



Air Transport

in 38 jurisdictions worldwide

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General

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

The principal regulatory body in the field of civil aviation in India is the Directorate General of Civil Aviation (DGCA), headed by the director general under the supervision of the Ministry of Civil Aviation (MoCA). The DGCA is responsible for air transport regulation, air safety and airworthiness. It issues licences to aerodromes and air carriers; monitors licensing of personnel (cabin crew, flight dispatchers, aircraft maintenance engineers, etc); renders advice to the government of India on civil aviation; investigates air accidents or incidents; and provides technical assistance to the courts and committees of inquiry. The DGCA coordinates regulatory functions with the International Civil Aviation Organization (ICAO). It oversees regulation of air transport, airworthiness, air safety, training and licensing, aerodrome standards, flight training, flight inspection, research and development.

The DGCA issues civil aviation requirements (CARs), air transport advisory circulars (ATACs), aeronautical information circulars (AICs) and other circulars, which are binding upon carriers and in some cases other parties involved (such as travel agents) under the provisions of rule 133A of the Aircraft Rules, 1937 (amended in 2012). There are 14 regional airworthiness offices and five regional air safety offices of the DGCA.

Air transport is a federal subject falling within the legislative competence of India's parliament. The following laws regulate aviation:

- The Aircraft Act, 1934.
- The Aircraft Rules, 1937 (as amended from time to time and recently in 2012).
- The Indian Aircraft Rules, 1920 (part IX).
- The Aircraft (Public Health) Rules, 1954 along with its notifications.
- The International Airports Authority Act, 1971.
- The Carriage by Air Act, 1972.
- The Tokyo Convention Act, 1975.
- The Anti-Hijacking Act, 1982 and the Anti-Hijacking (Amendment) Act, 1994.
- The National Airports Authority Act, 1985.
- The Suppression of Unlawful Acts against Safety of Civil Aviation Act, 1992 along with the Suppression of Unlawful Acts against Safety of Civil Aviation (Amendment) Act, 1994.
- The Airports Authority of India Act, 1994.
- The Air Corporations (Transfer of Undertakings and Repeal) Act, 1994.
- The Aircraft (Demolition of Obstructions caused by Buildings and Trees etc.) Rules, 1994.
- The Aircraft (Carriage of Dangerous Goods) Rules, 2003.
- The Airports Economic Regulatory Authority of India Act, 2008.

Matters pertaining to aviation fall under the MoCA and its connected organisations: the DGCA, the Bureau of Civil Aviation Security (BCAS), the Airports Authority of India (AAI), the Airports Economic Regulatory Authority of India (AREA), etc. The MoCA is the ministry responsible for policy formulation and regulation of civil aviation in India. The BCAS regulates civil aviation security in India. It lays down standards and measures for security of civil flights at international and domestic airports.

Under the Airports Authority of India Act, 1994 (amended in 2003), the AAI was entrusted with the responsibility of creating, upgrading, maintaining and managing civil aviation infrastructure. The AAI is charged with construction, modification and management of passenger terminals, development and management of cargo terminals, development and maintenance of apron infrastructure including runways, taxiways etc, provisions for communication, navigation and surveillance, air traffic control, passenger facilities and related amenities.

The AERA was constituted under the Airports Economic Regulatory Authority of India Act, 2008 and established in 2009. The AERA determines tariffs for aeronautical services, the amount of development fees in respect of major airports and passenger service fees, and monitors standards relating to quality, continuity and reliability of services, etc. Since its establishment in late 2009, the AERA has decided tariffs, charges for aeronautical services and issued appropriate directions under the Act from time to time.

Regulation of aviation operations

- 2** How is air transport regulated in terms of safety?

The DGCA is responsible for the safety regulation of civil aviation and is recognised in the Aircraft Act, 1934 and the Aircraft Rules, 1937 as the relevant regulatory authority for civil aviation. Section 4A of the Aircraft Act, 1934 empowers the director general or any other officer specially empowered to perform safety oversight functions in respect of matters specified in the Act or the rules. The director general also has special powers pursuant to section 5A of the Act to issue directions.

The DGCA prescribes the necessary safety requirements and is responsible for their oversight. The Aircraft Rules, 1937 in part III deal with general safety conditions, and under rule 133A, the director general can issue CARs relating to the operation, use, possession, maintenance or navigation of aircraft flying in or over India or of aircraft registered in India. The DGCA is also responsible for the safety oversight of foreign aircraft operating in India. The Aircraft Rules, 1937 contain conditions for operators, crews, airworthiness, flights, etc. The DGCA does not grant a carrier an operating permit (licence) until the carrier or the operator has had its safety manual approved with appropriate trained personnel available for safety purposes and an appropriate insurance policy in place for crew passengers and property to be transported by air. Each aircraft receives a certificate of airworthiness and the DGCA regulates air safety in conjunction with the BCAS. Although the two regulators function

under the MoCA, they are housed at different locations in Delhi and operate fairly independently. India follows the ICAO guidelines on safety and has a state safety programme under the Chicago Convention (ICAO 9859). The safety rules have been increasingly revised and refined from 1980 and are now updated quite regularly. In 2011, the Aircraft Rules were amended to ensure that all aircraft operators and aerodrome operators, air traffic service providers, the personnel involved in training, aviation personnel, etc were mandatorily required to establish and maintain a safety management system (SMS) and SMS manual. The rules now provide for the DGCA's officers to monitor and inspect not only the SMS but also its implementation. An old 1996 CAR (revised 17 March 2009) on 'Flight Safety Awareness and Accident/Incident Prevention Programme' requires all operators to prepare a flight safety manual and obtain approval from the director of air safety of the DGCA. This CAR further provides that the flight safety manual shall clearly lay down the company's safety policies, flight safety awareness and accident/incident prevention programme. Appendix 'A' gives the 'Guidance Material for Preparation of the Flight Safety Manual'.

The ICAO places responsibility on contracting states to formulate a state safety programme (SSP). The SSP is an integrated set of regulations and activities aimed at improving safety. The SSP provides the means to combine prescriptive and performance-based approaches to safety rule-making, policy development and oversight by the DGCA in India. To manage the SSP and ensure implementation of requirements of SMSs, an SSP/SMS Division was established in the DGCA in 2010. A regulatory framework, after introduction of the SSP and SMS, has also been established. 'SMS' is established in terms of rule 29D of the Aircraft Rules, 1937.

The DGCA, through relevant officers, carries out station facility inspection, cockpit enroute inspection, cabin inspection, air operator pilot proficiency checks, main base inspection and air operator ramp inspection apart from checking the airworthiness of each aircraft.

Various statutory/regulatory provisions starting with the Aircraft Act 1934, the Aircraft Rules 1937, CARs, ATACs, and AICs, etc (explained above) stipulate the safety and operational requirements applicable to different types of operations. CARs are divided into 11 sections. Section 5 of the CARs issued by the DGCA deals with air safety.

All flight crew members are now required to necessarily undergo periodic refresher and flight safety courses as stipulated. Aircraft operators are required to have trained and qualified, DGCA-approved load and trim sheet personnel at each airport for the type of aircraft operated. All crew members, cargo handling personnel, etc must be DGCA-approved before they receive BCAS airport entry permits.

Every operator must have a chief of flight safety responsible for implementation of policies laid down in the flight safety manuals and all other safety measures required by law. All operators are also required to have a safety audit team. The DGCA has safety audit teams to carry out safety audits of the operators periodically.

The AAI also has its own Directorate of Aviation Safety. This Directorate monitors aerodrome operations, air navigation operations. It detects safety hazards and points them out to the concerned directorates; assists all the directorates with establishing their SMS; coordinates safety matters of the AAI with the DGCA, ICAO and other stakeholders; promotes the safety of aerodromes and air navigation services; presents safety reports to the Safety Review Board (SRB) and implements the directions given by it and effective safety programmes.

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

The DGCA issued a CAR on 24 April 1992 under section 2 – Airworthiness (series O, part I, issue IV) on 'Minimum requirements to be complied with by Operators Engaged in Scheduled/Non Scheduled operation or in aerial work including Flying Training and

Private work'. Rule 134A of the Aircraft Rules, 1937 provides that for operation of an air transport service (other than a scheduled air transport service) by an air transport undertaking located outside India, special permission from the central government is required. For operation of an air transport service (other than a scheduled air transport service) by an Indian air transport undertaking, a non-scheduled operator's permit granted by the central government is required. A non-scheduled operator's permit is valid for two years and may be renewed for another two years upon application. Rule 3(2)(49) defines a 'scheduled air transport service' as an 'air transport service undertaken between the same two or more places and operated according to a published timetable or with flights so regular or frequent that they constitute a recognisably systematic series, each flight being open to use by members of the public'. This definition results in the distinction between scheduled and non-scheduled air transport.

Rule 134B of the Aircraft Rules, 1937 provides that no operator shall undertake any aerial work unless it holds a valid non-scheduled operator's permit granted under sub-rule (2) of Rule 134A. Aerial work is defined in rule 3(1A) as 'any aircraft operation undertaken for an industrial or commercial purpose or any other remunerative purpose, but does not include operation of an air transport service'.

Rule 140 lists the minimum requirements to be complied with by operators and provides that 'all aircraft owners and operators shall comply with the engineering, inspection and manual requirements contained in part XIII A and with the safety requirements in respect of air routes, aircraft and air crew, as may be specified by the director general'.

As the above rules are made equally applicable, it would appear that no distinction is made between scheduled and non-scheduled operations or in aerial work in respect of applicable safety regulations.

Further requirements for issuance of the certificate of airworthiness are set out in a 2007 CAR section II dated 1 February 2007, amending the original CAR of 20 March 1992, which contain reference to the application procedure, documentation and other conditions, mentioning particularly the renewal procedure (every two years for aircraft under 20 years old and one year for aircraft over 20 years old).

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

Access to the market for provision of air transport services is regulated under parts XIIA and XIII of the Aircraft Rules, 1937. Rule 134 introduces requirements for an operating permit to be issued by the central government in relation to scheduled air transport service from, to, in, or across India. Similarly, under rule 134A(3), an application may be made for grant of a non-scheduled operator's permit valid for up to two years. Access to the Indian market may be considered regulated by reference to the provisions of schedule XI to the Aircraft Rules setting out the requirements for a scheduled air transport service. These provisions confer some degree of discretion on the DGCA, but also contain rigorous disclosure requirements that must be met in terms of experience and financial resources, satisfactory equipment, organisational strength, staffing arrangements, general competence based on track record, ability to meet liabilities arising from loss or damage to persons or property, existing/potential need or demand for the relevant service, adequacy of other air transport services and the possibility of wasteful duplication or material diversion of traffic, capital expenditure involved, reasonableness of the tariff and objections or representations made (by any person including a third party). The permit follows a recommendation from the civil aviation authority of the international airline's home country recommending the operator in accordance with a bilateral agreement between the two governments. Clarifications are provided by this authority. The bilateral agreement (or air services agreement) finds reference in rule 134(2). The permit itself does not

generally contain conditions, but the application sets out the operator's intended frequencies.

The DGCA issued a CAR on 1 March 1994 (updated several times up to 2011), which sets out minimum requirements for grant of a permit to operate a scheduled passenger air transport service. The relevant CAR specifies minimum capitalisation, requirement of a minimum number of aircraft, maintenance engineers, flight crew and cabin requirements, etc and also refers to various permissions needed before an initial no-objection certificate is granted, actions to be completed before acquisition of aircraft and airworthiness requirements, operational requirements, etc. As per the applicable CAR, equity from foreign airlines was not allowed in the domestic air transport service sector in India; since March 2013, however, foreign equity participation is now permitted up to 49 per cent. The CAR expressly provides that the requirements are complementary to ICAO annex 6 part I. As explained in response to question 5, foreign equity participation of up to 49 per cent is now (as of March 2013) permitted to be made by a foreign airline.

It is possible to see some of the CAR requirements and the discretion granted to the DGCA with regard to the above-mentioned factors as non-tariff barriers that could limit access to the market, but India has not made specific WTO commitments for air transport services and there are no known reports of limited access due to these factors or discriminatory treatment arising from the exercise of discretion in this regard even though some measure of protectionism is inherent in the continued state ownership of the national carrier. The nationality requirements mentioned in reply to question 5 are also relevant here, as is our response to question 7 covering the procedures for deciding applications (these applications are now decided by a standing committee on behalf of the DGCA).

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

As per the updated CAR dated 1 March 1994 (revised 30 May 2011) under section 3 – Air Transport (series 'C', part II), a scheduled operator's permit can be granted only to:

- a citizen of India; or
- a company or a body corporate provided that:
 - it is registered and has its principal place of business within India;
 - its chairman and at least two-thirds of its directors are citizens of India; and
 - its substantial ownership and effective control are vested in Indian nationals.

This is also provided for in schedule XI of the Aircraft Rules, 1937 and a similar CAR contains the requirements for a non-scheduled operator's permit. Clause 3.2 provides that before the scheduled operator's permit is issued, an applicant shall have paid-up capital of:

- 500 million rupees for airlines operating aircraft with a take-off mass equal to or exceeding 40,000 kilograms (up to five aircraft) and for each addition of up to five aircraft, additional equity investment of 200 million rupees; and
- 200 million rupees for airlines operating aircraft with a take-off mass not exceeding 40,000 kilograms (up to five aircraft) and for each addition of up to five aircraft, additional equity investment of 100 million rupees.

As of 1 March 2013 scheduled and non-scheduled air transport undertakings are each allowed foreign direct investment (FDI) of up to 49 per cent by foreign airlines; the new policy further enables the government to approve up to 74 per cent FDI in non-scheduled airlines and chartered airlines.

The DGCA has regulated non-scheduled air transport services through another CAR dated 1 June 2010 (revised on 31 May 2011) setting out the same minimum nationality requirements as listed

above. Guidelines in the CAR permit FDI of up to 74 per cent (as against the current 49 per cent for scheduled operators), but again the majority of directors on the board are required to be Indian citizens and if the positions of chairman, managing director, CEO or CFO are held by foreign nationals they must be security vetted.

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

As explained above, Rules 134 and 134A of the Aircraft Rules, 1937 provide that permission of the central government is required to operate scheduled and non-scheduled air transport services. Rule 134B also requires a valid non-scheduled operator's permit for any aerial work. Application fees are prescribed for scheduled and non-scheduled operator permits. For this purpose, the DGCA has issued various CARs. CAR dated 1 March 1994 under section 3 – Air Transport' series 'C' part II lists out the minimum requirements for grant of a permit to operate scheduled passenger air transport services. CAR dated 1 June 2010 under section 3 – Air Transport, series 'C' part III, issue II lists the minimum requirements for grant of a permit to operate non-scheduled air transport services. CAR dated 26 August 1997 (revised 21 May 2009) under section 3 – Air Transport, series 'C' part IV lists the minimum requirements for grant of a permit and operation of air transport cargo services. The relevant operating permits are the equivalent of the air operator's certificate referred to in ICAO documents.

ATAC No. 1 of August 1997 issued by the DGCA on the 'Air Operator Certification Procedure' sets out the procedure for grant of a permit in clause 3, which is as follows:

- Application for grant of an initial 'no-objection certificate' (NOC).
- Examination of the application for issue of the initial NOC.
- Actions required to be taken by the initial NOC holder.
- Application for permission for import/acquisition of aircraft.
- Actions to be taken after import/acquisition of aircraft.
- Issue of an air operator's permit.

The detailed procedures are outlined in this ATAC, which must be read along with the above-mentioned schedule XI and CARs.

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

The above-mentioned CARs set out the procedure for applications for the necessary permits. The applications are now reviewed by a standing committee constituted by the MoCA. This committee recommends grant of the initial NOC, but it may also direct compliance with any unfulfilled requirements. The committee examines various aspects, such as the:

need for the services in the proposed area keeping in view the existing services, airport capacity and constraints at the main base and night stop station, suitability of the proposed aircraft type keeping in view the airworthiness and safety regulations, satisfactory plan of human resource development, maintenance arrangements and compliance with the requirements stipulated for grant of the permit sought by the applicant.

The committee can seek clarifications and it only recommends (to the MoCA) grant of the initial NOC after security clearance, if the requirements are satisfied and subject to such 'conditions as may be considered necessary'.

It is possible for all government decisions to be challenged under the Constitution of India (article 226), but it is more common for the MoCA to arrive at conditions that are realistic and achievable, to discuss the same with the affected party and then direct compliance

accordingly. It is not common for a third party to claim that a proposed licence may be prejudicial to its existing routes or interests and the regulator would probably only allow such objections to be tested by market forces. There have been instances in the past of the government exercising protectionism with regard to the national carrier and its routes, but the tendency has generally been resisted in the past few years by successive governments and this has noticeably affected the financial health of the carrier. Where permissions are withheld due to the particular route, the route dispersal guidelines discussed in question 10 are relevant.

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

There is no newly declared policy on airline access or competition but the government of India has pursued an open skies policy since 1994 when the two state airlines were required to compete against private carriers. Air India and Indian Airlines have merged since then. Various bilateral air service agreements were signed pursuant to the open skies policy and although some air service agreements still have seat restrictions, the general trend has been to allow greater access from points in India to points in the other country. India's improved pro-competition and free market access approach has also been bolstered by the new Competition Act that came into force in 2009 and a Competition Commission that has been increasingly active since then. Despite the anti-merger provisions of the Competition Act, 2002 there have been several permitted or accepted airline mergers such as the Jet-Sahara acquisition and Kingfisher's acquisition of Deccan Airways. No particular control has been exercised by the DGCA or the Competition Commission of India in relation to foreign mergers such as Delta's acquisition of North-West, the Air France and KLM integration and various code-share agreements. Despite many liberalisations in the law, rule 135(4) still empowers the DGCA to issue directions to an air transport undertaking that 'has established excessive or predatory tariff' or 'has indulged in oligopolistic practice'. Some vestiges of the old protectionist provisions survive such as AIC No. 8 of 2009, section 3.6 of which provides that operational plans submitted by the national carrier would be considered before allocation of traffic rights to other eligible applicants. It is usually hoped that undue priority will not be given to the national carrier, but this laudable objective is not necessarily uniformly applied. That the government is perfectly conscious of the need for free access to the market can be seen from a June 2012 report of the committee constituted to report on the competitive framework for civil aviation in India. The committee has recommended:

The regulator may consider abandoning preferential international route assignments to the national carrier, which would allow private carriers to compete with Air India. Taking away Air India's right to priority route assignments will also help other Indian international carriers expand service to additional international destinations, leading to expansion in the range of choices for consumers.

The committee did accept an expert researcher's report, but interestingly was itself composed mostly of government of India officers. It was chaired by the secretary of the MoCA with the DGCA as a member.

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

The DGCA has issued AIC No. 8 dated 1 December 2010 on the 'Requirements for grant of Operating Authorisation to Foreign Airlines under Bilateral Air Services Agreements'. The AIC requires designation of the foreign airline subject to the following conditions:

- substantial ownership and effective control of that airline vested in the party designating the airline or its nationals;

- the designated airline must be qualified to meet conditions prescribed under the laws and regulations normally applied to operation of international air services;
- the party designating the airline must maintain and administer the standards with regard to safety and aviation security set forth in the bilateral air services agreement; and
- all the other provisions of the bilateral air services must be complied with along with other requirements set out in the AIC.

The airline must be officially designated by the country of the airline by reference to the air services agreement. Information and documentation must be provided as per appendices A and B of the AIC.

The operating permit can be revoked or suspended, or made subject to additional conditions or limitations, in any case where:

- substantial ownership and effective control of the designated airline are not vested in the government of the country designating the airline or its nationals;
- the designated airline has failed to comply with Indian laws and regulations; or
- standards in relation to safety or aviation security are not being properly maintained and administered by the country of the airline.

For code-share arrangements that are recognised in the relevant air service agreement, one of the designated airlines performs the agreed services as the operating carrier while the other airline operates as a marketing airline. Pursuant to the AIC, both the operating and marketing airlines are required to obtain operating authorisation under the respective air service agreement and furnish the necessary information and documents. Marketing airlines are only exempt from providing the operational manual, fleet details and security programme. The AIC also calls for coordination of slots, filing of schedules and general compliance with the bilateral agreement terms. The information sought under appendix A and the documents required under appendix B are similar to those required by the earlier AIC No. 3 of 2000.

The airline must be formally designated through diplomatic channels or by the aeronautical authorities of its home country (ie, the country whose government has signed the relevant air services agreement with the government of India). Several documents must be filed before an operating permit can be granted and these include incorporation documents of the airline, details of the board of directors, copies of other air operator certificates or equivalent document issued by the state where the operator is already operating, an operations manual approved by the competent authorities of the home state, details of the fleet, a detailed security programme etc. Once the application is submitted, approval of the competent authorities involved in respect of airline level requirements must be submitted (this includes any arrangements with the Airports Authority, Reserve Bank of India permissions, etc). The slots are coordinated with the AAI and the schedule is to be filed at least 30 days prior to commencement of services.

After the above process is completed, a carrier engaged in international operations must ensure that all its employees comply with the laws, regulations and procedures pertinent to performance of their duties. The operator must have all necessary operational documents and publications such as an operations manual, CARs, AICs, NOTAMS, aeronautical maps and charts, operational circulars, etc, for reference. The carrier is required to have and must follow an approved flight safety manual laying down the policies and procedures for ensuring safety of operations, computerised systems to analyse digital flight data recorders (DFDRs), solid state flight data recorders (SSFDRs) data of all flights to determine exceedances in flight operations and to ensure compliance with operating procedures, investigation of occurrences, implementation of safety recommendations, accident/incident prevention programmes and safety enhancement measures as per the requirements laid down by the DGCA and the BCAS.

Scheduled operations must be conducted from approved operational bases and the operator is required to ensure that operations are conducted only to and from airports suitable for the type of aircraft. The carrier must ensure that all security requirements stipulated by the BCAS are strictly followed in respect of their operations at all airports.

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

With a view to achieving better regulation of air transport services and taking into account the need for air transport services for different regions in the country, the central government through the DGCA on 1 March 1994 laid down the Route Dispersal Guidelines. According to these Guidelines, all routes were divided into three categories. Route categorisation was based on traditionally surplus generating routes (Category I), loss-making routes (Category II) and the remaining routes (Category III). Category IIA was mandated as a category within Category II, to cover specifically the states of Jammu and Kashmir, Andaman and Nicobar Islands, and the Lakshadweep Islands.

It was obligatory on the part of scheduled airlines to deploy a specified percentage of capacity on Category II, IIA and III routes, as per the following requirements:

- on Category II routes, at least 10 per cent of the capacity deployed on Category I routes;
- on Category IIA routes, at least 10 per cent of the capacity deployed on Category II routes; and
- on Category III routes, at least 50 per cent of the capacity deployed on Category I routes.

The guidelines have been strengthened by the inclusion of 10 to 12 airports from Category III into Category I making Category II, IIA and III requirements more rigorous. To ensure that aviation services are offered to remote destinations, an Essential Air Services Fund (EASF) has been recommended to be created by the MoCA with the help of the central government, state governments and airport operators for the development of low-cost airports and to improve connectivity to remote cities of the country. The funds collected can be used on routes that are commercially unviable for three to five years until they reach a level of maturity. To improve air connectivity to remote areas of India new initiatives are required such as the underwriting of some seats by state governments, a reduction in sales tax on air transport finance, and routes that have a passenger load factor of less than 50 per cent and certain others should be given assistance from the EASF.

11 Are charter services specially regulated?

A CAR dated 12 October 2010 (revised on 9 May 2013) issued under section 3 – Air Transport, series ‘F’, part I deals with the issue of non-scheduled flight clearances to foreign-registered aircraft including cargo flights, inclusive tour package (ITP) charter flights, aerial photography and geophysical survey and cloud seeding operations, non-scheduled flights by Indian operators to foreign destinations and for becoming enrolled as a flight clearance agency. The CAR contains general requirements, minimum notice periods, application procedures, special provisions (long stays for aircraft, non-ICAO flights, air-dropping and non-ITP passenger flights), provisions for changes in flight clearance, landing at defence airfields, etc. ITP charter flights remain under regulations covered by an earlier AIC (No. 12 of 2008 dated 6 October 2008). The Circular sets out the application procedure, the conditions for operation of ITP charter flights (including a provision for the DGCA to impose additional conditions) and the applicable ‘safeguards and penalties’ (ie, applicable penalties for non-compliance).

12 Are airfares regulated, and if so, how?

Rule 135 of the Aircraft Rules, 1937 deals with tariffs and how they are to be first established and then published. Under sub-rule (3), every air transport undertaking is required to maintain all records relating to tariffs established by it in such manner and form as specified by the DGCA. Although filing and approval of tariffs is not required, the DGCA has the power under sub-rule (4) to intervene in cases where it is satisfied that the operator has established excessive or predatory tariffs or has indulged in an oligopolistic practice. Rule 135 has been amended by the DGCA by Circular No. 9/9/2009-IR dated 11 May 2009 referring to a MoCA Gazette Notification dated 16 April 2009. This Notification provides that all airlines operating scheduled air services (domestic as well as international) to, from or within India are required to advise passengers of the consolidated fare as well as a complete breakdown thereof and also show the fare on the ticket in the same manner. Another example of the government’s regulation of tariffs can be seen in a Circular dated 17 December 2012, whereby it was directed that ‘all Indian and foreign air carriers’ were prohibited from charging transaction fees in violation of rule 135 of the Aircraft Rules as part of the airfare. This Circular became part of the subject of a Supreme Court of India case and resulted in directions of the Supreme Court in February 2013.

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?

The owner of the aircraft, and in the case of leased aircraft the lessor and the lessee are to be mentioned in the aircraft register.

Rule 30(2) of the Aircraft Rules, 1937 provides that an aircraft may be registered in India in either of the following two categories:

- Category A, where the aircraft is wholly-owned either:
 - (i) by citizens of India;
 - (ii) by a company or corporation registered and having its principal place of business within India and the chairman and at least two-thirds of the directors of which are citizens of India;
 - (iii) by the central government or any state government or any company or corporation owned or controlled by either of the said governments; or
 - (iv) by a company or corporation registered elsewhere than in India, provided that such company or corporation has given the said aircraft on lease to any person mentioned in (i), (ii) or (iii) above; or
- Category B, where the aircraft is wholly-owned either:
 - by persons resident in or carrying on business in India; who are not citizens of India, or
 - by a company or corporation registered elsewhere than in India and carrying on business in India.

Rule 30(3) provides that aircraft for which the conditions mentioned in rule 30(2) are not satisfied or that are already validly registered in another country shall not be registered in India. Rule 30(4) provides that where the usual station of an aircraft and its ordinary area of operation are not situated in India, the central government may refuse an application for registration of the aircraft in India or to permit an aircraft to remain registered in India, if, in its opinion, the aircraft could more suitably be registered in another country. Rule 33 provides for change in the ownership of a registered aircraft.

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

In the CAR dated 10 September 1998 (revised 16 November 2012) under section 2 – Airworthiness, series ‘F’ part I, on ‘Procedures

Relating to Registration/Deregistration', it is provided that an owner or his authorised representative may apply for registration of an aircraft in the prescribed form. Where the aircraft has been mortgaged or hypothecated, the owner or operator shall submit his consent for the same and the papers to this effect. Such a mortgage or hypothecation shall be endorsed on the certificate of registration.

Part V of the Companies Act, 1956 deals with registration of charges. The Companies Act, 1956 is about to be repealed by the Companies Act, 2012 and the corresponding sections are shown in brackets. Section 124 [section 2(16) of the 2012 Act] thereof provides that 'charge' includes a mortgage. Section 125 [section 77] provides that every company is required to file the particulars of the charge created together with the instrument by which the charge is created with the registrar for registration as required by the Companies Act within 30 days after the date of creation of the said charge. Section 130 [section 81] provides that the registrar shall keep a register containing the particulars of all the charges requiring registration under this part. The particulars of the charges to be entered are the date of creation of the charge, the date of the acquisition of the property (where the charge exists on property acquired by the company), the amount secured by the charge, the short particulars of the property charged and the persons entitled to the charge. Section 136 [deleted and no longer required in the new Act] of the Companies Act, 1956 required every company to keep a copy of every instrument creating a charge requiring registration at its registered office. Section 142 [section 86] provides for penalties, in case of default.

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

Section 8 of the Aircraft Act, 1934 empowers an authority authorised by the central government to detain any aircraft if in its opinion:

- the flight of such aircraft would endanger persons in the aircraft or any other persons or property; or
- such detention is necessary to secure compliance with the provisions of the Aircraft Act or the rules applicable to such aircraft, or such detention is necessary to prevent a contravention of section 5(2h) (the air routes by which and, the conditions under which aircraft may enter or leave India, or may fly over India, and the places at which the aircraft shall land) and section 5(2i) (the prohibition of flight by aircraft over any specified area, either absolutely or at specified times, or subject to specified conditions and exceptions) of the Aircraft Act, or to implement any order made by any court.

With respect to unpaid debts, in the CAR dated 10 September 1998 (revised 16 November 2012) under section 2 – Airworthiness, series 'F' part I, on 'Procedures Relating to Registration/Deregistration', it is provided in clause 9.1 that the registration of an aircraft registered in India may be cancelled at any time by the DGCA, if it is satisfied that:

- such registration is not in conformity with paragraph 3.1 of this CAR;
- the registration has been obtained by furnishing false information;
- the aircraft could more suitably be registered in another country;
- the aircraft has been destroyed or permanently withdrawn from use;
- it is inexpedient in the public interest that the aircraft should remain registered in India;
- the lease in respect of the aircraft registered pursuant to paragraph 3.1(iv) has expired, has been terminated by mutual agreement between the lessor and the lessee, or has been otherwise terminated in accordance with the provisions of the lease agreement; or
- the certificate of airworthiness in respect of the aircraft expired five or more years ago.

In the case of a dispute regarding termination of an aircraft lease agreement, action can be taken under section 8(1)(b) of the Aircraft Act, 1934 for detention to implement a court order.

16 Do specific rules regulate the maintenance of aircraft?

Rule 60(2)(a) of the Aircraft Rules, 1937 provides that the DGCA may specify standards and conditions for the maintenance of an aircraft, aircraft component and item of equipment. As per rule 60(1), maintenance refers to performance of all work necessary for the purpose of ensuring that the aircraft is airworthy and safe including servicing of the aircraft and all modifications, repairs, replacements, overhauls, processes, treatment, tests, operations and inspection of the aircraft, aircraft components and items of equipment required for that purpose. Maintenance is also defined in rule 3(33C) of the Aircraft Rules, 1937.

Part XIII A of the Aircraft Rules, 1937 deals with engineering, inspection and manual requirements for owners or operators. As per rule 154, (i) 'engineering and inspection' refers to the performance of all work necessary for ensuring airworthiness and safety of the aircraft, including overhaul, maintenance, modification, repair, replacement, manufacture, assembly, testing, treatment, inspection and certification; and (ii) 'manual' refers to 'operators' maintenance system manual' or 'operators' quality control manual' or any other manual covering such requirements as the case may be.

Specific CARs regarding maintenance of aircraft regulate the minimum maintenance standards, periodic inspections, etc. Series D under section 2 (Airworthiness) deals with aircraft maintenance programmes. In the CAR dated 28 August 1996 under section 2 – Airworthiness, series 'A' part IV, issue I, clause 3.1 deals with maintenance approval. Clause 3.1.1 makes reference to rule 155A of the Aircraft Rules, 1937 and requires that an operator shall have access to an adequate organisation for maintenance of aircraft. Rule 133B specifies the conditions for approval of an organisation. As per clause 3.1.2, the organisation shall demonstrate, before grant of the approval or permit, its capability to satisfactorily maintain the aircraft and safely operate the air transport services sought to be operated. It is the responsibility of the operator to satisfy the DGCA that its maintenance support arrangements are to a satisfactory standard. The operator may have its own maintenance organisation approved by the DGCA in accordance with rule 133B or may contract its maintenance work to another DGCA-approved organisation. Clause 3.1.3 requires, in accordance with rule 140 of the Aircraft Rules, that all operators comply with the stipulated engineering, inspection manual and safety requirements to ensure that the passengers and the aircraft are protected at an adequate level of safety throughout the operation. Clause 3.1.4 contains requirements for maintenance and safe operation of foreign aircraft leased for operation by or on behalf of Indian operators for public transport. These requirements are detailed in CAR section 3, series 'C' part I issued by reference to rule 133A of the Aircraft Rules and section 5A of the Aircraft Act, 1934. Clause 3.5.5 provides that the approved organisation shall provide, for the use and guidance of its personnel, an engineering organisation manual, a quality control manual and a maintenance system manual with details of information concerning policies, procedures, practices and quality control methods relating to activities of the operator and containing such further information as may be specified by the DGCA.

Airports

17 Who owns the airports?

The International Airports Authority of India (IAAI) was constituted as an autonomous body under the International Airports Authority Act, 1971. Four international airports – Delhi, Bombay, Madras and Calcutta – were transferred to the IAAI with effect from 1 April 1972; later Trivandrum Airport was also transferred to IAAI. In

1985, a similar need was felt for domestic airports and air traffic control and related services. Consequently, the National Airports Authority (NAA) was constituted under the National Airports Authority Act, 1985. Eventually IAAI and NAA came to be merged into what is called the Airports Authority of India (AAI).

The AAI is a body corporate having perpetual succession and a common seal, with the power, to acquire, hold and dispose of property. The AAI may lease the premises of an airport.

About one-third of India's domestic air travel originates from either Delhi or Mumbai, and these cities account for more than 60 per cent of international traffic to and from India. As a result, in 2006 the AAI entered into two separate operation, management and development agreements for Delhi and Mumbai respectively. Both airports were expanded and modernised and are now managed by Delhi International Airport Pvt Limited (DIAL) and Mumbai International Airport Pvt Limited (MIAL), but the AAI retains a 26 per cent stake in both these companies which are financed and largely run by private interests (ie, the GMR group for Delhi and the GVK group for Mumbai).

18 What system is there for the licensing of airports?

'Airport' is defined in section 2(b) of the Airports Authority of India Act, 1994 and includes 'aerodrome' as defined in section 2(2) of the Aircraft Act, 1934. Part XI of the Aircraft Rules, 1937 deals with aerodromes and 'aerodrome' is also defined in rule 3(2) as any definite or limited ground or water area intended to be used, either wholly or in part, for the landing or departure of aircraft, and includes all buildings, sheds, vessels, piers and other structures thereon or appertaining thereto. Rule 78 provides for licensing of aerodromes. An aerodrome should have a licence or it should have been approved by the DGCA for such purpose. Sub-rule (2) provides that an aerodrome shall be licensed by the central government for public and private use. Rule 79 provides that a licence for an aerodrome shall be granted only to (i) a citizen of India; (ii) a company or body corporate, provided that (a) it is registered and has its principal place of business in India and (b) it meets the equity holding criteria specified by the central government from time to time; (iii) the central government or a state government or any company or any corporation owned or controlled by either of them; or (iv) a society registered under the Societies Registration Act, 1860. Rule 80 provides that an application for the grant of a licence for an aerodrome shall be made to the DGCA along with the aerodrome manual (rule 81 provides that an aerodrome manual shall be maintained by a licensee in the specified form and it shall contain the particulars as per sub-rule (2) thereof) in the form as specified by the DGCA. Additional information or evidence may also be requested by the DGCA. Rule 81(3) provides that a copy of the aerodrome manual, or such part as may be prescribed by the DGCA, shall be made available by the licensee to all units of the aerodrome. Rule 82 deals with inspection and rule 83 talks about the conditions governing the grant of a licence. As per rule 84, an aerodrome licence may be granted for a period not exceeding two years and the same time frame is prescribed for renewals. Rule 86 sets out tariff charges and rule 87 provides for the fee that is chargeable for the grant of a licence for an aerodrome. The licensee is entitled to collect passenger service fees under rule 88 and user development fees under rule 89. The relevant fees are treated as a tariff for aeronautical services regulated as explained in reply to question 19. An Aerodrome Advisory Circular dated 14 September 2006 contains 'Guidelines for preparation and maintenance of an Aerodrome Manual'.

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

Since 2010 there has been an independent economic regulator – the Airports Economic Regulatory Authority of India (AERA) – to regulate tariffs and other charges for 'aeronautical services' and to

monitor performance standards at airports. The Airports Economic Regulatory Authority of India Act, 2008 applies to all airports where air transport services are operated or are intended to be operated (other than airports and airfields belonging to or subject to the control of the armed forces or paramilitary forces of the Union of India), all private and leased airports, all civil enclaves and all major airports [section 2]. As per section 2(i) of the Act, 'major airport' means any airport that has, or is designated to have, annual passenger traffic in excess of 1.5 million or such other airport as the central government may, by notification, specify as such. Section 13 of the Act sets out the functions of AERA in respect of major airports:

- to determine the tariff for aeronautical services;
- to determine the amount of the development fees;
- to determine the amount of the passenger service fees;
- to monitor set performance standards relating to quality, continuity and reliability of service as specified by the central government or an authority specified by it;
- to call for such information as may be necessary to determine tariff; and
- to perform such other functions relating to tariffs as may be necessary.

As per section 13(2), tariffs are to be determined once every five years but a set tariff may be amended during this period if 'considered appropriate and in the public interest'. Section 17 provides for the establishment and powers of the AERA Appellate Tribunal to adjudicate disputes and dispose of appeals (the Tribunal was also established in early 2010).

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

Rule 11 of the Aircraft Rules, 1937 deals with aerodromes and provides that no person other than the occupant of an aircraft manoeuvring in accordance with the rules may enter upon the landing area of an approved or licensed aerodrome without the consent of the person in charge of the aerodrome (the definition of 'airport' includes 'aerodrome' – see question 18). Rule 90 provides that for entry to a government aerodrome or a public aerodrome or a part of such aerodrome or any other area in such aerodrome, an admission ticket issued by the aerodrome operator or an entry pass issued by the commissioner of security (civil aviation) or any person authorised by the central government is mandatory. Sub-rule (2) provides that no person, without permission in writing, by general or special order, of the central government or any authorised officer, shall (i) enter or remain or cause any other person to enter or remain in the movement area; (ii) leave or throw or cause to be thrown any animal, bird or property or object of any nature whatsoever in the movement area; (iii) permit any animal under his possession or control or otherwise to stray in the movement area; or (iv) operate any vehicle in the movement area. As per rule 3(35A), 'movement area' means the area of an aerodrome intended for the surface movement of an aircraft and includes the manoeuvring area and aprons. Sub-rule (3) provides that sub-rules (1) and (2) shall not apply to any passenger embarking, disembarking or in transit who holds an air ticket or any person who is engaged on regular duty at an aerodrome and holds a photo identity card issued by the commissioner of security (civil aviation) or any person authorised by the central government in this behalf. Rule 90(4) provides that the officer-in-charge of an aerodrome or any person authorised by the central government in this behalf, may if he is satisfied that it is necessary or expedient so to do for maintaining proper order or decorum, refuse admission to any person into the terminal building or the movement area or require any person in such building or such area to leave the same.

21 How are slots allocated at congested airports?

As per guidelines (revised in May 2013) issued by the MoCA, a 'slot' is a permission given by a coordinator for a planned operation to use

the full range of airport infrastructure necessary to arrive or depart at a Level 3 airport on a specific date and time. For the purpose of slot allocation, airports are generally categorised according to the following levels of congestion:

- Level 1: where the capacity of the airport infrastructure is generally adequate to meet the demands of airport users at all times.
- Level 2: where there is potential for congestion during some periods of the day, week, or season which can be resolved by voluntary cooperation between airlines.
- Level 3: where capacity is constrained due to lack of sufficient infrastructure.

For Level 3 airports, a coordinator is required to be designated to allocate slots to airlines and other aircraft operators using or planning to use the airport as a means of managing available capacity.

The Guidelines have been formulated to reflect international best practice and are in accordance with the recommendations of the IATA Worldwide Slot Guidelines (WSG), as amended twice yearly. The WSG is the globally adopted standard for efficient slot allocation to optimise the use of severely congested airport infrastructure worldwide.

After leasing of Delhi and Mumbai Airports to JVCs, and setting up of the greenfield airports at Hyderabad and Bangalore by another set of JVCs, the MoCA had reviewed the slots allocation procedure and issued a revised procedure in its letter dated 10 September, 2007. This revised procedure allows the respective JV airport operators of Delhi and Mumbai to allocate slots for these airports, and the AAI for the other airports. Later, the revised procedures were also made applicable to the other JVCs at Hyderabad and Bangalore.

Part VII of the Guidelines deals with slot allocation.

Airlines are required to file their slot requests for initial allocation twice each year for the summer and winter seasons with the concerned coordinator for Level 3 airports. The actual deadline for filing this request is as provided for in the IATA WSG Coordination Calendar.

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

Rule 92 of the Aircraft Rules, 1937 provides that the licensee of an aerodrome shall, while providing ground handling service by itself, ensure a competitive environment by allowing the airline operator at the airport to engage, without any restriction, any ground handling service provider permitted by the central government to provide such service. This is subject to a proviso that such ground handling service provider should have security clearance.

The DGCA has issued AIC No. 03/2010 dated 2 June 2010 on the subject of 'Grant of permission for providing ground handling services at airports other than those belonging to the Airports Authority of India'. Clause 1.2 of this Circular provides that in accordance with the Airports Authority of India (General Management, Entry for Ground Handling Services) Regulations, 2000, an airline operator may carry out ground handling services at an airport either by itself or engage the services of any of the following, namely: (i) AAI; (ii) Air India or Indian Airlines; and (iii) any other agency licensed by the AAI. This is currently the ground handling policy in place.

There are other circulars/guidelines such as the BCAS Circular No. 4/2007 dated 19 February 2007 regarding instructions on deployment of ground handling agencies at the airports.

On 18 October 2007, the AAI in exercise of powers conferred by section 42 of the Airports Authority of India Act, 1994 formulated the Airports Authority of India (General Management, Entry for Ground Handling Services) Regulations, 2007. Regulation 1.3 thereof provides that these Regulations shall apply to all airports and civil enclaves managed by the AAI, provided that they shall not apply to defence installations or enclaves or enclosures at the airports.

Regulation 3 provides that:

[...] a carrier may carry out ground handling services at metropolitan airports, that is, the airports located at Delhi, Mumbai, Chennai, Kolkata, Bangalore and Hyderabad, by engaging the services of (i) AAI or its Joint Venture Company (ii) subsidiary companies of the national carrier ie, NACIL or its joint ventures specialised in ground handling services [...] (iii) any other ground handling service provider selected through competitive bidding [...]

These regulations were similar to DGCA Circular No. 7/2007 dated 28 September 2007 whose implementation date had been extended from time to time. The Ground Handling Regulations, 2007 supersede the Airports Authority of India (General Management, Entry for Ground Handling Services) Regulations, 2000.

The BCAS has also issued an AVSEC Order No. 3/2009 dated 21 August 2009 which specifically provides that the aircraft operators' aviation security functions listed therein 'cannot be mixed-up with other ground handling activities, and these AVSEC functions shall not be allowed by an aircraft operator/airport operator to be undertaken by a Ground Handling Agency'. At present (September 2013) the ground handling policy AIC No. 3/2010 and other regulations or circulars (eg, AIC No. 7/2007 dated 28 September 2007, the Airports Authority of India (General Management, Entry for Ground Handling Services) Regulations, 2007, etc) are the subject matter of a challenge filed by the Federation of Indian Airlines pending in the Supreme Court.

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

'Air traffic service' as per rule 3(1F) of the Aircraft Rules, 1937 means the flight information service, alerting service and air traffic advisory service and air traffic control service (area control service, approach control service or aerodrome control service). Part XII of the Rules deals with personnel of air traffic services. Rule 93(1) provides that only a person who holds a valid air traffic controller's licence shall engage himself in the provision of air traffic services in the Indian airspace or in any airspace outside Indian territory for which India has, pursuant to any international arrangement, undertaken to provide air traffic services. Rule 93(2) provides that the designated military authority may provide air traffic services to civil aircraft in the airspace designated for military use in accordance with the provisions of part XII and subject to the conditions specified by the DGCA. Rule 95 provides for grant or renewal of the licences by the licensing authority and the conditions for grant or renewal of the same. The DGCA's CAR dated 8 January 2010 (revised 16 November 2012) regulates airspace and air traffic management.

'Air traffic service' is also defined in section 2(d) of the Airports Authority of India Act, 1994. Section 22 provides that the AAI may, with the previous approval of the central government, charge fees or rent for providing air traffic services etc. There is a Manual of Air Traffic Services issued by the AAI. Chapter 4 of this manual deals with air traffic services – its objectives, divisions, classification of airspaces, responsibility for control etc. A Department of Air Traffic Management under the AAI provides air traffic services to all arriving, departing and enroute aircraft over Indian airspace, establishment of air routes, realignment of existing air routes in consultation with user airlines and international bodies such as IATA and ICAO, manpower planning, training and award of ratings to air traffic controllers in conformity with ICAO rules and regulations as stated in annex I (Personnel Licensing), monitoring of standards and procedures in the provision of ATC, etc.

The AAI has drawn up plans to upgrade the air traffic management infrastructure in the country both in terms of conditional provision of automation systems and upgrading of technology which also involves shifting from ground-based navigation to satellite-based navigation. A Communication, Navigation and Surveillance (CNS)

Planning Department deals with planning, procurement and commissioning of CNS facilities and support systems for air navigation.

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?

The relevant statute is the Carriage by Air Act 1972, which in section 8 provides that the central government may, by notification in the Official Gazette, apply the rules contained in the schedules to the Act to such carriage by air, not being international carriage by air, subject to such exceptions, adaptations and modifications as may be specified. In April 1973, the government of India issued a notification regarding application of the Carriage by Air Act, 1972 to carriage by air that is not international; the same prescribes very low compensation but it is doubtful as to whether it is still applied. In the 2011 case of *S Abdul Salam v Union of India* (the Union), the Union (and their insurers) attempted to pay about 3 million rupees instead of at least 100,000 SDR to the family of a passenger killed in an Air India crash at Mangalore. This was considered discriminatory by the Kerala High Court, which directed full payment as per the Montreal Convention. The judgment is under appeal in the Supreme Court of India. The 1972 Act, as amended, enforces the 1929 Warsaw Convention (first schedule), the 1955 Hague Protocol (second schedule) and the 1999 Montreal Convention (third schedule), which practically applies for most international carriage by air now. Chapter III deals with the liability of a carrier. As per rule 17 of all three schedules, a carrier is liable for damage sustained in the event of the death or wounding of a passenger or any other bodily injury suffered by a passenger, if the accident that caused the damage sustained took place onboard the aircraft or in the course of any of the operations of embarking or disembarking. Rule 18 (of all three schedules) provides that a carrier is liable for damage sustained in the event of the destruction or loss of, or of damage to, any registered luggage/baggage or any goods/cargo, if the occurrence that caused the damage sustained took place during the carriage by air. Unfortunately there is still a dearth of case law on the clear exception in rule 17 limiting remedies to physical injury (*lésion corporelle*) and the consumer fora in India still tend to award compensation for mental agony and inconvenience.

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

The Rome Convention, 1952 has been enacted to ensure adequate compensation for persons who suffer damage caused on the surface by foreign aircraft, while limiting in a reasonable manner the extent of the liabilities incurred for such damage so as not to hinder the development of international civil air transport. Chapter II deals with the extent of liability. India signed the Convention in 1955.

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

Section 7 of the Aircraft Act, 1934 outlines the power of the central government to make rules for investigation of accidents or incidents arising out of or in the course of the navigation in or over India of any aircraft, or anywhere of aircraft registered in India. Accordingly, the Aircraft (Investigation of Accidents and Incidents) Rules, 2012 have been notified. Rule 12 provides for the setting up of an Aircraft Accident Investigation Bureau of India (the Bureau) for the purposes of carrying out investigation into accidents, serious incidents and incidents referred to in rule 5(1), (2) and (4). Rule 9 provides for a preliminary investigation and rule 12 provides details on the formal investigation for which the central government shall appoint a competent person referred to as the court who shall have, for the

purposes of investigation, all the powers of a civil court under the Code of Civil Procedure, 1908. As per rule 13, the DGCA may order investigation of any incident or serious incident involving an aircraft covered under rule 5(1)(c) and may appoint a competent and qualified person as inquiry officer for the purposes of carrying out the investigation. The inquiry officer has the same powers as an aircraft accident investigator under rule 10 and shall make a report to the DGCA in the format specified by the Bureau. The DGCA shall forward the report of the inquiry officer to the central government.

The AAI has also issued an Air Traffic Management Circular No. 7 of 2012 on the 'Procedure to be followed in case of Aircraft Accidents and Serious Incidents'. Clause 2.1 provides that the purpose of this Circular is to make air traffic controllers (ATCOs) aware of the procedure to be followed in case of aircraft accidents and serious incidents and the role of ATCOs regarding notification of accidents and serious incidents along with preservation of air traffic services records.

The DGCA CARs under section 5 – Air Safety on the 'Procedure for Accident/ Incident Investigation' (series 'C') and 'Prevention of Accidents/Incidents' (series 'F') cover aircraft accidents and serious incidents and also provide for investigation, protection and preservation of the wreckage, evidence, disclosure of records, and submission of reports.

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

Rule 18 of the Aircraft (Investigation of Accidents and Incidents) Rules, 2012 provides for a mandatory incident reporting system. This system requires the relevant persons, service providers and stakeholders to notify all accidents and incidents by the most suitable and quickest means to the Aircraft Accident Investigation Bureau and the DGCA but in any case not later than 24 hours. The DGCA shall immediately notify the Bureau about the accidents and incidents containing information as specified above. Rule 18(4) outlines who is included in 'relevant persons, service providers and stakeholders'. There is also a voluntary incident reporting system provided for in rule 19.

Competition law

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

There are no specific competition rules (although rule 135 of the Aircraft Rules, 1937 does prohibit an 'oligopolistic' or anti-competitive practice) for aviation. The Competition Act, 2002 (notified in 2009) applies and prohibits anti-competitive agreements (section 3), prohibits abuse of dominance (section 4) and regulates combinations including mergers (sections 5 and 6).

An anti-competitive agreement case filed by travel agents against several airlines was dismissed by the Competition Commission of India (CCI) in 2011 and an appeal by the Competition Appellate Tribunal in 2012. A planned acquisition of 24 per cent of Jet Airways by Etihad has come under the purview of the CCI. The CCI may approve such a combination if the same has no appreciable adverse affect on competition. If the CCI fails to accord approval within 210 days, or if it does not pass any order or issue any directions, then the combination is deemed to be approved.

Apart from the above matter relating to a combination, there have been a few cases that have come for adjudication before the CCI in relation to both abuse of dominance and anti-competitive agreements. In a 2011 case (*Uniglobe v Travel Agents' Association of India or TAAI and others*), the CCI penalised three travel agent associations for indulging in the anti-competitive practice of boycotting airlines that had shifted to zero per cent commission; the CCI also passed cease-and-desist orders on the practice. In *TAAI v British Airways*, decided in 2010, the CCI dismissed a complaint

against the carrier alleging abuse of dominance for having restricted sale of their tickets only through certain accredited travel agents, as the Commission found that British Airways was not dominant in the relevant market. In 2011, the CCI dismissed a complaint, and then in 2012 the Competition Appellate Tribunal (Compat) dismissed an appeal involving TAAI against nine airlines on the ground that the airlines had (acting as a cartel) been guilty of abuse of dominance in moving to the zero per cent commission system. The CCI and Compat both rejected the city-pair argument (that being the relevant market) and held that the airlines taken together were not dominant, did not act in concert so there was no agreement and hence dismissed the complaint and appeal.

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

Both competition agencies and regulators usually share a concern for economic efficiency. However, the conceptual framework reflects that sectoral regulators such as the DGCA have specific functions relating to that sector but not market functions, which is the domain of the general competition authority (ie, the Competition Commission of India). Therefore there are generally no sector-specific competition laws or rules that can be applied by the competition authority, however the provisions of rule 135 cited in reply to question 28 referring to oligopolistic practices are an exception that is not usually resorted to by the regulator or the DGCA.

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

The Competition Act 2002 defines 'relevant market' under section 2(r). Ascertaining the relevant market is a pertinent step to analysing whether there is an adverse effect on competition. The relevant market is determined in a two-pronged manner [section 19(5)]: one needs to ascertain the relevant geographic market as prescribed under section 19(6) and also determine the relevant product market as prescribed under section 19(7). Attempts have been made to define a geographic market by reference to city-pairs in the aviation sector, but the Competition Commission and the Competition Appellate Tribunal have not accepted this argument, generally preferring the view that the market is international flights to and from India.

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

The standard for assessing the competitive impact of a transaction is by determining whether such transaction has an appreciable adverse effect on competition. Appreciable adverse effect on competition can be determined by the presence of any kind of anti-competitive agreements between parties or whether such transaction would result in an abuse of dominance, foreclosure of market, etc. Even in the case of a combination (merger or acquisition), the standard used is the same: that is, whether such a combination would result in or is likely to cause an appreciable adverse effect on competition.

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

The CCI may make inquiries into certain types of agreements (under section 19) and combinations (under section 20, provided they are above the statutory threshold limit) to see whether they are anti-competitive. The CCI also has the power to take up these inquiries suo moto. Upon finding a contravention of the Act, the CCI may pass an order directing the responsible enterprises to discontinue the contravention and impose such penalties as it deems fit. The penalties can be up to 10 per cent of the offender's turnover for the preceding

three financial years. In the case of a cartel, the CCI may impose a greater penalty equal to three times the profit for each year that the contravention was carried on by the cartel. The CCI can by order modify agreements, award compensation or pass such order as it may deem fit.

In the case of a combination that is likely to or will cause an appreciable adverse effect on competition, the CCI has the power to stop such a combination from coming into effect, modify the combination suitably or propose appropriate modifications so as to eliminate any adverse effect on competition. If the parties do not agree with the modifications suggested by the CCI, such parties may amend the proposed suggestion and seek the CCI's approval within 30 days. The CCI, in its effort to tackle cartels, also has a leniency programme in place.

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?

No. However, the central government has given approximately US\$1.7 billion in the past four years (before 31 March 2013) to aid Air India. This year, Indian Oil Corporation, the nation's biggest refiner, has agreed to sell jet fuel to Air India at an 8 per cent discount.

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

The state has, as a policy, given aid and injected funds to assist Air India's business. It has been recommended that the stated policy 'that the national carrier would be considered before allocation of traffic rights to other eligible applicants' should be discontinued (see the 2012 Report of the Committee Constituted for examination of the recommendations made in the Report on Competitive Framework of Civil Aviation Sector).

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

State aid only applies to the national carrier, which is government-owned; as such there are no applicable exemptions.

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

No, since Air India is fully state-owned as the national carrier and no state aid is rendered to other airlines.

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

Not applicable.

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

Not applicable.

Miscellaneous

39 Is there any aviation-specific passenger protection legislation?

The Carriage by Air Act, 1972 and the Consumer Protection Act, 1986 are the statutes under which passengers may file an action to redress their grievances or approach civil courts for compensation and damages.

The DGCA has issued CARs under section 3 – Air Transport, series 'M' for 'Passenger Facilitation'. CAR dated 1 May 2008

(revised 26 March 2009), under this series, on 'Carriage by Air of Persons with Disability and/or Persons with Reduced Mobility' lists the rules for the protection of and provision of assistance to disabled persons and persons with reduced mobility travelling by air in order to protect them against any form of discrimination and to ensure that they receive all possible assistance with due respect and dignity. Clause 10 thereof deals with the complaints procedure and provides that if a disabled person or person with reduced mobility considers that this CAR has been infringed, he or she may bring the matter to the attention of the managing body of airlines, airport or other concerned authorities, as the case may be. CAR dated 22 May 2008 is issued on the subject of 'Refund of Airline Tickets to Passengers of Public Transport Undertakings'. CAR dated 6 August 2010 (effective 15 August 2010, revised 14 January 2011) is on the subject of 'Facilities to be provided to passengers by airlines due to denied boarding, cancellation of flights and delays in flights'. Clause 3.7 covers passenger redressal and provides that when affected by denied boarding, a cancellation or a long delay, the passenger may complain directly to the airline. If the airline has not provided compensation or reasonable facilities as listed in clauses 3.5 and 3.6, or if an airline fails to fulfil its obligations, passengers may complain to the statutory bodies set up under the relevant law.

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

Rule 50 of schedule III to the Carriage by Air Act, 1972 provides that state parties shall require their carriers to maintain adequate insurance covering their liability under the provisions of these rules. A carrier may be required to furnish evidence that it maintains adequate insurance covering its liability under the provisions of these Rules.

CAR dated 1 June 2010 under section 3 – Air Transport, series 'C' part III, issue II lists the minimum requirements for grant of permit to operate non-scheduled air transport services. CAR dated 26 August 1997 (revised 21 May 2009) under section 3 – Air Transport, series 'C' part IV lists the minimum requirements for grant of permit and operation of air transport cargo services. This CAR, in clause 7, provides that the application for issue of an operating permit shall contain information on a current comprehensive insurance policy covering passengers and their baggage, crew, third-party risks, hull loss, and any other conditions that may be specified by the DGCA. Clause 10.12 thereof provides that the operator shall maintain a current insurance for an amount adequate to cover its liability towards passengers and their baggage, crew, cargo, hull loss and third-party risks in compliance with the requirements of the Carriage by Air Act, 1972, or any other applicable law.

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

Section 5A of the Aircraft Act, 1934 provides that the DGCA or any other officer specially empowered by the central government, may issue directions, etc in any case where the DGCA or such other officer is satisfied that in the interests of the security of India or for securing the safety of aircraft operations it is necessary so to do.

The central government has created the Aircraft (Security) Rules, 2011. Part II thereof deals with security measures at aerodromes, part V deals with security measures by aircraft operators and part VII covers security accidents and incidents.

Aviation security comes under the purview of the Bureau of Civil Aviation Security (BCAS), which issues AVSEC (aviation security) orders and circulars. It lays down aviation security standards in accordance with annex 17 to the Chicago Convention of the ICAO for airport operators, airlines operators, and their security agencies responsible for implementing AVSEC measures; the BCAS monitors implementation of security rules and regulations and carries out surveys of security needs; it ensures that persons implementing security controls are appropriately trained and possess all competencies required to perform their duties; it plans and coordinates aviation security matters; and conducts surprise/dummy checks to test professional efficiency and the alertness of security staff as well as mock exercises to test the efficacy of contingency plans and operational preparedness of the various agencies. The BCAS has prepared a national aviation security programme for airport operators, airline operators and their security agencies. The commissioner of security of the BCAS is responsible for the development, implementation and maintenance of the national civil aviation security programme.

42 What serious crimes exist with regard to aviation?

Crimes with regard to aviation (hijacking; committing an act of violence onboard an aircraft in flight; destruction of, or damage to, air navigation facilities; offence at airports, etc) are provided for in the Anti-Hijacking Act, 1982 along with the Anti-Hijacking (Amendment) Act, 1994 and the Suppression of Unlawful Acts against Safety of Civil Aviation Act, 1992 along with the Suppression of Unlawful Acts against Safety of Civil Aviation (Amendment) Act, 1994. Other crimes include human and drug trafficking, inappropriate behaviour onboard an aircraft, carrying of prohibited goods, etc for which the general criminal laws apply.

Note, the above information applies as of 10 September 2013.



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