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Air Transport

Contributing Editors

Thomas van der Wijngaart and **Inês Afonso Mousinho**

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Contributors

USA

Cozen O'Connor

Jonathon H. Foglia jfoglia@cozen.com
Amanda G Losacco alosacco@cozen.com

REGULATORY FRAMEWORK

Regulators and primary legislation
Which bodies regulate aviation in your country? Under what basic laws?

The federal government regulates aviation pervasively and has exclusive sovereignty over US airspace. The primary agencies responsible for this oversight are:

- the Federal Aviation Administration (FAA), which oversees aviation safety;
- the Department of Transportation, which carries out aviation economic, consumer protection and civil rights programmes; and
- the Department of Homeland Security (DHS), which oversees civil aviation security through the Transportation Security Administration.

US Customs and Border Protection, a component of DHS, also has regulatory functions affecting air carrier operations, including the administration of the federal customs, immigration, and agriculture and quarantine laws at US ports of entry (including airports), in coordination with the US Department of Agriculture. Additionally, the US Centers for Disease Control and Prevention has authority to issue orders restricting or prohibiting the entry of persons into the United States due to communicable disease considerations, including at US airports, authority that was exercised repeatedly during the onset of the covid-19 pandemic. Finally, the National Transportation Safety Board investigates aircraft accidents to determine probable cause, makes safety recommendations to the FAA, and also reviews certain FAA civil penalty and certificate enforcement actions. The primary statutory authorities for federal aviation regulation are contained under Title 49, Subtitle VII of the United States Code and under Title 14 and Title 49 of the Code of Federal Regulations.

Law stated - 17 June 2024

AVIATION OPERATIONS

Safety regulations
How is air transport regulated in terms of safety?

In the United States, air transport safety is exclusively regulated by the federal government. The primary governmental agency for such regulation is the Federal Aviation Administration (FAA). Civil aircraft operators must hold an FAA-issued air carrier certificate or operations specifications (or both) to engage in common carriage, requiring an intensive application and ongoing monitoring process to confirm that the operations will be conducted with the highest degree of safety. US operators are certificated under Title 14 of the Code of Federal Regulations (CFR) Part 119 and (depending on the operation) either Part 121 or Part 135. Certain US commercial operators not involved in common carriage operations must hold certification or other operating authorisation from the FAA under 14 CFR Part 125. Non-US operators providing common carriage flights to or from the US are licensed by the FAA under 14 CFR Part 129. Civil aircraft may not be used in common carriage unless an airworthiness certificate has been issued, establishing that the aircraft conforms to the type design as approved by the FAA or (for foreign-registered aircraft) the civil aviation authority for the

country of the aircraft's registry. The FAA issues licences for pilots, aircraft dispatchers, mechanics and air traffic controllers. There is no FAA licensing of flight attendants; however, such crew members are subject to minimum rest periods and maximum duty times.

Law stated - 17 June 2024

Safety regulations

What safety regulation is provided for air operations that do not constitute public or commercial transport, and how is the distinction made?

Non-commercial operations are subject to the operating rules of Title 14 of the Code of Federal Regulations (CFR) Part 91, while most commercial operations (ie, operations for compensation or hire) are subject to a higher degree of safety oversight and must be conducted in accordance with not only Part 91 but also the operating rules of 14 CFR Parts 119, 121, 125, 129 or 135 (as applicable). A narrow set of operations that involve reimbursement but not common carriage may lawfully be conducted under Part 91 only, as provided for in subpart K (fractional ownership programmes) or subpart F (including but not limited to aerial photography or survey flights, and certain flights conducted by companies that are within the scope of, and incidental to, the company's business).

Law stated - 17 June 2024

Market access

How is access to the market for the provision of air transport services regulated?

The Airline Deregulation Act of 1978 (ADA) was signed into law to foster competition and entry by new US carriers into a then-highly concentrated market, and to end the federal government's economic regulation of the domestic industry as a public utility. The ADA essentially took the government out of the business of setting fares and determining how many competitors could serve an interstate route. However, access to the air transport market is still regulated, as new US carriers must obtain Department of Transportation (DOT) economic authority as follows:

- a certificate of public convenience and necessity for operations with large aircraft (ie, aircraft with a designed passenger capacity of more than 60 seats or a payload capacity above 18,000 lbs);
- commuter air carrier authorisation (for operations with small aircraft only that involve at least one passenger route served with five or more weekly round trips according to a published flight schedule); or
- air taxi registration (for other operations with small aircraft).

Before the DOT will issue a certificate of public convenience and necessity, or commuter air carrier authorisation, it must find that the applicant is a US citizen and 'fit' to provide the subject air transportation, for which the applicant must demonstrate managerial skills and technical ability to conduct the proposed operations; sufficient financial resources to

commence operations without posing an undue consumer risk; and a positive compliance disposition with respect to the laws and regulations governing its proposed services. Air taxi operators are required to certify to the DOT their US citizen status.

Law stated - 17 June 2024

Ownership and control

What requirements apply in the areas of financial fitness and nationality of ownership regarding control of air carriers?

Before issuing either a US certificate of public convenience and necessity or commuter air carrier authorisation, the Department of Transportation (DOT) will assess the applicant's financial position and confirm that the applicant has both a reasonable understanding of the costs of conducting operations and access to sufficient working capital. Additionally, before being granted effective authority, applicants typically must provide verification of financial resources sufficient to cover pre-operating costs; any deficit between current assets and current liabilities; and all reasonably projected costs for three months of 'normalised' operations.

The applicant also must demonstrate that it is a citizen of the United States. Thus, for partnerships, all partners must be US citizens. For corporations and associations, the president and at least two-thirds of the board of directors and other managing officers must be US citizens, 75 per cent of the voting interest must be owned and controlled by US citizens and the entity must be under the 'actual control' of US citizens. Limited liability companies (LLCs) are analysed as either partnerships or corporations, depending on the LLC's structure and governance.

In cases where foreign investors in US carriers are from countries for which a liberalised 'open skies' air transport agreement with the United States is being applied, such non-US investor ownership may go up to 49 per cent, provided total voting equity does not exceed 25 per cent. For foreign carriers seeking DOT authority, more limited financial information is required.

Additionally, under most air transport agreements to which the US is a party, carriers of each party must be substantially owned and effectively controlled by nationals of that party. However, the DOT may (and often does) grant waivers from this requirement in the case of non-US carriers where the carrier and its owners are from countries with which the US has an open skies air transport agreement.

Under the Corporate Transparency Act, codified in the 2021 National Defense Authorization Act, qualifying air carriers may also be required to report beneficial ownership information to the US Department of Treasury in addition to disclosing ownership to the DOT. Unless a US or foreign air carrier satisfies one of the statutory reporting exemptions, beneficial ownership information must be reported after notification or public announcement of formation. For foreign airlines, the Act requires reporting if the entity has filed a document with the secretary of state or similar office under the law of any US state (ie, if the airline is registered to do business in a US state), regardless of its incorporation or organisation status as a separate US legal entity. After the initial filing, qualifying air carriers must file an updated report when certain ownership information changes.

Law stated - 17 June 2024

Licensing
What procedures are there to obtain licences or other rights to operate particular routes?

For US carriers holding either a certificate of public convenience and necessity or commuter air carrier authorisation, generally no route-specific domestic authority is required.

Domestic routes must be authorised under the carrier's Federal Aviation Administration (FAA)-issued operations specifications, and, in the case of scheduled services, certificated carriers must hold interstate or (as applicable) foreign scheduled authority from the DOT. Scheduled certificate authority also includes the right to operate charter service.

For international routes, the traffic rights must either be provided for in the applicable air transport agreement with the United States or available on the basis of reciprocity; and the carrier must hold either a DOT exemption or foreign certificate authority (in the case of US carriers) or a permit (in the case of non-US carriers) authorising service on the route. Foreign certificate and foreign air carrier permit authorities are subject to presidential review prior to their issuance; however, the grounds upon which the president may lawfully block their issuance are narrow. In international markets with limited entry, the DOT designates and awards frequencies authorised under the air transport agreement to US carrier applicants. Foreign air carrier designations and frequency awards in limited-entry markets are made by the carrier's national civil aviation authority. In contrast, under open skies agreements, although official designation may be required, there is unlimited entry on all routes (ie, the right to operate between any point in the US and any point in the territory of the other party) without capacity restrictions.

Law stated - 17 June 2024

Licensing
What procedures are there for hearing or deciding contested applications for licences or other rights to operate particular routes?

If carrier applications exceed the number of opportunities available for an award (typically, in the case of US carriers seeking access to limited-entry international markets, such as US passenger carriers wishing to serve China), the DOT may institute a formal carrier selection proceeding. Contested applications for traffic rights are typically decided on the basis of written submissions, although the DOT retains discretion to employ an oral evidentiary hearing before an agency administrative law judge, whose recommendations may be accepted or rejected by the DOT (such hearings have been exceedingly rare over the last 35 years). Orders – whether for decisions rendered on the written record or pursuant to an evidentiary hearing – may be reviewed upon a petition for reconsideration, despite the fact that typically such petitions will not stay the effectiveness of the order. Although rarely invoked in the case of a carrier selection proceeding, judicial review of the DOT's final orders may be obtained in federal courts of appeal.

Law stated - 17 June 2024

Competition policy
Is there a declared policy on airline access or competition? What is it?

The Airline Deregulation Act, which became law in 1978 and fundamentally altered the relationship between the federal government and the US domestic airline industry, established a number of pro-competitive policy objectives applicable to the DOT's economic regulatory functions, including maximum reliance on competitive market forces; the prevention of unfair, deceptive, predatory or anticompetitive practices; the avoidance of unreasonable industry concentration, excessive market domination and monopoly power; and encouraging market entry by new and existing air carriers and strengthening small air carriers. The airline industry remains subject to the US antitrust laws to the same extent as any other deregulated industry, with one critical exception: the DOT has special authority to approve, and immunise from the US antitrust laws, certain agreements in foreign air transportation under 49 USC sections 41308–41309. Although several alliances have obtained such approval over the years, the DOT has also denied approval or immunity, or both, for other alliances. Finally, under Title 49 of the United States Code (USC) section 41712, the DOT is empowered to investigate and determine whether carriers have engaged in unfair methods of competition and to prohibit the conduct at issue; such conduct includes not only violations of the US antitrust laws (such as the Sherman Act) but also conduct that is not serious enough to violate the US antitrust laws but may well do so if not blocked, or conduct that may violate the spirit (but not the letter) of the US antitrust laws. Thus, the DOT's section 41712 authority is generally viewed as broader than that of the US Department of Justice (the chief federal law enforcement agency) under the US antitrust laws.

Law stated - 17 June 2024

Requirements for foreign carriers
What requirements must a foreign air carrier satisfy to operate in your country?

For common carriage operations to and from the United States, non-US carriers must obtain:

- economic authority from the DOT in the form of a foreign air carrier permit or exemption;
- safety authority from the FAA in the form of operations specifications; and
- civil aviation security approval from the Transportation Security Administration (TSA), involving the issuance of a security programme, the contents of which depend on the size of aircraft to be used in such operations and whether or not passengers are to be enplaned from, or deplaned into, an airport sterile security area.

The DOT review process focuses on whether the non-US carrier is fit to serve the US, and whether the requested traffic rights are provided for under the applicable air transport agreement or have been adequately established on the basis of reciprocity. With respect to operations specifications, the FAA assesses whether the carrier's operations and its homeland civil aviation authority comply with the standards and recommended practices (SARPs) of the International Civil Aviation Organization. The TSA review process assesses

carrier compliance with civil aviation security safeguards specified in 49 CFR Part 1546 and whether the carrier's homeland government meets the SARPs applicable to security. The TSA will not authorise nonstop foreign air carrier flights to the US which depart from a foreign airport for which the TSA has not completed an airport security assessment. In addition to the DOT, FAA and TSA approvals, local agency or airport authority permits and approvals specific to the US airports to be served and, in most cases, a US Customs and Border Protection customs bond must be secured.

Law stated - 17 June 2024

Public service obligations

Are there specific rules in place to ensure aviation services are offered to remote destinations when vital for the local economy?

The US Congress, when passing the Airline Deregulation Act of 1978, required the DOT to ensure that small and isolated communities would continue to receive continuous interstate air transportation, and to award carrier subsidies administered under the DOT's essential air service (EAS) programme in furtherance of such community service. Congress has since moved to limit funding for the EAS programme by tightening criteria for eligible communities, including average daily enplanements and per-passenger subsidy levels. Previous efforts by presidential administrations to drastically reduce or completely eliminate EAS funding have been unsuccessful, as the EAS programme enjoys popularity with Congress. Presently, EAS subsidies support air service at approximately 170 US communities (one-third of which are located in the state of Alaska). The DOT, in selecting applicants to provide EAS service, must consider several factors, including the applicant's operational reliability, connecting service beyond hub airports and local community preference. Carriers serving EAS communities and wishing to terminate such service (even carriers that serve the community without subsidy) must file a 90-day notice of intent with the DOT in cases where the community would be left with no service, and the DOT has the authority to 'hold in' the incumbent beyond that time frame (with payment of subsidy) while it searches for a replacement. EAS programme rules are set forth under 14 CFR Parts 271, 325 and 398. The DOT also administers a small community air service development programme (SCASDP), which is intended to help smaller communities enhance their air service and address issues related to high airfares through direct grants to local governments. The SCASDP programme is separate from the EAS programme, with its own eligibility and selection criteria.

Law stated - 17 June 2024

Charter services

How are charter services specifically regulated?

Charters to or from the United States may be flown by US or non-US carriers. Domestic US charters may only be flown by US carriers, due to statutory prohibitions against non-US carriers engaging in 'cabotage' operations (ie, the carriage of local traffic for compensation between two points in the United States). Depending on the size of the aircraft utilised, charter operations are subject to regulations of the DOT set forth at 14 CFR Parts 212 and 298. Charters must be flown by carriers holding appropriate economic authority from the

DOT, safety authority from the FAA and, in most cases, an approved civil aviation security programme issued by the TSA. Non-US carriers must also obtain a DOT statement of authorisation for any charter operations that are not included within the scope of traffic rights in the carrier's underlying DOT-issued economic authority. Any charters in foreign air transportation must be conducted in accordance with the provisions of the applicable air transport agreement. Additionally, the DOT regulates air charter brokers (ie, individuals or entities that hold out, sell or arrange single-entity charter flights using direct air carriers), pursuant to 14 CFR Part 295. Finally, the DOT regulates US and non-US public charter operators (ie, indirect carriers that, as principals, engage indirectly in air transportation by holding out and arranging public charters), under 14 CFR Part 380. The DOT has expressly disclaimed jurisdiction over foreign public charter operators operating foreign-originating charters.

Law stated - 17 June 2024

Regulation of airfares
How are airfares regulated?

The duty to file airfares for interstate air transportation was eliminated following the passage of the ADA. For foreign passenger air transportation, carriers still must file tariffs with the DOT under 14 CFR Parts 221 and 293, with the required scope of such filings being based on how liberalised the underlying international air services market is. For markets where an 'open skies' air transport agreement is not being applied, certain passenger airfares and general rules tariffs must continue to be filed with the DOT. For markets where an open skies air transport agreement is currently being applied, only certain rules tariffs for which the DOT has a public interest-based reason to continue monitoring the rule must continue to be filed (including, but not limited to, rules addressing disability accommodations, carrier liability and refusal to transport). Consistent with the pro-competitive objectives of the ADA, and notwithstanding certain residual authorities in Title 49 of the USC, the DOT does not dictate the reasonableness of airfare levels. However, it retains the authority to investigate and prohibit unfair or deceptive practices and unfair methods of competition in air transportation or the sale of air transportation. For example, the DOT regulates the advertising of airfares (including full-fare requirements) to US consumers and the disclosure of significant restrictions or conditions attached to such airfares, as well as information on fees for ancillary services, under 14 CFR Part 399.

Law stated - 17 June 2024

Drones
How is the operation of unmanned aircraft systems (drones) regulated?

The Federal Aviation Administration (FAA) has issued regulations under 14 CFR Part 107 governing the safe operation of non-hobbyist (ie, commercial), uncrewed aircraft systems (UAS or drones) weighing less than 55 lbs – including payload capacity – in the national airspace system. The Part 107 operating restrictions include, but are not limited to:

- maintaining the drone in the visual line of sight of the pilot or a visual observer;

- yielding right of way to a manned aircraft;
- limitations on speed, altitude, maximum distance from clouds and national airspace operational areas;
- prohibitions against operation in ATC-controlled airspace absent prior approval; and
- certificates and qualifications for pilots.

The regulations allow the FAA to issue waivers from certain of these requirements upon a finding that the operation can safely be conducted under the terms of the waiver. Among the more noteworthy of such FAA-issued waivers are those allowing operations involving multiple drones controlled by a single pilot. Over the last several years, the FAA also has amended Part 107 to allow operations over people not involved in the operation; nighttime operations; and operations from moving vehicles in sparsely populated areas.

For UAS commercial operations that cannot be conducted under Part 107, the operator must obtain either an airworthiness certificate (which is required for any civil aircraft engaged in commercial operations) or an FAA-issued special exemption under 49 USC section 44807, which entails a risk-based approach to confirm that the drone does not create a hazard to users of the national airspace system or the public. However, airworthiness certificates cannot be issued in the absence of an aircraft type certificate establishing the approved type design, and to date, very few type certificates have been issued for civil drones. Thus, the majority of commercial UAS operations outside Part 107 are operated pursuant to section 44807 exemptions. Such exemptions have been issued to package delivery drone operators such as Zipline, UPS Flight Forward, Wing Aviation (Alphabet – formerly known as Google), Causey Aviation and Amazon Prime Air.

Operations with commercial drones, whether pursuant to Part 107 or section 44807, must be conducted in accordance with FAA-issued certificates of waiver or authorisation, which provides underlying air traffic authorisation for the operation's safe integration into the airspace. Additionally, in general, all drones (whether commercial or recreational) must be registered with the FAA under 14 CFR Parts 47 or 48, as applicable.

In general, the FAA is statutorily prohibited from issuing additional regulations specifically regulating recreational or hobbyist drones not exceeding 55 lbs in weight (including payload); however, such operations must follow a community-based organisation's set of safety guidelines.

All drone operations (whether commercial or recreational) are subject to the FAA's prohibition against operating aircraft in a careless or reckless manner and federal law prohibiting interference with wildfire suppression, law enforcement or emergency response efforts, or operations over designated national security sensitive facilities. As of March 2024, drone operators (whether operating for commercial or recreational purposes) are now also required to conduct their operations in accordance with FAA remote identification rules, involving the continuous broadcast of information on the drone's identity and location for receipt by other parties. The FAA's efforts to safely integrate drones into the national airspace system are ongoing, and additional rules covering commercial operations are anticipated, whether on the FAA's own initiative or at the instruction of Congress, which, over the last 10 years, has regularly included drone-related rulemaking mandates in FAA reauthorisation legislation, including the FAA Reauthorization Act of 2024 (2024 Act). Notably, the 2024 Act directs the

FAA to timely publish a notice of proposed rulemaking to enable UAS operations beyond the visual line of sight of the pilot.

Law stated - 17 June 2024

AIRCRAFT

Aircraft register

Who is entitled to be mentioned in the aircraft register? What requirements or limitations apply to the ownership of an aircraft listed on your country's register?

Civil aircraft are eligible for registration by the Federal Aviation Administration (FAA), provided the aircraft is not registered on any other nation's aircraft registry and the owner is either:

- a citizen of the United States (whether an individual or corporate entity);
- a lawful permanent resident; or
- a corporate entity not qualified as a US citizen but organised and doing business in the United States, so long as the aircraft is 'based and primarily used' in the United States.

FAA regulations also provide for the registration of aircraft owned by a US citizen trustee holding legal title in trust for beneficiaries (including a beneficiary that is not a US citizen or permanent resident). Upon registration, the FAA issues a certificate of registration to the named aircraft owner. However, the aircraft registration certificate, by statute, cannot serve as evidence of ownership 'in a proceeding in which ownership is or may be in issue'. Registration certificates must be renewed once every three years. FAA aircraft registration regulations are contained under 14 CFR Part 47 and, with respect to certain uncrewed aircraft systems, 14 CFR Part 48.

Law stated - 17 June 2024

Mortgage register

Is there a register of aircraft mortgages or charges? How does it function?

Under Title 49 of the United States Code (USC), section 44107, the FAA maintains a system for recording conveyances, and leases and instruments executed for security purposes, that affect an interest in civil aircraft, specified aircraft engines, propellers or appliances and spare parts. The FAA also records the release, cancellation, discharge or satisfaction of such conveyances, leases or instruments. FAA regulations are contained under 14 CFR Part 49, titled 'Recording of Aircraft Titles and Security Documents'. The US is a contracting state to the Convention on International Interests in Mobile Equipment, and its Protocol on Matters Specific to Aircraft Equipment (the Treaty), applicable to specified airframes, helicopters and aircraft engines (aircraft objects), where the debtor, lessee or seller is situated in a contracting state. The FAA has been designated as the US entry point for the International Registry established under the Treaty. To register an interest against an aircraft object under the Treaty, parties must first file transaction documents with the FAA, along with the FAA

AC Form No. 8050-135. Filing with the FAA Registry and International Registry generally is required to perfect (and thereby prioritise) a security interest for recognition under the laws of other contracting states to the Treaty.

Law stated - 17 June 2024

Detention

What rights are there to detain aircraft, in respect of unpaid airport or air navigation charges, or other unpaid debts?

Creditors' rights to seize aircraft generally are governed by state law (either statutory or common law-based), with both substantive and procedural requirements depending on the type of debt and the priority of the lien. Under the Uniform Commercial Code (UCC), which has been enacted by most states (with some variations), aircraft lessors and secured parties generally may take possession in the event of default. Possession without judicial process is permissible only where it can be done without breach of the peace (UCC sections 2A-525 and 9-609). However, some jurisdictions expressly prohibit self-help. Thus, a lessor or secured party typically will (and should) seek to obtain a court judgment to foreclose on a lien and thereafter take possession. The right to take possession of aircraft also is limited by US bankruptcy law. Once a debtor has filed for bankruptcy, the right to take possession is automatically stayed for a period of 60 days, with the period extended either where the debtor-in-possession (DIP) has agreed to perform all obligations under the lease or financing agreement and cured all defaults, or the DIP and lessor or secured party stipulate to an extension of the stay.

Law stated - 17 June 2024

Maintenance

Do specific rules regulate the maintenance of aircraft? What are they?

Rules applicable to the maintenance of aircraft, for which an FAA airworthiness certificate has been issued, as well as airframes, aircraft engines, propellers, appliances and component parts of such aircraft (collectively, products), are contained under Title 14 of the Code of Federal Regulations (CFR), Part 43. The rules address, among other areas:

- approval for product return to service post-maintenance and persons authorised to provide such approval;
- the form and content of maintenance records;
- performance rules for inspectors; and
- airworthiness limitations.

Rules applicable to the FAA's airworthiness directives, issued when the FAA finds that an unsafe product condition exists (and is likely to exist or develop in other products of the same type design), are contained under 14 CFR Part 39, which reflects the standards established under Annex 8 to the Chicago Convention, Airworthiness of Aircraft.

14 CFR Part 91 establishes additional maintenance rules applicable to operators of US-registered civil aircraft. Additionally, US airlines are subject to maintenance requirements as specified in 14 CFR Parts 121 and 135. The FAA, through the issuance of operations specifications issued under Part 129, requires non-US airlines operating non-US registered aircraft to adhere to the maintenance program approved by their homeland civil aviation authority. The FAA also issues certificates and associated ratings, and establishes general licensing requirements, for mechanics and repairmen performing maintenance on US-registered aircraft.

Finally, the FAA licenses and regulates repair stations that perform maintenance on US-registered aircraft (including non-US repair stations located outside the United States) under 14 CFR Part 145 and aviation maintenance technician schools under 14 CFR Part 147.

Law stated - 17 June 2024

AIRPORTS

Ownership
Who owns the airports?

In the United States, state or local governments own the majority of public-use airports (ie, airports open to the public). However, some public-use general aviation airports (ie, airports that do not offer scheduled air services) are privately owned. There are approximately 5,000 public-use airports in the United States and approximately 14,000 private-use airports. The Airport Investment Partnership Program (the AIPP, formerly known as the Airport Privatization Pilot Program) enables the sale or long-term lease of public-use airports while maintaining their eligibility for federal funding. Although the United States Congress significantly expanded the pool of eligible airports in 2018, only two airports – Luis Muñoz Marín International Airport in Puerto Rico and Hendry County Airglades Airport in Florida – currently participate. In 2019, Westchester County Airport in New York withdrew its application to participate in the AIPP, as did St Louis Lambert Airport in Missouri in 2020.

Law stated - 17 June 2024

Licensing
What system is there for the licensing of airports?

Airports served by either scheduled flights using aircraft with more than nine passenger seats or unscheduled flights using aircraft with more than 30 passenger seats must be certificated by the Federal Aviation Administration (FAA) under Title 14 of the Code of Federal Regulations (CFR), Part 139. Of the nearly 5,000 public-use airports in the United States, only about 520 are certificated under Part 139. Such airports are subject to myriad safety-related requirements, such as minimum lighting requirements, standards for runway and pavement maintenance, snow and ice control, wildlife hazard management and aircraft rescue and firefighting capabilities. The FAA inspects Part 139 airports annually. As of 2023, the following Part 139 airports are required to maintain a safety management system:

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airports classified as large, medium or small hubs (as measured by passenger enplanements);

- airports with average annual operations of 100,000 or more aircraft movements; and
- airports serving international operations (other than general aviation).

Law stated - 17 June 2024

Economic regulation
Is there a system of economic regulation of airports? How does it function?

States and local governments are prohibited under the federal Anti-Head Tax Act (the Act) from imposing their own taxes, fees, head charges or other charge on passengers, the provision or sale of air transportation, or gross receipts from air transportation. On the other hand, the Act expressly allows airports to collect 'reasonable rental charges, landing fees and other service charges from aircraft operators'. Airlines and other aeronautical users may file complaints with the US Department of Transportation (DOT) challenging the reasonableness of such airport-imposed fees and charges and there is an expedited process for the DOT to resolve such complaints when filed by airlines. However, when deciding when a challenged fee or charge is reasonable, the DOT is prohibited under federal law from setting the fee or charge.

Airports approved to do so by the FAA may collect passenger facility charges (PFCs) of up to US$4.50 per eligible passenger enplanement for certain programmes that improve safety, security or throughput (capacity), reduce noise or increase competition. Federal law generally prohibits airports from using revenue collected by airlines and other aeronautical users for purposes other than airport capital or operating costs.

When accepting FAA grants or donations of surplus property, airports enter into grant assurance agreements with the FAA, which are designed to protect the federal government's investment in the airport and protect the public interest. These assurances impose various economic regulatory restrictions.

Finally, any public-use airport receiving scheduled passenger service and that either accounts for more than 0.25 per cent of all such airports' enplanements each year or where one or more airline controls more than 50 per cent of passenger enplanements must submit competition plans to the DOT to receive FAA grants, surplus property or approval for a PFC program. These reports, among other things, provide information on the availability of gates and related facilities, leasing arrangements, and gate-assignment and gate-use requirements and policies.

Law stated - 17 June 2024

Access
Are there laws or rules restricting or qualifying access to airports?

Conditions attached to FAA airport grants and donations of surplus property obligate airport sponsors to 'make the airport available as an airport for public use on reasonable terms and without unjust discrimination to all types, kinds and classes of aeronautical activities.' These conditions require that airports include this requirement in their agreements with service providers at airports (such as fixed-based operators). Each airline at the airport must be subjected to substantially comparable rules, conditions and charges as are applicable to all other airlines that make similar use of the airport, provided that airports may differentiate between signatory carriers (ie, carriers that enter into long-term leases with the airport sponsor) and non-signatory carriers. Additionally, airports are generally prohibited from granting exclusive rights for the use of the airport; however, this prohibition does not extend to fixed-based operators that meet certain requirements. Finally, at a handful of congested airports, airlines must hold slots (ie, authorisations to either take off or land on a particular day during a specified time period) or an approved runway timing to provide service at an airport. Given that demand for service at such congested airports exceeds capacity, these restrictions significantly limit access for new entrants.

Law stated - 17 June 2024

Slot allocation
How are slots allocated at congested airports?

Only three US airports – New York (JFK), New York LaGuardia (LGA) and Reagan Washington National (DCA) – are subject, with FAA approval, to slot controls. At JFK and LGA, slots are administered in accordance with longstanding FAA scheduling orders from 2008 and 2006, respectively. At DCA, slots are administered in accordance with regulations under 14 CFR Part 93, with a designated number of slots set aside for commuter operations (ie, aircraft with 76 or fewer seats). Flights at DCA and LGA are generally subject to perimeter restrictions that limit the points that can be served nonstop from those airports. However, over the years, the US Congress has created approximately 50 slot exemptions at DCA (covering 25 roundtrip flights) to facilitate nonstop flights to and from points beyond the perimeter, including but not limited to Seattle, Los Angeles and Phoenix. Most recently, the FAA Reauthorization Act of 2024 authorised 10 new slot exemptions at DCA (covering five roundtrip flights) to allow nonstop flights to and from points beyond the perimeter.

At JFK and LGA, slots cannot be sold, leased or traded without FAA approval. At DCA, although slots may be transferred for any consideration, slot exemptions cannot. At all three slot-controlled airports, slots that are not used at least 80 per cent of the time are subject to withdrawal and reallocation, with usage monitored through regular reports. The FAA waived these minimum usage requirements on several occasions during the covid-19 pandemic and, more recently at JFK and LGA (to encourage airlines to voluntarily reduce their schedules due to air traffic controller staffing shortages).

Law stated - 17 June 2024

Ground handling
Are there any laws or rules specifically relating to ground handling? What are they?

Ground handling is not specifically regulated from an economic standpoint, although general prohibitions against an airport sponsor engaging in economic discrimination apply to such aeronautical activities. Many ground handling companies are directly or indirectly subject to Transportation Security Administration civil aviation security requirements. Under FAA conditions attached to airport grants or surplus property donations, airports generally cannot grant an exclusive right to a ground handler, nor deny access to a new ground handler, other than with respect to certain fixed-based operators (FBOs) where it would be 'unreasonably costly, burdensome, or impractical for more than one fixed-based operator to provide such services' and the airport would have to reduce the leased space used by the incumbent FBO to accommodate a second FBO. These FAA conditions also require that airports provide airlines with the right to self-handle in lieu of utilising a ground handling company. A similar right exists under most international air transport agreements to which the United States is a party.

Law stated - 17 June 2024

Air traffic control
Who provides air traffic control services? And how are they regulated?

Air traffic control services are provided by the FAA through the Air Traffic Organization (ATO), which manages approximately 29 million square miles of airspace, including all of the United States and large swaths of the Atlantic and Pacific Oceans and the Gulf of Mexico. The ATO is staffed by approximately 35,000 personnel (of which approximately 14,000 are controllers) and is headed by a Chief Operating Officer, and on an average day is responsible for serving 45,000 flights. The national air traffic system includes approximately 520 control towers (of which about half are staffed directly by the ATO and the other half by contractors) and an additional 21 air route traffic control centres, each of which controls flying in a specified geographic region (referred to as flight information regions). FAA regulations governing air traffic controllers are set out in 14 CFR Part 65 and requirements for licensing any new control tower are set out in 14 CFR Part 170.

Law stated - 17 June 2024

LIABILITY AND ACCIDENTS

Passengers, baggage and cargo
What rules apply in respect of death of, or injury to, passengers or loss or damage to baggage or cargo in respect of domestic carriage?

Carrier liability for death of or injury to passengers, occurring in domestic carriage, is generally governed by state and territorial laws, with courts often engaging in a choice of law analysis. In determining which state or territorial substantive laws to apply, courts may look to the jurisdiction where the 'wrong' occurred, or the jurisdiction with the most significant relationship to the occurrence or the parties, or both (sometimes referred to as the centre of gravity approach). Principles of *dépeçage* – different rules governing different issues in the same litigation – may also apply.

Under state and territorial laws, common carriers owe their passengers the utmost duty of care, a higher standard of care than the traditional negligence standard. In certain cases, federal pre-emption may establish the standard of care. However, courts have frequently held that, even where the federal standard of care applies, state or territorial remedies (ie, recoverable damages) are not so pre-empted.

Liability for loss of or damage to baggage or cargo, occurring in domestic carriage, is ordinarily governed by contract (as specified in the carrier's conditions of carriage). For passenger baggage, a carrier may not limit its maximum liability to less than the amount specified in 14 CFR Part 254 (currently US$3,800 per passenger). The federal government may also be held liable under the Federal Tort Claims Act, 28 USC 1346, for negligent acts or omissions, to the same extent as a private individual, unless a statutory exception applies, such as the performance of a discretionary function or duty.

Law stated - 17 June 2024

Surface damage

Are there any special rules about the liability of aircraft operators for surface damage? What are they?

Operators are liable for surface damage caused to third parties in accordance with state and territorial laws, which apply negligence principles. The United States is not a contracting state to the Convention on Damage Caused by Foreign Aircraft to Third Parties on the Surface (1952 Rome Convention). Nor is the US a signatory to the Convention on Compensation for Damage to Third Parties, Resulting from Acts of Unlawful Interference Involving Aircraft (2009 Montreal Convention I) or the Convention on Compensation for Damage Caused by Aircraft to Third Parties (2009 Montreal Convention II), both of which address liability for surface damage caused to third parties and neither of which has entered into force.

Law stated - 17 June 2024

Accident investigation

What system and procedures are in place for the investigation of air accidents?

The National Transportation Safety Board (NTSB), an independent agency, conducts investigations of civil aircraft accidents and incidents. The NTSB's statutory authorities are contained at 49 USC section 1101 et seq. During investigations, the NTSB may rely upon assistance from the FAA, other federal agencies and third parties with specialised technical expertise. Final reports issued by the NTSB contain factual findings, a probable cause determination and, frequently, recommendations to the FAA regarding regulatory actions to be taken in response to the accident given that the NTSB does not have authority to issue safety regulations. The NTSB does not apportion fault or blame as part of its accident investigations, and thus NTSB final accident reports are inadmissible as evidence in civil litigation. Additionally, under statute, parties in civil litigation may not access the cockpit voice recorder transcript or recording unless a court finds such release necessary to ensure a fair trial. NTSB rules applicable to accident investigations are contained under 49 CFR

Parts 831 and 845. In general, the NTSB's rules have been harmonised with International Civil Aviation Organization Annex 13, Aircraft Accident and Incident Investigation. The NTSB also represents the US government in foreign accident investigations.

Law stated - 17 June 2024

Accident reporting
Is there a mandatory accident and incident reporting system? How does it operate?

In the case of aircraft accidents and serious incidents involving any US civil aircraft, or foreign civil aircraft where the event occurs in the United States, the NTSB regulations require immediate initial notification via the most expedient means. 'Accidents' are occurrences involving death or serious injury or substantial damage to aircraft, and 'serious incidents' are certain occurrences, other than accidents, as specified in 49 CFR section 830. More detailed accident reports must be provided to the NTSB within 10 days after the occurrence; in the case of serious incidents, more detailed reports are provided only as requested by the NTSB.

Law stated - 17 June 2024

COMPETITION LAW

Specific regulation
Do sector-specific or general competition rules apply to aviation?

US competition laws apply to air transport to the same extent as any other de-regulated industry. The general US competition laws are the Sherman Act, which prohibits agreements that unreasonably restrain trade (15 USC section 1) and monopolies, attempts to monopolise or conspiracies to monopolise, or a combination of the above (15 USC section 2), and the Clayton Act, which prohibits mergers and acquisitions when the effect may be to substantially lessen competition or to create a monopoly (15 USC section 18). The Department of Justice (DOJ) enforces the general US competition laws and, for mergers, has historically followed its Horizontal Merger Guidelines. In December 2023, the DOJ released revised Merger Guidelines for horizontal, vertical and non-horizontal mergers, with such revisions reflective of a more aggressive antitrust enforcement philosophy.

Sector-specific competition laws are enforced by the US Department of Transportation (DOT) and include 49 USC section 41712, which prohibits airlines from engaging in unfair methods of competition in air transportation or the sale thereof, and 49 USC section 41720, which entails prior DOT review of joint venture agreements between two or more major US airlines involving code-sharing or, with respect to airlines that together account for more than 15 per cent of the domestic market, other cooperative arrangements.

Additionally, under 49 USC section 41309, cooperative agreements between airlines relating to foreign air transportation may be submitted to the DOT for prior approval and, under 49 USC section 41308, may be immunised from the US antitrust laws when required by public interest. Any agreement approved under section 41309 must be immunised if the agreement substantially reduces competition but is necessary to either meet a serious

transportation need or achieve important public benefits, provided the need cannot be met, or the benefits cannot be achieved, by reasonably available alternatives that are materially less anticompetitive. Finally, under [49 USC section 41105](), the DOT has jurisdiction over the transfer of international route authorities between US airlines, with approval issued when the transfer is consistent with the public interest. Following the deregulation of the domestic airline industry in 1978 and the 1989 sunsetting of the DOT's statutory authority to disapprove airline mergers, the DOT's review of a requested international route transfer is generally limited to whether the transfer would conflict with important international aviation policy objectives, and the US citizenship of the carriers involved and their fitness to conduct the subject air transportation.

Law stated - 17 June 2024

Regulator

Is there a sector-specific regulator, or are competition rules applied by the general competition authority?

Both the DOJ and the DOT enforce competition laws against the airline industry. The general US competition laws, under the Sherman and Clayton Acts, are enforced by the DOJ, and the sector-specific competition laws, 49 USC sections 41105, 41712, 41720 and 41308–41309, are enforced by the DOT. Importantly, the DOT's authority under section 41712 is broader than that of the DOJ, allowing the DOT to take action in cases where anticompetitive conduct is not serious enough to violate the antitrust laws but may do so if left unchecked, or not a technical violation of the letter of US antitrust law but is close to such a violation or otherwise contrary to the spirit of US antitrust law.

Law stated - 17 June 2024

Market definition

How is the relevant market for the purposes of a competition assessment in the aviation sector defined by the competition authorities?

The relevant market is determined by identifying the relevant product or service (eg, scheduled passenger or all-cargo air transportation) and the relevant geographic area (eg, domestic or international routes or city pairs in specific regions) where the parties compete. The analysis examines whether the proposed transaction would be likely to lessen competition in the relevant market.

Law stated - 17 June 2024

Code-sharing and joint ventures

How have the competition authorities regulated code-sharing and air-carrier joint ventures?

Code-sharing between US airlines operating aircraft with more than 60 seats and non-US airlines or between two or more non-US airlines requires DOT approval under [14 CFR section]()

212 prior to implementation. The DOT will approve the application if it determines the arrangement is in the public interest. In making that determination, the DOT will consider (among other factors) whether the arrangement is authorised by the applicable air transport agreement or on the basis of comity and reciprocity. Where the arrangement involves a non-US airline's display of a US airline designator code, the US airline must audit the safety standards of its non-US partner(s). Additionally, US airlines may not place their designator codes on flights operated by non-US airlines that are from countries that are not rated as Category 1 under the Federal Aviation Administration's (FAA) International Aviation Safety Assessment (IASA) programme.

The DOT has the authority to approve and immunise from the antitrust laws joint ventures between airlines relating to foreign air transportation. Many such applications have been approved, but some have been denied on competition grounds, or have been approved only with conditions. In recent years, the DOT has specifically identified code-share exclusivity provisions as competitively harmful, directing applicants to strike the offending contractual provisions as a condition to receiving approval. Although the DOJ has general authority to enforce the antitrust laws in the airline sector, the DOT has exclusive authority over the immunisation of such joint ventures.

Finally, under 49 USC section 41720, joint ventures between two or more major US airlines (ie, airlines with more than US$1 billion in annual revenues), if involving code-sharing or affecting 15 per cent or more of all capacity offered by the major US airlines, must be filed with the DOT prior to implementation, which the DOT will review to assess whether the joint venture, if implemented as presented, would constitute an unfair method of competition under 49 USC section 41712. If so, the DOT and the carriers may agree to certain remedies to address the DOT's concerns. Regardless of any determination made by the DOT with respect to joint ventures submitted under 49 USC section 41720, the DOJ retains authority to file suit to prevent the transaction on antitrust law grounds. Indeed, the DOT and DOJ recently reached different conclusions with respect to the (now-defunct) Northeast Alliance (NEA) between American Airlines and JetBlue Airways, with the DOT completing its review under section 41720 in January 2021 subject to competitive remedies agreed to by American and JetBlue, and the DOJ filing a lawsuit under federal antitrust law in September 2021 to unwind the NEA (for which a federal court ruled in the DOJ's favour in May 2023).

Law stated - 17 June 2024

Assessing competitive effect

What are the main standards for assessing the competitive effect of a transaction?

Regulators look to whether the transaction would have an anticompetitive effect, either by creating or enhancing market power (ie, the ability to price above levels charged in a competitive environment) or facilitating the exercise of market power. The analysis considers post-transaction market concentration and the increase in that concentration, often (but not always) utilising the Herfindahl-Hirschman Index (HHI), which is calculated by squaring the individual market shares of all participants. Mergers in highly concentrated industries that produce more than a small increase in HHI levels are closely scrutinised, particularly where the prospect of entry by other firms is low (such as, in the case of airlines, at slot-controlled airports).

In the context of airline mergers, regulators evaluate the transaction in all city-pair markets served by both carriers, including on a nonstop basis and on a connecting basis. Within each of those markets, the regulators will then identify the number of airlines serving the market and the nature of that service to assess the availability of alternative products and services to which consumers may reasonably turn.

In general, transactions involving a high degree of overlap in markets where the parties are the dominant service providers are more likely to raise potential competition concerns from regulators. For example, in its March 2023 lawsuit to enjoin JetBlue Airways' proposed acquisition of Spirit Airlines, the US Department of Justice (DOJ) argued that the two carriers overlap on 40 direct routes where their combined share is high enough to be deemed presumptively anticompetitive, with DOJ further alleging that the elimination of the nation's largest ultra-low fare carrier (Spirit) will result in fare increases in these and other markets were the acquisition to proceed, given Spirit's history of driving down fares in markets where it competes. The US District Court for the District of Massachusetts accepted the DOJ's arguments and entered an order in January 2024 to enjoin JetBlue's proposed acquisition of Spirit.

Law stated - 17 June 2024

Remedies

What types of remedies have been imposed to remedy concerns identified by the competition authorities?

Both the DOJ and the DOT have imposed competition remedies on airline transactions. Examples of DOJ remedies include:

- the United/Continental merger in 2010 (entailing the divestiture of slots and related gates at Newark Liberty International (EWR));
- the US Airways/American merger in 2013 (entailing the divestiture of slots and related gates at DCA and LGA as well as a small number of gates at five other US airports); and
- the Alaska/Virgin America merger in 2016 (involving post-merger restrictions on code-sharing with American).

Examples of DOT remedies include:

- the Delta/LATAM joint venture in 2022 (involving the removal of code-share exclusivity and capacity growth-related provisions and limiting the requested grant of antitrust immunity to an initial term of 10 years);
- the Delta/Aeromexico joint venture in 2016 (involving the divestiture of slots at JFK and Mexico City's Benito Juárez International (MEX) and limiting the requested grant of antitrust immunity to an initial term of five years); and
- the Delta/US Airways slot transaction in 2011 (involving the divestiture of slots at DCA and LGA).

The DOT recently announced it would terminate its approval of the 2016 Delta/Aeromexico agreement because of anticompetitive concerns at MEX. Absent a change of course, the approval is tentatively scheduled to terminate in October 2024.

The DOJ also sued United and Delta under federal competition laws in 2016 over United's proposed acquisition of slots from Delta at EWR. However, the suit was subsequently rendered moot when slot controls were eliminated at that airport. More recently, the DOJ succeeded in requiring the unwinding, on competition grounds, of the Northeast Alliance between American Airlines and JetBlue Airways after securing a favourable court ruling in May 2023. Similarly, JetBlue Airways and Spirit Airlines agreed to terminate their merger plan after an unfavourable US District Court decision in January 2024 that ruled in favour of the DOJ in its suit to block the proposed merger on competition grounds.

Finally, the DOT denied approval for a proposed Hawaiian Airlines/Japan Airlines antitrust immunised alliance in 2020, finding that the joint venture would not offer public benefits that the carriers could not also deliver through arm's length, non-immunised, cooperation. The DOT also denied approval for a proposed American/Qantas antitrust-immunised joint venture in 2016 on competition grounds; however, the carriers reapplied for approval in 2018, and in 2019 obtained final DOT approval.

Law stated - 17 June 2024

FINANCIAL SUPPORT AND STATE AID

Rules and principles

Are there sector-specific rules regulating direct or indirect financial support to companies by the government, government-controlled agencies or companies (state aid) in the aviation sector? Is state aid regulated generally?

The federal government does not have sector-specific or general state aid rules for, and currently does not provide direct financial support to, the US airline industry. Following the 9/11 terrorist attacks, Congress passed, and the president signed into law, the Air Transportation Safety and System Stabilization Act, which provided US$5 billion in grants to, and set aside a further US$10 billion in federal loan guarantees for US carriers. Ultimately, only US$1.2 billion in loan proceeds were disbursed (all of which were subsequently repaid). More recently, and in response to the existential threat that the early phases of the covid-19 pandemic presented to the airline industry, Congress passed, and the president signed into law, a series of financial assistance packages that were distributed over roughly a one-year period, including approximately US$59 billion in payroll support grants for airline employee wages, salaries and benefits, and a further US$2.7 billion in emergency loans to 24 eligible businesses, including passenger and all-cargo airlines, repair station operators, travel agencies and aviation manufacturing businesses deemed critical to national security.

Under 49 USC section 44302, the US Department of Transportation (DOT) may, with the approval of the president of the United States, provide insurance or reinsurance against loss or damage in connection with the operation of aircraft (whether US or foreign registered) and (with respect to US carriers only) reimburse certain premium amounts. Presidential approval requires a finding that continued operation of the aircraft to be insured or reinsured

'is necessary in the interest of air commerce or national security or to carry out the foreign policy of the United States Government'.

US carriers are eligible to participate in the essential air service programme, which provides subsidies for air services in small and rural communities. Additionally, the Export-Import Bank of the United States (the official export credit agency of the United States) assists in financing and facilitating exports of US goods, including airframes and engines.

Law stated - 17 June 2024

Rules and principles
What are the main principles of the state aid rules applicable to the aviation sector?

Not applicable.

Law stated - 17 June 2024

Exemptions
Are there exemptions from the state aid rules or situations in which they do not apply?

Not applicable.

Law stated - 17 June 2024

Clearance of state aid
Must clearance from the competition authorities be obtained before state aid may be granted? What are the main procedural steps for doing so?

Clearance from competition authorities is not required before state aid may be granted. However, state aid is not currently provided to the US airline industry.

Law stated - 17 June 2024

Recovery of unlawful state aid
If no clearance is obtained, what procedures apply to recover unlawfully granted state aid?

Not applicable.

Law stated - 17 June 2024

CONSUMER PROTECTION

Passengers

What rules regulate denied boarding, cancellation or (tarmac) delay?

The US Department of Transportation (DOT) regulates denied boarding for most flights within and departing the US (14 CFR Part 250). The DOT sets requirements for soliciting volunteers, boarding priority, notice to passengers and compensation in the event of an oversale situation (currently up to US$1,550 per passenger, depending on the circumstances, with the amount periodically adjusted based on changes to the consumer price index). These protections do not apply to flights departing for the United States.

Under 14 CFR Part 259, carriers are required to notify passengers of flight cancellations and disclose the amenities that they will provide in the event of a flight cancellation or certain other flight irregularities. The DOT also maintains an online Airline Customer Service Dashboard that consumers may consult for a list of offered amenities by US carriers. However, under current federal law, carriers are not required to provide any specific mitigation in the event of a flight cancellation, other than refunding the value of any unused portions of the ticket and fees for ancillary services if a passenger rejects alternative transportation offered by the carrier and opts not to travel. In response to the large number of refund-related complaints that the DOT received from consumers during the covid-19 pandemic, the DOT promulgated new regulations under 14 CFR Parts 260 and 262, effective October 2024, that further address ticket refunds and both carrier- and passenger-initiated cancellations, including a controversial requirement that requires carriers to issue travel credits valid for at least five years from the date of issuance to non-refundable ticket holders who are unable, or do not wish, to travel due to communicable disease concerns. The DOT has also announced its intention to issue proposed regulations specifying, for the first time, minimum required amenities in the event of flight irregularities, however, no specific draft regulatory text has been released as of June 2024.

Finally, the DOT requires most US and non-US carriers to adopt contingency plans for lengthy tarmac delays applicable at US airports, with requirements such as allowing passengers to deplane within three hours for domestic flights and four hours for international flights (with certain exceptions, such as if deplaning is not possible for safety or security reasons), and the provision of food, water and lavatory facilities during the delay.

Violations of these and other DOT consumer protection requirements are subject to a civil penalty of up to US$41,577 per violation, and each day of continuing violation.

Law stated - 17 June 2024

Package holidays

What rules apply to the sale of package holiday products?

The sale of package holidays that include an air component is within the scope of the DOT's generally applicable consumer protection rules (eg, rules addressing full fare advertising as well as the disclosure of baggage fees and other significant conditions, and rules limiting or prohibiting post-purchase price increases) and, if applicable, the DOT's rules for public charter flights (14 CFR Part 380), which regulate not just the flight but the hotel and other elements of the charter programme.

Law stated - 17 June 2024

Other consumer legislation

Is there any other aviation-specific consumer legislation?

In addition to rules addressing denied boarding and oversale situations, cancellations and lengthy tarmac delays, several other DOT rules govern aviation consumer protection, including but not limited to the following:

- undisclosed display biasing on electronic airline information systems (14 CFR Part 256);
- the disclosure of code-sharing and long-term wet leasing arrangements (14 CFR Parts 257 and 258);
- carrier adherence to DOT-mandated customer service plans and responses to consumer complaints (14 CFR Part 259);
- fare advertising, ancillary fee disclosures and price increases (14 CFR Part 399);
- the timely processing of ticket refunds (14 CFR Part 374); and
- the performance of, and protection of consumer funds paid for, public charter flights (14 CFR Part 380).

There are no aviation consumer rules specific to airline bankruptcies; however, for US airlines undergoing reorganisation under the US bankruptcy code, the DOT will undertake a continuing fitness review to ensure that the carrier's continued operations will not pose an undue risk to consumers or their funds. Moreover, passengers affected by a carrier's cessation of operations owing to bankruptcy have certain protections under the Fair Credit Billing Act.

In 2004, the DOT largely deregulated CRS/GDS operations; however, as such entities are considered ticket agents under 49 USC section 40102, they continue to be subject to the DOT's prohibition on unfair or deceptive practices, and unfair methods of competition, under 49 USC section 41712, as well as the prohibition against undisclosed display bias noted above (14 CFR Part 256). Ticket agents are also subject to the DOT's recently enhanced requirements addressing the circumstances under which ticket refunds are due and the disclosure of certain airline ancillary service fees via online selling platforms.

Additionally, the DOT has issued a comprehensive set of technical regulations under 14 CFR Part 382, implementing the Air Carrier Access Act, 49 USC section 41705, which generally prohibits discrimination by either US and non-US airlines against passengers with disabilities in air travel and establishes specific accommodations that must be provided to such individuals. Furthermore, under 49 USC section 40127, the DOT may bring enforcement action to prevent airlines from subjecting passengers to discrimination on the basis of race, colour, national origin, religion, sex or ancestry.

Law stated - 17 June 2024

INSURANCE AND SECURITY

Insurance for operators

What mandatory insurance requirements apply to the operation of aircraft?

Under 49 USC section 41112, the DOT has established minimum insurance requirements for US and non-US carriers, with such requirements contained under 14 CFR Part 205. Minimum coverages are as follows:

- third-party liability coverage for bodily injury to, or death of, persons (other than passengers) and damage to property, with minimum limits of US$300,000 for any one person in any one occurrence, and a total of either US$20 million per involved aircraft (for large aircraft) or US$2 million (for small aircraft) for each occurrence; and
- aircraft accident liability insurance coverage for bodily injury to or death of passengers, with minimum limits of US$300,000 for any one passenger, and a total per aircraft or each occurrence coverage of US$300,000 times 75 per cent of the number of aircraft passenger seats installed.

Lower minimum coverage requirements apply to US and Canadian on-demand air taxi operators.

Law stated - 17 June 2024

Aviation security

What legal requirements are there with regard to aviation security?

Aviation security requirements are enforced by the Transportation Security Administration (TSA), a component of the US Department of Homeland Security. Prior to the 9/11 terrorist attacks, airlines were responsible for providing passenger and baggage screening at US airports, as well as checking passenger names against terrorist watch lists. Thereafter, such security functions were federalised and placed within the TSA. Additionally, post-9/11, the TSA took over aviation security functions previously performed by the FAA, including the Federal Air Marshal Service (which the TSA substantially expanded), the issuance of air operator security programs and the assessment of civil aviation security at foreign airports serving as the last point of departure for inbound US flights.

The TSA's statutory authorities are contained at 49 USC, Chapter 449. Specific TSA requirements are contained under Title 49 of the Code of Federal Regulations, Chapter XII, subchapter C, as supplemented by air operator security programmes and emergency amendments thereto, as well as security directives. Compliance with such security programmes, amendments and directives is aggressively enforced by the TSA and, in the case of violations, subject to substantial penalties. However, due to the sensitive security matters typically at issue in such enforcement, cases are rarely publicised. Finally, several TSA regulations and programmes also cover airport operators, freight forwarders, cargo screening facilities, flight schools and aircraft repair facilities.

Law stated - 17 June 2024

Serious crimes
What serious crimes exist with regard to aviation?

A number of statutes criminalise conduct with respect to aviation operations, punishable by fine, a term of imprisonment, or both. These statutes include:

- 49 USC section 46502 (aircraft piracy);
- 49 USC section 46503 (interference with airport security screening personnel);
- 49 USC section 46504 (interference with flight crew members and attendants);
- 49 USC section 46505 (carrying weapons or explosives on aircraft);
- 49 USC section 46507 (false information and threats);
- 18 USC section 32 (destruction of aircraft or aircraft facilities);
- 18 USC section 37 (acts of violence at international airports);
- 18 USC section 39A (aiming laser pointers at aircraft);
- 18 USC section 39B (operating drones in proximity to airport runways); and
- 18 USC section 40A (use of drones to interfere with wildfire suppression activities).

Criminal violations of the above statutes are prosecuted by the US Department of Justice (typically the US attorney for the federal district in which the case is brought). For acts occurring on aircraft, US jurisdiction attaches when the aircraft is in the 'special aircraft jurisdiction of the United States', which covers any US civil or military aircraft, any foreign aircraft in the US and certain other aircraft outside the United States, such as any aircraft with its next scheduled destination or last point of departure in the United States if the aircraft does, in fact, next land in the United States. In recent years, the Department of Justice, working in partnership with the Federal Aviation Administration, has aggressively stepped up enforcement of a number of these and other statutes in response to the troubling increase in violent acts committed by unruly passengers.

The United States is a contracting state to the Convention on Offences and Certain Other Acts Committed on Board Aircraft (Tokyo Convention) but has not signed the 2014 Montreal Protocol amending the Tokyo Convention.

Law stated - 17 June 2024

UPDATE AND TRENDS

Emerging trends
Are there any emerging trends or hot topics in air transport regulation in your jurisdiction?

In October 2022, President Biden signed into law the Advanced Air Mobility (AAM) Coordination and Leadership Act, which directed the US Department of Transportation (DOT) to establish an Advanced Air Mobility Interagency Working Group (IWG), comprised of representatives from nearly 20 different federal agencies. The IWG's purpose is to establish plans for the safe integration of AAM aircraft into the national airspace system, in

particular electric vertical take-off and landing (eVTOL) passenger-carrying aircraft. Further to such plans, the DOT issued a Request for Information (RFI) seeking public input on the development of a national strategy in May 2023. By August 2023, the DOT had received over 400 comments from diverse stakeholders, including but not limited to:

- eVTOL aircraft and vertiport manufacturers;
- operators;
- industry and labour associations;
- tribal nations; and
- state and municipal governments.

Additionally, in July 2023, the Federal Aviation Administration (FAA) issued an implementation plan spelling out the regulatory steps needed to enable AAM operations at scale by 2028, including the certification of pilots and AAM aircraft, infrastructure, security and environmental reviews. The implementation followed on the heels of the FAA's issuance, in June 2023, of proposed eligibility requirements for the certification of initial cadres of pilots rated for eVTOL aircraft and associated temporary operating rules, until such time as the FAA determines the permanent regulations that should apply to such aircraft and their operations. The FAA Reauthorization Act of 2024 included several provisions to promote the development of AAM in the United States, including requiring timely finalisation of the FAA's June 2023 proposed rule, prioritising the development of vertiports, and harmonising the FAA's bilateral aviation agreements with those of other civil aviation authorities to facilitate the integration of US AAM into foreign markets. These AAM initiatives will serve to accelerate the efficient development and deployment of piloted eVTOL passenger-carrying civil aircraft operations in the United States within the next five years, to be followed by the eventual integration of autonomous AAM operations into the national airspace system.

Law stated - 17 June 2024