



Aviation Law 2025

13th Edition



Contributing Editors:

Alan D. Meneghetti Ipeco, Inc.

Philip Perrotta K&L Gates LLP



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From the Publisher

Dear Reader,

Aviation law governs legal matters related to air travel, aircraft, and the business of aviation. It encompasses a diverse range of issues, including aircraft leasing and financing, regulatory compliance, safety standards, liability and insurance, passenger rights, environmental concerns, and international treaties such as the Chicago Convention and the Montreal Convention.

With over 4.4 billion passengers making trips each year, this continues to be a vibrant, ever-evolving, and crucial industry in today's world. Looking ahead to 2025, several key trends are anticipated to shape the industry:

1. **Sustainability and green initiatives:** Environmental laws and carbon reduction strategies are becoming critical, with airlines facing pressure to meet net zero goals by 2050. Legal disputes over emissions trading and greenwashing claims are expected to rise.
2. **Advancements in drone regulation:** The increasing use of unmanned aerial vehicles (UAVs) for commercial and recreational purposes necessitates updated legal frameworks addressing airspace management, safety, and privacy concerns.
3. **Passenger rights expansion:** Enhanced consumer protections, including compensation for delays and disruptions, will likely feature prominently in 2025 aviation litigation.
4. **Cybersecurity and technology:** With growing digital reliance, legal frameworks will need to address cybersecurity threats, data breaches, and the integration of artificial intelligence in aviation systems.

The aviation law industry continues to evolve, balancing innovation and sustainability with safety and compliance. There can be no let-up in these standards. Airlines, manufacturers, and airports rely on aviation lawyers to navigate these complex regulatory landscapes. This is why I am pleased to present the 13th edition of *ICLG – Aviation Law*, curated and written by leading individuals across the industry in this space for others to access, learn, and develop their understanding and knowledge of this ever-changing industry.

James Strobe
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Views from the Open Plan Office: A Private Practice Lawyer's Move into Industry

Ipeco, Inc.



Alan D. Meneghetti

As those who read last year's chapter will recall, a little over three years ago I decided to swap the glass-fronted sanctuary of the City law firm partner for the hustle and bustle of the in-house lawyer, and go in-house as the Group General Counsel at one of my former clients. Then, somewhat remarkably, someone said yes to my marriage proposal and, before this beautiful and charming but clearly mistaken American someone could renege, we tied the knot and I found myself applying for a Green Card to work and live in the United States.

My employer, being of the requisite tolerance to have hired me in the first place and then endured me in the second place, transferred me to its US entity, where I have taken on a more executive role, becoming a Vice President (Americans do have very grand titles for jobs, street names and fighter jets) and a Board Director of its US division. Which was great: I just had to figure out what I had to do. Having spent my life marking up agreements, moaning about my legal opposition and competitors, and advising my clients and, latterly, my employer, on the pros and cons of various courses of action, but rarely being called upon to actually make a decision, I now had to, *ahem*, start making executive decisions. So, what to do?

Well, of course, the first thing any self-respecting lawyer will do is pay money to various subscription services so that one can learn the job by reading about it. Which one can't. Well, not entirely. I must say, though, that there is a remarkable amount of management literature out there and, for the rather reasonable amount of \$12 a month, I secured a subscription to the Harvard Business Review which has, in all honesty, been extremely useful and helpful, even if only to point out that I am not entirely ill-suited to my new role and that my instinctive reaction to some things are not way off-piste. Usually. Not always, but I am generally in the ball park of a good decision. Which is, of course, not quite the same thing as making a good decision, but it's a good first step.

However, I am learning that what really counts here is experience. The theory around business management is all well and good but, as with most things, there really is no substitute for game time, the inevitable mistakes that follow and the lessons that follow those. I have discovered that it is not so much a case of trying to avoid mistakes (which are inevitable in my case, although it is probably a fairly accurate management truism), but about ensuring that one learns from these mistakes, and being far less rigid in my approach than when I was in private practice or, for that matter, in-house (although, in the latter case, to a lesser extent, as last year's chapter observed). I am not for a moment saying that being a lawyer is an exercise in rigidity and inflexibility, but when you are advising your client that something is or is not a good idea, one does have an eye on one's firm's insurance policy and one doesn't necessarily

want to stray too much from "market standard" (for want of a better phrase) in one's advice, especially when the client may be facing some element of risk. However, being in a non-legal role and learning that role, whilst one does have to have views, I have certainly benefitted from learning to be more flexible, more open to change and more open to saying "right, I can see the value in my approach but I can also see the value in Steve's approach and, on balance, Steve's approach works better in this situation". It doesn't mean I am less of a person, incur some nebulous diminution in my measure of self-worth or am less intelligent: it just means that I am learning, hopefully growing, and becoming a better leader by taking other points of view on board and deciding which view works best for the business at any one particular moment in time. In other words, I am learning that one cannot be too insecure if one wants to succeed in an executive role (as they say, it's windy at the top), and that constantly fighting for one's view in order to obtain some modicum of self-affirmation is not, ultimately, going to make me a good leader. You might win battles, but not wars.

There is much to learn about the executive functions of a business from my colleagues. Now I know that to some this may sound obvious, but I had not fully appreciated the amount of knowledge acquired through years of experience which good leaders possess, nor the skills which they require (both in the sense of "hard" as well as "soft" skills) in order to manage, lead and grow teams successfully. Fortunately, the lawyer is well placed to learn these, as many (but by no means all) of the skills required in good leadership and management overlap with what a good commercial lawyer needs and calls upon on a daily basis: patience; the ability to learn about different aspects of the business, both from self-study as well as from others; the ability to digest large volumes of information; the ability to manage meetings and to analyse and interrogate information; the ability to listen to different points of view and to understand these; and the ability to structure and plan. However, taking these skills and applying them to a more commercial, non-legal role, is not as straightforward or elementary as one might, perhaps, think, and being able to lean on one's colleagues and ask for assistance has been crucial: one cannot be too proud to ask a question or to say "help, I haven't a clue what this means" (or perhaps a less dramatic articulation of that). In this regard I have been extremely fortunate to have both a very good CEO and President to lean on, both of whom are extremely experienced and open to sharing their knowledge and experience (and to taking the time to share this) with me.

As I mentioned in last year's chapter, I relished the opportunity of working work alongside our customers in solving issues. No longer am I trundled out simply for the passive-aggressive

contract negotiation or tussle over the liability and intellectual property clauses: I now have the chance to work alongside both my colleagues and 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. A real benefit of no longer being labelled the Group General Counsel has been the ability to engage in non-legal discussions with greater ease, and being able to operate outside the relative constraints of the in-house lawyer's role and the associated legal moniker. No longer am I simply called on when there is a legal issue or strategy to be discussed; I have found myself being called upon more and more frequently to participate in general commercial, strategy and planning discussions and, whilst I am usually the least experienced person in the room when it comes to these types of discussions, I am constantly learning and very fortunate to be surrounded by colleagues who are decent enough to take my views on board.

Being deeply embedded within the aviation sector does, most definitely, provide one with 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 or SAF, 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 quite some time. I am sure that someone will correct me but, regardless of that, 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. I attended a trade show in Las Vegas during 2024, and the development of the eVTOL sector since the last trade show I attended (in early 2022) was astonishing. There is, rightly so, 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 and, for that matter, involved in the aviation sector.

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, or Aldous Huxley if you prefer, 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 2025 is an increase in supply chain challenges, not only in relation to the supply difficulties global markets have been experiencing since COVID-19 and which have been aggravated significantly in some cases by the war in the Ukraine, but also in respect of tariffs as regimes become more protectionist. We seem to be experiencing a global shift towards conservative and protectionist regimes in general and, closer to my new home, we have a new President in the United States who is well known to favour an "America first" agenda. At the time of writing, it remains to be seen what policies he will implement, on what countries and in what sectors these would be levied, and what the impact of these are going to be on global markets. Prices and inflation will inevitably accompany any large scale and meaningful increase in tariffs, and it will be interesting (I use the word in the loosest sense) to see the impact which these have on the geography of manufacture, and how this changes in response to any tariffs that may come to bear on the industry in the coming months and years. In other words, how will industry respond to tariffs which significantly impact prices? Will customers be expected to simply absorb these increases and pay more for the same products, items and services, or will manufacturers look at ways of minimising the impact of tariffs by relocating factories, manufacturing facilities and offices in order to circumvent these (which will, of course, come with its own associated costs)?

To bring all this together in closing, I think we are facing a really exciting and challenging year: we have weathered a few major industry labour strikes during 2024 and are now dealing with the impact of those, we have an industry which is in growth mode but which has ageing fleets coupled with an increased demand for new stock (as air travel continues to grow), and we will very likely face strategic challenges around tariffs and taxes which need to be watched, assessed and addressed.



Alan D. Meneghetti is the Group General Counsel for the Ipeco Holdings Group of companies. 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: 15 Years of Consolidation in Airport Law

Worldwide Airport Lawyers Association (WALA)



Diego R. Gonzalez



Michael Siebold



Roangelo Lodewijks

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.

Annual Conference – Wala XIV, Bahrain 2024: ‘Aligning civil aviation, airports and urban air mobility for the 21st Century’

The XIV World Airport Lawyers’ Association conference was held in Bahrain, and hosted by Bahrain Airport Company (BAC) in May. The III Pre-Conference Seminar “*Fostering Investment in Airports: Legal & Regulatory Pain Points: Post-pandemic airports accountability: a wake-up call for airport CLOs*” was, once again, another amazing meeting great chaired by Eduardo Carvalhaes Neto, Partner at Lefosse Advogados, Brazil.

The conference was attended by delegates from more than 25 countries. Notable presentations included: keynote speaker Marcelo Garcia Rosales (NACO); Prof. Alan Khee-Jin Tan of the National University of Singapore (NUS); Emilija

Evtimova Spaseska, Legal Affairs Manager, TAV Macedonia; Isabelle Lelieur, Lawyer, name partner at Lelieur Avocat, France; Mohammed Abdulhaq, Partner at Trowers & Hamlin, Bahrain; Laura Pierallini, Name Partner – Studio Pierallini, Italy; Pablo O. Nüesch, General Counsel, ACI North America, USA; Peter Kirsch, Partner at Kaplan, Kirsch & Rockwell, USA; Patricia O’shea, DAA plc. Group Head of Legal, Ireland; Khalid A. Alaseeri, Chief Legal Officer, Riyadh Airports, Saudi Arabia; Prof. Dr. Vincent Correia McGill University, Simon Mcphee, Chief Corporate Services Officer & General Counsel, Perth Airport Australia; Michael Tegethoff, Legal Affairs, Munich Airport, Germany; and Solange Leandro, Partner, Watson Farley & Williams, United Kingdom.

The topics on the excellent agenda included, among others, the following: “The Changing Global Regulatory Landscape and the Leadership Role of the Gulf Region”; “Environment, Social and Governance (ESG)”; “Airports, Airlines and Consumers”; “Inside North America Airports”; “Doing Airport Business Local and foreign perspectives from GCC”; “Challenges of teaching civil aviation law in the 21st century”; “Airport, Environment & City”; and “Why is WALA actively advocating for UAM? Taking legal and regulatory barriers seriously”.

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

15 Years of Consolidation in Airport Law – WALA XV, Curaçao May, 2025

The XV WALA World Airport Law Conference will take place from May 26 to 28, 2025, on the stunning island of Curaçao. This milestone not only celebrates 15 events filled with dedication, passion, and friendship, but also represents an opportunity to deepen the impact of a discipline that has become pivotal in global civil aviation: airport law. Curaçao offers the perfect setting for this momentous celebration. The country’s civil aviation ecosystem operates on a vibrant and colourful island that boasts some of the finest Caribbean beaches and offers a wealth of tourist, cultural, and recreational activities.

Since its founding in 2008, WALA has stood out as a uniquely global forum. Through its efforts, it has tirelessly fostered cooperation between the public and private sectors, driven specialisation, professional training, and research, and most importantly, created a vibrant community of experts – friends, in fact a true family – leading the development and advancement of airport law worldwide.

Over the course of 14 previous editions, WALA has brought together more than 1,000 delegates from 96 countries,

including 224 speakers and 551 participating organisations. These figures attest to sustained growth and impact, while also underscoring the importance of this community in shaping the future of aviation. The XV Conference will continue this tradition, providing a platform for experts, scholars, and industry leaders to reflect on accomplishments and envision the path ahead.

The current challenges faced by air travel, the traveller experience, the tourism sector, and the aviation industry – ranging from regulatory complexity and accessibility to sustainability goals and artificial intelligence – demand innovative and adaptive solutions. With its extensive network and unparalleled thematic agenda, WALA is uniquely positioned to lead global forums on these critical discussions.

WALA XV: Three Events in One: Conference + Pre-Conference Seminar + AAM/UAM Legal Forum

The Airport Law Conference

At the heart of the event lies the main conference, comprising two intensive days of sessions devoted to the most pressing trends in airport law, tourism law, aviation law, and the increasingly close interplay among these fields and space law. Participants will address regulatory issues, airport concessions, adapting infrastructure to emerging technological realities, comparative analysis of international regulations and case law, and best practices for efficient and safe airport operations and air navigation.

Pre-Conference Seminar (IV Edition).

As has become a valued tradition, this key event, held prior to the main conference, reaffirms WALA's commitment to excellence, continuous learning, and ongoing training for airport legal teams around the world. This exclusive, closed-door gathering brings together prestigious law firms and heads of airport legal departments to debate strategic issues critical to the future of the airport business and service. Conceived as a venue for in-depth, specialised dialogue, the Pre-Conference Seminar stands as a testament to WALA's dedication to addressing emerging challenges with precision, expertise, and cooperation.

Urban Air Mobility (UAM/AAM) International Legal Forum.

This multidisciplinary session invites professionals from around the globe to rise to the challenge of developing the future regulatory framework for urban air mobility in every city, region, and country.

We invite the global civil aviation law community to join us in May 2025. WALA XV promises to inspire, educate, unite, and together celebrate our achievements.

Why the WALA Conference is Important for Curaçao

For the first time the WALA Conference will be co-hosted by four key organisations from the Civil Aviation ecosystem: Curaçao Airport Holding (CAH); Curaçao Airport Partners (CAP); Curaçao Tourist Board (CTB); and the Dutch Caribbean Air Navigation Service Provider (DC-ANSP).

Curaçao Airport Holding (CAH) is the owner of the airport buildings and their surrounding terrains and infrastructure. As the owner on behalf of the Government of Curaçao, CAH is the supervisor of all airport operations executed at the Curaçao International Airport (CUR) carried out by CAP.

Curaçao Airport Partners (CAP) – a consortium made up of CCR (Brazil), Janssen De Jong (the Netherlands) and Zurich Airport International AG. CAP has a 30-year concession agreement with a subsidiary company of CAH.

Curaçao Tourist Board (CTB). Its Vision is to be the driving force for sustainable tourism growth and development by aligning public and private institutions to coordinate planning, promotion and management efforts.

DC-ANSP is the Air Navigation Service Provider (ANSP) which is responsible for the Air Traffic Services (ATS) within the Curaçao Flight Information Region (FIR).

"I joined WALA in 2019 and have attended all conferences since then. WALA is a professional environment, which focuses on the legal side of the entire spectrum of civil aviation, but with an airport perspective. The lectures, panels and debates organized by WALA provide into so many insights, whereby the knowledge of air law is integrated into its practice. Consequently, leaving its attendees fully equipped with relevant and applicable information. As one of the brains behind the inception of the Pre-Conference Seminar, I am a firm believer that the rapidly increasing globalization of the air market, requires a more personal and dynamic approach. The Pre-Conference Seminar provides a platform enabling attendees to exchange experiences directly. This direct, and face-to-face exchange of views with prestigious and experienced colleagues in the field from all over the globe has been extremely valuable for me. Reason why I believe that hosting this unique WALA XV conference is important for my Country, but also the entire region. WALA represents a great event in terms of air transport law and tourism, and I look forward for what it has to offer this year and the years to come." **Roangelo Lodewijks – Legal Counsel/Attorney | CAH**

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 to thank 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 2025.



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 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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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”). On 15 November 2024, the Council revised and restructured the Roadmap. Previous Roadmaps published up to 2022 described four phases on the use of UAVs, pursuant to which: in the first and second phases, UAVs may be flown within a visual line of sight; in the third phase, UAVs may be flown beyond a 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); and in the fourth phase, UAVs may be flown BVLOS over areas where a third party may be present. However, starting 5 December 2022, when certain amendments to the CAA took effect with the aim of achieving the fourth phase as scheduled in previous Roadmaps, the 2024 restructured Roadmap replaced descriptions of each phase with the promotion of the usage of drones in multiple areas including cargo delivery, the realisation of the UAV traffic management system, and the development of technology to operate multiple UAVs at the same time for the coming fiscal years 2025, 2026 and later.

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 (please see section 5 below), beyond the limitations

of permitted operating conditions (please see section 6 below), then that person must have permission or approval from the MLIT subject to certain exceptions. For example, if the UAV is moored by sufficiently strong strings which are no more than 30 metres long, permission or approval is not necessary.

UAV operations have been classified into three categories based on the associated risks. Category I covers the operation of UAVs with the lowest risk, that is, UAVs which do not fly in prohibited airspaces but fly within the limitations of permitted operating conditions; thus, Category I does not require any permissions or approvals. Both Category II and Category III are operations in prohibited airspaces and beyond the limitations of permitted operating conditions. Category III covers the operation of UAVs in an airspace below which a third party may be present without taking measures to restrict and control the comings and goings of third parties underneath the flight path and, therefore, is associated with the highest risk. Category II covers the operation of UAVs in an airspace while taking measures to restrict and control the comings and goings of third parties underneath the flight path, meaning that the UAVs do not fly over areas where third parties may be present. Thus, the risk associated with Category II does not reach the same level as Category III.

UAVs under Category III must have a first-class certificate and their operators must each hold a first-class licence. Note that there are two types of certification (i.e., first class and second class) for a UAV, and two types of licence (i.e., first class and second class) for an operator. In addition, separate permission or approval is required for each UAV operation.

In general, the operation of Category II UAVs requires the MLIT’s permission or approval. However, if the operation meets the following requirements, it will be permitted without need for 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 (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
- (d) 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. There are two categories of Standards: one is for a Category II operation; and another is for a Category III operation. Applications may be submitted at the following website: <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. Registration

Under the CAA, a UAV owner is required to register the UAV, including information on the kind and manufacturer of the UAV, the owner's name and address, and the operator's name and address. The registrant must display the registration mark (comprising numbers and letters) on the body of the registered UAV and install a function to dispatch signals by radio wave by which the registration mark can be identified. As of October 31 2024, 422,879 UAVs are registered.

3. Certification of UAVs

The CAA requires drone airframe certification depending on the method of operations. As for Category III operations, a first class certification is required for the UAV.

There are also UAV model certification and UAV certification. A UAV model certification is the model certification for the specifications and manufacturing process of a drone produced and designed by manufacturers, and is valid for three years regardless of whether it is first class or second class. A UAV certification is the certification required for each drone, and the duration varies depending on the type (one year for first class and three years for second class). If the subject drone has a first class UAV model certification, those using the drone model would be exempted from a part of the inspection for UAV certification.

As of 31 October 2024, only one type of UAV has obtained a first class UAV model certification while five types of UAV have obtained a second class UAV model certification.

4. Licences to operate UAVs

The CAA requires a UAV operator to hold a licence depending on the method of operations. As for Category III operations, a first class licence is required to operate the UAV.

Persons under 16 years old cannot obtain a UAV licence. Moreover, a person who fails to obtain a UAV licence due to certain reasons (e.g., mental illness, drug addiction or violation of the CAA) cannot apply for a period of one year after such failure, and a person whose UAV licence is revoked due to certain reasons (e.g., mental illness, drug addiction or a violation of the CAA) cannot apply for a period of two years after the revocation.

An applicant is required to take and pass certain examinations to get a UAV licence. A licence is valid for three years and renewable regardless of whether it is first class or second class. As of 31 October 2024, the number of granted licences is 2,136 for a first class licence and 17,252 for a second class licence.

5. 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 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. 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, subject to certain exceptions regarding item (b) which are available for Category II operations. 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.

6. 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).

Conditions (a) through (d) are absolute without exception. A person who intends to operate a UAV without complying with conditions (e) through (j) must obtain prior approval of the MLIT, subject to certain exceptions regarding conditions (e), (f) and (g) which are available for Category II operations. The applicant for an approval must comply with the specified requirements under the Standards.

(2) Requirements for BVLOS

BVLOS is beyond the scope of operating condition (f) above; thus, it requires MLIT approval in general.

Under the Standards for both Category II operation and Category III operation, BVLOS without visual observers must conform to stricter conditions to receive approval, e.g., in terms of UAV functions, the operator’s experience, and safety measures.

(3) Guidelines for cargo delivery

There are currently no regulations in place for commercial drone cargo deliveries, but there are “Guidelines for the Delivery of Cargos and Other Items Using Drones” which the MLIT first published in 2021 and amended in 2023. These guidelines set out the procedures for implementing delivery by drones and the rules that must be observed for businesses planning to conduct deliveries using drones, but they are not legally binding.

7. 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, the MLIT may cause any party who operates, designs, manufactures, maintains or alters UAVs to report such operation, design, manufacture, maintenance or alteration and may inspect UAVs and related property by entering a person’s office and any place where UAVs are stored.

8. 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. 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 prohibits UAV flights over important facilities, including the Houses of Parliament, the Prime Minister’s Official Residence, buildings of government Ministries, the Supreme Court, the Imperial Palace, nuclear plants, important facilities designated by the Ministry of Defense, major airports, and areas within approximately 300 metres of these facilities.

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 cargo delivery services by UAVs in city areas, 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.

If a party would like to equip a UAV with a device in the same manner as a mobile phone that can transmit and receive large-volume data, it can ask a mobile phone operator to do so without need for a licence for establishing a Radio Station. The radio frequency bands that are currently available for this usage are 800 MHz, 900 MHz, 1.7 GHz, and 2 GHz. Further, in July 2024, the Ministry of Internal Affairs and Communications, which is the key regulator of the Radio Wave Act, started discussions to allow the equipping of a device using a band of 2.5 GHz or more on 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

The Council which met in April 2024 published an outline for developing a UAV traffic management system ("UTM"). According to the outline and the Roadmap published in November 2024, the UTM will be developed with the goal of completion in fiscal year 2026 or later and to that end, the CAA and relevant regulations are expected to be amended to set up the UTM. Further, in October 2024, MLIT established a study group to examine the possible conditions to allow multiple UAVs to be operated by an operator at the same time. If the study group can establish these conditions, that would be an important milestone to promote businesses which use UAVs.

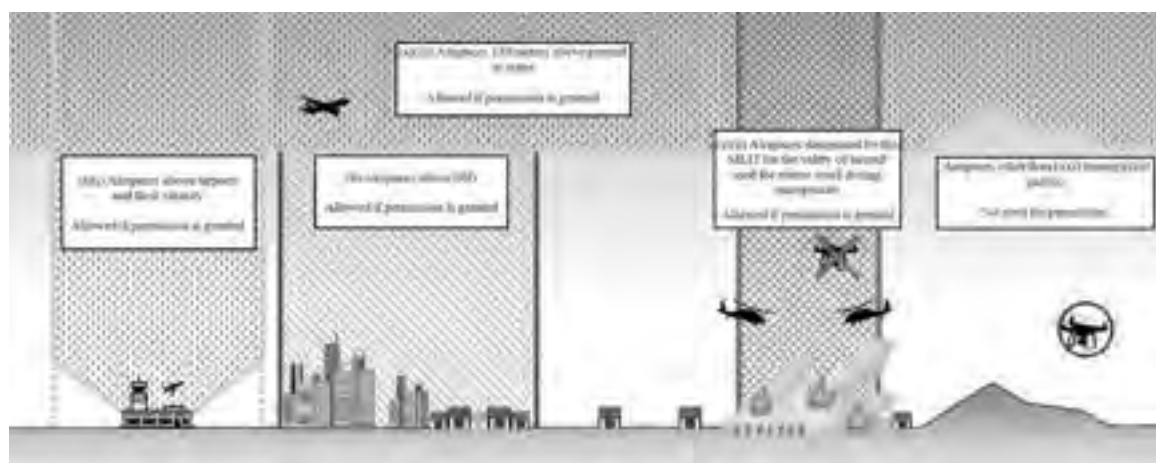


Figure 1: From the website of the MLIT, with modifications added by the authors for this chapter.



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to and expertise in 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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MORI HAMADA

Aviation Safety and Aircraft Certification in the United States

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“Safety” across the broad expanse of the aviation industry depends on three things: designing safe airplanes; safe piloting practices; and effective government oversight of the aircraft manufacturing process and airline flight operations. In this chapter we will focus on some of the issues related to the design of modern aircraft and government oversight limitations. With the rapid advances in artificial intelligence and the added complexity it will inevitably bring to aircraft designs and operations, it is critical that the next generation of aircraft now on manufacturers’ drawing boards and assembly lines have no design deficiencies that could doom passengers as happened in the recent Boeing 737 MAX crashes. The design failures in those aircraft spelled disaster before the planes even left the place of manufacture. That cannot happen again.

The root causes of airplane crashes are human failure and economics. People make mistakes, and airlines and manufacturers cut corners in the pursuit of profit. Excuses after accidents are no comfort to the bereaved. Government oversight has its limitations. The U.S. Federal Aviation Administration (FAA) has a fine set of regulations which set forth safe design minimum standards, but not enough money or personnel to guarantee that design flaws will not creep into new aircraft and their systems. Therefore, the ultimate responsibility for building safe aircraft must rest with manufacturers. Manufacturers who profit from the sale of their products should not be able to shirk their responsibility and shield their ample coffers by arguing that merely following an FAA-issued “minimum standard” protects them from liability.

The people and manufacturers responsible for aircraft design decisions must be held accountable if their products fail. The flying public demands that assurance.

Aviation Safety and Aircraft Certification

There is no question that great strides have been made in aviation safety over the past few decades. Statistics show that flying to your destination via commercial airplane is far safer than driving in your car. Nevertheless, in recent years there have been several tragic and preventable airline disasters and near misses caused by defective aircraft designs and negligent manufacturing processes. The doomed airplanes contained obvious and dangerous design defects, yet the FAA certified those airplanes as airworthy. So, what went wrong?

The U.S. Federal Aviation Act authorizes the FAA to issue regulations and to establish “minimum standards required in the interest of safety ... for the design, material, construction, quality of work, and performance of aircraft ...”, 49 U.S.C. §44701. In the exercise of its regulatory authority, the FAA is

tasked with issuing airworthiness certificates to all aircraft manufactured in the United States. To accomplish this, the FAA reviews the design of each aircraft produced in the U.S. and certifies that the aircraft’s design meets the applicable safety standards. However, FAA certification merely means that at the time of issuance, the FAA concluded that the aircraft met the regulation-prescribed *minimum* set standards. By necessity, the FAA relies heavily on the aircraft manufacturers’ input to make that determination. Importantly, the FAA cannot be held liable to accident victims for design mistakes – but manufacturers can be. *United States v. Varig Airlines*, 467 U.S. 797 (1984).

The FAA faces challenges that limit its oversight of aircraft safety, including limited staffing, budgetary limitations that prevent it from hiring more staff, and a lack of subject matter expertise among its existing staff. So, the FAA leverages its limited resources by relying on the personnel and resources of aircraft manufacturers to conduct the testing, reviews and analysis required to make its aircraft certification decisions.

49 U.S.C. § 44702(d) authorizes the FAA to delegate certification functions to private entities, like aircraft manufacturers. Since 1940, the FAA has allowed aviation manufacturers to conduct certification functions on its behalf by granting certain employees of the manufacturers the privilege of acting as Designated Engineering Representatives (DERs) to conduct type certification and make certification decisions on its behalf. More recently, in 2009, the FAA instituted the Organization Designation Authorization (ODA) process, which allows manufacturers to conduct certification work on behalf of the FAA with limited supervision and without direct FAA oversight. See 49 U.S.C. § 44736. Manufacturers with ODA status are given authority that may include issuing airworthiness certificates, production certificates and type certificates. In essence, federal law allows the FAA to rely on the ODA manufacturers to certify the airworthiness of their own aircraft – an inherent conflict of interest. In the real world, one must question whether those with ODA authority favor the manufacturer or the FAA.

Despite the broad delegation to aircraft manufacturers, the FAA has always denied that manufacturers are able to self-certify their aircraft. Nevertheless, for many years, safety concerns have prompted debate about whether the FAA has become too reliant on manufacturers in the certification process. Investigations into recent disasters and near-misses revealed dangerous aircraft defects that were obvious, but never identified by the FAA. These investigations disclosed just how heavily the FAA relies on the manufacturers to certify their own aircraft and how little independent oversight the FAA exercises over the process.

The Boeing Dreamliner

On the morning of January 7, 2013, shortly after 183 passengers and 11 crew members deplaned Japan Airlines Flight 008 at Boston's Logan International Airport, a mechanic noticed smoke and flames coming from the airplane's auxiliary power unit (APU) battery. The airplane was a Boeing 787-8 Dreamliner that Boeing had delivered to the airline only 18 days prior. The fire was caused by a thermal runaway in the APU's lithium-ion battery – the same model used for the 787's main battery. Nine days later, a Dreamliner operated by All Nippon Airways was forced to make an emergency landing after the pilots received a battery malfunction warning. These two events spurred the FAA to ground the entire Dreamliner fleet. The National Transportation Safety Board (NTSB) investigated the Japan Airlines fire and found Boeing and the FAA at fault for the design, manufacture and certification of the Dreamliner's lithium-ion battery system. Most troublingly, the NTSB discovered that production deficiencies caused a short circuit in the batteries that resulted in the fire. The NTSB faulted Boeing's assumptions that a short circuit would be contained and that it did not have to incorporate design changes that would have protected the system from fire. The NTSB also faulted the FAA for not requiring a thermal runaway test as part of its certification requirements.

The Dreamliner debacle highlights the role that manufacturers play in the certification process. Boeing's assumptions directly influenced what protocols the FAA deemed necessary for the aircraft's certification process. Had Boeing recognized that a thermal runaway was possible, the FAA would have taken a much harder look at the system and certainly would have required enhanced safety testing.

The Boeing 737 MAX

On December 15, 1967, the FAA issued a Type Certificate for the first Boeing 737-100. DOT FAA Type Certificate Data Sheet A16WE. Forty-four years later, Boeing unveiled plans for the 737 MAX, a modern upgrade of the 737. On January 27, 2012, Boeing applied for an Amended Type Certificate for the Boeing 737-8 MAX, which the FAA accepted on March 22, 2012. US Department of Transportation, Office of the Inspector General, FAA Report No. AV20200037, June 29, 2020. ("DOT OIG Report") at 11, 12. The MAX design was based on the earlier generation 737 model, the Boeing 737-800, and the decision to apply for an Amended Type Certificate, rather than a new type certification for a new aircraft design, was a shortcut that helped streamline the certification process. That shortcut was intended to allow Boeing to avoid certain new certification requirements. What was most troublesome about these shortcuts was that the MAX had undergone significant design changes compared to the 737-800. In particular, the MAX incorporated more fuel-efficient engines that were significantly larger than the ones on the 737-800. Early wind tunnel tests revealed that, due to the larger engines, the airplane would tend to initiate a nose-up pitching movement at certain flight conditions and thus would be at risk of not meeting certification requirements. Boeing decided to address this problem by adding the Maneuvering Characteristics Augmentation System (MCAS), a computer code programed into the airplane's flight control computers that would command nose-down trim when the airplane's angle of attack was too high. Boeing also convinced the FAA not to require simulator training for pilots transitioning to the MAX from the 737-800, claiming that the MCAS would never engage in a normal stage of commercial flight. And because the MCAS

was intended to be transparent to pilots, the training materials did not even identify or provide information about the new system. Disaster was built into the 737 MAX.

Lion Air Flight 610, a Boeing 737-8 MAX, crashed into the Java Sea on October 29, 2018, with 189 souls aboard. In the minutes before the crash, the pilots fought a terrifying battle with the airplane's MCAS, which repeatedly pushed the nose of the airplane down toward the ocean.

The reason? One of the airplane's angle of attack sensors fed erroneous information to the MCAS, causing it to "believe" that the nose of the airplane was too high. This then triggered the MCAS to repeatedly push the airplane's nose down.

The Lion Air investigation quickly identified the MCAS problem and that pilots did not have sufficient information and training to cope with the automatic MCAS inputs. Put another way, the pilots did not understand what was happening to their airplane. The FAA, however, elected not to ground the MAX. Even though the Lion Air disaster revealed the MCAS problem, 737 MAX pilots were not warned about the MCAS or sufficiently trained on how to respond to emergencies the MCAS created that could potentially cause disaster.

Airlines all over the world continued to fly the airplane until the crash of Ethiopian Airlines Flight 302, another 737 MAX 8, on March 10, 2019. Investigators found that shortly after takeoff from Addis Ababa, an angle of attack sensor once again sent erroneous information to the airplane's MCAS. Just as in the Lion Air Crash, the Ethiopian pilots helplessly battled the runaway system until the plane nose-dived into farmland, taking with it 157 lives.

Remarkably, after the second crash and 346 deaths, the FAA still resisted grounding the MAX fleet. Indeed, on March 12, acting FAA Administrator Daniel Elwell issued a statement that the FAA had found "no systemic performance issues" and had "no basis" to ground the airplane. The next day, however, Canada grounded the airplane, and later that day, then-President Donald J. Trump announced that the US would ground the Boeing 737 MAX 8 and 9 airplanes.

The Boeing 737 MAX 8 crashes brought much-needed public attention to the all-too-cozy relationship between the FAA and the aviation industry and the FAA's vulnerability to manufacturer influence. Congress stepped in and in December 2020 passed the Aircraft Certification, Safety and Accountability Act (ACSAA). The ACSAA aims to overhaul the FAA's certification process by tightening lapses in FAA oversight highlighted by the troubled safety culture at Boeing that investigators determined contributed to the crashes. The ACSAA requires the FAA to increase its oversight of ODAs and to maintain direct control over the manufacturer employees engaged in certification activities. It is too early to know whether the changes prompted by the ACSAA will improve product safety, but the recent blowout of a door plug on an Alaska Airlines Boeing 737-9 MAX brought new attention to the safety of airplanes manufactured in the U.S. and revealed that there remains significant room for improvement at Boeing.

The FAA issued an airworthiness certificate for the Alaska Airlines 737-9 MAX in October of 2023 and shortly thereafter Boeing delivered the aircraft to the airline. The airplane flew for three months and over 150 cycles before it experienced a terrifying midair blowout of its door plug, which was found to have been installed without retaining bolts at the Boeing factory. Fortunately, the event occurred at relatively low altitude, and in an airplane that was not quite full. Amazingly, the seats immediately adjacent to the door plug were empty.

Despite these recent events, manufacturers still try to limit their responsibilities to victims of aviation crashes by arguing

that they cannot be liable for accidents unless the aircraft failed to meet the minimum standard set by the FAA for the aircraft design. They argue a Jury should not be able to find that an FAA-certified airplane was defective, *even after a crash caused by a design defect*.

Manufacturers Are Not Entitled to Immunity Because of FAA Certification

The last 25 years have seen legal battles fought in U.S. courts over what legal standards should apply in products liability cases arising from aviation disasters. In the United States, products liability cases are litigated under state laws. These laws render aviation manufacturers liable if a defective product causes injury. An aircraft or component part is deemed defective if, by reason of its design, it is unreasonably dangerous.

In cases brought by victims after aviation crashes, however, manufacturers tend to argue that a Jury should not be able to find that an aircraft or component part is unreasonably dangerous, absent a finding that it did not comply with the minimum design and manufacturing standards established under federal laws and regulations. In short, manufacturers would like to focus on FAA minimum standards while the test should be whether a product is unreasonably dangerous by design.

The FAA has no requirements that aircraft must be safe or free from defects. This is in contrast with aviation operations, where the FAA promulgated a general standard of care that prohibits the careless or reckless operation of an aircraft in addition to specific requirements concerning aircraft operation. See 14 C.F.R. § 91.13(a).

A recent case is instructive. The court reasoned that a jury's verdict that an aircraft was defective would "conflict" with the FAA's certification of the airplane as airworthy. That would mean that absent unusual circumstances – like a manufacturer's fraud during certification – the manufacturer would be immune from civil responsibility to the aviation victims. See *Sikkelee v. AVCO Corp.*, 268 F. Supp.3d 660 (M.D. Pa. 2017) (claims against manufacturers are barred under the doctrine of contract preemption if FAA regulations make it impossible for the manufacturer to unilaterally implement a plaintiff's proposed design change), reversed in relevant part, 907 F.3d 701 (3rd Cir. 2018) (state law claims against manufacturers can go forward unless the defendant can show that the FAA would not have approved a plaintiff's proposed design change). Fortunately for plaintiffs, the appellate court overturned the decision. It remains unsettled, however, whether federal law preempts state law, and how the court would apply federal standards in determining whether an aircraft or component part was defective.

Victims of airline disasters have long pointed out that Congress intended for the Federal Aviation Act to improve aviation safety and that it certainly was not a tort reform measure. It would be inconsistent with this goal to find that

Congress also intended to reduce product safety standards to the "minimum standards" promulgated by the FAA when it passed the Federal Aviation Act.

The FAA historically has sided with the industry in litigation fights, supporting the manufacturer's argument that the Federal Aviation Act "implicitly preempts the field of aviation safety with respect to the substantive standards of safety [and that] while the act does not preempt state tort suits, it is federal standards that govern state tort suits based on design defects in aviation manufacturing". This is the position that the FAA took in its amicus submission in *Cleveland v. Piper Aircraft Corp.* The U.S. Court of Appeals for the Tenth Circuit, however, discounted the FAA's submission as lacking statutory support. The FAA also supported the industry's arguments that a product liability claim cannot proceed if the FAA expressly approved the specific design, or if compliance with both the type certificate and the claim in the lawsuit is a "physical impossibility". *Letter Brief for Department of Transportation and Federal Aviation Administration at p. 1-2, Sikkelee v. Precision Airmotive Corp.*, No. 14-4193 (3d Cir. argued June 24, 2015).

The FAA's position in court cases promotes the industry's interests over aviation safety and demonstrates the oversize influence the aviation industry still has over the FAA. The position not only effectively reduces product safety standards to "minimum standards", but it also undermines the deterrent value that potential liability has on manufacturer conduct. The FAA's minimum standards should not insulate a manufacturer whose product incorporates a defective design.

We urge the FAA to drastically reevaluate its relationship with manufacturers. It needs to step back from industry and fulfill the Congressional intent that the FAA be independent from industry influence and pressure. One way the FAA could fulfill its statutory mandate would be to issue a regulation that generally requires aviation manufacturers to ensure that their products are free from defects. A "defective" standard would raise the general standard of care governing aircraft safety and mitigate disputes caused by the current "minimum standards" criteria. Such a regulation would ensure that the ultimate responsibility for aircraft safety rests on the manufacturers and eliminate attempts by manufacturers to avoid their responsibility based on FAA certification.

Aviation manufacturers have the expertise and resources to ensure that their aircraft are properly designed, tested and manufactured. Manufacturers earn billions of dollars selling commercial aircraft and can absorb the financial losses caused by aviation disasters involving defective products. This is how products liability law was designed to work – and does work – in most other industries.

Aviation manufacturers should not be given special protections that insulate them from liability for failure to manufacture safe products just because they are subject to FAA regulation. And air crash victims cannot be left without legal recourse when the agency charged with keeping air travel safe cannot guarantee the efficacy of its work.



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Following the September 11, 2001, terrorist attacks, Mr. Moller was chosen as the Plaintiffs' Liaison Counsel for all attorneys representing personal injury and wrongful death cases consolidated into the litigation. He has also led landmark cases, including *in re Sabin Oral Polio Vaccine Products Liability Litigation*, which at the time established the liability of the U.S. government for mandatory regulatory violations.

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Argentina



Francisco J. Venetucci



Celina Andriani

Venetucci Maritime

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.

Legislation

The legal system in Argentina is primarily based on civil law. The legislation can be found through national laws and codes, decrees and administrative regulations. Some of the principal pieces of domestic legislation are:

- Aeronautical Code (Law 17,285).
- Airport Security Law (Law 26,102).
- Air Commercial Transport Law (Law 19,030).
- Air Taxes Law (Law 13,041).
- Decree 639/2024 (National Aircraft Registry).
- Decree 664/2024 (Aircraft Removal).
- Decree 809/2024 (Air Passenger and Baggage Contract. Protection of Air Transport Passenger Rights).
- Decree 824/2024 (Standards and Procedures Required for the Use of Foreign-Registered Aircraft and Foreign Crew Members).

Regulatory bodies

There are two main bodies which have the authority to regulate, administer and control civil aviation.

The National Civil Aviation Administration

The National Civil Aviation Administration (ANAC in Spanish) is the National Aviation Authority and exercises the functions and powers established in the Aeronautical Code (Law 17,285) and the Air Policy Law 19,030; the international treaties, laws, decrees, and provisions that regulate civil aviation in the Argentine Republic.

The Transportation Safety Board

The Transportation Safety Board (JST in Spanish) intervenes in the event of accidents and incidents involving civil aircraft that occur on or over the territory of the Argentine Republic, its jurisdictional waters, and the airspace covering it. Its functions include accident investigation and issuing recommendations.

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

According to the Aeronautical Code, the operation of any commercial air activity requires prior authorisation.

Scheduled or non-scheduled air transport services will only be carried out by companies authorised by the authority.

Authorisations to perform scheduled and/or non-scheduled air transport services will be subject to the requirement of a submission to the authority, which must include:

- a) Information identifying the individual or company, with a legal address in the country, along with supporting personal or corporate documentation.
- b) A description of the type and characteristics of the aircraft that will be used for the service, demonstrating ownership or a substantiated commitment to acquire it in the future, in accordance with the contractual instrument, declaration, or specific certification.
- c) The period during which the service will be maintained, which, for scheduled transport, cannot be less than six months.
- d) The insurance policies that the company proposes to contract, which must meet local and international regulatory requirements.
- e) A declaration of frequencies and schedules, for scheduled services, specifying the planned start date of the service.
- f) A declaration of air routes, departure and destination airports, and planned stops, according to the business plan.
- g) A declaration or projection of its base of operations and crew (local or foreign).
- h) The Business Plan and proof of economic and financial capacity, through a sworn statement or other suitable means.
- i) The legal address in Argentina.

The authorisations will be granted for specific routes and for a period not exceeding 15 years. However, it may be extended by another 15 years if there is a public interest, and at the company's request.

1.3 What are the principal pieces of legislation in your jurisdiction which govern air safety, and who administers air safety? Does this legislation adequately cover all the issues which tend to arise in your jurisdiction, or do you feel that certain amendments or additional laws would be desirable?

In accordance with the Aeronautical Code, the National Aeronautical Authority, managed by the ANAC, is responsible for issuing all civil aviation operational safety regulations.

The JST, on the other hand, investigates all civil aviation events, whether accidents or incidents, that occur within the territory of the Argentine Republic, its airspace, and its jurisdictional waters, and that cause death or serious injury, structural damage to aircraft, or the disappearance or total

inaccessibility of the aircraft. Once the investigation and analysis process of the event is complete, the JST monitors the implementation of operational safety measures.

Lastly, the Airport Security Police (PSA in Spanish) is responsible for verifying and inspecting airport facilities, vehicles, people, baggage, mail, cargo, goods, and items transported, as well as aircraft and crews within the airports.

The PSA is the authority responsible for enforcing the Chicago Convention (ratified by Law 13,891) and the standards and recommended practices established by the International Civil Aviation Organization regarding the security and protection of international civil aviation against acts of unlawful interference.

Additionally, the PSA will be the authority in charge of all matters related to the transport of dangerous goods by air, exclusively within the airport environment.

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

The legislation and regulatory bodies regarding air safety are the same for commercial, cargo and private carriers.

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

The legislation and regulatory bodies regarding air charters are the same 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. Does the *status quo* tend to create an aviation market which is sufficiently competitive and open?

Generally, in commercial air services, air personnel must be Argentine. However, the authority may authorise a percentage of foreign personnel. Similarly, aircraft used for commercial and general aviation services must have an Argentine registration. However, the authority will permit the use of foreign-registered aircraft subject to regulations that were not published at the time of this publication.

In summary, the new regulations aim to promote and streamline the granting of relevant authorisations to allow foreign personnel to perform aeronautical functions in the domestic market, as well as to enable the use of foreign-registered aircraft.

1.7 Are airports state or privately owned? Are there any plans to alter this position?

Airports can be public or private. Public airports are those intended for public use; all others are private. The property ownership status of the land does not determine whether an airport is public or private.

All public airports are subject to the regulations established by the Regulatory Body of the National Airport System (ORSNA in Spanish).

Despite their legal designation as public airports, most of them are managed by private companies through concession contracts, as is the case with the airports of Ezeiza, Aeroparque (Buenos Aires), Córdoba, Mendoza, Ushuaia, among others.

Other airports are managed by the provincial government of the province where they are located, such as Rosario and Santa Fé airports, among others.

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

Further to airport charges, the airports may set specific requirements for the carriers, including the mandatory use of ground handling services or the need to secure a slot or obtain prior authorisation.

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? Do you believe that there are any changes which would be of benefit to the existing regime?

The Decree 934/1970 establishes that the technical investigation of aviation accidents involving civil aircraft in Argentine territory, as well as the corresponding preventive measures, will be conducted through the Aviation Accident Investigation Board, now replaced by the JST.

The Aeronautical Code stipulates that anyone who becomes aware of an aviation accident or incident, or the presence of remains or wreckage of an aircraft, must report it to the nearest authority by the quickest means and in the shortest time possible given the circumstances. The first authority informed of or involved in the event must immediately notify the aeronautical authority and assign or arrange a guard until the aeronautical authority arrives.

Furthermore, Argentina has ratified the 1944 Chicago Convention, and the procedure established in Article 26 and the annex XIII, with regard to accidents involving an aircraft from one contracting State within the territory of another contracting State, have direct application in Argentina.

Finally, the investigation of aviation accidents conducted by the aeronautical authority does not preclude judicial action or police intervention. In cases where accidents involve unlawful acts, these investigations are coordinated according to the criminal procedure law.

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

Since December 2023, several decrees have been introduced establishing a new regulatory framework for access to the aviation market in Argentina. The main purpose of the new legislation is to enhance connectivity within the country and create new routes at more affordable prices, allowing foreign-registered aircraft to operate in the domestic market.

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 regulation 204/2019, issued by ANA, approved the implementation of the Monitoring, Reporting, and Verification

(MRV) Plan within the framework of the Carbon Offsetting and Reduction Scheme for International Aviation (CORSIA). This regulation requires airline operators to implement an Emissions Monitoring Plan (EMP) to monitor and annually report their CO₂ emissions from international flights.

2 Aircraft Trading, Finance and Leasing

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

The transfer of ownership of aircraft, as well as any legal acts related to them, such as mortgages or leases, will not have effect against third parties unless they are registered with the National Aircraft Registry.

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

The National Aircraft Registry was recently regulated by Decree 639/2024. The functions of the National Aircraft Registry include electronically and/or digitally registering mortgages on aircraft and engines, as well as registering liens, precautionary measures, and restrictions that apply to or are ordered against the aircraft.

When an applicant wishes to register an aircraft's mortgage or a mortgage over an engine that has individually been registered, the following requirements must be met:

- a) registration application;
- b) mortgage creation document; and
- c) copy of the hull insurance policy or coverage certificate.

Mortgage registrations are valid for a period of seven years. However, the parties may agree that the registration be made for a shorter period.

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

The aircraft leasing agreement must be executed in a public deed and registered with the National Aircraft Registry.

It is important to note that Argentina has ratified the Convention on International Interests in Mobile Equipment on Matters Specific to Aircraft Equipment and its protocol.

The main challenge Argentina faces is related to the time required for issuing foreign remittances.

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 owners of single engines are protected under Argentinian law. According to Article 41 of the Aeronautical Code, the aircraft engines may be registered in the National Aircraft Registry.

Further, Argentina is party to the Cape Town Convention, which distinguishes the aircraft engines and airframes as distinct and separate aircraft objects, and Article XIV(3) of

the Aircraft Equipment Protocol posits 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?

Sales, leases, and definitive imports of aircraft intended for passenger and/or cargo transportation for such activities, as well as those used for defence and security (in the latter case including their parts and components), are exempt from value-added tax.

As regards the stamp duty, this is a provincial tax. The sale/purchase of aircrafts in the Autonomous City of Buenos Aires is subject to a 6% stamp duty.

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

Argentina is a signatory to the Chicago Convention 1944, Montreal Convention 1999, Tokyo Convention 1963, the Geneva Convention 1948, and The Cape Town Convention on International Interests in Mobile Equipment and the Protocol.

2.7 How are the Conventions applied in your jurisdiction?

Argentina follows the monist system. By ratifying an international treaty, it can be directly applied.

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?

Argentina is a party to several Double Tax Treaties with other countries. While the specifics of these treaties differ, they generally stipulate that profits derived by an enterprise of a Contracting State from the operation of aircrafts in international traffic shall be taxable only in that State.

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?

Pursuant to Argentinian law, under the terms of the aircraft lease agreement, the lessee is granted a right of use only. Payment of rent does not confer any property rights over an aircraft registered with the National Aircraft Registry, unless a right to possess the aircraft or a right to purchase it has been duly registered.

3 Litigation and Dispute Resolution

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

According to the Aeronautical Code, all aircraft are subject to attachment, except for public aircraft.

The attachment will result in the detention of the aircraft in the following cases:

- a) when ordered as part of the enforcement of a judgment;
- b) when it involves a claim granted for the purpose of carrying out the journey, even if the aircraft is ready to depart; or
- c) when it involves a claim by the aircraft's seller due to a breach of the purchase agreement.

Further, Argentina is party to the 1933 Convention for the Unification of Certain Rules relating to the Precautionary Attachment of 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?

There is no regime of self-help to reacquire possession of the aircraft within the Aeronautical Code, and despite being party to the Cape Town Convention on International Interests in Mobile Equipment and the Protocol, Argentina made a declaration under Article 54(2) of the Convention, and hence creditors may only exercise their remedies with judicial intervention.

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 Aeronautical Code, the Federal Courts have jurisdiction to hear and decide cases related to air navigation or air commerce in general, as well as crimes that may affect them. The procedural rules differ depending on whether the matter relates to a commercial issue in which case the National Civil and Commercial Procedural Code would apply. For criminal cases, the National Criminal Procedural Code is applicable. Depending on the city where the court is based, some Federal Courts are split up in branches distinguishing the Federal Civil and Commercial Court and the Federal Criminal 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?

Court proceedings are normally served through various methods, such as personal service by a judicial officer, first-class mail, and occasionally by electronic communication methods.

Argentina is signatory to the Convention on the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters. In this regard, in case of non-domestic airlines/parties to be served that are located in a member country and where the Convention applies, the claimant may choose a service method which complies with the convention. If service is sought on a foreign airline/party located

in a country not a party to the convention, the Civil and Commercial Procedural Code establishes that the claim must be served through letter rogatory.

Notwithstanding, non-domestic airlines must appoint a local agent who is the legal representative of the foreign airline in Argentina, and hence the court must allow the claim form to be served on the appointed agent.

At the regional level and within the framework of MERCOSUR, Argentina approved the Protocol of Cooperation and Jurisdictional Assistance in Civil, Commercial, Labor, and Administrative Matters. Furthermore, Argentina is party to the Inter-American Convention on Letters Rogatory and Additional Protocol.

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?

Federal Courts and arbitral tribunals provide various remedies, depending on whether they are interim or final. These remedies are generally aligned with principles of Argentine procedural law and the arbitration rules.

As regards interim remedies, the courts can order interim measures to preserve rights or maintain the *status quo* pending the resolution of the dispute. Some of these precautionary measures are:

- a) Asset freezing orders: Preventing the transfer or dissipation of assets.
- b) Prohibition orders: Preventing parties from altering the disputed matter.
- c) Attachment of assets: Securing physical or movable property involved in the dispute.

Other specific remedies on an interim basis may include precautionary measures to gather or preserve evidence critical to the case.

In relation to arbitration, the Argentinian Arbitration Act establishes that it shall not be incompatible with an arbitration agreement for a party to seek interim measures from a court, either prior to or during the arbitration proceedings, nor for the court to grant such measures.

Likewise, prior to the issuance of the award that definitively resolves the dispute, the arbitral tribunal may order one of the parties to:

- a) maintain or restore the *status quo* pending resolution of the dispute;
- b) take measures to prevent current or imminent harm or impairment to the arbitral proceedings, or refrain from actions likely to cause such harm or impairment to the arbitral proceedings;
- c) provide means to preserve assets that may be used to enforce any subsequent award; or
- d) preserve evidence that may be relevant and material to resolving the dispute.

The remedies on a final basis include:

- a) Damages.
- b) Specific performance (a party may be ordered to fulfil its contractual obligations if monetary compensation is inadequate).
- c) Termination of contract.
- d) Declaratory judgments, clarifying rights, obligations, or the legal status of the parties without awarding damages.
- e) Injunctive relief to prevent a party from engaging in or requiring them to cease certain actions.
- f) Restitution.

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?

According to the Civil and Commercial Procedural Code, the appeal is to be only admissible in relation to:

- 1) Final judgments.
- 2) Interlocutory judgments.
- 3) Simple orders that cause an irreparable harm that cannot be remedied by the final judgment.

As regards arbitration, according to the Argentinian Arbitration Act, against an arbitral award, one can only appeal to a court through a petition for annulment.

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 rules of *force majeure* can be found in the Civil and Commercial Code, which is defined as an event that could not have been foreseen or that, even if foreseen, could not have been avoided. As a general rule, fortuitous events or *force majeure* exempt liability, except where otherwise stipulated.

From a contractual perspective, Article 955 posits that the supervening, objective, absolute, and definitive impossibility of performance caused by a fortuitous event or *force majeure* extinguishes the obligation without liability. If the impossibility arises due to causes attributable to the debtor, the obligation changes its object and becomes one of compensating for the damages caused. The temporary impossibility of performance has an extinguishing effect when the time is of the essence, or when its duration irreversibly frustrates the creditor's interest.

However, even in the case of *force majeure*, the debtor remains liable in the following cases:

- a) if the debtor has assumed the obligation to perform even in the event of a fortuitous event or impossibility of performance;
- b) if a legal provision establishes that the debtor is not released by a fortuitous event or impossibility of performance;
- c) if the debtor is in default, unless such default is irrelevant to the occurrence of the fortuitous event or impossibility of performance;
- d) if the fortuitous event or impossibility of performance is caused by the debtor's fault;
- e) if the fortuitous event or, where applicable, the impossibility of performance resulting from it constitutes a contingency inherent to the risk of the thing or activity; or
- f) if the debtor is obligated to make restitution as a consequence of an unlawful act.

3.8 Is there any trend developing towards regulatory support in civil justice for out-of-court solutions and the importance of engaging in Alternative Dispute Resolution (or similar)? If so, what (if any) are the implications for the answers in questions 3.1–3.7 inclusive?

There are no specialist ADR bodies dealing with mediation in aviation disputes in Argentina. It is worth noting that, unlike

other Federal Courts in the country, there is a compulsory mediation procedure for any claim that may be brought at the Federal Courts based in the city of Buenos Aires. However, the mediators are not specialised in aviation matters.

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? In your opinion, are there any improvements to the existing regime which would be advisable?

Decree 599/2024, published in July 2024, deregulated the aeronautical activity in Argentina, promoting competition and contractual freedom. This regulation allows airlines to enter into agreements for marketing, connection, consolidation, and business mergers, provided they have the approval of the ANAC and comply with the Competition Defense Law.

In this regard, the airlines are allowed to enter into cooperation agreements, including codeshare agreements and/or commercial operation and/or connectivity. The agreement must be submitted to the competent authority prior to their implementation.

Previous to Decree 599/2024, any agreements involving "pool" arrangements had to be submitted for prior approval by the aeronautical authority who had 90 days to raise objections.

The new regulation establishes that the competent authority shall have 15 business days to review the submitted application and issue observations and/or reject it if any of the formal requirements are not met (e.g. if the documentation is not properly certified/legalised with apostille). In case that no observations are made, and in the absence of a response from the competent authority, the application shall be deemed approved without further process, granting the applicant full authorisation to implement the agreement.

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 two dimensions:

- a) the product market; and
- b) the geographic market.

a) The relevant product market

The relevant product market encompasses all goods and/or services considered involved products and substitute products. Based on the collection of information, the relevant product market will be defined as the smallest group of products for which a hypothetical monopolist of all of them would find it profitable to impose a small but significant and non-transitory price increase. While the exact concept of a "small but significant and non-transitory" price increase may vary depending on the specifics of the market under analysis, it is generally understood to represent a price increase in the range of 5% to 10% in real terms, sustained for a period of no less than one year.

b) The relevant geographic market

Once the relevant product market has been defined, the relevant geographic market must be delimited. The latter is understood as the smallest region within which it would be beneficial for a single supplier of the goods and/or services constituting the relevant product market to impose a small but significant and non-transitory price increase.

Through the collection of information, the definition of the relevant geographic market will begin by considering the regions where the companies involved in the concentration operate. Subsequently, the analysis will focus on the existence of demand substitution between the products or services of these companies and those marketed in other localities.

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

Argentina's antitrust framework provides mechanisms for regulatory clearance through mandatory pre-merger notifications and offers a leniency programme to encourage the disclosure of anti-competitive conduct. For the notification process, see question 4.5.

The Defense of Competition Act includes a leniency programme designed to detect and deter cartel activities. Individuals or entities that voluntarily provide information about cartel conduct may receive immunity or reduced penalties. To qualify, the applicant must:

- Be the first among the parties involved to apply for leniency and provide evidence.
- Cease the anti-competitive practice immediately.
- Cooperate fully with the authorities.
- Refrain from destroying evidence related to the conduct.
- Maintain confidentiality regarding the application.

4.4 How does your jurisdiction approach mergers, acquisition mergers and full-function joint ventures? In your opinion, are there any improvements to the existing regime which would be advisable?

According to the Aeronautical Code as amended by Decree 70/2023, the joint ventures or other forms of partnership and/or alliances between airlines with operational impact that involve codeshare agreement is governed by the Defense of Competition Act 27,442.

The airlines may freely enter into agreements involving the consolidation or merger of services and/or businesses, the transfer of concessions and/or authorisations, in all matters related to their non-operational commercial aspects, provided such agreements do not constitute practices prohibited by the Defense of Competition Act.

Such agreements must be reported to the competent authority, and if they involve a concentration as defined in Chapter III of the aforementioned Act, the National Competition Authority will intervene in accordance with the procedures established under such regulation.

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

The Defense of Competition Act governs the merger control process, requiring parties to certain economic concentrations to notify and obtain clearance from the National Commission for the Defense of Competition. The notification thresholds for economic concentration transactions are expressed in adjustable units. Article 11(e) of the Defense of Competition Act sets that the transactions must be notified if the combined annual turnover of the involved parties exceeds 20,000,000 Adjustable Units, equivalent to AR\$ 10,123,800,000.

For transactions conducted over the past 12 to 36 months, the thresholds are set at 20,000,000 and 60,000,000 Adjustable Units, respectively. These amounts correspond to AR\$ 10,123,800,000 and AR\$ 30,371,400,000.

The costs of notifications are set out in Article 33 and range between 5,000 and 20,000 Adjustable Units, subject to further implementation through complementary regulations.

In all cases subject to the notification requirement, and within 45 days of the complete and correct submission of information and documentation, the authority must issue a reasoned decision to:

- a) authorise the transaction;
- b) condition the transaction on the fulfilment of requirements set by the same authority; and
- c) deny authorisation.

If the Defense of Competition Tribunal determines that the notified transaction has the potential to restrict or distort competition, thereby potentially harming the general economic interest, it will issue a reasoned report outlining its objections and communicate these to the parties prior to making a decision. The Tribunal will also call a special hearing to consider possible measures to mitigate the negative impact on competition. This report must simultaneously be made available to the public.

In such cases, the resolution period for the Tribunal may be extended by up to an additional 120 days through a reasoned opinion. This period may be suspended until the parties respond to the objections raised by the Tribunal.

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?

Argentina lacks a legal framework exclusively addressing state aid for the aviation sector. Instead, financial support initiatives are assessed under general competition laws to avoid market imbalances.

The national government has previously extended financial assistance to the national airline, Aerolíneas Argentinas, sparking public debate and policy discussions leading to the government's intention to privatise the company.

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

Financial support for air operators and airports in Argentina is primarily governed by provincial laws. Given Argentina's vast territory, provinces often subsidise companies engaged in air transport that are willing to operate at airports without regular service, ensuring a guaranteed occupancy rate.

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?

Decree 809/2024 contains the rules applicable to the air transport contract. According to Article 25, making a reservation and/or issuing a passenger ticket implies the passenger's consent for the carrier to retain the data provided by the passenger, including their name, address, tax numbers,

and passport numbers. This data may be transmitted to the carrier's offices, other carriers, or the carrier's providers, as necessary or appropriate for the execution of the air transport contract, in any country or jurisdiction.

The airline can only share the aforementioned data upon the request of a competent judicial 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?

Airlines, like all data controllers, are governed by the Personal Data Protection Act 25,326, and must implement technical and organisational measures to ensure the security and confidentiality of personal data.

In this regard, airlines must adopt the necessary technical and organisational measures to ensure the security and confidentiality of personal data, preventing its alteration, loss, unauthorised access, or processing. The regulation does not explicitly require data controllers to notify either the regulatory authority or affected individuals in the event of a data breach.

Any individual is entitled to claim compensation from the data controller or processor in case of a breach of the obligations imposed by the Personal Data Protection Act that causes damage.

Further, the Personal Data Protection Act creates several criminal offences in circumstances where a person:

- 1) knowingly and unlawfully, or by breaching confidentiality and data security systems, accesses a personal data database in any manner; or
- 2) discloses to another party information stored in a personal data database that they are legally obligated to keep confidential.

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 several mechanisms available to protect intellectual property, proprietary assets, and data under Argentinian law.

Trademarks are protected under the Trademark Act 22,362. Registration with the Argentine National Institute of Industrial Property is mandatory to secure trademark protection, which grants exclusive rights to use the mark in commerce. The registration is valid for 10 years and can be renewed indefinitely.

Patents for inventions that are new, involve an inventive step, and are industrially applicable are protected under the Patent Act 24,481. The protection lasts 20 years from the filing date. The Utility Models – for minor innovations – are protected for 10 years. Likewise, the industrial designs are protected under the Patent Act and the protection is valid for five years and renewable up to 15 years.

Copyrights are protected under the Copyright Act 11,723, and automatically arises upon the creation of an original work and for the author's life plus 70 years posthumously.

4.11 Is there any legislation governing the denial of boarding rights, delayed flights and/or cancelled flights? Is this legislation adhered to and well monitored?

The denial of boarding rights, delayed flights and cancelled flights are addressed by Decree 809/2024.

As regards the denial of boarding rights, the airline may deny transportation of any passenger and/or their baggage for strict safety reasons or if, in its transparent and reasonable discretion, it determines that:

- 1) such action is necessary to comply with an applicable legal regulation, rules, or orders of any State from, within, or to which the transportation is to be performed;
- 2) the passenger does not possess the required documentation, or either the passenger or such documentation does not comply with the applicable laws, rules, provisions, requirements, or regulations;
- 3) the applicable fare or any charges or fees have not been paid, or the ticket has been illegally obtained or forged; or
- 4) the passenger's conduct, age, or mental or physical condition is such that:
 - a) it requires special assistance not available under the airline's regulations or that are unavailable at the departure or arrival airport;
 - b) it involves disruptive behaviour that may pose a danger or risk to themselves, others, property, or operational safety, or distracts the crew from properly performing their duties;
 - c) the passenger fails to comply with the airline's instructions; or
 - d) the passenger has refused to undergo a security check.

In relation to delayed flights:

- a) If the departure delay is up to four hours, there will be no obligation to provide assistance unless it occurs during nighttime hours, defined for these purposes as occurring between 12:00 AM and 6:00 AM. In such cases, the provisions outlined in point (b) below shall apply.
- b) If the departure delay exceeds four hours but is no more than eight hours, sufficient meals and refreshments will be provided, based on the necessary waiting time.
- c) If the departure delay exceeds eight hours, the provisions detailed in point (b) will be provided, along with accommodation services and transfers to the accommodation.

The airline must make the necessary arrangements to reallocate passengers whose delays result in the loss of a connecting flight.

Concerning cancelled flights, the airline must:

- 1) make the necessary arrangements to reallocate passengers whose cancellation results in the loss of a connecting flight;
- 2) include the passengers on the airline's next immediate flight to their destination;
- 3) endorse their transport contract, including connections, if acceptable to the passenger; or
- 4) reroute the passenger to the destination indicated in the contract via another route, using the airline's services, another airline's services, or another means of transportation, subject to availability in the latter cases.

Passengers who voluntarily and expressly accept transportation under any of the above conditions will not have the right to make any subsequent claims against the airline.

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

Decree 816/2024 establishes the General Regulations on Civil Aviation Infractions, with the ANAC as the enforcement authority.

According to Article 21.6, it is considered a serious infraction, subject to fines and/or temporary suspension of the relevant

authorisations, to: “Cancel or delay, for reasons attributable to the operator, regularly scheduled flights previously approved by the Aeronautical Authority and/or its delegated authority, without complying with the applicable regulations.”

In practice, the authority will notify the airline and require it to submit a corrective plan before imposing the sanctions established by the regulation.

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

The Regulation 163/99 establishes the General Regulations for the Use and Operation of Airports in the National Airport System. This regulation outlines the framework for airport management, covering operational, administrative, and security procedures applicable to all airports in the national system. It details responsibilities of airport administrators, public and restricted areas, passenger and vehicle access protocols, and compliance with national and international aviation standards, emphasising safety and operational efficiency.

Key aspects include provisions for environmental protection, passenger service quality, advertising restrictions, and handling emergencies. The regulation also defines roles for airport administrators and State entities, establishing clear accountability for managing airport operations, granting access credentials, and ensuring adherence to national and international guidelines.

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 24.240 from 1993 posits on Article 63 that in the case of an air transport contract, the provisions of the Aeronautical Code and international treaties shall apply. The rules of the Consumer Protection Act have only subsidiary application.

Further, as from September 2024, the Decree 809/24 addresses specifically the protection of the rights of air transport passengers.

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

The primary GDSs facilitating travel bookings are Amadeus, Sabre, and Travelport.

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

There are no specific ownership requirements for GDSs operating in Argentina, other than those outlined in the general company laws applicable to all businesses.

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

Under Argentinian law there are no explicit prohibitions against vertical integration between air operators and airports. However, the Defense of Competition Act may be triggered in case of 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?

Through Regulation 259/2024, the ANAC incorporated Part 129 regarding foreign air carriers.

Any foreign operator that meets the requirements established in Part 129 may operate in Argentina without restrictions and without the need to establish a company within the national territory. The recognition of the Operator Certificate from the country of origin exempts the national authority from requiring capital integration or shareholders with local participation.

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?

Since taking office in December 2023, the new national administration has implemented significant legislative changes in Argentina's air transportation sector, focusing on deregulation, privatisation, and labour relations.

A deep reform has been introduced to liberalise the aviation market, aiming to increase competition and attract foreign airlines allowing airlines to operate unlimited routes and frequencies, subject to safety approvals, and grant full control over ticket pricing by eliminating previous price floor regulations.

Among others, the new administration passed legislation declaring aviation as an “essential service” imposing minimum service levels during strikes (Decree 825/2024). This regulation together with the government's intention to privatise the national airline (Aerolíneas Argentina) have sparked public debate and raised alarms among unions.



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Venetucci Maritime is a distinguished international law firm specialising in transportation law, with a proven track record in handling complex litigation, including court proceedings and arbitration, across maritime and aviation sectors. The firm plays an active role in administrative proceedings against customs, representing carriers, exporters, and importers in matters involving fines in both sea and air trade. Recently, Venetucci expanded its expertise with the launch of an aviation division, providing strategic advice to local companies on aircraft acquisitions and the development of chartering operations. This new division underscores the firm's commitment to delivering comprehensive legal solutions in the evolving transportation industry.

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Austria



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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.

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? Does this legislation adequately cover all the issues which tend to arise in your jurisdiction, or do you feel that certain amendments or additional laws would be desirable?

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-Regulation 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*).

The European legislative framework provides a very comprehensive set of rules in this regard and the Austrian national laws play a rather subordinated role in this field of law.

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. Does the *status quo* tend to create an aviation market which is sufficiently competitive and open?

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 might contain restrictions with regard to cabotage, however, due to the fact that Austria is a very small country, cabotage flights are rather irrelevant for foreign air carriers.

The unified system for third country operators to apply for a TCO with EASA makes the European market very accessible for foreign airlines, as only one permit must be applied for it to be recognised by all EU Member States. Austria recognises its geographically central position and is committed to the destination of Vienna being a hub, which is why we believe the Austrian market embraces international carriers flying to this destination.

1.7 Are airports state or privately owned? Are there any plans to alter this position?

Regional airports are mainly state-owned, usually with a combination of the regional state and city stakeholders. The regional airport of Klagenfurt was privately owned until 2023, and was renationalised, being now fully state-owned. Vienna International Airport, Austria’s main airport, is a listed stock corporation and is currently 40% state-owned (city of Vienna and lower Austria) with 60% stock traded on the stock exchange.

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? Do you believe that there are any changes which would be of benefit to the existing regime?

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.

Passenger liability for air accidents are mainly governed by the international regime of the Montreal and Warsaw Conventions.

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

Air operators and airports in Austria also need to comply with the sustainability requirements being currently established by EU regulations, such as Regulation No. 2023/2405 (“ReFuelEU

Aviation”) aiming at increasing the use of sustainable aviation fuels (“SAF”) as well as other measures to reduce carbon emissions. The difficulty air operators and airports are facing in this regard is the limited availability of SAF.

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 Art. 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.

3.8 Is there any trend developing towards regulatory support in civil justice for out-of-court solutions and the importance of engaging in Alternative Dispute Resolution (or similar)? If so, what (if any) are the implications for the answers in questions 3.1–3.7 inclusive?

There is no such trend.

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? In your opinion, are there any improvements to the existing regime which would be advisable?

The creation of joint ventures or partnerships between airlines is not regulated differently than any other joint venture of partnership. Such cooperations are typically established through (civil law) contracts subject to contract law. Some cooperations, in particular, if certain thresholds are reached or a non-EU based partner is involved, require regulatory approval from the Austrian Federal Competition Authority (*Bundswettbewerbsbehörde*) (merger control) or the approval of the Austrian Federal Ministry of Labour and Commerce (*Bundesministerium für Arbeit und Wirtschaft*) pursuant to the Austrian Investment Control Act (*Investitionskontrollgesetz*).

Anticipated changes in the ownership structure of air operators will need to be notified to the Ministry of Climate Protection, Environment, Energy, Mobility and Technology.

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? In your opinion, are there any improvements to the existing regime which would be advisable?

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 Competition 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 Competition 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.

Regarding approval from the Federal Ministry of Labour and Commerce under the Austrian Investment Control Act, a written request for approval needs to be filed immediately after the contract was signed or in case of a public tender

immediately after the intention to make an offer has become public. The Federal Ministry of Labour and Commerce shall issue a notification to the European Commission upon which the authority has a time frame of one month to decide whether approval is granted or a more in-depth examination of the transaction shall take 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 not.

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

This is not relevant in Austria.

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? Is this legislation adhered to and well monitored?

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.

Legislation is adhered to and well monitored.

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?

The competent authority for airports in Austria is the Ministry of Climate Protection, Environment, Energy, Mobility and Technology. There is no particular legislation for the airport authority. General EU Regulations and national aviation laws need to be respected and outline the competencies of the airport authority.

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. Please see the response to question 4.1 for the conditions.

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?

The implementation of the EU’s ReFuelEU Aviation Initiative as well as other sustainable practices and measures to reduce carbon emissions will govern the developments in the industry. Furthermore, digitalisation will also be a further focus.



Irena Gogl-Hassanin, LL.M., is an Austrian attorney-at-law specialising in Aviation and Real Estate Law. After graduating from the University of Vienna in Austria, she also obtained a Master of Laws degree in "International Banking & Finance" at University College London. Since her admittance to the Austrian Bar in 2009, she worked not only in renowned Austrian law firms but also at one of the leading London Aviation law firms, which allowed her to gain vast knowledge and experience in the International and Austrian Aviation industry. She is the author of several publications on aviation and finance topics and, since 2008 has been teaching as a lecturer in the aviation management Master's Programme at the FH Joanneum in Graz, Austria. She has been cooperating with GHP since 2023. Amongst her clients are renowned international airlines, insurances, operators, banks and service providers for the aviation industry.

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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), as amended and restated from time to time, including Regulation 2024/2803.

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? Does this legislation adequately cover all the issues which tend to arise in your jurisdiction, or do you feel that certain amendments or additional laws would be desirable?

Please see question 1.1 above, as well as question 1.9 regarding the implementation of the Just Culture regime. To note is that the implementing rules, the Authority Requirements and the Organization Requirements, under the 2018/1139 Regulation (as will be amended by Regulation 2024/2803 on the implementation of the Single European Sky), are directly applicable in Belgium. The DIRCOM is the National High-Level Airspace Policy Body, consisting of the Belgian Ministry of Defence, the Belgian civil ANSP, MUAC and the BCAA (as prescribed in art. 4.3 of the Comm. Reg. No. 2150/2005) and is assisted in its task by the Belgian Airspace and Navigation Committee (BELANC). It deals with the co-ordination between military service providers, civil service providers and other airspace users. Since June 2024, there is one NOTAM office in Belgium, responsible for the issuance of all NOTAMS. The merger into a joint NOTAM office organised by Belgian Defence and Skyes enhances the safety of airspace operations. Furthermore, the BCAA, in collaboration with the Federal Public Service Mobility and Transport develops the BASP, in which it identifies the safety risks in Belgium and how these are mitigated. Between October 2023 to 31 January 2024, the BASP v4 was published. This report reflects well the still pending issues. Some of the topics raised were: 1) enhancing the coordination between the civil and military airspace users (of which the steps are currently put in motion); 2) an overarching theme regarding the efficient use of airspace and cooperation between the many actors on national and EU level; and 3) ensuring the implementation and maintenance of SMS by the various Belgian aviation service providers, with oversight by the BCAA and the publication of a guidance document.

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. Does the *status quo* tend to create an aviation market which is sufficiently competitive and open?

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.

The landing/starting and ground handling rights defer between the various airports and are negotiable between the airport operators and the airlines. Furthermore, some airports, such as Brussels South Charleroi Airport, receive large subsidies allowing them to charge lower landing/starting and ground handling rights. A complaint was filed for illegal subsidies before the EU court of justice, which has, however, been overturned.

1.7 Are airports state or privately owned? Are there any plans to alter this position?

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.

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

The other airports in Belgium are: Liège Airport in Bierstet, 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 – 24.1%; NEB Participations – 50.36%; and ADP International – 25.54%.

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.

No statements have been made indicating an impending shift towards nationalisation or privatisation of any airport.

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 were 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). This Royal Decree of 25 September 2003 has been replaced by a new Royal Decree of 11 June 2023 which delineates the power of the Minister, in accordance with Regulation (EU) No. 598/2014 as regards the exploitation of Brussels National Airport, more specifically noise-related operating restrictions (<https://www.ejustice.just.fgov.be/eli/besluit/2023/06/11/2023400002/justel>). 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? Do you believe that there are any changes which would be of benefit to the existing regime?

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 'AAIU(Be)'). 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. It contains safety recommendations to competent authorities and other parties.

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. Safety investigations by the AAIU are performed solely for improving safety; the investigation does not address questions of guilt or responsibility, nor does it consider liability for damages.

Keyes 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 has been 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.

The BCAA has taken many steps recently to enhance the accidents and incidents investigations and the reporting.

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. Since 16 June 2024, the NOTAM-offices of the military and the civil aviation information services have been integrated into one NOTAM office. The NOTAM office is responsible for preparing, managing and disseminating essential information relating to air navigation to all civil and military airspace users.

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 was 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'aéronef 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. This directive has entered 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 is aligned with the allocation for flights under Directive 2003/87/EC, whereby the 2024 allocation is derived from the 2023 allocation to active operators, adjusted by the reduction factor in the Directive.

Free allowances are 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 airliners 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

In the context of the 'Fit for 55' package, a new Regulation (EU) 2023/1804 on the deployment of alternative fuels infrastructure repealing Directive 2014/94/EU entered into force on 13 April 2024 (**Alternative Fuels Infrastructure Regulation (AFIR)**).

The specific objectives of the AFIR are:

- to ensure minimum infrastructure to support the required uptake of alternative fuel vehicles across all transport modes and in all EU Member States to meet the EU's climate objectives;
- to ensure full interoperability of the infrastructure; and
- to ensure comprehensive user information and adequate payment options at alternative fuels infrastructure.

Airports will be required to provide electrical supplies for stationary aircraft by 2025 at gates and by 2030 at outfield posts. This measure aims to reduce the reliance on jet fuel for ground operations.

The Regulation (EU) 2023/2405 of the European Parliament and of the Council of 18 October 2023 on ensuring a level playing field for sustainable air transport (**ReFuelEU Aviation**) has set strict goals 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; and 1.2% must be synthetic aviation fuel by 2030 in all EU airports and by 2050 this is increased to 35%.

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.

On July 25, 2024, a major new directive, the EU Directive on Corporate Due Diligence in Sustainability Ensuring Responsible Business Practices in the EU took effect, requiring businesses to adopt a proactive approach in reducing their negative impacts on human rights and the environment. This directive, amending Directive (EU) 2019/1937, is intended to enhance existing sustainability reporting obligations.

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.

Pledges 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 486 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 must 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.

3.8 Is there any trend developing towards regulatory support in civil justice for out-of-court solutions and the importance of engaging in Alternative Dispute Resolution (or similar)? If so, what (if any) are the implications for the answers in questions 3.1–3.7 inclusive?

Yes, it is possible in Belgium to appoint an arbitrator or mediator or have their attorneys partake in 'collaborative law'. All are regulated in the Belgian Judicial Code. Courts often also ask the parties prior to the start of the procedure whether mediation is possible and separate courts and judges are organised in many courts. We refer to the specific explanations on enforcement of arbitral decisions in the answers above.

Mediation

With regard to mediation, either the judge or the parties in the litigation can propose for mediation to be initiated, suspending the judicial proceedings. It is a process of voluntary consultation between the conflicting parties with the participation of an independent, neutral third party. No one is obligated to accept the proposal for mediation or participate in. It is regulated in Articles 1723/1 to 1737 Judicial Code.

Collaborative law

It is a form of amicable dispute resolution, whereby the attorneys of all parties can negotiate an agreement between the parties. The attorneys are under an exclusive mandate of assistance and advice. There is, unlike arbitration or mediation, no neutral third party.

If the negotiation fails, the collaborative attorneys are obligated to terminate their intervention and may no longer intervene in any litigation between the same parties in the context of a dispute that was the subject of collaborative negotiations. This prohibition extends to any lawyer that is part of their law firm.

If the negotiation succeeds, the result is recorded in writing by the collaborative attorneys and can be, in case of disputes further down the line, enforced before the Court.

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? In your opinion, are there any improvements to the existing regime which would be advisable?

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? In your opinion, are there any improvements to the existing regime which would be advisable?

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.

There have been recently no mergers or full function joint ventures involving Belgian airlines other than the acquisition of all the shares in the parent company of Brussels Airlines by Deutsche Lufthansa AG in 2016.

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. Recently, the European Commission launched a call for evidence in order to update its Guidelines on State Aid to Airports and Airlines.

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, delayed flights and/or cancelled flights? Is this legislation adhered to and well monitored?

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(l)(b) in conjunction with article 8(l)(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.

The BCAA sets out on its website all the passenger rights and also allows the passengers to introduce a claim via a link on their website. The BCAA then acts as a mediator. This also allows the BCAA to monitor the adherence.

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@mobilit.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, as amended from time to time, allows only two ground handlers for each of the following activities: baggage handling; cargo handling; fuel supply; and platform handling at Brussels Airport. At least one of them cannot be directly or indirectly owned by more than 25% by the airport or any of its users, or be controlled by a user which transported more than 25% of the passengers or cargo registered at the airport during the year preceding the year in which those service providers are selected. 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?

On 22 July 2024, the European Commission published the draft revised interpretative guidelines on air passenger rights under the 261/2004 regulation. It is officially titled "*The approval of the content of a draft Commission Notice on the Interpretative Guidelines on Regulation (EC) No 261/2004 of the European Parliament and of the Council establishing common rules on compensation and assistance to passengers in the event of denied boarding and of cancellation or long delay of flights and on Council Regulation (EC) No 2027/97 on air carrier liability in the event of accidents*". These Guidelines aim to address the most common issues raised by national enforcement authorities, passengers and their associations, the European Parliament, and industry stakeholders and incorporate the judgments of the European Court of Justice. The proposal for the amendment of the Regulation itself is currently being examined.

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). The EU also plans to introduce a (voluntary) Flight Emissions Label, aimed at increasing transparency and providing passengers with reliable information

about the environmental impact of their flights. It is currently holding a public consultation in this regard. Brussels Airport together with its partners, including Brussels Airlines and TUI Airlines Belgium created Stargate which 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.

On November 11, 2024, the European Parliament and Council published Regulation (EU) 2024/2803, dated October 23, 2024, concerning the implementation of the Single European Sky. This regulation updates and clarifies previous regulations (including Regulation 2018/1139) with the goal of establishing a more efficient, safe, and sustainable air traffic management (ATM) system throughout Europe. The optimisation of European airspace usage will result from the interoperability of various ATM systems across Europe and cooperation between National Supervisory Authorities, while maintaining high standards of air traffic safety. This increased optimisation will also lead to improved environmental performance in aviation, as it will require less fuel and, consequently, reduce aviation-related emissions. This Regulation will not prevent Member States from applying measures necessary to safeguard essential interests of their security or defence policy.



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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.

With more than 30 years of experience in financial law, she has developed a strong practice in financial litigation.

Birgitta has niche knowledge in the legal aspects of fund management, regulatory aspects of insurance and reinsurance and complex insurance issues.

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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.

Brazil has its own legislation and regulatory guidelines regarding aviation. It is also party to an international multilateral agreement and air services agreements (ASA). Before understanding more about them, it is necessary to learn about the most relevant public authorities which are responsible for ruling the aeronautical industry.

The National Civil Aviation Agency (ANAC) is a governmental regulatory agency created by Law 11,182/2005, connected to the Ministry of Ports and Airports, which works autonomously in the administrative and financial spheres. The ANAC is responsible for the regulation, inspection and certification of aircraft, companies, manufacturers, aircraft maintenance organisations, aerodromes, schools and civil aviation professionals, and must promote safety, regularity, and efficiency in all aspects of civil aviation, with the exception of the air traffic control system and the aeronautical accident investigation system. The ANAC is responsible for developing the Brazilian aviation rules, and must enforce compliance of such regulation.

The Department of Airspace Control (DECEA) is a governmental organisation, subordinated to the Aeronautical Command (COMAER) and Ministry of Defense. The DECEA controls the Brazilian airspace, valuing the safety and efficiency of air operations, both civil and military.

The Brazilian jurisdiction has rules with an outstanding degree of international standardisation, which includes the following most relevant Multilateral International Treaties to which Brazil is signatory:

- The Warsaw Convention for the Unification of Certain Rules Relating to International Carriage by Air.
- The Hague Protocol to amend the Warsaw Convention.
- The Guadalajara Convention to supplement Warsaw Convention.
- The Chicago Convention on International Civil Aviation.
- The Tokyo Convention on Offences and Certain Other Acts Committed on Board Aircraft.
- The Montreal Convention for the Unification of Certain Rules Relating to International Carriage by Air.
- The Cape Town Convention on International Interests in Mobile Equipment and Protocol to the Convention on International Interests in Mobile Equipment on matters specific to aircraft equipment ("Aircraft Protocol").

Brazil also established a Multilateral Open Skies Agreement for Member States of the Latin American Civil Aviation Commission (LACAC), aiming to enable the expansion of flights and connectivity between Latin American States, and several International Bilateral Agreements on air services, airworthiness and safety, seeking the expansion of passengers and cargo airflow between nations and to increase the competitiveness of the Brazilian aviation industry.

The following are the main local regulations applicable to aviation in Brazil, beginning with article 178, the sole paragraph of the Federal Constitution, which concerns international transport and agreements signed by Brazil and the Brazilian Aeronautical Code, Law 7,565/1986 (*Código Brasileiro de Aeronáutica* – CBA), which establishes the general aeronautical infrastructure to promote the safety, regularity, and efficiency of civil aviation.

The following are the other important rules to consider:

Air Carriers	The ANAC's Brazilian Civil Aviation Regulation – RBAC 121; and the ANAC's Resolution 400/2016.
Air Charter	RBAC 135.
Air transport ancillary services companies	RBAC 116.
Private operation	RBAC 91.
Civilian unmanned aircraft, also known as drones	RBAC-E 94; the DECEA's Aeronautical Command Instruction; and ICA 100-40.
Aircrew	Law 13,475/2017; and RBAC 117.
Aircraft registration, deregistration and IDERA	The ANAC's Resolution 293/2013; and the ANAC's Resolution 309/2014.
Operators Certification	RBAC 119.
Air Passenger Accessibility	The ANAC's Resolution 280/2013.
Sanctions	The ANAC's Resolution 472/2018.

In 2023, the ANAC, the Federal Aviation Administration (FAA), the European Union Aviation Safety Agency and (EASA) and the Civil Aviation Authority of the United Kingdom (CAA UK) entered into three Letters of Intent to promote aviation safety, environmental quality and the technological development of aviation services, including the eVTOL industry. Furthermore, the ANAC issued the Advanced Air Mobility Program and Perspectives regarding the matter. In 2024, the ANAC and the Civil Aviation Authority of Singapore (CAAS) entered into a Memorandum of Understanding on Advanced Air Mobility to strengthen collaboration on regulatory approaches, technical standards, and industry engagement.

The last regulatory update brought by the ANAC related to eVTOLs was the issuance of the Ordinance 15.760/2024 establishing the Airworthiness Criteria for the EVE-10 aircraft model by EVE Air Mobility. The document provides the regulatory framework that will guide the ongoing certification process for this eVTOL model at the ANAC.

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

An interested Brazilian company must submit a certification request to the ANAC to operate public air transport in Brazil, based on the determinations of RBAC 119.

If the air carrier operates an aircraft with more than 19 passenger seats, or a maximum paid cargo capacity of more than 3,400 kg, the regulatory basis for the operation is the RBAC 121. However, if the air carrier operates an aircraft with up to 19 passenger seats, or a maximum paid cargo capacity up to 3,400 kg, the regulatory basis for the operation is RBAC 135.

The Air Operator's Certificate and the Operations Specifications are the documents issued by the ANAC that greenlight an air carrier.

Following the guidelines of the International Civil Aviation Organization (ICAO), the certification process established by the ANAC is divided into five phases: (i) prior request with a preliminary meeting with the ANAC; (ii) formal request; (iii) documentary assessment of the manuals, programmes and other documents prepared by the air carrier, including the Aircraft Certificate of Registration at the Brazilian Aeronautical Registry (RAB); (iv) the demonstrations and inspections stage when the air carrier schedules a face-to-face meeting with the ANAC to verify the adherence to the procedures proposed in the documentation presented; and (v) effective certification after the ANAC has examined the legal, tax and social security obligations of the air carrier, and decided to grant the authorisation to start providing public air transport.

There are also particular requirements and steps for foreign air carriers, as discussed further below.

1.3 What are the principal pieces of legislation in your jurisdiction which govern air safety, and who administers air safety? Does this legislation adequately cover all the issues which tend to arise in your jurisdiction, or do you feel that certain amendments or additional laws would be desirable?

Air safety in Brazil is governed by the ANAC and the COMAER. Such current legislation is solid enough to guarantee the safety of the aviation industry in Brazil, and follows the guidelines and standards of the ICAO.

However, if such rules are not followed by air carriers, or in the event of an air crash or any other accident, the authorities must enforce mandatory aviation practices, and if necessary, review the applicable rules and safety procedures.

The current legislation gathers standards as the Chicago Convention (in particular, Annex 19), the CBA, Decree 9.540/2018 (which provides for the Aeronautical Accident and Investigation Prevention System), and several other regulations, such as RBAC 121 and 135, and the ANAC's Safety Policy for promoting good practices and positive safety culture in the Brazilian civil aviation system.

There are also several regulations from the ANAC, ANATEL and DECEA regarding air safety in the operation of civilian unmanned aircraft (drones), making Brazil an attractive jurisdiction for air innovation.

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

The general principles of air safety control are equally applicable for commercial, cargo and private flights in Brazil. However, each air operation profile must also observe its specific regulations containing specific standards for air safety.

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

Yes, the air charters are regulated separately in Brazil by RBAC 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. Does the *status quo* tend to create an aviation market which is sufficiently competitive and open?

The Brazilian aviation industry is attractive for foreign players due to the size of its territory, the urgent necessity of national integration, and the full access to its remote regions and areas. In addition, recent legislative developments opened the market to air carriers whose capital is 100% foreign, enabling new, low-cost airlines to begin operating in Brazil. In parallel, the main public airport assets were granted to the private sector, including players from several countries.

In 2022, the bureaucracy associated with document submission for providing international regular and non-regular air transportation was reduced. Foreign air carriers are now exempt from the prior operating authorisation and can register directly with the commercial registry, while handling the operational authorisation with the ANAC.

New foreign low-cost airlines interested in joining the Brazilian market and providing scheduled air services must first be registered with the ANAC.

Such scheduled air services, including codeshare operations, are based on the RBAC 129, which regulates the operations of foreign air carriers engaged in common carriage in Brazil. The foreign air carrier must provide the following documents to the ANAC: (i) the Foreign Company Registration Form; (ii) a copy of the filing of the foreign company's registration with the Foreign Commercial Board; (iii) a copy of the Air Operator's Certificate issued by the foreign civil aviation authority; (iv) a copy of the Operations Specifications issued by the foreign civil aviation authority; (v) aircraft information; (vi) a Flight Operating Plan; (vii) information about handling service providers; (viii) information about maintenance services; (ix) a General Operations Manual; (x) any

requirement exemptions issued in favour of the air carrier, if applicable; (xi) the registration of an AVSEC responsible professional (Aviation Security); and (xii) the registration of the company in the Service Time Guarantee Fund (FGTS) system. All scheduled operations must also be recorded in the Operations Recording System (SIROS). The air carrier's operations in Brazil must be based on the traffic rights negotiated in the ASA.

1.7 Are airports state or privately owned? Are there any plans to alter this position?

There are both kinds of airport in Brazil. The main airports are now operated by private players.

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

No, they do not. The ANAC imposes requirements on air carriers, as stated below, and also to the airports based on RBAC 139, RBAC 153 and RBAC 154, among others.

Moreover, the DECEA also determines the air carriers' and airports' obligations regarding the use of airspace, and the respective documents, plans and equipment.

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? Do you believe that there are any changes which would be of benefit to the existing regime?

The Brazilian aeronautical accident investigation and prevention system is ruled by the Aeronautical Accidents Investigation and Prevention Center (CENIPA), which is subordinate to the COMAER. We rate such system as enough and effective. It does not aim to point liability or indicted agents, but it cares about understanding the reason for the accident to share the acknowledgement and avoid cases from recurring. The CENIPA's standards follow the ICAO guidelines, Annex 19 of the Chicago Convention, the CBA, and the Decree 9.540/2018 which provides for the Aeronautical Accident and Investigation Prevention System.

Additionally, the assistance plan for victims of aeronautical accidents and support for their relatives, which is mandatory to the air carriers' operations, must be applicable in accordance with the IAC 200-1001/2005.

The ANAC may also perform administrative procedures related to any incident or accident, monitor whether air carriers are keeping their abovementioned assistance plans up to date, and carry out periodic simulations to assess air carriers' preparedness in the event of assistance to accident victims.

Furthermore, there are criminal investigation procedures driven by several branches of the Police.

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

The CBA was amended by the recent updates through the publication of Law 14,368/2022. Following this legislative update, the ANAC's package of 50 efforts was published, with the aim of modernising civil aviation rules, generating cost reduction, reducing bureaucracy in certifications, promoting

unmanned aviation, and creating more benefits for all current and future players in the Brazilian jurisdiction.

Despite that, the new programme '*Asas para Todos*' was launched by ANAC in 2024 to foster diversity in the passenger community, increasing access for all levels of society to air transport, increasing the number of women playing strategic and high-performance roles in the civil aviation industry, and aiming to empower more professionals through education and training partnerships.

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 a signatory country to CORSIA, Brazil has obligations regarding the control of carbon dioxide (CO₂) emissions in the aviation sector.

The ANAC's RBAC 38 rules provide the requirements for CO₂ aircraft emissions, based on Annex 16 of the Chicago Convention. In January 2025, the ANAC's new Resolution 743/2024 will become effective, and the air carrier will be liable for monitoring its CO₂ emissions when it emits an amount exceeding 10,000 tons of CO₂ in international flight stages in one calendar year using fixed-wing aircraft, with a maximum certified takeoff weight above 5,700 kg. The air carrier's total CO₂ emission compensation obligations relating to a conforming cycle will be calculated by the ANAC. This is an effort in line with CORSIA's commitment.

Brazil has also signed all the most relevant programmes regarding sustainable aviation fuels, such as Capacity Building and Training for Sustainable Aviation Fuels (ACT-SAF).

Furthermore, Law 15,042/2024 established the Brazilian Greenhouse Gas Emissions Trading System to regulate the national carbon credit market, ruling all industries, including the aviation sector.

2 Aircraft Trading, Finance and Leasing

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

Yes, such registration before the RAB constitutes proof of the respective ownership, according to articles 72(II) and 115(IV) of the CBA, and is evidenced by the aircraft certificate of registration issued by the RAB.

The registration with the the RAB of an aircraft previously registered in another country can only be carried out after the applicant has proven that the foreign registration has been suspended or cancelled, by presenting the document issued by the civil aviation authority of the respective country.

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 the competent body of all aircraft registration, including any liens as mortgages and charges subjected to Brazilian legislation. The mortgage and registration of charges are ruled by Articles 138–152 of the CBA and the ANAC's Resolution 293/2013.

The RAB is a registry that is part of the ANAC, and concentrates the technical, usage and airworthiness data of Brazilian aircraft. The RAB is responsible for the granting of registration and nationality marks for Brazilian aircraft, issuing the aircraft certificates of airworthiness and certificates of registration, recognising the Real currency, use and acquisition rights of domain in the aircraft transfer of property, and aircraft deregistration, among other things.

Thus, the mortgage will be constituted by its registration before the RAB and with the endorsement on the respective aircraft certificate of registration. According to the CBA, previous aircraft registration is a conditional requirement to the registration of mortgages in Brazil. An aircraft that is provisionally registered before the RAB may not be the object of a mortgage, unless it is the guarantee of the agreement on which the registration is based.

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 several liability rules concerning aircraft operation in Brazil.

When the name of the aircraft operator (for example the lessee) is registered before the RAB, through any usage agreements (such as lease agreements), the aircraft owner is excluded from the responsibility inherent to the aircraft operation. The aircraft owner will be considered the aircraft operator, until proven otherwise, if the operator's name is not registered before the RAB, and if it is proven that there was an aircraft operator whose name is not registered before the RAB, the operator and the owner shall share the liability for any infraction or damage resulting from the aircraft operation, according to Article 124 of the CBA.

Therefore, foreseeing the aircraft operator name on the aircraft certificate of registration is a key premise for safe transactions and further liabilities.

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. Article 155, § 1º of the CBA states that the aircraft's transfer of title always includes the engines, equipment and internal installations, unless otherwise expressly stated. Therefore, the owners and financiers of engines installed 'on-wing' must know this singularity and protect their interest in the relevant agreements.

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 importation of an aircraft to commercial operation by commercial airlines has lower taxation, with the incidence of four federal taxes: (1) Import Duty – II – 0% rate; (2) the

Tax on Manufactured Product – IPI – 0% rate; (3 and 4) the Profit Participation Program – Import (PIS-Import) and Social Security Financing Contribution – Import (COFINS-Import) – 0% rate; and one state tax, the Tax on Distribution of Goods and Services – ICMS – 4% rate. There is no need to issue an electronic tax document.

The tax rates for importation of an aircraft by air charters, companies, trading companies or other companies and individuals for private purposes are higher.

In addition, Brazil has approved a relevant Tax Reform which will simplify and reduce the number of types of taxes in general. This is due to take place in 2026.

Nevertheless, the airline sector already suggests that the exclusion of commercial aviation from the special taxation regime could generate a 270% increase in the sector's tax burden, or the equivalent of an additional expense of R\$11.1 billion per year (<https://www.abear.com.br/imprensa/agencia-abear/noticias/reforma-tributaria>).

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

Yes, Brazil is a signatory to all of the aforementioned conventions.

2.7 How are the Conventions applied in your jurisdiction?

The Brazilian Federal Constitution determines the rules for the application of conventions. All international conventions must be approved by the National Congress, ratified by the President of the Federative Republic of Brazil, and enacted through a federal decree published in the Official Gazette. After all these steps, the convention and its enforceability receive the same importance as ordinary 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?

Currently, the taxes that affect finance leases and operating leases are: the PIS-Import/COFINS-Import Tax on Financial Transactions – IOF; the Withholding Income Tax – IRF; and the Tax on Services – ISS, but such scenario may change in 2026.

A Double Tax Treaty is being negotiated between the Brazilian and Irish Governments, and if closed, its terms could favour aircraft leasing operations between Irish lessors and Brazilian airlines.

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?

If all the Brazilian regulatory rules (especially regarding the registration procedures before the RAB) are followed and accomplished, 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?

In the event of default, if the amicable repossession procedures were unsuccessful, the lessor/financer might file a search and seizure lawsuit (*ação de busca e apreensão*) or a repossession lawsuit (*ação de reintegração de posse*), in accordance with the type of agreement and/or guarantee available, in order to seek repossession of the aircraft, with the possibility of requesting an injunction decision to immediately repossess the aircraft, provided that the lessor demonstrates the probability of the lessor's rights and the danger of damage or the risk to the useful outcome of the lawsuit.

The lessor/financer must formally prove their indirect possession of the aircraft, the lessee/debtor's event of default, the termination of the agreement, and the lessee/debtor's refusal to return the aircraft amicably under the term of such agreement.

In such a case, the legal remedy available to the lessor/financer would be seizure of the aircraft, which must be requested to the judge, according to Article 301 of Law 13,105/2025 (Brazilian Civil Procedure Code). However, such injunction may be revoked by the court at any time.

The lessee/debtor must then file its defence and the judicial decision will be rendered, subject to appeal.

In the case of a claim for aircraft repossession, the lessor/financer may be required to post a bond in an amount sufficient to compensate for any damages that the lessee/debtor may suffer if the final decision is not favourable to the lessor/financer, or to guarantee court costs and legal fees.

Regarding the unpaid debts, the lessor/financer may file a collection lawsuit and the attachment may be the legal remedy available, which must be requested to the court. The attachment may apply to as many assets as are sufficient to pay the updated debts, interest, court costs and legal fees.

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?

Yes, the lessor is permitted to request the aircraft's deregistration from the RAB and promote its due exportation in the event of default of any lease agreement, making use of the IDERA (Irrevocable Deregistration and Export Request Authorization) in cases where repossessions are amicable. For this purpose, the Cape Town Convention and Aircraft Protocol has been in effect in Brazil since 1 March 2012; and for local matters, the Cape Town Convention and the Aircraft Protocol have been effective from 16 May 2013, pursuant to Decree 8008, dated 15 May 2013, in addition to the ANAC's Resolution 309, dated 18 March 2014.

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?

State civil courts and arbitral chambers are appropriate for aviation disputes related to operation, liability and contractual issues, depending on what was agreed by the parties in the agreements.

State small claims courts may be chosen by the plaintiff where the amount claimed does not exceed 40 Brazilian minimum wages.

Federal courts are appropriate when the dispute involves federal state-owned companies or administration entities, such as the ANAC.

Federal criminal courts are appropriate to render decisions related to criminal prosecutions.

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?

It is the plaintiff's and the defendant's responsibility to pay the costs of the acts they perform or require in the lawsuit, from the beginning until the unappealable decision, in advance. The decision will condemn the loser to pay the winner the advanced costs.

The Brazilian or foreign plaintiff who resides or is domiciled abroad may be required to post a bond in an amount sufficient to cover the court costs and legal fees if the plaintiff does not have properties in Brazil that guarantee such payment. The bond will not be required when there is an exemption provided for in an international agreement or treaty to which Brazil is a party, or in execution lawsuits based on an extrajudicial title and in compliance with a judgment, or in the counterclaim.

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?

Law 9,307/1996 regulates the arbitration procedures in Brazil, and injunctions (as interim orders) may also be rendered by arbitral tribunals. The final decision must be rendered by the arbitral tribunals within the deadline agreed by the parties or within six months, counting from the institution of the arbitration procedure or the replacement of the judgment.

Regarding the lawsuits filed before the Brazilian courts, there are several types of judicial orders in the Brazilian legal system on an interim and final basis. An interim order may be obtained within the context of different proceedings by means of an injunction. This means that any judge has the power to grant preliminary orders to prevent damages that the elapsing of the procedural time may cause. On the other hand, a final decision may be obtained through different proceedings set forth by the Brazilian Civil Procedure Code.

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 lawsuit is subject to a double level of jurisdiction. First degree-level decisions rendered by a first-degree court can be reviewed by a court of appeal either in formal aspects or merits. Federal appeals can also be addressed to the Supreme Court, the Superior Court of Justice and the Superior Labor Court, based on strict violation of the Federal Constitution or federal law or labour matters.

The decisions rendered by arbitral tribunals are not subject to appeal (only to a motion for clarification to clarify or complete aspects of the decision). However, they can be the subject of a claim for nullification to be filed before one of the Brazilian 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?

Under Brazilian civil regulation, *force majeure* is understood as an unpredictable and inevitable fact. Article 393 of Law 10,406/2002 (Brazilian Civil Code) establishes that there is no liability due to *force majeure* events, unless the party formally declares that it is responsible for it. The parties of an agreement may agree the contractual remedies in the case of a *force majeure* event.

3.8 Is there any trend developing towards regulatory support in civil justice for out-of-court solutions and the importance of engaging in Alternative Dispute Resolution (or similar)? If so, what (if any) are the implications for the answers in questions 3.1–3.7 inclusive?

The National Council of Justice (CNJ) is a public institution aiming to improve the work of the Brazilian Judiciary, guaranteeing efficiency, transparency and social responsibility to Brazilian Justice, and developing initiatives to reduce the number of legal disputes through conciliation and mediation. The CNJ's Resolution 125/2010 created the Permanent Centers for Consensual Methods of Conflict Resolution, aiming to structure units designed to handle conciliation cases.

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? In your opinion, are there any improvements to the existing regime which would be advisable?

The Administrative Counsel of Economic Defense (CADE) is the independent agency reporting to the Ministry of Justice in charge of such regulation and enforcement, with the goal of ensuring free competition.

Law 12,529/2011 (Competition Defense Law) and the CAE's Resolution 17/2016 apply to several economic fields. There is no specific antitrust regime for the aviation industry.

Any acts which under any circumstance have the following objectives, or may have the following effects, shall be considered violations to the economic order, regardless of fault, even if not achieved: (i) to limit, restrain or in any way injure free competition or free initiative; (ii) to control the relevant market of goods or services; (iii) to arbitrarily increase profits; and (iv) to exercise a dominant position abusively.

A joint venture or other type of partnership transaction regarding air carriers will be analysed by the CADE and may be considered a concentration act, and may then be rejected or cleared with the conditions of remedies.

Additionally, Article 192 of the CBA provides that any consortiums, pooling, consolidation or merger of services or interests between air carriers must comply with the ANAC's regulation regarding the matter.

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

The CADE determines the 'relevant market' for air transport based on the product standpoint (passenger or cargo air transport) and the geographic standpoint, focusing on the route or macro region in which the companies operate, considering the existence of direct and indirect flights and the substitutability of the airports.

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, this is provided by the CADE.

4.4 How does your jurisdiction approach mergers, acquisition mergers and full-function joint ventures? In your opinion, are there any improvements to the existing regime which would be advisable?

Please refer to question 4.1 above. Besides that, the open market to full foreign capital Brazilian air carriers allows Brazil to be more attractive for foreign investments in the aviation sector.

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

There are two distinct procedures provided by the CADE.

- **Fast-track procedure:** this is reserved for transactions with minimal potential to harm competition, when the combined market share is below 20% in horizontal markets or when the parties have less than a 30% market share in vertical markets.

Timeframe: 30 days.

- **Ordinary procedure:** this is a more detailed review, including the completion of a comprehensive form, when the transaction results a market concentration of 20% or more in horizontal markets or vertical integrations where one party holds over 30% of the relevant market.

Timeframe: 240 days, which can be extended by an additional 60 days if requested by the transaction parties or 90 days if requested by the CADE's Tribunal.

- **Costs and expenses:** filing the CADE's fee payable and eventual costs on sworn translations.

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, these are governed by the Federal Constitution, International Treaties, the Brazilian Civil Code, the Brazilian Civil Procedure Code, the CBA, the rules issued by the Brazilian Central Bank, the National Monetary Council, and Brazilian Federal Revenue, among others.

Additionally, Law 12,462/2011 regulates the National Civil Aviation Fund (FNAC), managed by the Federal Government, which aims to support the expansion and modernisation of

aeronautical infrastructure and the broader civil aviation sector, among other things.

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

The Regional Aviation Development Program (PDAR) was created by Law 13,097/2016, with the primary objective of identifying communities lacking airport access, enhancing essential aviation infrastructure, and reducing reliance on road transportation in those areas.

The PDAR may authorise economic subsidies limited to the use of up to 30% of the FNAC's resources to be allocated directly to: (i) the airlines regularly registered in the PDAR; (ii) the payment of costs related to some airport and air navigation fees for some regional airports; (iii) the payment of costs corresponding to some additional airport tariffs; and (iv) the payment of part of the costs of up to 60 passengers transported on some direct flights on regional routes, depending, among other criteria, on the airport served, the kilometres flown and the fuel consumption, with up to 50% of the seats available per aircraft being subsidised, except within to the Legal Amazon area, where the limit of 50% does not apply.

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 Law, Law 13,709/18 (LGPD), came into effect in 2020. Under its provisions, air carriers are only permitted to collect passengers' personal data for specific and necessary purposes, such as processing reservations and issuing flight tickets.

The ANAC's Resolution 255/2012 provides obligations for the air carriers in relation to collecting and transferring passenger data to the ANAC, using the Advance Passenger Information (API) and the Passenger Identification Record (PNR), with the purpose of preventing and repressing acts of illicit interference in civil aviation, investigating public health concerns and facilitating the processing of passengers and baggage on international flights along with the migration, customs, health and agricultural control authorities.

Consumer rights are covered under Article 5, XII of the Federal Constitution and the Consumer Defense Code (CDC).

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?

Depending on the severity of the data loss, the air carriers are required to notify the ANPD (the National Data Protection Authority) about the incident, and if it is considered a violation of the LGPD, the air carriers may suffer the following administrative sanctions: (i) warnings; (ii) fines; and (iii) database suspension, among others. Other extra penalties may occur according to the ANAC's regulation.

Failure to comply with the Federal Constitution or the CDC's rules will imply the obligation to compensate for passenger's moral and/or material damages, depending on the non-appealable court decision rendered in the relevant damage compensation lawsuit.

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 several regulations regarding the protection of intellectual property in Brazil, such as: the Federal Constitution; International Treaties, especially the Trade-Related Aspects of Intellectual Property Rights (TRIPS) treaty; the Brazilian Civil Code; the Brazilian Civil Procedure Code; Law 9,279/1996, which establishes the legal framework for trademarks, patents, industrial designs, technology transfer and more related matters; and Law 9,610/1998, which governs the protection of copyright and related rights.

The Brazilian National Institute of Industrial Property (INPI) is the body responsible for issuing, reviewing, and enforcing industrial property rights in Brazil.

4.11 Is there any legislation governing the denial of boarding rights, delayed flights and/or cancelled flights? Is this legislation adhered to and well monitored?

The ANAC's Resolution 400/2016 provides the general conditions for air transport, including, but not limited to: the airline's responsibilities in cases of overbooking, flights delay, flight cancellation, and service disruption; and the passengers' rights and obligations due to the air transport agreement.

Although the Brazilian air carriers are considered punctual by the ANAC, there is an excessive passenger's litigation stance. According to a study published by the Brazilian Association of Airlines (ABEAR) in 2024, the number of lawsuits against air carriers are 5,000 times larger in Brazil than in the US.

According to the ABEAR, in 2023 735 occurrences of passengers' indiscipline was registered. It led the ANAC to accomplish, in 2024, a public consultation aiming tougher rules against such passenger's behaviour. The ANAC is reviewing the contributions from airlines and other entities, and the ANAC's regulation issuance is expected in 2025.

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

If the terms of the ANAC's Resolution 400/2016 are not accomplished, such authority may impose fines as sanctions to the air carriers, pursuant to Article 302, III, 'U' and 'P' of the CBA, following the administrative procedures provided by the ANAC's Resolution 472/2018.

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

Law 14,600/2023 establishes the Ministry of Ports and Airports as the body responsible for coordinating the organisation and elaboration of the air transport policy.

Decree 10,703/2021 created the National Commission of Airport Authorities (CONAERO) as a consultative forum formed by representatives of the following Federal Government bodies, under the coordination of the Civil Aviation Secretariat (SAC): the Ministry of Infrastructure; the Civil House of the Presidency of the Republic; the Ministry of Justice and Public Security, through the Federal Police; the Ministry of Defense, through the DECEA; the Ministry of Agriculture, Livestock and Supply, through the Secretariat of Agricultural Defense; the Ministry of Economy, through the Special Secretariat of the

Brazilian Federal Revenue; the National Health Surveillance Agency – ANVISA; and the ANAC.

The CONAERO's main function is to make airports more efficient in terms of passenger perception. To reach this target it promotes and evaluates decisions and strategic measures to be taken or implemented by airport authorities.

The ANAC's RBACs 107, 110, 139, 154 and 153 are the other regulatory determinations regarding airport security, operation, certification, construction and maintenance.

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

The CDC provides that a contracted service such as air transport should happen on the agreed terms. Such legal disposition may culminate in legal disputes involving consumers and airport operators. However, passengers used to file lawsuits against air carriers (and not against the airport operators) on the basis of the air transport agreements entered into with such companies.

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

We are aware of the following GDSs in Brazil: Amadeus; Navitaire; Sabre; Travel Technology Interactive; 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)?

Such practice is not prohibited in Brazil. However, the desired vertical integration can be categorised as abusive or another kind of economic menace. As we have mentioned above, vertical integrations may be analysed by the CADE and the ANAC.

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?

A Brazilian air carrier may have shareholders from any nationality. However, the air carrier must demonstrate its financial ability to support its structure and operations, and should aim to obtain the Air Operator Certificate (COA).

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 current main expectation is the creation of a legislative and regulatory framework aiming to develop eVTOL operations without blocking the technological development of the sector, which has projects in advanced stages at the moment.

Eve Air Mobility has received a finance solution of US\$ 88 million to raise a factory in the city of Taubaté – SP, to build electric vertical take-off and landing aircraft.

As mentioned under question 1.1, the Airworthiness Criteria for the EVE-10 aircraft model was established as a first step in the normative process that will guide the ongoing certification procedures for eVTOL before the ANAC.

The Brazilian Government should also speed up the regulatory sandbox set by Complementary Law 182/2021. The experimental environment can be a key instrument for the promotion of technology and innovative infrastructure, such as eVTOL and vertiports.

In October 2024, the ANAC completed its deadline for receiving contributions from stakeholders interested in joining the regulatory sandbox for vertiport construction. Several players have already disclosed their plans to develop such infrastructure for eVTOL operations. This is undoubtedly the main aviation trend in Brazil. The future of aviation, drone and eVTOL operations is prominent, and we are optimistic about Brazil's role in this area.



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Leal Andreoli Advogados (LAA) is a law firm specialised in Aviation and Regulatory Law and Airport Infrastructure and has gained recognition in the market for meeting their clients' needs in a customised and dynamic way.

LAA's role is to serve companies, family offices, associations, organisations and individuals in all their requests regarding the traditional aviation industry, airports and new applied technologies, especially the drone and eVTOL (electric vertical take-off and landing aircraft) industry.

LAA believes that solid, customised and consistent legal consultancy, directed to the themes of Aviation and Regulatory Law and Airport Infrastructure, is the most effective way for companies and individuals to keep up with the current market trends complying with the rules in effect, always keeping ahead of the competition and mitigating any

risks relating to legal matters, resulting from any illegal activities that give cause to the application of sanctions by the aviation authorities or to conflict of interest when legal a transaction is entered into among players in the aviation industry.

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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.

Chilean Aeronautical Law considers national and international norms and statutes, both in the public and private spheres. Among the international conventions ratified by Chile are:

- The International Civil Aviation Convention ("Chicago Convention"), ratified by Chile in 1947.
- The Convention on Offences and Certain Other Acts Committed on Board Aircraft ("Tokyo Convention"), ratified in 1974.
- The Convention for the Suppression of Unlawful Seizure of Aircraft ("Hague Convention"), ratified in 1972.
- The Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation ("Montreal Convention"), ratified in 1974.
- The Convention for the Unification of Certain Rules Relating to International Carriage by Air and Protocol Amending the Convention ("Warsaw Convention"), ratified in 1979.
- The Convention for the Unification of Certain Rules for International Carriage by Air, ratified in 2009.
- The Convention on the International Recognition of Rights in Aircraft, ratified in 1961.

The following are the national regulations:

- The Aeronautical Code, published in February 1990.
- Law No. 16,752, which establishes the organisation of General Directorate of Civil Aeronautics ("DGAC"), published in February 1968.
- DFL No. 241, which reorganises various services related to civil aviation, published in April 1960.
- DL No. 2,564, which establishes rules on commercial aviation, published in June 1979.

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

According to DAN No. 119, to obtain the Air Operator Certificate, the applicant must submit a letter of intent to the DGAC, indicating the company name, unique tax roll (*rol único tributario* – "RUT"), business address, main base, legal representative, type of proposed air operation (passenger transport, cargo or aerial work), and type of aircraft(s). Once the letter is submitted, the certification process consists of the following:

- Phase 1: A meeting between the applicant and the DGAC, where the applicant presents the project to the DGAC, and the DGAC provides information regarding the certification process and the "Air Operator Certificate Application" form, as well as an explanation on how to complete the application and compliance checklist.
- Phase 2: The applicant submits the required background information, which includes the operations manual, specifications related to specific operations and approvals, the minimum equipment list, routes, and demonstration tests.
- Phase 3: The DGAC evaluates the documentation submitted and informs the applicant of the approval, with the corresponding observations.
- Phase 4: The DGAC reviews and evaluates the information contained in the documents submitted by the operator, in order to determine compliance with the requirements regarding the aircraft, the main and auxiliary operating base, the instruction or training processes, and the performance of demonstration flights, among other things.
- Phase 5: Once the previous stages have been completed, the DGAC issues the Air Operator Certificate ("AOC") and the corresponding operational specifications.

1.3 What are the principal pieces of legislation in your jurisdiction which govern air safety, and who administers air safety? Does this legislation adequately cover all the issues which tend to arise in your jurisdiction, or do you feel that certain amendments or additional laws would be desirable?

Title IV of the Aeronautical Code establishes the freedom of air traffic and the conditions for entry and exit of aircraft, the conditions for take-off, flight and landing of aircraft, and the conditions for the transport of dangerous objects and observation and recording instruments, as well as the documents to be carried by the aircraft during traffic. Likewise, Aeronautical Regulations ("DAR") No. 92 and No. 121 establish the rules for operations and safety, both for commercial and non-commercial flights. The DGAC is the public entity responsible for the protection of air safety in civil aviation, and for the management and administration of public aerodromes and air navigation assistance services.

Currently, the regulations issued by the DGAC regarding aviation safety include the 19 annexes to the Chicago Convention, which establish basic standards and recommended practices for international civil aviation.

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

Yes. Chilean Aeronautical Regulation (“DAN”) No. 92 establishes the operating rules for non-commercial aviation of small aircraft, large aircraft, turbine-powered aircraft and corporate aviation operations, while DAN No. 121 establishes the operating requirements for domestic, international, scheduled and non-scheduled commercial operations of air carriers holding an AOC performing domestic and international, scheduled and non-scheduled, passenger, cargo or mail Air Transport Services with aircraft over 5,700 kg and/or more than 19 passenger seats.

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

No. Charter flights are not regulated by special regulations, and the common rules indicated in question 1.4 are applicable.

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. Does the *status quo* tend to create an aviation market which is sufficiently competitive and open?

DAN No. 129 establishes the technical operational requirements regarding international operations of air carriers to and from the territory of Chile. In order to carry out international commercial air transport operations of passengers, cargo and mail, foreign air operators must apply for recognition from the foreign AOC, following a procedure consisting of the following stages: an initial meeting with the DGAC certification team; a formal application; an valuation of the documentation; and approval and granting of the AOC Recognition Certificate. However, the documentation requirement in the foreign AOC recognition process does not differ substantially from the requirement for obtaining an AOC, although certain legal and commercial background information is specifically required with respect to foreign operators. In this sense, there are no particular restrictions or limitations to accessing the national civil aviation market.

1.7 Are airports state or privately owned? Are there any plans to alter this position?

In Chile, the Ministry of Public Works is the owner of the 16 airports that make up the Primary Airport Network. However, the management and operation of 11 of these airports is concessioned to private companies, while the remaining five airports are managed by the DGAC. Currently, there are no plans to substantially modify the ownership of the country’s airport infrastructure, although the construction and expansion of the existing infrastructure may be concessioned to private companies.

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

The requirements for airlines flying to and from national airports are established in DAR No. 6, which regulates aircraft

operations, and DAN No. 91 on rules of the air. However, the DGAC has issued procedures for the operational safety and operation of aircraft in civil airfields for public use administered by the DGAC. In the case of airports under concession, the concessionaire is responsible for establishing the operating conditions for aeronautical services and the operating plans and procedures for safety, risk prevention, accidents and other contingencies.

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? Do you believe that there are any changes which would be of benefit to the existing regime?

The Aeronautical Code establishes that the aeronautical authority, that is, the DGAC and the Civil Aeronautical Board (“JAC”), are in charge of investigating aircraft accidents and incidents occurring in national territory. In this sense, the purpose of the investigation is to determine the cause of the accident or incident and to adopt measures to avoid its repetition. In addition, the DGAC has issued regulations, aeronautical standards and procedures that regulate the investigation of aviation accidents or incidents, among which are DAR No. 13, DAN No. 13 and DAP No. 13. In this regard, the national regulations are updated with respect to the latest amendments made to Annex 13 of the Chicago Convention, which regulates the investigation of air 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?

There have been no recent notable cases. However, in early December 2024, the Ministry of Public Works announced an investment of more than US\$3 billion to improve the infrastructure of 19 facilities that make up the primary airport network. This investment, to be made over the next five years, includes infrastructure conservation works, expansion and improvement of terminals, runways and aircraft equipment, and even the construction of a temporary terminal in Mataverí, Rapa Nui.

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 construction of airports that may affect protected areas must undergo a prior environmental impact assessment to obtain applicable approvals and permits. Chile is not part of the EU Emissions Trading System. However, Chile participates in global climate initiatives, such as the Paris Agreement, and has its own climate policies and frameworks, including the development of voluntary and regulated carbon markets. Additionally, Chile has ratified the Kyoto Protocol and collaborates with international programmes to reduce greenhouse gas emissions. Chilean law establishes an annual tax

levied on air emissions of carbon dioxide, particulate matter (“PM”), nitrogen oxides, and sulphur dioxide, applied to facilities whose emission sources release 100 or more tons of PM annually or 25,000 or more tons of CO₂ annually. Within this framework, there is an Emissions Compensation System through which taxpayers may offset their taxable emissions by implementing projects aimed at reducing emissions of the same pollutant.

2 Aircraft Trading, Finance and Leasing

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

The registration of ownership in the aircraft register constitutes a presumption of ownership. The National Aircraft Registry maintains the Aircraft Registration and Ownership Registry, and the Aircraft Liens and Prohibitions Registry.

To register the ownership of an aircraft, the applicant must provide a copy of the public deed or a notarised private instrument that proves the acquisition. Without this registration, ownership transfers do not have legal effect before third parties. Once registration is complete, the Registrar can issue a certificate that includes essential details such as ownership, mortgages, liens, and judicial measures affecting the aircraft. Additionally, the certificate identifies both the owner and the operator of the aircraft, with a legal presumption that the owner is also its operator.

However, while the certificate is referred to as one of “ownership”, under Chilean civil law, it primarily establishes possession rather than true legal ownership (*dominio*). In accordance with general principles, possession is presumed to imply ownership unless someone else demonstrates a superior legal claim. Consequently, the registration of an aircraft constitutes a simple legal presumption of ownership.

This regulatory framework aligns with the requirements of the Geneva Convention of 1948, which mandates that national registries provide *prima facie* evidence (initial evidence sufficient to establish the recorded rights unless proven otherwise) of the content of their records.

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 Lien and Prohibitions Registry includes the registration of mortgages, other liens, prohibitions on aircraft, and privileged credits related to them, as well as seizures, detentions, and precautionary measures affecting aircraft. Additionally, this registry allows for the registration of acts and contracts through which operational control is transferred or assigned, such as lease agreements, aircraft charters, and aircraft exchange agreements.

As a general rule, entries cannot be made in the Registry of Liens and Prohibitions unless the aircraft in question is also registered in Chile. Although only aircraft owned by Chilean individuals or legal entities can be registered, there are exceptions for: (a) foreign legal entities with permanent operations in Chile; and (b) foreign aircraft registered in Chile under a lease agreement, provided the operator is a Chilean aviation company. This provision allows a foreign legal entity to transfer operational control of an aircraft to another party.

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

Any agreement by which an aircraft owner transfers operational control to another party must be formalised either by a public deed or by a private instrument duly notarised before a notary public. Although registration of the lease or other agreement transferring operational control with the National Aircraft Registry is not legally required for its validity or enforceability, it is strongly recommended. Failure to register such agreements makes the aircraft owner jointly and severally liable along with the operator for any damage caused by the aircraft.

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 specific provision under Chilean law. As a result, this matter must be analysed under general property principles established in civil law. The Civil Code recognises the concept of “accession” as a way of acquiring ownership. Therefore, it provides guidelines for the ownership and incorporation of one object (e.g., an engine) into another (e.g., an aircraft). According to these principles, if two physically attached objects can be separated without causing damage, they may be treated as independent and movable. Therefore, ownership of the engine may remain distinct if it is clearly separable and identifiable without harm.

Additionally, since Chile has not ratified the Cape Town Convention, engine ownership rights in Chile are not governed by the International Registry.

To mitigate the risks of automatic transfer or prejudicial treatment, the best pre-emptive action is to explicitly address this matter in lease, financing, or other relevant agreements. Such agreements should clearly specify the treatment of engines upon installation, in cases of default, or in relation to liens and encumbrances. Separate pledges can also be created on the engines, under the general rules for pledges on movable 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?

Value Added Tax (VAT)

In Chile, VAT is levied at a rate of 19% on the habitual sale of goods and real property (excluding land) located in Chile, as well as services rendered or utilised in the country. For services, VAT applies when the activity generating the service is developed in Chile, regardless of where it is utilised. VAT also applies to special taxable events, such as imports and other specific services. Aircraft leasing is classified as a “service” for VAT purposes.

The VAT payable is determined by a credit/debit system, by virtue of which the VAT that has been levied on the purchase of goods, services and special taxable events (i.e., import) forms an asset account, called VAT Tax Credit, that may be offset against the VAT charged on sales made and services rendered (Fiscal Debit). The excess of Fiscal Debit should be declared and paid monthly. If the VAT Tax Credit exceeds the tax payable, the excess can be carried forward indefinitely.

Under Article 8 of DL 2,564, specific tax benefits are provided for the importation and leasing of aircraft:

- 1) The General Treasurer of the Republic is allowed to accept promissory notes or bills of exchange for the total amount of VAT generated by the importation or leasing of aircraft. These instruments do not accrue interest or adjustments and must mature by the end of the sixth VAT period.
- 2) Upon maturity, the importer can offset any remaining VAT Tax Credit – including those derived from the same importation – against the notes. Any residual credit may either be applied to other tax obligations or refunded.

In practice, this mechanism enables VAT exemption or deferral.

Lastly, passenger or cargo transportation carried out or utilised in Chile is subject to VAT. However, VAT law provides exemptions for (i) income derived from passenger transportation contracts, and (ii) international air cargo transportation.

Stamp Tax

Documents supporting loans and money credit operations are subject to stamp tax on their principal amount at a rate equal to the lesser of (a) 0.8%, and (b) 0.066% multiplied by the number of months or fraction of a month from the issuance of the document until its maturity.

Regarding foreign money credit operations executed abroad, the Stamp Tax accrues either upon the arrival of the document to Chile, when it is notarised in Chile, or when the money credit operation is accounted for in Chile.

Stamp Tax should be applied only to the extent that taxable events are triggered in an aircraft trading operation (i.e., documented money credit operations, loans, notes, among others).

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

Chile is a signatory to the following conventions:

- **Chicago Convention 1944:** ratified in 1947.
- **Geneva Convention 1948:** ratified in 1955.
- **Tokyo Convention 1963:** ratified in 1974.
- **Hague Convention 1970:** ratified in 1972.
- **Montreal Convention 1999:** ratified in 2009.
- **Cape Town Convention 2001:** Chile has not yet ratified the Cape Town Convention.

2.7 How are the Conventions applied in your jurisdiction?

The question of whether international treaties have self-enforcement effects is a debated topic. The most widely accepted view is that only human rights treaties are considered to have self-executing effects, meaning they can be directly applied by courts without requiring additional legislation. Other types of treaty typically require implementing legislation to be enforceable within the domestic legal system.

In this context, the provisions of treaties related to aviation matters would not be directly enforceable in court. Therefore, their integration into the national legal framework – such as the Aviation Code or other relevant legislation – is required to ensure their effective applicability.

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?

In Chile, withholding tax (“WHT”) applies to Chilean-source income earned by non-resident individuals or entities when the income is paid or made available. Chilean-source income is defined as income derived from goods located in Chile or services rendered within the country. Aircraft trading and leasing in Chile benefit from specific tax rules, as detailed below:

- **Leasing:**
 - Generally, aircraft lease payments to foreign lessors are subject to WHT at a rate of 35%, which must be withheld, declared, and paid by the lessee.
 - However, article 6 of DL 2.564 exempts national commercial airlines from WHT on lease payments made to foreign lessors.
- **Disposal:**
 - Capital gains from the sale of assets located in Chile by non-resident entities are generally subject to WHT at a 35% rate. For aircraft, the Chilean IRS has ruled that registration determines the location of the asset. Thus, gains from the disposal of aircraft registered in Chile may be subject to WHT at a 35% general rate.
 - Chile has a broad network of double tax treaties, which typically stipulate that capital gains from the sale of aircraft, or movable property related to such operations, are taxable only in the seller’s state of residence.
- **Other aviation-related services:**
 - Payments made to non-residents for technical assistance, services performed abroad, interest, aircraft lease payments, or other aviation-related activities by national commercial airlines are exempted from WHT, provided they relate to the airline’s ordinary business operations.
 - Additionally, payments for aircraft insurance premiums, freight, and other aviation-related activities to non-established companies are exempt from WHT in Chile.
 - Double Tax Treaties (both general and aviation-specific) restrict the source country’s taxing rights over profits derived from the operation of aircraft in international traffic, allowing taxation solely in the beneficiary’s state of residence. Chile has signed aviation-specific treaties with countries such as Venezuela, Germany, and Singapore, which do not have a general Tax Treaty with Chile.

These rules, combined with Chile’s network of tax treaties, provide favourable tax treatment for leasing, disposal, and other aviation-related transactions, making Chile an attractive jurisdiction for international aircraft operations and financing.

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 do not see such a risk under Chilean Law.

3 Litigation and Dispute Resolution

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

In Chile, the right of detention of aircraft for unpaid debts is not explicitly regulated, and is considered inadmissible if there is no legal provision establishing it, or if the parties have not agreed to it contractually. In any case, to be enforceable, this right requires a court judgment recognising it, by way of precautionary measures or other proceedings. Once the creditor's (or lessor's) right is judicially recognised, it allows the holder to obtain repossession (in the case of a lease), or eventually foreclosure the asset (in the case of debt financing) to satisfy the corresponding 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?

In Chile, self-help or "*autotutela*" is generally prohibited, and is considered contrary to public order unless explicitly authorised by law.

In the absence of such a provision, lessors or financiers must resort to the courts to enforce their rights. This typically involves requesting precautionary measures, such as the judicial seizure ("*embargo*") of the aircraft, through the civil 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 amount in dispute does not affect court jurisdiction, as jurisdiction is determined by the nature of the conflict.

Disputes between private parties related to air transport contracts or commercial agreements are typically heard by civil courts. In contrast, criminal disputes involving offences outlined in the Aeronautical Code are generally under the jurisdiction of Aviation Courts, unless the accused are civilians. In such cases, jurisdiction falls to the ordinary criminal courts.

Disputes arising from administrative sanctions, permits, or the interpretation of aeronautical regulations are heard by the relevant jurisdictional authority, which will depend on the specific decision being challenged (e.g., the "DGAC").

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?

Notifications (service of process) are generally required to be made personally unless the recipient cannot be located. For individuals or entities domiciled abroad, service is typically

carried out via a letter rogatory ("*exhorto*") sent through judicial or consular authorities.

Domestic airlines and other parties are subject to Chilean procedural rules like any other domestic entity. Their legal representatives will be notified and must respond to summons or notifications served under these rules.

Non-domestic airlines or parties operating in Chile are subject to Chilean jurisdiction for disputes arising within its territory. Their representatives in Chile will be served with legal notifications and are responsible for responding to actions brought against them.

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?

Both courts and arbitral tribunals can grant remedies on an interim or final basis. Interim remedies include precautionary measures such as asset seizures, prohibitions on property transfers, and other actions aimed at securing the outcome of proceedings. However, if an arbitral tribunal orders a remedy requiring enforcement, civil courts must be approached for enforcement.

Regarding final decisions, both civil and arbitral tribunals possess broad authority to resolve disputes. The court's decision, however, is limited to addressing the relief requested by the parties. Final remedies may include declaratory relief, specific performance, monetary compensation for material and moral damages, and the rescission or nullity of contracts, among other things.

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?

Decisions from courts or arbitral tribunals may be appealed or challenged under specific circumstances. Court decisions can generally be appealed to a higher court if they meet the requirements established in the Code of Civil Procedure. Additionally, extraordinary remedies are available, such as:

- *Recurso de casación*, which addresses violations of procedural or substantive law, aiming to annul a decision that is legally flawed.
- *Recurso de queja*, which is used to address gross errors or abuse of authority in the issuance of judicial decisions.

For arbitral tribunal decisions, the scope of appeals is typically governed by the terms of the arbitration agreement. However, certain remedies are non-waivable, including:

- *Recurso de casación*, applicable in cases of lack of jurisdiction or *ultra petita*.
- *Recurso de queja*, to address gross error or abuse in the arbitral decision.

These mechanisms aim to ensure procedural fairness and the proper application of the law.

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* (*caso fortuito* o *fuerza mayor*) and impossibility of performance (*imposibilidad de cumplimiento*)

offer mechanisms to suspend or terminate contractual obligations when unforeseen events render their performance impossible or excessively burdensome. In the event of a dispute over their applicability, the matter will be resolved by the courts.

Force majeure is defined in the Civil Code as an unforeseeable and irresistible event beyond the control of the parties. Such events may lead to a temporary suspension or permanent termination of obligations if performance becomes impracticable. Additionally, the law acknowledges termination due to impossibility of performance, which provides for discharge when compliance is rendered unfeasible.

Contracts often include specific *force majeure* clauses. These contractual provisions typically prevail over legal general principles.

3.8 Is there any trend developing towards regulatory support in civil justice for out-of-court solutions and the importance of engaging in Alternative Dispute Resolution (or similar)? If so, what (if any) are the implications for the answers in questions 3.1–3.7 inclusive?

Alternative dispute resolution methods are increasingly encouraged in Chile, particularly through the use of arbitration. The Arbitration and Mediation Center of the Santiago Chamber of Commerce actively promotes mediation as a preferred method of resolving disputes. As a result, it has become common to find contracts with stepped arbitration clauses, stipulating that parties must first attempt mediation before initiating arbitration proceedings.

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? In your opinion, are there any improvements to the existing regime which would be advisable?

The JAC has established free access to markets, free pricing, minimum intervention by the authority, and liberalisation of ownership and control as principles of Chilean aviation policy. These factors have contributed to Chile being the least restricted country in the OECD in the air transport market. However, horizontal cooperation agreements between airlines are subject to the common regulation established in Competition Law aimed to prevent and sanction competition related infringements.

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

The Chilean Competition Court ("TDL") and Chilean Competition Agency ("FNE") have broadly segmented the air transport market between passengers and cargo from a product market definition, but have not deeply analysed the charter segment. Moreover, the FNE has established that this market can be characterised as a network industry composed of the various transportation routes from origin to destination ("O&D").

Within the regular passenger transportation market, the FNE has defined the market as that of scheduled passenger air transport services at the O&D pair level, with emphasis on the

city to city combination in a geographical scope. This definition is based on the demand side perspective, as consumers value the different possible ways to travel between an O&D pair without generally considering another flight between a different O&D pair as a substitute.

Regarding cargo transportation, the FNE has defined the relevant product market as that of scheduled air cargo transportation services. On the geographic dimension of this market, the TDL and the FNE have adopted a broader scope, considering as a relevant market the air cargo transportation at country-country and country-continent level, in a unidirectional way, including flights with and without stopover.

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

Chilean Competition Law establishes a mandatory *ex ante* merger control regime, by means of which concentration operations with effects in Chile, that meet or exceed the certain turnover thresholds, must be mandatorily notified to the FNE prior to its implementation (standstill obligation/suspensory effect).

There are also voluntary filings for concentrations below mandatory thresholds, as well as granting the FNE the possibility of opening *ex officio* investigations on below-threshold transactions for up to one year post-closing. Once the concentration is cleared by the FNE, the parties may proceed with its implementation.

Finally, acquisitions of minority shareholding in a competitor trigger a post-closing filing obligation.

4.4 How does your jurisdiction approach mergers, acquisition mergers and full-function joint ventures? In your opinion, are there any improvements to the existing regime which would be advisable?

Chilean Competition Law establishes the following means for concentrations: (a) mergers, regardless of the type of corporate organisation; (b) acquisitions of decisive (material) influence in another entity's administration; (c) full-functional joint ventures; and (d) acquisition of assets' control.

Regarding mergers, the FNE's broad interpretation includes: (i) incorporation mergers; (ii) absorption mergers; and (iii) any combination of economic activities of previously independent economic agents, resulting in the creation of an economic unit.

Regarding full-functional JVs, the FNE emphasises two requirements:

- The creation of a new economic entity – whether or not controlled by its constituents.
- Full functionality, from an economic and regulatory perspective.

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

Once the parties have filed a notification, the FNE has 10 business days to declare it complete. If not, the parties have 10 business days to submit a complementation.

Phase I review stage: once the notification is complete, the FNE issues a notice of completeness and Phase I starts. This phase has a statutory term of up to 30 business days and can be suspended for up to 10 working days each time the parties offer commitments to the FNE.

Following Phase I, the FNE may either decide to: (a) unconditionally clear the transaction; (b) approve the transaction subject to remedies; or (c) extend the investigation to a second in-depth review stage (Phase II).

Should the FNE preliminary conclude that the transaction might have the ability to restrict competition, the investigation will be extended to Phase II (in-depth review). Phase II has a statutory term of up to 90 working days and can be suspended for up to 15 working days each time the parties offer commitments.

Following Phase II, the FNE may either decide to: (a) unconditionally clear the concentration; (b) approve the concentration subject to remedies; or (c) prohibit the concentration. The parties have the right to challenge prohibitions decisions before the TDLC.

Finally, there are no filing fees in Chile.

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?

Currently, there is a national subsidy for paid public passenger transportation services, which includes air transportation services. However, this subsidy only benefits services carried out in the Regions of Arica and Parinacota, Tarapacá, Aysén, Magallanes and Antarctica, and the Provinces of Palena and Chiloé, or in other areas considered isolated. On the other hand, concession companies in charge of the operation and administration of airports receive state funds through the national concession system, according to the terms and conditions established in the respective bidding basis.

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

Yes, there are routes that connect isolated localities in the Regions of Valparaíso, Biobío, Los Lagos, Aysén and Magallanes. The bidding requirements for public air passenger transportation services are established in each bidding process and are defined in the bidding conditions of each process.

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 collection and processing of personal data is governed by Data Protection Law ("DPL"). According to DPL, data subjects have the rights of access or information, modification, cancellation or suppression and blocking.

Please note that a substantial amendment to the DPL will enter into force on 1 December 2026, which will regulate to a greater extent the rights of data subjects, and incorporate the right to portability.

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 DPL obliges data controllers to maintain the confidentiality of the personal data they process, to take care of them

with due diligence and to be liable for any damage caused. Currently, the DPL establishes sanctions with respect to the exercise of the rights of data subjects, but it does not establish a specific sanction referring to the loss of personal data. Fines in the DPL amount to approximately USD 3,400.

However, the amended DPL will establish the Data Protection Agency and detail the security obligations of data controllers and processors, including the duty to implement measures against data loss. It will also establish fines of up to approximately USD 1,400,000, which may be tripled in cases of recidivism. Additionally, for repeated very serious infringements within a 24-month period, the Data Protection Agency may order the partial or total suspension of the data processing operations and activities carried out by the data controller for up to 30 days.

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?

IP rights are recognised by the Chilean Constitution, Chilean law, and international treaties signed by Chile. The main laws governing IP are Industrial Property Law and Copyright Law.

Chilean IP laws follow the standards established in international treaties signed by Chile on this matter, such as the Paris Convention, the Berne Convention, and the Trade Related Aspects of Intellectual Property Rights ("TRIPS"), among others.

The National Institute of Industrial Property ("INAPI") is in charge of the registry of industrial property rights. On the other hand, copyright and related rights can be registered (although such registrations are not required to obtain protection) before the Intellectual Rights Department.

Infringement of IP rights is subject to criminal penalties, as well as compensation and damages. Such claims must be brought before the civil or criminal courts (depending on the type of relief claimed) as there are no specialised courts for IP infringement.

4.11 Is there any legislation governing the denial of boarding rights, delayed flights and/or cancelled flights? Is this legislation adhered to and well monitored?

Consumer Protection Law and the Aeronautical Code establish clear rights for passengers and corresponding obligations for airlines in case of denied boarding, delays or cancellation of flights.

Passengers are entitled to various rights depending on the circumstances, including the option to board the next available flight with the same airline, secure alternative transportation, receive assistance benefits (such as meals, accommodation, or communication services), request refunds, and claim compensations, among other things.

These laws are complied with by airlines and regularly enforced by the National Consumer Service ("SERNAC") and Chilean courts.

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

The SERNAC is responsible for monitoring compliance with consumer protection regulations in such cases, and enforce consumer rights before the competent courts.

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

According to the National Civil Aviation Safety Program (“PNSAC”) of the DGAC, the airport authority is the authority responsible for the administration of the aerodrome. Among its responsibilities are to establish and maintain an aerodrome security programme and an aerodrome contingency plan, and coordinate with government agencies, aircraft operators, air terminal operators and service companies to comply with the security programme.

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

If the relationship can be qualified as a “consumer relationship” then consumer protection legislation will apply. Although there is often no “direct” contractual relationship between airport operators and passengers, it may be possible to construe a “consumer relationship” based on the payment of boarding fees for access and use of the airport facilities or other services provided by airport operators.

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

We are not aware of any.

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

No, there are no such requirements.

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

Generally, vertical integration between airports and air operators is not permitted by competition authorities. However, the

TDLC has established that it would exceptionally be permitted if a company participated in an airport bidding and at the same time was related to:

- a) small aircraft commercial transportation companies in the terms defined by the DGAC (i.e., commercial airlines authorised to carry out air activities in aircrafts with a maximum take-off weight of 5,700 kg and a capacity of up to 19 passengers, in “normally non-scheduled flights and/or at the request of the company”); or
- b) companies engaged in forest firefighting, agricultural work or other minor airline services.

In both cases, these related entities cannot use a “relevant portion” of the concessioned airport or its facilities.

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?

No, there are no such requirements.

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?

Enhanced consumer protection regulations, in addition to the more active role of SERNAC, may entail increasing challenges to carriers and other industry players, including in situations when the relation with consumers is handled through third-party agencies. This, complemented with the new landscape on data protection laws to become effective in 2026. In addition, potential initiatives to ratify the Cape Town Convention are to be seen, although the outcome of this discussion remains uncertain.



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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 general provisions found in the Civil and Commercial Codes of the Dominican Republic, as well as the international treaties and conventions ratified by the Dominican Republic, the primary domestic statute governing civil aviation is the Civil Aviation Law No. 491-06 (Civil Aviation Law), as amended by Laws No. 67-13 and 17-24. Along with Law No. 188-11 on Aviation Security and Civil Aviation, these statutes regulate civil aviation in the Dominican Republic and provide a comprehensive framework 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, by its Spanish acronym), the Civil Aviation Board (JAC) and the Specialised Airport and Civil Aviation Security Body (CESAC, by its Spanish acronym).

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? Does this legislation adequately cover all the issues which tend to arise in your jurisdiction, or do you feel that certain amendments or additional laws would be desirable?

The principal legislation governing air safety in the Dominican Republic includes Law No. 188-11 on Aviation Security and Civil Aviation, its complementary regulations, and the Dominican Aviation Regulations (RAD, by its Spanish acronym), issued by the IDAC. Law No. 17-24 recently amended the Civil Aviation Law, aligning national safety standards with those of the International Civil Aviation Organization (ICAO) and the U.S. Federal Aviation Administration (FAA), further strengthening the regulatory framework to ensure a high level of operational safety across the aviation sector.

In terms of administration, the IDAC is responsible for air navigation security and operational safety, while the CESAC enforces civil aviation security under Law No. 188-11 and implements the National Programme on Civil Aviation Security. Together, these laws and regulatory bodies establish a comprehensive framework that effectively addresses technical air safety needs in the Dominican Republic, aligning well with international standards.

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. Does the *status quo* tend to create an aviation market which is sufficiently competitive and open?

The Dominican Republic's aviation market operates with certain limitations and distinctions between domestic and international air carriers. Under the Civil Aviation Law, air transport services are reserved for national air operators; however, permits can be granted to foreign air operators from countries with which the Dominican Republic has bilateral air service agreements or memoranda of understanding (MOUs), or when proof of reciprocity is established. Consequently, requirements for the issuance of operating permits to foreign air carriers differ from those imposed on national air carriers.

However, the Dominican Republic's extensive network of air service agreements and MOUs with the following diverse range of countries, reflects a commitment to facilitating international connectivity and fostering competition: 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.

Overall, the broad framework of agreements and the issuance of permits to foreign carriers in accordance with established agreements contribute to an aviation market that is competitive and open.

1.7 Are airports state or privately owned? Are there any plans to alter this position?

There are both privately owned and state-owned airports. Notably, 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, Aeropuertos Dominicanos Siglo XXI (Aerodrom), a private entity, holds an exclusive concession to operate six state-owned airports in the Dominican Republic, including the Las Americas International Airport.

Currently, there are no indications of plans to alter this ownership structure.

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? Do you believe that there are any changes which would be of benefit to the existing regime?

The Aviation Accident Investigation Commission (CIAA, by its Spanish acronym) 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.

Hence, to our knowledge, no changes are needed to this established regime.

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

Civil aviation in the Dominican Republic has recently seen significant developments aimed at enhancing the country's competitiveness in international aviation and aligning national regulations with global standards.

The introduction of Law No. 17-24 amending the Civil Aviation Law strengthens operational safety by aligning national regulations with best international practices and fulfilling the Dominican Republic's commitments as an ICAO member state. This reform includes new regulations on drone use and stricter penalties for safety violations.

Additionally, the recent Open Skies Agreement signed with the United States marks a major milestone, promoting airspace liberalisation by removing restrictions on capacity, frequency, route rights, charter flights, and code-sharing opportunities for passenger and cargo carriers. Once fully ratified, this agreement is expected to expand flight routes and options, benefitting both consumers and the local economy.

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?

Pursuant to articles 85 and 92 of the Civil Aviation Law, the RNA, administered and maintained by the IDAC, is a system whose purpose is to record all Dominican aircraft; that is, aircraft owned by either: (i) Dominican individuals or corporations; (ii) foreign individuals or corporations that have an established domicile in the Dominican Republic; or (iii) the Dominican State.

The RNA includes:

- a) nationality and registration marks and adequate specifications for the purposes of identifying individual aircraft;
- b) titles or instruments that incorporate, transfer, recognise, modify, extinguish or in any way affect the rights over an aircraft or accessories that are being used or are intended to be used in Dominican aircraft;
- c) judicial decisions that recognise, transfer, modify or extinguish property over aircraft or liens over aircraft, aircraft engines, etc.;
- d) foreclosures, injunctions or any other preventative or cautionary measures that may affect aircraft;
- e) contracts for the use of aircraft;
- f) cessations in the activities of aircraft;
- g) disabling or loss of aircraft and any substantial modifications that aircraft may be subject to;
- h) documentation regarding the owners of a Dominican aircraft;
- i) insurance policies over aircraft or aircraft engines; and
- j) any event or document that may alter or be linked to an aircraft’s legal status.

As indicated above, mortgages, liens and charges over aircraft can be registered in the RNA upon the request of the interested party by providing the evidentiary documents. However, registration certificates do not include fields expressly dedicated to liens or mortgage interests over the registered aircraft, although this information is included under the label of “relevant information” in some rare cases.

The information in the RNA is in the public domain and may be requested from the IDAC by third parties regarding specific aircraft. Pursuant to article 232 of the Civil Aviation Law, an interested party may oppose the amendment, suspension, or cancellation of a registration certificate via written protest addressed to the JAC.

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 "ITBIS" 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 83bis on 21 March 2006; article 93bis; 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?

Administrative procedures related to aviation matters are typically handled by the relevant regulatory bodies in accordance with the Civil Aviation Law, while disputes involving the government may be addressed in administrative courts.

For aviation disputes requiring judicial intervention, the Dominican legal system distinguishes between criminal, commercial and civil disputes, each with specific jurisdictions and civil courts based on the nature and value of the dispute. Criminal matters are handled separately from commercial and civil disputes, and each court level has authority over particular types of cases, which means that the jurisdictional assignment of a case depends on its classification and monetary value.

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 matters, both courts and arbitral tribunals in this jurisdiction provide a range of remedies on both interim and final bases, covering legal and equitable forms of relief. To protect a party's interests during proceedings, interim remedies such as provisional measures can be sought. These may include preliminary injunctions to prevent specific actions and avoid irreparable harm or temporary restitution orders to secure assets and maintain the *status quo*.

Upon reaching a final decision, courts may award actual damages, where applicable, to compensate for material and moral losses. In instances where monetary compensation is insufficient to fully address the harm, courts may also grant equitable remedies, such as specific performance to compel fulfilment of contractual obligations, permanent injunctions, or restitution to restore wrongfully taken property or funds.

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's Constitutional Court serves as the highest authority on constitutional interpretation and protection of fundamental rights.

Nonetheless, Dominican laws also recognise limitations to the right of appeal, meaning that certain cases may have restricted access to appellate review based on specific legal provisions. These limitations are often determined by the nature or economic significance of the case, thereby excluding some decisions from automatic appeal. For example, awards rendered by arbitral tribunals within the Dominican Republic are governed by the Commercial Arbitration Law No. 489-08 (Commercial Arbitration Law), which expressly excludes these awards from traditional appeals. Instead, such awards may only be contested by filing a petition for annulment, and only under the limited and specific grounds established by the Commercial Arbitration Law.

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.

3.8 Is there any trend developing towards regulatory support in civil justice for out-of-court solutions and the importance of engaging in Alternative Dispute Resolution (or similar)? If so, what (if any) are the implications for the answers in questions 3.1–3.7 inclusive?

The Dominican Republic has a well-established framework supporting Alternative Dispute Resolution (ADR) mechanisms, such as arbitration, conciliation, and mediation, integrated into civil and commercial practices as efficient dispute resolution methods. However, to our knowledge, there are no recent trends or administrative initiatives specifically promoting ADR as a primary tool for resolving civil liability in aviation.

Consequently, while ADR is a robust part of the Dominican legal system, it does not significantly affect all areas discussed in questions 3.1–3.7. In the limited cases where ADR is applicable, such as arbitration, we have addressed its role in the relevant answers.

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? In your opinion, are there any improvements to the existing regime which would be advisable?

In our jurisdiction, there are no competition laws specifically tailored to the aviation sector. Instead, the general competition framework is governed by Law No. 42-08 on the Defense of Competition (Law No. 42-08), which aims to promote and safeguard effective competition across all industries. This law seeks to enhance economic efficiency across markets for goods and services in the Dominican Republic, ultimately benefiting consumers.

Pursuant to Law No. 42-08, all acts, agreements and arrangements between competing economic agents, including airlines, express or implied, verbal or written, that aim to or result in creating unjustified market barriers are considered as “concerted practices” and/or “anti-competition agreements” and are prohibited. Such agreements – whether explicit or implicit, verbal or written – are subject to scrutiny to prevent market distortions.

The Civil Aviation Law further reinforces this by allowing for the denial or suspension of an operator’s permit if the JAC determines that market needs are adequately met and that an operator’s actions constitute clear anti-competitive practices designed to eliminate other carriers through unfair means. Additionally, codeshare agreements between airlines require the JACs approval, during which the competitive impact and potential consumer benefits of these alliances are carefully evaluated.

The current competition framework in the Dominican Republic, governed by Law No. 42-08, effectively addresses market dynamics and anti-competitive practices.

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

As previously explained, since there are no competition laws specifically tailored to the aviation sector within the Civil Aviation Law, the general competition framework governed by Law No. 42-08 applies. In this context, 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, in itself, constitute a violation.

However, when assessing potential abuses of dominant position, Law No. 42-08 does establish that the “relevant market” will be determined by the following elements:

- a) identification of the product or service whose relevant market is to be determined;
- b) identification of the corresponding geographical area;
- c) 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;
- d) 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;
- e) 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
- f) 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? In your opinion, are there any improvements to the existing regime which would be advisable?

Mergers, acquisition mergers and full-function joint ventures are recognised under the General Law on Commercial Companies and Limited Liability Individual Enterprises No. 479-08, which applies to both national and foreign entities with branches or interests in the Dominican Republic.

Under this law, parties involved in mergers and acquisitions have the liberty to contractually establish the terms of any private transaction. 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.

Mergers and acquisitions in regulated sectors – such as banking, telecommunications, energy, insurance, and mining – require approval from designated authorities, depending on the business’s nature.

It is also important to note that, in the context of merger and acquisitions, 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%.

To our knowledge, no further changes are needed in the current regime.

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, delayed flights and/or cancelled flights? Is this legislation adhered to and well monitored?

While there is no specific legislation or regulations addressing the denial of boarding rights, the Dominican Republic has ratified the Montreal Convention. Alongside the Civil Aviation Law, these provisions establish a framework for passenger rights that is widely recognised and upheld by Dominican courts regarding civil liability.

Concerning cancelled flights, due to interpretation of the applicable operational and logistics regulations, carriers must inform the JAC of the cancellation of scheduled flights. There is no need for approval; carriers must simply inform the authorities via written communication. Additionally, all licensed air operators must file and maintain an adequate compensation policy as indicated by the JAC. In principle, the JAC also holds the authority to modify, suspend or revoke a carrier's economic certificate or other issued authorisations, in whole or in part, if the air operator is not suitable, willing or able to properly exercise its transport commitments.

This framework is effectively monitored by relevant regulatory entities, with the Montreal Convention and Civil Aviation Law together establishing a rather consistently applied approach to protecting passenger rights in the Dominican Republic.

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, by its Spanish acronym) 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, founding partner of Fernández & Pou Abogados / Attorneys, has a career spanning three decades in specialised practice areas, including civil aviation, airport and maritime law, customs, logistics, free zones, procurement, regulatory compliance, corporate law, taxation, mergers and acquisitions, financing structuring, real estate, international trade, foreign investment, consumer rights, e-commerce, arbitration, and litigation. Her expertise uniquely combines extensive knowledge and hands-on experience in negotiation, contracts, administrative and regulatory law, customs, logistics, real estate, investment projects, and litigation. She has contributed to notable transactions and projects across various sectors.

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Fernández & Pou Abogados / Attorneys is a dynamic and dedicated law firm committed to providing innovative and personalized legal solutions. It offers a comprehensive range of specialised services across various legal fields and is distinguished by its focus on excellence and integrity in legal management. Combining experience, knowledge, and business vision, the firm provides clients with robust support at every stage.

The firm is led by founding partners María Esther Fernández Álvarez de Pou and María Fernanda Pou Fernández, accompanied by a multidisciplinary and highly qualified team of professionals with a strong reputation and unwavering dedication to professional excellence. Additionally, they work with a network of external consultants and service providers

in various national and international fields, enabling the firm to deliver a comprehensive approach to legal and related assistance needs, creating a value chain focused on results.



France



Grégory Laville de la Plaigne



Manon Samaille

Clyde & Co

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? Does this legislation adequately cover all the issues which tend to arise in your jurisdiction, or do you feel that certain amendments or additional laws would be desirable?

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.

Since 2006, France has adopted a national security programme called *Programme de Sécurité de l'Etat* (PSE). The French PSE includes a national plan for aviation safety. Its latest version, applicable for the period 2024–2028, is entitled “Horizon 2028”. This five-year plan has defined new areas for improving air safety, including:

- continued improvement of operator safety management systems and more effective Risk-Based Oversight (RBO): on the regulatory aspects, the supervisory authority commits to following the international work conducted by ICAO and EASA on SMS maturity assessment. *DGAC* will also take actions to limit the regulatory or administrative pressure on operators and front-line players providing the best possible support for regulatory changes;
- greater inclusion of Human and Organisational Factors (HOF);
- maturing the State Safety Programme (SSP) and improving the integration of oversight into the programme;
- improving assessment of safety performance and collaboration between aviation stakeholders; and
- safety promotion.

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. Does the *status quo* tend to create an aviation market which is sufficiently competitive and open?

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.

On the contrary, recently, new taxes for domestic consumers have been under discussion. Prime Minister Michel Barnier's Government intended to introduce a solidarity tax on airline tickets (TSBA). The purpose of this amendment to the Government's finance bill for 2025 was to make air passengers contribute to the effort to restore public accounts. On airlines' sides, the *FNAM* has repeatedly alerted the government and national representatives to the major impact of this project on airlines based in France, which could lead to the disappearance of entire sectors of French air transport, including general and business aviation. The Government has finally been censored and this proposition has been overturned. The consequence is that airlines that had increased their fares for travel from January 2025 onwards will have to refund the overpayment to their customers.

1.7 Are airports state or privately owned? Are there any plans to alter this position?

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.

No plan to alter this position has been identified.

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? Do you believe that there are any changes which would be of benefit to the existing regime?

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.

Identified areas for consideration: despite the unification rules laid down by the European Union, there is no effective harmonisation and thus there is inequality between victims depending on the type of aircraft used and whether the flight was international. Indeed, the liability regime applied to air accidents is derogatory to the usual French legal provisions: it is dealt with by a series of international conventions and national texts. The superiority of international texts over national legal provisions is established. As a result, victims of personal injury following an air accident do not all benefit from the same liability regime, and inevitably from the same compensation.

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. 1ere 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, 3e ch., 19 October 2023, n°21/01929).

Recently, at the European level, the CJUE established that the occurrence of an unexpected and unprecedented technical failure affecting a new model of aircraft recently put into service, which leads the air carrier to cancel a flight, falls within the notion of "extraordinary circumstances", within the meaning of Regulation (EC) n° 261/2004, when the manufacturer of this aircraft acknowledges, after the cancellation, that this failure was caused by a latent design defect concerning all aircraft of the same type and affecting the safety 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)?

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 marked 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 were 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 had 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.

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 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

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 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 is 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° 357-2023 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 specifics not listed above.

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.

3.8 Is there any trend developing towards regulatory support in civil justice for out-of-court solutions and the importance of engaging in Alternative Dispute Resolution (or similar)? If so, what (if any) are the implications for the answers in questions 3.1–3.7 inclusive?

Under French law, Article 46 of the Code of Civil Procedure provides that a plaintiff may, at his or her option, sue the defendant before the court of the latter's place of domicile, or the court of the place of actual delivery of the goods, or the court of the place of performance of the service. In these conditions, passengers seeking compensation may bring their claim before the court of the airline's head office, or the place of departure or arrival of their flight.

However, as stated above (see question 3.3), in the case of claims not exceeding EUR 5,000, Article 750-1 of the French Code of Civil Procedure states that such claims must be preceded, at the parties' option, by an attempt at conciliation by a court-appointed conciliator, an attempt at mediation or an attempt at a participatory procedure, before being presented to a judge. If not, the judge may declare such claims inadmissible.

The obligation was cancelled for a short while and has been reintroduced back into French law by decree n° 357-2023 dated 11 May 2023. In practice, the number of conciliators and mediators may be insufficient in some jurisdictions (e.g. the creation of a local court in Aulnay-sous-Bois, due to the aviation litigation generated by its direct proximity to the Roissy-Charles De Gaulle airport hub).

To solve this issue, a French Deputy, M. Peu, recently proposed amending Article 750-1 to specify that, in the case of air travel disputes, mediation shall be carried out by the Tourism and Travel Mediator. He also proposed mediation would become the only applicable amicable procedure, to the exclusion of conciliation and participatory procedure. He believes that such a development would enable 90% of disputes to be settled out of court, in the interests of both passengers on delayed flights and other local court users.

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? In your opinion, are there any improvements to the existing regime which would be advisable?

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 prohibits 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 must 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 your opinion, are there any improvements to the existing regime which would be advisable?

In general, there is no control of foreign ownership. However, airlines' ownership and control are subject to Regulation (EC) 1008/2008 as detailed in 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).

Noticeable changes: In July 2024, the European Commission gave Lufthansa its green light to its entry into the capital of ITA Airways (successor airline to Alitalia). On November 29, 2024, the European Commission accepted the measures negotiated to maintain competition in the Italian air transport market and authorised a gradual takeover.

In return for this entry, ITA Airways and Lufthansa shall allow their competitors easyJet, IAG (International Airlines Group) and Air France-KLM to develop their own air routes between Rome and Milan, as well as certain Central European destinations, by granting them takeoff and landing rights. This symbolic union shows that the European Commission, so vigilant on competition for the benefit of consumers, knows its necessity.

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 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, delayed flights and/or cancelled flights? Is this legislation adhered to and well monitored?

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).

This legislation is adhered to and monitored in the spirit of passengers' protection rights. Recently, the Court of Justice of the European Union has once again interpreted the texts of the regulation, as regards to denied boarding (Article 4), with the aim of guaranteeing a high level of protection for passengers (in CJUE 26 oct. 2023, LATAM Airlines Group, aff. C-238/22). In particular, it established that in the event of early denied boarding (in this case more than two weeks before the flight date) by the airline, compensation for denied boarding is due even if the passenger concerned did not show up for check-in.

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 are still to be addressed and confirmed very shortly in France. For instance, on the occasion of the Paris 2024 Olympic Games, a Temporary Restricted Area (ZIT) and a Temporary Restricted Area (ZRT) have been created in the Paris region, to "ensure the implementation of the special aviation security system (DPSA) as part of the protection of the Paris 2024 Olympic and Paralympic Games". Yet, the authorities had to intercept numerous unauthorised drones during the Olympics.

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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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? Does this legislation adequately cover all the issues which tend to arise in your jurisdiction, or do you feel that certain amendments or additional laws would be desirable?

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. Does the *status quo* tend to create an aviation market which is sufficiently competitive and open?

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? Are there any plans to alter this position?

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? Do you believe that there are any changes which would be of benefit to the existing regime?

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.

3.8 Is there any trend developing towards regulatory support in civil justice for out-of-court solutions and the importance of engaging in Alternative Dispute Resolution (or similar)? If so, what (if any) are the implications for the answers in questions 3.1–3.7 inclusive?

As set out under question 3.5, the common out-of-court solution in Germany for claims under Regulation (EC) 261/2004 is ADR with one of the ADR bodies implemented for this purpose. The “*Schlichtungsstelle Reise & Verkehr e.V.*” (arbitration body for travel and traffic) is competent for legal disputes between travellers and transportation companies (bus, train, ship, aircraft, package tour). If the respective airline is not a member of this ADR body, consumers who wish to put forward claims against such airline can commence ADR proceedings before the respective body within the German Ministry of Justice. As the arbitration proceedings are free of charge for the consumer (whereas airlines have to pay the fees of the ADR proceedings), more and more consumers seek assistance via this path of dispute resolution. Germany is moving towards more structured support for out-of-court solutions in civil justice, especially in aviation law, through ADR mechanisms

that encourage the use of these alternative processes to resolve disputes efficiently.

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? In your opinion, are there any improvements to the existing regime which would be advisable?

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? In your opinion, are there any improvements to the existing regime which would be advisable?

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, delayed flights and/or cancelled flights? Is this legislation adhered to and well monitored?

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?

As of 1 May 2024, the German air traffic tax increased by 19 per cent to between €15.53 and €70.83 per passenger, depending

on the route. This tax must be paid by the respective airline per passenger that departs from a German airport. This increase concretely means that the air traffic tax for a flight within Germany or to a EU Member State that amounted to €12.73 per passenger per trip in 2023 increased to €15.53 in May. For flights with a distance of more than 6,000 kilometres, the tax increased from €58.06 to €70.83 per passenger.

The significantly increased costs for the airlines have led to a decrease in flights departing from Germany. Various airlines, especially low-cost airlines, have cancelled flights and routes because of the high costs burden at German airports and further cancellations may materialise.

The tax rise could also lead to more expensive tickets as airlines may increase the ticket price to pass on the higher taxes to the passengers.



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 primary Greek legislation governing aviation law is Law 1815/1988, known as the Greek Aviation Code. This law sets out key terms, such as the definition of an aircraft, and includes provisions regulating aircraft registries, ownership and leasing conditions, and nationality requirements. Additionally, European Union (EU) regulations are directly applicable and binding, alongside directives and decisions, including, among others, Regulation (European Commission (EC)) No. 1008/2008 regarding the operation of airlines, conditions and procedures for granting and revoking operating licences, as well as aircraft leasing arrangements, and Regulation (EU) 2018/1139 establishing safety rules in the field of civil aviation.

The principal authority regulating and supervising air transport in Greece is the Hellenic Civil Aviation Authority (HCAA), an independent administrative authority established by Law 4757/2020, which divided the former single Greek aviation authority into two bodies: the HCAA; and the Civil Aviation Office, delegating different responsibilities to each of them.

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

To obtain an operating licence in Greece, the conditions set out in Regulation (EC) 1008/2008 should be met by air carriers, including establishing their principal place of business in Greece, meeting specified financial criteria, developing a business plan, and demonstrating that the individuals or legal entities managing the company's operations are creditworthy and have not been declared bankrupt. Additionally, they must hold a valid Air Operator Certificate (AOC).

Applicants submit their application dossier to the HCAA at least 90 days prior to the intended operation and are required to pay the relevant application fee, the amount of which is determined based on the category to which they belong.

1.3 What are the principal pieces of legislation in your jurisdiction which govern air safety, and who administers air safety? Does this legislation adequately cover all the issues which tend to arise in your jurisdiction, or do you feel that certain amendments or additional laws would be desirable?

The primary legislation governing air safety in Greece derives

from Regulation (EU) 2018/1139 establishing EU-wide aviation safety standards. Additionally, Greece complies with the International Civil Aviation Organization (ICAO) standards for air safety and accident investigation.

Air safety in Greece is administered by the HCAA, working in collaboration with the EU Aviation Safety Agency (EASA) and Hellenic Air Accident Investigation and Aviation Safety Board (HARSIA).

Greece's legislative framework effectively ensures compliance with EU and international air safety standards.

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

Air safety regulations generally apply to all categories of aircraft – commercial, cargo, and private carriers – but with distinctions based on their operational nature and risk profiles. Commercial carriers face stricter supervision due to passenger safety concerns.

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

The chartering of aircraft for commercial, cargo, or private carriers is governed by the Greek Aviation Code, and by special pieces of legislation as may be applicable each 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. Does the *status quo* tend to create an aviation market which is sufficiently competitive and open?

Regulation (EC) 1008/2008 establishes the fundamental requirements that air carriers must meet to operate services between EU airports. International carriers from non-EU countries may operate under relevant bilateral agreements. International aviation in Greece is also regulated by Law 3006/2002, which ratified the Montreal Convention 1999. The different framework for international carriers does not significantly disrupt competition; as regards the domestic market, there is room for improvement.

1.7 Are airports state or privately owned? Are there any plans to alter this position?

In recent years, the operation of several major airports in Greece, including the Athens International Airport, airports of Thessaloniki, Rhodes, Heraklion, and others, was granted by the Greek State to investors under long-term concession agreements. In the future, more airports in Greece are expected to undergo similar arrangements.

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

Licensed air carriers have the right to provide air transport services in Greece subject to restrictions stipulated by public service requirements, noise reduction requirements, scheduling and slot allocations to manage airport traffic, 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? Do you believe that there are any changes which would be of benefit to the existing regime?

The regulation of aviation accidents in Greece is primarily governed by national legislation, including the Greek Aviation Code and Law 2912/2001, establishing the core principles for investigating civil aviation accidents and incidents. The responsibility for safety investigations of air accidents and serious civil aviation incidents lies with HARSIA. Overall, the current framework is aligned with international standards, incorporating European regulations, such as Regulation (EU) No. 996/2010 and ICAO Annex 13.

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

Major airport operators announced significant investments and growth plans, including Athens International Airport's listing in the Athens Stock Exchange and expansion plan, aiming to increase capacity to 40 million passengers. Moreover, major airlines like American Airlines and Emirates have introduced new routes to and from Greece, reflecting the country's dynamic presence in the market.

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)?

In Greece, environmental obligations for aviation are governed by both EU and international regulations. Greece is a participant in both the EU Emissions Trading System (EU ETS) and 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?

Registration of ownership in the aircraft register maintained by the HCAA constitutes proof of ownership; a relevant registration certificate is issued by the HCAA to this effect. Foreign owned aircraft operated by a Greek airline are registered with the foreign aircraft register maintained by the HCAA as a requirement for such aircraft to acquire Greek nationality.

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

Per the Greek Aviation Code, liens on Greek registered aircraft and on spare engines are effective and valid upon their due registration with the respective registers of the HCAA. Liens on aircraft eligible and requiring registration are Greek law mortgages (simple or preferred) on the aircraft and on spare engines (not affixed on the aircraft), court claims and seizure proceedings. To establish a valid mortgage on a Greek registered aircraft, it should be granted under Greek law and registered with the HCAA.

For the registration of a mortgage, the title, a summary of same, and any other relevant supporting documents should be filed. A registered mortgage will take priority over mortgages concluded and/or registered subsequently in time.

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 a foreign lessor or financier seeks to deregister and export the aircraft from Greece, following termination of the lease agreement with the aircraft operator, a notarial deregistration power of attorney to this end would be necessary.

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 attached to an airframe do not constitute individual assets *per se*, subject to ownership rights; they are components of the aircraft as a whole and as such, the owner of the airframe also has ownership over them. Only spare engines duly registered in the relevant spare engine register maintained by the HCAA can be subject to property rights. Upon permanent attachment on an airframe of an engine (whether spare or detached from another aircraft), the owner of the airframe to which the engine will be attached as a component, shall acquire ownership of the engine as well.

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?

As per the Greek VAT Code (which follows the EU VAT Directive), there is a VAT exemption on the sale of aircraft used in international commercial transportation. In particular, the VAT Code provides for VAT exemptions on the supply and importation of aircraft which are to be used by airlines operating for reward chiefly on international routes. To qualify as operating chiefly on international routes, an airline should derive more than 50% of its gross annual revenues from international flights. For airlines that do not qualify for the international commercial exemption, the sale must be subject to the standard Greek VAT (24%), provided that the aircraft is located within the Greek territory at the time of sale.

No digital transaction duty (formerly stamp duty) is imposed on transactions related to aircraft trading within the Greek territory.

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

Greece has ratified the Montreal Convention by way of Law 3006/2002 and the Geneva Convention by way of Legislative Decree 543/1970. Greece has not signed nor ratified the Cape Town Convention.

2.7 How are the Conventions applied in your jurisdiction?

The Conventions that have been ratified by way of Greek legislation are applicable in the Greek legal system and are upheld and enforced by the Greek 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?

As per Article 27 par.1 (b) of the Greek VAT Code and the guidelines issued by Circular 1246/2014 which are in line with the ECJ C-33/11 A Oy and the guidelines issued by the VAT Commission (taxud.c.1(2013)3384768/2.10.2013), there is a VAT exemption on the transfer (sale) of the aircraft that is in the Greek territory during the time of the transfer between foreign contracting parties. The exemption applies, *inter alia*, in case the aircraft is at the exclusive disposal of a Greek airline under lease and more than 50% of the total annual gross revenue of the Greek company is from international transport.

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 alone under an operating lease agreement would not create legal ownership or security rights of the

lessee over the leased aircraft. Ownership rights and encumbrances are established in accordance with the law and registered in the public registers maintained by the HCAA.

3 Litigation and Dispute Resolution

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

Any creditor may expedite the seizure of property from its debtor by initiating temporary seizure proceedings. Specifically, under the Greek Code of Civil Procedure, a creditor is entitled to file a petition for temporary seizure, requesting that the Court order the detention of the aircraft. A temporary order may also be issued in cases of imminent danger.

Additionally, Article 189 of the Greek Aviation Code stipulates that any aircraft flying over Greek territory, landing at Greek airports, or utilising airport services, is subject to various rights, duties, and charges related to aviation, landing, and the use of Greek airports. These charges are considered liens on the aircraft and if they remain unpaid, the creditor may request the airport authority to prevent the aircraft from taking off or seize any other aircraft owned by the debtor. However, the aircraft may be released for take-off if the owner or operator provides a bank guarantee equal to the total debt, or if the creditor does not request the provisional arrest of the aircraft within four days of its detention.

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 in principle prohibited by Greek law; the lessor may repossess the leased aircraft on the basis of a deregistration power of attorney, unless the termination of the lease agreement and/or repossession of the aircraft is disputed by the lessee and/or other third parties, in which event repossession would require a relevant court order.

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 Greece are handled by the Civil Courts:

- i) the Single-Member Court of First Instance is competent when the disputed amount does not exceed EUR 250,000; and
- ii) the Multi-Member Court of First Instance is responsible for disputes where the disputed amount exceeds €250,000. For Summary Proceedings, the Single-Member Court of First Instance is usually the appropriate court, unless the main dispute is already pending in the Multi-Member Court. Criminal aviation cases are governed by the general provisions of Articles 1-10 of the Greek Code of Criminal Procedure, falling under the jurisdiction of 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?

Per the Greek Code of Civil Procedure, service to domestic legal

entities is in principle made to said entity's registered seat or to an appointed service agent, whether in Greece or abroad. When service is to be made on a party residing or having their seat abroad, the service is made on the prosecutor of the court where the proceedings are pending or about to be initiated, or on the court that issued the judgment. Subject to any specific contrary provisions, the service is effective once the document has been delivered to the authorities or individuals specified in the same Code, regardless of when it was dispatched or received.

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 applicant has the right to seek interim remedies before the Greek courts, including: the freezing or seizure of assets; prohibitory and mandatory injunctions; interim payments; and provisional orders. The claimant may also request an interim attachment order to safeguard assets while awaiting a judgment or final decision. In terms of final remedies, the applicant can initiate a lawsuit in the Greek Civil Courts, requesting specific performance or damages; a declaration of the existence or non-existence of a legal relationship; and the creation, modification, or annulment of a legal relationship. Parties may agree to resolve private law disputes through arbitration. The arbitration tribunal can grant all final remedies available in litigation. However, arbitrators are not authorised to issue, alter, or revoke provisional 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?

Arbitral decisions are not subject to legal remedies, and unless the arbitration agreement provides a right of appeal, these decisions serve as precedent and can be enforced in accordance with the provisions of the Greek Code of Civil Procedure. The New York Convention has been ratified through Law 4220/1961, governing enforcement of arbitral awards. Court decisions are subject to appeal before the competent appellate 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?

The general principle in Greek civil law is that there is no liability for accidental events or *force majeure*. Liability for compensation usually requires fault (negligence or subjective responsibility), and it is excluded when the damage results from an accident or *force majeure*.

3.8 Is there any trend developing towards regulatory support in civil justice for out-of-court solutions and the importance of engaging in Alternative Dispute Resolution (or similar)? If so, what (if any) are the implications for the answers in questions 3.1–3.7 inclusive?

In Greece, the scope of disputes related to aviation law is relatively narrow. There has generally been a discernible shift towards the adoption of alternative dispute resolution (ADR) mechanisms, however, such methods have not become the standard practice.

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? In your opinion, are there any improvements to the existing regime which would be advisable?

The establishment of a full function joint venture shall constitute a 'concentration' within the meaning of Article 5 of Law 3959/2011 on the protection of free competition (Competition Act or CA), and thus falling within the scope of the Greek merger control regime provided that the relevant turnover thresholds are met.

If the establishment of a joint venture has as its object or effect the co-ordination of the competitive behaviour of undertakings remaining independent, such co-ordination shall be assessed according to the provisions of Article 1 (1) and (3) CA, i.e. the national equivalents of Article 101 (1) and (3) TFEU.

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

The Hellenic Competition Commission (HCC) largely follows the EC's decisional practice. In the past, the HCC has defined the relevant market for scheduled passenger air-transport services on the basis of the 'point of origin/point of destination' (O&D) city-pair approach. As a result, every combination of a point of O&D is considered as a separate market from a customer viewpoint. Moreover, the HCC determines relevant markets depending on the type of routes, i.e. public/private (VIP) routes.

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, under Article 6 CA, a mandatory pre-merger notification before the HCC applies to 'concentrations' encompassing a lasting change in the control of an undertaking and provided that the statutory thresholds (the combined aggregate worldwide turnover of all the undertakings concerned amounts to at least EUR 150 million, and the aggregate turnover of each of at least two of the undertakings concerned exceeds EUR 15 million in the Greek market) are met.

4.4 How does your jurisdiction approach mergers, acquisition mergers and full-function joint ventures? In your opinion, are there any improvements to the existing regime which would be advisable?

The Greek merger control regime in essence mirrors the EC's merger control regime and applies to all transactions deemed as 'concentrations' which meet the relevant turnover thresholds, including 'foreign-to-foreign' transactions.

A mandatory formal notification for prior clearance by the HCC must be made within 30 calendar days from the occurrence of the first of the events triggering the concentration if the statutory thresholds are met.

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

Merger review procedure is primarily aligned with the merger review before the EC. Hence, it comprises a Phase I investigation which may be followed by an in-depth Phase II investigation in the event of serious concerns about the admissibility of the notified concentration.

The filing fee for a pre-merger filing amounts to EUR 1,100. In case the HCC decides to open a Phase II investigation, a filing fee of EUR 3,000 applies.

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?

EU general state aid rules are directly applicable in the Greek aviation sector.

At national level, there is no specific legislation on the application, the granting of state aid or the enforcement of EU state aid rules except for the recovery of illegal state aid, for which procedural rules are set forth in Articles 30 *et seq.* of Law 5000/2022.

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

State subsidies are regulated under Articles 16 and 17 of Regulation (EC) No. 1008/2008.

At national level, pursuant to Ministerial Decision D11/B/24702/9337 (GG' 836/4-7-2002) titled 'Establishment of a procedure – conditions for subsidising public service obligations in the aviation sector', a prior information notice for the submission of tender shall be communicated by the Air Transport and International Agreements Division of the HCAA and the criterion for the selection of the air carrier for each route shall be the lowest remuneration requested.

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 acquisition, retention, and use of airline passenger data are governed by Regulation No. 2016/679 (GDPR), Law 4624/2019 on personal data protection, Law 4579/2018, transposing Directive (EU) 2016/681 concerning the obligations of air carriers regarding Passenger Name Record (PNR) data and Greek Presidential Decree (PD) No. 53/2008, transposing Directive 2004/82/EC, requiring air carriers to transmit Advance Passenger Information (API) to enhance border control and combat illegal immigration.

Airline passengers are entitled to all rights outlined in the GDPR, including the right to access, rectify, erase, and restrict processing of their data, the right to data portability, the right to object to processing, and the right to protection from decisions made solely through automated processing.

API data transmitted for flights arriving in Greece from non-EU countries, including the passenger's name, date of birth, and nationality, is strictly used for identification and

border management and is deleted 24 hours after receipt unless further legal processing is necessary. Airlines are also required to inform passengers about how their data will be used.

Law 4579/2018 mandates the submission of PNR data for flights to and from Greece, including intra-EU routes. Sensitive data such as ethnicity, religion, or health information must not be processed and must be deleted immediately if received. PNR data is stored by the Greek Police's Passenger Data Unit (PDU); after six months, elements that directly identify passengers are masked to anonymise the data, and all data is permanently deleted after five years unless it is part of an ongoing investigation or prosecution.

The PDU must appoint a Data Protection Officer (DPO) responsible for lawful data handling and assisting passengers with data-related concerns. Passengers have the right to access their PNR data, request corrections, demand deletions or restrictions on processing, and seek legal recourse or compensation for any violations of their rights. Both airlines and the PDU must implement strong security measures to protect data and report any breaches to the Hellenic Data Protection Authority (HDDPA) and affected individuals.

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?

If the breach is likely to affect individuals' rights and freedoms, the controller must report it to the HDDPA (unless the breach does not pose a risk to individuals) without undue delay and, where possible, within 72 hours of becoming aware of the incident.

If the breach poses a high risk to individuals' rights and freedoms, the controller must inform the affected individuals without delay.

In case of non-compliance with these obligations, the HDDPA has the authority to investigate the breach, take corrective actions (issue warnings, reprimands, or orders including instructing the controller to notify affected individuals), and/or impose administrative fines, up to EUR 10 million or up to 2% of the total worldwide annual turnover of the previous financial year, whichever is higher.

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?

Law 4679/2020 on trademarks, Regulation (EU) 2017/1001 on EU trademarks, and the Madrid Agreement concerning the International Registration of Marks provide protection for national, EU, and international trademarks in Greece for a period of 10 years, which may be renewed for further 10-year periods.

Greek PD 259/1997 on designs, Regulation (EC) 6/2002 on Community designs, and the Hague Act concerning the International Registration of Industrial Designs provide protection for national, EU, and international designs in Greece for a period of five years, which may be renewed for further five-year periods, up to 25 total years of protection. New Regulation (EU) 2024/2822 on designs shall apply from May 1, 2025.

Unregistered trademarks and designs (and other distinctive signs) are protected under Law 146/1914 on unfair competition (passing-off). Unregistered EU designs are protected under Regulation (EC) 6/2002 for a period of three years as from the date on which the design was first made available to the public in the EU.

National Greek patents and utility models are registered with the Greek competent authority, OBI, according to the Law 1733/1987 on patents and are valid for a total period of 20 years, and seven years, respectively, upon annual renewal.

European (not unitary) patents registered with the European Patent Office, designating Greece among the designated jurisdictions, are valid and protected in Greece, according to the European Patent Convention and Law 1733/1987.

Equal protection can be granted with a PCT patent, in accordance with the Patent Cooperation Treaty. Greece has not ratified the Agreement on a Unified Patent Court, therefore, European patents with unitary effect (unitary patents) are not automatically valid in Greece.

Copyrighted works are automatically protected in Greece upon creation (no formal registration is required). Law 2121/1993 on copyright provides protection for all forms of copyrighted works, including computer programs (software) and databases.

Trade secrets in Greece are governed and protected under Law 4605/2019, transposing EU Directive 2016/943 on trade secrets.

Infringement of registered or unregistered IP rights, including unauthorised use, filing or registration of IP rights similar/identical to earlier IP rights, can be pursued in court proceedings.

4.11 Is there any legislation governing the denial of boarding rights, delayed flights and/or cancelled flights? Is this legislation adhered to and well monitored?

Regulation (EC) 261/2004 applies to air passengers departing from EU airports to flights arriving into airports located within the EU and are operated by air carriers which are licensed within the EU, protecting passengers in cases of flight cancellations, delays, denied boarding, or downgrading. While Regulation (EC) 261/2004 provides a clear framework for passenger rights, airlines are sometimes slow to fulfil their compensation obligations or may deny claims outright, often leading to protracted communication processes.

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

If a violation of the Regulation (EC) 261/2004 is identified, the HCAA has the authority to compel the airline to compensate the affected passenger. In cases where the carrier refuses to provide the required assistance to passengers, a financial penalty may be imposed.

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

Airport authorities are governed by international standards, EU regulations, and national laws. One of their primary obligations is to ensure the safety and security of passengers, aircraft, and airport staff, as well as efficient operations and compliance with health and safety standards.

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

Under Law 2251/1994 on consumer protection, passengers are considered ‘consumers’. Passengers typically have contractual relationships with air carriers – addressed under Regulation (EC) No. 261/2004 for rights in cases of delays or cancellations, however, consumer protection laws could apply to airport operators if their services are rendered directly to passengers.

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

Amadeus, Sabre and Galileo are active in Greece.

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

No, in Greece, 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. However, potential restrictions could apply under the merger control rules, if applicable.

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?

Entities may apply to the HCAA for an AOC in accordance with Regulations (EC) No. 1008/2008 and (EU) No. 2018/1139 and its Implementing rules. In parallel with the process for granting an AOC, the applicant should get approval from the HCAA for its Security Manual/programme. Holding a valid AOC is a prerequisite for the issuance of the Commercial Operating License in accordance with Regulation (EC) 1008/2008.

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?

From a legislative perspective, Greece is generally in line with EU and international standards. Greek aviation market's dynamic growth in volume, investment flow and increasing domestic air carriers' prominence are worthy of attention in the upcoming years.



Claire Pavlou has long-standing working experience with the firm and is an expert in M&A, commercial and corporate law. Her practice focuses mainly on private M&A deals, group restructurings, and joint ventures at a local and cross-border level. Claire's experience covers a variety of aspects of the M&A process, from strategy and due diligence (identifying key legal issues when buying or selling a company) to the drafting and negotiation of all related contracts and agreements. She has been involved in a number of important and complicated cross-border as well as local deals involving the acquisition of target companies and business activities in various business fields, including tightly regulated areas (cement and quarries of inert materials, gold mines, foods, cosmetics, aviation, telecommunications, pharmaceuticals and medical devices, lubricants, etc.).

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KYRIAKIDES GEORGOPOULOS Law Firm (KG) is a leading multi-tier business law firm and the largest in Greece, dating back to the 1930s, recognised for its prestige and expertise. With approximately 120 highly specialised lawyers, KG provides services to Greek and multinational corporations, renowned for handling complex, innovative cases, and cross-border transactions. Preferred by US and European law firms, KG delivers legal services at the highest international standards of quality and client service. Our partners and lawyers are active participants in major international law organisations and networks, including the International Bar Association, the American Bar Association, the Antitrust Alliance, and the Employment Law Alliance, among others. KG is a founding member of South East Europe Legal Group (SEE Legal) a regional alliance of major law firms from 12 countries in South East Europe, established in 2003. Working together on cross-border transactions, SEE Legal is the largest local legal team in SE Europe, with more than 450 lawyers organised in cross-jurisdictional practice groups. Our firm's performance is consistently ranked highly by the most prestigious of international directories, such as *Chambers & Partners Global*, *Chambers & Partners Europe*, *The Legal 500 EMEA*, as well as *IFLR1000*.

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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 followed below.
5. The Bharatiya Vayuyan Adhiniyam, 2024 (“**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 airworthiness, maintenance of aircraft, general conditions for flying and safety, registration of aircraft and the conduct of investigations.
6. 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.
7. 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.

8. 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.
9. Airports Economic Regulatory Authority of India Act, 2008 (as amended) (“**AERA Act**”) provides for: (i) the establishment of AERA; (ii) regulating tariffs and other charges for services rendered at airports; and (iii) establishing an appellate tribunal for the adjudication of disputes.
10. 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 programmes 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? Does this legislation adequately cover all the issues which tend to arise in your jurisdiction, or do you feel that certain amendments or additional laws would be desirable?

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 various CARs dealing with Air Safety provide 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, incidents, 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 National Aviation Safety Plan (2018–2022) released by the DGCA 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.

Since air safety is a complex matter comprising technical, commercial and legal aspects, it is recommended that safety related SARPs issued by ICAO may be implemented by the DGCA (for example, Annex 6 Part IV of the Chicago Convention) and amendments or additional laws to that effect would be required.

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 for passenger services can be undertaken by using single or multi engine aeroplanes, sea planes, and helicopters duly registered in India. Operations by air cargo operators can be scheduled or non-scheduled operations. Cargo operations can be undertaken using 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 Sl. No. 3/2020 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. Does the status quo tend to create an aviation market which is sufficiently competitive and open?

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 December 7, 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 in 2023) (“**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, unlike domestic scheduled airlines that are allowed to conduct self-handling services. However, the vast network of Bilateral Air Services Agreements entered into between India and other foreign countries and a liberalised FDI regime has resulted in a sufficiently competitive regulatory regime for fostering an aviation market.

1.7 Are airports state or privately owned? Are there any plans to alter this position?

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, OMDAs 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**”). As of December 4, 2023, the airports of Ahmedabad, Bengaluru, Cochin, Delhi, Guwahati, Hyderabad, Jaipur, Lucknow, Mangaluru, Mumbai, Kannur, Durgapur, Mopa and Thiruvananthapuram are currently operated under the PPP model by way of entering into OMDAs with the AAI. As of May 15, 2024, the AAI manages a total of 133 airports (110 are operational and 23 are non-operational) which include 35 International airports, 28 civil enclaves, eight airports under private control (two are joint venture airports and six are under the PPP model). Further, as of July 24, 2023, 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, of which 12 are currently operational as of July 25, 2024. As far as we are aware, the PPP model will be continued in accordance with the Government’s open-skies policy.

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? Do you believe that there are any changes which would be of benefit to the existing regime?

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 provides 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.

Since air safety is a complex matter comprising technical, commercial and legal aspects, a comprehensive analysis would be needed to determine whether any amendments or additional laws would be required.

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. On October 3, 2023, the Government of India issued a notification under Section 14(3) of IBC declaring that the provisions relating to moratorium under Section 14(1) of IBC would “not apply to transactions, arrangements or agreements under the Cape Town Convention and the Protocol, relating to aircraft, aircraft engines, airframes, and helicopters” (“**Notification**”). The Delhi High Court has passed directions to Go First in its order dated October 12, 2023 to (i) 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) continue to maintain the aircraft. Considering the change in law due to the Notification, the lessors filed applications with the Delhi HC. On April 26, 2024, the Delhi HC issued its judgment on the lessor’s petitions on de-registration of aircraft. It held, *inter alia*, that the Notification applied to the GoFirst insolvency and ordered the DGCA to

de-register all the aircraft of the petitioners within five (5) working days from the date of the order and required the DGCA to facilitate the export of aircraft including by issuing the relevant export certificates of airworthiness. In the judgment, the Delhi HC made various observations – these could help contribute to mitigating the India jurisdiction risk for future aircraft leasing and financing:

- i. The Notification has cured a lacuna in the existing law, i.e., it was issued pursuant to the Cape Town Convention, and it is clarificatory in nature, meaning that the Notification would apply since the promulgation of the IBC, i.e., since 2016. The Government of India and DGCA filed an affidavit in the Delhi HC court stating that the Notification was a “necessary adjunct” to the IBC, and was required to be effective from May 28, 2016, that i.e., the date on which Section 14(1) of IBC came into force. The Delhi HC has held that the legislative intent of the Notification is clear from the reference to the Cape Town Convention and Aircraft Protocol and the date of accession by India – all of which form part of the Notification.
 - ii. Rule 30(7) of the Aircraft Rules is a mandatory provision that requires the DGCA to give effect to the IDERA application within five working days.
 - iii. The Delhi HC acknowledged that India’s declaration of the two calendar months waiting period under Article XI (9) of the Aircraft Protocol for implementation of “remedies on insolvency” under the Aircraft Protocol should also apply to GoFirst from the date the Notification came into force, i.e. October 3, 2023 and that such waiting period ended on December 3, 2023.
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 representatives 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. On November 7, 2024, the Supreme Court of India, under Article 142 of the Constitution of India, invoked its extraordinary powers to order the liquidation of Jet Airways due to non-implementation of the resolution plan for five years.
 3. 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 followed by five more A350-900 from CACIB, MUFG, BNPP and SMBC, respectively. This marked the first instance of a wide-body aircraft being leased through GIFT City. Additionally, the Tata Group’s airlines viz Vistara and Air India, merged with effect from November 12, 2024. With this consolidation, Air India will be India’s leading domestic and international full-service airline. As part of the merger transaction, Singapore Airlines Limited (“**SIA**”) will also invest and hold 25.1% shareholding in Air India.
 4. 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.
 5. IndiGo has placed an order of 500 Airbus A320 family aircraft which provide it with a steady stream of deliveries between 2030 and 2035.
 6. FLY91, a Goa-based airline, has received an air operators certificate issued by the DGCA 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.
 7. Noida International Airport, also known as “Jewar Airport” is set to begin operations on April 17, 2025, with a total of 30 flights to various locations. This airport 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.
 8. 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 2025 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 Environment Protection, Series “C”, Part I, Issue 2, October 8, 2024) as updated from time to time (“**CORSIA CAR**”) provides for “Carbon Offsetting and Reduction Scheme for International Aviation (CORSIA)” and is applicable to aeroplane

operators that produce CO₂ emissions more than 10,000 tonnes per year from the use of aeroplanes) with a maximum certified take-off mass greater than 5,700 kg conducting international flights on or after January 1, 2019 (excluding humanitarian, medical and firefighting flights). The two aspects of CORSIA are (i) Monitoring, Reporting & Verification (“MRV”) to capture fuel consumptions from international operations by an operator and to calculate the carbon emissions for reporting to DGCA annually, and (ii) offsetting where an operator is required to offset its carbon emissions from international operations and cancel a quantity of CORSIA eligible emissions units corresponding to their offsetting requirements. As per the CORSIA CAR, aeroplane operators are required to develop an annual emissions report. India has not volunteered to participate in ICAO’s pilot (2021–2023) and first phase (2024–2026) of CORSIA. The Second Phase (2027–2035) is mandatory. As such, for Indian operators with international flights between India and other States, the offsetting requirements will be applicable from January 1, 2027 onwards.

- ii. 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.
- iii. 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.

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 17(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(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 22(1) 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.

As regards transactions involving entities incorporated in GIFT-City (Gujarat International Finance Tec-City, India’s newly established international financial services centre), a framework for forming an alternative dispute resolution centre has been proposed on July 16, 2024.

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 exists 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.

3.8 Is there any trend developing towards regulatory support in civil justice for out-of-court solutions and the importance of engaging in Alternative Dispute Resolution (or similar)? If so, what (if any) are the implications for the answers in questions 3.1–3.7 inclusive?

This past year, as far as Indian airlines are concerned (Jet Airways, GoFirst, SpiceJet, FlyBig), aggrieved parties have sought court intervention for effective redressal of their claims rather than opting for alternative dispute resolution.

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? In your opinion, are there any improvements to the existing regime which would be advisable?

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 (or the recently introduced deal value thresholds, detailed below in para c) 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 150 calendar days (subject to statutory exclusions) from the date of filing of the notification, whichever is earlier. That said, a typical JV arrangement in the airline sector which involves 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 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 target enterprise (i.e. the one being acquired/merged/amalgamated) has “substantial business operations in India” (SBO), will require approval from the CCI.

As of September 9, 2024 the Competition Commission of India (Combinations) Regulations, 2024 (“**Combination Regulations**”) has been issued replacing the earlier regulations. The Combination Regulations prescribe the modalities for determining what constitutes “substantial business operations in India”.

As per the Combination Regulations, a target enterprise will be deemed to have SBO in India, if its:

- (i) Gross Merchandise Value (“**GMV**”) in India is (a) 10% or more of its total (global) GMV for the period of 12 months prior to the trigger date in India, and (b) more than INR 500 crores (~USD 59.5 million); **or**
- (ii) turnover in India is (i) 10% or more of its total global turnover from all products and services in India, in the preceding year; and (ii) more than INR 500 crores (~USD 60 million) turnover in India.; **or**
- (iii) digital service provider (i.e., entities providing internet services or digital content) is deemed to have an SBO in India if its number of business users or end-users in India is 10% or more of its total global number of such users.

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.

Under CA02, there is no mechanism to seek the CCI's approval for other forms of non-structural partnerships or alliances in the aviation sector – unlike certain other jurisdictions like Singapore. The CA02 has recently undergone an overhaul, which intends to cover any existing lacunae in the law. In our opinion, no further changes are required in the current regime.

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 Rules, 2024 prescribe certain exemptions for combinations from mandatory notification to 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? In your opinion, are there any improvements to the existing regime which would be advisable?

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.

In our opinion, nothing further is required under the current regime.

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 horizontally 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 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. However, until approval from the CCI is obtained, the acquirer is prohibited from exercising any ownership or beneficial rights or interests in the acquired shares or convertible securities. That said, the acquirer may:
 - avail economic benefits such as dividends, other distributions, subscription to rights issues, bonus shares, stock splits, and buy-backs of securities; and
 - exercise voting rights exclusively in matters related to liquidation or insolvency proceedings.
- 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. With respect to on-market purchases (detailed above), the parties must also file an application with the CCI for approval within 30 days of the first on-market acquisition.
- 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 calendar 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 120 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 150 days from the date of notification, the Combination will be deemed to be approved by the CCI.

The CCI introduced the deemed approval mechanism known as the “Green Channel” on August 13, 2019. Requirements for eligibility for a green channel filing are presently under the CCI (*Criteria for Combination*) Rules, 2024, (“**Green Channel Rules**”); 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 30 lakhs (approximately USD 35,544) while a Form-II will have to be accompanied with a filing fee of INR 90 lakhs (approximately USD 106,633).

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.

The Digital Personal Data Protection Act, 2023 (“DPDPA”) 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:

- a. 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.
- b. 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.
- c. The Patents Act, 1970 (as amended) also provides for remedies pertaining to patent infringement.
- d. 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, delayed flights and/or cancelled flights? Is this legislation adhered to and well monitored?

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. The Ministry of Civil Aviation, DGCA and Indian airlines are each consistently playing their roles to ensure passengers have a good travel experience, and when necessary, are compensated for denied boarding, cancelled or delayed flights.

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.

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.

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 or a body corporate:
 - 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.

Further, the airline and its Board of Directors shall be required to obtain security clearance from the Ministry of Home Affairs (“MHA”). The positions of the Chief Executive Officer (“CEO”) and/or Chief Financial Officer (“CFO”) and/or Chief Operating Officer (“COO”), and/or any other similar designation(s) exercising management control, if held by foreign nationals, would also require security clearance from MHA.
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?

- a. On October 3, 2023, the Ministry of Corporate Affairs, Government of India issued a notification (“**Notification**”) stating that the provisions of Section 14(1) of the Insolvency and Bankruptcy Code, 2016 (“**IBC**”) relating to moratorium will not apply to transactions, arrangements or agreements under the Cape Town Convention and the Cape Town Protocol 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 under Section 14(l) of the IBC.

- b. The Bharatiya Vayuyan Adhiniyam, 2024 replaces the 90-year-old Aircraft Act, 1934 and addresses certain ambiguities and redundancies. The Bharatiya Vayuyan Adhiniyam, 2024 came into force on January 1, 2025 and brought in new regulations on aircraft design and manufacturing, aligning with global civil aviation standards. It also transfers the responsibility to issue certain important certificates to the DGCA from the department of telecommunication.
- c. 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.
- d. The DGCA, on July 8, 2024, issued CAR (Section 4, Series X, Part II) (“**GH CAR**”). The GH CAR outlines the framework for the safety clearance and operations of Ground Handling Service Providers (“**GHSPs**”) at licensed airports in India. Key aspects include the requirement to obtain from the DGCA a safety clearance within six months from the issuance of the GH CAR, compliance with regulatory requirements (such as the Aircraft Rules and GH Regulations), and adherence to safety, training, and operational standards. GHSPs must develop a comprehensive Ground Handling Service Manual (GHS Manual), implement a Safety Management System (“**SMS**”), and maintain proper training and certification for personnel. Regular audits, incident reporting, and emergency response plans are also to be undertaken to ensure compliance.
- e. By its notification dated July 12, 2024, the Ministry of Finance, with effect from July 15, 2024, has implemented a uniform Integrated Goods and Services Tax rate of 5% on import of aircraft components or parts, as prescribed in specified technical manuals, for servicing, repair, maintenance, or overhauling (subject to conditions). This decision, aligned with the Government’s policy to make India a global aviation hub, marks a significant milestone for the Indian maintenance, repair, and overhaul of the Maintenance, Repair, and Overhaul (“**MRO**”) industry.
- f. The International Financial Services Centres Authority (“**IFSCA**”) issued a circular dated October 30, 2024 whereby the “Framework for Aircraft Leases” dated May 18, 2022, which, *inter alia*, provides guidelines for the establishment of a lessor entity in GIFT City stands further amended. The circular has introduced a new clause in the framework restricting persons resident in India from selling, transferring, leasing or otherwise disposing assets covered by the Aircraft Lease Framework (or rights or interests related to such assets) to a finance company undertaking leasing activities where the assets, on or after disposal, will be operated or used solely by persons resident in India or to provide services to persons resident in India. Such restrictions do not apply where the disposal is to a lessor (a) who is not a group entity of such person, or (b) as part of a sale and leaseback arrangement of assets which are being imported into India for the first time.
- g. On April 12, 2024, the DGCA amended the CAR on registration and de-registration of aircraft dated September 10, 1998 with the aim of simplifying the process of import and repossession of aircraft for GIFT City based aircraft lessors and empowering such lessors to ensure the value of aircraft is preserved following repossession. By this amendment, the GIFT City Lessors can take control of the aircraft as ‘operators’ which empower them with the critical right to ensure that the value of the aircraft is preserved and maintained. A GIFT City lessor can approach the DGCA for special flight permits so that the aircraft can be transported for maintenance checks without delay.
- h. 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. It is difficult to ascertain when the CTC Bill will be promulgated as legislation by the Parliament.

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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.
For recent amendments to the ASL due to the COVID-19 pandemic, please see question 1.10 below.

The principal regulatory bodies in Israel for aviation matters are:

- **The Ministry of Transportation:**
 - regulates the aviation industry; and
 - has the authority to initiate new laws and enact regulations.
- **The Israel Civil Aviation Authority (CAAI):**
 - 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):**
 - 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" shall mean 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? Does this legislation adequately cover all the issues which tend to arise in your jurisdiction, or do you feel that certain amendments or additional laws would be desirable?

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 ability 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, in order 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 have to 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. Does the status quo tend to create an aviation market which is sufficiently competitive and open?

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. The above situation creates an aviation market which is sufficiently competitive and open, as the same criteria apply on local and foreign carriers.

1.7 Are airports state or privately owned? Are there any plans to alter this position?

The airports in Israel are state-owned and there are no formal plans to alter this position. The IAA is the governmental company which is in charge of the operation of airports throughout Israel.

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 May 2024, the CAAI published a draft of proposed flight regulations regarding restrictions of transport and noise limit during the restricted night hours at Ben Gurion Airport, which includes a proposal to determine limits on number of take-offs/landings during and noise quotas for the night hours in Ben Gurion International Airport.

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? Do you believe that there are any changes which would be of benefit to the existing regime?

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 in order 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.

In accordance with the amendment, statutory compensation was not payable in cases of cancellation of flights during the validity of the provisional amendment. In addition, the time frame for providing a refund for cancelled flights was extended from 21 days (according to the original law) to 90 days as of the date of the cancelled flight or until 1 October 2020 (subject to various conditions), whichever is the latest.

Subject to the passenger's consent in writing, within the time frame for making the refund, a refund may have been replaced by a voucher. In case there is consent for a voucher, it should be at least for the same value as of the consideration paid for the ticket, and valid for purchasing any of the carrier's services for at least one year. Such voucher shall be transferable and subject to a written request, and refundable if not used. In August 2021, the regulator published a memorandum for the amendment to the ASL in respect of cancellations due to COVID-19 – accordingly it was suggested that such cancellations will be regarded as "extraordinary circumstances" under the ASL. The memorandum states that such amendment will have a retroactive validity as of 7 July 2021 as it is meant to replace the latest amendment as mentioned above.

In May 2024, a draft amendment to ASL was published for comments from the stakeholders. The new amendment – Aviation Services Law (Compensation and Assistance due to flight cancellation or change in its conditions) (Amendment

No. 3) (Special Instruction – Iron Swords) – proposes to make a change in the passengers' entitlement to statutory compensation during the period of the "Iron Swords" war. In view of the above, it is proposed to adjust the wording of the law to the wording of the European Directive (EU 261/2004) and to determine that a passenger whose flight was cancelled will not be entitled to statutory compensation, as mentioned in the first appendix, if the carrier or the flight organiser proved that the flight was cancelled due to special circumstances that the carrier or the flight organiser was unable to prevent, even using all reasonable means. The draft is outstanding and has yet to be approved and therefore the final wording of the amendment (if approved) is uncertain as well as in respect of its period of applicability.

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.

Further information in respect of the requirements for registration of aircraft in the Register of Aircraft is available at: <https://www.gov.il/en/collectors/legalinfo>

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 not signed the Cape Town Convention.

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 has to 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 Magistrates 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 court 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 also 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 events caused by the COVID-19 pandemic, amended legislation was initiated in order to address these unforeseen events, thus contractual obligations have been overcome by specific legislation in a timely manner. A new draft amendment is outstanding for approval in the Knesset which proposes to make a change in the passengers’ entitlement to statutory compensation during the period of the “Iron Swords” war, for a limited period of time (which has yet to be determined).

3.8 Is there any trend developing towards regulatory support in civil justice for out-of-court solutions and the importance of engaging in Alternative Dispute Resolution (or similar)? If so, what (if any) are the implications for the answers in questions 3.1–3.7 inclusive?

There has been a growing trend in Israel toward regulatory support for out-of-court solutions and the importance of engaging in Alternative Dispute Resolution (ADR). This shift is part of a broader global movement toward encouraging more efficient, cost-effective, and flexible methods of resolving disputes outside of traditional litigation. Key elements of this trend in Israel include the following:

- (i) Legal Framework and Legislative Support – Israeli civil procedure law has incorporated ADR mechanisms, including mediation, arbitration, and conciliation, as part of its broader effort to streamline the judicial system. The Israeli courts have long been supportive of ADR practices.
- (ii) Judicial Encouragement of ADR – Israeli Courts have the authority to encourage that parties attempt ADR before proceeding with litigation. This is particularly common in family law and commercial disputes. Courts have established specialised ADR programmes aimed at resolving cases more quickly and amicably.
- (iii) Judicial Efficiency – the increasing pressure on the Israeli court system due to high case volumes has made out-of-court solutions more attractive. ADR helps alleviate the burden on courts, which are often overloaded with cases. This creates a natural incentive for both the legal system and the public to engage in ADR mechanisms where possible.

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? In your opinion, are there any improvements to the existing regime which would be advisable?

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 recently 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 on an organisation of up to approximately NIS 115 million (app. USD 31 million) and on an individual of up to approximately NIS 1,150,000 (app. USD 310,000).

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? In your opinion, are there any improvements to the existing regime which would be advisable?

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).

Obviously, there are several potential improvements that could be considered for the Israeli competition regime in the aviation industry, bearing in mind that the aviation sector is crucial for Israel's economy. In order to support airlines in operating to and from Israel while maintaining a competitive and fair aviation market, several improvements to the existing Israeli competition regime could be considered. These improvements would not only benefit airlines but also help create a more dynamic and sustainable aviation ecosystem. Key areas for improvement include streamlining regulations, incentivising low-cost carriers, enhancing airport infrastructure, and expanding international aviation agreements. These initiatives would foster a more competitive and dynamic aviation market, benefitting both airlines and passengers.

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.

However, 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.

As part of the evolving development in technology, privacy and data information legislation, on August 5, 2024, the Israeli Parliament (Knesset) approved a comprehensive amendment to the Protection of Privacy Law, 1981. This Amendment, which will come into effect in August 2025, marks a significant update to the Privacy Protection Law.

The Amendment significantly reduces the current formal database registration obligations. This is expected to alleviate the registration burden for many businesses, which will generally no longer need to register databases. The Amendment holds that there is a duty to register databases so long as: (i) the database includes more than 10,000 data subjects and is collected for the purpose of transferring it to others for a fee or business; or (ii) where the data Controller is a public body. The Amendment further introduces a reporting duty for databases (and not registration duty), when the database contains "Highly Sensitive Information" on more than 100,000 data subjects.

The Amendment introduces a mandatory Data Protection Officer (DPO) appointment for specific sectors. This requirement extends to organisations whose core operations involve extensive processing of highly sensitive information, such as financial institutions, healthcare providers and credit agencies. Additionally, entities engaged in systematic monitoring of individuals' behaviour or location, like telecommunications companies, must appoint a DPO.

The Amendment significantly enhances the Privacy Protection Authority's enforcement capabilities under the Law. It empowers the Privacy Protection Authority to appoint investigators and inspectors with broad statutory powers, including access to computer materials, data collection and the ability to conduct both administrative and criminal investigations. Notably, the Amendment introduces a gradual imposition of monetary levies, which can be substantial, potentially reaching hundreds of thousands of Israeli Shekels. The level of these payments will be determined based on two key components: the number of individuals affected by the data breach and the sensitivity of the compromised information. Additionally, the Amendment enables the imposition of exemplary damages for certain violations of the Law without proof of damage.

The Amendment grants the Privacy Protection Authority with broad investigative authority, which includes the power to compel identification and information disclosure, access database locations and seek Court orders when necessary. Another significant change involves an extension of the limitation period while the previous two-year limitation for civil claims is removed, defaulting to the standard seven-year period for most cases.

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, delayed flights and/or cancelled flights? Is this legislation adhered to and well monitored?

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 11,590 in several cases, including where the operator has not given the required benefits to a passenger.

For recent amendments to the ASL due to Iron Swords, please see question 1.10 above.

The Aviation Services Law is adhered to and generally well-monitored by the Civil Aviation Authority and other relevant regulatory bodies. The law ensures that airlines operate safely, fairly, and in compliance with international standards. Regular reviews and updates to the law, in line with specific issues that require different practices, should be taken more promptly to assist Israel maintain a competitive and efficient aviation sector.

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 near future, the focus of new legislation may be related to the impact of the Iron Swords war which affected Israel in general and specifically the international aviation to and from Israel, which was badly affected as many international airlines ceased operation (in whole or for certain period).

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 (including due to the entry into force of Amendment 13 to the Privacy Protection Law in August 2025) 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 programmes, the duty of call centres to promptly reply, and additional revisions to consumer rights in case of cancellation of a transaction.

Moreover, potential legislative and regulatory developments may apply to ESG (Environment, Social and Governance) initiatives in the business sector as a whole, and specifically in the aviation industry.



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Gross, Orad, Schlimoff & Co. (GOS) is a boutique law firm specialising in insurance/reinsurance, aviation and commercial law. 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 main set of internal rules governing the aviation industry includes the following:

- the Italian Navigation Code (“INC”), approved pursuant to Italian Royal Decree No. 327 of 30 March 1942, as subsequently amended by Legislative Decree No. 96 dated 9 May 2005 and Legislative Decree No. 151 dated 15 March 2006;
- Legislative Decree No. 250 of 25 July 1997, which established the “*Ente Nazionale Aviazione Civile*” (“ENAC”), the Italian Civil Aviation Authority;
- Legislative Decree No. 185 of 19 August 2005, implementing Directive No. 2000/79/EC concerning the European Agreement on the Organisation of Working Time of Mobile Workers in Civil Aviation;
- Legislative Decree No. 69 of 27 January 2006, which provides for penalties in cases of non-compliance with Regulation (EU) No. 261/2004 (regarding passenger’s rights to compensation and assistance in the event of denied boarding, flight cancellations or delays);
- Legislative Decree No. 197 of 6 November 2007, which establishes penalties for violations of Regulation (EU) No. 785/2004 (as amended by Commission Delegated Regulation (EU) No. 2020/1118, concerning insurance obligations for airlines and aircraft operators);
- Ministerial Decree dated 10 December 2008, relating to airport services fees provided on an exclusivity basis;
- Legislative Decree No. 24 of 24 February 2009, implementing fines for violations of Regulation (EU) No. 1107/2006 on the rights of disabled persons and persons with reduced mobility when travelling by air; and
- in general terms, ENAC Regulations setting out technical-operational requirements applicable to the aviation sector to comply with safety standards appropriate to the state of the art and/or efficiency levels compatible with the national civil aviation system, among which ENAC Regulation – Edition 4, dated 13 May, 2021, which establishes the rules applicable to aircraft entering/operating in/or leaving Italian airspace and ENAC Regulation – Edition 1, dated 27 February, 2024, which contains the National Air Transport Facilitation Program.

Italy has also ratified major international conventions and treaties relating to air transport. Specifically, the 1933 Rome

Convention, the 1944 Chicago Convention, the 1948 Geneva Convention, and the 1999 Montreal Convention have been executed and ratified by Italy, while the 2001 Cape Town Convention, which established the International Registry of Movable Property, has been signed but not been yet ratified by Italy.

Furthermore, all European Union regulations concerning the aviation sector apply to the Italian market. Some of the most recent ones that have had a significant impact on the aviation sector in Italy include the following:

- Regulation (EU) No. 2018/1139 of the European Parliament and Council, dated 4 July 2018, which sets out common rules for civil aviation and establishes the European Union Aviation Safety Agency;
- Regulation (EU) No. 2019/712, dated 17 April 2019, concerning the safeguarding of competition in air transport, which repeals Regulation (EC) No. 868/2004;
- Council Regulation (EEC) No. 95/1993, as amended by Regulation (EC) No. 793/2004 and Regulation (EC) No. 545/2009, which governs the allocation of airport slots. At congested airports, slot allocation is managed by Assoclearance (see below) in accordance with Articles 6, 8, 9, and 10 of Regulation (EEC) No. 95/1993; and
- Commission Implementing Regulation (EU) No. 2019/947, along with related acceptable means of compliance and guidance material, as well as Commission Delegated Regulation (EU) No. 2019/945, which governs Unmanned Aircraft Systems (UAS) and third-country operators of UAS. Additionally, Commission Implementing Regulation (EU) No. 2021/1166 and, in order to complete the governance of all such European regulations in Italy, finally ENAC has issued its regulation “UAS-IT” on 4 January 2021.

The main regulatory authorities overseeing the aviation sector in Italy are the following:

- ENAC “*Ente Nazionale Aviazione Civile*” (the Italian Civil Aviation Authority), the primary agency tasked with regulating aviation in Italy, as established by Article 687 of the INC and Legislative Decree No. 250/1997. ENAC has comprehensive authority over the aviation sector, including the supervision and regulation of airlines, the issuance, suspension, and revocation of airline licences, as well as the imposition of fines for breaches of aviation rules and regulations, such as those under Regulation (EU) No. 261/2004;
- the Ministry of Infrastructure and Transportation, acting through its specific Department (“*Dipartimento per le Infrastrutture e le Reti di Trasporto*”), which holds supervisory authority over ENAC;

- ENAV (“Ente Nazionale per l’Assistenza al Volo”), the National Agency for the Safety of Air Navigation, which is responsible for the investigation of aviation accidents and incidents in order to enhance flight safety and ensure compliance with aviation safety standards;
- the Italian Competition and Market Authority (“Autorità Garante della Concorrenza e del Mercato”, or “AGCM”), established by Law No. 287 of 10 October 1990, which is responsible for overseeing anti-competitive practices, abuses of dominant market positions, and unfair commercial conducts;
- the Italian Transport Authority (“ART”), an independent administrative body whose main function is to promote and safeguard competition across all transport sectors, including aviation; and
- Assoclearance, the agency responsible for the allocation of airport slots at Italian airports, ensuring compliance with relevant regulations and the equitable distribution of available slots.

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

ENAC is responsible for issuing airline licences in accordance with INC provisions, EU Regulation No. 1008/2008 and ENAC’s own set of rules (“EAL-016”).

In order to obtain a licence, the following criteria must be fully satisfied by the applicant, pursuant to Article 778 of the INC:

- the applicant must be an Italian entity or a company effectively controlled by EU Member States or by citizens of EU Member States, or must have its majority share capital owned by such entities or individuals;
- the primary activity of the applicant must be air transportation, which may be carried out either exclusively or in conjunction with other commercial aviation activities, such as aircraft operation, maintenance, or repair;
- the applicant must possess a valid certificate of airworthiness issued by ENAC and must own or hold as (dry) lessee at least one aircraft in compliance with Article 2.2 of ENAC’s EAL-16 rules dated 27 February 2008;
- if the applicant is using a leased aircraft, it must provide ENAC with a certified true copy of the relevant lease agreement for verification and approval. Furthermore, the applicant must demonstrate compliance with the financial, administrative, and insurance requirements set out in EU Regulation No. 1008/2008 and EU Regulation No. 785/2004; and
- the applicant must also hold a valid Air Operator Certificate (“AOC”), issued by ENAC, confirming that the carrier possesses the professional qualifications, operational capabilities, and organisational structure necessary to meet safety standards and regulations required for aircraft operations.

1.3 What are the principal pieces of legislation in your jurisdiction which govern air safety, and who administers air safety? Does this legislation adequately cover all the issues which tend to arise in your jurisdiction, or do you feel that certain amendments or additional laws would be desirable?

The Decree of the Minister of Infrastructure and Transport of 21 July 2009 designated ENAC as the sole authority responsible

for coordinating and monitoring the implementation of safety regulations. Pursuant to Articles 10 and 11 of Regulation (EC) No. 300/2008, ENAC ensures the drafting, implementation and updating of the National Civil Aviation Security Program (“NSP”) and the National Program for Quality Control of Civil Aviation Security. To carry out the above tasks and functions ENAC avails itself of the CISA – “Comitato Interministeriale per la Sicurezza dei trasporti aerei e degli Aeroporti” (the Interministerial Committee for Air Transport and Airport Safety).

All EU regulations related to air safety are directly applicable in Italy, being in certain cases integrated by Italian regulations supplementing and clarifying further details or practical aspects of the EU regulations. Among the EU Regulations related to air safety, the following can be highlighted:

- Regulation (EU) No. 216/2008 (on common rules in the field of civil aviation and establishing a European Aviation Safety Agency);
- Regulation (EU) No. 965/2012 (laying down technical requirements and administrative procedures related to air operations pursuant to Regulation (EC) No 216/2008);
- EU Regulation No. 748/2012 (laying down implementing rules for the airworthiness and environmental certification of aircraft and related products, parts and appliances, as well as for the certification of design and production organisations);
- Regulation (EU) No. 1321/2014 (on the continuing airworthiness of aircraft and aeronautical products, parts and appliances, and on the approval of organisations and personnel involved in these activities); and
- Regulation (EU) No. 1199/2016 (as regards operational approval of performance-based navigation, certification and oversight of data services providers and helicopter offshore operations).

When an accident or incident occurs, it is the duty of the aircraft captain to note it in the flight book and, immediately after landing, report it to ENAC.

ANSV (the National Flight Safety Agency), ENAV and airports management, have tasks and duties in the event of accidents, according to Articles 826 and 832 of the INC.

Italy applies the international regulations and rules issued by the International Civil Aviation Organization (“ICAO”), the European Aviation Safety Agency (“EASA”) and EU-OPS (in accordance with Article 2 of EU Regulation No. 1899/2006, which has amended EU Regulation No. 3922/1991 on the harmonisation of technical requirements and administrative procedures in the civil aviation sector).

It should also be noted that the rapid digitisation of the aviation industry has brought about increased connectivity and efficiency, but it has also raised concerns about cybersecurity. The aviation sector is vulnerable to cyberattacks that can disrupt operations, compromise safety and undermine public trust. As it is known, cyberattacks in aviation can have devastating consequences, affecting flight systems, air traffic control and passenger data. Furthermore, the interconnected systems make the industry susceptible to a cascade of events from a single breach.

ENAC plays a pivotal role in implementing preventive measures and training staff to address cyber threats. This involves raising awareness, equipping employees with the skills to respond effectively to cyberattacks, and ensuring they are familiar with the appropriate contacts and protocols.

Additionally, the activities of the Italian Airports Information Sharing Analysis Centre (“ISAC”) aim at mitigating cyberattacks by facilitating the collection and real-time sharing of critical information.

The existing legislation provides a stable framework for addressing many critical issues in Italy's civil aviation sector, particularly in terms of safety, security, and compliance with international and EU standards. However, an enhanced legislative focus on cyber resilience, regular audits, and mandatory reporting of cyber incidents could strengthen protections against evolving threats. Therefore, proactive legislative measures could better position Italy to tackle emerging challenges and maintain high standards of safety, efficiency, and public trust in the aviation sector.

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

The distinction between commercial and private flights primarily lies in their respective administrative, organisational, and financial requirements and burdens, even though the same air safety rules and standards generally apply to both. Specifically, ENAC issued its rules "NAV. 70-C" on 31 October 2011, addressing the Continuing Airworthiness Management Organization ("CAMO") approval certificate for commercial air transportation operations.

In accordance with the subsequent ENAC rules "NAV. 71-B", operators not engaged in commercial air transportation were required to obtain the CAMO approval if their aircraft exceeded a weight of 5,700kg or met certain other specifications. However, these requirements have been later removed following to the issuance of EU Regulation No. 965/2012 (subsequently amended by EU Regulation No. 2018/1042 and EU Commission Implementing Regulation No. 2019/1387), as well as of EU Regulation No. 1321/2014 (amended by EU Commission Regulation No. 2018/1142 and EU Commission Implementing Regulation No. 2020/1159).

The ENAC Regulations of 21 October 2003 and of 30 June 2003 provide clear guidelines for determining whether an operation is considered commercial or private. Specifically, a distinction is made between commercial air transportation operations (which include scheduled, charter, and taxi flights for both passengers and cargo), aerial work operations (such as aerial photography, advertising, surveillance, fire prevention, and emergency services) and general aviation operations (including the use of private aircraft, as well as activities carried out by flight clubs, associations, and flying schools).

The private use of aircraft must correspond to the statement rendered by the aircraft's captain to ENAC on landing. Such statement is subject to ENAC's control. The private use of aircraft must be free of charge.

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

Charter flights, whether operated for commercial, cargo, or private purposes, are generally subject to the same regulations, with no separate legal framework specifically applied to such activities. Historically, all charter services were subject to the Ministry of Transportation Decree of 18 June 1981, which applied to non-scheduled services in general. However, with the introduction of more specific EU Regulations concerning charter flights, the abovementioned Ministerial Decree has been rendered obsolete and superseded by international provisions.

Notably, European carriers are now authorised to operate charter flights within Europe, provided that airport slots are available at the destinations they intend to serve. This

shift has simplified the operational framework for European airlines in the charter flight sector.

As regards extra-EU non-scheduled air services, according to Article 787 of INC, ENAC is entitled to impose specific requirements on non-EU licensed airlines. These requirements include safeguards designed to ensure civil aviation safety, which must be both implemented and maintained to avoid any potential risk. In addition to these safety measures, ENAC may also impose technical and administrative obligations on such airlines. Failure to meet these conditions may result in ENAC prohibiting the extra EU airline from entering Italian airspace.

Moreover, ENAC will only approve the operation of non-EU non-scheduled flights on a reciprocal basis. This means that the airline's country of origin must offer EU-licensed carriers the same rights to operate non-scheduled flights to that particular destination.

According to Article 3 of ENAC Regulation of 24 April 2007 on the "Discipline of extra-EU non-scheduled air services", non-scheduled flights include charter services, flights for special events, private flights, transport of mail, freight, dangerous goods, taxi services, as well as emergency and humanitarian aid operations.

Italian air carriers have the right of objection for charter flights operating under the fifth-freedom regime.

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. Does the *status quo* tend to create an aviation market which is sufficiently competitive and open?

Market access for airlines from non-EU countries is governed by bilateral or multilateral air service agreements. These agreements set forth the terms regarding traffic rights, frequencies, destinations, and capacity. In cases where no such agreements are in force, the Civil Aviation Authority of the foreign airline's state must formally request authorisation from Italy to operate scheduled services. The airline may only commence operations to and from Italy once the specific authorisation has been granted. International carriers, under reciprocal terms, are permitted to operate to and from Italy pursuant to agreements (called "open skies" agreements) between the European Union and their country of origin.

For airlines based in EU Member States, domestic cabotage within Italy is permitted, but all relevant regulations must be respected, among which EU Regulation No. 1008/2008 concerning Air Operator Certificates ("AOCs") and airline licences, as well as Article 38 of Law Decree No. 179/2012 (converted into Law No. 221/2012), according to which an airline from another EU Member State is deemed to be established in Italy if it maintains a base in Italy with material installations and relevant employees working on a non-temporary basis.

No restrictions are imposed on EU air carriers wishing to operate to and from Italy, provided that they submit the necessary application to the local coordinator for slot allocation in accordance with the aforementioned regulations and international standards.

To operate in Italy, EU airlines must apply to the local coordinator responsible for slot allocation, in accordance with international rules provided by IATA conferences (or clearance),

Regulation (EEC) No. 95/93 (amended by Regulation (EC) No. 793/04), and ENAC Circular EAL-18 of 24 August 2009. Slots are allocated based on the chronological order of applications, ensuring compliance with the relevant EU regulations and ENAC rules.

As regards taxation, in general terms the same taxes apply to the operations of Italian and foreign air carriers.

The current regulatory framework generally determines a competitive and open aviation market in Italy, particularly through compliance with EU regulations and international agreements. However, there are areas where further improvements could enhance competitiveness and market access. The possible increasing presence of “open skies” agreements with third countries may foster greater international connectivity and competition, enabling airlines to expand operations. Moreover, pursuing more bi or multilateral agreements similar to “open skies” could reduce barriers for non-EU carriers and enhance competition. However, it must be considered that although the slot allocation system is transparent it can become congested at major airports, potentially limiting market entry for new carriers or operations’ expansion for existing ones.

1.7 Are airports state or privately owned? Are there any plans to alter this position?

Private companies are entrusted with the task of managing Italy’s largest airports by means of concessions granted by the Italian State, in accordance with Article 2 of Ministerial Decree No. 521 of 12 November 1997.

The abovementioned companies may be participated by public bodies (such as regional, provincial, municipal or other local public bodies, including the chambers of commerce) or private investors.

The State maintains ownership title over the relevant airport premises.

In this framework, the company responsible for the operation of the two major airports serving Rome (Aeroporti di Roma S.p.A.) is almost entirely owned by private investors, while the shares of the managing company of Milan airports (SEA S.p.A.) are majority owned by the City of Milan.

As of today, most of regional airports throughout Italy are managed by companies whose shareholders are predominantly local municipalities or other public bodies.

Additionally, there is a range of minor airports dedicated to private or general aviation being privately owned, either by flight clubs, associations, or flying schools.

Currently, there is no indication of significant plans to alter the existing ownership structure of airport managing companies in Italy. The current framework allows for a mix of public, private, and mixed ownership models, reflecting a balance between public interest and private sector efficiency. While no major shifts have been announced, there is always the possibility that future initiatives could try to introduce legislative reforms aimed at attracting more private investments and improving operational efficiency.

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

Air carriers, whether based within or outside the European Union, are required to follow specific operational regulations, commonly referred to as the “*Regolamento di Scalo*”, established by the airports where they operate. These regulations are developed by Italian airports in compliance with the general directives issued by ENAC (APT-19).

In addition, air carriers must discharge their obligations concerning airport duties, including landing and take-off charges, as determined by the respective airport and subject to oversight by ENAC. Pursuant to Article 802 of the INC, upon request of airport authorities and/or ENAV, ENAC is entitled to deny take-off authorisation to aircraft departing from Italian airports until all outstanding airport taxes, duties, and air navigation charges have been fully settled.

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? Do you believe that there are any changes which would be of benefit to the existing regime?

The procedures to be followed in the event of an air accident/incident are set out in Articles 826 to 832 of the INC.

In the event of an accident/incident, the airport manager and public security authorities are required to promptly inform the judicial authority, ANSV, and ENAC (in accordance with the procedures set out in ENAC Regulation No. 37/2021).

European legislation also applies to such occurrences, particularly Directive (EU) No. 94/56/EC (implemented in Italy by Legislative Decree No. 66 of February 25, 1999), Regulation (EU) No. 996/2010, as amended by EU Regulation No. 2018/1139. Therefore, the approach adopted in Italy aligns with that of other EU Member States.

Pursuant to Article 727 of the INC, ENAC has adopted its internal guidelines, identified as “APT-18A” which specifically govern the development and implementation of airport emergency plans in response to aviation accidents/incidents.

Lastly, considering the possibility of an aviation accident/incident, all airlines operating within or to and from Italian territory are subject to ENAC’s regulatory supervision. This oversight ensures compliance with the insurance obligations imposed on air carriers and aircraft operators under EU Regulation No. 785/2004.

The existing regime governing responses to air accidents and incidents in Italy is well-aligned with EU and international standards. However, there are potential areas where enhancements could further strengthen the system’s effectiveness and efficiency. For example, introducing and/or improving real-time data-sharing systems between airport managers, airlines, and public authorities could reduce response times and improve situational awareness. Leveraging advanced technologies such as AI and predictive analytics in post-accident investigations and emergency responses could also expedite processes and improve accuracy. In addition, enhancing public awareness campaigns about passenger rights, emergency procedures, and safety measures could build trust and confidence in the aviation system.

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

Recent developments in the aviation sector in Italy include regulatory and sustainability initiatives that align with EU directives and global goals. Key updates include:

- Sustainable Aviation Fuels (“SAFs”): Regulation (EU) 2023/2405 “ReFuelEU Aviation”, which defines the minimum Quotas of Synthetic Aviation Fuels to be made available by fuel suppliers at major EU airports in the period 2025–2050. ENAC has been leading efforts to integrate SAFs into aviation operations, working closely

with stakeholders, including air operators and airport managers, to ensure compliance. This aligns with Italy's broader commitment to reducing carbon emissions in aviation;

- **Emission Reduction Strategies:** the Italian aviation sector has adopted measures to meet the EU “Fit for 55” objectives, which focus on significant CO₂ reductions. These measures include adjustments to the EU Emissions Trading System (“ETS”) for aviation and initiatives to discourage fuel inefficiency practices, such as tankering. These efforts aim to achieve climate neutrality by 2050;
- **RPAS and Drone Regulations:** Italy's regulatory framework for remotely piloted aircraft systems (“RPAS”) has evolved significantly. ENAC's Regulation issued on 16 July 2015 distinguishes between RPAS (subject to INC regulations) and model aircraft used solely for recreational purposes. RPAS are classified by their maximum take-off weight (“MTOW”), and operations are divided into Visual Line of Sight (“VLOS”) and Beyond Line of Sight (“BLOS”) categories. Additionally, all RPAS must have a flight manual, their pilots must be ENAC-certified, and third-party insurance is mandatory for any flight operation, in accordance with Regulation (EC) No. 785/2004. The regulation also governs the handling of personal data collected by RPAS, in compliance with the Legislative Decree No. 196/2003 (Personal Data Protection Code, or “PDPC”). These provisions ensure that RPAS operations are carried out safely and responsibly; and
- **Sustainability Partnerships:** ENAC has partnered with ENEA (acronym for “*Agenzia nazionale per le nuove tecnologie, l'energia e lo sviluppo economico sostenibile*” – the national agency for new technologies, energy and sustainable economic development) to promote sustainability within airport operations, emphasising energy efficiency and improved environmental practices. This collaboration aims at aligning Italian airport infrastructures with EU Green Deal targets.

These developments highlight Italy's dynamic aviation landscape, where traditional air transport is evolving alongside innovative technologies such as RPAS and sustainability initiatives.

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)?

EU Directive 2003/87, amended by Directive 2018/410, has established the framework for emissions quotas, requiring air operators to offset on an annual basis their emissions by a corresponding amount of quotas. Italy implemented this directive through Legislative Decree No. 47/2020, ensuring compliance with the EU's revised ETS rules.

In general terms, it could be said that no specific obligations are provided for by the abovementioned regulations with respect to aircraft owners, airlines, financiers, or airports, given that they are subject to ETS rules similarly to operators of other involved sectors.

The ETS is complemented by the Carbon Offsetting and Reduction Scheme for International Aviation (“CORSIA”),

developed by ICAO. Under CORSIA, airlines are required to purchase carbon credits to offset CO₂ emissions from international flights, with participation being voluntary until 2026.

In Italy, ENAC cooperates with ENAV on CO₂ reduction initiatives and implements CORSIA's integration with the EU ETS. Italian air operators are required to submit their CO₂ emissions data for verification, and ENAC continues to assist in navigating the evolving regulatory landscape.

With the approval of EU Regulation 2392/2017, the process of integration of the CORSIA system into EU ETS has been started. In essence, in the European Union and in Italy CORSIA is implemented through the ETS in order to avoid excessive administrative burden on the involved aviation operators.

2 Aircraft Trading, Finance and Leasing

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

The Italian Aircraft Registry is primarily a registry of ownership, where the registration of ownership is meant to serve as full and valid proof of ownership. According to Article 756 of the INC, the aircraft can be registered either in the name of the owner or the operator. In the case of the operator, it is typically a lessee who holds an air operating licence and submits to ENAC for its approval the lease agreement granting the operator the right to operate the registered aircraft.

Non-Italian owners are entitled to register aircraft in the Italian Aircraft Registry under their own name provided that the EU nationality requirements outlined in EU Regulation No. 1008/2008 are fully met.

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

The same registry in which aircraft are registered can be used to record any mortgage or charge over aircraft. The Italian Aircraft Registry is held by ENAC, and it is the only registry where it is possible to register a mortgage on aircraft in Italy.

In order to register mortgages, a notarised mortgage deed shall be executed, which must be then filed with ENAC. The mortgage and/or charge on the aircraft is then recorded by the ENAC in both the Aircraft Registry and in the certificate of registration of that aircraft.

To remove and extinguish mortgages from the Aircraft Registry, the mortgagee must execute before a notary public and issue to the mortgagor (or submit directly to ENAC) a deed of consent to the extinguishment of the mortgage and an application to ENAC to proceed with the deregistration of the mortgage from the Aircraft Registry.

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

Regardless of the country of registration of aircraft, whether in Italy or abroad, every aircraft operated in the Italian territory is subject to ENAC's supervision. In the event that an aircraft is registered in a different EU Member State but operated in Italy, the aviation authority of the state of registration must transfer oversight responsibilities to ENAC. Italy, through ENAC, allows Italian airlines to operate aircraft registered in other countries, in accordance with Article 83-*bis* of the ICAO Convention, if

an agreement has been signed between Italy and the foreign country of registration. Such agreements delegate to ENAC the responsibility for overseeing the crews, operations and airworthiness maintenance of foreign registered aircraft.

As of today, ENAC has delegation agreements in place with several European countries and in the absence of similar agreements, authorisation may be issued on a case-by-case basis.

With regard to risks associated with aircraft ownership, owner or lenders of aircraft may face significant difficulties in recovering such assets in a timely manner if, for instance, the Italian operator fails to pay airport or navigation fees or maintenance costs, or in the event of the Italian operator's insolvency in case the bankruptcy trustee decides to continue using the aircraft while meeting the monthly lease payments.

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 Italian law, if an aircraft engine is installed on an aircraft owned by a third party, there is no risk that the engine owner will lose ownership on the engine if it has a valid title of ownership and can prove it.

The title in the engine can be enforced against third parties if it results from an original purchase contract with a certified date. The certification can be obtained by having the owner's signature over the title of ownership be certified by a public notary, and legalised for use in Italy by an apostille pursuant to the 1961 The Hague Convention on International Legalization, unless the certifying notary is from a State which has signed a legalisation treaty with Italy.

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 subparagraph c) of Article 8-bis of Presidential Decree No. 633 of 1972, transactions involving aircraft mainly used by airlines operating for reward chiefly on international routes are VAT-exempt. Documentation and proof of use must be provided to qualify for this exemption. As stated in Italian Tax Office Resolution No. 126 of 21 May 2009, lease rents of Italian airlines which mainly operate commercial flights on international routes are also VAT-exempt.

Furthermore, under subparagraph d) of Article 8-bis of Presidential Decree No. 633 of 1972, the acquisition by Italian airlines of aircraft engines and their components, spare parts, and internal elements and installed parts of aircraft are also exempted from VAT and under subparagraph e) the acquisition of fuel, maintenance and repairs services, lease rents and wet lease fees, if relating to aircraft to be used prevalently on international routes is VAT-exempt.

VAT does not apply also if the aircraft is sold in Italy and thereafter exported by the foreign purchaser within 90 days from the purchase.

Italy does not have a separate GST system; VAT is the primary consumption tax.

Aircraft transactions may attract registration tax ("*imposta di registro*"). If an aircraft is sold by a foreign party to another foreign party while it is on the ground or operated in Italy (i.e., while it is leased to an Italian airline, or it is registered in Italy), there is a risk of the imposition of a registration tax amounting to 3% of the transfer price of the aircraft, pursuant to Presidential Decree No. 131 of 26 April 1986, in particular, if the sale transaction is *per se* exempt from VAT.

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

Italy is a signatory to the Montreal Convention of 28 May 1999, which was ratified through Law No. 12 of 10 January 2004 and became effective in Italy on 28 June 2004. Furthermore, Italy is also a party to the Geneva Convention of 19 June 1948 on the International Recognition of Rights in Aircraft.

However, Italy has not yet ratified the 2001 Cape Town Convention on International Interests in Mobile Equipment, along with its associated Aircraft Equipment Protocol. As a result, interests in aircraft are governed by the provisions of the INC, the Italian Civil Code ("*ICC*"), and the Geneva Convention.

This legal framework presents challenges in establishing a consistent international standard for protecting interests in leasing or financing transactions involving Italian airlines as lessees or borrowers. Foreign lessors and financiers must mainly rely on Italian law to secure their interests, particularly in cases of default. Notably, remedies such as self-help measures and automatic enforcement of repossession rights are unavailable under Italian law, generally necessitating the involvement of Italian courts to ensure repossession or to carry out enforcement actions.

2.7 How are the Conventions applied in your jurisdiction?

In Italy, international conventions are applicable only after being both signed and formally ratified through the enactment of a national law by the Parliament. Upon ratification, international conventions are applied before Italian courts as it happens with national laws and regulations.

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?

Italy has a comprehensive network of Double Taxation Treaties ("*DTT*") with numerous countries.

The abovementioned Double Taxation Treaties may provide for favourable rates or total exemption, in any case upon condition that the lessor is not a resident in Italy for tax purposes and is the actual beneficiary of the payments.

VAT also does not apply if the aircraft is sold in Italy and thereafter exported by the foreign purchaser within 90 days from the purchase.

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 general terms, ownership rights over registered aircraft are generally well-protected in Italy, provided that the required formalities are met. Title to ownership must be substantiated by valid written evidence of purchase or possession and registered in public registries, such as the Italian Aircraft Registry. Registration provides strong protection for ownership claims over aircraft and other registrable assets. However, engines, when dismantled from an aircraft, as well as other components of aircraft, are not subject to registration in Italy and that makes it more challenging to prove ownership of disassembled engines or other non-registrable components without a duly notarised ownership deed.

In principle, these formalities mitigate the risk of ownership disputes. However, potential complications may arise in insolvency scenarios.

3 Litigation and Dispute Resolution

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

Under Italian law, creditors may enforce various rights of detention or seizure against aircraft to secure unpaid debts, subject to specific legal conditions and procedures. These rights depend on the nature of the claim and the relevant legal framework.

Creditors may apply for a judicial seizure of aircraft as a precautionary measure to secure claims, especially to prevent the risk that the debtor transfers or conceals the aircraft to evade payment. Judicial seizure requires a court order based on proof of the creditor's claim and the necessity of preserving the aircraft as collateral.

Disputes often arise after a lessee default on obligations such as failing to pay airport charges or maintenance costs, leaving the aircraft abandoned at the respective facility. In these cases, airport companies or maintenance, repair, and overhaul providers often obtain a prejudgment attachment order ("*sequestro conservativo*") from local courts. This order allows creditors to detain the aircraft until the debt is paid, or the debtor posts a bond with the court to secure its release.

Pursuant to Article 6 of Law No. 324 of 5 May 1976, both the aircraft operator and the owner can be held jointly liable by airport companies for unpaid charges related to take-off, landing, parking, and passenger screening duties. Similar principles apply in relation to Eurocontrol's outstanding navigation fees. In such circumstances, the abovementioned qualified creditors may be obtained by Italian courts as an order resulting in the seizure of the involved aircraft(s). Once seized, aircraft may be grounded for extended periods due to the duration of judicial proceedings in Italy, unless the owner posts a bond to release the involved aircraft.

Under Article 2756 of the ICC, maintenance, repair, and overhaul providers have a statutory right to detain assets they have repaired or maintained until their fees are fully paid. This retention right applies to aircraft, engines, or other components left unpaid by the debtor or operator. If the debt remains unsettled, the qualified creditor may sell the detained assets through a public auction to recover its credit.

Article 1023 of the INC provides that certain third-party preferred liens and rights shall have priority over debtor's aircraft: in particular, reference is made to judicial costs incurred by the State, crew and pilots' unpaid salaries and social security contributions, salvage claims, damages caused on the ground by aircraft if insurance coverage is insufficient and passenger claims for personal injuries or lost baggage.

Under Article 802 of the INC, upon request from airport companies and/or ENAV, ENAC shall be authorised to deny take-off clearance and ground aircraft if airport or navigation fees remain unpaid.

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?

Under Italian law, self-help remedies for lessors or financiers seeking to repossess an aircraft or enforce rights under lease finance agreements are generally not available.

Consequently, enforcement of claims and repossession must be pursued through judicial proceedings before Italian courts.

In Italy, lessors or financiers cannot take unilateral possession of an aircraft without the lessee's cooperation and consent, or court order authorising repossession. If a creditor attempts to repossess the aircraft without these pre-requisites, it risks criminal prosecution and civil liability. Therefore, creditors must submit claims to the competent court to secure legal enforcement. Pursuant to Article 633 of the Italian Civil Procedure Code ("CPC"), lessors, financiers or owners may act before the court to obtain an injunction order for aircraft redelivery. The process includes quick injunctions (courts may issue injunctions within a few days of the petition, enabling creditors to reclaim possession swiftly), enforcement support (police or court-appointed assistants may enforce the order if the lessee resists). However, a lessee may challenge the injunction by filing an opposition within 40 days from the date when the injunction has been served to the lessee itself. Before initiating judicial proceedings, lessors or financiers should carefully consider that a lessee's cooperation may still be necessary to obtain in a reasonably short term essential items such as (i) aircraft records and manuals, (ii) spare parts located at the lessee's premises, and (iii) the lessee's written application to ENAC for deregistration of the aircraft.

Judicial time consuming procedures and delays must also be taken into account. While injunctions can be obtained quickly, court proceedings subsequent to lessee's opposition may be very time consuming due to the structural lengthiness of Italian judicial proceedings.

As a final remark, it shall be noted that under Article 1057 of the INC without prior authorisation from the Ministry of Transportation, aircraft cannot be seized, confiscated and attached to the extent that they are used on scheduled commercial routes for passenger transportation.

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 Italy, aviation disputes are governed by the same rules applicable to Italian ordinary proceedings.

Civil and criminal proceedings are governed by two different procedural rules: the CPC; and the Code of Criminal Procedure.

When an accident that may give rise to criminal as well as civil responsibilities occurs, under the Italian Criminal Procedure Code, there are specific rules concerning the relation between the civil action and the criminal proceedings.

In Italy there are three levels of courts: first instance courts (Justices of the Peace and Courts); second instance courts (Courts of Appeal for judgments rendered by Courts and Courts for judgments rendered by Justices of the Peace); and the Court of Cassation (Supreme Court).

According to the rules governing the civil process in Italy, jurisdiction depends on the value of the dispute: the Justice of the Peace has jurisdiction over legal actions up to the value of €10,000 and over proceedings related to damages caused by movement of vehicles or vessels up to the value of €25,000. In accordance with a recent reform, starting from 31 October 2025 the abovementioned thresholds will be respectively raised to €30,000 and €50,000. In addition to this, the Justice of the Peace also has jurisdiction over some specific subject matters.

As regards Criminal Courts, Justice of the Peace's jurisdiction depends on the nature of the offences, as minor offences fall under the jurisdiction of the Justice of the Peace while more serious offenses fall under the jurisdiction of the Criminal Courts and most serious offences fall under the jurisdiction of Courts of Assizes.

It must be noted that, as a general rule of Italian law, criminal liability and sanctions only apply to natural persons who commit or omit with malice (or, in certain cases, with fault) certain actions described in the relevant criminal provisions. Legislative Decree no. 231/2001 provides for the so-called "administrative liability" of legal entities, companies and associations (including those without legal personality) in relation to the commission of certain crimes. Under Legislative Decree no. 231/2001, legal entities can only be subject to administrative pecuniary sanctions in relation to the crimes committed in their interest or to provide and advantage to their corporate entity. According to Legislative Decree no. 231/2001, a company may be held liable for the crimes listed in the same Decree committed by individuals in top positions (i.e. "*soggetti in posizione apicale*") or individuals in subordinate positions (i.e. "*soggetti in posizione subordinata*") within the legal person and provided that such crimes have been committed in the interest or for the benefit of the company/association they work for.

Legislative Decree no. 231/2001 also provides for that a company shall not be considered liable for the crimes committed by the aforementioned individuals if it proves, *inter alia*, that: (a) it has adopted and effectively implemented, prior to the commission of the relevant crimes, an adequate organisational model to prevent crimes of the same nature as those which have been committed; and (b) it has appointed an internal but independent body having autonomous powers of initiative and control to oversee the implementation and updating of the organisational model.

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 case begins with the plaintiff's writ of summons, which includes all the claims against the defendant. In the writ of summons the plaintiff must clearly state, *inter alia*, the kind of relief sought (namely, claim for compensation for damages) and the facts and points of law supporting the claim. The plaintiff shall serve its counterparty with the writ of summons.

Pursuant to Ministerial Decree no. 55 of 3 April 2013, the writ of summons is served via certified email ("*Posta Elettronica Certificata*" or "PEC"), provided that the defendant has a registered PEC address.

Such electronic-processed service works and is mandatory only if both parties are based in Italy and have a PEC and are not foreign-based parties.

The serving of a writ of summons or any other legal document on such foreign parties, or from them to an Italian party is governed by the rules of international or bilateral 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?

Under Italian law there are various remedies available, both provisional and final, depending on the stage of the proceedings and the type of dispute.

In general terms, as far as remedies under Italian law are concerned, a creditor which has not been paid by its debtor has a general remedy pursuant to Articles 2905 and *seq.* of the ICC, according to which, the unpaid creditor may request an attachment ("*sequestro conservativo*") over goods owned by the debtor.

The assets stored within the territory of Italy would definitively fall within the definition of goods under such provision. Such attachment can be enforced by way of a court order and a court supervised procedure in accordance with the relevant rules of the CPC.

In addition, the claimant may initiate summary proceedings (e.g., an aircraft lessor may be intent on repossess leased property) under Article 633 of the CPC, it being understood that separate "ordinary" legal proceedings will be required in order to recover any damages.

Under Articles 669 to 705 of the CPC, provisional measures such as judicial seizure ("*sequestro giudiziario*") can be plead to the court as a matter of urgency to preserve a party's rights over a specific asset while a lawsuit is pending.

On the other hand, so-called emergency measures ("*provvedimenti d'urgenza*") provided for in Article 700 of the CPC may be as well pleaded to the court and help to prevent irreparable damages by obtaining the issuance of court orders ordering immediate actions or restrictions.

However, it must be underlined that the legal proceedings aimed at recovering damages shall not result in a "summary judgment", as the court decision will be preceded by an ordinary full trial ("*a cognizione piena*").

As regards quantification of damages, according to Article 1223 of ICC, damages for breach of contract should include both the actual loss the claimant has suffered and the loss of profit in so far as they are the immediate and direct consequence of the breach of contract.

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?

Decisions issued in first instance proceedings can be appealed by ordinary means before courts of second instance.

Courts have first instance jurisdiction over all cases not expressly allocated to other courts and second-instance jurisdiction over decisions issued by the Justices of the Peace. Courts of Appeal have first-instance jurisdiction over some specific matters and general second-instance jurisdiction over the challenge of decisions issued by Courts.

Decisions issued by Courts of Appeal can always be challenged before the Court of Cassation, which is the judicial body standing at the top of the Italian judicial hierarchy. Court of Cassation is the court of last resort and its main task is to ensure the consistent interpretation and application of the law. Court of Cassation's review is limited to issues regarding the interpretation and correct application of the law, as the Court does not review any assessment of facts made in first and second instance proceedings. Second-instance courts can rule again on the merits of the case. Generally, new claims and new challenges are not admissible. New evidentiary means or requests cannot be admitted unless the party proves that they could not have been submitted during first-instance proceedings for reasons not attributable to the same. Appeal decisions can in turn be challenged before the Supreme Court for limited reasons of law but are not subject to further review on the merits and facts of the case.

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 Italian law, “unforeseen events” mean exceptional circumstances that are temporary and involve an extraordinary event.

Generally, the meaning includes those circumstances that constitute *force majeure*, such as, including but not limited to, acts of God, storms, floods, terrorism, earthquakes, wars, rebellions, revolutions or strikes or any other event, happening or occurring beyond the reasonable control of the affected party.

Under Italian law, a party who becomes non-performing is exempted from liability: (i) if the service referred to in the contract becomes excessively onerous owing to “extraordinary or unforeseeable events” that justify the party concerned in requesting the termination of the contract; or (ii) if non-performance or delay in performing is due to the supervening impossibility of delivering the service for which the party is not to blame. Although there is no precise definition of *force majeure* in the Italian legal system, the term encompasses natural and/or human events whose unforeseeable and extraordinary nature renders them, in actual practice, impossible to confront in that they are beyond the control of the parties, making the service totally impossible or excessively onerous. In international (and contract) practice, examples of “extraordinary and unforeseeable” events falling within the definition of causes of *force majeure* are, for example, earthquakes, hurricanes, wars, rebellion, etc.

In light of the above, in all cases in which a party cannot fulfil its obligations (whether in the form of delay or absolute non-performance) as a result, for instance, of an order issued by an Authority (the so-called “*factum principis*”, i.e. the act of State), this circumstance may be valid as a reason to exempt such party from liability, regardless of the express contract terms in place.

3.8 Is there any trend developing towards regulatory support in civil justice for out-of-court solutions and the importance of engaging in Alternative Dispute Resolution (or similar)? If so, what (if any) are the implications for the answers in questions 3.1–3.7 inclusive?

As to legislative developments, under Italian law several

alternative dispute resolution mechanisms are now available to the parties before starting litigation before courts. Reference is made, in particular, to assisted negotiation and mediation. In general terms and subject to some exceptions, in case of claims relating to the payment of any amount between €1,100 and €50,000, prior to filing a case before a court, the parties must attempt to carry out negotiations in the presence of their attorneys at law to try to settle their dispute amicably (assisted negotiation).

Mediation is a procedure by which the parties charge a third and impartial subject (usually a professional mediator appointed by conciliatory bodies) with the task of trying to reach an amicable solution to the dispute.

Generally speaking, only for certain subject matters is it compulsory by law to make an attempt to reach an out-of-court settlement as a pre-filing requirement. However, the plaintiff can in any event try to use this procedure as a way to attempt to reach an amicable agreement with the adverse party before starting litigation.

The trend outlined above as a general remark for Italian civil proceedings finds further application specifications in the aviation sector.

Under Article 10 of Law No. 118/2022, which amended Article 37 of Law Decree No. 201 of 6 December 2011, ART was granted jurisdiction over ADR for the whole transport sector, including air transport. Pursuant to Article 10 of Law 118/2022, which amended Article 37 of Decree Law No. 201 of December 6, 2011, jurisdiction over ADR for the whole field of transport, including air transport, has been granted to the ART.

Article 37, par. 3, (h) of Decree Law 201 of 2011 gives to the ART the authority to regulate out-of-court settlement procedures between operators (e.g., airlines and airport operators) and consumers, using simple and low-cost mechanisms including online platforms. Judicial remedies cannot be pursued until ADR is complete, and the timeframe for filing a lawsuit is suspended for the whole duration of the ADR procedure.

ADR proceedings offer quick remedies tailored to each specific dispute and these measures can often be implemented more quickly than interim measures granted by the courts.

Moreover, ADR mechanisms aim at reducing litigation and attracting the parties to costs saving solutions. Therefore, also in respect to the above answers to questions from 3.1 to 3.7 inclusive, it is possible to argue that ADR's influence over the aviation sector is increasing especially for passenger/consumers claims issues; however, proceedings aimed at obtaining the issuance of attachments, seizures and/or other emergency measures are not subject to any mandatory ADR proceedings and the same conclusion applies in general terms to claim for damages for a value higher than €50,000.

In August 2022, the ENAC and the Italian Antitrust Authority established a joint working group to develop and publish specific guidelines for ADR procedures in the air transport sector.

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? In your opinion, are there any improvements to the existing regime which would be advisable?

In Italy, the regulation of joint ventures, partnerships, and alliances between airlines is subject to both national and EU

competition laws and principles. The AGCM established under Law No. 287 of 10 October 1990 (the Italian Antitrust Law), is entrusted with supervisory and regulatory powers over joint ventures and other forms of partnership between airline competitors. The application of the Italian Antitrust Law is aligned with the principles of EU legislation, ensuring consistency with the broader European framework.

The AGCM and other national competition authorities closely cooperate with the European Commission to evaluate specific cases. Depending on whether the potential anti-competitive effects of a joint venture or other forms of partnership are confined to Italy or extend to multiple EU Member States, either the AGCM or the European Commission may intervene.

In evaluating joint ventures and other forms of partnerships between airlines, competition authorities typically define the relevant market and additional analysis is generally focused on whether the proposed concentration could create dominance in upstream markets or airport slots, which might disadvantage competitors and affect consumers' rights in the downstream market. An airport-by-airport analysis is often applied to these cases and remedies imposed on airlines to secure approval for mergers or joint ventures frequently involve the relinquishment of slots at key and congested airports to mitigate potential anti-competitive effects.

In general terms, the existing regime could be improved by granting faster approval processes and clearer guidelines for smaller partnerships, in the view of providing greater predictability for market participants. Additionally, a clearer definition and standardisation of methodologies for assessing the benefits and risks of airline collaborations would ensure consistent and transparent decision-making.

Strengthening regulatory coordination and cooperation between national competition authorities would be of key importance in order to resolve cross-border complexities and adapt to the rapidly evolving aviation sector.

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

A relevant market for mergers and acquisitions is determined by AGCM on the basis of a distinction between scheduled flights and charter flights markets. Scheduled flights market is assessed based on specific routes operated point to point or city-pairs, while charter flights market is assessed based on the relevant geographical market divided into long, medium, or short-haul routes, which are then divided, as the case may be, between European destinations and the Mediterranean Sea.

In general terms, AGCM assesses upstream and downstream markets, including airport slots and passenger services. It also considers whether consumers would have the possibility to switch to alternatives in response to price changes (demand-side substitution) or if suppliers can easily adjust to compete (supply-side substitution). AGCM's approach aligns with EU competition law, focusing on potential anti-competitive effects such as market dominance or reduced 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, Italy has a notification system that requires parties to obtain regulatory clearance for certain agreements. According

to Article 16 of the Italian Antitrust Law, a pre-merger notification to the AGCM is mandatory if the concentration meets specific turnover thresholds. These thresholds have been updated on 11 March 2024 (by means of AGCM Order No. 31088) and are now equal to the following:

- the aggregate domestic turnover of all entities involved in the concentration or merger exceeds €567 million; and
- the domestic turnover of at least two entities participating in the concentration or merger exceeds €35 million each.

These thresholds are subject to annual revaluation based on the inflation rate.

In 2022, Article 16, para. 1-bis of the Italian Antitrust Law was introduced, empowering the AGCM to request the notification of below-threshold concentrations and review them when three cumulative conditions are met: (a) one of the two turnover thresholds provided for in Italian Antitrust Law is exceeded, or the combined aggregate worldwide turnover of the undertakings concerned exceeds €5 billion; (b) the concentration raises competition concerns in the national market, or in a substantial part of it, also taking into account possible detrimental effects on the development of small enterprises with innovative strategies; and (c) no more than six months have elapsed since the completion of the transaction.

In general terms, in cases where the relevant operation results in one party taking control over another party, the transaction may become effective only subsequent to AGCM approval.

4.4 How does your jurisdiction approach mergers, acquisition mergers and full-function joint ventures? In your opinion, are there any improvements to the existing regime which would be advisable?

Under Italian Antitrust Law, mergers, acquisition mergers, and full-function joint ventures must be notified to the AGCM if the relevant turnover thresholds (outlined in question 4.3 above) are exceeded. Additionally, the EU Merger Regulation may apply in cases where the proposed concentration has a Community dimension, as defined in Article 1 of the Regulation.

The notification shall include the details of the involved parties and economic activities, a description of the transaction, its key terms and expected changes in control or ownership and the turnover and market data (financial thresholds and relevant market details, including definitions of product and geographic markets).

A prescribed form must be completed, providing all requested information and documents.

Upon the abovementioned notification, AGCM shall assess whether the relevant merger or concentration unlawfully affects competition in the relevant market or a significant part thereof, and as a result of such assessment it may either deny its approval or subject it to compliance with certain conditions aimed at eliminating possible restrictive effects on competition.

The current regime relies on turnover thresholds, which may not capture certain transactions involving companies with high market influence though not meeting such specific thresholds. Introducing some additional criteria – to be added to those set forth in Article 16, para. 1-bis of Italian Antitrust Law and to be taken into account – could ensure that strategically significant but undersized deals are reviewed. Implementing expedited review mechanisms for transactions that are unlikely to raise competition concerns would reduce administrative burdens and allow businesses to proceed more

quickly. In addition, strengthening mechanisms to monitor compliance with remedies imposed during clearance would improve long-term enforcement and effectiveness.

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

The procedure to be followed by AGCM further to notifications is outlined in Italian Antitrust Law and in general terms consists of two phases.

As regards the first phase, according to Article 16, par. 4, of Italian Antitrust Law, within 30 days from the receipt of the relevant notification or from AGCM having known otherwise about the relevant concentration AGCM shall either: (i) clear the transaction, if no further investigation is deemed necessary, and inform the involved parties accordingly; or (ii) start a second-stage investigation, if it is deemed that competition issues may arise.

If AGCM decides to start a formal second-stage investigation, under Articles 16, par. 8, and 18 of Italian Antitrust Law the involved entities must be then notified within 90 days from the beginning of such investigation on whether AGCM has eventually decided to: (i) prohibit the proposed concentration; (ii) clear the concentration without conditions; (iii) clear the concentration subject to certain commitments aimed at removing any anti-competition concerns; or (iv) clear the concentration subject to mandatory measures to be strictly and fully complied with in order to prevent the establishment or strengthening of any dominant position. The abovementioned term of 90 days may be extended by up to further 30 days if the involved parties do not timely provide all necessary additional information requested by AGCM.

No specific filing fee applicable to notifications is currently provided for in Italian law.

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 is not subject to sector-specific rules concerning financial support and/or state aid.

The abovementioned measures to the benefit of air operators or airports must comply with the general EU State Aid Rules, as outlined in Articles 107 and 108 of the Treaty on the Functioning of the European Union.

Since most Italian airports managing companies are controlled – directly or indirectly – by local municipalities or public entities, their management and financing are subject to EU State Aid regulations rules and guidelines, provided in particular under Communication 2005/C 312/01 of the Community (Community guidelines on the financing of airports and start-up aid to airlines departing from regional airports) and the subsequent EU Commission Communication 2014/C 99/03 (Guidelines on State aid to airports and airlines).

As per Italian regulations, the Decree of the Ministry of Transport of 2 October 2014 contains guidelines relating to the support of air carriers in starting up and developing air routes.

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

Under Article 782 of the INC, public services obligations may be imposed in order to guarantee the right to mobility of citizens

under Article 16 of the Italian Constitution, particularly as regards domestic scheduled air transportation services to reach peripheral or underdeveloped regions or on minor routes to secondary airports, whenever such route is deemed essential for the economic development of the area where the airport is located. Such impositions by the Italian Government shall be applied in accordance with relevant EU regulations and to this purpose the abovementioned Article 782 of INC results to be consistent with Articles 16, 17 and 18 of EU Regulation No. 1008/2008 on public service obligations in the aviation sector.

Airlines operating unprofitable routes deemed essential for public interest receive specific financial compensations for such services, which are considered legitimate on the condition that they are proportional, necessary, and do not distort market competition. Operators must comply with transparency, competitive tendering, and service agreement requirements to obtain these subsidies.

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 acquisition, retention, and use of passenger data in Italy are subject to PDPC and to EU Regulation No. 2016/679 (General Data Protection Regulation, or “GDPR”). These regulations provide a complete framework for data protection.

Under Article 13 of the GDPR, passengers have the right to obtain detailed information about the processing of their personal data, including the purposes of processing, the categories of data involved, the recipients of the data, the storage period and the criteria used to determine such period. Passengers can request corrections or deletions of their data, restrict processing, or lodge complaints with supervisory authorities. If the data have not been provided directly by the passenger, the latter is entitled to obtain available information on their source. Passengers must also be informed about any automated decision-making, including profiling, its underlying logic and its potential impact.

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?

Under Article 15 of the PDPC and Article 2050 of the ICC, airlines (as well as other operators) are liable for any harm or damage caused by the processing or loss of personal data. This includes an obligation to compensate or indemnify affected individuals for all resulting damages. The abovementioned liability regime is particularly strict and basically the only defence available to the airline is to provide valid and satisfactory evidence that all appropriate measures to prevent such damages have been properly implemented.

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, including trademarks, are protected under Legislative Decree No. 30 of 10 February 2005 (as amended). The Italian Patents and Trademarks Authority (“*Ufficio Italiano Brevetti e Marchi*”) oversees the enforcement of intellectual property rights and maintains public registries for trademarks, patents, and utility models.

Pursuant to Legislative Decree No. 168 of 27 June 2003, there have been established specialised sections within Italian courts, known as “*Sezioni Specializzate Proprietà Industriale e Intellettuale*”, which are entrusted with the task of deciding disputes related to intellectual property issues.

4.11 Is there any legislation governing the denial of boarding rights, delayed flights and/or cancelled flights? Is this legislation adhered to and well monitored?

Passengers’ rights concerning denial of boarding, flight cancellations and delays are subject to EU Regulation No. 261 of 11 February 2004, which establishes compensation and assistance duties on airlines. This regulation is directly applicable and enforceable in Italy.

The Italian Parliament has also implemented additional consumer protection measures applicable to such cases, including the Legislative Decree No. 130 of 6 August 2015 (which incorporates EU Directive 2013/11 on alternative dispute resolution for consumer complaints), the Legislative Decree No. 69 of 27 January 2006 (which sets penalties for violations of EU Regulation 261/2004), Legislative Decree No. 79 of 23 May 2011 (providing for the so called Italian Code of Tourism, whose regulation may apply to certain travel contexts).

In general terms, it could be said that the abovementioned provisions are sufficiently adhered to and well monitored and they contributed to the reduction of judicial disputes on such matters.

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

Under Legislative Decree No. 69 of 2006, ENAC is responsible for enforcing EU Regulation No. 261/2004 and is the authority entitled to impose fines and sanctions for violations related to flight delays, cancellations or denied boarding.

ENAC’s powers include conducting investigations, issuing penalties for non-compliance, and ensuring that passengers receive the compensation and assistance provided for in EU Regulation 261/2004.

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

Italian airport authorities are governed by Law No. 241 of 7 August 1990 (the Italian Administrative Procedure Law), which applies to all Italian administrative bodies, including airport authorities. This law establishes key principles of transparency, participation and non-discrimination, requiring airport authorities to ensure equal protection and opportunities to all stakeholders.

Additionally, airport managing companies must comply with sector-specific regulations governing aviation and related infrastructures, including rules set forth by ENAC which oversees airport operations and ensures compliance with national and EU standards, as regards to – without limitation – safety issues, facilitation of passenger services, maintenance of relevant infrastructures, and adherence to environmental and public service obligations.

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

General consumer protection legislation in Italy applies to relationships between airport operators and passengers, particularly in cases of complaints about services or organisational inefficiencies. Legislative Decree No. 130 of 6 August 2015, which implements EU Directive 2013/11 on alternative dispute resolution for consumer claims, is applicable to events and disputes.

Beyond this, broader consumer protection laws apply whenever an airport operator directly provides goods or services to passengers against reward. Notably, Italian airports are required to publish on an annual basis a document named “*Carta dei Servizi*” (Service Charter), which outlines the services offered and specifies mandatory quality standards to be met.

In addition to these obligations, airport operators must adhere to ENAC guidelines and applicable aviation and consumer protection regulations aimed at ensuring that services are delivered in accordance with established quality benchmarks and that passengers’ rights are respected.

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

Global Distribution Suppliers (“GDSs”) operating in Italy include the major players serving the travel and tourism industry worldwide. The key GDSs active in Italy are Amadeus, Sabre, and Travelport, which encompasses three main systems: Galileo; Worldspan; and Apollo. There is also TravelSky that primarily serves the Chinese market, but it is increasingly used by agencies in Italy that focus on outbound and inbound travel involving China.

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

There are no specific Italian legal rules or ownership requirements applicable to GDSs operating in Italy. Such operators must adhere to provisions set forth in EU Regulation No. 80 of 14 January 2009, which outlines a Code of Conduct for Computerized Reservation Systems (“CRSs”). This regulation provides for a standardised framework governing the operations of market participants in the CRS sector.

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

In general terms, vertical integration between air operators and airports is permitted in Italy.

Given that most of the Italian airport managing companies are owned by public bodies, any vertical integration process shall be subject to public tender provisions in force in Italy among which the main measure is given by Legislative Decree No. 36 of March 31, 2023, n. 36, with the consequential necessity to ensure compliance with the principles of transparency and non-discrimination as regards the relevant transaction.

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, there are nationality requirements for entities applying for an Air Operator's Certificate ("AOC") and holding an AOC is one of the requirements for obtaining an Operating Licence.

In particular, entities applying for an Operating Licence in Italy must comply with nationality requirements set forth in Regulation (EC) No. 1008/2008, under which the applicant must be an Italian entity or a company effectively controlled by EU Member States or by citizens of EU Member States, or must have its majority share capital owned by such entities or individuals. In Italy, ENAC is the regulatory body responsible for overseeing compliance with these requirements.

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 Italian aviation industry will be facing new challenges related to sustainability and performance in a technological environment in evolution.

Potential regulatory and legislative developments will arise from the EU context.

In this regard, the new Regulation (EU) 2024/2803 represents an important step towards a more coordinated and efficient management of European air traffic.

This Regulation will be an instrument for better management of European airspace and a lower impact on the environment in order to improve the climate and environmental performance of European airspace management.

The Regulation (EU) 2024/2803 entered into force on 1 December 2024, 20 days after its publication in the Official Journal of the European Union, which took place on 11 November 2024, having marked the conclusion of a long and awaited approval process.

Sustainable aviation is therefore the new focus in the Italian aviation sector to concretely achieve the ambitious objectives set in the EU context and it will be crucial to make progress in this regard.

Advanced technologies (such as SAF) in order to achieve the decarbonisation of aviation will require significant investments and effective and responsible regulatory interventions for their large-scale implementation, taking into account the growth in air traffic. Italy has not yet implemented specific policies targeting SAF transition.

ENAC has drafted a roadmap for Sustainable Aviation Fuels in Italy, on the assumption from ICAO, that SAF represents the most promising solution for achieving net-zero greenhouse gas emissions.

This document is a work plan for policymakers to foster the development of a SAF market in Italy, as a result of ongoing dialogue between ENAC and stakeholders, including aircraft operators, airport managing bodies, fuel producers and distributors, aircraft manufacturers, research organisations, universities, and trade associations.

The need for a more sustainable future in the Italian aviation sector is pushing companies in the aviation industry to follow new strategic policies.



Barbara Michini specialises in transportation law (air, maritime, land, rail, intermodal). Her transport law practice includes over 25 years of experience in the aviation industry, advising on all aspects of air transport, including regulatory, litigation and dispute resolution (also about airline passenger claims), risk management and contractual and insurance issues.

She has acquired broad experience in assisting Italian and foreign airlines, private operators, manufacturers, lessors, financiers, airports, handlers and travel operators.

In addition to the traditional field of transport law, Barbara advises on a regular basis on matters relating to construction and management of good storage warehouses and logistic hubs. She has advised worldwide global logistics ground transportation providers based in Italy and she is a trusted consultant for some of the most relevant logistics companies and international freight forwarder.

She assists clients on negotiations (both national and international) for commercial distribution contracts closing, on import and export issues, and international commercial terms matters.

Barbara graduated in Law from the University of Bologna in 1998, *maxima cum laude*, and she has been a member of the Italian Bar since 2002. She is admitted to the Supreme Court. Prior to joining Gianni & Origoni, Barbara worked as a senior partner in another primary Italian law firm.

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Japan

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Mori Hamada



Hiromi Hayashi



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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 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. 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, 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 kanrisha*) 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 Jigyō*)

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 (*honpō 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 Shiyō 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? Does this legislation adequately cover all the issues which tend to arise in your jurisdiction, or do you feel that certain amendments or additional laws would be desirable?

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. In general, the MLIT covers all material issues regarding air safety pursuant to the Civil Aeronautics Act. 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?

Air charters are not separately regulated under the Civil Aeronautics Act.

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. Does the *status quo* tend to create an aviation market which is sufficiently competitive and open?

A foreign entity or person cannot be a domestic air carrier (*honpou koukuu unsou 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. The number of air flights arriving in and taking off from Japan has approximately doubled from 2010 to 2019. One may conclude that the current regulation regime is creating a competitive and open aviation market in the country.

1.7 Are airports state or privately owned? Are there any plans to alter this position?

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. There appears to be no plans to alter the foregoing position.

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? Do you believe that there are any changes which would be of benefit to the existing regime?

The Act for the Establishment of the Japan Transport Safety Board created the Japan Transport Safety Board (*Unyu Anzen Inkai*). 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). There would be no material issues that require any changes to the existing regime.

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, in 2022, a registration system for UAVs, that is, the certification of UAVs in accordance with safety standards and a licence to operate UAVs, was introduced.

If a person intends to fly UAVs in prohibited airspaces and beyond the limitations of permitted operating conditions, then that person must have permission or approval from the MLIT subject to certain exceptions.

Currently, UAV operations have been classified into three categories based on the associated risks. Category

I covers the operation of UAVs with the lowest risk, that is, UAVs which do not fly in prohibited airspaces but fly within the limitations of permitted operating conditions; thus, Category I does not require any permissions or approvals. Both Category II and Category III are operations in prohibited airspaces and beyond the limitations of permitted operating conditions. Category III covers the operation of UAVs in an airspace below which a third party may be present without taking measures to restrict and control the comings and goings of third parties underneath the flight path and, therefore, is associated with the highest risk. UAVs under Category III must have a first-class certificate and their operators must each hold a first-class licence. Note that there are two types of certifications (i.e., first class and second class) for a UAV, and two types of licences (i.e., first class and second class) for an operator. In addition, a separate permission or approval is required for each UAV operation.

Category II covers the operation of UAVs in an airspace while taking measures to restrict and control the comings and goings of third parties underneath the flight path, meaning that the UAVs do not fly over areas where third parties may be present. Thus, the risk associated with Category II does not reach the same level as Category III. In general, the operation of Category II UAVs requires the MLIT's permission or approval. However, if the operation meets certain requirements, it will be permitted without need for any permissions or approvals.

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 (*hikouki*) or rotorcraft (*kaitenyoku koukuuki*), 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 (*Koukuuki 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 (*Inshizei 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-henkou-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.

3.8 Is there any trend developing towards regulatory support in civil justice for out-of-court solutions and the importance of engaging in Alternative Dispute Resolution (or similar)? If so, what (if any) are the implications for the answers in questions 3.1–3.7 inclusive?

The Act on the Promotion of the Use of Alternative Dispute Resolution was promulgated in 2004, but it was not possible to enforce an agreement made through this procedure; thus, that Act was not widely used. To promote ADR, this Act was recently amended, which took effect on April 1, 2024. Under the amended Act, if a petitioner and the other party reach a settlement that includes an agreement to enforce the settlement, a party can seek an enforcement order from the court, subject to certain exceptions. Since the amendment took effect very recently, it is not certain whether this amendment will increase the use of ADR.

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? In your opinion, are there any improvements to the existing regime which would be advisable?

The Civil Aeronautics Act grants Antitrust Immunity (“ATI”) 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. We have a view that there are no material issues that require improvements to the existing regime.

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 torihiki 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? In your opinion, are there any improvements to the existing regime which would be advisable?

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.

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, delayed flights and/or cancelled flights? Is this legislation adhered to and well monitored?

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). There is no publicly available information as to cases where a pilot has actually issued an order pursuant to the foregoing legal provision. The Civil Aeronautics Act does not explicitly deal with the delay or 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 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. The Council which met in April 2024 published an outline for developing a UAV traffic management system (“UTM”). According to the outline and the Roadmap published by the Council in November 2024, the UTM will be developed with the goal of completion in fiscal year 2026 and to that end, the CAA and relevant regulations are expected to be amended to set up the UTM. Further, in October 2024, MLIT established a study group to examine the possible conditions to allow multiple UAVs to be operated by an operator at the same time. If the study group can establish these conditions, that would be an important milestone to promote businesses which use UAVs.

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. In September 2024, the Committee on National Space Policy established a subcommittee to discuss revisions of the Space Activities Act whose discussion points includes how to deal with suborbital flights in the Act. However, no laws have been enacted yet.

C. Cybersecurity

In the wake of the rapid increase in cyber attacks of businesses that include essential infrastructure, MLIT published guidelines to ensure the security of information systems (e.g., systems to operate airplanes and monitor airports) deployed in the aviation and airport businesses. These guidelines are not legally binding, but carry a lot of weight in 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.

1. The Aviation Division of the Ministry of Transport (**MOT**) is responsible for civil aviation affairs that include policy formulation, licensing, aviation infrastructure, safety and security as well as promoting legislation and regulations in respect of aviation matters in Malaysia.
2. The principal regulatory bodies under the auspices of the MOT are:
 - (i) Civil Aviation Authority of Malaysia (CAAM)
CAAM is the primary technical regulator regulating safety, maintenance and security of civil aviation as well as its enforcement.
 - (ii) Malaysian Aviation Commission (MAVCOM)
MAVCOM regulates and oversees the economic and commercial matters relating to civil aviation.
 - (iii) Air Accident Investigation Bureau (AAIB)
The Air Accident Investigation Bureau is an independent investigation body responsible for the investigation of all air accidents and incidents.
3. The core legislations regulating the civil aviation industry are as follows:
 - (i) Civil Aviation Act 1969.
 - (ii) Carriage by Air Act 1974.
 - (iii) Aviation Offences Act 1984.
 - (iii) Airport and Aviation Services (Operating Company) Act 1991.
 - (iv) International Interests in Mobile Equipment (Aircraft) Act 2006.
 - (v) Civil Aviation Authority of Malaysia Act 2007.
 - (vi) Malaysian Aviation Commission Act 2015.
4. Subsidiary legislations and regulations related to the primary legislations have been enacted to facilitate and aid their operations and enforcement. These include:
 - (i) Civil Aviation Regulations 2016.
 - (ii) Civil Aviation (Aerodrome Operations) Regulations 2016.
 - (iii) Civil Aviation (Fees and Charges) Regulations 2016.
 - (iv) Malaysian Aviation Consumer Protection Code 2016.
 - (v) Malaysian Aviation Commission (Aviation Services Charges) Regulations 2016.

- (vi) Malaysian Aviation Commission (Code of Conduct) Regulations 2018.
- (vii) Malaysian Aviation Commission (Regulatory Services Charges) Regulations 2018.
- (viii) Ministry of Transport Directives 2016.
- (ix) Aviation (Security) Regulations 2019

5. In mid-2024, the Malaysian Parliament passed two bills (Malaysian Aviation Commission (Dissolution) Bill 2024 and Civil Aviation Authority of Malaysia (Amendment) Bill 2024) which paved the way for a merger between CAAM and MAVCOM into a single regulatory body to govern both technical and economic/commercial related matters in the aviation industry. Through the passing of these bills, MAVCOM would be dissolved and all its powers, rights, duties, liabilities and obligations would be transferred to CAAM. It has been reported that the MOT will announce the tentative date of the merger which will take effect in 2025.

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**) from the Civil Aviation Authority of Malaysia (**CAAM**).

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 MAVCOM.

In this regard, the brief steps required to be taken by the air carriers 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 will have to be supported by certain material details including the organisation structure, financial status and projection, air carrier business plan, aircraft, finance and leasing, maintenance, insurance and complaints management. An application for ASL/ASP requires a minimum of 90 days to be processed.
5. MAVCOM's award of the ASL or ASP would be for a period up to 10 years.

Upon the merger of CAAM and MAVCOM as indicated in question 1.1 above and since CAAM will be the sole regulator for the civil aviation industry, it is anticipated that the procedures to obtain the operating licence would be streamlined.

1.3 What are the principal pieces of legislation in your jurisdiction which govern air safety, and who administers air safety? Does this legislation adequately cover all the issues which tend to arise in your jurisdiction, or do you feel that certain amendments or additional laws would be desirable?

The CAAM regulates and administers the safety and security of civil aviation in Malaysia through the provisions laid down under the Civil Aviation Authority of Malaysia Act 2017. Under the Civil Aviation (Security) Regulations 2019, a National Civil Aviation Security Authority was established and it shall be responsible for safeguarding the civil aviation against any act of unlawful interference and for regulating the security of the civil aviation in compliance with Annex 17 of the Chicago Convention. Further, the 2019 Regulations also provide for the establishment of a National Civil Aviation Security Committee which shall establish and implement the following National Security Programmes:

- The National Civil Aviation Security Programme (NCASP) – To safeguard the civil aviation operation against any act of unlawful interference.
- The National Civil Aviation Security Training Programme (NCSTP) – To ensure that security awareness and function-specific trainings are provided to all persons involved in the implementation of the NCASP.
- The National Civil Aviation Security Quality Control Programme (NQCP) – To determine the compliance with and validate the effectiveness of the NCASP.

There is also in place the National Aviation Safety Plan (NASP) containing the strategic direction of Malaysia for the management of aviation safety and which presents a series of safety enhancement initiatives.

Meanwhile, the principal legislations 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 2016
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) Regulations 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.

Whilst the current laws governing air safety is adequate, there may be a need for laws and regulations to be passed to regulate the various aspects of the use, operations and safety of unmanned aerial vehicles (UAV) or drones. Currently, the only aspect regulated is that concerning the licensing of UAV which is captured by the Civil Aviation Regulations 2016.

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, there are no separate pieces of legislations 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 the 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. Does the *status quo* tend to create an aviation market which is sufficiently competitive and open?

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.

The current restrictions/limitations maintain a healthy level of competition in the aviation market, particularly with the local operators constantly raising their standards and quality of service to maintain a competitive edge with foreign carriers.

1.7 Are airports state or privately owned? Are there any plans to alter this position?

The majority of airports in Malaysia are owned by a state-controlled entity which is Malaysia Airports Holdings

Berhad, whilst at least one is owned by private entities. Notwithstanding this, the Malaysian Government is exploring privatisation of ownership of airports as a means to improve efficiency and service quality whilst maintaining significant local control over ownership and management of airports in Malaysia through state-related entities. This approach reflects the desire to enhance operational performance whilst ensuring that airport operations align with the national interest.

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 the MAVCOM. These requirements and charges include obtaining the requisite 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? Do you believe that there are any changes which would be of benefit to the existing regime?

The main body responsible for matters relating to air accidents is the Air Accident Investigation Bureau (AAIB). Air accident investigations carried out by AAIB is regulated under Part XXVI of the Civil Aviation Regulations 2016, which adopts and gives effect to Annex 13 of the Chicago Convention 1944 that relates to Aircraft Accident and Incident Investigation. AAIB in its investigations and reporting is guided by its internal Policy and Procedure as well as the Manual of Aircraft Accident and Incident Investigation.

In addition, Regulation 185 of the Civil Aviation Regulations 2016 requires the pilot-in-command or the owner, operator or hirer of the aircraft to notify the AAIB of the accident/incident. The notification shall be made to AAIB through the prescribed form 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.

Currently, there are no immediate necessities for any changes to be made to the existing regime.

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

In the High Court decision of *Malaysia Airlines Sdn Bhd & Anor v Airasia Com Travel Sdn Bhd (unreported)*, an action was brought by Malaysia Airlines (MAS) and FlyFirefly (FFY), the Plaintiffs against Airasia for damages for infringement of intellectual property in respect of the Plaintiffs' trademarks appearing on Airasia's mobile application (Airasia Super App) whereby Airasia sells MAS' and FFY's tickets on the said application (with price discrepancies compared to MAS' and FFY's websites). The High Court found for the Plaintiffs and held that there was an infringement of the Plaintiff's trademark

and allowed a permanent injunction with general damages to be assessed. This decision is currently pending appeal before the Court of Appeal.

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 this regard, in September 2024, Malaysia launched the Malaysia Aviation Decarbonization Blueprint (MADB) with the aim to achieve net zero carbon emissions as early as 2050 for the international aviation sector through several initiatives. Under this, the CAAM will also be developing a State Action Plan to support the implementation of each initiative under the MADB. Furthermore, under the National Climate Change Policy 2.0 which serves as the authoritative source to develop relevant regulatory instruments, a Bill on climate change is expected to be tabled in the Parliament in 2025. This Policy also sets out the direction and framework to pursue a transition to a low-carbon economy and enhancing climate resilience in line with national sustainable development agenda and international climate commitments. At this juncture, the Ministry of Natural Resources and Environmental Sustainability had issued a consultation paper to various relevant bodies to obtain their comments and feedback on the climate change Bill. In addition, the main legislation relating to environmental obligations is the Environmental Quality Act (EQA) 1974. Under the EQA, aircraft owners and airline operators are required to ensure proper maintenance of the aircrafts 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 the Civil Aviation Authority of Malaysia (CAAM) under Regulation 10 Civil Aviation Regulations 2016 is only a non-conclusive, *prima facie* evidence of ownership. 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 CAAM.

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

The CAAM keeps a register of aircraft mortgages. Pursuant to the Civil Aviation Regulations 2016 together with the Civil Aviation Directive 7301, the entry of the aircraft mortgage into the register is made by the mortgagor submitting the relevant form (signed by the mortgagee in duplicate) to CAAM. On this note, the fee for such an entry is MYR2,000. Meanwhile, any removal of the mortgage from the register is also made by submitting the prescribed form to CAAM.

Pursuant to the International Interests in Mobile Equipment (Aircraft) Act 2006 (which ratifies the Cape Town Convention 2001 with modifications), 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 aircraft operation are as follows: (1) in circumstances where the aircraft is owned by a foreign entity, the aircraft will first need to be leased to a qualified person as required 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; (2) the Civil Aviation Directive 6014 made pursuant to Civil Aviation Regulations 2016 provides and regulates definitive and clear provisions involving operators intending to act as a lessor or lessee; and (3) as Malaysia has ratified the Cape Town Convention 2001 through 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 Irrevocable De-Registration and Export Request Authorisation (**IDERA**) issued by the lessee to the CAAM pursuant to the Cape Town Convention 2001 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 the aircraft engines have been registered in the international registry.

However, the CAAM does not keep a separate 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 by the Parliament as detailed below:

- 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.
- Montreal Convention 1999 – Carriage by Air Act 1974
The Malaysian Courts, in applying the provisions of the Montreal Convention 1999, have affirmed the principles of international jurisprudence on 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 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 Convention and statute.

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. 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, 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 the legal title/ownership and possession of aircrafts 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 lessee 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 as a result of unpaid debts can be found in both aviation-specific legislations/regulations 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 an aircraft by the CAAM in the event there is any default in payment on any fees or charges imposed by CAAM. Apart from detention of aircraft, 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 on 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 several non-consensual rights which have priority and allows for lien over the aircraft to be imposed without the need of registration. The said rights in the form of liens are as follows:
 - Liens in favour of airline employees for unpaid wages.
 - Liens or other rights of Malaysian authorities 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 had 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 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 1957 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 injuncted 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 judgment creditor whereby an aircraft, as a movable property, can be seized through a Court Order 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?

Through 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 though the issuance of the IDERA by the lessee addressed to the 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 (West Malaysia and Sabah and Sarawak) as well as the Sessions and Magistrates' Courts (being the subordinate Courts).

For civil actions, the jurisdiction of the Courts is based on the monetary value of the claims 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, it is within the jurisdiction of the High Court.

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. However, for civil cases, appeals before the Federal Court are subject to the granting of leave upon the legal threshold under Section 96 Courts of Judicature Act 1964 being 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 Rules of Court 2012 outlines the requirements 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, 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 said 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 the 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 grant a myriad of common law and civil remedies that are provided under the Courts of Judicature Act 1964, Subordinate Courts Act 1948, Specific Relief Act 1950, Rules of Court 2012 and Arbitration Act 2005. Such remedies include:

- interim orders such as orders for stay of execution, security for costs and interim injunctions to preserve the subject matter of a suit; and
- final judgments/orders such as judgments/orders made through a summary process, full trial or arbitration, the remedies of which can range from payment of monies towards debt claims, damages, declaratory reliefs, specific performance, injunction and costs.

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 civil actions where 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 minimum monetary limit of MYR250,000 for subject matters in dispute.

Sessions Court

For civil actions where the Sessions Court had original jurisdiction, the first appeal may 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 minimum monetary limit of MYR250,000 has been satisfied.

High Court

For civil actions where the High Court had original jurisdiction, an appeal can be made to the Court of Appeal. For the second and final right of appeal to the Federal Court, the subject matter of 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.

Arbitral tribunal

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 an application to the High Court, and only on specific grounds as provided 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?

Upon the occurrence of unforeseen events, parties to an agreement may rely on the express terms in their agreement commonly known as the *force majeure* clause or Section 57(2) of the Contracts Act 1950 to suspend or terminate contractual obligations.

Force majeure clause

A *force majeure* clause is a contractual provision that anticipates non-performance of the contract due to a specific event occurring that is beyond the parties' control. Through this clause, on the face of it, it can allow parties to be free of their contractual obligations once it has been triggered. However, there are several factors that must first be established before it is used to suspend/terminate parties' contractual obligations:

- The trigger event that caused the non-performance of the contract is specifically listed as a *force majeure* 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.

In aircraft leasing agreements, a "Net Lease" or a "Hell or Highwater" clause is usually included as part of the lease agreement. A Net Lease obliges a lessee to continue with lease payments unconditionally throughout the agreed leasing period, irrespective of any event or circumstances. However, there are limited exceptions to the applicability of the Net Lease clause and any suspension of payment relies on the negotiations and agreement 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 placed 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.

3.8 Is there any trend developing towards regulatory support in civil justice for out-of-court solutions and the importance of engaging in Alternative Dispute Resolution (or similar)? If so, what (if any) are the implications for the answers in questions 3.1–3.7 inclusive?

Yes. There has been a growing trend in Malaysia towards regulatory support for out-of-court solutions particularly, through Alternative Dispute Resolution (ADR) mechanisms such as mediation (private or Court-administrated). The Malaysian Judiciary formally introduced the Court-Annexed Mediations Practice which encourages parties in civil actions to attend mediation sessions before proceeding to trial, aiming to resolve the disputes amicably and avoid lengthy litigation. It is noteworthy that under the Rules of Court 2012, road accident cases shall be referred to mediation first. For other cases, Judges have also actively promoted ADR as a means to resolve disputes, thus reducing backlog of cases (Court congestion) and in this regard, the Mediation Act 2012 further solidifies mediation's role in dispute resolution. Additionally, the Malaysian Bar Council and its ADR Committee have been instrumental in promoting ADR, offering training and certification programs for mediators.

The shift towards ADR reduces the strain on the Court system and offers a more efficient, cost-effective and less adversarial approach to resolving disputes. On this note, it is common to find an ADR clause in contracts between parties that require them to exhaust ADR mechanisms to resolve disputes before resorting to litigation.

The introduction of ADR primarily in the form of mediation would be an additional option to avoid protracted litigation and to allow parties to resolve their disputes efficiently under a confidential setting.

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? In your opinion, are there any improvements to the existing regime which would be advisable?

Anti-trust 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, is not provided for under this Act.

Part VII of the MAVCOM Act 2015 generally adopts and incorporates the anti-trust provisions under the Competition Act 2010 and additionally provides for merger control rules whereby joint ventures are ordinarily treated as merger. Section 49 of the MAVCOM Act 2015 prohibits anti-competitive agreements which have the objective or effect of lessening, preventing or distorting competitors in any aviation service market. The Guidelines on Anti-Competitive Agreement issued by MAVCOM states that joint ventures between airlines as well as code-sharing or alliance could fall within the agreements envisaged under Section 49 and that these agreements would be prohibited agreements if they have an anti-competitive object and effect.

Meanwhile, merger control provisions are found in Section 54 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. As for merger notifications, the notification provisions are set out in Sections 55 and 56 and the two Guidelines. Nonetheless, a party involved in a merger or anticipated merger is not compelled to notify MAVCOM of the merger as MAVCOM's notification procedures are voluntary.

If a merger or anticipated merger is not notified to MAVCOM and such merger raises competition concerns, MAVCOM is empowered under Section 83 to investigate to determine whether the prohibition in Section 54 is infringed. In addition, 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 in any aviation service market whether or not this falls within the threshold set under the pertinent Guidelines.

The current provisions under the MAVCOM Act and the Guidelines are currently sufficient in regulating these matters.

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 MAVCOM 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 MAVCOM Act 2015 provides for a notification system whereby any party involved in a merger either notifies MAVCOM or applies to seek its clearance. This is provided under Sections 55 and 56 of the Act. The Guidelines on Notification on Application Procedure are issued by MAVCOM under Section 65 and it also regulates the notification process.

As for antitrust immunity, or relief of liability where the merger agreement is prohibited under Section 49, such relief or immunity is prescribed by Section 50.

As regards reliefs to liabilities and immunities, they may be granted through:

- a. An individual exemption under Section 51.
- b. Block exemption under Section 52.
- c. Invoking Section 50 as a defence to infringement proceedings if:
 - i. there are significant identifiable technological, efficiency or social benefits directly arising from the agreement;
 - ii. 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;
 - iii. the detrimental effect of the agreement on competition is proportionate to the benefits provided; and

- iv. 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? In your opinion, are there any improvements to the existing regime which would be advisable?

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 mechanisms, namely: the aviation sector (provided by the MAVCOM Act 2015); and the Communication and Multimedia sector (provided by the Communications and Multimedia Act 1998). It is worth highlighting that Malaysia ordinarily treats full-function joint ventures as mergers.

The merger control provisions in Section 52 of the MAVCOM Act 2015 and the Guidelines on the Substantive Assessment of Mergers provisions issued by MAVCOM provide sufficient and adequate provisions to regulate mergers and joint ventures.

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

The notification regime under the MAVCOM 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 substantial lessening of competition.

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.

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.

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 had 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 (**RAS**) 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 East 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 RAS provided by MASwings are non-economic, it is a form of national services provided to the rural and remote communities in East Malaysia. These subsidies are privately awarded by the Malaysian Government and are not open for any public application.

It is expected that MASwings will be taken over by the Sarawak Government by end-2024 through the formalisation and signing of a sale and purchase agreement between the relevant parties. Hence, there may be some changes in respect of the RAS.

Apart from the RAS, the Malaysian Government also subsidised the purchase of one-way flight tickets from West Malaysia to East Malaysia during major festive seasons in 2024 which will be continued until 2025, subject to certain restrictions.

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) must 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 amount to an offence that 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 that provides 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, delayed flights and/or cancelled flights? Is this legislation adhered to and well monitored?

The sole consumer protection law specific to the commercial airline industry pertaining to rights in respect of denied boarding, delayed flights and cancelled 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 and recently, Malaysian Aviation Consumer Protection (Amendment) Code 2024.

For denied boarding without reasons, 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 either a full refund of the ticket price or re-routing of the flight (together with the allied rights of meals, limited telephone calls, internet access, hotel accommodation and transport).

For delayed flights of more than five hours, paragraph 12 and the First Schedule of the Malaysian Aviation Consumer Protection Code 2016 provide a passenger the right to choose between a full refund of the ticket price or hotel accommodation and transportation.

For cancelled flights, paragraph 12 and the First Schedule of the Malaysian Aviation Consumer Protection Code 2016 provide a passenger the right to choose between a full refund of the ticket price or re-routing of the flight.

These rights are mandated by the regulations and airlines are required to include them in their General Conditions of Carriage for Passengers. In practice, the legislation and regulation are generally adhered to by airlines with compliance monitored by MAVCOM. However, the effectiveness of enforcement and monitoring can vary, with occasional concerns over implementations and passengers' awareness of their rights.

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 MAVCOM under Section 69 of the MAVCOM Act 2015 may impose a financial penalty for non-compliance with the consumer code which includes flight delays and cancellation. The penalty imposed would not exceed MYR200,000 for the first non-compliance, and an amount 10 times of 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 and Malaysian Aviation Consumer Protection (Amendment) Code 2024, passengers can directly lodge complaints relating to an airport operator's services to MAVCOM but it must be done within two years from the date of the cause of complaint accrued. However, as indicated above, upon the merger between MAVCOM and the CAAM which will take effect in 2025, CAAM will be the sole body to govern both regulatory and commercial/economic matters.

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 the 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.

However, as indicated above, the merger of CAAM and MAVCOM into a single entity that will be operative in the near future will streamline the application process.

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 two years, several significant legislative and regulatory developments are likely to shape Malaysia's aviation industry:

1. National Transport Policy (2019–2030)

This policy provides guiding long-term transport strategies, with key aviation-related goals, including aligning aviation safety with international standards, promoting a green transport ecosystem, and expanding Malaysia's aviation footprint globally. The integration of environmental initiatives like CORSIA for emissions reductions and enhancing infrastructure will likely drive future industry changes.

2. CAAM-MAVCOM merger

The planned merger of the CAAM and the MAVCOM will create a single regulatory body overseeing both technical and commercial/economic aspects of aviation, improving administrative and management efficiencies and reducing bureaucratic hurdles. It is reported that the Ministry of Transport will announce the effective date of the merger soon which will be in 2025.

3. Proposed Climate Change Act

This forthcoming legislation will address global warming and carbon emissions, potentially imposing stricter regulations on

airlines’ environmental responsibilities, which could affect their operational practices and costs.

4. Malaysian drone technology action plan (MDTAP30)

With drones becoming a growing technology, Malaysia plans to enhance the use of unmanned aircrafts particularly in agriculture and telecommunications. Regulatory developments in this area are expected to streamline drone operations and regulations and boost economic growth.

5. Aviation decarbonisation blueprint

Malaysia’s Ministry of Transport has outlined a roadmap for decarbonizing the aviation industry, targeting reductions in carbon emissions through new technologies and operational improvements, with a focus on sustainable aviation fuels and operational efficiency.

These developments are likely to have a profound impact on Malaysia’s aviation industry, shaping its future competitiveness, sustainability, and regulatory landscape.



Saranjit Singh has represented and advised corporations, statutory bodies, airlines and individuals on a broad range of issues associated with corporate and contractual disputes, transportation, aviation, construction arbitration and litigation, defamation, employment, manufacturing, infrastructure and energy, environmental and information technology ("IT") among others for more than 30 years with trial and appellate experience. He has also represented the Government of India in arbitration appeals, acted for various airlines in aviation accidents and passenger and cargo related litigation and a wide range of commercial and corporate litigation for various corporations and individuals. Notable representations in aviation liability claims include advising the airlines and representing the insurers in connection to catastrophic aviation accidents and liability involving MH 370, MH 17 and liability claims in aviation accidents involving Singapore Airlines Flight 321 and Lao Airlines Flight 301 in Pakse, Laos. Saranjit also acted as lead counsel in the landmark Malaysian decision on Article 29 Montreal Convention 1999 and has also authored the Malaysian chapter on Aviation Law and Aviation Liability for two reputed international journals for a number of years.

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Saranjit Singh is a legal firm that provides a broad spectrum of legal services. The firm carries with them an extensive range of experience in high-end litigious matters ranging from representing the airline industry, energy and infrastructure arbitration involving sovereign government, environmental litigation to corporate and commercial disputes. The firm has a unique blend of bold and trusted advocates who are strategic in tailoring legal solutions and the firm believes in simplifying complex legal matters and provide solutions to resolve legal issues in the most cost effective and efficient way for its clients by putting the client first and tailoring their services to minimise exposure to risks while still overcoming legal challenges through strategic and innovative solutions.

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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 governing aviation in Malta are the following:

- The Civil Aviation (Air Operators' Certificates) Act (Chapter 218 of the Laws of Malta).
- The Civil Aviation Act (Chapter 232 of the Laws of Malta).
- The Eurocontrol Act (Chapter 333 of the Laws of Malta).
- The Civil Aviation (Security) Act (Chapter 353 of the Laws of Malta).
- The Airports and Civil Aviation Security Act (Chapter 405 of the Laws of Malta).
- The Authority for Transport in Malta Act (Chapter 499 of the Laws of Malta).
- The Aircraft Registration Act (Chapter 503 of the Laws of Malta).
- Air Navigation Act (Chapter 641 of the Laws of Malta).

As a Member State of the European Union (EU), all EU regulations are directly applicable to Malta.

The regulatory body which regulates all aviation activities in Malta is the Civil Aviation Directorate (CAD) within the Authority for Transport in Malta (TM). It is predominantly responsible for:

- the registration of aircraft;
- the safety of navigation;
- aircraft and aerodrome operators;
- air navigation service providers;
- the licensing of aeronautical personnel; and
- the conclusion of international air services agreements.

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

The issue of an operating licence by the CAD is principally regulated by the provisions of Regulation (EC) No 1008/2008 on common rules for the operation of air services in the Community. In particular, article 4 of Regulation 1008/2008 allows the granting of an operating licence on satisfactory compliance with the conditions outlined in the regulation. Once an air carrier establishes a legal entity in Malta, it will then need to secure an Air Operator Certificate (AOC) and an Air Operator License (AOL). The application process involves five phases, namely:

- A pre-application phase (allowing CAD to undertake a thorough assessment of the financial, economic and legal status of the proposed air carrier).

- A formal application phase (allowing the proposed air carrier to rectify any issues arising from the previous phase, as well as to ensure compliance through detailed evaluation of manuals, training programmes, operations, facilities, aircraft, equipment, records, crew, management including the accountable manager and the selected nominated persons).
- A document evaluation phase (allowing CAD to extensively review all documentation and manuals submitted by the proposed air carrier to ensure that every aspect required by the relevant regulations is comprehensively addressed).
- An inspection and demonstration phase (including inspections of base and station facilities, operational control and supervision facilities, as well as training programmes and facilities).
- A certification phase (issuance of the AOL and AOC once CAD is satisfied that the proposed air carrier is able to comply with all applicable regulations, ensuring a safe and efficient operation).

1.3 What are the principal pieces of legislation in your jurisdiction which govern air safety, and who administers air safety? Does this legislation adequately cover all the issues which tend to arise in your jurisdiction, or do you feel that certain amendments or additional laws would be desirable?

The principal pieces of legislation governing air safety in Malta are the following:

- The Civil Aviation Act (Chapter 232 of the Laws of Malta).
- The Airports and Civil Aviation Security Act (Chapter 405 of the Laws of Malta).
- Air Navigation Act (Chapter 641 of the Laws of Malta).
- Regulation (EU) No 2018/1139 on common rules in the field of civil aviation and establishing a European Union Aviation Safety Agency (EASA) (the "EASA Regulation").

Air safety in Malta is primarily administered by the CAD. CAD's key responsibilities include:

- issuing AOCs and Airworthiness Certificates;
- conducting inspections and audits of aircraft, operators, and maintenance organisations;
- overseeing compliance with EASA and International Civil Aviation Organization (ICAO) safety standards;
- regulating pilot licensing and training standards; and
- monitoring air traffic control operations and ensuring safe airspace management.

In order to ensure that Maltese aviation standards align with EU and international requirements, CAD closely collaborates

with both EASA and ICAO on a regular basis, participating in information exchanges and regulatory updates. This collaboration ensures that Malta implements the latest safety practices, complies with evolving standards and addresses emerging challenges in aviation. Additionally, CAD engages with stakeholders such as airlines, airport operators and maintenance organisations to promote a culture of safety and continuous improvement. The recent promulgation of the Air Navigation Act has addressed certain legislative gaps which existed in the compendium of Maltese law regulating air navigation and navigational safety. Such law has brought Maltese Law up to date with European Union law and ensures that Maltese legislation is set in a future proof context.

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

Comprehensive air safety regulations exist for all types of carriers, including commercial, cargo and private operators, however, there are certain variations in specific requirements based on the type of operation undertaken. The robust regulatory framework aligns with EU regulations and international standards of safety (such as those emanating from ICAO) thereby ensuring that all carriers meet the same key safety principles. It is pertinent to note that for commercial and cargo carriers, an AOC would be required, which would be issued following an extensive review of the operators' safety management systems, flight operations, crew training and maintenance programmes. Further to the strict airworthiness standards and the undertaking of periodic inspections (which apply to both commercial and cargo carriers), commercial carriers are also subject to additional safety measures for passenger protection such as emergency evacuation drills, safety equipment and operational procedures. Certain special provisions also apply to cargo carriers for the safe handling and transportation of dangerous goods in compliance with the Air Navigation (Dangerous Goods) Regulations (Subsidiary Legislation 499.44). As for private carriers, whilst an AOC is not required, aircraft registration and strict airworthiness requirements must still be adhered to in terms of the Aircraft Registration Act and the Air Navigation Act, respectively. In contrast to common assumptions, private aircraft also undergo meticulous and regular maintenance checks as imposed by EASA, with many private jet operators often going beyond these regulatory requirements, thereby equating (and at times surpassing) the already strict requirements set for commercial aircraft.

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

For an air operator to undertake chartering activities, i.e. a flight or a series of flights carrying passengers, cargo and/or mail for remuneration and/or hire, it is required to obtain an AOL in terms of the Civil Aviation Act and an AOC in terms of the Civil Aviation (Air Operators' Certificate) Act, as issued by the CAD. Private carriers may not engage in commercial air transport services. The Air Navigation Act and the EASA Regulation apply to all types of carriers in relation to the safety and technical requirements relating to their operation.

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. Does the *status quo* tend to create an aviation market which is sufficiently competitive and open?

International air carriers operating in Malta are generally subject to the same regulatory framework as domestic or local operators. Air carriers from EU Member States benefit from the principle of freedom of movement within the Single European Sky, allowing them to operate freely between EU destinations, including Malta. International air carriers must secure operating permits under bilateral air service agreements between Malta (or the EU) and their home country. This can include restrictions on routes, frequencies, or capacity, and will typically contain restrictions concerning cabotage. International air carriers need to apply for a TCO Authorization with EASA in accordance with the procedure outlined in Regulation (EC) No. 452/2014. In certain limited instances where a local AOL is issued in terms of the Air Navigation Act, certain benefits relating to international transport of passengers, e.g. VAT exemptions on operations, might not apply if an aircraft is performing local cabotage or similarly if an aircraft is conducting cabotage in another jurisdiction.

1.7 Are airports state or privately owned? Are there any plans to alter this position?

Malta International Airport (MIA) is the only airport in Malta and is owned by the Government of Malta. It is granted under emphyteutical concession to the Malta International Airport p.l.c. (C 1266).

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

MIA does not impose any specific requirements on carriers. Notwithstanding, carriers must adhere to the applicable aviation laws under international treaties or European regulations based on their state of registration. They must also secure an allocated time slot for landing and take-off, which may prove to be rather challenging in view of the limited slots available at MIA. Similar to other jurisdictions, carriers are required to pay the relevant 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? Do you believe that there are any changes which would be of benefit to the existing regime?

The applicable regulatory regime in these cases is the Civil Aviation (Investigation of Air Accidents and Incidents) Regulations, the scope of which is the implementation of Regulation (EU) No. 996/2010 and of Annex 13 of the Chicago Convention. In terms of these Regulations, the Bureau of Air Accident Investigation is the body established to carry out such safety investigations occurring for any aircraft in or over Malta, or elsewhere to an aircraft registered in Malta or an aircraft

operated by an operator established in Malta but the aircraft is not registered in Malta, provided such investigations are not carried out by another State. The purpose of an investigation is not to apportion blame or liability, but solely to prevent future accidents and incidents. An investigation shall include:

- the gathering, recording and analysis of all available information and evidence on the accident or incident;
- if appropriate, the issuance of safety recommendations;
- if possible, the determination of the causes; and
- in the case of an accident or serious incident, the completion of the final report.

The Bureau shall be functionally independent of any authority in Malta responsible, in particular, for airworthiness, certification, flight operation, maintenance, licensing, air traffic control or aerodrome operation, the judicial authorities and, in general, of any other party or entity whose interests or missions could conflict with the functions of the Bureau or influence its objectivity.

One could possibly consider the drafting of specific guidelines whereby the delineation of duties between the Bureau of Air Accident Investigation and Transport Malta, as regulator, are further amplified upon.

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

On 30th March 2024, the national carrier Air Malta established half a century ago, ceased its operations and was succeeded by KM Malta Airlines (KMMA), a new national state-owned carrier that commenced flights on 31st March 2024. Following the European Commission’s rejection of additional state funding for Air Malta, this transition ensued with KMMA obtaining its AOC from Malta’s Civil Aviation Directorate on 1st December 2023.

Some recent noteworthy cases are the following:

- 24th May 2023 – *Hi Fly Limited vs Flypop Limited of London et al* – The court ruled that a warrant of prohibitory injunction could not obstruct an IDERA holder from enforcing its rights thereunder and deregistering an aircraft from the National Aircraft Register, emphasising Malta’s commitment to the Cape Town Convention and its protocols.
- 20th December 2023 – EU Court Ruling on State Aid to Air France-KLM following a complaint by Ryanair and its subsidiary Malta Air whereby it was deemed that the Commission erred in approving the French government’s financial aid without adequately assessing its impact on competition, leading to the annulment of the Commission’s decision.

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)?

Malta participates in the EU ETS through the implementation of the Directive 2003/87/EC into Maltese law by virtue of the European Union Greenhouse Gas Emissions Trading System for Aviation Regulations (Subsidiary Legislation 423.51) as well as 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 registration of ownership serves as evidence that the party registering such title in the aircraft in fact has such title. The Maltese registry is an operator registry (for the purpose of commercial aircraft), and the registration of ownership is simply evidence of such title, and it does not constitute definite proof thereof.

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 register records all mortgages registered over the aircraft in order of priority of ranking. A mortgage can be registered by the owner of the aircraft in favour of any third party. This is registered with the CAD following which the aircraft register is amended in order to include an entry pertaining to the mortgage. An aircraft registry transcript can be ordered from the CAD which will show whether any mortgages are registered over the aircraft. It will also identify the date and time of registration, the details of the mortgagor and mortgagee, the ranking of the mortgage and a brief summary of the mortgage.

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

If the aircraft is operated commercially, the aircraft must be leased or operated by an operator in possession of an AOL and an AOC. Since Malta is a member of the EU, aircraft are operated according to EASA regulations and standards. The CAD maintains an operator registry and so the aircraft is registered in the name of the operator as registrant. The registrant is the direct point of contact with the Directorate in respect of all aircraft matters and can de-register the aircraft unless any securities are registered in the aircraft registry.

From an administrative perspective, for the purposes of aircraft registration, the CAD will require basic corporate documentation (such as certificate of registration, memorandum and articles of association and certificate of incumbency) in order to register such as owner of the aircraft. Evidence of signing authority such as a power of attorney is required for the purposes of documents such as bills of sale and mortgages. If the owner is not an entity established in the EU, this would need to be notarised and apostilled. The CAD will also require a copy of all lease agreements in the chain leading from the owner to the operator.

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 such concept, however, we appreciate that there are practical difficulties that can arise in cases where the owners

of the airframe and on-wing engines are distinct. Pre-emptive steps can be taken in this respect such as specifically registering the engine owners with the CAD and also registering an irrevocable power of attorney or other applicable securities in respect of the engines with the CAD, together with the registration of International Interests over the 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?

Assuming that the aircraft is registered in the name of a commercial operator under its AOC then no such levies, duties, taxes or VAT will be due.

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

Malta is a signatory to numerous international conventions such as the Chicago Convention of 1944 on International Civil Aviation, the Montreal Convention for the Unification of Certain Rules for International Carriage by Air of 1999 and the Cape Town Convention on International Interests in Mobile Equipment and the associated Protocol on Matters Specific to Aircraft Equipment of 2001.

2.7 How are the Conventions applied in your jurisdiction?

The Conventions are closely followed by the courts, authorities and practitioners alike. By way of example, the courts have recently strictly enforced the registration of the irrevocable deregistration export authorisation pursuant to the Cape Town Convention. In fact, Malta is top ranked on the Cape Town Convention Compliance Index.

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 jurisdiction provides for specific legislation allowing for specific tax treatment for lessors, in such a manner, amongst others, that certain trading income derived from such operations will not be considered to arise in Malta from a fiscal perspective, thus allowing for possible planning in this regard. Furthermore, any such operation would also benefit from the application of current applicable tax regimes in Malta which allow for attribution of income at shareholder level allowing for an optimisation of tax paid in Malta. The jurisdiction also offers a considerable amount of treaty arrangements regulating double taxation. Certain key individuals within an aviation undertaking can also be eligible to a 15% flat rate of tax on their income derived and generated in Malta.

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 an aircraft or other aviation asset does not acquire any economic right over that aircraft merely in view of the payment of such rental or similar payment. The right of lessors are properly protected in terms of the Maltese Civil Code (Chapter 16 of the Laws of Malta) and the Aircraft Registration Act (Chapter 503 of the Laws of Malta). Such protections are further enhanced by the rights granted in terms of the Cape Town Convention (Aviation Protocol) in such instances where a lease interest is registered as such with the International Registry.

3 Litigation and Dispute Resolution

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

On the assumption that an aircraft is actually present in the jurisdiction of Malta and irrespective of its state of registration, any creditor of such aircraft may, subject to the satisfaction of the relevant civil laws in this regard, have an aircraft detained in relation to a debt which is due by the person responsible for the operation of such aircraft to the claimant of such debt. Such rights of detention are covered by a right to arrest such aircraft in terms of Maltese law and particularly in the relevant provisions of the Code of Organisation and Civil Procedure (Chapter 12 of the Laws of Malta) (the COCP).

In those instances where an aircraft is used for commercial air transport, the right of detention is limited for those claims exceeding the value of €1 million.

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?

Under Maltese law, in addition to the remedies available under the Cape Town Convention (CTC) to a creditor holding a registered Security Interest or Irrevocable De-registration and Export Request Authorization (IDERA), specific rights are granted to such holders.

When a clear default arises under a lease agreement, a default notice (or its equivalent) is issued and served on the defaulting party pursuant to the relevant finance or security documentation. Upon valid service of this notice, a creditor may file a warrant of arrest before the Maltese courts, requesting the seizure of the aircraft. Typically, the court grants the request based on scanned copies of the default notice, security documentation, and a transcript from the National Aircraft Register confirming the validity of a CTC Security Interest or a Maltese Law Mortgage. Scanned copies of CTC Priority Search Certificates are also required.

The law furthermore entitles the lessor to take precautionary measures allowing for the arrest of the aircraft and the law also, through the exercise of the rights under the CTC (besides the COCP as quoted in the second paragraph hereto, the law allows for any lessor to take relevant self-help measures which allow it to take possession of the aircraft without

further recourse to the court and based on the presumptive right it as under a lease agreement and/or otherwise in terms of the CTC).

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 civil courts of Malta will determine any particular aviation dispute. Competencies depend on the value of a claim but are however determined by the civil court, either in an inferior jurisdiction or a superior jurisdiction.

The Court of Magistrates (Civil) is competent to hear and determine all claims of an amount not exceeding €15,000 – presided by one Magistrate. Any claim exceeding the competence of the above-mentioned court shall fall within the competence of a higher court that is the First Hall of the Civil Court – presided by one Judge.

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 case of domestic airlines, service can be served at the local registered office of the domestic airline and in the case of a non-domestic airline service will be made to either any person known to represent the domestic airline in a first instance. Failing valid service in such instance, such service shall then be made to the nominated curators in terms of the COCP. Such curators shall assume the representation of the non-domestic airline in an initial instance.

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 Maltese law, any person having a claim against a person who is responsible for the operation of an aircraft (speaking in broad terms), can institute a precautionary action constituting in the arrest of an aircraft in order to prohibit such aircraft from departing from the territory of Malta. Within 20 days from the filing of such precautionary warrant, the claimant will need to bring a case on the merits of the claim whereby it will require a competent court to confirm its claim on its merits. If an arbitral award or otherwise a court judgment in Malta or any other jurisdiction or otherwise in arbitration is awarded, then in such instance, subject to the terms of the COCP and/or the Arbitration Act, such decisions and/or arbitral awards can be enforced in Malta. Upon their enforcement, the enforcing party/the claimant shall be entitled to issue a definitive/executive warrant of arrest in order to secure the aircraft from departing from Malta to secure one's claim. Furthermore, should an operator be present in Malta, or rather registered and established in Malta, any claimant shall have the right to file a precautionary or executive/final acts with a view to enforcing any claim. Broadly, such precautionary or executive/final acts can entitle a claimant to seize any assets of an operator or otherwise, seize/freeze any funds which are held by the operator in security for such claim.

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 aggrieved party in a court decision delivered in Malta shall have a right of appeal to the Court of Appeal (which broadly) will finally determine a particular matter. In the case of an arbitral award there is the possibility to appeal on both points of law and points of fact within a period of 15 days.

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?

Maltese law will, in general, uphold any choice of law between the parties. Rights of termination including those of *force majeure* would be typically observed and enforced by Maltese courts upon a request being made. Should an agreement be regulated by Maltese law, the competent court shall observe the terms of any particular agreement (including any definition of *force majeure* therein), in order to evaluate whether a particular agreement is/has been terminated. In certain limited instances, a court may not uphold a particular agreement if it does not satisfy the basic requirements relating to the validity of a contract. However, beyond that, in general, a court will observe the terms of a contract and shall enforce it as such, provided that such terms have not been varied in any way, whether orally or otherwise in writing.

3.8 Is there any trend developing towards regulatory support in civil justice for out-of-court solutions and the importance of engaging in Alternative Dispute Resolution (or similar)? If so, what (if any) are the implications for the answers in questions 3.1–3.7 inclusive?

Parties to any agreement which is subject to any dispute in Malta will, subject to standard conflict of law notions, be subject to the jurisdiction of Malta, in particular, that of the Courts of Malta; however, any party may elect to contractually (or after a dispute having arisen) refer any dispute to Arbitration in Malta. It is not uncommon for any disputes for any disputes to Mediation in Malta and resorting to Mediation has been on the rise over the past years.

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? In your opinion, are there any improvements to the existing regime which would be advisable?

The Office for Competition (OFC) has taken the approach that all joint ventures, in so far as they are full-function joint ventures, are notified to it prior to their implementation. Any joint venture that is not a full-function joint venture and agreements/partnerships entered into by and between undertakings are then assessed under normal competition rules.

The Director General (Competition) of the OFC often has recourse to judgments of the Court of Justice of the European

Union as well as decisions of the European Commission in the exercise of its responsibilities when assessing mergers, acquisitions and full-function joint ventures, as well as agreements between undertakings and the conduct of undertakings on the market.

One ideal improvement to the existing regime adopted by the OFC is a timelier assessment of complaints by undertakings relating to agreements which are anti-competitive or conduct on a market by an undertaking which is abusive.

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

To define the relevant market, the OFC first considers the products or types of products of the undertakings involved in the transaction. It will then assess the substitutability of products from the perspective of the customer. Where the OFC finds that customers would switch easily from one product to another, the OFC would consider those products to fall within the same 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?

The OFC does not issue comfort letters as a guarantee that an agreement does not fall foul of competition/anti-trust rules. However, mergers, acquisition, and full-function joint ventures must be notified to the OFC prior to their implementation, and this is a stand-still obligation.

4.4 How does your jurisdiction approach mergers, acquisition mergers and full-function joint ventures? In your opinion, are there any improvements to the existing regime which would be advisable?

The approach to mergers, acquisitions, and the creation of full-function joint ventures is positive. The OFC is always open to, and encourages, discussions on the transaction with the parties involved.

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

Notification to the OFC must be made through the filing of a concentration notification form and the submission of the supporting documentation listed in the form within 15 working days following the conclusion of an agreement. A notification fee of €163.06 must be paid by the notifying party or parties on submission of the notification form.

Information on the notification is published by the Director General in the Government Gazette and a daily newspaper.

The OFC would then issue its decision within four to six weeks from notification.

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?

From an anti-trust/competition perspective, any state aid

granted to airports and air operators by national public authorities must not distort or threaten to distort competition by favouring certain undertakings over others. The European Commission had also published guidelines on State aid to airports and airlines, the aim of which is to set out general principles and compatibility conditions for any State aid that is airports and airlines in the European Union. The European Commission recently launched a public consultation on a proposed targeted revision of these guidelines.

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

State subsidies are available subject to approval of such subsidies by the competent EU bodies regulating state aid 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?

The EU General Data Protection Regulation (GDPR) regulates any and all processing of personal data, while the Passenger Name Record (Data) Act (Chapter 584 of the laws of Malta, the 'PNR Act') which transposes Directive (EU) 2016/681, specifically governs PNR data. Passengers enjoy and may exercise against any data controller that processes their personal data, all data subject rights emanating from the GDPR as well as the PNR Act:

1. The Right of Information.
2. The Right of Access.
3. The Right to Rectification.
4. The Right of Erasure ('right to be forgotten').
5. The Right to Restriction of Processing.
6. The Right to Data Portability.
7. The Right to Lodge a Complaint with a data protection supervisory authority at any time.
8. The Right to Withdraw Consent (if consent has been provided at any point).
9. The Right to Compensation.
10. The Right to Judicial Redress.

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, a data loss will constitute a data breach as understood under GDPR (unless for instance, an effective backup is in place, in which case the data has not actually been lost and no breach of availability has taken place). Since the carrier/airline is acting as a data controller *vis-à-vis* the lost data, in the event that the data loss constitutes a data breach, the airline must assess whether the data breach poses a risk to the rights and freedoms of its data subjects (the passengers) and if so, the airline must report the data breach to the relevant data protection supervisory authority/ies (in Malta, this is the Information and Data Protection Commissioner 'IDPC'). Should the data loss pose a *high* risk to the rights and freedoms of data subjects, the airline must additionally inform the affected data subjects themselves of the data breach. The IDPC will determine what sanctions to mete out accordingly,

these could range from a reprimand to administrative fines, depending on various factors, such as the severity and duration of the data breach, the number of affected data subjects and the likely consequences of the data 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?

Maltese law safeguards a broad range of intellectual property rights (IPRs), including trademarks, patents, designs, author's and neighbouring rights (i.e. copyright) and trade secrets. In line with Article 288 TFEU, Regulations and Directives adopted by the EU are also binding in Malta, as are the decisions of the CJEU. Additionally, Malta is also a contracting party to a myriad of multilateral instruments concerning intellectual property, including various treaties and conventions administered by the WTO and the WIPO. In cases of alleged IPR infringement, various interim measures are available to IPR right-holders, such as provisional injunctions intended to obtain information preserve evidence or obtain a provisional cessation of infringement, amongst others. Following a decision on the merits, beyond the possibility of obtaining an permanent order for the cessation of infringement, a broad range of civil remedies are available to injured IPR right-holders, including corrective measures (such as delivery of and destruction of infringing goods and implements), damages (including moral damages), fines, restitution of profits, as well as punitive damages (in certain cases). In addition, IPR infringement can also give rise to a range of criminal offences. It is also worth highlighting that special administrative and/or judicial proceedings are also available to oppose and/or invalidate the registration of certain IPRs and other specific procedures and remedies are available in cases of cross-border IPR infringement (such as goods in transit).

4.11 Is there any legislation governing the denial of boarding rights, delayed flights and/or cancelled flights? Is this legislation adhered to and well monitored?

There is various legislation regulating the denial of boarding rights, delayed flights and cancelled flights, particularly EU legislation which has direct effect in Malta. This legislation is adhered to and is commonly used by passengers in order to enforce their rights.

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

The Malta Competition and Consumer Affairs Authority is the National Enforcement Body (NEB) for Malta. This body is responsible for the enforcement of Regulation (EC) 261/2004 with regard to the establishment of common rules on compensation and assistance to passengers in the event of denied boarding and of cancellation or long delay of flights.

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

Malta International Airport plc is principally governed, amongst others, by 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 Union Aviation Safety Agency and the Commission Regulation (EU) No 139/2014 of 12 February 2014 laying down requirements and administrative procedures related to aerodromes, pursuant to which it is authorised to operate the aerodrome at Luqa International Airport (LMML/MLA).

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

A passenger can benefit from the protection awarded by general consumer protection legislation insofar as the passenger qualifies as a consumer – such as where the passenger is an individual that is acting outside of his trade, business, art of profession.

If an airport operator enters into a consumer contract with a passenger, that airport operator must ensure that the consumer contract does not contain any unfair contract terms. The Consumer Affairs Act (Chapter 378 of the laws of Malta) provides a non-exhaustive list of terms that are considered unfair, including prohibiting a passenger from terminating a contract where the airport operator fails to fulfil its obligations under the consumer contract entered into.

An airport operator must also ensure that the commercial practices that it directs towards passengers (if any) are not unfair. Commercial practices are considered unfair if they are contrary to the requirements of professional diligence and if they (are likely to) materially distort the economic behaviour of a passenger, and can take the form of misleading commercial practices, aggressive commercial practices, or misleading omissions.

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

The main GDSs operating in Malta are Amadeus, Sabre and Travelport.

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)?

Vertical integration is permitted between airport operators and airports. However, potential restrictions could apply under the relevant laws (such as certain competition regulations to prevent market distortions or unfair advantages).

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?

This is regulated by Regulation (EC) No 1008/2008 of the European Parliament and of the European Council of 24 September 2008 on common rules for the operation of air

services in the Community (Recast). No undertaking established in the European Community is permitted to carry by air passengers, mail and/or cargo for remuneration and/or hire unless it has been granted the appropriate operating licence. One of the conditions for an undertaking to be granted an operating licence is that EU Member States and/or nationals of EU 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 European Community is a party.

The Maltese Civil Aviation Authority strictly adheres to the terms of international guidelines which are issued by the European Union in terms of Regulation (EC) No 1008/2008.

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?

Malta has over the past years passed through significant changes in its legislative infrastructure in relation to air navigation and aircraft registration. Such changes follow public consultations with relevant stakeholders whereby the terms of such laws were discussed in public fora. We feel that such laws are up to date and correctly address the current requirements of the jurisdiction.



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The firm is a full service law firm, offering a top tier level of legal advice in a number of practice areas. One of the firm's main aims is to provide timely and hands-on legal advice by combining its diverse specialist resources and expertise in the most efficient manner. Mamo TCV is the legal firm of choice for a large number of Malta's leading corporations, banks, fund managers and wealth management groups or organisations, consortia and other institutions, including government organisations, and has an extensive foreign client base. It is also the preferred correspondent in Malta for various leading law firms based in Europe, the US, Middle East and Far East and North Africa, Canada and Russia.

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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 Constitution of the Federal Republic of Nigeria 1999 (as amended) ("Constitution") places aviation matters within the exclusive legislative jurisdiction of the National Assembly and confers exclusive jurisdiction on the Federal High Court (FHC) on aviation and safety of aircraft.

The National Assembly of Nigeria enacted the Civil Aviation Act which is the principal legislation governing the aviation industry in Nigeria. The Civil Aviation Act was recently re-enacted by the National Assembly of Nigeria, as 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 aviation 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 and 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).
- The Nigerian Safety Investigation Bureau Act 2022.
- The Federal Competition and Consumer Protection Act 2018.
- The Federal High Court Act Cap F12 and the Federal High Court Rules 2019.
- The Cape Town Convention (CTC) Practice Directions 2024 recently signed by the Chief Judge of the FHC in September 2024.

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? Does this legislation adequately cover all the issues which tend to arise in your jurisdiction, or do you feel that certain amendments or additional laws would be desirable?

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.

These legislations address the current safety issues that affect the Nigerian aviation industry. Hopefully, amendments will be made to these laws or additional laws will be enacted to address any safety issue that may arise in the future which is not covered by the current laws.

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. Does the *status quo* tend to create an aviation market which is sufficiently competitive and open?

Generally, no. The Foreign Carriers' Operating Permit, as provided under section 99 of the CAA, issued to international carriers depends on the terms of their Air Services Agreements.

1.7 Are airports state or privately owned? Are there any plans to alter this position?

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.

There is currently no plan to alter this position.

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? Do you believe that there are any changes which would be of benefit to the existing regime?

Yes. The CAA 2022, the NSIB Act, and the Civil Aviation (Investigation of Air Accidents and Incidents) Regulations 2023 regulate the handling of 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?

Some notable developments in the Nigerian aviation industry are as follows:

- (a) The Federal High Court invalidated the sale of shares in Nigeria's proposed carrier, Nigeria Air, to Ethiopian Airline in a ruling delivered on 5 August 2024. Sometime in 2023, the Federal Ministry of Aviation and NAMA imposed a USD 300 per movement helicopter landing levy on oil companies for all helicopter operations at all Nigerian aerodromes, helipads, airstrips, floating production storage and offloading ("FPSO") units, floating storage and offloading ("FSO") units, and oil platforms. The levy is to be collected on behalf of the Ministry and NAMA by a private organisation. However, the Federal Government, through the Ministry, has temporarily suspended the levy following pushback from the helicopter operators.
- (b) The Nigerian Federal Government signed the Cape Town Convention Practice Direction to ensure that the Cape Town Convention becomes fully operational in Nigeria. This is in a move to reduce the cost of insurance for airlines, restoring investors' confidence in the Nigerian aviation sector and enabling domestic airline operators to dry lease aircraft.
- (c) Also, as provided under the CAA 2022, the NCAA has completed drafting Nigeria's State Safety Programme ("SSP"). The SSP seeks to enhance the level of safety in aviation operations by ensuring continuous improvement of safety standards and promoting collaboration among stakeholders in the interest of safety to mitigate against serious incidents and accidents. Under the SSP, the NCAA is required to ensure that airline operators and aviation service providers implement a Safety Management System ("SMS") to facilitate proactive hazard identification and risk mitigation.

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 applies to aircraft 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 under 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 Chicago Convention, 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.

It is noteworthy that Nigeria recently signed the Federal High Court (Cape Town Convention and Aircraft Protocol) Practice Directions 2024 with the primary objective of aiding the FHC to take judicial notice and enforce the provisions of the Cape Town Convention and its Protocol while dealing with cases connected with interests in mobile equipment especially on matters specific to aircraft equipment.

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 (“FHCRC”) and the Sheriff and Civil Processes Act (“SCPA”).

For domestic airlines/parties, by virtue of Order 6 Rules 2 and 8 of the FHCRC, 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 FHCRC 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 FHCRC 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.

3.8 Is there any trend developing towards regulatory support in civil justice for out-of-court solutions and the importance of engaging in Alternative Dispute Resolution (or similar)? If so, what (if any) are the implications for the answers in questions 3.1–3.7 inclusive?

Yes, there is a growing trend toward regulatory support for out-of-court settlements in Nigeria. Section 19(d) of the Constitution encourages the settlement of disputes through arbitration, mediation, conciliation, negotiation, and adjudication. A significant development in Alternative Dispute Resolution (“ADR”) is the enactment of the Arbitration and Mediation Act (“AMA”) 2023, which repeals the 35-year old Arbitration and Conciliation Act of 1988 and aligns Nigeria’s arbitration and mediation practices with international standards, incorporating provisions from the UNCITRAL Model Law of 2006. Notable innovations under the AMA include:

- mandatory court referrals to arbitration when a valid arbitration agreement exists;
- provision for emergency arbitrators and interim measures; and
- suspension of limitation periods for enforcement during arbitration proceedings.

It should be noted that the AMA mandates the Court to make an order for a stay of proceedings and refer the parties to arbitration in a matter that is subject to an arbitration agreement.

Additionally, the Court of Appeal Rules 2021 provides for the Court of Appeal Mediation Programme (“CAMP”) and empowers the Court of Appeal to refer a civil appeal where the matter relates to a liquidated money demand or any other matter as mutually agreed by the parties, for mediation through CAMP. The Rules also enjoins parties to resolve their dispute through mediation or any other ADR mechanism during the appeal. Where the parties succeed in using any of the ADR mechanisms to resolve their dispute, the Court will adopt their agreement as the judgment of the Court.

While the FHC maintains exclusive jurisdiction over aviation-related disputes, the increasing emphasis on ADR provides a viable alternative, helping reduce court congestion. This shift supports Nigeria’s efforts to enhance its business environment by creating a more efficient, transparent, and predictable judicial system, which in turn boosts investor confidence. Furthermore, as arbitral awards are final and binding, with limited grounds for judicial review, this trend reduces prolonged appellate procedures, ensuring quicker resolution of disputes among aviation stakeholders.

The implication of this answer and to the answers to questions 3.1–3.7 is that where disputes are submitted to the Court for adjudication, the current trend in Nigeria is that the Court will encourage the parties to use any of the ADR mechanisms to amicably resolve the dispute. Where the parties fail to resolve the dispute out-of-court, then the Court will proceed to hear the case and deliver its judgment.

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? In your opinion, are there any improvements to the existing regime which would be advisable?

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:

- at least one of the joint venture companies is established in Nigeria;
- 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
- 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 investigate 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”) about 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.

We believe that since the powers of the FCCPC are general while those of the NCAA are industry-specific, the FCCPA should be reviewed to remove the dominant powers of the FCCPC over industry-specific regulators like the NCAA where there is a conflict between the FCCPC and the industry regulator over industry-specific consumer protection issues.

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? In your opinion, are there any improvements to the existing regime which would be advisable?

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.

Paragraph 18.20.1.2 of Part 18 of the NCARs 2023 paragraph 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”), 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 that 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 indicates the need for a balance between the protection of safety information to improve aviation safety and the need for the proper administration of justice.

Additionally, NAMA restricts the disclosure of information related to air transport undertakings without the written consent of the party involved, except when directed by the Agency for its functions or legal proceedings related to any offence under the NAMA Act.

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 Trademark Act, Patents and Design Act, and Copyrights Act which protect trademarks, patents, and copyrights, respectively. Each statute also provides for the procedure for registration and protection of IPRs, mechanisms and procedures 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, delayed flights and/or cancelled flights? Is this legislation adhered to and well monitored?

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.

The legislation is well-monitored. However, there is room for improvement by the regulator in its regulatory functions in this regard to eliminate the occasional cases of passenger complaints of airlines' breaches of these rights.

It should be noted that the courts have also intervened to enforce these passenger rights by issuing declarations, and injunctions, and awarding damages against erring airlines where such matters are submitted to the courts for adjudication.

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?

FAAN is the statutory manager of Federal and 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 or 100 million where the GDS has foreign participation.

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

Please refer to the response provided in 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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ÆLEX is a full-service commercial and dispute resolution law firm with its head office in Lagos and other offices in Port Harcourt and Abuja, Nigeria and in Accra, Ghana. ÆLEX has nine partners, two international counsel and over 60 lawyers operating from its various offices. Lawyers in the Firm are admitted to practice in several jurisdictions including Nigeria, New York, Ghana, and England & Wales.

ÆLEX 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 of 3 March, 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.

1.3 What are the principal pieces of legislation in your jurisdiction which govern air safety, and who administers air safety? Does this legislation adequately cover all the issues which tend to arise in your jurisdiction, or do you feel that certain amendments or additional laws would be desirable?

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, of 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 by 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). 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.

Aviation safety legislation is wide-ranging, as mentioned, and encompasses many critical aspects necessary for ensuring safety in civil aviation. However, like any regulated field, there is always potential for improvement and updates, especially in areas experiencing significant advancements, such as technology and innovation, cybersecurity, and environmental sustainability.

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. Does the *status quo* tend to create an aviation market which is sufficiently competitive and open?

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.

The *status quo* of legislation in Portugal, naturally, integrates the country into the European Union's single aviation market, which in itself promotes a fair and competitive environment. Common rules ensure a level playing field and a high level of passenger protection. The legislation on state aid and competition (TFEU) applied to the sector ensures that practices such as mergers and price fixing are regulated. To also address the relationship with third countries, Regulation (EU) 2019/712 establishes a mechanism to ensure fair competition. In addition, Regulation (EEC) No 95/93 ensures that the allocation of 'slots' at congested airports is carried out in a fair and transparent manner, supervised by an independent coordinator.

1.7 Are airports state or privately owned? Are there any plans to alter this position?

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 for a duration of 60 years. Currently, there are no plans to alter this arrangement. However, the official decision regarding the location of the new Lisbon Airport may lead to some changes, particularly concerning funding for the new facility.

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? Do you believe that there are any changes which would be of benefit to the existing regime?

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.

This regulatory framework is continually evolving to align with international and European recommendations. There is a recognition that improvement and updates are essential, particularly given advancements in technology and the emergence of new threats related to accident prevention and incident response.

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. Other recent legislative developments include updates to passenger compensation and assistance, following the approval of ANAC Internal Regulation 1081/2024. This regulation establishes the National Civil Aviation Security Quality Control Programme, with the aim of continuously safeguarding and protecting people and property. In addition, this framework is complemented by Regulation 944/2024, which defines the access protocols for persons entering the restricted and controlled areas of national aerodromes and airports.

In relation to airports and air operators, two key governmental decisions have been impacted due to new elections being called on 10 March 2024.

In May 2024, the Portuguese government announced its final decision regarding the location of the New Lisbon Airport, which will be located at the Alcochete firing range. The existing Humberto Delgado Airport will remain operational during this transition. The project is estimated to take 10 years to complete.

The privatisation of TAP Air Portugal, initially scheduled for 2023, is now under the new government's authority. Negotiations are ongoing with several interested parties, including Air France-KLM, Lufthansa, and the IAG Group (which includes British Airways and Iberia). Finance Minister Joaquim Miranda Sarmiento stated that the government is engaging with these key parties and hopes to present a sale proposal later this year. However, TAP's CEO, Luís Rodrigues, indicated that finalising the privatisation in 2024 may be challenging, suggesting it could extend into 2025.

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 (with the addition of certain relevant legal concepts in ordinance 242/2023), 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 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?

In Portugal, there are no specific courts dedicated exclusively to aviation disputes. The appropriate court for such disputes depends on the nature of the case—civil, criminal, administrative, or competition law. 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 nonexistence 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.

3.8 Is there any trend developing towards regulatory support in civil justice for out-of-court solutions and the importance of engaging in Alternative Dispute Resolution (or similar)? If so, what (if any) are the implications for the answers in questions 3.1–3.7 inclusive?

In Portugal, there is a growing trend toward supporting out-of-court solutions through Alternative Dispute Resolution (ADR). This shift aligns with broader European Union objectives to alleviate court congestion and expedite dispute resolution processes. Key legislative developments include: (i) Law No. 29/2013 – this law promotes mediation for civil and commercial disputes and aligns with the EU Mediation Directive; and (ii) Law No. 63/2011 – this law modernises arbitration rules, enhancing the appeal of arbitration for resolving disputes.

Portuguese courts frequently encourage ADR, often suggesting mediation before formal litigation. Court Mediation Programs provide structured opportunities for out-of-court resolution. In certain sectors, such as consumer protection, Law No. 144/2015 mandates ADR before litigation can occur.

In general, passengers are increasingly using the forum of the Arbitration Centre for claims against airlines.

The advantages of ADR, such as efficiency and cost-effectiveness, make it increasingly popular. This is particularly evident in the aviation sector, where ADR is used to handle passenger claims and contractual disputes. Additionally, the rise of online ADR platforms has facilitated remote dispute resolution, especially following the pandemic.

Overall, Portugal is fostering a legal environment that encourages ADR, streamlining dispute resolution across various sectors, including aviation. This development allows for faster and less formal resolutions to conflicts.

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? In your opinion, are there any improvements to the existing regime which would be advisable?

The Portuguese legal system does not have specific regulations for joint ventures between airline competitors. However, such joint ventures must adhere to applicable national and European antitrust and competition laws. If the joint venture functions as an autonomous economic entity on a regular basis, it could be considered a ‘concentration’ under competition law, subjecting it to merger control.

At the national level, the Portuguese Competition Authority (PCA) enforces general competition rules to prevent anti-competitive practices. Additionally, European Union competition law, particularly Articles 101 and 102 of the Treaty on the Functioning of the European Union (TFEU), applies, especially if the joint venture affects trade between Member States.

In terms of improvements, clearer guidance on how joint ventures between airlines are assessed under competition law

could provide more legal certainty. Additionally, streamlined procedures for reviewing such collaborations might encourage partnerships that improve efficiency without compromising competition.

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? In your opinion, are there any improvements to the existing regime which would be advisable?

Mergers, acquisition mergers and full-function joint ventures that meet the requirements provided for by Article 27 of the domestic Competition Law are subject to a compulsory notification to the PCA.

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 is responsible for approving the specific operation after assessing whether it will significantly impede effective competition in the domestic market or a sizable portion of it. Until the PCA grants clearance, the operation cannot be carried out.

Regarding potential improvements, enhancing the clarity and efficiency of the notification process could be beneficial. Streamlining procedures and providing more guidance on the criteria for assessing the impact of mergers could help businesses navigate the process more effectively.

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 No. 933/2021.

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.

As for costs, the notification incurs a fee, which should be confirmed by checking the current PCA fee schedule, as it may vary depending on the specific case.

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 must notify any personal data breach to the applicable supervisory authority, the Comissão Nacional de Proteção de Dados (CNPd), within 72 hours after becoming aware of it, unless the breach is unlikely to result in a risk to the rights and freedoms of individuals.

If the data breach is likely to result in a high risk to the rights and freedoms of affected individuals, the airline must also notify the data subjects without undue delay, unless certain exceptions apply (for example, if the data was encrypted or other safeguards were in place).

As for sanctions, the GDPR provides for different types of penalties depending on the nature of the breach. These include reprimands, temporary or definite bans on processing data, and monetary fines of up to €20 million or 4% of the airline's total annual worldwide turnover, whichever is higher.

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 122/2000 4 July, 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, delayed flights and/or cancelled flights? Is this legislation adhered to and well monitored?

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.

The ANAC enforces these regulations, ensuring compliance by airlines and addressing passenger complaints. Overall, adherence to these regulations is monitored effectively.

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 has extended 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 (see also question 1.10).

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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 that the aviation industry activities are in accordance with 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 GACA 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.

The Aviation Investigation Bureau (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. 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, include Air Operator Certificates (AOC) for commercial operators, and Operator Certificates (OC) for non-commercial operators. 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? Does this legislation adequately cover all the issues which tend to arise in your jurisdiction, or do you feel that certain amendments or additional laws would be desirable?

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 GACAR, the Kingdom of Saudi Arabia now has civil aviation regulations covering all aspects of civil aviation activity in the Kingdom.

Moreover, 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?

In general, air safety regulations apply to all categories of air transport. However, there are some regulations that apply to certain air transport categories only, for example, GACAR 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. Does the *status quo* tend to create an aviation market which is sufficiently competitive and open?

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.

Since KSA has adopted many international aviation agreements, and issues licences to foreign air carriage companies and establishments on a reciprocal basis, this creates beneficial transactions between both the KSA and the country of the international air carrier and thus, makes it competitive. Taxes can only be exempted by a decision of the competent authority.

1.7 Are airports state or privately owned? Are there any plans to alter this position?

It is important to note that the GACA is the regulatory body of the Aviation field in Saudi Arabia. Nonetheless, Saudi Arabia's airports are mainly owned by MATARAT Holding Company – an affiliate of the GACA and is organised under private law by way of operating companies organised under private law as well. The Airports in Saudi Arabia are 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).
- The General Authority of Civil Aviation, in 2016, started working on the privatisation of airports in the Kingdom of Saudi Arabia.

It was also pointed out that the General Authority of Civil Aviation will separate the Civil Aviation Holding Company

from the Authority, and accordingly the “holding company” will become responsible for the operational aspect of all airports in the Kingdom, while the GACA will continue its role in the legislative aspect of the aviation and air transport sector.

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.

All requirements issued by the GACA must be followed, as airports adhere to and apply those requirements issued by the GACA as well.

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? Do you believe that there are any changes which would be of benefit to the existing regime?

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 through 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.

The existing regime follows local and international regulations regarding air safety and accidents, and the regime is being constantly enhanced since it is AIB's mission to advance aviation safety through independent occurrence investigations and safety studies in order to promote an effective and comprehensive safety reporting system, and communicate risks and safety recommendations.

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

The new passenger rights protection guidelines announced by the GACA came into effect in 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, the 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 an 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 in 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 Non-commercial 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 “profits 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 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.

3.8 Is there any trend developing towards regulatory support in civil justice for out-of-court solutions and the importance of engaging in Alternative Dispute Resolution (or similar)? If so, what (if any) are the implications for the answers in questions 3.1–3.7 inclusive?

In Saudi Arabia, there is the Saudi Center for Commercial Arbitration (SCCA), which is a not-for-profit organisation established by a Saudi minister council decision in 2014 to administer Alternative Dispute Resolution (ADR) procedures in commercial disputes where parties agree to refer their disputes to SCCA Arbitration and Mediation all in accordance with regulations in force and judicial principles of civil and commercial procedure. Its headquarters are in Riyadh, and the centre's jurisdiction does not include disputes related to family law, administrative and criminal cases, and matters that are not permissible to reconcile in.

An independent well-known foreign and national expertise Board of Directors is formed by a high order from the Prime Minister. All Board members may not hold a government position.

The SCCA ADR services, including Arbitration and Mediation, are provided in accordance with international and professional standards in Arabic and English.

SCCA also provides customers with professional institutional services by a staff trained to international best practice standards and the latest ADR technology methods and facilities – all contributing to the rapid and effective settlement of domestic and international commercial disputes.

SCCA's mission is that it is dedicated to providing professional, transparent and efficient ADR services. SCCA services are inspired by Sharia principles and meet international standards. SCCA shall contribute to enhance ADR awareness in order to create a safe investment environment that attracts both domestic and foreign investments.

Since the SCCA's jurisdiction is to administer Alternative Dispute Resolution (ADR) in commercial disputes where parties agree to refer their disputes to SCCA Arbitration and Mediation, and since the arbitral tribunal has the same powers as any court, and an arbitral tribunal's decision is binding, the

implications for the answers in questions 3.1–3.7 is that any dispute that is of a commercial nature, the parties agreed to refer it to SCCA Arbitration and Mediation, and the dispute in question is of matters that can be reconciled, can be settled through binding ADR, given that it is within the SCCA's jurisdiction.

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? In your opinion, are there any improvements to the existing regime which would be advisable?

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).

Other forms of partnerships and alliances that do not result in the 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, are regulated by other laws in Saudi Arabia, such as but not limited to, Saudi Companies Law, Civil Transactions Law, Saudi Investment Law, and any applicable law depending on the type of transaction.

The regime and the aforementioned laws have recently been developed to align with Saudi's vision to attract worldwide investments/partnerships and transaction. For example, the new Investment Law was redesigned as an integrated system to replace the Foreign Investment Law issued by Royal Decree No. (M/1) dated 5/1/1421H, in order to align with the Kingdom's Vision 2030 and the targets of the National Investment Strategy, as well as best international practices, in addition to taking into account the established principles and policies of investment in the Kingdom approved under the Directive No. (16917) dated 27/3/1440H, in order to increase the Gross Domestic Product and achieve economic diversification by supporting the development of investment sectors, increasing the private sector's contribution to GDP, and preserving the rights of investors. During its preparation, the public's participation was considered by presenting it for a public consultation survey, where many government entities and the private sector participated. The Ministry of Investment also held workshops with international organisations regarding the Law to ensure its alignment with best international practices.

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 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? In your opinion, are there any improvements to the existing regime which would be advisable?

The approach to mergers, acquisitions, and full-function joint ventures in Saudi Arabia is primarily governed by the Saudi's Competition Law, enforced by GAC. For mergers and acquisitions and full-function joint venture, parties involved in a merger or acquisition, or joint venture are required to notify GAC of the proposed transaction. The thresholds may vary based on factors such as market share, turnover, or asset value. 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 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, “entities 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.

The existing regime practiced through 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.

4.5 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 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 the related clause which 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 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.

According to the article (24) – Saudi Arabia 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 Law:

- 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, delayed flights and/or cancelled flights? Is this legislation adhered to and well monitored?

In Saudi Arabia, passenger rights are mainly governed by a regulation called “Regulation for the Protection of Travelers’ (Passengers’) Rights” that has just 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.
 - The Customer has 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.

This regulation just recently came into effect and is well monitored by the relevant authority (GACA). All Air Carriers must adhere to these regulations and any decisions made by the relevant authority, and in case there were any violations, the regulation in Article (25) states that the authority shall apply a fine not exceeding (SAR 50,000) to be paid by the Air Carrier in violation.

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 any rules violated in this regard.

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 relevant 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 Saudi 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: "the 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?

In the Istitlaa platform, which is a unified electronic platform affiliated with the National Competitiveness Centre to seek the opinions of the public, government entities and the private sector regarding economics and the development of laws and regulations issued by government entities prior to its approval. There is a reconnaissance that started on October 10, 2024, with regard to the potential update of the Executive Regulations for Aviation Safety Part 145. The regulation aims to facilitate the procedure for issuing an aircraft repair station certificate within the Kingdom, and to encourage those wishing to establish an aircraft repair station within the Kingdom by cancelling the requirement to bring a letter from the air operator of aircraft with Saudi registration (HZ). The reconnaissance on the aforementioned regulation ended on October 25, 2024, and the results of the feedback will be issued after the relevant entity (GACA) has completed its study within 30 days from the project completion date. If no feedback is received on the project, the results will not be issued.



Hamad Khalifa Aldossary is the founder of Dossary Law Firm, and practises and has expertise in various areas of the law, including corporate law as well as arbitration and trade disputes. 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 through working on numerous cases in various areas of litigation including labour, banking, competition, securities, intellectual property and complex commercial disputes. Many of these cases have been multi-party cases.

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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Ghaida MohammedAkram Makhdom is an associate within the aviation, litigation and corporate law practice. She graduated with honours *cum laude* and was awarded a bachelor's degree of Arts in Law (LL.B.) in 2021. She has also completed 100 hours of the Judicial Training Centre and obtained many certificates from the centre.

Ghaida, since her graduation, has worked on a wide spectrum of legal matters with the help of the Firm, varying from matters concerning family law, labour law, civil law and commercial law, to mostly legal matters regarding aviation. Her works included writing legal memoranda, pleading before primary and appeal courts as well as quasi-judicial committees, drafting and reviewing contracts and agreements, and establishing companies in the Kingdom of Saudi Arabia in accordance with local laws and requirements.

Ghaida currently works on due diligence reports in connection with the potential merging of two companies in Saudi Arabia. She was also one of the key members in drafting a consortium agreement for operating a catering kitchen to provide in-flight catering services for the operating airlines.

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Dossary Law Firm LLP "DLF" was founded in 2019 and quickly built a national reputation for excellence in the litigation and corporate fields, the firm also came to be counted among the leading litigation firms in the Kingdom of Saudi Arabia. Prior to establishing Dossary law firm, founding partner Hamad Khalifa Aldossary served as Counsel for many years at Blake, Cassels & Graydon LLP.

DLF is a full-service Saudi Arabian law firm led by Saudi lawyers with international transactional experience. The firm's core business and expertise are corporate commercial and business litigation law in all its aspects: be it counsel for strategic projects or litigation to defend business interests.

DLF is a law firm with national and international scope, whose guidelines are focused on efficiency, availability, and responsiveness, in order to provide adequate solutions for any corporate situation.

DLF is firmly focused on building long-term client relationships. We understand the client perspective – the need for responsive legal advice, top-ranked expertise, creativity and value.

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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.

1.1.1 Principal legislation

- The Civil Aviation Act No. 13 of 2009 and the Regulations, 2011 provides for the control and regulation of aviation within the Republic.
- The Carriage by Air Act No. 17 of 1946 (as amended) gives effect to the Convention for the Unification of Certain Rules for International Carriage by Air, signed in Montreal on 28 May 1999, and for the unification of certain rules relating to international carriage by air.
- The Air Services Licensing Act No. 115 of 1990 provides for the licensing and control of domestic air services, and the International Air Services Act No. 60 of 1993 provides for the licensing and control of international air services.
- The Convention on the International Recognition of Rights in Aircraft Act No. 59 of 1993 provides for the application of the Convention on the International Recognition of Rights in Aircraft.
- The Convention on International Interests in Mobile Equipment Act No. 4 of 2007 enacts the Convention on International Interests in Mobile Equipment and the Protocol to the Convention on International Interests in Mobile Equipment on Matters Specific to Aircraft Equipment (the Cape Town Convention).
- The Mortgage of Aircraft Regulations, 1997 (as amended).
- The Air Traffic and Navigation Services Company Act No. 45 of 1993, and Regulations, 1976, provide for air traffic navigation services.

1.1.2 Regulatory bodies

- The South African Civil Aviation Authority (SACAA) is charged with promoting, regulating and enforcing civil aviation safety and security.
- The Air Service Licensing Council is responsible for regulating domestic air services, and the International Air Services Licensing Council is responsible for regulating international air services.
- The Air Traffic and Navigation Services Company Limited (ATNS) provides air traffic navigation services.

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

Domestic and international air services are governed by the

Air Services Licensing Act No. 115 of 1995 and the International Air Services Act No. 60 of 1993, respectively.

1.2.1 International air service licence

An application to the Council in the prescribed format is required. An applicant who wishes to use an aircraft other than a South African aircraft in providing an international air service must satisfy the Council that an appropriate certificate of airworthiness has been issued in respect of the aircraft concerned in the country in which that aircraft is registered.

1.2.2 Domestic air service licence

The granting of a licence is founded on the applicant's ability to satisfy the Council that: the air service will be operated in a safe and reliable manner and that the operator is financially capable of operating an air service; if the applicant is not a natural person who is a national of South Africa, at least 75% of the voting rights are held by residents of the Republic; the person referred to will be actively and effectively in control of the air service; and the aircraft is a South African-registered aircraft.

1.3 What are the principal pieces of legislation in your jurisdiction which govern air safety, and who administers air safety? Does this legislation adequately cover all the issues which tend to arise in your jurisdiction, or do you feel that certain amendments or additional laws would be desirable?

The SACAA has overall safety and security oversight functions, exercised in terms of the Civil Aviation Act, 2009 and the Civil Aviation Security Regulations, 2011. The Civil Aviation Act provides for the establishment of an independent Aviation Safety Investigation Board in compliance with Annexure 13 of the Chicago Convention. (See more at question 1.9 below.)

The current air safety legislation and measures are compliant with ICAO standards and whilst the air traffic navigation systems are in dire need of updating, measures have commenced to address the problems and should be overcome in 2025.

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

All modes of air transport (except for defence) are regulated in the same manner.

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

Passenger charters are classified as a non-scheduled public air transport service (defined as a public air transport service rather than a scheduled public air transport service) in connection with which specific flight or a specific series of flights is undertaken.

Domestic air charters are regulated under the Domestic Air Services Regulations, 1991, issued under Section 29 of the Air Services Licensing Act, 1990.

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. Does the *status quo* tend to create an aviation market which is sufficiently competitive and open?

The limitations to be considered are as follows:

- Shareholding – no shareholding restrictions or limitations are imposed on international air carriers operating in South Africa.
- Slot availability – the Airport Slot Coordination Regulations, 2012 make provisions for the appointment of a Coordinator (the ATNS) who will allocate, monitor and enforce the use of slots at airports and ensure that the capacities of coordinated airports are not exceeded.
- Airport charges – the Airports Company South Africa Limited (ACSA) levies airport charges that comprise landing, parking and passenger service charges, which are regulated by the Regulating Committee. There is a differentiation in airport charges for flights landing at an ACSA airport where the airport of departure of that aircraft was outside of South Africa, but those charges apply equally to both foreign and locally owned carriers.
- Air traffic service charges – the ATNS levies air traffic service charges, which are regulated by the Regulating Committee established by Section 11 of the Airports Company Act. Differentiation in charges applies in respect of flights undertaken by an aircraft (regardless of whether the carrier is foreign or locally owned) where either the airport of departure or the airport of arrival of the aircraft is within any State other than South Africa, and the other airport is within South Africa or elsewhere.

Shareholder restrictions on domestic operators restrict growth by limiting foreign operators from investing locally, although some international carriers have not been deterred, such as Qatar Airways which took up a minority stake in Airlink in 2024.

1.7 Are airports state or privately owned? Are there any plans to alter this position?

Airports in South Africa are both State and privately owned. The state owned Airports Company of South Africa owns and operates the nine major domestic and international airports.

Lanseria International Airport (HLA) is one of the largest privately owned airports, however, talk of further privately owned airports being built is unlikely to materialise.

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

Airports do not impose requirements, save for “conditions of use” agreements.

Foreign aircraft must be operated in terms of:

- the International Air Services Transit Agreement (the Chicago Convention);
- a bilateral air transport service agreement;
- a foreign licence; or
- a foreign operator's permit.

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? Do you believe that there are any changes which would be of benefit to the existing regime?

The SACAA regulates all aspects of aircraft accidents and investigations, and the independent Aviation Safety Investigation Board conducts independent investigations through the Director of Investigations, who has exclusive authority to direct the conduct of investigations on behalf of the Aviation Safety Investigation Board under this Act in relation to aircraft accidents and aircraft incidents.

Subject to the provisions of the South African Maritime and Aeronautical Search and Rescue Act, 2002 (Act No. 44 of 2002) and the Convention, the South African Police Service have rights of prior access to any scene of an aircraft accident or aircraft incident.

No significant changes to the existing regulatory regime are contemplated or which would benefit the current environment.

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

The Airports Company Act of 1993 is still pending amendment by the Airports Company Amendment Act, No. 17 of 2020 (provisions have not yet been proclaimed).

The Economic Regulation of Transport Act, No. 6 of 2024 aims to create a coordinated and transparent regulatory framework across all modes of transport, including aviation, and provides for the creation of a Transport Economic Regulator mandated with overseeing the economic regulation of the transport sector, however, the provisions have not yet commenced.

Long overdue upgrades to numerous ACSA controlled airports have caused significant delays and disruptions to air traffic in 2024 which are due to continue into 2025.

Aviation Co-Ordination Services (ACS) ACSA sought and was granted an interdict against CSA in a case in which ACS sought to declare unlawful, and to have reviewed and set aside the decision by ACSA to ‘insource’ the provision of hold baggage screening (HBS) and other services currently provided by ACS at all of ACSA's airports.

The South Africa's International Air Services Licensing Council has accused FlySafair of contravening the International Air Services Licensing Act, noting that Ireland-based ASL Aviation Holdings indirectly controls 74.86% of the airline in contravention of the country's foreign ownership restrictions. FlySafair has filed an urgent court application for an interdict against the IASC's finding and another challenge is pending before the domestic Air Services Licensing Council (ASLC), which regulates the licensing of domestic air services.

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)?

Specific environment related obligations are contained in the Civil Aviation regulations, including: Aircraft Engine Emissions [Part 34]; Aircraft Noise [Part 36]; monitoring of aircraft noise at Aerodromes and Heliports [Part 139]; establishment of aerodrome/heliport environmental programmes; and maintenance of aerodrome/heliport environmental management programmes.

South Africa is not a participant in the EU Emissions Trading System (EU ETS) or national equivalent, nor is it a participant of ICAO's Carbon Offsetting and Reduction Scheme for International Aviation (CORSIA), although it will participate in the Second Phase from 2027.

The SACAA has, however, developed a Roadmap for use by all its stakeholders as guidance on the issues and timelines relating to Aviation Environmental Protection and air transport operators involved in international operations will be required to implement CORSIA and offset their emissions as from 2027.

2 Aircraft Trading, Finance and Leasing

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

South Africa maintains an operator's registry. Registration of an aircraft and the issuing of a certificate of registration under the Civil Aviation Regulations do not necessarily confer or imply beneficial ownership over an aircraft. In terms of Section 8 of the Civil Aviation Act, 2009, the registered owner of an aircraft is deemed to be the owner for purposes of liability for damages caused by the aircraft in certain circumstances. Registration of ownership is obtained by filing the necessary form (CAR47A-2) with the SACAA. The legal effect of registration is to designate aircraft registered on the South African Civil Aircraft Register as being deemed to have South African nationality.

Proof of transfer of ownership is satisfied by either a deed or bill of sale, or an Aircraft Purchase Order or a similar agreement, supported by a deregistration certificate issued by the SACAA if the aircraft was previously registered.

The legal effect of registration is to designate aircraft registered on the South African Civil Aircraft Register as being deemed to have South African nationality.

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

2.2.1 The mortgage register under the Geneva Convention
Section 4 of the Convention on the International Recognition of Rights in Aircraft Act No. 59 of 1993 provides for the opening of a mortgage register with the SACAA, which makes it possible for a creditor to register a mortgage over an aircraft or a share therein, or in respect of aircraft over any spare part including engines.

2.2.2 Registration procedure

Registration is on application to the SACAA with the filing of the prescribed form (MAR 2.1), and payment of the prescribed fee. The prescribed form identifies the mortgagor and mortgagee, the cause of indebtedness, and the amount secured. The application is usually accompanied by the instrument giving rise to the debt or finance transaction, together with a company resolution authorising the registration.

If the mortgage is to be registered under a Power of Attorney from a non-resident, the Power will have to be Notarised and Apostilled under the Hague Convention of 1961 and filed with the SACAA.

The certificate of mortgage does not authorise any mortgage to be made in the Republic or by any person not named in the certificate and contains the prescribed particulars as well as a statement of any registered mortgages or certificates of mortgage affecting the aircraft or share in respect of which the certificate is given.

2.2.3 Registration under the Cape Town Convention

In terms of the Convention on International Interests in Mobile Equipment Act No. 4 of 2007, the SACAA is designated, in accordance with Article 18 (5) of the Convention, as the entry point through which the information required, or registration, may be transmitted to the International Registry.

The following SACAA fees are payable (in South African Rand)* when applying for:

- The recording, transfer, transmission of rights, or discharge of a mortgage in the register of aircraft mortgages: R 2,255.
- A certificate of mortgage: R 1,680.
- Access to the register of aircraft mortgages: R 230.
- The furnishing of information from the register of aircraft mortgages: R 1.60 per page.

*Correct as of 2 June 2024

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 Part 48 of the Civil Aviation Regulations, 2011, all aircraft lease agreements involving South African air service operators, South African-registered aircraft and foreign-registered aircraft operated by South African air service operators, or any South African operator who enters into a financial or capital lease agreement as lessee in respect of an aircraft, must provide the Director of the SACAA with a certified copy thereof, and adhere to the provisions of the Convention on the International Recognition of Rights in the Aircraft Act, 1993, where applicable.

Where a dry lease involving a foreign operator is approved by the Director, a copy of the duly completed form must be forwarded to the International Air Services Council or the Domestic Air Services Council, as applicable, for record-keeping purposes. The oversight responsibilities in respect of a dry lease of a foreign-registered aircraft may be fully or partially transferred, in terms of an Article 83bis Agreement, from the appropriate authority of the State of Registry to the appropriate authority of the State of the Operator.

When the conditions contemplated in sub-regulation (3) (d) of Part 48.03.1 are not met, the aircraft to be dry-leased must be registered in the Republic as prescribed in Part 47 of the Regulations, and:

- (a) the aircraft shall be subject to the airworthiness certification, maintenance, and inspection procedures

prescribed by the regulations in respect of South African-registered aircraft;

- (b) the responsibility or custody of the aircraft and control of all operations shall be vested in the lessee operator;
- (c) the responsibility for the airworthiness and maintenance of the aircraft shall be vested in the lessee operator; and
- (d) the registration of the aircraft shall be valid only for the duration of the lease agreement, and for as long as the aircraft is operated in accordance with the Regulations, the terms or conditions specified in the lessee operator's operating certificate, the related operations specifications, and the lessee operator's operations and maintenance control manuals.

The conditions of approval referred to in sub-regulation (3) must be made a part of the lease agreement.

(As regards the right to retake possession of the aircraft either on breach or at the end of the contract, the comments in questions 3.1 and 3.2 below apply.)

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 common law does not allow the automatic transfer of any rights in an asset, including a component thereof, and a court order is required in all cases. See more at question 3.1 below.

It is also not possible for an owner or operator's rights in a single engine to be separately registered; such rights can only be registered together with an interest in the airframe to which the engine is affixed. A solution may be the registration of a notarial bond over a moveable asset.

In summary, there are no general rules of self-help available.

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?

Generally, there are no taxes or stamp duties applicable to aircraft trades where the aircraft is in South Africa, or by a domestic party if exported between non-residents.

The VAT implications which are applicable are as follows:

- On the sale of aircraft between South African residents, VAT is levied at the effective rate of 15% except when the sale is between two non-residents, and they were not registered for VAT purposes.
- Exported aircraft – a sale of an aircraft that is exported should not attract any VAT, and the transaction may be zero-rated for the purposes of VAT. If the zero rating is not accepted by the Revenue Authority, due in part to inadequate documentation, etc., there is a possibility that the non-resident purchaser may apply to be exempt from registering for VAT.
- Imported aircraft or engines, other than on a temporary basis, attract VAT at 15%.

Leases – aircraft imported for the purposes of a lease will normally attract VAT on the value of the aircraft, based on the

'blue book' value. If the lessor is a non-resident and the lessee a South African resident, this may result in the lessor having to register for VAT purposes.

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

South Africa is a signatory to:

- The Geneva Convention by means of the Convention on the International Recognition of Rights in Aircraft Act No. 59 of 1993 (date of commencement: 1 January 1998).
- The Cape Town Convention by means of the Convention on International Interests in Mobile Equipment Act No. 4 of 2007 (effective date: 1 May 2007).
- The Montreal Convention by means of the Carriage by Air Amendment Act No. 15 of 2006 (date of commencement: 19 June 2007).

2.7 How are the Conventions applied in your jurisdiction?

2.7.1 The Geneva Convention

A mortgage register with the SACAA is open for a creditor to register a mortgage over an aircraft or in respect of aircraft over any spare part, including engines.

2.7.2 The Cape Town Convention

The SACAA is the designated entry point through which the information required for registration may be transmitted to the International Registry.

For the purposes of Article 53 of the Convention, the High Court of South Africa is the court that has jurisdiction, as contemplated in Chapter XII of the Convention.

As aforesaid, practical implementation of the Convention has yet to be achieved due to the inconsistencies in the local laws and regulations, and enforcement of a security interest, at present, must be made by way of an application to the High Court of South Africa.

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?

South Africa is a signatory to over 100 double taxation agreements and protocols for the avoidance of double taxation, including with most EU countries, the UK, and the USA.

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 no provision in the law that the payment of rent creates an economic interest in an aircraft capable of frustrating any right to possession or legal ownership, save for the possible lien over the aircraft for any debts owed by the owner or financier or for maintenance/repairs not due by the lessee under any contract of lease.

3 Litigation and Dispute Resolution

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

In terms of the common law, a creditor may seize an aircraft for debts owing to the creditor by the debtor by means of formal proceedings in the High Court, which has discretion to order the release of the aircraft against the provision of security for the creditor's claim together with costs and interest. An aircraft can be detained under the Criminal Procedure Act if the aircraft is used in the commission of a crime. The tax authorities may also detain an aircraft when there has been a breach of customs import rules, or for non-payment of VAT.

In addition, the holder of a debtor/creditor or salvage and improvement lien over a debtor's property is regarded as a secured creditor on insolvency of the debtor. Other than the form of self-help provisions contained in the Cape Town Convention (see the comments at question 3.2 below), the creditor will, in the normal course, approach the Court for an order to seize and detain the aircraft. Urgent and *ex parte* (without notice) orders are available to the creditor regarding the formal proceedings referred to above. Where a debtor is a *peregrinus* (foreigner) to a local court, assets belonging to the debtor within the jurisdiction of the local court may be attached by an *incola* to find or confirm jurisdiction and to secure the creditor's claim.

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 general remedies of 'self-help' are available to financiers or lessors, who must resort to the courts in the event of default or breach of an agreement by means of formal action or motion proceedings.

South Africa has made the necessary Declaration under the Cape Town Convention to include the availability of nonjudicial remedies for a lessor seeking to re-acquire possession of the aircraft, either at the end of the contract or upon the breach thereof, under the Convention; however, practical implementation has yet to be enforced due to the inconsistency between certain provisions of the Convention and local laws. The Airline Working Group is currently hard at work in assisting local authorities to overcome the issues.

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?

Specialised aviation courts are not available in South Africa. The most appropriate courts for hearing aviation disputes are the superior courts and consist of the High Court of South Africa, and Provincial and Local Divisions which have review and appellate jurisdiction in criminal and civil matters.

The apex courts are the Constitutional Court and the Supreme Court of Appeal, which cannot be approached as a court of first instance. The rules of jurisdiction relating to the value of a claim and geographical area are important considerations in approaching the correct superior or inferior 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 of court proceedings is obligatory and is affected by the Sheriff of the Court.

The Court Rules require personal service in matters affecting status or in sequestration proceedings, on a residence or place of business of the Defendant, or on a person who is apparently in charge of the premises at the time of service and is not younger than 16 years of age.

Service at a place of employment or at a chosen address (*domicilium citandi*), or at the registered office, is also permissible as a substituted service, or by edictal citation where the details are unknown, to initiate legal proceedings.

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 orders interdicting and preventing an aircraft from being removed pending the final determination of a court are available and can be extended to include preservation and control of the aircraft.

Article 13 of the Cape Town Convention makes provision for similar interim orders.

Final orders are made in the normal course of events once a matter has been decided upon by the arbitral tribunal or the 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?

Rights of appeal from the higher courts are to the Supreme Court of Appeal and, in applicable cases, to the Constitutional Court.

A judicial review of a decision of a Court or a tribunal may be brought under the Promotion of Administrative Justice Act, 2000 (PAJA).

Decisions of the Director of Civil Aviation may be appealed to the Civil Aviation Appeal Committee, and thereafter to the High 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?

Contractual obligations may be terminated when performance becomes impossible due to unforeseen events, such as acts of God, natural disasters, the actions of third parties for whom the parties are not responsible, or other exceptional circumstances. *Force majeure* clauses typically suspends contractual obligations, rather than terminating the agreement outright.

If performance is objectively impossible at the time the contract is concluded, no obligation will arise. If after the conclusion of the contract performance becomes objectively impossible without the fault of the debtor as a result of an unavoidable and unforeseen event, the obligation to perform is also, as a general rule, extinguished. This is referred to as supervening impossibility of performance.

3.8 Is there any trend developing towards regulatory support in civil justice for out-of-court solutions and the importance of engaging in Alternative Dispute Resolution (or similar)? If so, what (if any) are the implications for the answers in questions 3.1–3.7 inclusive?

The Rules of the Uniform Rules of the High Court, rule 41 A, requires litigants in every new action of application proceedings to indicate whether the parties agree to or oppose referral of the dispute to mediation. The parties may at any stage before judgment agree to refer the dispute to mediation with leave of the Court.

There have accordingly been significant moves to make mediation and arbitration in dispute resolution more mainstream and the judiciary has engaged with key players to create a viable pool of accredited and credible mediators who will offer their services at affordable fees, so that they can play a meaningful role in dispute resolution. Engaging in such alternative dispute resolution methods is increasingly popular in SA mainly due to the lengthy delays which are associated with court proceedings and allowing parties to choose a presiding officer with specialised aviation knowledge, and the proceedings are both private and confidential with a certain degree of flexibility regarding the rules and procedures.

Further, section 166 of the Companies Act No. 71 of 2008 makes provision for any party who would be entitled to apply for relief under the Act, to refer the matter to a to an accredited entity for resolution by mediation, conciliation or arbitration.

Notwithstanding these developments, the detention and self-help rights (including under the Cape Town Convention) discussed in questions 3.1 and 3.2 above may only be exercised by the Courts.

The Court procedures and rights discussed in questions 3.4 to 3.7 may be amended by agreement between the parties in setting out the terms for resolving the dispute by mediation or arbitration.

4 Commercial & Regulatory

4.1 How does your jurisdiction approach and regulate joint ventures or other forms of partnership and/or alliances between airlines? In your opinion, are there any improvements to the existing regime which would be advisable?

Joint ventures fall within the ambit of the Competition Act 89 of 1998 (the Competition Act). Competitors are normally regarded as being in a horizontal relationship. In terms of Section 4(1) of the Act, an agreement between, or concerted practice by firms, or a decision by an association of firms, is prohibited if it is between parties in a horizontal relationship and if the joint venture prevents or reduces competition or, alternatively, constitutes a merger in a manner contemplated in the Competition Act.

The relaxation of local ownership rules will go a long way to promote joint ventures and other forms of partnership and/or alliances between airlines.

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 primarily with a specific focus on the aviation sector, but there is scope for a narrower

focus as to the specific type of aviation sector in which the transaction occurs, if distinguishable (e.g. cargo transport). To date, there have not been any cases in terms of which a narrower view of a specific type of sector within the aviation industry was applicable.

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 Commission's Corporate Leniency Policy (CLP) offers a cartel member the possibility to disclose information on a cartel to the Commission in return for immunity from prosecution and fines. Immunity is only available to the first cartel member to approach the Commission.

If other cartel members wish to come clean on their involvement in the same cartel, the Commission will also encourage such cooperation outside the scope of the CLP, which can eventually result in a reduction in the fine to be paid in a settlement agreement. Any member of a cartel can apply for leniency and must comply with the requirements set out in the CLP.

Parties to intermediate and large mergers are required to notify the Commission in the prescribed format, and the parties to such mergers may not implement them until they have been approved by the Commission.

Parties to a small merger may implement the merger without the approval of the Commission (and, as such, are not obliged to notify the Commission of that merger).

An Advisory Opinion may be requested from the Commission by external parties to provide guidance on the position that the Commission is likely to take in respect of certain transactions, agreements or practices (on payment of a fee of R 2,500). An Advisory Opinion is not binding on the Commission.

4.4 How does your jurisdiction approach mergers, acquisition mergers and full-function joint ventures? In your opinion, are there any improvements to the existing regime which would be advisable?

Mergers are generally regulated by the Competition Act; however, where an airline is concerned and foreign ownership results, aviation legislation rather than the Competition Act comes into play.

If the applicant is not a natural person resident in the Republic, at least 75% of the voting rights of a domestic carrier must be held by residents of the Republic (Section 16(4)(c) (ii) of the Air Services Licensing Act, 1990), and the aircraft which will be used in operating the air service is a South African-registered aircraft (Section 16(4)(e) of the Air Services Licensing Act, 1990). The voting rights in respect of a South African-licensed international carrier need to be substantially held by residents of the Republic, and the aircraft which will be used in operating the air service is a South African-registered aircraft (Sections 17(5)(a) and 17(5)(c) of the International Air Services Act, 1993).

Joint ventures will most likely be dealt with under the provisions of the Competition Act dealing with restrictive practices – horizontal and vertical (Sections 4 and 5) – rather than a merger, unless they are constructed in a special purpose vehicle (company), in which case the merger provisions would apply.

No improvements to the existing regime are advised save as what has been mentioned before to lower the foreign ownership threshold from 75% to at the very least, 50%.

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

4.5.1 Procedure

A notification must be made in a single filing by one of the primary firms, and must include:

- (i) A Merger Notice in Form CC 4 (1), which must declare the names of the primary acquiring and target firms and whether, in the opinion of the filing firm, the merger is small, intermediate or large.
- (ii) For each of the primary acquiring firm and the primary target firm, a Statement of Merger Information in Form CC 4 (2).
- (iii) All the required documents must be provided together with payment of the fees.

4.5.2 Timing

The Competition Act does not prescribe a specific time limit within which a merger must be notified. As the parties to a merger may not implement the merger until it has been approved by the relevant competition authority, the parties have an incentive to notify the merger as soon as possible.

The Commission has an initial 20 business days to investigate intermediate and small mergers and can extend the investigation by 40 business days. Regarding large mergers, the Commission has an initial 40 business days to investigate and can extend by a maximum of 15 days.

Under non-binding, indicative Service Standards issued by the Commission, the timeframes given are:

- Phase 1 cases (non-complex) – 20 business days.
- Phase 2 cases (complex) – 45 business days.
- Phase 3 cases (very complex) – 60 business days.

4.5.3 Fees

A filing fee of R 165,000 is required for the notification of an intermediate merger, and R 550,000 is required for the notification of a large merger.

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 State aid provisions exist in the Competition Act for air operators or airports.

Government domestic air transport policy includes undertakings to create a competitive air transport market to level the playing field, and equal treatment of State-owned airlines in a competitive market, as opposed to a market that is reserved for a State-owned and controlled monopoly.

The Domestic and International Air Services Council normally requires a ‘guarantee’ for consumer protection regarding cash receipts for flights not yet undertaken.

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

No State subsidies are available currently. The Airlift Strategy 2006 does, however, create a framework for public service obligations and national interest considerations:

“Consistent with the spirit of sound commercial operations, air carriers should have no obligation to provide services

below cost to any institutions whether Government or otherwise, unless such intervention is required based on national interest considerations and subject to appropriate financial compensation.”

In terms of the Government’s public service obligations, air transport services on routes that are not economically viable should be invited through a transparent public tender process.

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 Personal Information Act, 2013 is the closest thing to a dedicated piece of data protection legislation such as the EU Data Protection Directive.

There is currently no dedicated data protection legislation in South Africa, although other legislation does provide some protection, these being the Consumers Protection Act, the National Credit Act, the Promotion of Access to Information Act, the Electronic Communications and Transactions Act, and the Regulation of Interception of Communications and Provision of Communications-Related Information Act.

The Constitution of South Africa Act No. 108 of 1996 and the common law continue to provide for the right to privacy and impose certain restrictions on the processing and disclosure of personal information.

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?

No mandatory breach notification procedure exists. Individuals’ rights are enforced, and damages are claimed through the common law and the Constitution and enforced by the courts. Normal appeal procedures are available to a carrier against whom damages are granted, as set out in question 3.5 above.

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 Patents are protected by the Trade Marks Act and the South African Patents Act 57 of 1978 and are registered with the Companies and Intellectual Property Commission. An action for infringement may be brought in the Court of the Commissioner of Patents (an *ad hoc* court set up under the High Courts of South Africa). Unregistered trademarks may be defended in terms of common law.

South Africa is a signatory to the Paris Convention, and therefore protection is afforded to trademarks that are well known, even if they are not registered in South Africa. South Africa is also a member of the Patent Co-operation Treaty (PCT). Copyright is protected under the Copyright Act No. 98 of 1978.

4.11 Is there any legislation governing the denial of boarding rights, delayed flights and/or cancelled flights? Is this legislation adhered to and well monitored?

The Consumer Protection Act 68 of 2009 (CPA) applies to the promotion and supply of goods and services concluded in the

ordinary course of business between suppliers and consumers and provides some protection to passengers in the event of a denial of boarding under certain circumstances. The Code of Conduct for Consumer Goods and Services is applicable regarding overselling and overbooking.

The CPA under Section 47 provides for the reasonableness test for overselling and overbooking. In terms of this test, a supplier may not accept payment for goods or services where it has no reasonable intention to supply the goods or services.

Regarding damages suffered because of a supplier's inability to supply goods or services due to overbooking or overselling, the CPA provides for a refund of the amount paid plus interest (usually, this would be the deposit plus interest), as well as any consequential damages that directly resulted from the breach of contract.

The aforesaid legislation and remedies are sparsely applied and not well known by air travellers.

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

There is no applicable legislation or sanction available to authorities currently. It is worth noting that Article 19 of the Warsaw Convention as incorporated in terms of the Carriage by Air Act is applicable to carriers.

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

State airports are governed by the Airports Company Act No. 44 of 1993, which imposes levies and airport charges with the permission of the Regulating Committee and is restricted from having any financial interest, either directly or indirectly, in the provision of any air service and may not unduly discriminate against or among various users, or categories of users, of any company airport.

The Airports Company is obliged to conduct its business in such a manner as to ensure that it: does not engage in any restrictive practice as defined in Section 1 of the Maintenance and Promotion of Competition Act No. 96 of 1979; does not change the level or modify the structure of any airport charge more than twice within a financial year; publishes any airport charge at least three months prior to the coming into operation of such charge; and ensures that relevant activities are performed subject to any relevant activity service standards, which shall conform to internationally accepted and recommended practices.

The Air Traffic and Navigation Services Company Act No. 45 of 1993 transferred certain assets and functions of the State to a public company responsible for the provision and control or operation of air navigation infrastructure, air traffic services and air navigation services. The ATNS is entitled to levy air traffic service charges by virtue of a permission issued by the Regulating Committee.

(Refer also to question 1.6 regarding slot allocations and the introduction of the Airport Slot Coordination Regulations, 2012.)

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

The CPA, as stated in question 4.11 above, applies to the promotion and supply of goods and services to consumers within

South Africa, and thus generally applies to the relationship between the airport operator and the passenger.

If a passenger were to cancel a flight, he/she would be entitled to a refund of the airport taxes included in the air fare under the provisions of the CPA.

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

The major global distribution suppliers operating in South Africa are Amadeus, Travelport Distribution Systems via its Galileo and Worldspan distribution channels, Sabre, Airline Solutions, Altéa GDS and Pegasus.

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

There is no ownership requirements placed upon GDSs operating in South Africa.

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

In terms of Section 5 of the Competition Act, an agreement between parties in a vertical relationship is prohibited if it has the effect of substantially preventing or lessening competition in a market, unless a party to the agreement can prove that any technological, efficiency or other pro-competitive gain resulting from that agreement outweighs that effect.

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?

Operating a domestic air service is subject to Section 16(4)(c) and (d) of the Air Services Licensing Act No. 115 of 1990, in that the applicant for an AOC must be: a natural person, who is a resident of the Republic; or if not a natural person, the applicant must be incorporated in the Republic, with at least 75% of the voting rights in respect of such entity held by residents of the Republic; and actively and effectively in control of the air service. NB: The Act makes provision for the Domestic Air Services Licensing Council to exempt an applicant, on the conditions determined by the Minister (of Transport), from the above provisions if the Minister, after considering an application, directs the Council to exempt such applicant; and a resident of the Republic is defined in the Licensing Act as 'a person who has his or her ordinary residence in the Republic and who is a South African citizen by virtue of the provisions of the South African Citizenship Act, 1995'.

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 interpretation of Section 16(4) of the Air Services Licensing Act No. 115 of 1990 is increasingly under the spotlight and the

recent decision by the Council against Flysafair’s ownership structure will be heard by the Courts in 2025 (see question 1.10 above).

There will be a further focus on the issue of foreign ownership restrictions of local airlines with increasing interest in foreign airline’s participation in local carriers such as the 25% stake recently taken by Qatar Airlines in South Africa’s Airlink.

Sustainable aviation fuels (SAFs) are expected to play a pivotal role in the decarbonisation of the aviation industry. South Africa has been earmarked as a major player in SAF production technologies, and is actively participating in ICAO’s Assistance, Capacity-building, and Training for Sustainable Aviation Fuels (ACT-SAF) programme.



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Christodoulou & Mavrikis Inc is a corporate and commercial law firm established in Johannesburg in 1991, with expertise in local and international aviation, commercial law, and with litigation and dispute resolution capabilities. The firm provides a full range of aviation law services including liability and contentious issues, drafting, and negotiating aviation related agreements and other commercial aspects of aviation, including aircraft acquisitions and sales, aviation financing, repossessions, acquisitions and aircraft registrations, and more recently airline insolvencies.

Recent aviation matters include: securing the release of several aircraft attached by judicial means; providing various legal opinions on matters ranging from drone regulations, operator licensing and local ownership issues; drafting and negotiating aircraft sale and lease transaction; drafting employment agreements; drafting a joint venture memorandum of understanding for a European wet lease operator; and advising the liquidators of an insolvent commercial airline on the disposal of aircraft and aviation assets.

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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. The 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?

The 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 the 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? Does this legislation adequately cover all the issues which tend to arise in your jurisdiction, or do you feel that certain amendments or additional laws would be desirable?

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 the AESA, although other governmental agencies (such as police bodies) cooperate with the AESA as well. It is felt that existing legislation covers all issues that arise in Spain in connection with air safety. In fact, in some cases it has been argued that the aviation authorities have extended the scope of air safety regulations beyond their intended scope to cover issues relating to the protection of passengers in consumer law matters.

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 the 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 the 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, the 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, the 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. Does the *status quo* tend to create an aviation market which is sufficiently competitive and open?

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. It is therefore generally accepted that the aviation market in the EU is highly competitive and much more open than most other areas of the world.

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 the 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 the 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.

The 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? Are there any plans to alter this position?

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? Do you believe that there are any changes which would be of benefit to the existing regime?

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 created the Commission for the Investigation of Accidents and Incidents in Civil Aviation (*Comisión de Investigación de Accidentes e Incidentes de Aviación Civil*, "CIAIAC"). This authority was merged by Act 2/2024 into a newly created body, the Independent Administrative Authority for the Technical Investigation of Railway, Maritime and Civil Aviation Accidents and Incidents (*Autoridad Administrativa Independiente para la Investigación Técnica de Accidentes e Incidentes Ferroviarios, Marítimos y de Aviación Civil*). 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 Independent Authority'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 ongoing 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 was eventually cancelled due to concerns voiced by the European Commission concerning the potential anti-competitive effects for certain routes.

At a domestic level, the new alternative dispute resolution mechanism for passenger claims came into force in May 2023 once the AESA became certified as the arbitration body in charge and has been gradually taking speed since then. However, no significant decrease of court cases seem apparent.

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. Joint venture agreements with oil producers have been publicised showing the industry's willingness to use SAF in the near future. Similarly, the 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 Matrícula 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 the 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 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 re-characterise 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.

3.8 Is there any trend developing towards regulatory support in civil justice for out-of-court solutions and the importance of engaging in Alternative Dispute Resolution (or similar)? If so, what (if any) are the implications for the answers in questions 3.1–3.7 inclusive?

As mentioned under question 1.10, a new alternative dispute resolution mechanism for passenger claims has been in force for just over 18 months. The impact of reducing the number of court cases for this type of claim does not seem to have taken effect yet.

In January 2025, the Spanish Parliament passed a law which essentially obliges parties to attempt to solve their disputes amicably before they can resort to the courts. To this end, the law has identified certain systems as being “adequate mechanisms to solve disputes” and using one of these is required in most situations. The initial implementation will be made during 2025.

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? In your opinion, are there any improvements to the existing regime which would be advisable?

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. Thus, any improvements would have to be made at EU level.

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? In your opinion, are there any improvements to the existing regime which would be advisable?

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). As mentioned above, any legislative improvements would have to be made at EU level.

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. 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.

The most recent development has been the publication of Regulations (EU) 2025/12 and 2025/13, which update previous legislation relating to Passenger Name Records and Advanced Passenger Information notifications.

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 incidents 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, delayed flights and/or cancelled flights? Is this legislation adhered to and well monitored?

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 the AESA and the Spanish courts regularly enforce this body of law. In fact, Spain is regarded to be one of the strictest European countries in terms of enforcement of this type of legislation.

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

The AESA has been designated as the national enforcement body pursuant to Regulation 261/2004. In that capacity, the 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. The 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/merger control 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. The 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. The 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 became the subject of intense scrutiny within the context of the United Kingdom's exit from the EU. In June 2016, the 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, which has been halted for quite some time. 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 submitted a Bill of Act to the Spanish Parliament in January 2023 following the French model, attempting to ban domestic

flights where the same destination can be reached by train within a reasonable period of time. Due to a general election, the parliamentary process was cancelled, but the Government has stated its commitment to approving this measure.



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Switzerland



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VISCHER AG

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). Certain federal legislative texts are even translated into Switzerland’s fourth official language “Rhaeto-Romanic” and English (as non-official translations).

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? Does this legislation adequately cover all the issues which tend to arise in your jurisdiction, or do you feel that certain amendments or additional laws would be desirable?

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.

In our view, the EU air safety legislation and its adoption in Switzerland is not only adequate but necessary to enable Swiss carriers to smoothly and safely participate in the European aviation sector. Such legislation is generally perceived to be on a sophisticated level, adequately covering all relevant air safety issues. It is expected that (European and Swiss) aviation legislation will further evolve over time, particularly to address technical developments as they arise.

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 (*Betriebsreglement*) of Zurich Airport stipulates a departure prohibition after 10pm, solely applicable to air charters (BVGer A-1936/2006).

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. Does the *status quo* tend to create an aviation market which is sufficiently competitive and open?

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 (*Betriebsreglement*) of the airport and must not be discriminatory. The operational regulation is subject to FOCA approval. Thus, the aviation market in Switzerland seems currently sufficiently competitive and open as the FOCA can only implement restrictions on a non-discriminatory basis and Swiss legislation does not tend to create an unbalanced market.

1.7 Are airports state or privately owned? Are there any plans to alter this position?

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. There are currently no public plans or even rumours regarding a potential change in the ownership structure of these three commercial airports in Switzerland.

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 (*Betriebsreglement*), 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? Do you believe that there are any changes which would be of benefit to the existing regime?

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.

From a Swiss perspective, no improvements to the existing regime seem warranted.

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.

One 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.

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.

After a narrow majority of the Zurich cantonal council approved the runway extension of Zurich airport, a referendum was lodged against this decision. In the meantime, the referendum was put to public vote on 3 March 2024. The voters of the canton of Zurich have approved the runway extension by a clear margin. The main reason for the runway extension are safety aspects. The extension of the runways should reduce the complexity of the approach and departure regime. The start of the construction works is expected around 2030. The works will be fully financially covered by Flughafen Zürich AG.

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. The matter is now settled, as the Swiss parliament in the meantime amended the Ordinance on Private Security Services provided Abroad (so called “Mercenary Ordinance”) in a way that allows maintenance, repairs, or servicing of exported products as legal, provided their export is authorised.

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. It has since chosen seven architectural projects from a global competition. First construction works have started in 2024. It is planned to create a campus with a mix of office, laboratory, and manufacturing spaces. The campus will also include utilities, services, and research-related housing, as well as flexibly usable areas for catering, leisure, and shopping. Over 10,000 people should be able to work on the Campus, and it will be accessible for visitors.

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. The Bülach Labour Court rejected their claims in the first-instance ruling in Summer 2024. The detailed reasoning for the rejection is expected by the end of November 2024. The ruling is not yet legally binding.

The Federal Council approved a new object sheet for “Schmerlat” airfield, a gliding airfield in the canton of Schaffhausen, on 21 February 2024. The new object sheet outlines general requirements for the infrastructure and operation of civil aerodromes, including the establishment of a drone competence centre. The object sheet is a prerequisite for the approval of the operational regulation (*Betriebsreglement*) and includes specifications on the airfield perimeter, noise pollution, obstacle limitation, and nature and landscape conservation.

On 23 November 2023, and with effect as of 1 February 2024, the Swiss-EU Joint Aviation Committee has resolved to adopt a number of EU regulations aiming at enhancing flight safety in Europe. Most importantly, one ordinance contains the technical regulations and administrative procedures that air carriers from third countries operating in commercial air transport require for authorisation to fly over EU or Swiss territory. The amended provisions allow for a risk-based approach to the authorisation of operators from third countries and greater efficiency in regulatory oversight by EASA, in which Switzerland also participates. Several amendments concern

the list of air carriers that are under an operating ban in the EU. Among other things, the updates shall improve the information process between the EU, its Member States, and the airlines.

Again, on 24 October 2024, the Swiss-EU Joint Aviation Committee has resolved to implement several EU regulations seeking to harmonise and further improve overall flight safety in Europe. The Federal Council approved the adoption of the new provisions, which entered into force on 1 November 2024. The amendments focus on aviation safety and air traffic management (ATM). The EASA will have a central role in assessing compliance. One new ordinance includes the creation of a common information repository so that national authorities and EASA may work together more effectively on certification and inspection tasks.

At the ICAO conference Air Services Negotiation (ICAN), which took place from 21 to 25 October 2024 in Kuala Lumpur (Malaysia), Switzerland signed four new bilateral agreements on scheduled air services with: the Dominican Republic; Sierra Leone; Singapore; and Suriname. The agreements reflect the Swiss Federal Council’s endeavours to secure Switzerland’s transport links to as many intercontinental destinations as possible.

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 (*Luftfahrzeugbuch*), 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.

3.8 Is there any trend developing towards regulatory support in civil justice for out-of-court solutions and the importance of engaging in Alternative Dispute Resolution (or similar)? If so, what (if any) are the implications for the answers in questions 3.1–3.7 inclusive?

While mediation and ADR are not as prominent in Switzerland as they are in other jurisdictions, such as the UK, there has been a trend since the entry into force of the unified Civil Procedure Rules in 2011 to engage out-of-court solutions. At the beginning of any litigation (with narrow exceptions), there is a compulsory conciliation stage. Also, the court can, at any given point during the proceedings, encourage the parties to resort to mediation, and/or hold a settlement hearing. In commercial (B2B) disputes, the court normally schedules a settlement hearing after the first exchange of legal briefs, i.e., after roughly six months. A high percentage of cases is settled out of court through either of these channels.

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? In your opinion, are there any improvements to the existing regime which would be advisable?

All agreements between undertakings, decisions by associations of undertakings, and concerted practices, including joint ventures, which may affect trade between Switzerland and the EU 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.

From a Swiss perspective, no improvements to the existing regime seem warranted.

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? In your opinion, are there any improvements to the existing regime which would be advisable?

See above, question 4.1.

From a Swiss perspective, no improvements to the existing regime seem warranted.

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).

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, delayed flights and/or cancelled flights? Is this legislation adhered to and well monitored?

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. Generally, the enforcement of these rights works well in Switzerland, and legislation is adhered to. Many people use (online) legal services to enforce their rights and claim compensation. However, there is no official monitoring regarding the enforcement of the legislation.

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/en/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 (*Betriebsreglement*) 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, 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’s operational regulation (*Betriebsreglement*) 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 (FAO)).

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?

Recently, the Swiss Federal Council has started a public consultation on proposed amendments to the FCAA. The planned revision of the FCAA is partly based on parliamentary initiatives and currently consists of 22 subject areas, including, among others, criminal proceedings in the event of: air accidents; age limits for helicopter pilots, stipulating the principle of “just culture”; protection of national airports, granting exemptions from the Federal Act on Freedom of Information in the Administrations; public procurement; expansion of the options for outsourcing air traffic control services; and the use of biometric passenger data. In particular, the Federal Council proposes to transfer the prosecution and assessment of serious violations in aviation to the Office of the Attorney General of Switzerland to consolidate expertise in one place and expedite these prosecutions. Also, a national professional pilot licence is to be created that should allow commercial helicopter pilots to fly until the age of 65. The consultation draft proposes that passengers can avoid printed tickets and electronic boarding passes by using biometric data. Facial recognition technology could be used when checking in, dropping off baggage, checking boarding passes, or boarding an aircraft. Airport managers shall, under the revised FCAA, be able to order police checks on staff if there are signs of drunkenness or drug consumption. The consultation period ended on 28 November 2024. Based on the consultation results, the Federal Council will amend the draft and prepare a dispatch for the attention of the Swiss Parliament, which will then debate and vote on the amended FCAA. Such changes usually will not be contested by the public so that the changes will become effective approximately one to two years after the consultation period ends, *i.e.*, most likely not before 2026.

Switzerland plans to introduce a flight passenger database from 2026 to collect and process personal data in a bid to combat terrorism and serious crime. The government has sent

a related draft bill to parliament. While it is not yet clear how the parliament will handle this draft bill, it will lead to discussions on such databases and their use.

Swiss aviation aims to be even safer, more efficient, and more environmentally friendly in the future. To this end, the Confederation and the aviation industry have launched the “Swiss Airspace and Aviation Infrastructure Strategy” (AVISTRAT-CH) programme. The DETEC informed the Federal Council about the implementation plans at its meeting on 22 May 2024. The extensive work should be completed by 2035.

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. From 28 February 2022 on, the Swiss Federal Council took the decision to adopt the EU sanctions against Russia (and Belarus) 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.

Also, due to the ongoing war in the Middle East (especially between Israel and the Hamas, Lebanon, and Iran), multiple carriers have, every now and then, cancelled at least some of their flights to Israel and surrounding countries as well as avoid certain airspaces. So far, no airline has announced a permanent suspension of all services to Israel. It is still unclear how these tensions will develop, and how long the instable situation in the Middle East will affect the aviation industry.

On 15 December 2023, the Swiss Federal Council proposed draft legislation and adopted a dispatch regarding the introduction of a general investment control regime in Switzerland which, if adopted by Swiss Parliament and not voted down in a Swiss public vote, as the case may be, would create a legal basis for controlling foreign investments into Switzerland with a focus on state-controlled investors and domestic companies operating in particularly critical sectors, including, *e.g.*, airports. The new law is expected to enter into force in 2025 at the earliest.

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 (in particular, 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).

In addition to the abovementioned 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. 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.



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VISCHER is an influential, innovative Swiss law firm dedicated to providing effective legal solutions to business, tax and regulatory matters. Our attorneys, tax advisers and public notaries are organised under the direction of experienced partners in practice teams, covering all areas of commercial law. Our breadth of practice ensures we have the right team available for every mandate and client.

Our clients demand and deserve impartial, unbiased advice. Our conflict standards set us apart from other firms. The fact that VISCHER is not tied to an association of law firms or attorney network means that our ability to select and instruct counsel in international transactions is not compromised. We have spent decades building up networks with attorneys and firms that meet our standards. VISCHER can choose freely from those networks, according to the demands of the matter at hand.

VISCHER advises and represents airline companies in their core business and also in associated fields such as catering. We regularly advise on questions at a cantonal and federal level, handle damage and insurance cases of all types, and assist in contract negotiations with travel offices, air-traffic authorities, and airport operators. In addition, we advise on leasing, buying and selling aircraft and also have a wealth of experience in aircraft completion and all types of aviation-related dispute resolution. VISCHER received the *Finance Monthly* 2016 award for "Aviation Law Firm of the Year – Switzerland".

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.

Our offices are located in Zurich, Basel, and Geneva, the largest business centres in Switzerland.

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Ukraine

Jurvneservice



Dr. Anna Tsirat

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.

Ukraine is a party to the following conventions:

- the Convention on International Civil Aviation (the “Chicago Convention”), together with its 18 Annexes;
- the Convention Relating to Cooperation for the Safety of Air Navigation, 1960;
- the Convention on Offences and Certain Other Acts Committed on Board Aircraft (the “Tokyo Convention”);
- the Convention for the Suppression of Unlawful Seizure of Aircraft (the “Hague Convention 1970”);
- the Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation (the “Montreal Convention 1971”);
- the Protocol for the Suppression of Unlawful Acts of Violence at Airports serving International Civil Aviation (the “Montreal Protocol 1988”);
- the Convention for the Unification of Certain Rules for International Carriage by Air (the “Montreal Convention 1999”); and
- the Convention on International Interests in Mobile Equipment and the Aircraft Equipment Protocol (the “CTC”).

Local laws may be divided into:

- general regulations, including the Air Code of Ukraine, the State Programme of Aviation Safety;
- regulations from the State Aviation Administration of Ukraine (“SAAU”), State Inspector of Aviation Supervision, and Licensing Terms for Business Activities on Transportation by Air; and
- a collection of aviation rules on registration of aircraft and their airworthiness, certification of carriers, their personnel, airports, transportation of passengers and cargos, etc., adopted and in compliance with international treaties, EU aviation laws, the International Civil Aviation Organization (“ICAO”) and the European Union Aviation Safety Agency (“EASA”) requirements.

The SAAU is the central executive body authority, whose activities are directed and coordinated by the Cabinet of Ministers of Ukraine through the Minister of Infrastructure, who implements state policy in civil aviation and use of the airspace in Ukraine.

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

If an air carrier is at least 50% owned by Ukraine or a Ukrainian legal or natural person and certified as an operator, they may apply for operating licence from the Ministry of Infrastructure. The licence is issued in 10 days if there are no grounds for refusal.

1.3 What are the principal pieces of legislation in your jurisdiction which govern air safety, and who administers air safety? Does this legislation adequately cover all the issues which tend to arise in your jurisdiction, or do you feel that certain amendments or additional laws would be desirable?

The principal pieces of legislation governing air safety in Ukraine are the International Conventions discussed under question 1.1, the State Civil Aviation Safety Program developed by the SAAU (in accordance with the standards and recommended practices of the Chicago Convention), and the obligations arising from Ukraine’s participation in the other Conventions stated in question 1.1. The principal pieces of domestic legislation in the sphere are the Air, Customs, and Criminal Codes of Ukraine, the Code of Ukraine on Administrative Offenses, as well as the laws of Ukraine on transport, the national police, the security service of Ukraine, the state border service of Ukraine, border control, and operational and investigative activities.

Air safety is administered by the SAAU, the national police, the Ministry of Defence, the Security Service, and other Ministries within their tasks and competence. Each entity dealing with air transportation activities is certified by the aviation security service to show that their organisation, structure, tasks and functions comply with the regulations on aviation security and the rules for the certification of aviation security services. The establishment of security services at airports and air navigation service providers is mandatory.

The aviation legislation in Ukraine is robust and generally aligned with international standards set by the ICAO and EASA. It covers key areas such as air safety, airspace management, operator certification, environmental compliance, and passenger rights. However, there is always room for improvement that might enhance further harmonisation with European Standards, improve legislation on modernising air traffic control systems and airport infrastructure to meet the demands arisen after the end of Russian-Ukrainian war, and introduce civil UAV/Drone regulations and carbon offset programmes or incentives for adopting green technologies.

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

Air safety in Ukraine is regulated separately for commercial, cargo, and private carriers, although they all fall under the overarching framework of the SAAU and international aviation standards. Key distinctions include the stringent regulation of commercial carriers aligned with the ICAO and EASA, certification for air operators, crew licensing, and maintenance under detailed operational and safety requirements. Cargo Carriers are subject to specific safety protocols related to the transport of goods, including hazardous materials, in compliance with the ICAO's Technical Instructions for the Safe Transport of Dangerous Goods by Air (Doc 9284), detail packaging, labelling, documentation, and handling requirements for hazardous materials. While private carriers are governed by separate rules focused on airworthiness, pilot licensing, and non-commercial operations under general aviation regulations. These rules are generally less restrictive but still ensure adherence to safety standards. While the regulatory body is unified, the safety requirements are tailored to the nature and scale of operations for each category.

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

No. The general rules are stated in the Rules of Charter Flights Performance, No. 297 as of 2001, and the Order on Accounting and Reporting on the Regularity of Flights of Civil Aviation Aircraft of Ukraine, No. 792 as of 2005.

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. Does the *status quo* tend to create an aviation market which is sufficiently competitive and open?

The only restriction applicable to international carriers is the impossibility of receiving a transportation licence from the local Ministry of Infrastructure for domestic flights if the air carrier has less than 50% Ukrainian ownership.

1.7 Are airports state or privately owned? Are there any plans to alter this position?

Currently, all airports in Ukraine are owned either by state or local communities. Just before the war, the government planned to transfer certain regional airports into concession. Although no formal decision was approved, the governmental Investment Atlas listed Lviv Danylo Halytskyi, Kherson, Zaporizhzhya, Chernivtsi, and Vinnitsya International Airports and Multimodal Cargo Hub Bila Tserkva as objects to which investments were invited. There are no disclosed plans to privatise or transfer the airports into concession, but the situation may change after the war finishes. The Ministry of Infrastructure plans to audit the state of airports after termination or abolition of the military service state within three months. If airports are significantly damaged, the Ministry may want to attract investments there.

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

Ukrainian airports impose charges for landing/take-off, service to passengers, safety and security services, and parking under unified rules and tariffs imposed by the Ministry of Infrastructure (No. 433).

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? Do you believe that there are any changes which would be of benefit to the existing regime?

The rules and procedures for technical investigation of aviation events and incidents in civil aviation are stated in the Ukrainian government Regulation No. 610 as of 20 May 2022. This regulation fully complies with the requirements of Annex 13 of Chicago Convention. It is difficult to estimate the necessity of changes, as the rules were introduced after the closing of airspace in February 2022 and have not yet been used in practice.

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

The airspace over Ukraine has been closed since 24 February 2022 and there were no accidents involving air operators 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)?

Since 2021, the Law of Ukraine on Principles of Monitoring, Reporting and Verification of Greenhouse Gas Emissions has entered into force. The government has also developed the Strategy on the Formation and Implementation of State Policy in the Sphere of Climate Change until 2035, and the Operating Plan for the next three years.

Ukraine is a participant of CORSIA at the voluntary stage. All eight Ukrainian airlines that met CORSIA requirements became CORSIA participants. From 2027, participation in CORSIA will be mandatory.

2 Aircraft Trading, Finance and Leasing

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

No, proof of ownership is clearly stated on the certificate of aircraft registration in Ukraine. The SAAU usually accepts AC Form 8050-2 Aircraft Bill of Sale as confirmation 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 no special register of aircraft mortgages and charges. Ukraine is a party to the CTC and aircraft mortgages or charges are registered at the International Registry (the “IR”). To make due registration of the lessor/financier’s interests at IR, appropriate AEP codes should be received from the SAAU through the submission of an application in a prescribed form, listing all interests to be registered and enclosure of agreements on which these interests are based or assigned.

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

We expect that after the war finishes there could be some new requirements, especially in the sphere of war risks insurance.

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 Ukrainian law, the principle of “a part follows the destiny of the whole” applies, meaning that when an engine is installed “on-wing” on an aircraft owned by another party, it could be at risk of title annexation. To mitigate such risks, owners and financiers of engines should take some pre-emptive steps, including contractual protections, physical marking and IR registration.

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 aircraft is exempt from the value-added tax (“VAT”) of 20% under Article 206.7.1 of the Tax Code and Article 105 of the Customs Code, provided it is imported under a temporary regime for a period of no more than three years, and is exported before the expiry of such period. The three-year period may be extended. In any case, the Lessee is solely liable for any VAT payments for the aircraft importation. If the lessee fails to pay VAT, the Ukrainian tax authorities will not have a lien on the aircraft as any lien may only encumber an asset the lessee owns.

Aircraft trading on the Ukrainian customs territory is subject to taxation by corporate tax in the amount of 18%.

There is no registration, stamp, or other taxes or duties of any kind payable in Ukraine in connection with the signature, performance, filing, or enforcement through legal proceedings of any of the transaction documents, or in connection with payments made according to the transaction documents.

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

Ukraine is a party to the CTC and Montreal Convention 1999.

2.7 How are the Conventions applied in your jurisdiction?

Ukraine has declared the application of Alternative A of the CTC. Under the Aircraft Protocol, the Irrevocable De-registration and Export Request Authorization (“IDERA”) is a key instrument enabling the de-registration and export of aircraft in the event of airline default under a lease agreement. While IDERAs are registered with the SAAU, they are not recognised by Ukrainian customs authorities, which creates some complications.

Under the CTC, the IDERA holder is typically a creditor to the entity listed in the aircraft registry. In Ukraine, the Civil Aircraft Registry records ownership rather than operatorship, meaning that only the aircraft owner can issue an IDERA. Despite this, the SAAU inconsistently registers IDERAs issued by local operators (lessees), creating ambiguity about their enforceability.

The application of the Montreal Convention in Ukraine is well-integrated, providing a clear framework for carrier liability and passenger rights. It ensures alignment with international standards, offering legal certainty and protection for passengers and cargo owners. However, challenges such as raising public awareness of rights and ensuring swift dispute resolution remain areas for ongoing attention.

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?

Ukraine concluded the Double Taxation Treaty (the “DTT”) with many countries, in which no withholding tax or other Ukrainian taxes will be deducted from any payment made by the lessee pursuant to transaction documents. The DTT states that there are no applicable tax payments if the aircraft is used on international routes. Though the DTT does not specify whether the aircraft must be used “exclusively” on international routes, as practice has shown, tax exemption is applicable if the aircraft is used, in any capacity, for domestic routes as well. There is no relevant court practice, and the Ukrainian tax authorities have issued no recommendations or explanations on the possibility of using the aircraft for international and domestic routes. According to current Ukrainian laws, if the aircraft were used on domestic routes, the lessee would be obligated to pay a 15% withholding tax on each payment made in favour of the lessor. However, in practice, aircraft leased from foreign lessors (i) located in countries that have signed the DTT with Ukraine with the above-stated regime, and (ii) that were used both for domestic and international routes did not result in payment of the 15% withholding tax. To receive the benefits under the DTT, the lessee, when transmitting rental or any other payment, must have evidence that the lessor does not have a residence in Ukraine and has permanent residence in a

country party to the DTT. A certificate of the lessor’s residency issued by the appropriate authority is treated as sufficient evidence for the application of a tax exemption. This evidence is valid for one year. It should be submitted to the lessee periodically during the term of the lease. The residency certificate must not be filed with any Governmental Entity in Ukraine.

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 risk of a lessee acquiring an economic interest in leased aircraft in Ukraine is low, as Ukrainian law does not grant a lessee any proprietary or economic interest in the leased aircraft merely through the payment of rent. Ownership remains with the lessor unless explicitly transferred under the terms of a contract. Payments under a lease agreement are considered obligations under civil law, and fulfilling such obligations does not create ownership rights. In any case, agreements must be unambiguous, and ownership properly documented. The CTC adds an additional layer of protection by securing international interests. However, to avoid potential disputes, owners and financiers should ensure airtight contractual provisions and register their interests internationally.

3 Litigation and Dispute Resolution

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

In Ukraine, rights of detention over aircraft for unpaid debts are recognised. Detention rights may be applied by Airport Authorities for unpaid fees related to airport services (e.g., landing, parking, or navigation services). Detention is permitted until the outstanding amounts are settled. The authority must provide a notice to the aircraft operator or owner regarding the detention.

Customs officials may detain an aircraft for breaches of customs regulations, such as non-compliance with temporary importation rules.

Civil Code allows the service provider to detain the aircraft for non-payment for its services.

Judicial Detention (“seizure”) is available to creditors of the aircraft owner. They may apply to a Ukrainian court to arrest an aircraft as a part of debt recovery proceedings. If a lease agreement has no quit possession clause, the court may grant detention if the creditor demonstrates that the detention is necessary to secure the claim.

The CTC provides mechanisms for creditors to enforce speedy remedies, including detention and repossession of aircraft, in the event of default.

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?

Ukrainian law does not explicitly provide for self-help remedies for lessors or financiers. Actions to repossess an aircraft without the lessee’s consent or judicial approval may be

considered unlawful and subject to legal challenges even if self-help actions are taken under the CTC with proper IDERA registration. While IDERA registration with the SAAU is functional, enforcement is sometimes hindered by the need for judicial involvement to address practical issues such as access to the aircraft or customs clearance, and lack of coordination with customs authorities for physical 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?

In Ukraine, civil, commercial, administrative and criminal cases are distinguished by their subject matter, persons involved, applicable legal framework, and procedures.

If a natural person (such as a passenger) is a party in a dispute with an airline, the case will be considered by a civil court.

Commercial cases address disputes arising from economic or business relationships, such as disputes between lessor and lessee.

Criminal cases involve offences against public order or the state, for example, drug trafficking.

Administrative courts in Ukraine play a key role in resolving disputes between individuals, businesses, or organisations and government bodies in aviation law. Administrative courts consider challenges to decisions or actions by the SAAU, such as revocation or suspension of Air Operator’s Certificates (“AOCs”), penalties imposed for regulatory violations, or denial of aircraft registration or airworthiness certification. Disputes related to compliance with environmental standards for airports or aviation operations are also under administrative court jurisdiction.

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 parties, court summons are delivered in paper form by registered mail with delivery confirmation, or electronically if the party has provided contact details (e.g., email or phone). Summons must be served at least five days before the court session, allowing sufficient time to prepare. If the party has an electronic office, documents are sent exclusively through the Unified Court Information and Communication System.

For non-domestic parties, Ukraine follows the 1954 HCCH Convention on Civil Procedure and the 1965 HCCH Service Convention. Initial service of documents must comply with these conventions. After appointing a local attorney, further service is conducted through the attorney as if serving a domestic party.

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 both court and arbitral tribunal (the “AT”) interim remedies are available under the law, the tribunal interim remedies have practical problems in enforcement. The following are the interim remedies from the commercial court of Ukraine:

- Arrest on Property or Funds that belong to the defendants or are due to be transferred to them, whether in their possession or held by third parties.

- Prohibition on Defendant's Actions that might harm the claimant's interests.
- Preventing third parties from engaging in actions related to the subject matter of the dispute, such as making payments, transferring property, or fulfilling obligations in favour of the defendant.
- Halting collection efforts under an executive document or other instruments permitting undisputed collection.
- Preventing property sale under dispute when a claim is filed to establish ownership, exclude the property from inventory, or remove an arrest on it.

Courts may apply multiple interim measures, provided they are commensurate with the claimant's stated claims. However, interim measures cannot mirror the final relief sought if the dispute has not yet resolved to its merits.

Both court and AT final remedies typically include specific performance (enforcing contractual obligations), damages award (compensation for losses incurred), declaratory relief (establishing the legal rights of the parties), and injunctions (permanent prohibitions against certain actions).

Though Ukraine is a party to the CTC, which provides for immediate relief under Article 13, these remedies must be performed in accordance with local laws. Since Ukrainian law does not explicitly define the procedures for executing CTC remedies, their practical enforcement can be challenging and may lead to inconsistent outcomes.

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?

Parties, third parties, and individuals not directly involved in a case have the right to apply to the court to annul the AT's decision if:

1. The case was outside the jurisdiction of the AT.
2. The tribunal ruled on a dispute not covered by the arbitration agreement or decided issues beyond the scope of the agreement. In such cases, only the portion of the decision exceeding the scope of the agreement may be annulled.
3. The arbitration agreement was declared invalid by a court.
4. The tribunal's composition did not meet legal requirements.
5. The tribunal ruled on the rights or obligations of individuals who were not parties to the case.

A court decision may be annulled, wholly or partially, or amended if: the court failed to establish circumstances relevant to the case or prove facts it recognised as established; the conclusions in the decision contradict the established facts of the case; or procedural law violations led to an incorrect resolution of the case or misapplication of substantive law.

Procedural violations require mandatory annulment and a new judgment if:

1. The case was heard by an incomplete panel of judges.
2. A judge involved in the decision was successfully challenged, and the grounds for the challenge were upheld by the appellate court.
3. The case was heard in the absence of a participant who was not duly notified of the hearing (if notification was mandatory).
4. The court ruled on the rights or obligations of individuals not involved in the case.
5. The judgment was not signed by one or more judges listed in the decision.

6. The decision was issued by judges not part of the hearing panel.
7. The case was improperly heard under simplified proceedings instead of general claim procedures.

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?

Ukrainian law recognises *force majeure* and frustration of purpose as mechanisms to address unforeseen events affecting contractual obligations. While *force majeure* typically suspends obligations during the event, frustration allows for contract modification or termination. Both require strong evidence and, often, judicial intervention to be effective.

3.8 Is there any trend developing towards regulatory support in civil justice for out-of-court solutions and the importance of engaging in Alternative Dispute Resolution (or similar)? If so, what (if any) are the implications for the answers in questions 3.1–3.7 inclusive?

There is no significant trend in the Ukrainian aviation sector toward regulatory support for Alternative Dispute Resolution ("ADR") mechanisms, due to the low volume of disputes involving aircraft in Ukrainian courts. The reliance on international conventions such as the CTC and international arbitration clauses in leasing and financing agreements reduces the need for local ADR mechanisms.

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? In your opinion, are there any improvements to the existing regime which would be advisable?

Ukrainian law does not specifically regulate partnership or alliances in the aviation sector; thus the general norms are applied.

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

Determination of the relevant market for mergers and acquisitions is governed by the Law on Protection of Economic Competition by the Antimonopoly Committee of Ukraine ("AMCU"). The "relevant market" in certain goods or services is assessed from the point of potential impact of a transaction on competition. The ability of competitors to switch production to the merging parties' goods or services is considered. The AMCU relies on data from market participants, consumer surveys, industry reports, and public data to substantiate its analysis. Such factors, like transportation costs, distribution networks, and regulatory barriers, are taken into account. The SSNIP test (Small but Significant and Non-Transitory Increase in Price) and Herfindahl-Hirschman Index are used to measure market dominance or increased concentration post-merger.

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

While Ukraine does not have a formal anti-trust immunity system akin to the United States’ business review letter process, it offers mechanisms like pre-approval of concerted actions, leniency programmes for cartel participants, and merger clearance. These tools provide some level of protection for parties engaging in potentially anti-competitive conduct, but they require prior approval or compliance with specific conditions.

4.4 How does your jurisdiction approach mergers, acquisition mergers and full-function joint ventures? In your opinion, are there any improvements to the existing regime which would be advisable?

The main aims of the AMCU are to prevent market dominance, promote fair competition, and ensure compliance with international best practices.

While Ukraine’s merger control regime is relatively robust and aligned with EU standards, there is still room for improvement that could enhance its effectiveness and efficiency:

- The current thresholds for notification are relatively low. Their raising could reduce the regulatory burden on businesses and allow the AMCU to focus on cases with significant market impact.
- Though the treatment of full-function joint ventures as concentrations is consistent with EU law, clearer guidance or more illustrative examples could help businesses understand whether their joint ventures require notification.
- Expanding the adoption of waivers for foreign-to-foreign transactions with limited effects on the Ukrainian market would enhance alignment with global practices and reduce unnecessary filings.
- Publishing anonymised decisions or summary reviews for non-contentious cases could improve predictability and foster greater trust in the AMCU’s decision-making process.
- Introducing a fully digital filing system would streamline the notification process and improve efficiency, particularly for cross-border filings.

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

A key feature of the Ukrainian approach is mandatory pre-notification to the AMCU for the review of transactions that meet certain financial or market share thresholds. These thresholds include €30 million combined worldwide turnover or assets of all parties, with at least €4 million turnover or assets in Ukraine for each of at least two parties. The target’s turnover or assets in Ukraine should exceed €8 million. Joint ventures, including full-function joint ventures, are subject to the same merger control requirements as mergers and acquisitions. The AMCU conducts a two-phase review – a preliminary one within 30 days of receipt of the documents to determine whether further investigation is needed, and an in-depth one lasting up to 135 days if competition concerns arise. The AMCU evaluates the impact of the transaction on market competition, focusing on whether it will create or strengthen

a dominant position or substantially restrict competition. The Herfindahl-Hirschman Index and market share analysis are used to assess market concentration. Failure to notify the AMCU when required can result in significant fines, up to 5% of the violating party’s worldwide turnover.

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 aviation-specific state aid rules in Ukraine.

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

No formal subsidies are available for particular aviation routes at this time.

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 are the Law on Personal Data Protection, No. 2297-VI, and Aviation Rules as to Air Transportation and Service to Passengers and their Luggage, No. 1239 (the “Aviation Rules 1239”), the Montreal Convention 1999, and the ICAO Guidelines on Passenger Name Record (“PNR”) Data, Doc. 9944.

By providing their personal data during booking, the passengers authorise the air carrier and give their consent to process, store and transfer their personal data to third parties for the purpose of booking or re-booking transportation, servicing flights and passengers, receiving additional services, organising baggage search, preventing/detecting fraud with transportation documents, providing information assistance regarding entry/exit along the transportation route, and accompanying the passenger.

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?

An airline should promptly notify the affected individuals and report to the Office of the Ombudsman if the breach poses significant risks to individual rights and freedoms. Failure to fulfil these obligations can result in administrative fines and civil liability for material and moral damages caused. If the data loss involves European passengers, compliance with standards under the EU-Ukraine Common Aviation Area Agreement may also be required, particularly for aligning with EU GDPR principles.

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?

Ukraine is a party to key IP treaties, including the Paris Convention, Madrid Agreement, and WIPO-administered treaties, ensuring international recognition and protection. Ukraine

has also developed domestic legislation that effectively protects trademarks, patent, copyright and related rights. Proprietary data relies on strict confidentiality agreements and cybersecurity compliance.

4.11 Is there any legislation governing the denial of boarding rights, delayed flights and/or cancelled flights? Is this legislation adhered to and well monitored?

Aviation Rules 1239 govern the issues. They are under the purview of the SAAU, which oversees their implementation and enforcement. However, there are no specific public assessments or comprehensive studies available that thoroughly evaluate the effectiveness of the monitoring system.

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

The powers of the SAAU regarding late arrivals and departures are tied to its enforcement of both local aviation rules (rules for granting operators permits departure from and arrival at Ukrainian airports, No. 897/703) and ICAO Doc. 4444 standards. These mechanisms ensure real-time updates on flight schedules, mitigate disruptions, and maintain air traffic safety and efficiency.

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

Yes, airport authorities are governed by the Air Code, Rules for Certification of Airports and Aerodromes, the Law On Environmental Protection, ICAO Annex 17, and the EU-Ukraine Common Aviation Area Agreement. They are tasked with a wide array of responsibilities spanning safety, security, passenger service, operational efficiency, and compliance with international standards.

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

General consumer protection laws in Ukraine apply to non-aviation services provided by airport operators (e.g., retail, parking), while aviation-related services are regulated by the Air Code and international agreements. Passengers have recourse for non-aviation grievances under these laws, but aviation-specific complaints follow specialised regulations.

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

The primary GDSs operating in Ukraine are Amadeus, Sabre, and Travelport.

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

There are no specific ownership requirements for GDSs. They function in the Ukrainian market under international frameworks and agreements through local partnerships or agency models.

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

Most airports in Ukraine are state-owned or communal, while the majority of airlines are privately owned. Thus, while there is no established regulatory framework directly addressing such integration, the current ownership structure in Ukraine effectively prevents it.

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?

No, but there are such requirements for air transportation licences which are only issued to air operators owned over 50% by Ukrainian legal or natural persons. For operators of foreign aircraft into and out of Ukraine, these nationality requirements do not apply.

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?

Some efforts are currently underway to gradually reopen airspace for civil aviation, starting with safer regions like Lviv in 2025. This will likely involve new regulations on airspace management and coordination with international aviation bodies. As part of the efforts to resume flights, Ukraine is developing insurance mechanisms to cover commercial aviation risks, particularly for operations in higher-risk zones.



Dr. Anna Tsirat is a distinguished legal professional specialising in aviation law, with over two decades of experience in the field. She is recognised as a leading expert in Ukraine and internationally, offering unparalleled expertise in aircraft financing, leasing, registration, and regulatory compliance.

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Beyond her legal practice, Anna has contributed to the advancement of aviation law through teaching, publications, and active participation in legal forums. She frequently authors articles in leading legal journals and delivers lectures on the evolving dynamics of international aviation law.

Anna’s career also reflects her commitment to aligning Ukraine’s aviation framework with international standards, particularly in the context of the EU-Ukraine Common Aviation Area Agreement. Her work has been instrumental in facilitating the development of transparent, efficient, and competitive aviation legal practices in Ukraine.

With her combination of legal acumen, academic distinction, and practical expertise, Dr. Anna Tsirat continues to be a leading figure in aviation law, shaping the industry’s legal landscape both domestically and globally.

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Jurvneshservice is a distinguished Ukrainian law firm with over 35 years of experience. Founded in 1987 as one of Ukraine’s first private legal practices, the firm is renowned for its expertise in various sectors, including corporate law, dispute resolution, international trade, intellectual property, and tax.

A key focus of Jurvneshservice is the aviation sector, where the firm has established itself as a trusted advisor to airlines, lessors, financiers, and service providers. Its lawyers have deep knowledge of aviation regulations, aircraft leasing and financing, insurance, and dispute resolution related to aviation operations.

By combining comprehensive legal expertise with a clear understanding of the complexities of the aviation industry, Jurvneshservice ensures that its clients navigate challenges effectively and meet their strategic objectives. The firm’s longstanding commitment to professionalism and innovation has cemented its reputation both in Ukraine and internationally.

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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 11.00p.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 the 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? Does this legislation adequately cover all the issues which tend to arise in your jurisdiction, or do you feel that certain amendments or additional laws would be desirable?

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. Does the *status quo* tend to create an aviation market which is sufficiently competitive and open?

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? Are there any plans to alter this position?

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 15 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 5 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? Do you believe that there are any changes which would be of benefit to the existing regime?

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 allocation 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	£223
5,701kg–15,000kg	£443
15,001kg–50,000kg	£736
50,000kg	£325

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	£66
Over 15,000kg	£132

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 residence 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.

3.8 Is there any trend developing towards regulatory support in civil justice for out-of-court solutions and the importance of engaging in Alternative Dispute Resolution (or similar)? If so, what (if any) are the implications for the answers in questions 3.1–3.7 inclusive?

The English Civil Procedure Rules (“CPR”) govern civil litigation in the UK in the County Court, the High Court and the Court of Appeal (Civil Division). They now require parties to consider Alternative Dispute Resolution in view of the fact that “dealing with cases justly and at proportionate cost” includes promoting or using Alternative Dispute Resolution (CPR 1.1). More generally, the UK courts actively encourage parties to settle their disputes without recourse to litigation proceedings where possible, and in addition the UK courts have the power to order parties to engage in ADR as well as penalise parties on costs for failing to do so.

The implications of this for the answers in questions 3.1–3.7 inclusive are essentially that they should be read in the context that the UK Courts expect parties to seek to resolve their disputes without issuing court proceedings, to actively consider ADR at all times (i.e. not just at the commencement of a dispute) and (since 1st October 2024) that express provisions are set out in the CPR to the effect that the UK Courts may order parties to engage in ADR as well as penalise a party on costs for failing to do so.

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? In your opinion, are there any improvements to the existing regime which would be advisable?

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/SNAirholdings*, 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? In your opinion, are there any improvements to the existing regime which would be advisable?

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 judgment on a series of preliminary reference questions raised by the Belgian Constitutional Court (Case C-817/19, *Ligue des droits humains 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, delayed flights and/or cancelled flights? Is this legislation adhered to and well monitored?

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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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”) is a federal cabinet-level department comprising multiple agencies and is tasked with providing an efficient network of national transportation systems and services.

The Federal Aviation Authority (“FAA”) is a national agency within the DOT, the largest transportation agency in the US, and regulates all aspects of US civil aviation, including commercial space transportation, airspace over the US surrounding international waters, and unmanned aircraft systems (“UAS”). The federal FAA Reauthorization Act of 2024 (Bill No. H.R. 3935, Public Law 118-63), signed into law on 16 May 2024, amends title 49 of the United States Code and extends the FAA authorisation until 2028. *See* question 5.1.

The National Transportation Safety Board (“NTSB”) is a fully independent US government agency that investigates and reports on civil transportation accidents, not only aviation accidents and incidents. The NTSB 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 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” is federal legislation governing all forms of transportation in the US, issued by the DHS and DOT, regulates transportation and its related-security issues, including the transportation of hazardous materials and civil aviation security, and Subtitle VII aviation programmes, addresses air commerce, safety and airport development.

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

Air carriers must obtain economic authority from the DOT and safety authority from the FAA.

Economic authority. The DOT grants economic authorisation through a certificate for interstate or foreign passenger and/or cargo operations. 49 USC § 41101. The DOT Air Carrier Fitness Division evaluates whether 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.

A US air carrier economic authority may consist of either a (1) certificate for interstate or foreign passengers and/or cargo and mail authority, (2) 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: <http://www.regulations.gov>, making it available for public comment. Air carriers must file separate applications for interstate and foreign authority.

The DOT analyses foreign air carrier applications 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 of the US and EU Joint Committee allows for reciprocal recognition of regulatory determinations of airline fitness and citizenship, meaning that applicants from EU Member States, Iceland, and Norway are entitled to file abbreviated applications.

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 49 USC § 41110(e) requirement to remain “fit” to retain the air carrier’s air transportation services authority.

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? Does this legislation adequately cover all the issues which tend to arise in your jurisdiction, or do you feel that certain amendments or additional laws would be desirable?

The FAA administers air safety within four major areas:

1. Airports – optimises the safety, capacity, and condition of airports in the US. 14 CFR Part 139.
2. Air Traffic Organization – controls air traffic routes and airspace safety. 14 CFR Parts 71 and 77.
3. Aviation Safety – ensures 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 – regulates the US commercial space transportation system, including rocket and satellite launches. 51 USC § 50921.

As discussed below in question 5.1, the US government recently passed the FAA Reauthorization Act of 2024, advancing a safer, cleaner, greener, and more accessible aviation system in the US. This Act requires airlines to use more sustainable fuels, encourages investment in airports, implements key safety measures, and bolsters accessibility and consumer protection for all passengers. To support its policy objectives and the ongoing advancement of US aviation safety as a worldwide benchmark, this Act authorises \$105 billion in funding through fiscal year 2028 related to the FAA's various certification and safety programmes, infrastructure and technology upgrades, and the hiring of inspectors and air traffic controllers. See H.R. 3935, Title I. Additionally, the TSA (established under the DHS in response to the 9/11 terrorism acts) develops and implements policies to ensure the safety and security of transportation systems at airports. These laws and the body of regulations, caselaw and rules interpreting and implementing the amendments provide comprehensive legislation supporting the FAA and US as the safest civil aviation system in the world.

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

Safety regulations differ based on aircraft size, measured by the number of passenger seats and payload capacity, and whether the operation involves common carriage of passengers and/or cargo:

- 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 establish operational requirements relating to equipment, maintenance, pilot qualifications, and training. 14 CFR Parts 91 and 129 also establish operating standards applicable to foreign air carriers operating in the US.

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

The US regulates air charters based upon aircraft size and type:

- 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. Does the *status quo* tend to create an aviation market which is sufficiently competitive and open?

The US generally treats foreign and US carriers that are parties to bilateral air transport or service agreements similarly. The FAA's International Aviation Safety Assessment Program ("IASA") evaluates whether a foreign country's aviation authority over carriers operating in the US or under US carrier codeshares comply with International Civil Aviation Organisation ("ICAO") international safety standards. ICAO promotes the safe and orderly development of civil aviation globally by setting standards, regulations, and procedures necessary for aviation safety, security, efficiency, regularity, and environmental protection. See <https://www.faa.gov/about/initiatives/iasa>. 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.

Airline and passenger taxes and fees fund national security, environmental protection, agriculture inspection, infrastructure enhancement, airport operation, and agency financing. Taxes that international passengers 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/>

By generally giving equal treatment to foreign carriers, and implementing ICAO and other international aviation standards, the US provides a competitive, open aviation market. Further, as noted in questions 1.10, 4.1, and 4.5 below, DOT and DOJ regulation and scrutiny aim to mitigate anti-competitive activities that could potentially harm the flying public.

1.7 Are airports state or privately owned? Are there any plans to alter this position?

Commercial airports are nearly exclusively publicly owned in the US, whether local, regional, state or bi-state authorities, but operated through private long-term contractual arrangements. 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. The City of New York contracts with the Port Authority, which in turn enters into contracts with numerous airport operators, US airlines, and maintenance and service organizations to design, build, manage and operate terminals. These contractual arrangements often provide for long-term operation agreements, such as the August 2022 Avports LLC agreement with the Tweed New Haven Airport Authority for a 43-year lease and management agreement. Avelo Airlines’ first East Coast hub was at Tweed New Haven, and the Connecticut Airport Authority is currently advertising leasing and development opportunities at Bradley International Airport, near Hartford, Connecticut’s capital.

The US Airport Investment Partnership Program (“AIPP”) (formerly the Airport Privatization Pilot Program), enacted in 1997 and last amended in 2018, is the primary policy aimed at supporting longer term public-private partnerships surrounding not just airport operation but also ownership. 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). Under the AIPP, Luis Muñoz Marín International Airport in San Juan, Puerto Rico 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, is also privatised. Most recently, on November 13, 2024, the FAA published notice that it approved the Final Application for privatisation of Avon Park Executive Airport in central Florida. See FR Doc. 2024-26190, filed November 12, 2024, available at: <https://www.federalregister.gov/documents/2024/11/13/2024-26190/airport-investment-partnership-program>. There have been multiple AIPP applications to privatise airports, all withdrawn or terminated, and while Stewart International Airport in Newburgh, NY was 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 operated by the Port Authority.

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

The FAA and its Airport Safety Program address 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. There was a failed attempt in 2021 to increase the PFC to \$7.50 and index it to inflation moving forward with a cap of \$8.50. 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? Do you believe that there are any changes which would be of benefit to the existing regime?

Federal regulations grant the NTSB authority to investigate all civil transportation accidents, including aviation accidents. 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. 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 notification of and counselling to family members (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 that set forth 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 its “go-team” that is lead by an investigator-in-charge and has 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.nts.gov/Pages/AviationQuery.aspx>. The only public hearing of an NTSB

investigation held in recent years was held on 6–7 August 2024 arising out of the Alask Airlines flight 1282 incident on 5 January 2024. The investigation is ongoing. At the conclusion of the NTSB's investigation, the NTSB will prepare a public "final" report (49 CFR Parts 831 and 845). The final report 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. While there are jurisdictions that have moved toward criminalising aviation incident investigations, the US regime remains focused on transparency and advancing safety as its first priority.

The FAA and the NTSB signed an agreement dated 9 September 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 reentry 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 reentry vehicle; or (2) damage to property not associated with the commercial space launch or reentry 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?

In January 2024, a federal judge blocked the proposed \$3.8 billion merger between JetBlue and Spirit pursuant to DOJ's legal action. See *US v. JetBlue Airways Corp.*, Case 1:23-cv-10511, ECF No. 461 (D.Mass. Jan. 16, 2024). This ruling came on the heels of the May 19, 2023 court order in *US v. American Airlines Group Inc.*, No. 1:21-cv-11558 (D.Mass. 2021) granting DOJ's request to permanently enjoin the Northeast Alliance as a violation of US antitrust laws, because the "benefits of American and JetBlue 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. On 8 November 2024, more than a year after American Airlines filed its appeal, the First Circuit Court of Appeals affirmed the lower court's decision in *US v. American Airlines Group Inc.* JetBlue did not appeal, instead, focusing on its proposed merger with Spirit Airlines.

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. Since February 2022, Western lessors of Russian operated aircraft with an asserted value in excess of \$10 billion have commenced insurance coverage actions in the US, UK and Ireland seeking an estimated \$10–\$35 billion. The cases are wending their way through the courts.

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") 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. On 14 May 2024, the DOJ notified the Northern District of Texas that it believed Boeing breached its obligations to establish and enforce a compliance and ethics programme related to US fraud laws under the deferred prosecution agreement. Subsequently, Boeing and the DOJ entered a proposed plea agreement related to Boeing's alleged violation of its deferred prosecution agreement, which recommended, amongst other things, that the Court impose a statutory maximum fine of \$487.2 million, with a credit of \$243.6 million previously paid, for a net monetary penalty of \$243.6 million remaining. See *United States of America v. The Boeing Company*, Case 4:21-cr-00005-O, ECF No. 221 (N.D.TX. Jul. 15, 2024).

The use of firefighting foams containing per- and poly-fluoroalkyl 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. In July 2024, Plaintiffs' counsel in the MDL matter notified the court of two additional settlements in the amounts of \$750 million and \$316.5 million with Tyco Fire Products LP and BASF Corporation, respectively. See *In Re Aqueous Film-Forming Foams Product Litigation*, 2:18-mn-02873-RMG, ECF No. 5379-2 (D.S.C. Jul. 22, 2024). Settlement values therefore remain significant, and news outlets report that PFAS litigation may have industry-wide effect beyond even that of asbestos litigation.

Airline carbon offsetting is the subject of recent litigation. The May 2023 class action lawsuit against Delta Air Lines alleging that the airline is “carbon neutral” and environmentally friendly representations are false and misleading remains pending in the US federal district court for the Central District of California. *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.* In May 2024, Delta filed a motion to dismiss the plaintiffs’ amended complaint, arguing that the plaintiffs lacked standing to sue given the lack of material, imminent harm posed to the plaintiffs. The Court took Delta’s motion under advisement in August 2024, which remains pending. See *Berrin v. Delta Air Lines Inc.*, No. 2:23-cv-04150, ECF No. 46 (C.D.Cal. Aug. 8, 2024).

Plaintiffs continue to file an increasing number of class action lawsuits against airlines. In August 2024, one group of passengers sued Delta Air Lines over its response to the July 2024 global CrowdStrike network outage, during which Delta cancelled over 1,000 flights. The lawsuit seeks damages for travel and other unexpected expenses for replacement flights, hotels, rental cars, and food under a variety of causes of action alleging breach of contract, unjust enrichment, and violation of various unfair trade and consumer protection law. See *Bajra et al. v. Delta Air Lines, Inc.*, Case 1:24-cv-03477-MHC, ECF No. 1 (N.D.Ga. Aug. 6, 2024). Another recent class action lawsuit against Alaska Air Group and Delta Air Lines alleges that the airlines’ flight operations caused environmental and health pollution around the Seattle-Tacoma International Airport. Claims against Alaska and Delta include negligence, battery, continuing intentional trespass and public nuisance. On 25 November 2024, the federal court denied the defendants’ motion to dismiss the lawsuit, finding the defendants’ arguments on federal pre-emption under the Airline Deregulation Act and Clean Air Act as premature, requiring discovery to support factual findings. See *Codoni et al. v. Port of Seattle, Alaska Air Group, and Delta Air Lines Inc.*, Case 2:23-cv-00795-JNW, ECF No. 73 (W.D.Wash. Nov. 25, 2024). The Court also notably rejected the defendants’ arguments that the Federal Aviation Act and Clean Air Act pre-empt the entire field of airplane pollution laws under the federal “field pre-emption” doctrine. This doctrine holds that federal law intending to occupy an entire field displaces state law within the same field. The Court likewise declined to immediately apply the “conflict pre-emption” doctrine to the Federal Aviation Act and Clean Air Act, where federal laws pre-empt state laws with which they expressly conflict. In *Hartsfield v. Frontier Airlines Inc.*, a putative class action lawsuit claiming that the Frontier Airlines “All You Can Fly Pass” is a bait-and-switch scheme, the court dismissed the lawsuit, without prejudice, compelling arbitration amongst the parties pursuant to the “All You can Fly Pass” Program arbitration clause that each plaintiff accepted when clicking the electronic link to join the Program. It also found that the terms and conditions required each plaintiff to pursue claims in their individual capacity. See

Hartsfield v. Frontier Airlines Inc., No. 1:23-cv-02093, ECF Nos. 52 and 53 (D.Colo. Jun. 14, Jul. 1, 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)?

The Clean Air Act of 1970 (“CAA”) (42 USC § 7401 *et seq.*), a federal air quality law, was enacted to reduce and control air pollution and is administered by the Environmental Protection Agency (“EPA”). EPA regulatory programmes, such as the National Emissions Standards for Hazardous Air Pollutants, set emissions standards, whereas the FAA establishes and administers compliance with the Certification Requirements for aircraft and engines. 40 CFR Part 87, entitled “Control of Air Pollution from Aircraft and Aircraft Engines”, sets forth the EPA emission standards, and 14 CFR Part 34, entitled “Fuel Venting and Exhaust Emission Requirements for Turbine Engine Powered Airplanes”, sets forth the associated FAA requirements. These rules and regulations closely follow standards adopted by ICAO.

The US continues to participate in ICAO’s global market-based mechanism, CORSIA, which is designed to offset and reduce CO₂ emissions. Offsetting of CO₂ emissions is intended to be achieved through the acquisition and cancellation of emissions units from the global carbon market by airplane operators. As of 2024, 126 countries participate in CORSIA, with Comoros, Mauritania, and Saint Lucia announcing intent to participate as of January 2025. See <https://www.icao.int/environmental-protection/CORSIA/Pages/state-pairs.aspx>. During the current phase, 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, subjecting international flights to offsetting requirements, with exceptions that include, for example, Least Developed Countries, Small Island Developing States and Landlocked Developing Countries (see https://www.icao.int/sustainability/Documents/RTK%20ranking/International%20RTK%20rankings_2018_SIDS_LDC_LLDC.pdf).

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. The Biden administration’s Sustainable Aviation Fuel Grand Challenge aimed 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, a \$1.25 SAF credit for each gallon of SAF produced was envisioned. Although approximately 20 new SAF projects were expected to be operational by 2030, with the January 2025 change in administration, changes in the US position are to be expected.

Airlines are beginning to use artificial intelligence (“AI”) to reduce carbon emissions and aviation’s global warming impact, and 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?

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 FAA-registered aircraft ownership is an original bill of sale from the manufacturer/seller to the current owner. For multiple prior-owner aircraft, the best evidence of current ownership is a chain of title with all prior bills of sale and previous title transfers. 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 aircraft mortgages, liens and other security interests are recorded. 14 CFR Part 49 contains the requirements for recording 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. For registration, the FAA Aircraft Registry requires that 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. The duration of aircraft registration certificates is seven years. *See* 14 CFR 47.31(c)(1). 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 a US 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?

Lessors and financiers should require their 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 and, as noted in question 1.3, other

Parts govern safety regulations. 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 lease is 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?

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 individual state 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. Tax treatment favourability depends upon various factors, including but not limited to the jurisdiction of the persons involved in the transaction, the situs of closing, the intended use of the aircraft subsequent to closing.

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.

Each US 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). 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, and applies a 0.384% sales tax rate on aircraft below 12,500lbs). 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 some or all categories of aircraft from sales tax, while others cap the sales tax on aircraft sales and leases (South Carolina – \$500; North Carolina – \$2,500; Virginia – 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 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)?

The US is a signatory to the following major 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?

Federal treaties preempt the individual state laws in conflict therewith; however, both federal and state courts may exercise jurisdiction over the interpretation of treaties and conventions, with the US Supreme Court having final say over the proper interpretation of a treaty. A seminal US Supreme Court decision governing international aviation law, *EL AL Israel Airlines, Ltd. v. Tseng*, 525 U.S. 155 (1999), 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. However, 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 aimed at minimising double taxation. There is no exact method to maximise an entity’s tax benefits and there are various restrictions on “treaty-shopping”, which compel 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?

Aircraft owner/financier economic interests in a leased aircraft is dependent on the type of lease and objectives of the owner and financier. A “true” or “operating” aircraft lease is a contract for the use and possession of an aircraft for a specified duration, typically 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, parties may enter an “aircraft finance” lease, also referred to as a “conditional sale” or “long-term lease”. The lessee’s ultimate goal under a “finance” lease is to acquire the leased aircraft, and the lessee makes payments throughout the duration of the lease, typically a significant portion of the aircraft’s useful life. Under this regime, the FAA may treat a “finance” lessee as the owner of the aircraft and the lessor as a secured party (rather than an owner), meaning that the owner would be required to 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?

The US legal system provides creditors the ability to obtain judgments or injunctions regarding an aircraft owner or operator’s unpaid debts. If such an owner operator 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. State law generally governs creditors’ rights; however, creditors may seek

relief in both state and federal courts. 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 could be afforded automatic stay protection under US bankruptcy law, and subject the creditor 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 some form of the UCC. In certain circumstances, the UCC permits a self-help remedy, although 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?

Civil and criminal aviation disputes 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 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?

The Federal Rules of Civil Procedure govern service requirements in federal courts. *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. Service of process standards are generally liberal in both federal and state courts. 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. *See* Tex. R. Civ. P. 106(b)(2); Alaska R. Civ. P. 4(e)(3).

Foreign defendants may be served subject to treaty within a country 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 Audra 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. Generally, a showing of irreparable harm is required for interim relief, meaning that the

threatened harm cannot be corrected through monetary compensation or conditions cannot be imposed to otherwise remedy the harm. Interim relief comes 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, either by motion, stipulation or trial (before a judge or jury). The US permits parties to 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 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 9th 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 in federal courts, state courts and arbitral proceedings differ. 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?

US commercial agreements often contain *force majeure* provisions to address events beyond the parties’ control that would frustrate one or both parties’ performance. Typical qualifying events include: 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. State contract law generally governs the applicability of *force majeure* provisions, which are narrowly construed on a case-by-case basis and 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-flier 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. In March 2024, the court denied the plaintiffs’ motion for class certification, and the parties subsequently filed a stipulation of voluntary dismissal with prejudice in April 2024, while United’s summary judgment motion remained pending. See 1:20-cv-02142 (N.D. Ill. 2020) (Doc. Nos. 209 and 213).

3.8 Is there any trend developing towards regulatory support in civil justice for out-of-court solutions and the importance of engaging in Alternative Dispute Resolution (or similar)? If so, what (if any) are the implications for the answers in questions 3.1–3.7 inclusive?

State and federal courts throughout the US encourage and facilitate Alternative Dispute Resolution (ADR) through programmes and guidelines established within each jurisdiction. The ADR could be through an assigned magistrate judge, volunteer attorneys and private arbitrators. For example, the Mediation Program of the US District Court for the Southern District of New York, a federal, not state, court in New York, provides ADR services at the earliest practicable stage of a lawsuit. See <https://www.nysd.uscourts.gov/programs/mediation-adr>. Under Southern District Local Civil Rule 83.9, an appointed Mediation Supervisor administers the programme. These Procedures contain standalone and comprehensive rules for the court-sponsored ADR process, including confidentiality, automatic referral procedures, mediator assignment and selection guidelines, scheduling provisions, and a multitude of procedures and rules governing attendance and conduct of the mediation sessions by the parties and mediator. Local Civil Rule 83.9 obligates all parties to consider the use of mediation or a judicial settlement conference and report the parties’ election to the assigned judge at the first case management conference.

While ADR is offered and encouraged, the right to a jury trial will not be eliminated in the US. Notwithstanding, ADR’s use within the aviation industry holds the attention of federal

lawmakers. For example, in May 2024, more than 160 US lawmakers called on the National Mediation Board to assist in resolving flight attendant collective bargaining contractual disputes and labour negotiations with major airlines. Federal law requires that flight attendants cannot strike without permission of the board.

One recent scholarly article in the US recognised that the European Union’s EU Directive 2013/11/EU, which mandates use of specialised aviation ADR for passenger-airline disputes, could provide a roadmap for US legislatures to support aviation industry ADR, with a policy toward supporting passenger rights and ADR accessibility and enforceability. See Chang, Cheng-chi, Destination ADR: Charting a New Course for Airline Passenger Disputes, 55 Geo. J. Int’l L. 473, 495-96 (2024). However, in addition to the right to seek redress in the courts, ADR may not present the best or primary avenue to address disputes implicating the potential for irreparable harm or need for injunctive relief in order to restrain or enforce particular behaviour or to seek “specific performance” of contractual rights and duties. In addition, Court-ordered judgments or rulings likely are necessary to enforce statutory legal rights.

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? In your opinion, are there any improvements to the existing regime which would be advisable?

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)). In January 2024, a federal judge also blocked the proposed \$3.8 billion merger between JetBlue and Spirit pursuant to DOJ’s legal action. See *US v. JetBlue Airways Corp.*, Case 1:23-cv-10511, ECF No. 461 (D.Mass. Jan. 16, 2024). See question 1.10.

Global Airline Alliances: Pursuant to 49 USC § 41308–41309, the DOT employs a two-step analysis to analyse major US and foreign air carrier requests for DOT immunity from US anti-trust laws. 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.

The aforementioned challenges to JetBlue’s activities demonstrate that the DOT and DOJ obstacles to alliances and mergers is formidable.

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”), 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 product market definition factors 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?

The Hart-Scott-Rodino Act (“HSR Act”) (15 USC § 18a *et seq.*) is the federal premerger notification programme requiring US carriers that are seeking to merge or acquire another carrier to provide notice of the proposed transaction to the DOJ and FTC. The carrier must first complete a 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 a DOT 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? In your opinion, are there any improvements to the existing regime which would be advisable?

The US federal government closely scrutinises such transactions, as explained in question 4.3. This includes premerger notification to the DOJ and FTC. Further, under the HSR Act

and by agreement with the FTC, the DOJ evaluates and issues approval, modification, or rejection of proposed transactions based on their competitive effect and whether they may lessen competition. The policy of the administration in power may exert considerable influence on the degree of scrutiny.

Ownership of a US air carrier, however, is subject to strict criteria, including it 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”. The DOT has approved foreign corporate 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 an extensive probe into the new airline’s operation, 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 applicants to provide detailed information to the FTC and DOJ about each party’s business, including the rationale and plans for the transaction. In turn, the FTC and DOJ 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.

On November 12, 2024 the FTC issued a final rule amending the premerger notification form and associated instructions, requiring additional information regarding the applicant's business operations, disclosure of investors in the buyer, high-level business plans related to competition, and information regarding business lines of each filer to reveal existing areas of competition between the parties and their relationships. These changes are aimed at aiding the FTC determine which proposed deals require closer antitrust scrutiny and investigation. See 89 Fed. Reg. 89216 (Nov. 12, 2024).

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.

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 grant varies 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 2024 increased AIP funding from \$3.35 billion to \$4 billion annually, starting in fiscal year 2025 continuing through fiscal year 2028.

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 US senate committee on commerce, science & transportation publicly noted that the FAA Reauthorization Act of 2024 increased EAS programme funding by over 111% per year, thus bolstering the programme and its service to rural communities. The Act also modified EAS programme subsidies based upon the EAS community's distance from the nearest large or medium airport. Airports less than 175 miles have average per-passenger subsidies of less than \$650, while those 175 miles or farther have average per-passenger subsidies of less than \$1,000, which reduces to \$850 effective October 1, 2026. See H.R. 3935, Sec. 561.

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.

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”. As of August 2024, the FAA has recorded 1,240 unruly passenger incidents in 2024, an increase of 43 cases during the past year. The FAA referred a total of 310 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.

Generally, airports do not collect passenger personal data, although their facilities may be utilised by the government for that purpose. 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. 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.

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 became 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. In *Abitron Austria GmbH, et al. v. Hetronic International, Inc.*, 600 U.S. 412 (2023), the US Supreme Court held that the Lanham Act protects against infringing trademark use occurring only within the US, and not extraterritorially, even if extraterritorial infringing use ultimately causes confusion within the US. In *Sanho Corporation v. Kaijet Technology International Limited, Inc.*, 2024 WL 4553279 at *18 (N.D. Ga. May 20, 2024), one US federal court held that a foreign supplier to a US company, whose products are displayed in stores across the US and are admittedly used in US commerce, is not necessarily protected by an “extraterritorial defence” even though the foreign supplier operates abroad, in view of *Abitron*.

Patents provide limited duration property rights relating to inventions, (e.g., machines, manufactured articles, industrial processes, and chemical compositions), with their duration dependent on patent type. The USPTO grants patents 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. The US also recognises intellectual property protection through trade secrets, which is generally a formula, pattern, compilation, programme, device, method, technique, or process that provides a competitive edge.

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, delayed flights and/or cancelled flights? Is this legislation adhered to and well monitored?

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, it mandates Denied Boarding Compensation and other protections for passengers who hold “confirmed reserved space” on a flight and were involuntarily denied boarding because the flight was oversold, subject to passenger compliance with the carrier’s contract of carriage, check-in, and gate appearance requirements. Airlines must solicit volunteers to relinquish their seats in exchange for compensation before denying passengers boarding. Compensation depends upon the planned arrival time of the substitute transportation, if available, and whether the flight is domestic or international. The regulations do not establish 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 or 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 or four hours for international flights.

Carriers must notify the DOT quarterly 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 April 2024, the DOT issued a final rule, DOT Docket No. DOT-OST-2022-0089, providing additional protection for passengers regarding airline ticket and baggage fee refunds. The rule requires automatic ticket refunds for cancelled or “significantly changed” flights, defined as a departure or arrival time change of more than three hours domestically and six hours internationally or from a different airport, increased connections, downgrades to lower service classes, and changes to airports or flights with less disability accommodation. Refunds of checked baggage fees is dependent on flight length and, if required, is triggered if not delivered within 12 hours of gate arrival for domestic and within 15–30 hours for international flights. Refunds are to be issued within seven business days for credit card purchases and 20 calendar days for other methods.

In addition to legislation, with respect to international flights, passengers may file a claim with the airline for reimbursement under Article 19 of the Montreal Convention.

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 must adopt customer service plans to assist passengers after the delays, and as noted in question 4.11 the DOT issued its final rule regarding refunds arising from delays. 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). The US levies substantial fines 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. DOT fines are not limited to domestic air carriers. For example, in May 2024 the DOT fined Mexican carrier Volaris Airlines for tarmac delay violations.

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

Part 139 of the FAA regulations and 49 USC § 44706 govern federal certification of airports. 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?

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) govern airport accessibility and disability assistance requirements for disabled passengers. Required services 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. The ADA also protects airport and airline employees in addition to airport passengers. 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). This case was transferred to the North District of Texas in October 2024, where it remains pending. 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)?

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?

The most significant legislative development in the US is the recent approval of the FAA Reauthorization Act of 2024, authorising and amending programmes administered by the FAA and NTSB through fiscal year 2028. The Act establishes a framework maintaining 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.

For FAA operations during fiscal years 2024–2028, the FAA Reauthorization Act of 2024 appropriates \$19.35 billion for the Airport Improvement Fund to support more than 3,300 airports in the US, \$17.78 billion to fund the modernising of key technologies, systems, facilities and equipment, and \$66.742 billion for overall operations. See H.R. 3935, Title I, Sec. 101-04.

The Act establishes several new programmes and positions to maintain the US as the world leader in aviation safety. For example, it establishes a new Assistant Administrator for Rulemaking and Regulatory Improvement responsible for the FAA's rulemaking agenda, updating outdated rules of the agency, evaluating existing regulations for effectiveness and accuracy, and similar tasks. H.R. 3935, Sec. 202. It also creates a new office of Airspace Modernization responsible for the ongoing modernisation of the US National Airspace System (NAS), replacing the NextGen office which will close after the conclusion of work on NextGen by the end of 2025. See H.R. 3935, Sec. 205-07. The Act subjects all foreign aircraft repair stations operating under Part 145 of the Federal Aviation Regulations to at least one unannounced safety inspection each year, with minimum qualifications for mechanics and others work on US-registered aircraft at foreign repair stations. See H.R. 3935, Sec. 302. Another key topic of interest in the US aviation industry is the FAA's delegation of airworthiness authority to private companies and individuals under its Organization Designation Authorization ("ODA") framework. The Act amends FAA ODA to mandate recurrent training requirements for ODA holders, an ODA holder code of ethics, and safety reporting requirements. See H.R. 3935, Sec. 303-04.

Initially 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 final version of the Act maintained the existing criteria for computation of the 1,500 hours of experience and thus not permitting pilots to count up to 150 hours of simulator training towards meeting the requirement. See H.R. 3935, Sec. 372. Further, while the initial bill proposes raising commercial pilot retirement age from 65 to 67 years old, the final Act maintained the current mandatory commercial airline pilot retirement age of 65. Pilots can still fly corporate and charter jets beyond the age of 65.

Importantly, the FAA Reauthorization Act of 2024 contained an entire Title, Title IX, Subtitle A, devoted to UAS and these various strategies. See H.R. 3935, Sec. 901-50. Section 921 of the Act, in particular, sets forth the comprehensive elements of FAA UAS integration strategy.

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 included runway incursion measures within the FAA Reauthorization Act of 2024 provisions governing NextGen NAS modernisation. This includes, for example, establishing a Runway Safety Council, conducting a federal runway safety study, and installation of more technology aimed at improving runway safety. See H.R. 3935, Sec. 347(b), 619, 748.

In June 2024, the US Supreme Court in *Loper Bright Enterprises v. Raimondo*, and *Relentless, Inc. v. Department of Commerce*, significantly curtailed what is known as the “Chevron Doctrine” under which substantial deference was given to federal government agencies to promulgate and enforce their regulations and rules. Under the new decisions, the US Supreme Court held that the Administrative Procedures Act requires courts to exercise independent judgment in deciding whether federal agencies act within their statutory authority, and courts may not defer to an agency’s interpretation of the law simply because a statute is ambiguous. By issuing this ruling, the US Supreme Court created a requirement that courts must evaluate and issue rulings on the independent branch of executive agencies, such as the FAA, authority. Cases applying this new doctrine to the FAA remain developing. For example, *Kovac et al. v. Wray et al.*, 109 F.4th 331 (5th Cir. 2024) challenged the federal terrorist watchlist in the context of the FAA Reauthorization Act of 2018. This case upheld the watchlist, finding that the US government “has broad and detailed statutory authority to screen airline passengers.” *Kovac et al. v. Wray et al.*, 109 F.4th 331, 340 (5th Cir. 2024).

Regarding personal jurisdiction, courts within the US continue to interpret the Supreme Court’s *Mallory v. Norfolk Southern Railway Co.*, 600 U.S. 122 (2023) decision, which 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. In *State*

of Connecticut v. Exxon Mobile Corp., 2024 WL 3580377 (Jul. 23, 2024 Sup. Ct. CT), the Connecticut court recently addressed the issue of whether states must provide express notice of consent to jurisdiction to a business registrant while that business registrant is completing its registration in order to establish consent-based jurisdiction. The court held that Connecticut’s body of law does not require express notice during the registration process, because under *Mallory*, so long as the consent to jurisdiction is present within the business registration statute itself, then no constitutional due process analysis is required. *State of Connecticut v. Exxon Mobile Corp.*, 2024 WL 3580377 at *17 (Jul. 23, 2024 Sup. Ct. CT). In *Williams v. Cincinnati Lubes, Inc.*, 2024 WL 4437118 (Oct. 7, 2024 M.D.TN.), the US District Court for the Middle District of Tennessee held that, because Tennessee’s business registration statute did not contain explicit language stating that the registration of a foreign corporation constitutes consent to the exercise of general personal jurisdiction, consent-based jurisdiction does not apply to foreign corporations in the state of Tennessee. *Williams v. Cincinnati Lubes, Inc.*, 2024 WL 4437118 at *3–4 (Oct. 7, 2024 M.D.TN).

In the wake of various mental health events, including the Alaska Airlines 22 October 2023 incident, the FAA Reauthorization Act of 2024 implemented a Mental Health Task Force to provide recommendations for detecting and reporting mental health conditions and reviewing treatment options and allowable antidepressants for pilots. See H.R. 3935, Sec. 411. Under federal regulations, 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.

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. This bill remains in the introduction stage, with the proposed bill’s sponsorship changing to a different member of the US House of Representatives in July 2024 and the bill remaining under review by the House Science Committee.



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