

Air Transport

Contributing editors

John Balfour and Mark Bisset



2016

GETTING THE
DEAL THROUGH 

GETTING THE
DEAL THROUGH 

Air Transport 2016

Contributing editors
John Balfour and Mark Bisset
Clyde & Co LLP

Publisher
Gideon Robertson
gideon.roberton@lbresearch.com

Subscriptions
Sophie Pallier
subscriptions@gettingthedealthrough.com

Business development managers
Alan Lee
alan.lee@lbresearch.com

Adam Sargent
adam.sargent@lbresearch.com

Dan White
dan.white@lbresearch.com



Published by
Law Business Research Ltd
87 Lancaster Road
London, W11 1QQ, UK
Tel: +44 20 3708 4199
Fax: +44 20 7229 6910

© Law Business Research Ltd 2015
No photocopying without a CLA licence.
First published 2006
Tenth edition
ISSN 1751-9098

The information provided in this publication is general and may not apply in a specific situation. Legal advice should always be sought before taking any legal action based on the information provided. This information is not intended to create, nor does receipt of it constitute, a lawyer-client relationship. The publishers and authors accept no responsibility for any acts or omissions contained herein. Although the information provided is accurate as of September 2015 be advised that this is a developing area.

Printed and distributed by
Encompass Print Solutions
Tel: 0844 2480 112



CONTENTS

Global Overview	7	Iceland	90
John Balfour Clyde & Co LLP		Erlendur Gíslason Logos Legal Services	
Afghanistan	11	India	95
M Wisal Khan and Ghazi Khan Legal Oracles		Amir Singh Pasrich and Mohana Malhotra I.L.A. Pasrich & Company	
Argentina	15	Indonesia	106
Elizabeth Mireya Freidenberg Freidenberg, Freidenberg & Lifsic		Wahyuni Bahar and Anggia Rukmasari Bahar & Partners	
Austria	21	Italy	110
Joachim J Janezic Recht & Co – Janezic & Schmidt Rechtsanwälte OG		Laura Pierallini Studio Pierallini	
Bahamas	25	Japan	117
Arthur K Parris ParrisWhittaker		Shuji Yamaguchi Okabe & Yamaguchi	
Belgium	28	Malta	121
Birgitta Van Itterbeek Monard Law		Tonio Grech Dingli & Dingli Law Firm	
Brazil	33	Mexico	127
Renata Iezzi Basch & Rameh Advogados Associados		Javier Alegre and Carlos Campillo Alegre, Calderón y Márquez Abogados	
Canada	38	Netherlands	133
Laura M Safran QC and Prasad Taksal DLA Piper (Canada) LLP		Jeroen Timmermans, Laetitia Kunst-den Teuling and Ruben Elkerbout Stek	
Cayman Islands	45	New Zealand	139
Louise Groom and Ellie Crespi-McCarthy Harneys		Frank Porter, Anita Birkinshaw and Rishalat Khan Buddle Findlay	
Denmark	49	Nigeria	145
Henrik Kleis and Rune Hamborg Delacour Law Firm		Etigwe Uwa SAN, Chinasa Unaegbunam and Queenette Hogan Streamsowers & Köhn	
Dominican Republic	55	Norway	151
Rodolfo Mesa Chavez Mesa & Mesa Abogados		Knut Boye, Ingar Fuglevåg and Camilla Flatum Advokatfirmaet Simonsen Vogt Wiig AS	
European Union	59	Poland	155
Geert Goeteyn Shearman & Sterling LLP		Krystyna Marut, Edyta Michalak and Anna Burchacińska-Mańko MMMLegal Legal Counsels	
France	71	Portugal	160
Vonnick Le Guillou, Edouard Sarrazin, Marie Bresson, Jonathan Rubinstein and Guilhem Argueyrolles DLA Piper France		João Pedro Alves Pereira and João Marques de Almeida APTS – Alves Pereira & Teixeira de Sousa RL	
Germany	77	Russia	166
P Nikolai Ehlers Ehlers, Ehlers & Partner		Mikhail Sokolov, Anna Arkhipova and Sergey Seliverstov Sokolov, Maslov and Partners	
Greece	83	Singapore	172
Betty Smyrniou and Konstantina Linardou Bahas, Gramatidis & Partners		Rajaram Ramiah and Amos Tan Quahe Woo & Palmer LLC	

Sweden	178	United Arab Emirates	198
Stephan Eriksson and Erik Hägnefors Sander Advokaterna Liman & Partners AB		Donald H Bunker, Ian Veall, Christine Veall and Henock Girma Donald H Bunker and Associates	
Switzerland	183	United Kingdom	202
Andreas Fankhauser Baumgartner Mächler		John Balfour Clyde & Co LLP	
Turkey	189	United States	208
M Ali Kartal Aybay & Aybay		Andrew J Harakas and Christopher Carlsen Clyde & Co US LLP	
Ukraine	193	Uruguay	216
Anna Tsirat Jurvneshservice International Legal Services		Gonzalo Yelpo Yelpo & Facal Abogados	

Greece

Betty Smyrniou and Konstantina Linardou

Bahas, Gramatidis & Partners

General

1 Which bodies regulate aviation in your country, under what basic laws?

Aviation in Greece is regulated by the Hellenic Civil Aviation Authority (HCAA), which constitutes a public authority and comes under the Ministry of Transport and Communication, pursuant to section 2 of Law 1340/1983 and the Air Law Code, as ratified by Law 1815/1988.

Regulation of aviation operations

2 How is air transport regulated in terms of safety?

Air transport in terms of safety is regulated by the HCAA. More specifically, the HCAA Department of Airports Security is responsible for the implementation of the National Civil Aviation Security Programme and the coordination of activities of all agents involved in the safety of civil aviation.

Said Department takes all necessary steps to prevent and address to illegal acts against the safety of civil aviation in Greece and Greek aviation interests abroad. Moreover, it participates in many meetings arranged by European and international institutions with the aim of forming the European and international legislation on aviation security.

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

Regarding safety regulation in the aviation sector, EC Regulation No. 216/2008 and Ministerial Decision D2/1614/2008 apply to all aircraft except for those with historic or scientific value, private and very light aircraft, very small aircraft, helicopters and military aircraft. More specific legislation is provided for air operations that do not constitute public or commercial transport, such as, for example, Presidential Decree 64/2012 regarding safety regulation for helicopters.

4 Is access to the market for the provision of air transport services regulated and, if so, how?

With the goal of liberalising transport and creating an internal market without frontiers, market access for air transport services is regulated by EC Regulation No. 1008/2006 and HCAA Regulation D1/D/30817/2180. No undertaking established in the European Union may carry passengers, mail or cargo by air for a fee unless it has been granted the appropriate operating licence certifying it as a suitable, willing and capable undertaking to provide the proposed operations and comply with the relevant rules. The operating licence is granted by the HCAA to companies that are technically experienced, professionally capable, financially robust and reliable to provide air transport services without creating undue risk to consumers. The basic requirements for licensing an air transport company are the following:

- its principal place of business is located in a member state;
- it holds a valid air operator's certificate (AOC) issued by the HCAA;
- it has one or more aircraft at its disposal either through ownership or through a dry lease agreement;
- its main occupation is to operate air services solely or combined with any other commercial operation of aircraft or the repair and maintenance of the aircraft;

- member states or nationals of member states own more than 50 per cent of the undertaking and effectively control it, whether directly or indirectly, through one or more intermediate undertakings; and
- it meets specific financial conditions, insurance and solvency requirements specified in the above-mentioned Regulation.

Charter services, in addition to the above licence, require approval from aviation authorities, granted on the written request of the air carrier. In the case of individual charters, a notification of the competent authorities before flight is required instead of the approval.

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

To obtain an operating licence, an air transport company must satisfy certain requirements including financial fitness and nationality of ownership requirements.

In particular, for an applicant to acquire an operating licence, financial fitness must be demonstrated. The applicant must be able to meet, at any time, its current and future obligations as well as the fixed costs and operating costs involved in these activities, in accordance with its business plan, for three months from entry into the market without using any income.

Applicants should submit all details and information required by Annex I to EC Regulation No. 1008/2008 and the above-mentioned HCAA Regulation, to demonstrate their financial fitness and economic potential to meet the increased demands for aviation.

Regarding nationality of ownership, the mandatory conditions for granting an operating licence to a company are that the principal place of business is located in Greece and member states, or nationals of member states, or both, own more than 50 per cent 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.

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

The legal framework for granting licences to air carriers is defined in EC Regulation No. 1008/2008. Additionally, HCAA Regulation No. D1/D/30817/2180 applies to the parts of it that are not in conflict with EC Regulation No. 1008/2008. For the granting of a licence to operate particular routes, the following certificates, approvals or licences should have been acquired previously in the following order:

- written approval of the base airport;
- approval of lease of the aircraft;
- certificate of noise (if required);
- certificate of flying capability;
- certificate of registration;
- licence of the aircraft's station; and
- AOC.

The aforementioned documents, a written application, any other documents mentioned in the above EC Regulation and HCAA Regulation (which show the ability of the air transporter to conduct scheduled operations satisfactorily between each regular or provisional airport and the destination) and that the services and facilities are available and adequate must be brought by the applicant to the HCAA (Directorate of Civil Utilisation, part D). The HCAA must notify the applicant in writing within 20 calendar

days from the day of their submission of any missing documents, which should be presented within 30 days. The HCAA shall analyse and evaluate the aforementioned documents and reply to the applicant within 120 days from the submission of all documents required for the application.

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

The HCAA is the authority responsible for examining applications from companies seeking the issue of air transport licences. Should a company's application lack any of the required documentation, a 30-day deadline is set by the HCAA to the applicant to present it. If the applicant fails to do so without informing the HCAA, or to provide the information and the explanations requested in writing, the application is rejected and further work ceases. The decision to deny a grant of an air transport licence must be in writing and be fully and objectively justified by the HCAA. Re-examination of the application is allowed only after the submission of a new application and the deposit of a new fee.

Moreover, if the application is rejected by the HCAA even though the requested documents are complete in the applicant's opinion, the applicant may challenge the HCAA's decision by taking legal action before the administrative courts.

8 Is there a declared policy on airline access or competition and, if so, what is it?

Presidential Decree 276/1991 repealed the monopolistic status of Olympic Airways in air transport in Greece and the gradual liberation of air transport has begun, following the common policy of the European Union. Thus, the EU policy of protecting and maintaining open, competitive markets applies to aviation in Greece. In the framework of the common rules of competition, the Greek legislation has adopted the liberalisation measures introduced by the European Union, for example, the liberalisation of airfares, market access and capacity.

9 What requirements must a foreign air carrier satisfy in order to operate to or from your country?

EC Regulation 1008/2008 regulates aviation in the European Union and sets the basic requirements that an air carrier must satisfy to operate an air service between two airports in the European Union. International aviation in Greece is regulated by Law 3006/2002, which has ratified the Montreal Convention and by air transport agreements between the European Union and third countries. The abovementioned agreements provide that for the operation of air transport services from or to third countries an operating licence from the responsible authorities (HCAA) is absolutely necessary. The prerequisites of this operating licence are provided separately in each agreement. However, each air carrier at its entry, stay and exit from the territory of a party state must comply with the legislation of its party state.

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

EC Regulation No. 1008/2008, which replaced EC Regulation No. 2408/92 and has an immediate effect on Greek legislation, provides that a member state may impose public service obligations on scheduled airlines that serve regional, yet vital, areas to strengthen their economic development. Thus, the service of these areas with sufficient regular flights, satisfying fixed standards of continuity, regularity, pricing or minimum capacity should be ensured. If no air carrier is willing to demonstrate that it is about to commence sustainable scheduled air services on a route in accordance with the public service obligation that has been imposed on the route (with a compromise of its commercial gain), the state may limit access to the scheduled air services on that route to only one air carrier chosen by public tender for up to four years. This period may be up to five years if the public service obligation is imposed on a route to an airport serving an outermost region.

11 Are charter services specially regulated?

Charter services are regulated by HCAA Regulation D1/D/30817/2180. It is obligatory that a previous written approval from aviation authorities is granted, under the prerequisites of said Regulation. Such approval is valid for the specific purpose, airport, date and time it has been issued for, while charter flights should be carried out without violating airport operating

hours. As for individual flights, an exception is made and the only requirement is the notice before flight to the airport authorities and the airport involved.

12 Are airfares regulated and, if so, how?

Airfares were liberalised by EC Regulation No. 1008/2008. EC air carriers have been able to determine airfares at their discretion provided that they do not violate the rules of free competition. The parties to a freight contract are free to agree the charter rates, freight rates and fares charged by EU air carriers.

Exceptions to the freedom of fares and rates may be established by public service obligations, in accordance with EC Regulation No. 2408/92.

Aircraft

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

According to article 3 of the Air Law Code, all aircraft operating in Greek airspace must be entered in the aircraft register and hold a certificate of airworthiness.

To be included in the Greek aircraft register, an application by the aircraft owner is required. If the aircraft owner is a natural person, he or she must be a citizen of a member state of the European Economic Area. If the aircraft owner is a corporate entity, it must comply with the following, depending on its legal form (article 18 of the Air Law Code):

- unlimited partnerships: all partners must be natural persons with citizenship of an EEA member state;
- limited partnerships: all partners must be natural persons with citizenship of an EEA member state and two-thirds of the partnership capital must have been paid by natural persons having citizenship of an EEA member state;
- limited liability companies: the managers and three-quarters of the partners should have citizenship of an EEA member state and three-quarters of the capital belong to natural persons with EEA member state citizenship;
- *sociétés anonymes*: all the shares to be registered and owned in absolute majority by natural persons with citizenship of EEA member states and two-thirds of the board members, as well as the president, CEO and legal representatives to be natural persons with an EEA member state citizenship; and
- cooperatives or associations: two-thirds of the members and all members of the management and supervisory boards must have citizenship of EEA member states.

In the case of a leased aircraft owned by non-Greek entities or natural persons and hired by EU nationals, member states or legal persons that meet the above requirements (article 18(2)), the aircraft can be used by the lessee only if it has been registered in the foreign aircraft register held by the HCAA (article 17(1)(c)).

For the registration in the aircraft register, a certificate of airworthiness is required (article 20 of the Aviation Law Code) together with a technical inspection conducted by the CAA, which issues the airworthiness certificate for the aircraft.

For a foreign-owned aircraft to be registered in Greece, it should first be deleted from the prior register (article 24).

14 Is there a register of aircraft mortgages or charges and, if so, how does it function?

Pursuant to the provisions of article 17 of the Aviation Law Code, the CAA shall keep (in addition to the Greek aircraft register) the Greek aircraft engines' register and the foreign aircraft register: a mortgage record, a confiscation record, a claims record and a leases record.

However, in practice, only the mortgage and confiscation records are kept. The following elements are necessary for a mortgage to be registered in the relevant record (article 55 of the Air Law Code and articles 1305-1307 of Civil Code):

- an application form which can be submitted either by the creditor or by the debtor, or by the third party consenting to the mortgage or by anyone having a legal interest;
- a title of registration; and
- two summaries of the title which should contain the names, last names, residences and professions of the creditor and the debtor,

the date and the type of the above-mentioned title, the amount due, the repayment date of the debt, the description of the aircraft or the engine and the process agent that has been appointed.

The registrar of mortgages ought to record all the elements included in the summaries and note down the date that the application form is submitted for registration (article 55 of the Air Law Code and articles 1315, 1337 of the Civil Code). From the moment of its registration in the mortgage record, the mortgage is considered valid.

Moreover, the contracts for leases and subleases, which are prepared in written form, are registered in the above-mentioned registers, as no separate record of leases is kept. The registration of a lease and sublease contract in the above-mentioned registers is a constituent element of the contract (article 80 of the Air Law Code).

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

Article 189 of the Air Law Code provides that any aircraft flying over Greek territory or landing at Greek airports, or accepting any kind of airport services, is subject to payment of rights, dues and other charges related to aviation, landing and using Greek airports. In case of non-payment, the creditor can request that the airport authority prohibits the take-off of the aircraft and the provision of services to that aircraft or any other aircraft that the debtor owns or operates.

If the total debt exceeds the minimum amount determined by the Minister of Finance and the Minister of Transportation and Telecommunications, the airport authority must satisfy the request of the creditor and detain the aircraft, drafting a relevant report.

The airport authority detaining the aircraft must enable its take-off in the following cases:

- if the owner or administrator of the aircraft deposits a letter of guarantee from a bank operating legally in Greece, equal to the total debt; and
- if the creditor does not submit to the relevant airport authority a request of aircraft provisional arrest within four days of its detention.

16 Do specific rules regulate the maintenance of aircraft?

Aircraft maintenance in Greece is governed by EC Regulation No. 2042/2003 as amended by EC Regulation No. 376/2007 and decision of the administrator of civil aviation at the Civil Aviation Ministry D2/46777/13556, which adopts Annex 6, Part II of the International Civil Aviation Organization regarding International General Aviation – aeroplanes issued under the Chicago Convention. According to the above-mentioned, the owner or the leaseholder, in the case of a leased aircraft, is responsible for the constant airworthiness of the aircraft and the assignment of the aircraft's mechanical controls to an approved maintenance organisation.

Moreover, the Civil Aviation Department inspects the maintenance programme and conducts audits to verify the airworthiness of aircraft, to ensure that:

- the aircraft is maintained in a status of airworthiness;
- the operational equipment and emergency equipment, necessary for the planned flight, are in use;
- the airworthiness certificate of the aircraft remains active; and
- the maintenance of the aircraft is conducted according to the regulations of civil aircraft maintenance EASA, part 145 that are in force and approved by the CAA.

Airports

17 Who owns the airports?

All airports in Greece are owned and operated by the state, with the exception of Athens International Airport. Said airport is operated by Athens International SA, which has the exclusive right and obligation to conduct the financing, construction, completion, operation, development and management of the airport, and the Greek state retains control of, and supervision over, these activities.

Moreover, pursuant to Law 3913/2011 and by virtue of a decision of the competent Intra-Ministerial Committee of Restructuring and Privatization, relevant *soci t  anonyme* companies (SAAs) may be established for the administration and operation of all or certain Greek regional airports.

18 What system is there for the licensing of airports?

Ministerial Decision D3/A/20357/2002 approves the Basic Regulation for Airport Licensing, Functioning and Operating. Its purpose is to establish the criteria and procedures under which the Hellenic Civil Aviation Authority certifies Greek airports serving international flights. Regardless of their ownership, operation and supervision regime, the Hellenic Civil Aviation Authority must certify that they provide the necessary level of safety, regularity and efficiency.

An airport certificate is required for all Greek airports serving flights to and from abroad. The airport licence applicant must submit a form to the Hellenic Civil Aviation Authority enclosing the airport manual. Before the certificate is issued, the HCAA controls and ensures that the airport meets, *inter alia*, the following conditions: the applicant and staff have the necessary competence and experience to properly operate and maintain the airport; and an acceptable safety management system is in place.

The airport certificate licensing regime obliges the airport operator to ensure safe, regular and efficient operation of the airport and to allow access of the authorised personnel of the CAA to the airport to conduct security audits, inspections and tests.

The airport certification process includes:

- preparation and expression of interest from the applicant for the certificate;
- submission of the official application including the airport manual;
- providing the necessary facilities, equipment, service and airport operating procedures;
- the act itself of issuance or denial of the airport certificate; and
- notification of the certified status of the airport and the publication of related details in the Greek Aeronautical Information Manual.

19 Is there a system of economic regulation of airports and, if so, how does it function?

Chapter I of Ministerial Decision D3/A/20357/2002, which approves the Basic Regulation for Airport Licensing, Functioning and Operating, and article 189 of the Air Law Code provide that the operator (the state operates all airports in Greece, with the exception of the Eleftherios Venizelos International Airport) may establish charges for all airport users. The basic principles for the determination of airport charges are the following:

- the maintenance of a high level of services to support the airport's economic efficiency and competitiveness;
- the existence of incentives for the efficient and economically effective use of the existing infrastructure;
- the prevention of abuse of dominant position;
- the assurance of necessary funding to meet future demand;
- the achievement of local and regional economic development objectives; and
- the assurance of transparency and direct presentation of all necessary financial assets.

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

EC Regulation No. 1008/2008 and HCAA Regulation D1/D30817/2180 provide a general right of air carriers with an operating licence to provide air transport services on domestic routes and on routes in the European Union. There are also restrictions to the free access in the market of air transport services, when the state imposes public service obligations on scheduled airlines that serve regional yet vital areas to strengthen economic development. Thus, it is possible to limit access to route to an exclusive carrier, selected by a public tender. Moreover, the state can limit access through the allocation of slots to reduce air traffic congestion and delay.

21 How are slots allocated at congested airports?

The allocation of slots in Greece is regulated by EC Regulation No. 541/2009, which defines slot capacity available for allocation, the process of allocation and monitoring of the correct use of slots. 'Slot' shall mean the permission given by a coordinator to use the full range of airport infrastructure necessary to operate an air service at a coordinated airport on a specific date and time for the purpose of landing or take-off as allocated by a coordinator. Also slot allocation should be considered as giving air carriers permission to access the airport facilities for landing and taking-off at specific dates and times for the duration of the period for which the permission is granted. The sole person responsible for the allocation of slots shall be the coordinator. He or she shall allocate the slots in accordance with the

provisions of the above-mentioned Regulation and shall make provision so that, in an emergency, slots can also be allocated outside office hours.

In Greece, Law 3534/2007 provides for the establishment of the Authority of the Coordination of Flights for the Allocation of Slots at Greek airports. In a situation where all slot requests cannot be accommodated to the satisfaction of the air carriers concerned, preference shall be given to commercial air services and in particular to scheduled services and programmed non-scheduled air services. In the case of competing requests within the same category of services, priority shall be given for year-round operations. Finally, slots may be:

- transferred by an air carrier from one route or type of service to another route or type of service operated by that same air carrier:
 - between parent and subsidiary companies and between subsidiaries of the same parent company, as part of the acquisition of control over the capital of an air carrier;
 - in the case of a total or partial takeover when the slots are directly related to the air carrier taken over; or
- exchanged, one by one, between air carriers.

22 Are there any laws or rules specifically relating to ground handling?

Ground handling is typically regulated by Presidential Decree 285/1998, Law 3913/2011 (articles 23 and 24) and the Basic Regulation of Land Service of the Ministry of Transportations and Communications (D3/B/16067/3831, Government Gazette B' 1138/2011). Due to the provisions of this Regulation, the ground service agents have the right to access freely the market services of the ground service in all the Greek airports which are open to trade traffic, if they are located in the European Union. Some cases render it impossible to open a market in ground services, when specific constraints with regard to the available space or the capacity exist in the airport. In these cases, the ground service agents are selected through a competition process and only if they fulfil specific criteria. After that selection, they are obliged to comply with the safety and security rules, which are provided in the above-mentioned Regulation.

The use of particular ground service agents at Greek airports depends on the approval provided by the decision of the Minister of Transportation and Communications in response to requests by the relevant aeronautical authority that precede the commencement of the activities in question.

The activities of the ground service agents are divided into the following categories:

- baggage handling;
- ramp handling;
- fuel and oil handling; and
- freight and mail handling.

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

In Greece, air traffic control services are provided by the General Air Navigation's Department, according to the provisions of Law 3913/2011.

Especially, air traffic control services are provided:

- to all flights flown according to instrument flight rules (IFR) in a restricted aerial space (air corridors, terminals, etc);
- to all flights flown in the control zone of the airport when the necessary visual conditions are unavailable (Special Visual Flight Rules (VSR) Flights); and
- in the whole airports' traffic zone in the controlled aerodromes of the country.

Liability and accidents

24 Are there any special rules in respect of death of, or injury to, passengers or loss or damage to baggage or cargo in respect of domestic carriage?

Pursuant to article 106 of the Air Law Code, in the case of transfer of persons, the carrier must compensate the passengers, or those who are entitled to damages, according to the Civil Law, for passengers' personal injury or death by incident which occurred while the passenger was in the aircraft or during boarding or disembarking. This is a strict liability. The carrier is exempted from this if the death or injury occurred exclusively as a result of the passenger's health (article 106). The carrier's liability can also be raised or reduced if the damage is exacerbated by the fault of those injured or persons acting for the carrier.

According to article 110 of the Air Law Code, the carrier's obligation for damages cannot exceed €12,000 per passenger, unless the damage is due to fault of the carrier or person acting on its behalf. In this case the liability becomes unlimited (article 111 of the Air Law Code).

Regarding the transport of goods and luggage, article 107 of the Air Law Code provides that the carrier must pay compensation for total or partial loss, destruction, or deterioration of the transported goods and luggage, from the time of receipt until delivery. The compensation for damage amounts to €6 per kilogram in case of transport of cargo and €12 per kilogram in the case of transport of registered luggage.

The carrier can be exempted of liability, if it proves that all necessary measures to prevent damage were taken and that the damage is due to fault by those afflicted or their employees.

Finally, if the dispatcher of cargo and registered luggage declared their value in writing and paid an additional fare, the carrier is liable up to the value declared, unless it is proven that the declared value is higher than the actual value at the destination.

25 Are there any special rules about the liability of aircraft operators for surface damage?

Articles 117–120 of the Air Law Code regulate liabilities for third-party damages on the surface, caused by aircraft in flight, under the International Convention of Rome 1952. A strict liability is entirely established both to the aircraft owner and the person that exploits it, for third-party damage on the surface, caused by aircraft in flight, or by a person, or object, dropped from it (article 117). The liability of the aircraft owner and the person that exploits it can be raised or reduced, if the damage was caused by those injured or by persons acting for them (article 118).

Regarding the amount of compensation, there is a relative obligation for the person that exploits the aircraft – this cannot exceed three times the value of the aircraft if it was new on the day of the incident; and for the aircraft owner – it is the real value of the aircraft on the same day of the incident.

When the demands of the third parties exceed these limits, half of the amount is allocated to claims, preferably, involving a person's death or injury. The remainder is distributed, in proportion, to meet property damage claims, and partly for not satisfied claims of death or injury (article 119, paragraph 2).

The above-mentioned liability limits do not apply, if it is proven that the damage is due to guile or gross negligence of the person that exploits the aircraft or the owner or the persons that were at their services (article 111 paragraph 5 of the Air Law Code).

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

Pursuant to the provisions of articles 141–150 of the Air Law Code, in the case of an aircraft's accident in Greek territory or of a Greek aircraft's accident abroad, the Hellenic Civil Aviation Authority is responsible for investigating accidents involving civil aircraft, after informing the responsible minister. During the preliminary investigation technical consultants, mainly civil aviation pilots or engineers specialised in aeronautics, can be examined. Those having legitimate interest in the case may also be present or represented by a special attorney.

When the preliminary investigation is completed, the case file and the examiner's report are submitted to the minister. Then the minister turns the file over to the Investigative Air Accident Board. The board may make further investigation if the evidence is judged insufficient. Based on the evidence gathered, the board completes a justified report for the causes and the circumstances of the accident. Copies of the finding, which is not binding for the judge, is evaluated independently along with the rest of the evidence, as well as the file are submitted to the minister.

In the case of death or serious injury of a crew member, a passenger or a third person on the surface, the file and the finding are transmitted to the public prosecutor of the magistrates' court with jurisdiction.

The preliminary investigation is completed within six months of the accident, while the process of the board is completed within three months of the receipt of the file. The minister may extend these time limits up to six months. The HCAA is not responsible for prosecuting criminal behaviour or assigning blame.

27 Is there a mandatory accident and incident reporting system and, if so, how does it operate?

The provisions of article 140 of the Air Law Code require that aircraft operators report all accidents and certain incidents to the nearest airport, police or other authority responsible. According to Law No. 2912/2001, the Air Safety and Accident Investigation Committee keeps a mandatory accident and incident reporting system. The committee is also charged with investigating accidents and serious incidents regarding civil aviation aircraft. It is under the purview of the Ministry of Transport and Communications and it is assisted by the Air Accidents and Incidents Investigation Unit. The investigation process and techniques must comply with Annex 13 to the Chicago Convention and the manuals of the International Civil Aviation Organization. When the investigation is complete, the Committee's findings are summarised and published in two daily newspapers with the largest sales, issued in Athens, and in a local newspaper published in the area covered by the court of first instance with jurisdiction for the case where the incident occurred.

Competition law

28 Do sector-specific competition rules apply to aviation? If not, do the general competition law rules apply?

There are no sector-specific competition rules applied to aviation. In Greece, the general provisions of Competition Law 3959/2011 as well as EU competition rules apply to air transport.

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

There is no specific competition regulator for the aviation sector. The competition rules introduced by the Law 3959/2011 apply for the aviation sector under the supervision of the Greek Competition Authority. The Competition Authority has four main areas of regulatory authority: the discretionary authority to opine on competition issues, the authority to supervise compliance with competition rules, the authority to issue individual administrative acts and the authority to enforce sanctions in cases of the breaking of competition rules (recommendations, fines, licence revocation).

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

The evaluation of competition in the aviation sector is focused on the relevant geographical market and the relevant product or service market. The liberalisation of the air transport services market aims to ensure a constantly growing healthy competition between air transport companies, as well as other means of public transportation, which is fulfilled through a variety of transportation options available at passengers' disposal. The city pair (origin and destination), the passenger's demand and the transport cost determine the configuration and supply of the alternative means of transportation.

The healthy competition in Greece between aviation companies that operate to and from big cities, either within the country or abroad, is proven by the configuration of ticket pricing, in contrast with the pricing for remote and arid areas.

In such cases, where the state assigns the service of these areas to a single carrier after public contest, maintaining quality standards, regularity, non-discrimination and affordable prices, compliance with the established competition rules is not compulsory.

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

Article 1 of Law 3959/2011 prohibits all business transactions whose purpose or effect is the impeding, the constraint or the distortion of competition. The standards for assessing the competitive effect of a transaction, as used by the Competition Authority, are whether through these agreements the companies lead to:

- the direct or indirect fixing of market prices, sales prices or other transaction terms;
- the restriction or the control of production, distribution, technological development or investments;
- the distribution of markets or supply sources;

- the anti-competitive imposition of unequal conditions on trade or the provision services, especially the unjustifiable refusal to sell, buy or provide services or other transactions;
- the application of unequal terms to equal transactions on trade and services, in a way that restrains competition, especially the unjustifiable refusal to sell, purchase or provide services or other transactions; or
- the dependence of contracts on the acceptance (by the parties involved) of additional terms that are, by their nature or according to commercial usage, unrelated to the subject of those contracts.

On the contrary, the Competition Authority may consider an anti-competitive transaction permissible, if the following thresholds are met:

- the transaction contributes to the improvement of production or distribution or to economic development;
- the transaction ensures a benefit to consumers;
- the permissible constraints of competition must be absolutely necessary for the achievement of positive results; and
- the competition in a significant part of products or services is not abolished.

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

Both civil and criminal penalties can be imposed by the Competition Authority for competition violations. Criminal penalties are imposed, under article 44 of Law 3959/2011, on individuals responsible for compliance with the competition rules and can be differentiated regarding the type of violation. In addition, individuals can be imprisoned for criminal violations, according to article 44(2) of Law 3959/2011.

To determine the amount of the civil penalties or fines, the Competition Authority takes into account the duration and severity of the offence.

Financial support and state aid

33 Are there sector-specific rules regulating direct or indirect financial support to companies by the government or government-controlled agencies or companies (state aid) in the aviation sector? If not, do general state aid rules apply?

In the aviation sector, general state aid rules apply according to the direct or indirect financial support to individual companies by the government or government-controlled agencies or companies. In particular and in the scope of European Union law, articles 107 and 108 of the TFEU, EC Regulations No. 659/1999 as amended, 794/2004 as amended and 800/2008 and Community Guidelines C312 of 9 December 2005 on financing airports and start-up aid to airlines departing from regional airports are applicable.

At a national level, except for the abovementioned European Union texts that have direct application to the Greek legislation, Ministerial Decisions 2007892/1982 and 2/2000 for the recovery of illegal state aid and Circulars 39729/2005 and 16825/2006 of the Ministry of Finance/General Directorate for Economic Policy/ Directorate of European Union regarding the organisation and management of the state aid system electronic notification system also apply.

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

Financial support in a company is considered state aid when the following criteria are met:

- there is state intervention that can take various forms (eg, grants, interest subsidies, the provision of goods or services on preferential terms, etc);
- the intervention affects trade between member states;
- the intervention provides benefits to the recipient on a selective basis; and
- competition is or could be distorted.

Among the basic principles of the state aid rules applicable to the aviation sector, are the following:

- the proportionality principle: the aid granted must be proportional to its objective for an exemption under article 87(3) of the EC Treaty to be granted;
- the principle of non-discrimination: the aid must be granted on equal terms for public and private companies;
- the principle of transparency, between states and companies that are

- granted state aid;
- the principle of the compliance of state aid with the European Community rules on state aid; and
- the principle that the aid must not adversely affect the development of trade and the other transportation services in the EU.

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

The exceptions from state aid prohibition, as defined in article 107(2) and (3) of the TFEU and in Regulation No. 800/2008, also apply in the aviation sector. Particularly, for air transport, member states may grant a temporary licence through an open public competition (that is considered a case of state aid) to ensure regular provision of service to specific air routes that the market does not supply with adequate services. Another case is start-up aid, according to Community Guidelines C-312/2005.

Start-up aid granted to airlines operating from regional airports is a way of attracting airlines to new destinations. Aid operations of this kind must be justifiable, temporary and only given in the case of small airports. In addition, the aid must provide airlines with the necessary incentive to create new routes or new schedules operated from the regional airports in question. This state aid and encouragement of regional airport development will help decongest air traffic in Europe and provide scope for economic development in the regions concerned. The Commission considers that start-up aid for the operation of new routes should be allowed for a maximum of three years (or five years in the case of the outermost regions), and shall oppose the rules of free competition, the principle of proportionality and the principle of transparency.

36 Must clearance from the competition authorities be obtained before state aid may be granted?

Article 108 of the TFEU establishes the European Commission's competence at community level to constantly control the state-aid schemes and monitor the plans of member states intending to adopt or amend the existing aid in advance.

The concerned member state cannot apply state aid measures without notifying the Commission and before its final decision is reached. Any aid that is granted without Commission approval is automatically classified as unlawful aid.

37 If so, what are the main procedural steps to obtain clearance?

Any plans to grant new aid are to be notified to the Commission and should not be put into effect before the Commission has authorised it. The main procedural steps that the Commission follows for the rejection or approval of the above-mentioned plans are divided into two stages:

The preliminary examination

Any plans to grant new aid shall be notified to the Commission in sufficient time, through the Directorate-General for Economic Policy of the Directorate of European Union, providing the Commission with all information necessary to reach a decision. The notification's receipt marks the two-month deadline for a Commission decision. Where the Commission finds that the notified measure does not constitute aid, it shall record that finding by way of a decision. Where the Commission finds that no doubts are raised as to compatibility with the common market and competition rules of a notified measure, it shall decide that the measure is compatible with the common market. Where the Commission finds that doubts are raised as to the compatibility with the common market and competition rules of a notified measure, it shall decide to initiate the formal investigation procedure.

The formal investigation procedure

The Commission, through its decision to initiate the formal investigation procedure, shall call upon the state concerned and upon other interested parties to submit comments within a prescribed period which shall normally not exceed one month. After having considered the above-mentioned comments, within 18 months from the commencement of this proceeding the Commission should conclude its examination by means of a final decision that rejects or approves the notified measure or imposes additional terms. Once the above-mentioned time limit has expired, the Commission shall within two months make a decision on the basis of the information available, upon request by the state concerned.

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

According to the provisions of article 14 of the EU Regulation No. 659/1999, in the case of the Commission's negative decisions regarding unlawful state aid due to incompatibility with the common market and competition rules, the Commission adopts a decision in order for the member state to take all necessary measures to recover the aid from the beneficiary.

In Greece the recovery of illegal aid takes place under Ministerial Decisions 2007892/1998 and 2/2000 of the Ministry of Finance. The Commission, to implement the above-mentioned decision, composes an audit report, which is announced to the concerned party, with a notice to object within 30 days from notification. If this deadline is missed, or the objections of the interested party are unjustified, the Commission issues a charging practice, which is notified to the concerned party, obliging them to pay the amount charged to any Tax Office within one month. State aid is surcharged by default interest, calculated from the day of illegal aid's disposal up to its actual recovery. In Greece, according to the Authority decision (C179/7 of 1 August 2009), the current rate of state aid recovery amounts to 1.77 per cent. If the state does not comply with that decision, the Commission or any interested state may take legal action to the ECJ.

A typical case is the one involving Olympic Airways and Olympic Airlines, against which the Commission proceeded to issue four convictions, describing some of the companies' debts to third parties (government, social security funds, airport fees, etc) as illegal state aid.

Miscellaneous

39 Is there any aviation-specific passenger protection legislation?

In Greece, within the framework of ensuring a high level of protection of passengers, the following are applied:

- EC Regulation No. 261/2004 with regard to the refusal of boarding, the cancellation or delay of flight;
- Presidential Decree 339/1996, which has incorporated the European Directive 90/314 and relates to travel packages;
- EC Regulation No. 1107/2006 for disabled people; and
- EC Regulation No. 1008/2008 and Law 2251/1994 with regard to airfares.

In particular, EC Regulation No. 261/2004 defines the issues of passengers' reimbursement and aid in the case of refusal of boarding, cancellation and delay of flight. In the case of refusal of boarding to passengers due to excessive reservations or cancellation of a flight, the carrier must reimburse them according to the specific guidelines of the Regulation. In addition, passengers in the aforementioned cases and in the case of a considerable flight delay have the right of:

- reimbursement of the cost of the ticket within seven days, a return flight to the first point of the departure or re-routing to their final destination; and
- care, such as free meals and refreshments, hotel accommodation, transport between the airport and place of accommodation and two free telephone calls, telex, fax messages or e-mails.

With regard to travel packages (Presidential Decree 339/96), the tour operator bears responsibility for the proper fulfilment of obligations which derive from the contract signed by the consumer and the tour operators, regardless of whether these obligations would be executed by a particular tour operator or the providers of other tourism services, since these services constitute a part of the contract. With regard to the damages which the consumer suffers owing to non-execution or improper execution of the transportation contract, the tour operator bears the responsibility, except if non-execution or improper execution is due to neither its fault nor that of other service providers, but is the exclusive fault of the consumer or a third party, unrelated to the services offered in the contract or it is due to greater forces. In cases of non-execution or improper execution of the agreed transport service by a carrier, the consumer may turn against the tour operator, which in turn may sue the carrier in question (article 5, paragraph 1, Presidential Decree 339/1996).

Also, under the aforementioned Regulation No. 1107/2006, a number of facilities for disabled people are defined, which ensure their right to travel in the air without problems. The relevant regulations are specified in detail in the chapter about the European Union.

Finally, EC Regulation No. 1008/2008 prohibits all price discriminations based on the customer's residence or nationality or the travel agent's location. It also provides the following consumer rights regarding the prices of tickets offered or even published online.

There must be a clear indication of the total price. Additional charges such as airport taxes, fuel surcharges, booking fees or credit card charges must be stated from the beginning in the ticket price published, rather than be added at a later stage in the overall reservation price. Many airlines do not include various charges such as airport fees or surcharges in their final prices to make them attractive to consumers. This practice is illegal and the Commissioner for Consumer Affairs, Menglena Cuneva, has sent a strict warning to companies that mislead consumers.

40 Are there mandatory insurance requirements for the operators of aircraft?

Pursuant to article 137 of the Air Law Code, a carrier must have insurance coverage for damages deriving from the transportation contract of passengers, items or luggage. Civil responsibility insurance for the carrier and for third-party damage on the surface is among the obligations of the carrier, as defined by Regulation D1/D/30817/2180 as well as a prerequisite for granting an operating licence. In obligatory insurance ceases, the Air Law Code states that the validity of the operating licence may be revoked. Moreover, the aircraft operator must have insurance covered for harm or damage caused by crew members of crew or others embarking the aircraft for the service of the flight, as well as for third parties on the surface.

Additionally, EC Regulation No. 785/2004 applies in fixing the minimum insurance claims of carriers and aircraft operating companies. The insurance is defined per accident for each aircraft, proportionately with its MTOM(kg) classification and the risks that are covered include damage due to the carrier as well as risks deriving from acts of war, hijacking and terrorist acts.

41 What legal requirements are there with regard to aviation security?

The security of airports and air safety in general is based on EC Regulation No. 300/2008 and the National Civil Aviation Security Regulation. The CAA is responsible for planning, development, implementation, monitoring and maintenance of the National Civil Aviation Security Programme as well as coordinating all the activities of those involved in the safety of civil aviation. The purpose of the National Civil Aviation Security Programme is to set aviation security standards, procedures and practices for preventing and suppressing acts of unlawful interference against civil aviation that are committed on the ground and in flight.

Among these practices of airport and aircraft security, the following are basic:

- an identity check of passengers;
- security control of passengers either by hand or through a metal detector portal;
- security control of hand luggage;
- controls on hold baggage; and
- prohibiting passengers from carrying items hazardous to safety into security restricted areas and the aircraft cabin.

42 What serious crimes exist with regard to aviation?

The provisions of articles 162 to 184 of the Air Law Code contain various crimes that are either felonies or misdemeanours. These crimes include, among other things:

- aircraft operation without the appropriate licence;
- violation of pilot's official duties and violation of air traffic regulations;
- breach of obligations of the exploited aircraft;
- aircraft's clearance to foreigners;
- omission of aircraft insurance;
- illegal loading or transport;
- breaches of orders;
- violation of the pilot's instructions and orders;
- jeopardising the safety of aircraft during the flight by passengers or crew members;
- transaction of stunt flights without the appropriate licence;
- flight in a restricted area;
- omission of an accident's announcement or provision of help
- violations by the crew in case of emergency;
- despoilment or depredation;
- air piracy;
- destruction or damages to the aircraft or survival tools;
- carrying weapons or explosives on the plane;
- destruction or damages to facilities; and
- spreading false rumours.

* The information in this chapter was correct as of September 2014.



BAHAS, GRAMATIDIS
& PARTNERS LLP

Betty Smyrniou
Konstantina Linardou

6 Filellinon Street
10558 Athens
Greece

b.smyrniou@bahagram.com
k.linardou@bahagram.com

Tel: +30 210 331 8170
Fax: +30 210 331 8171
www.bahagram.com

Getting the Deal Through

Acquisition Finance	Domains & Domain Names	Labour & Employment	Public Procurement
Advertising & Marketing	Dominance	Licensing	Real Estate
Air Transport	e-Commerce	Life Sciences	Restructuring & Insolvency
Anti-Corruption Regulation	Electricity Regulation	Loans & Secured Financing	Right of Publicity
Anti-Money Laundering	Enforcement of Foreign Judgments	Mediation	Securities Finance
Arbitration	Environment	Merger Control	Securities Litigation
Asset Recovery	Executive Compensation & Employee Benefits	Mergers & Acquisitions	Ship Finance
Aviation Finance & Leasing	Foreign Investment Review	Mining	Shipbuilding
Banking Regulation	Franchise	Oil Regulation	Shipping
Cartel Regulation	Fund Management	Outsourcing	State Aid
Climate Regulation	Gas Regulation	Patents	Structured Finance & Securitisation
Construction	Government Investigations	Pensions & Retirement Plans	Tax Controversy
Copyright	Healthcare Enforcement & Litigation	Pharmaceutical Antitrust	Tax on Inbound Investment
Corporate Governance	Initial Public Offerings	Private Antitrust Litigation	Telecoms & Media
Corporate Immigration	Insurance & Reinsurance	Private Client	Trade & Customs
Cybersecurity	Insurance Litigation	Private Equity	Trademarks
Data Protection & Privacy	Intellectual Property & Antitrust	Product Liability	Transfer Pricing
Debt Capital Markets	Investment Treaty Arbitration	Product Recall	Vertical Agreements
Dispute Resolution	Islamic Finance & Markets	Project Finance	
Distribution & Agency		Public-Private Partnerships	

Also available digitally



Online

www.gettingthedealthrough.com



iPad app

Available on iTunes



Air Transport
ISSN 1751-9098



THE QUEEN'S AWARDS
FOR ENTERPRISE:
2012



Official Partner of the Latin American
Corporate Counsel Association



Strategic Research Sponsor of the
ABA Section of International Law