your jurisdiction, and to what extent is your jurisdiction a participant in (a) the EU Emissions Trading System (EU ETS) or a national equivalent, and (b) ICAO's Carbon Offsetting and Reduction Scheme for International Aviation (CORSIA)?

The Clean Air Act of 1970 ("CAA") (42 USC § 7401 *et seq.*) is a federal air quality law enacted to reduce and control air

pollution. The Environmental Protection Agency (“EPA”) administers the CAA. The EPA sets forth regulations and has broad authority to determine the extent to which aircraft and engine emissions affect air quality throughout the US and the technological feasibility of controlling these emissions. The EPA, through its regulatory programme, such as the National Emissions Standards for Hazardous Air Pollutants, sets emissions standards and the FAA establishes and administers the Certification Requirements for aircraft and engines to comply with such emission standards. 40 CFR Part 87, entitled “Control of Air Pollution from Aircraft and Aircraft Engines”, contains the EPA emission standards, and 14 CFR Part 34, entitled “Fuel Venting and Exhaust Emission Requirements for Turbine Engine Powered Airplanes”, contains the associated FAA requirements. These rules and regulations closely follow standards adopted by ICAO.

The US is in a pilot phase, projected to end in 2023, of participation in ICAO’s global market-based mechanism, CORSIA, which is designed to offset and reduce CO₂ emissions. Offsetting of CO₂ emissions are intended to be achieved through the acquisition and cancellation of emissions units from the global carbon market by airplane operators. A voluntary first phase of CORSIA is set to begin in 2024. During these phases, only flights between countries that volunteer to participate in CORSIA are subject to offsetting requirements. By 2027, CORSIA will begin a second phase expected to end in 2035, which will subject all international flights to offsetting requirements, with exceptions for flights to and from Least Developed Countries, Small Island Developing States, Landlocked Developing Countries and States which represented less than 0.5% of the global international RTK in 2018 (*see* https://www.icao.int/sustainability/Documents/RTK%20ranking/International%20RTK%20rankings_2018_SIDS_LDC_LLDC.pdf).

The Biden administration’s Sustainable Aviation Fuel Grand Challenge aims to increase sustainable aviation fuels (“SAF”) production in the US to 3 billion gallons in 2030 and 35 billion gallons by 2050. The 2050 SAF goal would account for the entire jet fuel market, thus achieving a net-zero greenhouse gas emission. To incentivise the production of SAF, the US government allows for a \$1.25 SAF credit for each gallon of SAF produced, and there are approximately 20 new SAF projects expected to be operational by 2030.

The US is not a participant in the EU ETS, which follows a “cap and trade” approach wherein the EU caps how much greenhouse gas pollution is permissibly emitted each year and allows tradable allowances equal to that limit. In 2021, the US EPA finalised its first rule regulating standards for greenhouse gases for commercial airplanes and business jets. This action aligned US standards with CORSIA and will require all new aircraft sold to commercial airlines to meet the requirements of the rule by 2028.

Airlines are beginning to use artificial intelligence (“AI”) to reduce carbon emissions and aviation’s global warming impact. A 2022 Intergovernmental Panel on Climate Change (“IPCC”) report noted that clouds created by contrails account for roughly 35% of aviation’s global warming impact. A group of American Airlines pilots flew 70 test flights using Google’s AI-based predictions, cross-referenced with Breakthrough Energy’s open-source contrail models, to avoid altitudes that are likely to create contrails. The test flights found that the pilots were able to reduce the contrails by 54%. Airlines also are beginning to use AI to more accurately predict weather and create direct flight routes to reduce the amount of fuel burned and ultimately result in less CO₂ emissions.

2 Aircraft Trading, Finance and Leasing

2.1 Does registration of ownership in the aircraft register constitute proof of ownership?

No. A Certificate of Registration alone is “not evidence of ownership of an aircraft in a proceeding in which ownership may be in issue”. 49 USC § 44103. The best evidence of ownership of an FAA-registered aircraft is an original bill of sale from the manufacturer/seller to the current owner. For multiple prior-owner aircraft, the best evidence of ownership is a chain of title with all prior bills of sale and previous title transfers, which would need to be established by the current owner. The following documents are not acceptable as evidence of ownership: acquisition and invoice/shipping documents, DD Form 1149, transfer order surplus personal property, SF Form 123; US Air Force excess/surplus personal property transfer and work agreement; and notice of award, statement, and release document, DPDS Form 1427.

2.2 Is there a register of aircraft mortgages and charges? Broadly speaking, what are the rules around the operation of this register?

The FAA Aircraft Registry is a public database where mortgages, liens and other security interests can be recorded against an aircraft. 14 CFR Part 49 contains the requirements for recordation of mortgages and other security interests. Registration documents consist of an aircraft registration application, AC Form 8050-1, evidence of ownership (*i.e.*, bill of sales or chain of title), and a \$5 registration fee to the FAA. All documents must include the manufacturer, model, serial number, registration number, and original signatures. In order to register an aircraft on the FAA Aircraft Registry, the aircraft must be owned by: (1) a US citizen; (2) a partnership each of whose partners is a US citizen; (3) a US corporation of which the president and at least two-thirds of the board of directors are US citizens and at least 75% of the voting interest is owned or controlled by US citizens; (4) a citizen of a foreign country lawfully admitted for permanent residence in the US; (5) a US governmental unit or subdivision; or (6) a non-US citizen corporation organised and doing business under the law of the US or one of its states as long as the aircraft is based and primarily used in the US (60% of all flight hours being from flights starting and ending in the US). 14 CFR Part 47. An aircraft registered in a foreign country is not eligible for US Registration. *Id.* Effective January 23, 2023, the FAA extended the duration of aircraft registration certificates from three to seven years, and the FAA Registry will no longer issue letters of extension, meaning there is no time limit within which the FAA must either issue a letter extending the temporary authority to continue to operate or deny the application. *See* 14 CFR 47.31(c) (1). Thus, the Aircraft Registration Application is valid until the applicant either receives the aircraft registration certificate, the FAA denies the application, or 12 months have elapsed during which the registration is pending on the aircraft.

The Cape Town Convention and related Protocol on Aircraft Equipment is an international treaty that recognises an international registry for registering ownership and security interests. The FAA Aircraft Registry serves as the entry point for registering an aircraft according to the Cape Town Convention.

2.3 Are there any particular regulatory requirements which a lessor or a financier needs to be aware of as regards aircraft operation?

A lessor or financier should require its lessee/operator to comply with all applicable FAA and DOT aircraft operation regulations. 14 CFR Part 91 sets forth general rules regarding operation of civil aircraft. The lessee/operator must meet certain requirements, including, for example, licensure of the aircraft pilot. The lease agreement should explicitly provide that the lessee maintains operational control of the aircraft. Moreover, lease agreements for a “large civil aircraft”, as defined in 14 CFR § 1.1 (12,500 pounds, maximum certificated takeoff weight) must include a written truth-in-leasing clause as a concluding paragraph, which satisfies the requirements set forth in 14 CFR Part 91. The truth-in-leasing clause must include: (1) identification of the Federal Aviation Regulations (“FAR”) under which the aircraft has been maintained and inspected during the 12 months preceding the execution of the lease and certification by the parties that the aircraft is in compliance with applicable maintenance and inspection requirements for the operations contemplated by the lease (*e.g.*, typically Part 91 since truth-in-leasing requirements do not apply to Part 121 or 135 air carrier lessees); (2) the name, address and signature of the person responsible for operational control of the aircraft under the lease, and certification that each person understands that person’s responsibilities for compliance with applicable FAR; and (3) a statement that an explanation of factors bearing on operational control and pertinent FAR can be obtained from the responsible Flight Standards District Office. *See* 14 CFR § 91.23. The lease is then filed with the FAA for truth-in-leasing purposes only and within 24 hours of execution, a copy of the lease must be sent to the aircraft registration branch. At least 48 hours prior to the first flight the lessee must notify the FAA of the time, departure location, and the aircraft’s registration number. A copy of the lease must be carried aboard the aircraft at all times.

2.4 As a matter of local law, is there any concept of title annexation, whereby ownership or security interests in a single engine are at risk of automatic transfer or other prejudice when installed ‘on-wing’ on an aircraft owned by another party? If so, what are the conditions to such title annexation and can owners and financiers of engines take pre-emptive steps to mitigate the risks?

Yes. The Cape Town Convention, to which US is a signatory, defines aircraft engines and airframes as distinct and separate aircraft objects. Article XIV(3) of the Aircraft Equipment Protocol provides that “ownership of or another right or interest in an aircraft engine shall not be affected by its installation on or removal from an aircraft”.

2.5 What (if any) are the tax implications in your jurisdiction for aircraft trading as regards a) value-added tax (VAT) and/or goods and services tax (GST), and b) documentary taxes such as stamp duty; and (to the extent applicable) do exemptions exist as regards non-domestic purchasers and sellers of aircraft and/or particular aircraft types or operations?

Tax implications are unique to each transaction given the interplay between US federal and each state’s tax laws and applicable treaties. Aircraft transactions (including the use, sale, or lease of an aircraft) involving the US or US citizens can

be subject to federal and/or state(s) tax laws, regulations and treaties. The favourability of tax treatment varies based upon factors such as the jurisdiction of the persons involved in the transaction, the situs of closing, the intended use of the aircraft subsequent to closing, and others.

There is no VAT in the US. Parties must consult the US tax code (Title 26 of the USC) with respect to any aircraft sale or lease transaction in the US with a US entity or citizen. For example, the Tax Cuts and Jobs Act of 2017 (“TCJA”), Pub. L. No. 115-97, 131 Stat. 2054, eliminates the deferral of gains and losses for the like-kind exchange of aircraft, but expands the use of bonus depreciation of all qualifying, new and pre-owned, equipment to 100%. Therefore, the TCJA allows taxpayers to immediately write off the cost of an aircraft acquired and placed in service between September 17, 2017 to December 31, 2023. The bonus depreciation phase-out began on January 1, 2023, and businesses can write off 80% of an eligible property’s purchase price in 2023. The phase out will reduce to 60% in 2024, 40% in 2025, 20% in 2026, and to zero in 2027.

In addition, each state maintains its own tax laws, and within each state, there may be county or city tax laws. Most states collect sales tax on transactions involving tangible personal property. Specifically, state taxes for aircraft purchases and transactions range widely between 2% (Virginia) and 7.5% (California). Five states – Alaska, Delaware, Montana, New Hampshire, and Oregon – do not have a state sales tax (although Alaska allows for certain local taxes and Delaware has retailers’, wholesalers’, and lease taxes). This means that sales taxes will not be assessed for aircraft delivered in these five states. There are states that provide special tax treatment and exemptions specific to transactions involving aircraft. New York, Maine, Connecticut, and Rhode Island exempt aircraft from sales tax, while others cap the sales tax on aircraft sales and leases (South Carolina – \$500; North Carolina – \$2,500; Virginia and Alabama – 2%). There have been numerous unsuccessful attempts to repeal the sales tax exemptions for aircraft in New York and Massachusetts. Many states, such as Arizona, Arkansas, California, Colorado, Florida, Georgia, Idaho, Illinois, Indiana, Michigan, Oklahoma, Texas, and Wisconsin have a “fly-away” exemption, which exempts the transaction from sales tax if the aircraft is flown out of the state where it was purchased within a specified period of time after closing. The “fly-away” exemption may be limited, *e.g.*, in Georgia, the aircraft must be manufactured or assembled in Georgia, or in Oklahoma, the exemption applies when the sale price exceeds \$2.5 million. Other states such as Indiana, Michigan, Ohio, Louisiana, and Texas, provide a “lessor exemption” that typically comes in the form of a resale exemption. A lessor can elect to pay use tax on receipts from the rental/lease of an aircraft *in lieu* of payment of sales or use tax on the full cost of the aircraft at time of purchase. The specifics of a lessor exemption differ from state to state. An overview of aircraft state tax laws can be found on the Aircraft Owners and Pilots Association website (<https://www.aopa.org/advocacy/state-advocacy>).

2.6 Is your jurisdiction a signatory to the main international Conventions (Montreal, Geneva and Cape Town)?

Yes. The US is a signatory to the following treaties and conventions:

- Convention on International Civil Aviation (the “Chicago Convention”), Dec. 7, 1944, 61 Stat. 1180.
- Convention on the International Recognition of Rights in Aircraft, June 19, 1948, 4 U.S.T. 1830.

- Convention for the Unification of Certain Rules relating to the International Carriage by Air (the “Warsaw Convention”), Oct. 12, 1929, 49 Stat. 3000.
- The Geneva Conventions of 1949.
- Convention on Offenses and Certain Other Acts Committed on Board Aircraft (the “Tokyo Convention”), Sept. 14, 1963, 20 U.S.T. 2941.
- Montreal Protocol No. 4 to amend the Warsaw Convention as Amended by the 1955 Hague Protocol.
- Convention for the Unification of Certain Rules for International Carriage by Air (the “Montreal Convention”), May 28, 1999, S. Treaty Doc. No. 106-45, 1999 WL 33292734.
- Convention on International Interests in Mobile Equipment (the “Cape Town Convention”) and Aircraft Equipment Protocol.

2.7 How are the Conventions applied in your jurisdiction?

State and federal courts in the US essentially share jurisdiction over the interpretation of treaties and conventions, notwithstanding that a federal treaty generally pre-empts state law in conflict therewith. The US Supreme Court issued a seminal decision governing international aviation law in *EL AL Israel Airlines, Ltd. v. Tseng*, 525 U.S. 155 (1999), wherein the Supreme Court upheld the pre-emptive effect of treaties, such as the Montreal Convention, on local law. Unlike the Montreal and Warsaw Conventions, there is limited case law in the US interpreting the Cape Town Convention or the Geneva Convention in the context of aviation or aerospace. In a precedential decision, the US Supreme Court in *Hamdi v. Rumsfeld*, 542 U.S. 507, 520 (2004) held that “it is a clearly established principle of the law of war that detention may last no longer than active hostilities”.

2.8 Does your jurisdiction make use of any taxation benefits which enhance aircraft trading and leasing (either in-bound or out-bound leasing), for example access to an extensive network of Double Tax Treaties or similar, or favourable tax treatment on the disposal of aircraft?

The US has an extensive network of income tax treaties, which aim to minimise double taxation. There is no exact method to maximise an entity’s tax benefits and there are various restrictions on “treaty-shopping”, which compels the utilisation of sophisticated analysis tailored to each situation to maximise the taxation benefits.

2.9 To what extent is there a risk from the perspective of an owner or financier that a lessee of aircraft or other aviation assets in your jurisdiction may acquire an economic interest in the aircraft merely by payment of rent and thereby potentially frustrate any rights to possession or legal ownership or security?

The economic interest of an owner/financier in a leased aircraft is dependent on the type of lease. An aircraft lease can be structured as a “true” or “operating” lease, meaning that the contract is for the use and possession of an aircraft for a specified duration, which is normally less than the useful life of an aircraft. With a true or operating lease, the lessee does not expect to acquire ownership of the aircraft when making lease

payments. Alternatively, an aircraft lease can be structured as a “finance” lease, which is also referred to as a “conditional sale” or “long-term lease”. With a “finance” lease, the lessee’s ultimate goal is to acquire the leased aircraft, and the lessee will make payments throughout the duration of the lease, which is typically a significant portion of the aircraft’s useful life. Therefore, the “finance” lease can provide for the transfer of title to the aircraft to the lessee after the lessee makes all of the contractual payments. Given the structure and ultimate goal of a “finance” lease, the FAA may treat a “finance” lessee as the owner of the aircraft and the lessor as a secured party, meaning that the owner would be required to properly record its aircraft security interest to be able to maintain its security interest in the aircraft.

Prudence dictates that an owner of the aircraft properly perfect its interest in a lease of a US-registered aircraft under the FAA regulations, the Cape Town Convention, and in accordance with the Uniform Commercial Code (“UCC”) (see question 3.2) for components not contained within an aircraft.

3 Litigation and Dispute Resolution

3.1 What rights of detention are available in relation to aircraft and unpaid debts?

Generally, if an aircraft owner or operator has unpaid debts, and has not filed a bankruptcy action, a creditor may: (1) obtain a court judgment enforceable in accordance with the relevant state laws and procedures; or (2) obtain a pre-judgment restraining order or injunction preventing the debtor from moving the aircraft, subject to meeting certain criteria. While the creditors’ rights are generally governed by state, the creditor can seek relief in both state and federal courts, assuming the federal court has subject matter jurisdiction through either federal question or diversity (see question 3.3). The applicable law may vary depending on the type of debt, priority of any lien, and whether the lien has been perfected, *i.e.*, properly recorded/registered. If the aircraft owner or operator has filed for bankruptcy protection, the debtor is afforded automatic stay protection and a creditor will be subject to the jurisdiction of the bankruptcy courts. The remedies will be limited to the appropriate relief afforded by federal bankruptcy law and is dependent on the type of bankruptcy relief sought and the type of debt.

3.2 Is there a regime of self-help available to a lessor or a financier of an aircraft if it needs to reacquire possession of the aircraft or enforce any of its rights under the lease/finance agreement?

The UCC governs nearly all commercial transactions in the US and all 50 states have adopted the UCC in some fashion. In certain circumstances, the UCC permits a self-help remedy, however, a lessor’s rights may be limited by the applicable lease and/or financing agreements. Pursuant to UCC § 2A-523 and § 2A-525, a lessor is entitled to repossess leased equipment or render the equipment unusable, if it can do so without causing a breach of the peace. Upon seizure, the lessor may then retain, sell, lease, or otherwise dispose of the aircraft and apply the proceeds to satisfy the outstanding debt. Default remedies available in the US may be affected by the Cape Town Convention and its Aircraft Equipment Protocol, depending on the type of aircraft, its place of registration, the location of the debtor, and whether the transaction documents create an “international interest”. The US Declaration to the Cape Town Convention affirms that the US respects applicable local laws with respect to non-consensual liens.

3.3 Which courts are appropriate for aviation disputes? Does this depend on the value of the dispute? For example, is there a distinction in your jurisdiction regarding the courts in which civil and criminal cases are brought?

Aviation disputes, both civil and criminal, can be litigated in either state or federal court, depending on the parties and amount in dispute. Individuals and the government may bring a claim in civil court, where the available remedies are generally limited to monetary and/or injunctive relief. Only the government can prosecute criminal cases, which can result in a monetary award, injunctive relief, and/or incarceration. State courts have broad jurisdiction and can hear almost any civil or criminal case, as long as it is not pre-empted by federal law or international convention or treaty. A civil lawsuit can be filed in federal court if the case involves either: (1) federal question jurisdiction (*i.e.*, the case arises under or implicates a federal treaty, law, or regulation, *e.g.*, the Montreal Convention); or (2) diversity jurisdiction (the claim is between citizens of different states and the amount in controversy exceeds \$75,000). Alternatively, if a plaintiff files a civil lawsuit in state court, there are limited bases for a defendant to remove the matter to federal court, which may be challenged by a plaintiff via a motion for remand. It is not uncommon for a plaintiff to assert damages just under \$75,000 in an effort to avoid removal to federal court. *See, e.g., Haines v. Southwest Airlines Company*, No. 1846-CC00042 (Circuit Court of Taney County at Forsyth, Missouri) (plaintiff sought \$74,999.99 after airline landed at wrong airport); *see also Morales v. Allstate Texas Lloyds*, 419 F.Supp.3d 816 (S.D.Tex. 2019) (granting plaintiff's motion for remand after finding that the damages demand was not made in bad faith and plaintiff's stipulation to not seek or accept any damages, recovery, or award that exceeds \$74,999.99 was valid and enforceable); *McDonald v. Automoney, Inc.*, 2021 WL 5599501 (M.D.N.C. Nov. 30, 2021) (remand motion granted based on similar stipulation). Conversely, the 6th and 7th Circuits have held that even when a plaintiff strategically claims damages under the jurisdictional amount, a court may nevertheless infer that the damages will ultimately exceed the \$75,000 jurisdictional amount, and affirm removal of the action to federal court. *See Halsey v. AGCO Corp.*, 755 F.App'x. 524 (6th Cir. 2018); *Webb v. Frawley*, 858 F.3d 459 (7th Cir. 2017).

3.4 What service requirements apply for the service of court proceedings, and do these differ for domestic airlines/parties and non-domestic airlines/parties?

In the federal courts, service of process is governed by the Federal Rules of Civil Procedure. *See* Fed. R. Civ. P. 4. Conversely, in state courts, each state has its own rules of civil procedure, which includes rules regarding service of process. Generally, both federal and state courts liberally permit service of process with some jurisdictions authorising service via certified mail, by leaving a copy with someone at the defendant's dwelling or usual place of abode, publication, service on the Secretary of the State, by email or social media platforms, and even serving the defendant's counsel. *See, e.g., Schwartz v. Sensei, LLC*, 1:17-CV-04124-SN, Order dated March 11, 2019, ECF No. 70 (S.D.N.Y.) (Order authorising service of defendant "through every known internet account, including but not limited to: e-mail, text message, iMessage, WhatsApp, and Twitter"); *WhosHere, Inc. v. Orun*, Civil Action No.1:13-cv-00526-AJT-TRJ, 2014 WL 670817 (E.D.Va. Feb. 20, 2014) (permitting service

via Facebook and LinkedIn). Most recently, Texas and Alaska have amended their rules to permit, in certain circumstances, alternative electronic service by social media, email, or other technology.

Service of foreign defendants may be subject to treaty if that country is in treaty relations with the US, *e.g.*, Convention on the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters, Nov. 15, 1965, 20 U.S.T. 361, 658 U.N.T.S. 163., Inter-American Convention on Letters Rogatory and Additional Protocol ("IACAP"), Jan. 30, 1975, S. TREATY DOC. No. 27, 98th Cong., 2d. Sess. (1984). *Compare Andra Short, et al. v. Embraer S.A., et al.*, No. 20-cv-61473-WPD, Order dated May 26, 2021, ECF No. 88 (S.D.Fla. 2021) (permitting alternative service outside of the Hague Convention and specifically upon the Brazilian manufacturer's retained counsel); *see also San Antonio Winery, Inc. v. Jiaying Micarose Trade Co., Ltd.*, 53 F.4th 1136 (9th Cir. 2022) (the Lanham Act permits service on a foreign corporation through means that do not require the international transmittal of documents, and therefore, the Hague Convention is not implicated); *Trapenard v. Clester*, 2023 WL 2264177 (M.D.Fla. Feb. 28, 2023) (IACAP only applies in situations where a party seeks to serve letters rogatory, and IACAP does not preclude any other methods of alternative service).

3.5 What types of remedy are available from the courts or arbitral tribunals in your jurisdiction, both on i) an interim basis, and ii) a final basis?

Courts and arbitral tribunals both have authority to award interim and final relief. Interim relief is generally limited to situations where a party demonstrates irreparable harm, meaning that the threatened harm cannot be corrected through monetary compensation or conditions cannot be imposed to otherwise remedy the harm. Interim relief is awarded through a Temporary Restraining Order ("TRO") and Preliminary Injunction. TROs are generally limited to emergency situations to prevent immediate, irreparable harm, and on a temporary basis until a Preliminary Injunction hearing can be conducted. In some courts, discovery is permissible prior to the Preliminary Injunction hearing and even prior to filing a lawsuit. *See, e.g., NY CPLR §3102(c)* ("Before an action is commenced, disclosure to aid in bringing an action, to preserve information or to aid in arbitration, may be obtained, but only by court order. The court may appoint a referee to take testimony").

In a court proceeding, a final judgment follows a decision on the merits – this could be via motion, stipulation or trial (before a judge or jury) on the merits. In the US, parties can agree to binding or non-binding arbitration. In binding arbitration, the arbitrator's decision is final and legally binding, while an arbitrator's decision in non-binding arbitration is merely advisory. After a final binding arbitration award, the successful party may bring a court proceeding to confirm and convert the award into a judgment, whereas the aggrieved party may seek to vacate an arbitration award in whole or in part. Vacating a binding arbitration award is exceptional in New York, the venue for the vast majority of commercial disputes, particularly involving foreign parties. The US Federal Arbitration Act (9 USC § 1 *et. seq.*) provides extremely narrow standards for review, vacating awards only in narrow circumstances: (1) the award was procured by corruption, fraud, or undue means; (2) there was evident partiality or corruption by the arbitrators; (3) there was arbitral misconduct, such as refusal to hear material evidence; or (4) the arbitrators exceeded their powers, or so imperfectly executed their powers that they failed to render a mutual, final, and definite award.

The Federal Arbitration Act does not apply to “contracts of employment of seamen, railroad employees, or any other class of workers engaged in foreign or interstate commerce”. 9 USC §1. While on its face this provision may appear inapplicable to aviation, the US Supreme Court recently held that a ramp agent supervisor, who is involved in the loading and unloading of airplane cargo, is part of a “class of workers engaged in foreign or interstate commerce”, and is therefore exempt from the arbitration requirements set forth in the Federal Arbitration Act. *Southwest Airlines Co. v. Saxon*, 596 U.S. 450 (2022). In *Lopez v. Aircraft Service International, Inc.*, 2022 WL 18232726 (N.D.Cal. Dec. 9, 2022), the California district court relied on *Saxon* and held that a field technician at Los Angeles International Airport, who was responsible for fuelling passenger and cargo airplanes, was involved in interstate transportation, and was exempt from the Federal Arbitration Act’s requirements. *Lopez* is on appeal in the Ninth Circuit Court of Appeals with oral argument set for January 2024.

3.6 Are there any rights of appeal to the courts from the decision of a court or arbitral tribunal and, if so, in what circumstances do these rights arise?

Rights of appeal differ depending on whether the case was filed in federal court, state court or an arbitral proceeding. In federal court, interim appellate review is extremely limited and primarily discretionary, e.g., pursuant to Fed. R. Civ. P.23(f), 28 USC § 1292. Some states permit an appeal only from a final judgment, while others permit interlocutory appeals, either as of right or permission (e.g., New York).

As discussed above, the Federal Arbitration Act (9 USC § 1 *et. seq.*) severely limits judicial review of arbitration awards. See question 3.5. In *Hall Street Associates, LLC v. Mattel, Inc.*, 552 U.S. 576 (2008), the US Supreme Court held that the Federal Arbitration Act exclusively determines the scope of judicial review, which precludes parties from customising the scope of judicial review in their arbitration agreements.

3.7 What rights exist generally in law in relation to unforeseen events which might enable a party to an agreement to suspend or even terminate contractual obligations (in particular payment) to its contract counterparties due to *force majeure* or frustration or any similar doctrine or concept?

Force majeure provisions are typically contained in US commercial agreements to address events beyond the parties’ control that would frustrate one or both parties’ performance. The provision typically enumerates the following qualifying events: epidemics, pandemics, and quarantines, such as COVID-19; natural disasters, such as earthquakes or floods; violence, such as war, hostilities, terrorist acts or civil unrest; government action (i.e., changes in laws, regulations, order, and embargoes); and organised labour activities, such as strikes and work slow-downs, and shortages of power, supplies, infrastructure, or transportation. *Force majeure* provisions also usually include a “catch-all” clause such as “acts of god” to protect a party against unforeseen events that are not specifically enumerated. *Force majeure* clauses vary by events, conditions, subject matter, industry, and relative bargaining power. The applicability of a *force majeure* provision is governed by state law, is narrowly construed on a case-by-case basis and is extremely difficult to prove.

Additionally, US courts recognise the common law doctrines of impossibility of performance and frustration of purpose. While unforeseen events that make contractual performance impossible may excuse a party’s performance under the doctrine

of impossibility, courts narrowly apply the frustration of purpose doctrine. At a minimum, the frustrated purpose must be so fundamental to the contract that, without it, the parties would never have entered into the contract in the first place. In *Banco Santander (Brasil) S.A. v. American Airlines, Inc.*, No. 1:20-cv-03098 (E.D.N.Y. 2020), Banco Santander sued to terminate an agreement that required Banco Santander to annually purchase a minimum number of miles from American, and, in turn, American allowed credit card holders to earn frequent-flyer miles through their purchases. Banco Santander argued that the COVID-19 pandemic’s flight cancellations to and from Brazil justified terminating the contract under *force majeure* and frustration of purpose. The court dismissed the *force majeure* claim, stating that American had not assumed any duty to fly, however, the frustration of purpose claim survived as Banco Santander adequately alleged that the worldwide disruption of the airline industry, together with the declined demand for air travel – rather than just American’s suspension of flights – rendered the agreement valueless and the travel perk card no longer served its intended purpose. The case was resolved by voluntary agreement and dismissal of the matter in May 2022.

UCC § 2-615 includes an impracticability provision whereby a seller of goods may be able to excuse his inability to deliver all or some of the goods where performance has been made “impracticable”.

In *Rudolph v. United Airlines Holdings, Inc. et al.*, 1:20-cv-02142 (N.D.Ill. 2020), three passengers filed a class action arguing that United violated consumer protection laws by refusing to refund passengers for cancelled flights during the COVID-19 pandemic. United moved to dismiss the Complaint arguing, in part, that COVID-19 qualifies as a *force majeure* event that relieved United of its obligation to issue refunds for the cancelled flights. Conversely, plaintiffs argued that United’s decision to cancel the flights was purely economic, not because they were prohibited from continuing with its regular flight schedule. United’s Contract of Carriage allows for refunds in the event of a schedule change. The Court granted United’s motion in part and denied it in part, generally holding that United’s reading of the *force majeure* clause was overly broad, because it would render the schedule change provision in the Contract of Carriage moot. One plaintiff was granted discovery to determine whether the pandemic or economic considerations were the proximate cause of the flight cancellation. The Court granted United’s motion to dismiss as to the plaintiff whose international flight was cancelled following travel restrictions and the plaintiff who cancelled his own flight as proximately caused by the pandemic. In July 2023, the plaintiffs filed a motion to certify two classes of ticket buyers (“direct booking class” for plaintiffs who purchased their tickets directly from United and “third-party booking class” for those who purchased an airline ticket from a third-party, like Expedia). United filed a summary judgment motion seeking to eliminate plaintiffs’ individual claims, arguing among other things that the *force majeure* clause defeats plaintiffs’ individual claims and cancellations were not caused by the COVID-19 pandemic and resulting travel restrictions. The motions are pending before the court.

4 Commercial and Regulatory

4.1 How does your jurisdiction approach and regulate joint ventures between airline competitors?

Corporate Service Agreements, Code-Sharing: The DOT regulates joint ventures between major air carriers to ensure that it is not anti-competitive and would not harm the public. 49 USC § 41720. Pursuant to 49 USC § 41712, the DOT has the authority to take certain actions to prohibit unfair or deceptive

practices and unfair methods of competition. The DOJ, after consulting with the DOT, may file a lawsuit seeking injunctive relief against the parties to an airline agreement, whether or not the agreement is subject to 49 USC § 41720. As explained above, the DOJ successfully challenged the Northeast Alliance (a partnership between American and JetBlue), pursuant to which the airlines intend to share routes, passengers, and other resources at airports in the US Northeast (*US v. American Airlines Group Inc.*, Case 1:21-cv-11558 (D.Mass. 2021)), and is challenging the proposed \$3.8 billion merger between JetBlue and Spirit (*US v. JetBlue Airways Corp.*, Case 1:23-cv-10511 (D.Mass. 2023)). See question 1.10.

Global Airline Alliances: Pursuant to 49 USC § 41308–41309, major US and foreign air carriers may request that the DOT grant immunity from US antitrust laws, at which point, the DOT employs a two-step analysis. First, the DOT determines whether the proposed alliance “substantially reduces or eliminates competition”. If the DOT concludes, yes, it must reject the application unless the DOT finds that the alliance “is necessary to meet a serious transportation need or to achieve important public benefits” and a less anti-competitive alternative does not exist. If the DOT grants immunity, an alliance is required to comply with the operating constraints and reporting requirements specified in a final DOT order.

4.2 How do the competition authorities in your jurisdiction determine the ‘relevant market’ for the purposes of mergers and acquisitions?

Determining the “relevant market” requires an analysis of the relevant product markets (goods and services) and geographic markets. The relevant authorities, including the DOT, DOJ, and Federal Trade Commission (“FTC”), will evaluate whether the desired merger or acquisition will or may substantially lessen competition, and whether consumers in the relevant market can find a suitable alternative in a reasonable time at similar cost and quality. Relevant factors defining the product market include the line of commerce being offered, such as scheduled passenger or cargo flights from Point A to Point B, or control or ownership of landing rights or slots. The relevant geographic market is typically defined by locations where the companies involved compete, often based on routes or city-pairs. For example, the DOJ’s complaint in *US v. JetBlue Airways Corp.*, Case 1:23-cv-10511 (D.Mass. 2023) asserted that relevant geographic markets for JetBlue and Spirit in Florida include Miami International Airport and Fort Lauderdale-Hollywood International Airport, and in the New York City metropolitan area include John F. Kennedy International Airport (“JFK”), LaGuardia International Airport (“LaGuardia”), and Newark Liberty International Airport (“Newark”).

Transactions that significantly raise concentration levels in city-pair markets may attract scrutiny by the DOJ and the FTC. Two elements govern the DOJ analysis of the effect in all city-pair markets served by the respective carriers: (1) non-stop service; and (2) non-stop and connecting service. The DOJ recognises that non-stop service between cities is important because business travellers are less likely to consider connective service as a reasonable alternative.

4.3 Does your jurisdiction have a notification system whereby parties to an agreement can obtain regulatory clearance/anti-trust immunity from regulatory agencies?

Yes, the Hart-Scott-Rodino Act (“HSR Act”) (15 USC § 18a *et seq.*) is the federal premerger notification programme, which requires US carriers that are seeking to merge or acquire another

carrier to provide notice of the proposed transaction to the DOJ and FTC. First, the carrier must complete an HSR form, which asks for the parties involved, the structure of the transaction, and financial data. The DOJ uses this form to determine whether a more extensive review is needed. Before the parties can close the transaction, they must wait a specific amount of time while the enforcement agencies review the proposed merger. The government can grant early termination of the waiting period.

As described in question 4.1, parties must submit to the DOT an application for clearance to form a cooperative agreement or joint venture within the meaning of 49 USC § 41720, or to obtain an exemption from antitrust laws for a proposed alliance. See 49 USC §§ 41308–41309.

4.4 How does your jurisdiction approach mergers, acquisition mergers and full-function joint ventures?

As noted in question 4.3, parties seeking to merge or acquire another carrier must file a premerger notification with the DOJ and FTC. Pursuant to the HSR Act, and by agreement with the FTC, the DOJ evaluates whether the transaction may lessen competition and whether the transaction should be approved, modified, or rejected.

Owners of a US air carrier formed as a result of a merger, acquisition, or full-function venture, must be considered a US citizen, meaning: (1) be organised under the laws of the US or a state; (2) have a corporate president that is a US citizen; (3) have two-thirds of its board of directors and other managing officers comprising US citizens; (4) be under the actual control of US citizens; and (5) be 75% (or greater) owned (with a voting equity interest) by US citizens. 49 USC § 40102. The first three criteria mandate that day-to-day operations be vested in US citizens and the fourth and fifth criteria require an analysis of the actual ownership structure of the company. The DOT examines both contractual agreements and the corporate structure to determine “actual control”. With respect to the corporate structure, the DOT has approved foreign ownership of up to 49.99% of the total equity in an air carrier, as long as non-US citizens hold no more than 24.99% of the voting interest. It is imperative that there are no indications of foreign control, or even the ability of a non-US citizen to exert control or influence on the day-to-day management relationships or other contractual agreements vesting control in non-US citizens.

According to the FAA’s official website, other factors that the FAA examines as part of an airline merger include: substantive changes in certain areas of management; labour issues; personnel turnovers; changes/differences in fleet type; changes in outside vendors (*e.g.*, MRO’s, service providers, etc); operational control systems; and approved/accepted manuals and programmes, including training, maintenance, and safety quality control. The airline operating certificates must be combined into one new operating certificate. Following the merger’s completion, the FAA typically will conduct a broad based “deep” dive into the operation of the new airline, called a Certificate Holders Evaluation Program or CHEP inspection.

4.5 Please provide details of the procedure, including time frames for clearance and any costs of notifications.

The HSR Act requires the applicants to provide detailed information to the FTC and DOJ about each party’s business, including the rationale and plans for the transaction. The FTC and DOJ are authorised to determine whether additional information is needed or whether to challenge the transaction

or allow it to proceed. Filing fees are based upon the size of the transaction. Effective February 27, 2023, the FTC increased the size-of-transaction threshold from \$101 million to \$111.4 million. For transactions valued at more than \$111.4 million but less than \$445.5 million, the parties must also meet the size of person test. This test is generally satisfied where one party to the transaction at the ultimate parent entity (“UPE”) level has total assets or annual net sales of \$222.7 million or more and the UPE of the other party has total assets or annual net sales of \$22.3 million or more. Transactions valued at more than \$445.5 million are reportable regardless of the size of the parties, unless an exemption applies.

The FTC also amended the required filing fees as follows: (1) \$30,000 for transactions less than \$161.5 million; (2) \$100,000 for transactions valued in excess of \$161.5 million but less than \$500 million; (3) \$250,000 for transactions valued in excess of \$500 million but less than \$1 billion; (4) \$400,000 for transactions valued in excess of \$1 billion but less than \$2 billion; (5) \$800,000 for transactions valued in excess of \$2 billion but less than \$5 billion; and (6) \$2.25 million for transactions valued at \$5 billion or more. Before finalisation of the transaction, the parties must observe a statutory waiting period, which is 15 days for reportable acquisitions by means of a cash tender offer or certain bankruptcy transactions, and 30 days for all other types of reportable transactions, unless extended if additional information and/or documentary material is requested.

In June 2023, the FTC and DOJ together proposed amendments to the premerger notification form and associated instructions, which would enable the federal agencies to more effectively and efficiently scrutinise the transactions. *See* Matter No. P239300, Federal Trade Commission Docket Doc. No. FTC-2023-0040-0001. The FTC conservatively estimates that the proposed form would increase the average preparation time for an HSR filing to 144 hours, nearly four times the current estimate of 37 hours on average.

Additionally, parties seeking approval of a joint venture within the meaning of 49 USC § 41720, or a cooperative agreement, and/or antitrust immunity for a proposed alliance must submit an application to the DOT. The DOT shall grant approval and/or request for an exemption where: (1) it is not in violation of the laws of 49 USC § 413; (2) it is not adverse to the public interest; and (3) it does not substantially reduce or eliminate competition, unless it is necessary to meet a serious transportation need or to achieve important public benefits.

The Attorney General and the Secretary of State are provided notice and given an opportunity to comment, and, if required, a hearing is conducted. The DOT must issue a final decision within six months of receipt if there is no hearing, or 12 months if there is a hearing.

4.6 Are there any sector-specific rules which govern the aviation sector in relation to financial support for air operators and airports, including (without limitation) state aid?

The US government does not provide direct financial support to US airlines, however, there are programmes that assist air carriers and/or airports as set forth in question 4.7. Under the Federal Airline Deregulation Act of 1978 (49 USC § 1371 *et. seq.*), the US federal government may not enforce a state law, regulation, or other provision related to a price, route, or service of an air carrier providing transportation.

In response to COVID-19, through the Coronavirus Aid, Relief, and Economic Security Act (“CARES Act”), the Consolidated Appropriations Act of 2021 and the Airport

Rescue Plan Act of 2021, it is estimated that the airlines received approximately \$74 billion in relief funds from the government, of which \$19 billion has been or will be repaid. Moreover, the Infrastructure Investment and Jobs Act of 2021 provided the FAA \$25 billion in grants over five years to modernise infrastructure, increase equity in transportation, help fight climate change, strengthen the supply chain, and create jobs: \$5 billion for airport terminals; \$5 billion for air traffic facilities; and \$15 billion for airport infrastructure.

Airports receive federal and state government financial support through the Airport Improvement Program (“AIP”). The AIP provides funding through FAA grants for airport capital improvements related to enhancing airport safety, capacity, security, and environmental concerns. The amount of the grants vary depending on the airport size, ranging from 75% coverage of eligible costs for large and medium-sized primary hub airports, to 90–95% coverage of eligible costs for small primary, reliever, and general aviation airports. An airport must be included in the National Plan of Integrated Airport Systems to receive a grant. This system is prepared and published every two years and identifies public-use airports that are important to public transportation and contribute to the needs of civil aviation, national defence, and the Postal Service. By accepting federal funding from the AIP, airports accept certain grant assurance obligations to operate and maintain the airport in a safe and serviceable condition, not grant exclusive rights, mitigate hazards to airspace, and use airport revenue properly. Operators must also comply with security requirements imposed by the TSA and CBP. In 2023, airports could apply for an estimated \$1.5 billion in grants under the AIP and on average, the AIP provides more than \$3.35 billion annually to more than 3,300 eligible airports. The FAA Reauthorization Act of 2023 proposes to provide \$4 billion in annual funding for the AIP.

4.7 Are state subsidies available in respect of particular routes? What criteria apply to obtaining these subsidies?

The US government may subsidise air carriers to serve small, rural communities in an effort to maintain a minimal level of scheduled air service to those communities. Under the Essential Air Service (“EAS”) programme, the DOT will generally subsidise between two round trips per day with a 30- to 50-seat aircraft between an EAS community and a major hub airport. Under the EAS programme, the DOT applies four key criteria to select an air carrier: (1) service reliability; (2) contractual and marketing arrangements with a larger carrier at the hub; (3) interline arrangements with a larger carrier at the hub; and (4) community views (49 USC § 41733). The largest EAS hubs are Denver, Chicago O’Hare and Minneapolis/St. Paul. A proposed amendment to the FAA Reauthorization Act of 2023, which would have eliminated EAS, failed by a vote of 49-386 with representatives calling EAS critical to rural communities. The FAA Reauthorization Act of 2023 proposes to provide an average of \$292 million per year for the EAS programme (\$332,000,000 for fiscal year 2024, \$312,000,000 for fiscal year 2025, \$300,000,000 for fiscal year 2026, \$265,000,000 for fiscal year 2027, and \$252,000,000 for fiscal year 2028). The proposed legislation also includes a 5% cost-sharing requirement, a reduction in the subsidiary cap from \$1,000 to \$500, and a 650-mile restriction on the length of EAS routes, subject to exceptions.

The Alternative Essential Air Service Program (“AEASP”) provides subsidies to a municipality or airport authority and allows them to allocate the grant money in ways that may better suit their individual needs, but that would not otherwise meet EAS guidelines.

Small communities may obtain grants and financial assistance to address air service and airfare issues through the Small Community Air Service Development Program (“SCASDP”) (49 USC § 41743). The SCASDP provides more flexibility than the EAS as the eligibility criteria is broader and permits a grant applicant to self-identify its air service deficiencies and propose an appropriate solution. Eligibility requires that the airport serving the community cannot be larger than a small hub airport. To obtain the benefits of SCASDP, the community must also demonstrate that it has insufficient air carrier service or unreasonably high airfares. The DOT may provide assistance to an air carrier to subsidise service to and from an underserved airport for a period of up to three years, or it may provide assistance to an underserved airport. SCASDP can involve, among other things, revenue guarantees, financial assistance for marketing programmes, start-up costs and studies. There is no limit on the amounts of the grants, which vary depending upon the features and merits of proposals, and to date, grant sizes have ranged from \$20,000 to nearly \$1.6 million. In 2023, the DOT awarded 20 grants to US airports in 16 states, totalling \$14.81 million. The FAA Reauthorization Act of 2023 proposes \$10 million in funding for SCASDP.

4.8 What are the main regulatory instruments governing the acquisition, retention and use of passenger data, and what rights do passengers have in respect of their data which is held by airlines and airports?

With respect to security screening, air carriers operating flights to, from and through the US must provide passenger name records (“PNR data”) to the DHS pursuant to the Intelligence Reform and Terrorism Prevention Act of 2004 (49 USC § 114) and the TSA under its Secure Flight Program (49 CFR Parts 1540 and 1560). PNR data includes a passenger’s full name, date of birth, gender, and travel information, and records of passengers who are not potential or confirmed matches on the “No Fly List” are deleted within seven days of travel. Individuals on the “No Fly List” are prohibited from boarding a commercial aircraft travelling within, into or out of the US. According to the FBI, the “No Fly List” “prohibits an individual who may present a threat to civil aviation or national security from boarding a commercial aircraft that traverses [US] airspace”. Members of Congress are proposing a new no fly list for violent, unruly and/or disruptive passengers, which would be separate from the current FBI “No Fly List”. Airlines also maintain their own no fly lists, with Delta claiming to have placed nearly 1,900 individuals on their list as of 2022. Unruly airline passenger incidents have dropped approximately 80% since 2021. In 2021, the FAA received 5,973 unruly passenger reports, of which, the FAA initiated investigations on 1,113 incidents. Prior to 2021, the FAA did not track the number of unruly passenger reports, however, the FAA reported an average of 182 initiated investigations from 1995 to 2020. In 2022, the FAA received 2,455 unruly passenger reports, initiated 831 investigations, 567 enforcement actions, and \$8.4 million fines levied. As of August 2023, the FAA has recorded 1,117 unruly passenger incidents in 2023, and has referred 39 incidents to the FBI. The FAA referred a total of 270 cases to the FBI since late 2021 under their partnership aimed at ensuring the prosecution of unruly passengers. The Privacy Act of 1974 (5 USC § 552a) allows passengers to request a copy of or make corrections to their PNR data. Additionally, air carriers typically have their own privacy policies, that are governed by state privacy laws. EU citizens are covered by the EU-US PNR Agreement, which

allows the transfer of certain passenger data to CBP in order to facilitate safe and efficient travel.

The DOT regulates consumer privacy under its unfair and deceptive practice statute, 49 USC § 41712. An airline or ticket agent may violate a passenger’s privacy by: (1) violating the terms of the airline’s privacy policy; (2) gathering or disclosing private information in a way that violates public policy, is immoral, or causes substantial consumer injury not offset by countervailing benefits; (3) violating a rule issued by the DOT identifying specific privacy practices to be unfair or deceptive; or (4) violating the Children’s Online Privacy Protection Act (“COPPA”) (15 USC § 6501 *et. seq.*) or FTC rules implementing COPPA. On December 7, 2020, the DOT published a final rule, effective January 6, 2021, further clarifying “unfair” and “deceptive” practices. On August 29, 2022, the DOT published an interpretive rulemaking (guidance) to inform the public and regulated entities such as airlines of its interpretation of the terms “unfair”, “deceptive”, and “practices” as they relate to DOT’s authority to prohibit unfair and deceptive trade practices in air transportation and the sale of air transportation. 87 FR 52677 (August 29, 2022); RIN 2105–ZA18; Docket DOT–OST–2019–0182. Effective July 17, 2023, the DOT amended its regulations regarding the enforcement procedures if the DOT brings an enforcement action against an airline or ticket agent, and clarified that the DOT may bring a civil action in the US district courts. 14 CFR § 399.79. Complaints related to consumer privacy may be submitted to the DOT through its Aviation Consumer Protection website.

Generally, airports do not collect passenger personal data, although their facilities may be utilised by the government for that purpose. Airports, like retailers since the digital age, have begun to track passenger/consumer traffic for purposes of maximising revenue and making decisions regarding leasehold renewals and prospective new entrants.

4.9 In the event of a data loss by a carrier, what obligations are there on the airline which has lost the data and are there any applicable sanctions?

Air carrier privacy obligations are governed by their own privacy policies and state privacy laws. There is no federal law that specifically regulates the loss of private consumer data or a data breach. Rather, the DOT’s unfair and deceptive practices and unfair methods of competition statute (49 USC § 41712) allows passengers to file privacy-related complaints and an airline could be subject to fines up to \$27,500 per violation.

State privacy laws often require, among other things, reasonable security procedures, data disposal procedures, and notification of a security breach. In the event of a breach or data loss, states generally allow individuals to commence private actions and the state Attorneys General can file enforcement actions for civil penalties, damages, and/or injunctive relief. As set forth above, the DOT may file a civil action against an airline or ticket agent pursuant to 14 CFR § 399.79.

State governments continue to monitor recent data breaches and consumer demand for privacy and control. This evolving landscape has led to new state level regulations relating to consumer data privacy, with robust regulations, particularly the California Consumer Privacy Act (“CCPA”) (Cal. Civ. Code § 1798.100 *et. seq.*) (amended effective January 1, 2023, providing consumers the rights to correct inaccurate personal information and limit the use and disclosure of sensitive personal information collected and possessed by businesses) and New York’s SHIELD Act (N.Y. Gen. Bus. Code Art. 39-F, §§ 899-aa – 899-bb). Other states including Colorado (CO Code § 6-1-1301 *et. seq.*),

Connecticut (S.B. 6, Public Act No. 22-15), Utah (Utah Code § 12-61-101 *et. seq.*), and Virginia (Va. Code Ann. § 59.1-575 *et. seq.*) passed privacy laws which became effective in 2023. Montana, Oregon and Texas have passed privacy laws that will become effective in 2024, Delaware, Iowa, and Tennessee in 2025, and Indiana's law takes effect in 2026. New Jersey and Pennsylvania have introduced privacy legislation, and it is anticipated that more states will introduce and pass similar laws.

EU citizens may seek recourse for privacy incidents through the EU-US PNR Agreement, which provides that administrative, civil, and criminal enforcement measures are available under US law.

4.10 What are the mechanisms available for the protection of intellectual property (e.g. trademarks) and other assets and data of a proprietary nature?

Parties may protect intellectual property primarily through trademarks, patents, and copyrights. A common law trademark may be established through the use of the mark in commerce. However, federal trademark registration with the US Patent and Trademark Office ("USPTO") under the Lanham Act (15 USC § 1051, *et. seq.*) provides broader geographic protection and is advantageous for purposes of exclusivity. A federal trademark establishes a legal presumption of the exclusive right to use the trademark throughout the US or in connection with the registered classes of goods and services associated with the trademark. Conversely, a common law trademark can only be enforced in the geographic area where the trademark is being used. Unlike copyrights or patents, trademarks do not expire and endure so long as the trademark is continued to be used in commerce to indicate the source of goods and services. On June 29, 2023, the US Supreme Court's *Abitron Austria GmbH, et al. v. Hetronic International, Inc.*, 600 U.S. 412 (2023) decision addressed the scope of Lanham Act protection regarding trademarks used internationally. It held that the Lanham Act only protects against infringing trademark use occurring within the US, and not extraterritorially, even if extraterritorial infringing use ultimately causes confusion within the US. Relying on the historical language of the Act, the Supreme Court found that it extends only to protect against claims where the infringing use itself is "in commerce" within the US.

Patents provide limited duration property rights relating to inventions, (*e.g.*, machines, manufactured articles, industrial processes, and chemical compositions) and the duration of the patent depends on the type of patent granted. Patents are granted by the USPTO in exchange for public disclosure of the invention. Copyrights, which protect original works of artistic works, computer software, and architecture are registered with the US Copyright Office and the duration of copyright protection depends on several factors. Once the copyright protection expires, the copyright belongs to the public domain, and anyone can freely use the copyright. Parties can also protect their intellectual property through trade secrets, which is generally a formula, pattern, compilation, programme, device, method, technique, or process that provides a competitive edge. A trade secret may be considered a viable alternative to protect intellectual property given that patents and copyrights may ultimately end up in the public domain.

Federal intellectual property laws provide mechanisms for enforcement of rights and, in certain circumstances, the recovery of statutory or treble damages depending on the nature of the infringement.

4.11 Is there any legislation governing the denial of boarding rights and/or cancelled flights?

Federal legislation governs the issues of oversold flights and denied boarding. While 49 CFR Part 250 of the Federal Aviation Regulations permits airlines to oversell tickets for a flight, Part 250 mandates compensation and other protections for passengers who hold "confirmed reserved space" on a flight and were involuntarily denied boarding because the flight was oversold. The passenger must comply with the carrier's contract of carriage, check-in, and gate appearance requirements to be eligible for compensation. Before denying passengers boarding, an airline must solicit volunteers to relinquish their seats in exchange for compensation. Denied Boarding Compensation is immediately required to a passenger who is denied boarding against their will due to insufficient volunteers. The scope of this compensation varies depending upon the planned arrival time of the substitute transportation, if available, and whether the flight is domestic or international. The regulations do not set forth a maximum level of compensation, but instead require airlines to provide *at least* the lower amount of: (1) 200% of the passenger's one-way fare or \$775 for delays of more than one hour but less than two hours for domestic flights and delays of more than one hour but less than four hours for international flights; and (2) 400% of the passenger's one-way fare or \$1,550 for delays of more than two hours for domestic flights and delays of more than four hours for international flights. The regulations do not mandate compensation for delays of less than one hour, however airlines may be inclined to compensate passengers to preserve goodwill and maintain the passenger's loyalty.

On a quarterly basis, the carrier must notify the DOT of all passengers involuntarily denied boarding. The DOT may seek enforcement action against air carriers that improperly deny passengers boarding under Part 250 as well as 49 USC § 41712. In 2022, the DOT announced a proposed rule for public comment that would provide additional protection for passengers seeking a refund for airline tickets. If adopted, the rule would: (1) require airlines to proactively inform passengers that they have a right to receive a refund when a flight is cancelled or significantly changed; and (2) define a significant change and cancellation that would entitle a consumer to a refund as more than three hours for a domestic flight, and more than six hours for an international flight.

For domestic flights, aside from a refund of the airline ticket, airlines are not legally required to provide additional compensation to passengers whose flights are cancelled, unless the airline has a different policy in its customer service plan. For international flights, passengers may be entitled to reimbursement under Article 19 of the Montreal Convention for expenses incurred from a cancelled flight, by filing a claim with the airline.

4.12 What powers do the relevant authorities have in relation to the late arrival and departure of flights?

The DOT can bring an enforcement action with civil penalties when an air carrier engages in unrealistic scheduling of flights. This includes deeming a chronically delayed flight to be an unfair and deceptive practice in violation of 49 USC § 41712. A chronically delayed flight is defined as any domestic flight operated at least 10 times a month which arrives more than 30 minutes late (including cancelled flights) more than 50% of the time. Airlines are required to adopt customer service plans to assist passengers after the delays. The Biden Administration

recently submitted proposed legislation to Congress that would mandate airlines to provide cash compensation when the carrier is responsible (in whole or in part) for a delay exceeding three hours.

Air carriers must notify passengers of known delays, cancellations, and diversions under DOT regulations (14 CFR Part 259.8), and US and foreign air carriers must not leave aircraft on the tarmac for more than three hours for domestic flights and four hours for international flights, with exceptions for certain safety, security, and air traffic control concerns (14 CFR Part 259.4). Substantial fines are levied for failure to comply with the tarmac delay rules, pursuant to 49 USC §§ 42301, 41712, and 46301. In September 2021, the DOT fined United Airlines \$1.9 million for violations of the extended tarmac delay rule, and in August 2023, the DOT fined American Airlines \$4.1 million, the largest DOT fine for tarmac delay violations, for lengthy tarmac delays of 43 flights between 2018 and 2021 that impacted more than 5,800 passengers.

4.13 Are the airport authorities governed by particular legislation? If so, what obligations, broadly speaking, are imposed on the airport authorities?

The federal certification of airports is governed by Part 139 of the FAA regulations and 49 USC § 44706. The Part 139 airport certificate serves to ensure safety in air transportation. To obtain a certificate, an airport must agree to certain operational and safety standards and firefighting and rescue equipment, which vary depending on the size of the airport and types of flights available. To satisfy the Part 139 standards, an airport must maintain an FAA-approved Airport Certification Manual, which ensures that safety and maintenance requirements are met. The FAA issues Airport Operating Certificates to airports that serve scheduled passenger-carrying operations using an aircraft originally designed with more than nine passenger seats, but less than 31 seats, or an unscheduled passenger-carrying operation using an aircraft originally designed with more than 30 passenger seats. FAA Airport Certification Safety Inspectors conduct yearly certification inspections to ensure compliance with Part 139.

In the event of an excessive tarmac delay, airport authorities must provide for the deplanement of passengers, to the extent practicable. 49 USC § 42301.

4.14 To what extent does general consumer protection legislation apply to the relationship between the airport operator and the passenger?

Airports are required to be accessible to passengers with disabilities and must provide various types of disability assistance to passengers. Services to passengers with disabilities include wheelchair or other guided assistance to board, deplane, or connect to another flight; seating accommodation assistance that meets passengers' disability-related needs; and assistance with the loading and stowing of assistive devices. These requirements are governed by the Americans with Disabilities Act of 1990 (the "ADA") (49 USC §§ 12101–12213), Section 504 of the Rehabilitation Act of 1973 (29 USC § 794), and the Air Carrier Access Act of 1986 (40 USC § 41705, 14 CFR Part 382). In addition to airport passengers, airport and airline employees are also entitled to the protections of the ADA. In September 2023, plaintiff filed a proposed class action against American Airlines alleging that the airline violated the ADA by discriminating against employees and refusing to provide reasonable accommodations. *White v. American Airlines, Inc.*,

5:23-cv-01164 (W.D.Tex. 2023). Additionally, federal grants, such as through the AIP, the Federal Aid to Airports Program, or the Airport Development Air Program, also require airport owners and operators to operate their facilities in a safe and efficient manner and to comply with certain conditions and assurances. US airports also must be available for public use on fair and reasonable terms without unjust discrimination.

4.15 What global distribution suppliers (GDSs) operate in your jurisdiction?

The three major GDSs that operate in the US are Amadeus, Sabre, and Travelport (combined three GDSs: Galileo; Apollo; and Worldspan), and they account for approximately 98% of all travel bookings.

4.16 Are there any ownership requirements pertaining to GDSs operating in your jurisdiction?

No, however, the DOT may monitor the actions of GDSs pursuant to the DOT's unfair and deceptive practices statute. 49 USC § 41712.

4.17 Is vertical integration permitted between air operators and airports (and, if so, under what conditions)?

Yes. Vertical integration patterns exist in the US, whereby multiple major operators contract with smaller operators at regional airports. Given that airports are natural monopolies, operators generally enter into lease agreements with airports, subject to federal oversight to thwart competition concerns. In New York and New Jersey, "local" competition among JFK, LaGuardia, and Newark airports may be viewed as an exception since they are essentially competing with each other, and JFK's multiple terminals are operated individually by multiple different carriers and non-carriers. Vertical integration also relates to the success of the airport supply chain, namely, entities that provide various services to the airlines and others that provide services to passengers. Examples include security screening, ground handling, terminal operation, catering both on the aircraft and in the terminals, aircraft refuelling, parking, telecommunications, internet, and other utilities, such as electricity and gas.

4.18 Are there any nationality requirements for entities applying for an Air Operator's Certificate in your jurisdiction or operators of aircraft generally into and out of your jurisdiction?

Yes, to receive operating authority by the DOT and FAA, a US carrier must be deemed a "citizen" pursuant to 49 USC § 40102. See question 4.4.

5 In Future

5.1 In your opinion, which pending legislative or regulatory changes (if any), or potential developments affecting the aviation industry more generally in your jurisdiction, are likely to feature or be worthy of attention in the next two years or so?

A significant development in the US is the imminent approval of the FAA Reauthorization Act of 2023, also known as the

Securing Growth and Robust Leadership in American Aviation Act (H.R. 3935), which would authorise and amend programmes administered by the FAA and NTSB for fiscal years 2024 through 2028. The proposed bill provides a framework to maintain the US's leadership in aviation safety and aerospace innovation, strengthens and diversifies the aviation workforce, improves consumer protections and accessibility, and makes ground-breaking investments in sustainability and resiliency.

The FAA Reauthorization Act of 2023 proposes to provide more than \$104 billion (originally \$107 billion) in funds for the FAA from 2024 through 2028: \$66.69 billion for FAA operations to fund key safety programmes from aircraft certification reform to air carrier oversight; \$17.23 billion for FAA facilities and equipment to fund the modernising of key technologies, systems and equipment; \$20 billion for FAA airport improvement grants (AIP) to support more than 3,300 airports in the US; and \$1.3 billion for FAA research, engineering and development (*see* <https://www.commerce.senate.gov/2023/6/cantwell-cruz-duckworth-moran-introduce-bipartisan-faa-reauthorization>).

The proposed legislation is stalled in the Senate over the so-called “1,500-hour rule” for pilots, which mandates that pilots earn a minimum of 1,500 real world flight hours before being permitted to work for a commercial airline and is criticised as one of the major contributing factors to the current pilot shortage. The original draft of the bill would permit pilots to count up to 150 hours of simulator training towards meeting the requirement. The bill proposes raising commercial pilot retirement age from 65 to 67 years old. Currently, commercial airline pilots must retire at age 65, but can still fly corporate and charter jets beyond age 65. Another contentious issue involves the “perimeter rule” at Reagan National Airport, which limits the number of flights that can land at the local Washington DC airport from destinations more than 1,250 miles away. The original proposal was for an additional 28 flights, however, the House of Representatives approved legislation that added only seven new flights. Senators have discussed adding as many as 32 new flights. Members of Congress who oppose expanding the “perimeter rule” fear that the additional flights into Washington DC will lead to increased numbers of passengers and flight delays.

The FAA authorisation was set to expire on September 30, 2023, and Congress granted a short-term extension of the reauthorisation until December 31, 2023. The House of Representatives approved the bill in July. If approved by the Senate, the Act will be presented to President Biden for approval and signature. In addition to the anticipated approval of the FAA Reauthorization Act of 2023, the Senate also recently confirmed Michael Whitaker as the new FAA Administrator, filling a 19-month vacancy.

In January 2023, the Government Accountability Office (“GAO”) released a report concluding that the FAA does not have a comprehensive strategy for full integration of UAS into the National Airspace System (“NAS”). The GAO made four recommendations to the FAA: (1) develop a drone integration strategy “that includes all seven elements of a comprehensive strategy”; (2) evaluate its current documentation to identify ways to more clearly communicate how applicants can satisfy drone operational request requirements, and communicate FAA's internal process for reviewing and approving operational requests; (3) develop and document a formal lessons-learned process for its drone integration activities that includes data collection, analysis, validation, documentation, and application, to ensure the efficient allocation of time and resources; and (4) implement this formal lessons learned process to guide current activities in conducting Part 107 waiver reviews and the BEYOND programme, aimed at UAS integration. Legislators continue the research and development of UAS technologies

at UAS test sites and to develop a UAS traffic management regulatory framework.

In January 2023, the FAA posted a Notice of Proposed Rulemaking asking for comments on its proposed solution to the ongoing problem of 5G interference with aircraft radio altimeters. The FAA directive mandates that transport category airplanes used in scheduled passenger or cargo flight operations have 5G C-Band-tolerant radio altimeters, or an acceptable radio frequency filter by July 1, 2023. As of the end of September 2023, the entire US airline fleet upgraded their equipment, mitigating the risk of 5G interference.

The FAA's Notice to Air Missions System (“NOTAM”), which sends real-time alerts to pilots about safety conditions, experienced an outage in January 2023, resulting in a grounding all US flights for several hours, and there were more than 1,300 flights cancelled and 10,000 delays. This was the first time the FAA grounded all flights since the 9/11 terrorist attacks. Congress thereafter introduced the NOTAM Improvement Act of 2023 (H.R. 346, Public Law 118-4) to establish an FAA taskforce to determine what improvements must be made to NOTAM. The legislation included language to ensure the stability, resiliency, and cybersecurity of NOTAM is considered by the taskforce.

Following numerous “close calls” in the US, the FAA issued a safety call to action and conducted a Safety Summit and then, in August 2023, awarded at least \$121 million to airports around the US to reduce the risk of runway incursions and conduct runway safety meetings at approximately 90 airports. The FAA hired 1,500 air traffic controllers in 2023, and the FAA is considering whether to implement a rule that would mandate installation of technology that alerts pilots and flight crews when the aircraft is misaligned with the intended runway, is aligned with the wrong runway and is landing short of the intended runway.

Personal jurisdiction caselaw continues to evolve in the US. The US Supreme Court in *Mallory v. Norfolk Southern Railway Co.*, 600 U.S. 122 (2023) held that a Pennsylvania law that requires out-of-state companies who register to do business in Pennsylvania to agree to appear in Pennsylvania courts on “any cause of action” against them meets the requirements of the US Constitution's Due Process Clause. The Supreme Court adopted a consent-based theory of personal jurisdiction and held that the “minimum contacts test” from the seminal *International Shoe* decision applies in the absence of consent and further supports jurisdiction over lawsuits against foreign corporations even when the claim lacks a nexus to that jurisdiction. States with “consent to jurisdiction” statutes include Pennsylvania, Georgia, Iowa, Kansas, Minnesota and the territory of Puerto Rico. Many lower courts have distinguished *Mallory*, relying on interpretation of the statute at issue. *See Estate of Caviness v. Atlas Air, Inc.*, 2023 WL 6802950 (S.D.Fla. Sept. 20, 2023) (involving the defendants' COVID-19 vaccination policy, held that *Mallory* does not apply because Florida law does not establish that a foreign corporation's registration to do business in Florida amounts to consenting to general jurisdiction in Florida courts); *Lumen Technologies Service Group, LLC v. CEC Group, LLC*, 2023 WL 5822503, at *6 (D.Colo. Sept. 8 2023) (distinguishing *Mallory* because “neither § 7-90-801 nor § 7-90-805 expressly informs foreign entities that by registering to do business in Colorado, or by designating a Colorado registered agent, they are consenting to the personal jurisdiction of Colorado courts”); *Fuld v. Palestine Liberation Organization*, 82 F.4th 74, 95-96 (2d Cir. 2023) (distinguishing *Mallory* because the Promoting Security and Justice for Victims of Terrorism Act does not require that the defendants “consent to jurisdiction as a condition of securing a legal right to do business in the [US]... the statute does not offer any in-forum benefit, right, or privilege that the

[defendants] could ‘voluntarily invoke’ in exchange for their submission to the federal courts”).

The Alaska Airline incident on October 22, 2023, discussed in question 1.10, triggered calls for the FAA to reform the medical certification process and its treatment of mental health. Commercial airline pilots must hold a first-class medical certificate, which mandates a visit to an aviation medical examiner, every 12 months for pilots aged 40 and younger, and every six months for older pilots. 14 CFR § 61.23. FAA exam forms (Form 88500-8) require pilots to self-disclose psychiatric conditions (No. 47) and mental disorders (No. 18m) including depression and/or anxiety. The FAA’s official website encourages pilots to seek mental-health treatment, noting that treatment will not disqualify a pilot and only approximately 0.1% of medical certificate applicants who disclose health issues are denied. The FAA Reauthorization Act of 2023 includes implementation of a Mental Health Task Force, tasked with providing recommendations for detecting and reporting mental health conditions and reviewing treatment options and allowable antidepressants for pilots.

With the continued advancement of commercial space, the House Science Committee considered a commercial space bill, with one of the top priorities being the US’s continued

international competitiveness. In September 2023, the House of Representatives proposed the Space Transformation and Reliability Act (H.R. 5617), which would extend the “learning period” or moratorium on certain safety regulations for eight years through 2031, therefore amending 51 USC § 50905. The regulatory restriction, which limits the ability of the FAA to promulgate regulations regarding the safety of commercial spaceflight, was enacted in 2004 and designed to give the industry time to build experience upon which regulations could be based. The Commercial Spaceflight Federation supports a multi-year extension of the learning period and contends that ending the learning period early could hinder safety.

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