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AIR TRANSPORT

India

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Air Transport

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REGULATORY FRAMEWORK

Regulators and primary legislation

Which bodies regulate aviation in your country? Under what basic laws?

The principal regulatory body for civil aviation in India is the Directorate General of Civil Aviation (DGCA), led 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 and issues licences to aerodromes and air carriers, monitors licensing of personnel (pilots, aircraft maintenance engineers, etc) and flight crew standards, renders advice to the government of India on bilateral air services agreements and technical matters relating to civil aviation; investigates air accidents and incidents and provides technical assistance to the courts and committees of inquiry. The DGCA coordinates regulatory functions with the International Civil Aviation Organization.

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 and ground handling agents) under the provisions of Rule 133A of the Aircraft Rules of 1937 (updated in 2022). There are 14 regional airworthiness offices and five regional air safety offices of the DGCA.

The Aircraft (Amendment) Act of 2020 (the Amendment Act) came into force on 19 September 2020. It granted statutory and independent status to three existing agencies, namely the DGCA, the Bureau of Civil Aviation Security (BCAS) and the Aircraft Accidents Investigation Bureau. The Amendment Act increases the central government's powers of supervision and control over the aforementioned agencies, and has increased the maximum ceiling of penalties. The Amendment Act also now provides for the appointment of certain designated officers to adjudicate and compound penalties.

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

- the Aircraft Act 1934 (as amended and updated in 2020), empowers the federal government to make rules for regulating the manufacture, possession, sale, use, operation, export, import and safety of all civil aircraft;
- the Aircraft Rules of 1937 (as amended and updated in 2022), provide for the parameters for determining airworthiness, maintenance of aircraft, general conditions for flying and safety, registration of aircraft, aerodromes, air transport services, regulatory provisions, etc.;
- the Indian Aircraft Rules of 1920 (Part IX);
- the Aircraft (Public Health) Rules of 1954, along with its notifications;
- the Carriage by Air Act of 1972, which implements the Warsaw Convention, the Hague Protocol and the Montreal Convention of 1999 relating to passenger rights, limits of liability, etc;
- the Tokyo Convention Act of 1975, gives effect to the Convention on offences and certain other acts committed on board aircraft, 1963;
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the Anti-Hijacking Act of 2016, enacted to enforce the Hague Convention for the Suppression of Unlawful Seizure of Aircraft and the Beijing Protocol Supplementary to the Convention;

- the Suppression of Unlawful Acts against Safety of Civil Aviation Act of 1982, along with the Suppression of Unlawful Acts against Safety of Civil Aviation (Amendment) Act of 1994;
- the Airports Authority of India Act of 1994;
- the Air Corporations (Transfer of Undertakings and Repeal) Act 1994;
- the Aircraft (Demolition of Obstructions caused by Buildings and Trees, etc) Rules of 1994 (as amended by GSR No. 202(E), dated 20 September 2007);
- the Aircraft (Carriage of Dangerous Goods) Rules of 2003 (amended in 2022);
- the Airports Economic Regulatory Authority of India Act of 2008;
- the Aircraft (Security) Rules of 2023; and
- the Aircraft (Investigation of Accidents and Incidents) Rules of 2017 as amended by the Aircraft (Investigation of Accidents and Incidents) (Amendment) Rules 2022.

The Ministry of Civil Aviation (MoCA) is the nodal 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.

The Airports Authority of India Act resulted in the Airports Authority of India (AAI) 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, parallel taxiways, apron, etc; provisions for communication, navigation and surveillance; air traffic services; and passenger facilities and related amenities.

The Airports Economic Regulatory Authority (AERA) was constituted under the Airports Economic Regulatory Authority of India Act of 2008 and was established in 2009. The AERA is a statutory body that determines tariffs for aeronautical services, the amount of the development fees in respect of major airports and passenger service fees. It monitors standards relating to quality, continuity and reliability of services, etc. Since its establishment, the AERA has decided tariffs, charges for aeronautical services and it has periodically issued appropriate directions under the Act.

Law stated - 20 November 2023

AVIATION OPERATIONS

Safety regulations

How is air transport regulated in terms of safety?

The Directorate General of Civil Aviation (DGCA) is responsible for safety regulations and is the recognised authority under the Aircraft Act of 1934 and under the Aircraft Rules of

1937 as the relevant regulatory authority for civil aviation. Section 4A(2) of the Aircraft Act empowers the Director General to perform safety oversight and regulatory functions in respect of matters specified in the Act or the Rules. The DGCA has special powers to issue directions and to prescribe the necessary safety requirements, the oversight of which is the responsibility of the DGCA. The Aircraft Rules, in Part III, deal with general safety conditions, and under Rule 133A, the Director General can issue civil aviation requirements (CARs) relating to the operation, manufacture, 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 of 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 Bureau of Civil Aviation Security (BCAS). Although the two regulators function under the Ministry of Civil Aviation (MoCA), they are housed at different locations in Delhi and operate fairly independently. India follows the International Civil Aviation Organization (ICAO) guidelines on safety and has a state safety programme under the Chicago Convention (ICAO 9859). The safety rules have been increasingly refined and revised since 1980 and are now updated quite regularly. The Aircraft Rules were amended (in April 2022) to ensure that all aircraft operators and aerodrome operators, air traffic service providers, maintenance organisation under Rule 133B, training organisation under Rule 41B, etc, were mandatorily required to establish and maintain a safety management system (SMS). They were also required to prepare an SMS manual in the form and manner prescribed by the DGCA, and submit it for acceptance. The rules now provide for the DGCA's officers to oversee the SMS. There is a CAR dated 24 March 2022 on the establishment of an SMS. This CAR specifies the minimum acceptable requirements for the establishment of an SMS by a service provider. 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 have it approved by 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 and incident prevention programme. Appendix A to the CAR contains 'Guidance Material for Preparation of 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. An SSP and SMS Division was established in the DGCA in 2010 to manage the SSP and ensure implementation of all requirements. After the introduction of the SSP and SMS, a regulatory framework was also established. SMSs are established in terms of Rule 29D of the Aircraft Rules. The SSP is mentioned in the National Civil Aviation Policy of 2016. There is a National Aviation Safety Plan 2018–2022, which incorporates the Global Safety Priorities contained in the Global Aviation Safety Plan and the Regional Safety Plan of the Regional Aviation Safety Group-Asia Pacific.

The DGCA, through relevant officers, carries out station facility inspection, cockpit en route inspection, cabin inspection, air operator pilot proficiency checks, main base inspection and air operator ramp inspection as well as general airworthiness of each aircraft.

Various statutory and regulatory provisions – beginning with the Aircraft Act of 1934, the Aircraft Rules of 1937, CARs, air transport advisory circulars and aeronautical information

circulars (AIC) – 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. If the operator intends to employ foreign pilots and engineers for a specified period, specific approval of the competent authority must be obtained.

Every operator must have a chief of flight safety approved by the DGCA for ensuring compliance of all operational requirements and be responsible for the implementation of policies laid down in the flight safety manual 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.

On 12 April 2023, the FAA informed the DGCA that India had complied with the Chicago Convention's aviation safety oversight standards. India retains its Category 1 status, which is important, particularly for airlines that operate flights to the US. In a recent ICAO audit, India's Effective Implementation (EI) score significantly increased from 69.95 per cent to 85.65 per cent, improving its global ranking. The audit covered aircraft operations, airworthiness, and personnel licensing.

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

Law stated - 20 November 2023

Safety regulations

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

Access to the market for the provision of air transport services is regulated under Parts XIIB and XIII of the Aircraft Rules of 1937. Rule 134 introduces the requirements for an operating permit to be issued by the central government in relation to a scheduled air transport service from, to, in or across India. Similarly, under Rule 134A(4), an application may be made for grant of a non-scheduled operator's permit valid for up to five years. Access to the Indian market is regulated by Schedule XI to the Aircraft Rules setting out the requirements for operating 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 for issuance of a no-objection certificate (NOC), prior to making an application to the DGCA, considering the financial soundness of the applicant, operational plan, clearance from a security angle of the applicant organisation including its directors, and any other factor that may have a bearing on the proposed air transport services from a policy angle. 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 DGCA issued a CAR on 19 April 2022, which sets out 'Minimum Requirements for Grant of Air Operator Certificate to Operate Scheduled Air Transport Services (Passenger)'. The relevant CAR specifies minimum capitalisation, a requirement of a minimum number of aircraft, maintenance engineers, flight crew and cabin crew requirements, etc, and refers to various approvals needed before an initial NOC is granted, actions to be completed before acquisition of aircraft and airworthiness requirements, operational requirements, etc. The CAR expressly provides that the requirements are complementary to ICAO Annex 6, Parts I & III.

It is possible to see some of the CAR requirements and the discretion granted to the DGCA with regard to the above-mentioned factors operating as non-tariff barriers that could limit access to the market, but India has not made specific World Trade Organization 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. Nationality requirements are also relevant, covering the procedures for deciding applications, which are now decided by a standing committee on behalf of the DGCA.

Law stated - 20 November 2023

Market access

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

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Law stated - 20 November 2023

Ownership and control

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

As per the CAR, dated 19 April 2022 (revised on 12 June 2023) under section 3 – Air Transport (series C, Part II), a scheduled operator's permit can only be granted to the following:

- 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 chairperson and at least two-thirds of its directors are citizens of India; and
    - its substantial ownership and effective control are vested in Indian nationals.

Schedule XI to the Aircraft Rules of 1937 pertains to the 'Grant of Air Operator Certificate to Operate Scheduled Air Transport Services'. A similar CAR dated 1 June 2010 (revised on 21 May 2021) contains the requirements for a non-scheduled operator's permit.

Clause 3.2 of the CAR dated 19 April 2022 provides that before the scheduled operator's permit is issued, an applicant shall have paid-up capital as follows:

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

A certificate indicating the paid-up capital issued by a chartered accountant and countersigned by the company secretary or the CMD/MD is to be submitted. Full equity shall be available with the company at the time of the NOC from the MoCA.

The FDI policy of the government of India permits foreign investment of up to 49 per cent under the 'automatic route' for scheduled air transport services or domestic scheduled passenger airline and regional air transport services. In 2017, the central government decided to raise this limit to 100 per cent, with FDI of up to 49 per cent permitted under the automatic route and FDI beyond 49 per cent through express government approval. The Consolidated FDI Policy Circular of 2020 effective from 15 October 2020 allows 100 per cent FDI under the automatic route for non-resident Indians (NRI).

The DGCA has regulated non-scheduled air transport services through another CAR, dated 1 June 2010 (revised on 21 May 2021) setting out the same minimum nationality requirements as listed above for CAR dated 19 April 2022. Guidelines in the (2021 amended) CAR permit FDI of up to 74 per cent (100 per cent for NRIs), but again the majority of directors on the board are required to be Indian citizens and, if the positions of chairperson, managing director, CEO or CFO are held by foreign nationals, they must be security vetted by the Ministry of Home Affairs. This CAR, in the case of helicopter and seaplane services, allows FDI up to 100 per cent, provided the same requirements regarding the board of directors are met.

Law stated - 20 November 2023

Licensing

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

Rules 134 and 134A of the Aircraft Rules of 1937 provide that permission of the central government is required to operate scheduled and non-scheduled air transport services. Rule 134B also requires an authorisation or a valid non-scheduled operator's permit for undertaking any aerial work. Application fees are prescribed for scheduled and non-scheduled operator permits. For this purpose, the DGCA has issued various CARs. The CAR dated 19 April 2022 under section 3 – Air Transport (series C, Part II) lists out the 'Minimum requirements for Grant of Air Operator Certificate to Operate Scheduled Air Transport Services (Passenger).' The 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 25 January 2017) 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.

As per CAP 3100 – the Air Operator Certification Manual – the application for an air operator certificate (AOC) must be prepared in accordance with requirements prescribed in Appendix A of the manual. The manual has separate chapters on the 'Initial Issue of an AOC' and the 'Certification Process'.

Law stated - 20 November 2023

Licensing

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

Various CARs set out the procedure for applications for the necessary permits. As per CAP 3100, for applicants of scheduled air operators permit, the permission is subject to obtaining in-principle approval from the MoCA. 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, including:

> the need for the services in the proposed area keeping in view the existing services, airport capacity and constraints at the proposed 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 arrangement 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) the grant of the initial NOC after security clearance if the requirements are satisfied and subject to such 'conditions as may be considered necessary'. For international flights, the licence to operate a route depends on the bilateral agreement.

It is possible for 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.

Law stated - 20 November 2023

Competition policy

Is there a declared policy on airline access or competition? 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 and the merged entity was privatized in 2022. 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. The DGCA in 2020 made changes to India's Open Sky Policy by limiting non-scheduled and ad-hoc cargo flights by foreign carriers to six airports, namely Delhi, Mumbai, Chennai, Kolkata, Hyderabad and Bengaluru. India's improved pro-competition and free market access approach has also been bolstered by the 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 of

2002, there have been several permitted or accepted airline mergers. 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, but the DGCA has been involved in various airline company investments in 2013–14, such as the Etihad acquisition of equity in Jet Airways. 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'. That the government is 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 of the civil aviation sector in India. The committee 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 officers of the Indian government. It was chaired by the secretary of the MoCA with the DGCA as a member. Air India can no longer receive preferential treatment as the National Carrier, its sale by the State to the Tata group in 2022 converts it into an ordinary private airline.

Law stated - 20 November 2023

Requirements for foreign carriers

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

The DGCA issued AIC No. 09, dated 12 June 2020 (superseding AIC No. 16/2019 dated 2 August 2019), on the 'Requirements for grant of Operating Authorisation to Foreign Airlines under Bilateral Air Services Agreements'. This AIC requires designation of the foreign airline and grant of the appropriate operating authorisation subject to the following conditions:

1. substantial ownership and effective control of that airline are vested in the Party designating the airline or its nationals;
2. the designated airline is qualified to meet conditions prescribed under the laws and regulations normally applied to operation of international air services; and
3. the Party designating the airline is maintaining and administering the standards with regard to safety and aviation security set forth in the bilateral ASA.

The designated airline must ensure and demonstrate continued compliance with the conditions of operating authorisation, and the provisions of the bilateral ASA must be complied with alongside other requirements set out in the AIC.

The airline must be officially designated by the government of the country of the airline in accordance with the bilateral ASA. Information and documentation must be provided as per appendices A and B of the AIC.

The operating authorisation may be revoked or suspended, or made subject to additional conditions or limitations if the above conditions (a to c above) have been breached.

For code-share arrangements that are recognised in the relevant bilateral ASA, one of the designated airlines performs the agreed services as the operating airline while the other airline operates as a marketing airline. Pursuant to AIC 09 of 2020, both the operating and marketing airlines are required to obtain operating authorisation under the respective ASAs and furnish the requisite information and documents. Marketing airlines are only exempt from providing the operations manual, fleet details and approval of the security programme. The AIC also calls for coordination of slots, filing of schedules and general compliance with the conditions of the operating authorisation and the bilateral ASA terms.

The airline must be formally designated through diplomatic channels, and thereafter, the aeronautical authority of India (the DGCA) grants the appropriate operating authorisation, subject to the conditions provided therein. Several documents must be filed before an operating authorisation 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 country designating the airline, an operations manual approved by the competent authority of the home state, details of the fleet, a detailed security programme and approval granted to it by the BCAS, undertaking by the CEO of the airline that Indian laws, rules, regulations and requirements shall be complied with by the designated airline, 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 approved at least 30 days prior to commencement of the proposed air services.

After the above-mentioned process is completed, a carrier engaged in international operations must ensure that all its employees comply with the laws, regulations and procedures pertinent to the performance of their duties. The operator must have all necessary operational documents and publications such as an Operations Manual, CARs, AICs, notices to airmen, 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 the safety of operations, investigation of occurrences, implementation of safety recommendations, accident or incident prevention programmes and safety enhancement measures as per the requirements laid down by the DGCA and the BCAS. The carrier is required to have computerised systems to analyse digital flight data recorders and solid-state flight data recorders, to record data of all flights to determine exceedance in flight operations, and to ensure compliance with operating procedures.

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.

In 2014, IndiGo, Jet Airways, SpiceJet and GoAir asked the aviation regulator to deny an airline permit to Tata SIA Airlines Ltd, a joint venture between the Tata group and Singapore Airlines, complaining that substantive and effective control (of Tata-SIA) did not vest in Indian hands, that the mandate of Schedule XI to the Aircraft Rules of 1937 (related to minimum airworthiness, operations and other general requirements for grant of air permit) was not being satisfied and that foreign airlines are not entitled to use sensitive airports. The DGCA eventually approved the Tata–SIA proposal after imposing conditions and upon being satisfied that control remains with the Tatas and that the other compliance requirements were met.

Law stated - 20 November 2023

Public service obligations

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 north-eastern region and the states of Jammu and Kashmir, Andaman and Nicobar Islands, and the Lakshadweep Islands.

It was thus made 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:

1. on category II routes, at least 10 per cent of the capacity deployed on category I routes (trunk routes). Further, at least 10 per cent of the capacity thus required to be deployed on category II routes is required to be deployed for connectivity exclusively within these regions;
2. on category IIA routes, at least 10 per cent of the capacity deployed on category II routes; and
3. on category III routes, at least 50 per cent of the capacity deployed on category I routes.

The route dispersal guidelines were sought to be rationalised as per the NCAP 2016. On 8 August 2016, the MoCA came out with an order revising the route dispersal guidelines (RDG) in compliance with the NCAP 2016. As per the order, effective from the winter schedule of 2017, anyone who operates scheduled air transport services on one or more of the routes under category I has been required to provide such services in categories II, IIA and III as follows subject to (a) and (b) above, but (c) has been modified to 'at least 35% in Category-III routes of the capacity deployed on Category-I routes'. As per a March 2022 press release from the MoCA through the Press Information Bureau, all operators are required to deploy at least 1 per cent in Category-II A routes of the capacity, deployed on Category-I routes.

The order further provides that withdrawal or revision of the domestic operations to and within the northeast region, island territories and Ladakh, subject to full compliance with RDG, can be done under prior intimation to the MoCA and the DGCA at least three months before the withdrawal or revision of the service. Routes under different categories are required to be reviewed by the MoCA once every five years from the year of issuance of the RDG or as and when required on a need basis. Capacity deployed is reckoned in available seat kilometres.

A CAR dated 9 December 2016 (revised on 5 October 2018) under section 3 – Air Transport on 'Requirements for grant of Air Operator Certificate for Scheduled Commuter Air Transport Services' defines a scheduled commuter air transport service as an air transport service undertaken between two or more places or routes (except on category I routes), 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.

As per a press release of 11 November 2016 from the MoCA through the Press Information Bureau, the amount collected as regional connectivity fund (RCF) is mandated to be used to stimulate growth and development in the civil aviation sector. The objective of the 'Allowing the Common Man to Fly' scheme (the UDAN Scheme) is to enhance air passenger traffic in India by stimulating demand on regional routes. The amount collected as RCF will be used to provide financial support to airlines in the form of viability gap funding for operations under the UDAN Scheme.

In accordance with the directions of the MoCA, the RCF funding will come from small levies, per departure, on all domestic flights, with the exception of flights on categories II or IIA routes under the RDG, Regional Connectivity Scheme routes and aircraft with a maximum certified take-off mass of less than 40,000kg. A part of the fund will also be contributed to by the states that have signed the UDAN Scheme memorandum of understanding: as of the date of the Press Release, 19 states have either signed or given their consent to the UDAN Scheme. National scheduled airlines providing services on domestic routes, where such fee per departure is levied, would also be eligible under the UDAN Scheme to avail the benefits. Similarly, the passengers would also benefit from additional connectivity on regional routes at prices that are on par with, or below, the airfare caps.

The MoCA issued Order No. AV13030/34/2012-DT on 4 March 2014, which provides for the requirements under which services are to be operated in different regions and remote areas of the country. As per this order, it is mandatory for all scheduled airlines to operate at least 6 per cent of their total domestic operating capacity to airports in remote or strategic areas. Further, it is now mandatory for all India-based airlines to operate at least 1 per cent of their total operating capacity on sectors or routes to airports in the northeastern region (with the exception of Guwahati and Bagdogra), airports in the Jammu and Kashmir region (with the exception of Jammu) and airports in the Andaman & Nicobar Islands and to the Lakshadweep islands. For the purpose of this calculation and for internal connectivity, operations to and from Guwahati, Bagdogra, Jammu, and the Andaman and Nicobar Islands are also to be included.

Law stated - 20 November 2023

Charter services

How are charter services specifically regulated?

A CAR dated 7 December 2017, effective 15 December 2017, issued under section 3, Air Transport (series F, Part I), deals with the 'Requirements for Issue of Non-Scheduled Flight Clearances and Enrolment of a Flight Clearing Agency'. This CAR is applicable to an agency obtaining flight clearances including tour operators; government agencies including state governments; foreign aircraft operators; agencies undertaking aerial photography, geophysical surveys, cloud seeding, etc; and Indian aircraft operators.

The government may liberalise international charter operations as per the NCAP 2016.

Law stated - 20 November 2023

Regulation of airfares

How are airfares regulated?

Rule 135 of the Aircraft Rules of 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 no longer required, the DGCA has the power under sub-rule (4) to intervene in cases where it is satisfied that any air transport undertaking has established excessive or predatory tariffs or has indulged in an oligopolistic practice. Rule 135 has been amended by gazette notification GSR 254(E), dated 16 April 2009 pursuant to which the DGCA came out with Circular No. 9/9/2009-IR dated 11 May 2009 and 22 June 2009. This notification provides that all airlines operating scheduled air services (domestic as well as international) to, from or within India are required to amend their respective websites and advise their travel agents to display tariffs in a conspicuous manner to show the total amount payable by a passenger and a complete break-up of the total amount 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 of 1937 as part of the airfare. This circular became the subject of a Supreme Court of India case and resulted in directions of the Supreme Court in February 2013. This eventually resulted in a further government order, dated 16 September 2013, which provides that the terms 'commission', 'transaction fees', 'convenience fees' or any other similar terms are to be treated as 'commission' mentioned in Rule 135 of the Aircraft Rules of 1937 as a part of the tariff to be determined by the airlines and 'no amount will be collected from the consumers over and above this'.

Law stated - 20 November 2023

Drones

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

On 25 August 2021, MoCA notified The Drone Rules, 2021. The same have been amended by the Drone (Amendment) Rules, 2022. The Drone Rules apply to: all persons owning or possessing, or engaged in leasing, operating, transferring or maintaining an unmanned

aircraft system in India; all unmanned aircraft systems that are registered in India; and all unmanned aircraft systems that are being operated for the time being, in or over India. These Rules do not apply to an unmanned aircraft system (UAS) belonging to, or used by, the Navy, Military or Indian Air Force. As per Rule 4, the UASs are categorised as aeroplane; rotorcraft; and hybrid unmanned aircraft system, which are further sub-categorised as remotely piloted aircraft system; model remotely piloted aircraft system; and autonomous unmanned aircraft system. The UAS, as per Rule 5, are classified as:

- nano: weighing less than or equal to 250gm;
- micro: weighing more than 250gm, but less than or equal to 2kg;
- small: weighing more than 2kg, but less than or equal to 25kg;
- medium: weighing more than 25kg, but less than or equal to 150kg; and
- large: weighing more than 150kg.

No person shall operate a UAS in India unless the UAS conforms to a type certificate (in terms of Rule 8) or is exempt from such requirement. No type certificate is required for manufacturing or importing UAS, operating a model remotely piloted aircraft system and operating a nano UAS. Rule 12 specifies the safety features to be installed on a UAS such as 'No Permission – No Takeoff' hardware and firmware; real-time tracking beacon that communicates the UAS's location, altitude, speed and unique identification number; and geo-fencing capability.

Rule 14 provides for registration that has to be done on the digital sky platform (defined in Rule 3(1)(g) as an online platform hosted by the DGCA for various activities related to the management of UAS activities in India) and obtaining a unique identification number/UIN, unless exempt from the requirement of UIN. The DGCA shall maintain the registration record. Every person operating a UAS is mandated to ensure that the UAS conforms to a valid type certificate. The digital sky platform shall contain an airspace map for UAS operations segregating the entire Indian airspace into red, yellow and green zones with a horizontal resolution equal or finer than 10m. Prior permission is required for operating UAS in a red or yellow zone. Rule 27 prohibits the carrying of arms, ammunition, explosives, military stores, etc, on UAS except with the central government's written permission. Rule 28 prohibits carriage of dangerous goods unless it is in compliance with the Aircraft (Carriage of Dangerous Goods) Rules 2003.

Rule 29 prescribes that a person operating UAS shall not violate the right of way of a manned aircraft and shall remain clear of all manned aircrafts. Rule 30 mandates the remote pilot of a UAS to report to the DGCA through the digital sky platform, any accident involving a UAS within 48 hours. Only a holder of a valid remote pilot certificate enlisted on the digital sky platform shall operate a UAS. The certificate is valid for 10 years and renewable for maximum period of 10 years upon payment of the fees as per Rule 46. The holder is required to undergo refresher courses as specified by the DGCA on the digital sky platform from time-to-time. Operating a Nano UAS and a Micro UAS for non-commercial purposes does not require a remote pilot certificate. A Nano UAS may operate without third party insurance. For all other UAS (including micro UAS weighing 250g to 2kg), the Motor Vehicles Act and Rules apply mutatis mutandis for third party insurance and compensation for damage to life or property caused by the UAS. Rule 50 provides the maximum penalty (100,000 rupees) for contravention or failure to comply with the provisions of the Drone Rules.

Law stated - 20 November 2023

AIRCRAFT

Aircraft register

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

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

Rule 30(2) of the Aircraft Rules of 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:

1.
    1. by citizens of India;
    2. by a company or corporation registered and having its principal place of business within India;
    3. by the central government or any state government or any company or corporation owned or controlled by either of the said governments; or
    4. 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 (1), (2) or (3); or

- category B, where the aircraft is wholly owned either:

1.
    1. by persons resident in or carrying on business in India, who are not citizens of India; or
    2. 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 is 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.

Law stated - 20 November 2023

Mortgage register

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

In a civil aviation requirement (CAR) dated 10 September 1998 (revised 24 August 2023), under section 2 - Airworthiness (series F, Part I) on 'Registration/ Deregistration of Aircraft' it is provided that an owner or his or her authorised representative may apply for registration of an aircraft in the prescribed form complete with the requisite documents, at least five working days (for aircraft on outright purchase) and 10 working days (for aircraft on lease), before the expected date of issue of a certificate of registration. Where the aircraft has been mortgaged or hypothecated, the owner or operator shall submit his or her consent for the same and the papers to this effect. Such a mortgage or hypothecation shall be endorsed on the certificate of registration.

Chapter VI of the Companies Act of 2013 deals with the registration of charges. Section 2(16) provides that 'charge' includes a mortgage. Section 77 provides that every company is required to register the particulars of the charge signed by the company and the charge holder, together with the instrument by which the charge is created, in the prescribed form and on payment of the prescribed fees, with the registrar for registration as required by the Companies Act within 30 days of the date of creation of the said charge. Section 81 provides that the registrar shall keep a register containing the particulars of the charges registered under this chapter in such form and manner as may be prescribed. Section 85 requires every company to keep a register of charges and a copy of every instrument creating a charge requiring registration, at its registered office.

Law stated - 20 November 2023

Detention

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 of 1934 empowers any authority authorised by the central government to detain any aircraft if, in its opinion, the following applies:

- the flight of such aircraft would endanger persons in the aircraft or any other persons or property;
- such detention is necessary to secure compliance with the provisions of the Aircraft Act or the rules applicable to such aircraft;
- such detention is necessary to prevent a contravention of any rule made under 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) or 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 a CAR dated 10 September 1998 (revised 24 August 2023) under section 2 - Airworthiness (series F, Part I) on 'Registration/ Deregistration of Aircraft', it is provided that the registration of an aircraft registered in India may be cancelled at any time by the Directorate General of Civil Aviation (DGCA), if it is satisfied that at least one of the following applies:

- such registration is not in conformity with paragraph 3.1 of that 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, or 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 case of a dispute regarding termination of an aircraft lease agreement, action can be taken under section 8(1)(b) of the Aircraft Act of 1934 for detention of an aircraft to implement a court order.

Law stated - 20 November 2023

Maintenance

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

Rule 60(2)(a) of the Aircraft Rules of 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 the 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 of 1937.

Part XIIIA of the Aircraft Rules of 1937 deals with engineering, inspection and manual requirements for owners or operators. As per Rule 154(a), '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, certification and continuing airworthiness management. As per Rule 154(b), 'manual' refers to 'Operators' Continuing Airworthiness Management Exposition' or 'Quality Manual' or any other manual covering such requirements as the case may be.

CAR-M and CAR-145 contain requirements regarding the maintenance of aircraft, inspections, etc. CAR-M and CAR-145 were amended on 12 June 2020 to be compatible with the latest European Union Aviation Safety Agency (EASA) regulations Part 145 and EASA

Part M. They were then amended on 15 June 2021 to include the United Kingdom's Civil Aviation Authority Form 1. Rule 133B specifies conditions for approval of an organisation as an 'approved organisation' for one or more of the specified activities that include design and manufacture of aircraft, components or parts and items of equipment, maintenance, repair, overhaul, training organisations, laboratories, etc. Rule 133BA(1) provides that the DGCA may accept a foreign approved organisation for maintenance of aircraft, engine and components or training, in accordance with requirements specified by the DGCA in this behalf. Such acceptance shall remain valid for a period of two years as per Rule 133BA(2), it may be renewed for a further period of two years at a time. Rule 133BA(3) gives power to the DGCA after making enquiry and after issuing a show cause notice to cancel, suspend or endorse any acceptance or issue a warning or an admonition to the said organisation in the event of certain specified conditions.

Law stated - 20 November 2023

AIRPORTS

Ownership
Who owns the airports?

The International Airports Authority of India (IAAI) was constituted as an autonomous body under the International Airports Authority Act of 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 the 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 of 1985. Eventually, the IAAI and the NAA were merged into what is now known as the Airports Authority of India (AAI).

In 2006, the AAI entered into two separate agreements for the operation, management and development of the Delhi and Mumbai airports. Both airports were expanded and modernised and are now managed by Delhi International Airport Pvt Limited and Mumbai International Airport Pvt Limited, 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). Nearly half of India's domestic air travel originates from either Delhi or Mumbai. According to a MoCA PIB release in May 2023, the number of domestic passengers marked a substantial annual growth of 42.85 per cent compared to the corresponding period of the previous year and the MoM growth rate between April 2022 and April 2023 increased by 22.18 per cent. As per the DGCA monthly statement, for April 2023, international passenger traffic for Indian carriers was 20 per cent higher than the pre-Covid (April 2019) levels. As per the 2023 Air Traffic Report-June 2023 by the AAI, the International aircraft movements, domestic aircraft movements and total aircraft movements increased by 25.2 per cent, 3.6 per cent and 6.4 per cent respectively during (April–June) 2023–24 as compared to (April–June) 2022–23.

Law stated - 20 November 2023

Licensing

What system is there for the licensing of airports?

'Airport' is defined in section 2(b) of the Airports Authority of India Act of 1994 and includes 'aerodrome' as defined in section 2(2) of the Aircraft Act of 1934. Part XI of the Aircraft Rules of 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 be approved by the DGCA for such purpose. Sub-rule (2) provides that an aerodrome shall be licensed by the central government for public or private use.

Rule 79 provides that a licence for an aerodrome shall only be granted to:

- a citizen of India; or
- a company or body corporate, provided that:
    - it is registered and has its principal place of business in India;
    - it meets the equity-holding criteria specified by the central government from time to time;
- the central government or a state government or any company or any corporation owned or controlled by either of them; or
- 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 in the form as specified by 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). Additional information or evidence may also be required by the DGCA. Rule 81(3) provides that a copy of the aerodrome manual, or such part as may be specified by the DGCA, shall be made available by the licensee to all units of the aerodrome. Rule 82 deals with inspection and Rule 83 covers the conditions governing the grant of a licence. As per Rule 84, an aerodrome licence may be granted for a period not exceeding five 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. As per Rule 88A, the central government, or any authority designated by it, may levy and collect aviation security fees on embarking passengers, cargo transported out of an airport, departing general aviation private aircraft, chartered aircraft operations and any other dedicated civil aviation operations. The relevant fees are treated as a tariff for aeronautical services. An Aerodrome Advisory Circular dated 14 September 2006 contains 'Guidelines for preparation & maintenance of Aerodrome Manual'. This Circular provides details of the contents to be incorporated into the aerodrome manual and provides guidelines to be followed by the aerodrome operator while preparing the aerodrome manual and procedures for maintenance.

Law stated - 20 November 2023

Economic regulation

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

Since 2009, there has been an independent economic regulator – the Airports Economic Regulatory Authority (AERA) – regulating tariffs and other charges for 'aeronautical services' and monitoring performance standards of airports. The AERA Act of 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 1(3)). As per section 2(i) of the AERA Act, 'major airport' means any airport that has, or is designated to have, annual passenger traffic in excess of 1.5 million (amended to 3.5 million in 2019) or such other airport as the central government may, by notification, specify as such. Section 13(1) of the AERA Act sets out the functions of AERA in respect of major airports as follows:

> (21) to determine the tariff for aeronautical services, taking into consideration the specified factors; (b) to determine the amount of the development fees; (c) to determine the amount of the passenger service fees; (d) to monitor set performance standards relating to quality, continuity and reliability of service as specified by the central government or any authority authorised by it; (e) to call for such information as may be necessary to determine the tariff under clause (a); and (f) to perform such other functions relating to tariff as may be entrusted to it by the central government or as may be necessary to carry out the provisions of the Act.

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 public interest'. Section 17 provides for the establishment and powers of the Airports Economic Regulatory Authority Appellate Tribunal to adjudicate disputes and dispose of appeals, which was established in early 2010. As per the Finance Act of 2017, the AERA Appellate Tribunal and the Cyber Appellate Tribunal (established under the Information Technology Act of 2000) have been merged with the Telecom Disputes Settlement and Appellate Tribunal (TDSAT), set up under section 14 of the Telecom Regulatory Authority of India (TRAI) Act of 1997 as amended by the TRAI (Amendment) Act of 2000. Accordingly, the TDSAT exercises original as well as appellate jurisdiction regarding airport tariff matters.

The AERA (Amendment) Act of 2019 received the assent of the President on 6 August 2019. The AERA (Amendment) Act amends the definition of 'major airport' in section 2(i) of the AERA Act of 2008 as one having or designated to have annual passenger traffic in excess of 3.5 million. Section 13(1A) was also added, which provides that the AERA will not determine the tariff, tariff structures or the amount of the development fees in respect of an airport or part thereof, if such tariff or tariff structures or the amount of development fees has been incorporated in the bidding document that awards operatorship of that airport. There is also a proviso stating that the AERA shall be consulted in advance regarding the tariff, tariff structures or the amount of the development fees proposed to be incorporated in the bidding document, which shall be notified in the Official Gazette.

Law stated - 20 November 2023

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

Rule 11 of the Aircraft Rules of 1937 deals with aerodromes and provides that no person other than the occupant of an aircraft manoeuvring in accordance with the Aircraft 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'). 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) of the Bureau of Civil Aviation Security (BCAS) or any person authorised by the central government is mandatory. Sub-rule (2) provides that:

> No person shall, without permission in writing, by general or special order, of the Central Government or any officer authorized in this behalf – (a) enter or remain or cause any other person to enter or remain in the Movement area; (b) leave or throw or cause to be thrown any animal, bird or property or object of any nature whatsoever in the Movement area; (c) permit any animal under his possession or control or otherwise to stray in the Movement area; and (d) 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. Rule 90(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) of the BCAS or any person authorised by the central government. Rule 90(4) provides that the officer-in-charge of an aerodrome or any person authorised by the central government may, if he or she 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.

Law stated - 20 November 2023

Slot allocation
How are slots allocated at congested airports?

As per guidelines (revised in May 2013) issued by the Ministry of Civil Aviation (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 at or depart from 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 that can be resolved by voluntary cooperation between airlines; and
- 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 recommendations contained in the latest International Air Transport Association (IATA) Worldwide Slot Guidelines (WSG). The WSG sets a globally adopted standard for efficient slot allocation to optimise the use of severely congested airport infrastructure worldwide.

After leasing the Delhi and Mumbai Airports to joint venture companies (JVCs) and after setting up greenfield airports at Hyderabad and Bangalore by another set of JVCs, the MoCA reviewed the slots allocation procedure and issued a revised procedure by its letter dated 10 September 2007. This revised procedure allows the respective joint venture airport operators of Delhi and Mumbai to allocate slots for these airports, and the Airports Authority of India (AAI) for the other airports. Later, the revised procedures were also made applicable to the other JVCs at Hyderabad and Bangalore. Part VII of these guidelines deals with slot allocation. The revised procedures have been updated from time to time.

Airlines are required to file their slot requests for initial allocation twice each year for the summer and winter seasons with the concerned coordinator of the level 3 airport. The actual deadline for filing this request is as provided for in the IATA WSG Coordination Calendar. As per a civil aviation requirement (CAR) dated 19 April 2022, clause 14.20 provides that 'the operator shall intimate slots and/or flights not operated for a considerable period to DGCA and all concerned agencies every month'.

Law stated - 20 November 2023

Ground handling

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

Rule 92 of the Aircraft Rules of 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 the ground handling service provider should have security clearance from the central government.

BCAS Circular No. 4/2007, dated 19 February 2007, contains instructions on the deployment of ground handling agencies at the airports.

The AAI (Ground Handling Services) Regulations of 2018 provide for ground handling at Indian airports. These regulations are in supersession of the Ministry of Civil Aviation (Ground Handling Services) Regulations of 2017. These Regulations stand amended by the AAI (Ground Handling Services) Amendment Regulations, 2023. Ground handling is defined in Regulation 2(b) as services necessary for an aircraft's arrival at, and departure from, an airport other than air traffic control and it includes:

- ramp handling including activities as specified in Schedule I;
- traffic handling including activities as specified in Schedule II; and
- any other activity specified by the central government from time to time.

Regulation 3 lists the ground handling services at airports and has been amended.

Regulation 3 can be accessed here.

The amended Regulation can be accessed here.

The DGCA has come out with aeronautical information circular (AIC) No.3/2022 dated 25 February 2022 on 'Grant of permission for providing Ground Handling Services at airports other than those belonging to the Airports Authority of India' on similar lines. This AIC, while implementing MoCA Order No. AV-24011/3/2019-AAI-MOCA dated 6 September 2019 and AV-13024/5/2019-AS-MOCA dated 07.01.2020, provides for a stipulated period of 84 months relating to provisions with respect to Air India.

As per the National Civil Aviation Policy of 2016 (NCAP 2016), self-ground handling by airlines will be allowed for operations under the regional connectivity scheme at all airports. Paragraph 19 of the NCAP 2016 deals with ground handling and provides that the existing ground handling policy, instructions and regulations will be replaced by a new framework. Ground handling is also to be included under the Essential Services Maintenance Act of 1968, under which essential services include 'any service connected with the operation or maintenance of aerodromes, or with the operation, repair or maintenance of aircraft'.

Law stated - 20 November 2023

Air traffic control

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

Air traffic service, as per Rule 3(1F) of the Aircraft Rules of 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 Aircraft 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 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 specified licences by the licensing authority and the conditions for grant or renewal of the same. There is also a CAR dated 12 September 2022 on the subject of air traffic services which applies to all Air Navigation Service Providers engaged in the provision of Air Navigation Services in India and for the navigation of aircraft flying in or over India or of aircraft registered in India.

Air traffic service is also defined in section 2(d) of the AAI Act of 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. The Department of Air Traffic Management under the AAI provides air traffic services to all arriving, departing and en-route aircraft over Indian airspace, including the establishment of air routes, realignment of existing air routes in consultation with user airlines and international bodies such as IATA and the International Civil Aviation Organization (ICAO), manpower planning, training and award of ratings to air traffic controllers in conformity with ICAO rules and regulations as set out in Annex I (Personnel Licensing), monitoring of standards and procedures in the provision of Air Traffic Services, etc.

The AAI has drawn up plans to upgrade the air traffic management infrastructure both in terms of conditional provision of automation systems and upgrading of technology. A communication, navigation and surveillance (CNS) planning department deals with planning, procurement and commissioning of CNS facilities and support systems for air navigation.

Law stated - 20 November 2023

LIABILITY AND ACCIDENTS

Passengers, baggage and cargo

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

The relevant statute is the Carriage by Air Act of 1972 (the 1972 Act), 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 1972 Act to such carriage by air, not being international carriage by air, subject to such exceptions, adaptations and modifications as may be specified. The third schedule (the Montreal Convention) applies unchanged (without dilution) for all international carriage of goods and passengers, but the Montreal Convention has been modified for domestic air transport. Pursuant to the said section 8, the Directorate General of Civil Aviation (DGCA) has issued aeronautical information circular (AIC) No. 2/2014, dated 14 February 2014, which refers to a Ministry of Civil Aviation (MoCA) notification of 17 January 2014, whereby the provisions of section 5 of the 1972 Act and the rules contained in the Montreal Convention were made applicable to all carriage by air that is not international carriage subject to several significant exceptions, adaptations and modifications.

For death or bodily injury in a domestic case, the carrier's liability cannot exceed a mere 2 million rupees (approximately 18,055 special drawing rights (SDR) in August 2023) as opposed to 100,000 SDR for international carriers under the Montreal Convention. In case of damage caused by delay, liability on a domestic flight is limited to 80,000 rupees (about

722 SDR) as against 4,150 SDR for international carriers under the Montreal Convention. For the carriage of baggage, the liability for destruction, loss, damage or delay is limited to 20,000 rupees (about 180 SDR as against 1,000 SDR for international carriage) unless there is a special declaration. For the carriage of cargo, the liability for destruction, loss, damage or delay is limited to only 350 rupees per kilogram (under 3.1 SDR instead of 17 SDR for international carriage) unless there is a special declaration in place. As per Rule 24, these units of liability are to be reviewed by the central government every five years based on the cost inflation index as notified by the central government, but they have not been reviewed since 2014.

In the 2011 case of ***S Abdul Salam v Union of India,*** 2011 SCC Online Ker 1880, the Union of India (and its insurers) attempted to pay 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 under 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 to most international carriage by air. 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 on board 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 or baggage or any goods or cargo, if the occurrence that caused the damage sustained took place during the carriage by air. There is still a dearth of case law on the clear exception in Rule 17 limiting remedies to physical injury and the consumer fora in India still tend to award compensation for 'mental agony and inconvenience' despite the clear provisions of the rule. In ***Interglobe Aviation v N Satchidanand*** (2011) 7 SCC 463, the Honourable Supreme Court held:

> 'What is relevant is whether there was any cause of action for claiming damages, that is whether there was any deficiency in service or whether there was any negligence in providing facilitation. If the delay was due to reasons beyond the control of the airline and if the appellant and its crew have acted reasonably and in a bona fide manner, the appellant cannot be made liable to pay damages even if there has been some inconvenience or hardship to a passenger on account of the delay.'

In the case of ***Indigo Airlines v Kalpana Rani Debbarma*** (2020 9 SCC 424), the Supreme Court observed that the 'due care' by the ground staff of the airline would arise when the passengers are physically under their complete control and not otherwise. 'That is possible after the passengers have boarded the aircraft or may be in a given case at the operational stage whilst facilitating their entry to the boarding gate'.

The Carriage by Air (Amendment) Act of 2016, which came into force on 21 March 2016 introduced section 4A(6) which provides:

> 'The Central Government may, having regard to the objects of the Act, and if it considers necessary or expedient so to do, by notification in the Official Gazette, give effect to the limits of liability, revised by the depository under rule 24 of Chapter III of the Third Schedule to this Act, for the purposes of determining the liabilities of the carriers and extent of compensation for damages under the said Chapter of that Schedule.'

The amendment provision enables the central government to give effect to (higher) limits prescribed by the Montreal Convention, but that does not seem to have been implemented as yet.

Law stated - 20 November 2023

Surface damage

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

The Rome Convention of 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 Rome Convention in 1955 but has still not ratified it.

Law stated - 20 November 2023

Accident investigation

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

Section 7 of the Aircraft Act of 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. The Aircraft (Investigation of Accidents and Incidents) Rules of 2017 make appropriate provisions for air accidents. Rule 8 provides for the setting up of an Aircraft Accident Investigation Bureau of India (AAIB) for the purposes of carrying out investigations 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 the details for a formal investigation for which the central government shall appoint a competent person who shall have, for the purposes of investigation, all the powers of a civil court under the Code of Civil Procedure of 1908. As per Rule 13, the DGCA may order the 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 Investigator-in-Charge for the purposes of carrying out the investigation. The investigator-in-charge shall have the same powers and duties as an investigator under Rule 10 and shall make a report to the DGCA in the format specified by the AAIB. The DGCA shall accept the report of the investigator-in-charge and, after acceptance, the report will be made public by the DGCA in a manner that is deemed fit.

The DGCA civil aviation requirement (CAR) under section 5 – Air Safety on the 'Notification of Incidents and Investigation thereof' (series C) and 'Flight Data Analysis Program (FDAP)' (series F) – cover aircraft accidents and serious incidents. The series C CAR also provides for investigation, accident or incident prevention programme, and its implementation and submission of reports procedure, etc.

Law stated - 20 November 2023

Accident reporting

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

There is no mandatory accident and incident reporting system since Rules 18 and 19 of the Aircraft (Investigation of Accidents and Incidents) Rules of 2017 providing for the DGCA to establish a mandatory safety reporting system and voluntary safety reporting system have been omitted by the Aircraft (Investigation of Accidents and Incidents) (Amendment) Rules, 2022 dated 22 April 2022.

Law stated - 20 November 2023

COMPETITION LAW

Specific regulation

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

There are no separate competition rules for civil aviation, however, Rule 135 (4) of the Aircraft Rules of 1937 does prohibit an 'oligopolistic' or anticompetitive practice with respect to tariffs imposed by airlines. The Competition Act of 2002 applies and prohibits anticompetitive agreements (section 3), prohibits abuse of dominance (section 4) and regulates combinations including mergers (sections 5 and 6). The Competition (Amendment) Act 2023 introduces 'services' in addition to 'goods' in section 3 and makes amendments to section 6. The Competition Commission of India (Procedure in Regard to the Transaction of Business Relating to Combinations) Regulations 2011 (the Combination Regulations) also provide for the procedural requirements to seek approval regarding certain agreements and combinations from the CCI.

The Airports Economic Regulatory Authority of India (AERA) is also an independent economic regulator which aims to create a level playing field and foster healthy competition amongst all major airports of India in order to encourage investment in airport facilities and regulate tariffs for aeronautical services. Section 13 of the Airports Economic Regulatory Act, 2008 sets out the functions of the Authority. It has been tasked with various functions including regulating the tariff of major airports in India, determination of the amount of passenger service fee levied under Rule 88 of the Aircraft Rules 1937, monitoring performance standards relating to quality, continuity and reliability of service, etc. The Authority has powers under section 14 to call for information and make inquiries with respect to these matters. Section 17 of the Act provides for an appellate tribunal for the adjudication of any kind of AERA disputes. The Telecom Disputes Settlement and Appellate Tribunal is the appropriate authority for the adjudication of disputes arising under the AERA Act.

The provisions of the Competition Act relating to anticompetitive agreements and abuse of dominant position have been the subject of several cases decided by the Competition Commission of India (CCI) and its appellate tribunal (the COMPAT). In 2017, the COMPAT merged with the National Company Law Appellate Tribunal.

In June 2022, the CCI approved the acquisition of the entire shareholding in AirAsia India by Air India. Air India will acquire AirAsia's 16.33 per cent stake in the airline partnership. Tata Sons owns the 83.67 per cent residual stock in AirAsia India and will transfer its entire shareholding to Air India. A planned acquisition of 24 per cent of Jet Airways by Etihad was approved by the CCI in 2013. The CCI can approve such combinations if the same have no 'appreciable adverse effect' on competition.

If no order is passed or direction issued by the CCI within 150 days from the date of notice to the CCI, the combination shall be deemed to be approved as per the provisions of the amended Section 31(6) of the Competition Act. In March 2014, the COMPAT dismissed an appeal challenging the CCI's approval of a 20.6 billion rupees ***Jet/Etihad*** deal, stating the appellant did not have locus standi to file the appeal. A former Air India executive director had filed the appeal questioning the decision of the CCI to permit the 'combination' of two airlines, namely Etihad Airways and Jet Airways (India) Ltd. The CCI majority order, passed by its chairman and four members, found that the ***Jet/Etihad*** combination was not likely to have an appreciable adverse effect on competition.

Apart from the above matter relating to a combination, there have been a few cases relating to alleged abuse of dominance and anticompetitive agreements in this sector. In ***Turbo Aviation Pvt Ltd v. Bangalore International Airport Ltd. & Ors., 2016 SCC OnLine CCI 8***, M/s Turbo Aviation (the informant) alleged that Bangalore International Airport Limited (BIAL), GVK Power & Infrastructure Limited (GVK) and the Airports Authority of India (AAI) had violated provisions of sections 3 and 4 of the Competition Act, alleging abuse of group dominance by BIAL and GVK. It was further alleged that by leveraging its dominance in the market for airport operations, BIAL was able to extend its dominance to protect the ground handling services market to the detriment of the airline operators. The CCI observed that the relevant market should be considered as the 'market for the provision of ground handling services at KIAB' (ie, Kempegowda International Airport at Bangalore). Although it was found that the respondents were in a dominant position in the relevant market, the CCI pointed out that dominance per se is not a violation, as the Competition Act proscribes only abuse of dominant position by a dominant enterprise and it was held that there was no case of abuse under the Competition Act.

In ***Express Industry Council of India v. Jet Airways (India) Ltd and Ors., 2018 SCC OnLine CCI 11***, the informant filed a complaint against Jet Airways, IndiGo Airlines, Spicejet, Air India and Go Airlines alleging contravention of section 3 of the Competition Act (against anticompetitive agreements). It was alleged that certain domestic airlines colluded to introduce a fuel surcharge (FSC) for transporting cargo. The levy of FSC at a uniform rate from the same date itself was said to constitute a (continuing) act of cartelisation. After considering the Director General of the CCI (DGCCI) (adverse) report and hearing the parties, the CCI held that the respondents had acted in concert and the only plausible reason for increment of FSC rates was collusion among them. It was further held that such conduct indirectly determined the rates of air cargo transport in contravention of section 3(3a) of the Competition Act. The matter was decided against the airlines and appealed, remanded back for a fresh decision subject to certain directions issued by the COMPAT. Pursuant to

this order, a report of the DGCCI was considered by the CCI and the CCI, by its order dated 7 March 2018, found that: 'a clear pattern is seen to emerge, which indicates concerted and coordinated efforts by the airlines'. It was opined that the opposite parties had acted in parallel and the only plausible reason for increment of FSC rates by the airlines was collusion among them. Such a conduct had, in turn, resulted into determining the rates of air cargo transport, as such Jet Airways, Indigo and SpiceJet were found to have acted in contravention of the Act and consequently significant penalties were imposed.

In *International Air Transport Association (IATA) v. Air Cargo Agents Association of India (ACAAI) and Others, decided on 12 September 2017*, the informant (ie, IATA) filed information under section 19(1)(a) of the Competition Act against the ACAAI and its office bearers alleging contravention of section 3 of the Act (anticompetitive agreements). It was alleged that the respondents were colluding and collectively boycotting business with airlines that sought to implement the cargo accounts settlement system in India and such conduct limited the supply of air cargo transport services affecting the end consumer and this had an appreciable adverse effect on competition in India. The CCI noted that an independent decision by an enterprise to offer or not to offer services at prevailing conditions did not raise antitrust concerns per se. However, an agreement amongst competitors not to offer services under prevailing conditions would raise antitrust concerns. The matter was closed for lack of evidence of such agreement.

In 2011, the CCI dismissed a complaint, and then in 2012, the COMPAT dismissed an appeal titled *Travel Agents Association of India (TAAI) v. Lufthansa and eight airlines* wherein it was alleged 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 (the authors' firm acted for three out of eight respondent airlines).

In *Re: Alleged Cartelization in the Airlines Industry, 2021 SCC OnLine CCI 3*, the CCI dismissed a case of alleged cartelisation among leading domestic airlines. The CCI noted that price parallelism conduct is actionable under the Competition Act only when the adaptation to the market conditions is not done independently and is attributable to information exchanged between the competitors or through some other collusive conduct, the object of which is to influence the market.

In *Uniglobe Mod Travels Pvt. Ltd. v. Travel Agents Federation of India, 2011 SCC OnLine CCI 62*, some international airlines including Singapore Airlines in the month of July–August, 2008 had issued a notice stating that the practice of paying commission to agents on sale of tickets was to be discontinued; however, agents were free to charge their customers a transaction fee to recover their costs of operations etc. This notice was not received favourably and the informant alleged that the opposite party had entered into anticompetitive agreements, ie, acted in a cartel-like manner resulting in the restriction of supply of Singapore Airlines tickets in violation of Section 3 of the Competition Act 2002. The CCI held that the decisions of the associations that are causing or are likely to cause an Appreciable Adverse Effect on Competition (AAEC) in India fall within the CCI jurisdiction. Penalties were imposed on the travel agent associations and they were directed to refrain and undertake from indulging in anticompetitive conduct in future.

Law stated - 20 November 2023

Regulator

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

Both competition agencies and regulators usually have some, albeit limited, overlapping mandate to achieve economic efficiency. However, the conceptual framework reflects that sectoral regulators such as the Directorate of Civil Aviation (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 (CCI). 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 of the Aircraft Rules of 1937 referring to oligopolistic practices are exceptions that are not usually resorted to by the regulator or the DGCA.

Law stated - 20 November 2023

Market definition

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

The Competition Act of 2002 defines the '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 as provided under section 19(5). The two kinds of relevant markets provided under this section are the 'relevant geographic market' and the 'relevant product market'. The definition of 'relevant product market' has been amended by the Competition (Amendment) Act 2023 to include 'production or supply' by the supplier. The factors to be considered to ascertain the relevant geographic market have been prescribed under section 19(6) which as amended introduces two additional factors pertaining to characteristics of goods or nature of services and costs associated with switching supply or demand to other areas. The factors to be considered to determine the relevant product market have been prescribed under section 19(7), which also stands amended with three changes made. Attempts have been made to define a geographic market by reference to city-pairs in the aviation sector, but the CCI and the Competition Appellate Tribunal have not accepted this argument, generally preferring the view that the market is international flights to and from India.

Law stated - 20 November 2023

Code-sharing and joint ventures

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

Code-share agreements have not resulted in adverse orders limiting carriage of passengers. They consider business facilitators, and their operation has been tried and tested by airlines. Combinations (air-carrier joint ventures) are regulated under sections 5 and 6 of the Competition Act of 2002 (as amended). Section 5 provides that the acquisition of one or

more enterprises by one or more persons, or merger or amalgamation of enterprises shall be a combination of such enterprises and persons or enterprises subject to the conditions contained therein as amended. Section 6 provides that no person or enterprise can enter into a combination that causes or is likely to cause an appreciable adverse effect on competition within the relevant market in India and such a combination shall be void. Under sub-section 2 of section 6, any person or enterprise that proposes to enter into a combination must give notice to the CCI in the specified form and upon payment of the prescribed fees after any of the following, but before consummation of the combination, of (a) the approval of the proposal related to the merger or amalgamation; or (b) the execution of any agreement or other document for acquisition or acquiring control. An Explanation has been added by the Competition (Amendment) Act 2023 defining 'other document'. Section 6(2A) as amended provides that a combination shall come into effect after 150 days from the date of notice to the CCI or passing of orders by the CCI under section 31, whichever is earlier. Section 29 provides for the procedure for investigations into a combination where the CCI is of the prima facie opinion that a combination is likely to cause or has caused an appreciable adverse effect on competition within the relevant market in India. Section 31 provides for the powers of the CCI to direct that a combination shall not take effect or approve it subject to appropriate modifications, etc.

On 14 October 2013, the CCI passed an order holding that the combination proposed in the case of ***Etihad Airways and Jet Airways (India) Ltd*** would cause an appreciable adverse effect on competition within the market of international air passenger transportation from and to India, and thus a show cause notice was directed to be issued calling upon the parties to respond as to why investigation in respect of the proposed combination should not be conducted. Etihad and Jet had submitted notice under section 6(2) of the proposed combination following an investment agreement, shareholders agreement and commercial cooperation agreement. Eventually, following Regulation 14 of the CCI (Procedure in regard to the Transaction of Business relating to Combinations) Regulations of 2011, the parties were required to remove certain defects and provide information and documents, which was done.

On 1 October 2019, the CCI in Combination Registration No. C-2019/07/676, conditionally approved the proposed acquisition of up to 55.2 per cent of the equity share capital of GMR Airports Limited by a consortium of investors, namely, TRIL Urban Transport Private Limited (Tata Group), Valkyrie Investment Pte Limited and Solis Capital (Singapore) Pte Limited. The Tata Group has a majority stake in two airlines – AirAsia India and Vistara Airlines – and GMR Group, through its subsidiaries, operates and manages the Delhi and Hyderabad airports. The concern was that the Tata Group would now have a significant stake in both the upstream (airport) and the downstream (air carriage services) markets. This concern was alleviated by imposing certain conditions (such as restrictions on the appointment of directors and restrictions on exercising voting rights in certain cases) on the Tata Group as a pre-condition for approving the proposed acquisition.

The Tata Group announced the merger of Air India and Vistara through a press release dated 29 November 2022. Tata Sons had earlier acquired a 100 per cent stake in Air India on 27 January 2022. Vistara is a joint venture between Tata Sons Pvt Ltd. and Singapore Airlines Ltd. (SIA). It has been stated that as part of the merger transaction, SIA shall invest 20.59 billion rupees in Air India. The transaction would then lead to SIA holding 25.1 per cent shareholding in Air India. On 13 June 2022, the CCI issued an order regarding the proposed combination stating that it was not likely to have any appreciable adverse effect on

competition in any of the relevant market and thus approved the same under section 31(1) of the Competition Act 2002.

Law stated - 20 November 2023

Assessing competitive effect

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

The standard for assessing the competitive effect of a transaction is by determining whether such transaction has an appreciable adverse effect on competition. 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 within the relevant market in India.

Section 19(3) of the Competition Act as amended prescribes the various factors for assessing the appreciable adverse effect on competition of a transaction. These are as follows:

- creation of barriers to new entrants in the market;
- driving existing competitors out of the market;
- foreclosure of competition;
- benefits or harm to consumers;
- improvements in production or distribution of goods or provision of services; or
- promotion of technical, scientific and economic development by means of production or distribution of goods or provision of services.

Section 19(4) of the Competition Act prescribes various factors for assessing the dominant position of an enterprise:

- market share of the enterprise;
- size and resources of the enterprise;
- size and importance of the competitors;
- economic power of the enterprise including commercial advantages over competitors;
- vertical integration of the enterprises or sale or service network of such enterprises;
- dependence of consumers on the enterprise;
- monopoly or dominant position whether acquired as a result of any statute or by virtue of being a Government company or a public sector undertaking or otherwise;
- entry barriers including barriers such as regulatory barriers, financial risk, high capital cost of entry, marketing entry barriers, technical entry barriers, economies of scale, high cost of substitutable goods or service for consumers;
- countervailing buying power;
- market structure and size of market;

- social obligations and social costs;
- relative advantage, by way of the contribution to the economic development, by the enterprise enjoying a dominant position having or likely to have an appreciable adverse effect on competition;
- any other factor which the Commission may consider relevant for the inquiry.

There are certain factors also prescribed for assessing the appreciable adverse effect of a combination under section 20(4) of the Competition Act. These are not being reproduced here but can be accessed through the link below:

https://www.indiacode.nic.in/handle/123456789/2010?sam_handle=123456789/1362.

Rule 4 of the Combination Regulations read with Schedule I prescribes the categories of transactions not likely to have an appreciable adverse effect on competition in India. The Regulations and the Schedule can be accessed through the link below:

https://www.cci.gov.in/combination/legal-framwork/regulations/details/1/0.

In***Re Reliance Aerostructure Ltd., 2017 SCC Online CCI 141***, the CCI approved a joint venture between Reliance Aerostructure Ltd. and Dassault Aviation on 18 January 2017. The proposed combination contemplated the creation of a joint venture ie, Dassault Reliance Aerospace Limited, wherein Reliance Aero would hold 51 per cent shares with the remaining 49 per cent to be held by Dassault. The CCI while approving the combination observed as follows:

> '5. The Commission observed that Dassault is engaged in the market for manufacture and supply of military combat aircrafts at the global level. The Commission noted that neither Reliance Aero nor the Reliance Group is present in the market for the manufacture and supply of military combat aircrafts at a global level or in India. Accordingly, the parties do not produce/provide similar or identical or substitutable products or services either directly or indirectly in India.
>
> 6. The Commission also observed that the parties are not engaged in any activity relating to the production, supply, distribution, storage, sale and services or trade in products or provision of services which is at different stages or levels of the production chain.'

Thus, the production of similar or identical or substitutable products or services either directly or indirectly may also be a factor that may be taken into consideration by the CCI while assessing the competitive effect of a transaction.

Law stated - 20 November 2023

Remedies

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 of the Competition Act) and combinations (under section 20 of the Competition Act, provided they are above the statutory threshold limit) to see whether they have an appreciable adverse effect on competition. The CCI (under these sections) also has the power to take up these inquiries of its own motion. Upon finding a contravention of the Competition Act, the CCI may pass an order directing the responsible enterprises to discontinue the contravention and it is also empowered to impose penalties. The penalties can be up to 10 per cent of the offender's average turnover or income 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 or 10 per cent of its turnover or income for each year of the continuance of such agreement, whichever is higher as per the amended Section 27(b) of the Competition Act 2002. The CCI can by order modify agreements 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 approve it subject to appropriate modifications so as to eliminate any adverse effect on competition. If no order is passed or direction is issued within 150 days from the date of the notice to the CCI, the combination shall be deemed to be approved as per the provisions of Section 31(6) of the Act as amended.

In a case decided by the CCI on 11 January 2012,***In Re: Domestic Air Lines***, the CCI considered whether exorbitant fares of various Indian airlines for tickets and 'shifting seats from the lower bucket to higher bucket' (allegedly due to a strike called by Air India pilots), violated section 3(3) of the Act. It was held that price parallelism in this case was established but 'this on its own cannot be said to be indicative of any "practice" being carried on in terms of section 3(3) of the Act.' The CCI held that 'it cannot be concluded that the airlines had been carrying on any anticompetitive practice in violation of section 3(3) of the Act.'

In ***Air India Ltd v the Competition Commission of India and InterGlobe Aviation Limited,*** [2016] CCI 14, the COMPAT dismissed an appeal filed by the appellant, Air India, alleging that Indigo Airlines (which enjoys a dominant position in the civil aviation market) had resorted to predatory recruitment of pilots serving with the appellant and other airlines by offering attractive emoluments, thereby causing serious operational problems for Air India. The CCI declined to exercise its powers and order an investigation. The COMPAT also dismissed the appeal, seeking 'tangible evidence' to show that the respondent had in fact indulged in predatory hiring of pilots already serving other airlines.

In ***Shikha Roy v. Jet Airways (India) Ltd., 2021 SCC Online CCI 31***, an allegation was made by the Informant regarding the existence of an anti-competitive agreement amongst various airlines during the period of Jat agitation in February 2016. These allegations related to the exorbitant increase in ticket fares on certain routes. The CCI directed the Office of the Director General to investigate into the matter. The DG analysed the softwares and algorithms employed by the airlines for ticket bookings and if there was any collusive agreement amongst the airlines with respect to ticket prices. The DG did not discover any collusive agreement amongst the airlines. The CCI held that – 'the establishment of "agreement" would require some explicit or tacit arrangement amongst the parties wherefrom a concert between them can be deciphered. This may include, amongst others,

exchange of information in the form of communications or emails or in any other form of communication amongst the competitors, whether – explicit or tacit, oral or in writing, formal or informal including through parallel conduct which cannot be otherwise explained etc.' It was held that there was no anti-competitive agreement between the airlines. The CCI, however, did take note of the fact that widespread usage of algorithms in price determination by individual airlines could pose possible anti-competitive effects by making it easier for them to achieve and sustain collusion without any formal agreement or human interaction. These practices will have to be addressed carefully in the coming future and appropriate remedies will have to be formulated by the Commission.

At times, the CCI may approve combinations and mergers subject to specified conditions and restrictions as provided under the Act or as per CCI's discretion in the matter.

Law stated - 20 November 2023

FINANCIAL SUPPORT AND STATE AID

Rules and principles

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

No.

Law stated - 20 November 2023

Rules and principles

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

The state had traditionally, as a policy, given aid and injected funds to assist Air India's business. Air India and Indian Airlines were merged in 2007. Spice Jet (SG) and Go First (G8) were granted state aid of 1.2 billion rupees and 256.5 million rupees respectively in 2021, under the Indian government's Emergency Credit Line Guarantee Scheme (ECLGS) that provides government-guaranteed loans to businesses affected by the Covid-19 pandemic. In October 2022, SpiceJet and Go First again applied under the ECLGS as the Indian government raised the loan limit to 15 billion rupees from 4 billion rupees to help the covid-hit aviation industry tide over liquidity stress. Presently both airlines are 'cash strapped' and Go First is not flying. Air India and Air India Express have been acquired by the Tata group and there is little chance of the State making any financial provision for Air India which is now a private carrier.

Law stated - 20 November 2023

Exemptions

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

There are no applicable exemptions. However, the government has settled over 610 billion rupees of Air India's legacy debt and other liabilities that were left in a special purpose vehicle, AI Assets Holding Ltd (AIAHL), ie, the company holding residual assets and liabilities of Air India ahead of the transfer of the airline to the Tata Group. The airline had a total debt of 615.62 billion rupees, the Tata Group took over 153 billion rupees and the rest 75 per cent or around 460 billion rupees was transferred to AIAHL.

Law stated - 20 November 2023

Clearance of state aid

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

The competition authorities do not seem to regard state aid as anticompetitive, at present there are no required clearances for state aid.

Law stated - 20 November 2023

Recovery of unlawful state aid

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

There are no reported instances of unlawfully granted state aid as yet.

Law stated - 20 November 2023

CONSUMER PROTECTION

Passengers

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

In case of cancellation or delay, an airline has no obligation to offer compensation if the delay is caused due to extraordinary circumstances or circumstances that are beyond its control. For other reasons and for a delay of fewer than 24 hours, passengers are entitled to meals and refreshments at the airport. If the delay is beyond 24 hours, passengers are entitled to hotel accommodation with transfers but the operating airline has absolute discretion in the selection of hotels.

There is a civil aviation requirement (CAR) dated 6 August 2010 (effective 15 February 2023) under section 3, Series M, Part IV on 'Facilities to be provided to passengers by airlines due to denied boarding, cancellation of flights and delays in flights'.

Paragraph 1.4 of the CAR provides that operating airlines will not be liable to pay compensation for any cancellation or delays in cases where the cancellations and delays

have been caused by events of force majeure, namely extraordinary circumstances beyond the control of the airline.

Paragraph 1.5 of the CAR provides that airlines will also not be liable to pay any compensation in cases where cancellations and delays are clearly attributable to Air Traffic Control (ATC), meteorological conditions, security risks, or any other causes that are beyond the control of the airline but which affect their ability to operate flights on schedule.

Paragraph 3.2 of this CAR deals with denied boarding. If passengers voluntarily vacate seats on being told that a flight is full, the airline, at its own discretion, would offer such benefits or facilities that it wishes to offer.

Paragraph 3.2.2 provides that if boarding is denied to passengers against their will, the airline shall not be liable for any compensation in case an alternate flight is arranged that is scheduled to depart within one hour of the original scheduled departure time of the initial reservation. The airline is otherwise required to compensate passengers as below:

- an amount equal to 200 per cent of the booked one-way basic fare plus airline fuel charge, subject to a maximum of 10,000 rupees, if the airline arranges an alternate flight scheduled to depart within 24 hours of the booked scheduled departure;
- an amount equal to 400 per cent of the booked one-way basic fare plus airline fuel charge, subject to a maximum of 20,000 rupees, if the airline arranges an alternate flight that is scheduled to depart more than 24 hours after the booked scheduled departure; and
- if the affected passenger does not opt for such alternate flight, the passenger is entitled to a refund of the full value of the ticket and compensation equal to 400 per cent of the booked one-way basic fare plus airline fuel charge, subject to a maximum of 20,000 rupees.

Paragraph 3.2.3 of this CAR provides that a passenger booked on connecting flights of the same airline or of another airline, shall be compensated by the airline of the first flight for the first leg in accordance with the provisions of paragraph 3.2.2, when the delay is at the departure station on account of denied boarding, but the passenger has arrived at the final destination at least three hours later than the scheduled arrival time.

Paragraph 3.3 pertains to the cancellation of flights. An airline is required to refund the ticket in case passengers are not willing to travel on its alternate or subsequent flight or on another airline's flight. The refund is to be processed in accordance with CAR section 3, series M, part II dated 22 May 2008 (revised on 27 February 2019).

Paragraph 3.3.2 of the CAR provides that for passengers who have not been informed as per the provisions contained in paragraph 3.3.1, or if they have missed a connecting flight booked on the same ticket number, the airline shall either provide an alternate flight acceptable to the passenger or provide compensation in addition to the full refund of the air ticket in accordance with the following provisions:

- 5,000 rupees or the booked one-way basic fare plus airline fuel charge (whichever is less), for flights having a block time of up to and including one hour;
- 7,500 rupees or booked one-way basic fare plus airline fuel charge (whichever is less), for flights having block time of more than one hour and up to and including two hours; and

- 10,000 rupees or the booked one-way basic fare plus airline fuel charge (whichever is less), for flights having a block time of more than two hours.

Additionally, meals and refreshments in relation to waiting time shall be provided to waiting passengers.

Paragraph 3.4 pertains to flight delays. Paragraph 3.4.1 provides that the airline shall provide facilities in accordance with paragraph 3.8.1(a) if the passenger has checked in on time and if the airline expects a delay beyond its original announced scheduled time of departure or a revised time of departure of:

- two hours or more in case of flights having a block time of up to two and a half hours;
- three hours or more in case of flights having a block time of more than two and a half hours and up to five hours; or
- four hours or more in case of flights not falling under sub-paragraphs (a) and (b) of paragraph 3.4.1.

Paragraph 3.4.2 of the CAR provides that when a domestic flight is expected to be delayed for more than six hours from the published scheduled time of departure or previously revised departure time (communicated more than 24 hours prior to original scheduled departure time), the airline shall offer an option of either an alternate flight within a period of six hours or full refund of the ticket to the passenger.

Paragraph 3.4.3 provides that when the total delay is more than 24 hours from the published scheduled time of departure or more than six hours for flights scheduled to depart between 8pm and 3am, passengers shall be offered specified facilities (ie, hotel accommodation and necessary transfers).

Paragraph 3.5 provides for reimbursements to passengers in cases where their seats have been downgraded involuntarily. These provisions have been introduced after a recent amendment. The reimbursement amounts are calculated in accordance with the provisions of paragraph 3.5.1 of the CAR. The provisions are as follows:

1. For domestic sectors: 75 per cent of the cost of ticket including taxes.
2. For international sectors:

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  - 30 per cent of the cost of ticket including taxes for flights of 1,500 km or less.
  - 50 per cent of the cost of ticket including taxes for flights between 1,500 km to 3500 km.
  - 75 per cent of the cost of ticket including taxes for flights more than 3,500 km.

Paragraph 3.6 deals with compensation by foreign carriers and provides that, in the case of foreign carriers, the amount of compensation paid to the passengers shall be as contained in the regulations of their country of origin or as given in paragraphs 3.2.2, 3.3.2 and 3.5.1 of the CAR.

Paragraph 3.8.1 provides that certain facilities are to be provided to passengers in cases of denied boarding, cancellation and delays in flights. Airline must offer free of charge facilities to passengers namely, meals and refreshments in relation to waiting time; hotel accommodation when necessary (including transfers).

There is also a provision for grievance redressal of passengers under paragraph 3.9 of this CAR whereby a passenger can complain directly to the airline in the event the airline has not provided the compensation or reasonable facilities as specified in this CAR in cases of denied boarding, cancellation or a long delay. There is also a provision to file grievances on an app and a portal (ie, the Air Sewa app or portal). Passengers are also at liberty to complain to a statutory body or court set up under the relevant applicable laws.

In *Kuwait Airways v Samir Kapahi, 2015 SCC OnLine NCDRC 4147*, Kuwait Airways was directed by the State Commission to pay to the complainant 500,000 rupees for harassment, inconvenience and mental agony suffered by the complainant and to deposit 500,000 rupees in the Consumer Welfare Fund for inconvenience caused to 11 other passengers who were denied boarding. The National Commission set aside the second part of the award of 500,000 rupees that was to be deposited in the Consumer Welfare Fund, on the ground that there was no evidence of suffering of those 11 passengers justifying any such amount to be paid to them.

In the case of *Indigo Airlines v Kalpana Rani Debbarma, (2020) 9 SCC 424*, the Supreme Court of India held that:

> After a boarding pass is issued; the passenger is expected to proceed towards security channel area and head towards the specified boarding gate on his own. There is no contractual obligation on the airlines to escort every passenger, after the boarding pass is issued to him at the check-in counter, up to the boarding gate. Further, the Airline issuing boarding passes cannot be made liable for the misdeeds, inaction or so to say misunderstanding caused to the passengers, until assistance is sought from the ground staff of the airlines at the airport well in time. It is not the case of the respondents that the boarding gate was changed at the last minute or there was any reason which created confusion attributable to airport/airlines officials, so as to invoke an expansive meaning of 'denied boarding'.

The fact situation was found to be one of 'Gate No Show', a situation brought about by the Respondent (passengers) and hence not a case of 'denied boarding' as such.

In *Indigo Airlines & Ors. v. Aastha Pansari*, 2020 SCC Online NCDRC 254, the Respondent boarded an Indigo flight from Jaipur to Kolkata and was carrying five bags. After deboarding, the Respondent discovered that one of the bags was missing and as such alleged deficiency in service on the part of the Appellant. The airlines offered to pay 3,000 rupees as compensation to the Respondent in accordance with the terms and conditions of the airline's Rules of Carriage. The Respondent sued for payment of 500,000 rupees for loss of baggage by the airlines, 1.4 billion rupees towards mental agony along with other costs. The NCDRC held as follows:

> When the Airlines Rules of Carriage limits the liability to Rs. 3,000/-, unless there were special declaration by the passenger, the Airlines cannot be made liable for the amounts claimed lost since the contents of each baggage is not known to the Airlines unless and until the declaration is made. Therefore, we are of the view that the Conditions of Carriage of the Airlines constitute a valid and binding contract between the passenger and the Airlines.

In *Air India Ltd. v. Tushar Kothari,* 2023 SCC Online NCDRC 37, the Respondent had travelled along with his family from Nagpur to Goa via Mumbai and was carrying 16 bags, however, on reaching Goa, only 15 bags were received by the Respondent. The airline offered to pay to the Respondent an amount of 3,600 rupees at the rate of four hundred and fifty rupees per kg in accordance with provisions of Citizens Charter/Contract of Carriage Rule 1972 on Domestic Travel & Bureau of Civil Aviation Security (Ministry of Civil Aviation). The Respondent alleged deficiency in service on the part of the airline and contended that the cost of the articles lost was about 203,785 rupees. The NCDRC while dealing with the revision petition held on the basis of the Supreme Court judgments cited therein that it had no right to interfere with concurrent finding of facts of the Fora below in revisional jurisdiction. The National Commission did not find any good ground to interfere with the order of the State Commission awarding 203,785 rupees towards cost of articles lost during the course of travel, 25,000 rupees towards mental agony and 5,000 rupees towards costs of litigation and upheld the same

Law stated - 20 November 2023

Package holidays

What rules apply to the sale of package holiday products?

Aeronautical information circular (AIC) No. 3/2020, dated 6 February 2020 pertains to the 'Operation of Inclusive Tour Package (ITP) Charter Flights to and from India'. Under this AIC, tourist charter flights are permitted only for ITPs, which is a package consisting of a round trip for a pre-determined period and for one or several pre-determined places, for which an inclusive consolidated price has been charged for the airfare for all segments, hotel accommodation, airport pick-up and drop-off, and other ground arrangements such as visits to tourist places, etc. More than one tour operator can also apply for the same tourist charter flight. Paragraph 4 of this AIC deals with conditions for the operation of ITP charter flights wherein paragraph 4.1 relates to foreign ITP charter flights to India (Inbound Tourist Charters) and paragraph 4.2 relates to ITP charter flights from India (Outbound Tourist Charters).

Paragraph 5 provides for the imposition of penalties in the event of a violation of the AIC, ie, cancellation of all clearances given by the DGCA for the operation of charter flights by the Indian tour operator, blacklisting of the tour operator (Indian or foreign) and the charter operator concerned leading to a ban on undertaking any future ITP charter flights for a minimum period of six months and up to a maximum of two years, and de-recognition of the Indian tour operator by the Ministry of Tourism.

Law stated - 20 November 2023

Other consumer legislation

Is there any other aviation-specific consumer legislation?

The Carriage by Air Act of 1972 and the Consumer Protection Act of 2019 are statutes that help passengers to file an action to redress grievances or approach civil courts for compensation and damages. The former enacts the Warsaw, Hague and Montreal Conventions and the latter provides for redressal of a consumer dispute involving deficient services. The Consumer Protection Act of 2019 (which replaced and significantly improved a 1986 law) provides for product liability for service providers and from 30 December 2021 increased the pecuniary jurisdiction of consumer courts (for district commissions, up to 5 million rupees; for state commissions, from 5 million to 20 million rupees; and for the national commission, claims above 20 million rupees).

The CAR dated 28 February 2014 (revised 21 July 2022), under section 3 – Air Transport, Series M, Part I, pertains to 'Carriage by Air - Persons with Disability (Divyangjan) and/or Persons with Reduced Mobility'. This CAR is applicable to all Indian operators engaged in scheduled and non-scheduled air transport services both domestic and international for carriage of passengers, all foreign carriers engaged in scheduled air transport operating to and from Indian territory, and all airport operators within Indian territory. Paragraph 4.1.1 specifically provides that no airline shall refuse to carry persons with a disability or reduced mobility and their assistive aids or devices, escorts and guide dogs, including their presence in the cabin, provided such persons or their representatives, at the time of booking, inform the airline of their requirements. Paragraph 4.1 of this CAR deals with airline-specific requirements and paragraph 4.2 pertains to airport operators. Paragraph 4.5 provides for passenger grievance redressal. As per paragraph 4.5.1, a person with disability or reduced mobility who considers that provisions of this CAR have been infringed may bring the matter to the attention of the airlines or airport operator. As per paragraph 4.5.2, the Air Operator is bound to ensure speedy and proper redressal of these complaints and as per paragraph 4.5.3 the Air Operator shall appoint a Nodal Officer and Appellate Authority for settling grievances within a specified time frame. A person with a disability or reduced mobility may complain to the statutory authorities set up under relevant applicable laws such as the Chief Commissioner for Persons with Disabilities or the Commissioner for Persons with Disabilities in the concerned state.

Some examples of airline consumer protection cases are as follows.

In ***Jeeja Ghosh & Anr v Union of India & Ors***, (2016) 7 SCC 761, a disabled passenger (Jeeja Ghosh) was forcibly de-boarded by the flight crew at the insistence of the captain of the aircraft due to her disability. Ms Ghosh was to travel from Kolkata to Goa to attend a conference, which she was forced to miss. The Supreme Court held that:

> Jeeja Ghosh was not given appropriate, fair and caring treatment which she required with due sensitivity, and the decision to deboard her, in the given circumstances, was uncalled for […] the manner in which she was treated . . . depicts total lack of sensitivity on the part of the officials of the airlines. The manner in which she was dealt with proves the assertion of Shapiro as correct and justified that 'non-disabled do not understand disabled ones'.

The Supreme Court further held that the airline had acted in a callous manner and had violated the Aircraft Rules 1937 and the 2008 CAR Guidelines on Carriage of People with Disabilities, resulting in mental and physical suffering and unreasonable discrimination against her. Damages were awarded to the tune of 1 billion rupees.

In *Jeeja Ghosh & Anr v Union of India*, (2022) 1 SCC 202, the Supreme Court directed the DGCA to consider some additional suggestions and objections for the above-mentioned CAR regarding 'Carriage by Air - Persons with Disability and/or Persons with Reduced Mobility'. The Supreme Court held as follows:

'5. Before parting, two aspects need to be mentioned. First is that no differently-abled person should be manually lifted without his consent. We find that the suggestion is worth considering, as lifting of a person manually is inhumane. How, the differently-abled person should be treated with dignity is left to the DGCA.

6. Another aspect we want to mention is about some of the differently-abled person use prosthetic limbs/callipers. Sometimes, they are directed to remove their prosthetic limbs/callipers as a part of the security check. In the draft guidelines circulated, it has been mentioned that scanning of prosthetic limbs/callipers through full body scanner but to what extent differently-abled persons with prosthetic limbs/callipers are required to be checked for the purpose of security should be in a manner where, no such person is asked to remove prosthetic limbs/callipers to maintain human dignity while ensuring the requirement of security checks.'

In *Air France v Dimple Bhambra Malhotra II* [2018] CPJ 393 (NC) the complainant travelled from Paris to London on an Air France flight on 2 July 2010. On arrival at London, one of her pieces of baggage was missing. The bag was eventually traced and returned to the complainant but, according to her, a number of articles were found missing. The complainant approached the concerned District Forum seeking compensation of 402,860 rupees. The airline submitted that its liability was limited under the Carriage by Air Act to just 6,747 rupees. The District Forum ruled in favour of the complainant passenger. An appeal to the State Commission was dismissed. The airline then filed a revision petition before the National Consumer Disputes Redressal Commission (NCDRC). The NCDRC held:

> Therefore, even while giving the widest and most liberal interpretation to the provisions of the Consumer Protection Act, this Commission cannot act contrary to the provisions contained under Section 22 of the Carriage by Air Act and cannot exceed the limit statutorily prescribed therein.

The impugned order was set aside and the petitioner's liability was fixed at 6,747 rupees along with interest at 9 per cent per annum.

In *Air France v OP Srivastava,* 2018 SCC OnLine NCDRC 548, the appellant questioned the correctness of an order dated 29 May 2008, passed by the State Consumer Disputes Redressal Commission at Lucknow. The complainants were allegedly not allowed to board the Air France flight from Charles de Gaulle Airport in Paris to Delhi due to over-booking and claimed business loss, etc. The appellant airline submitted that for denied boarding, as an accepted international and national practice, the complainants were given €300 each plus free accommodation at Hotel Ibis Gare with meals, two telephone vouchers and

nine telephone cards, liability was limited to proven damages and not indirect damages or non-compensatory damages. After accepting the compensation and facilities, the complainants still filed the complaint. The claim was resisted on the grounds of territorial jurisdiction as being highly inflated, speculative and grossly disproportionate. The airline averred that the complainants suffered no loss and, if at all, it would have been suffered by the employer company, which was not a party to the complaint. The National Commission eventually partially allowed the airline's appeal, holding that: ends of justice would be subserved if a lump sum compensation of 400,000 rupees was given to each of the three Complainants for personal inconvenience and harassment on account of delay in departure from Paris.

In *Air Arabia Airline v Ashok Kataria* IV [2017] CPJ 183 (NC) the complainant alleged that, on landing at Sahar International Airport Mumbai, luggage comprising of four bags was not loaded from Sharjah. The complainant developed severe chest pain, fluctuations in blood pressure resulting in unconsciousness and he was directly taken from the airport to a hospital for further medical treatment and management. Ultimately, three out of four bags were located and handed over to the passenger. The fourth bag contained, among other important things, medicines and (allegedly) a Rolex watch with cash of 3,000 dirhams was not traceable. The airline admitted the loss of the fourth bag and offered to settle the claim at US$20 per kilogram, presuming total weight of the bag as 30kg, but the complainant refused the offer and eventually preferred a complaint claiming 4,732,324 rupees and interest at 18 per cent per annum. The complaint was partly allowed. The airline appealed to the NCDRC. The appeal was partly allowed with the NCDRC reducing the award but upholding US$20 per kilogram with the maximum permissible baggage weight of 32kg. Compensation for mental stress and agony was also awarded at 100,000 rupees, litigation costs were reduced to 20,000 rupees and the award of 3,800 rupees for to-and-fro expenses was affirmed.

In *British Airways v Kallol Basu II* [2017] CPJ 286 (NC), the complainant filed a complaint on the grounds that, while deplaning from the appellant's aircraft through a very dilapidated and unstable staircase, provided by British Airways, he had a fall that resulted in grave injury and profuse bleeding through his nose. He was diagnosed with a serious case of intracranial subdural haematoma and could only resume his duties after eight days. The complaint was allowed and opposite parties were directed to pay 2,241,560 rupees, a verdict against which an appeal was filed. The NCDRC eventually allowed the appeal, limiting its award to only 56,000 rupees including costs.

Law stated - 20 November 2023

INSURANCE AND SECURITY

Insurance for operators

What mandatory insurance requirements apply to the operation of aircraft?

Rule 50 of the Third Schedule of the Carriage by Air Act of 1972 in Ch. VI 'General and Final Provisions' lays down that State Parties shall require their carriers to maintain adequate insurance covering their liability under the provisions of the rules. A carrier may be required to furnish evidence that it maintains adequate insurance covering its liability under the provisions of these rules.

A civil aviation requirement (CAR) dated 19 April 2022 provides that an operator shall maintain 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 of 1972, or any other applicable law.

Another CAR dated 1 June 2010 (revised on 21 May 2021) issued under section 3, Air Transport (series C, Part III, issue II) lists the minimum requirements for the grant of a permit to operate non-scheduled air transport services. Clause 10.11 thereof provides for insurance requirements on similar lines to the clause mentioned above. The CAR dated 26 August 1997 (revised on 25 January 2017) under section 3 – Air Transport (series C, Part IV) lists the minimum requirements for the grant of permit and operation of air transport cargo services. The said CAR, in clause 4.3, provides that the application for the grant of an air cargo operator's permit shall be accompanied by a current comprehensive insurance policy covering the aircraft, crew, cargo and third-party risks. Clause 7.5 of the CAR provides that the operator shall maintain a current and adequate insurance coverage for liability in compliance with the requirements of the Carriage by Air Act of 1972.

Law stated - 20 November 2023

Aviation security

What legal requirements are there with regard to aviation security?

Section 5A of the Aircraft Act of 1934 provides that the Directorate General of Civil Aviation (DGCA) or any other officer specially empowered by the central government, may issue directions, etc, with respect to the matters specified, in any case where the DGCA or any other officer is satisfied that it is necessary to do so in the interest of the security of India or for securing the safety of aircraft operations.

The central government has created the Aircraft (Security) Rules of 2023, dealing with aviation security service, security clearance and security programme, aviation security measures, security occurrence or incidents, protection of information and records.

Aviation security comes under the purview of the Bureau of Civil Aviation Security (BCAS), which issues aviation security (AVSEC) orders and circulars. It lays down aviation security standards in accordance with Annex 17 to the Chicago Convention of the International Civil Aviation Organization for airport operators, airline 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;
- ensures that persons implementing security controls are appropriately trained and possess competencies required to perform their duties;
- plans and coordinates aviation security matters;
- conducts surprise or dummy checks to test professional efficiency and the alertness of security staff; and
- conducts mock exercises to test the efficacy of contingency plans and operational preparedness of the various agencies.

The BCAS has prepared a national civil 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.

The National Civil Aviation Policy of 2016 covers aviation security, immigration and customs in paragraph 15. In this policy document, it was proposed that the DGCA be given administrative and financial autonomy for an effective aviation safety oversight system. This policy has now been enforced statutorily after the enactment of the Aircraft (Amendment) Act of 2020.

As per the Ministry of Civil Aviation Guidelines for Setting Up of Greenfield Airports, activities concerning security would be reserved for central government agencies. Any applicant seeking a licence for reserved activities would need prior clearance from the BCAS regarding the location of the airport and acquisition and installation of security equipment.

Law stated - 20 November 2023

Serious crimes

What serious crimes exist with regard to aviation?

Aviation related crimes include hijacking, acts of unlawful interference, committing an act of violence on board an aircraft in flight, etc. These are provided for in the Anti-Hijacking Act of 2016 (the 2016 Act) and the Suppression of Unlawful Acts against Safety of Civil Aviation Act of 1982 along with the Suppression of Unlawful Acts against Safety of Civil Aviation (Amendment) Act of 1994. Several other matters are covered by the Aircraft Act 1934 (as amended) and the Aircraft Rules 1937 (as amended).

Section 3 of the Suppression of Unlawful Acts against Safety of Civil Aviation Act provides for the 'offence of committing violence on board an aircraft in flight, etc.' and Section 3A of the Act provides for 'offence at airport'. Section 4 of the Act provides for 'Destruction of, or damage to, air navigation facilities'. The punishment provided for all three offences or for an attempt or abetment of the same is imprisonment for life and the person shall also be liable to fine.

A threat to commit the offence of hijacking is also severely punishable under the 2016 Act. Section 3 of the Act defines the offence of hijacking and Section 4 of the Act provides for punishment for the offence of hijacking. The commission of the offence is punishable with death where such offence results in the death of a hostage or of a security personnel or of any person not involved in the offence, as a direct consequence of the offence of hijacking and in other cases with imprisonment for life and with fine. The movable and immovable property of such person is also liable to be confiscated.

In June 2019, a person accused under section 3 was sentenced to life imprisonment and was fined 50 million rupees for leaving a hijack threat note on a Delhi-bound Jet Airways aircraft (***State of Gujarat v. Birju Kishorekumar Salla***). The Gujarat High Court observed that the evidence was tainted with doubt and acquitted him on 8 August 2023 from the offence under sections 3(1) and 3(2)(a) of the Anti Hijacking Act 2016. The High Court also set aside the sentence under section 4(b). The order of payment of fine of 50 million rupees was also set aside. The properties seized by the Investigation Officer and ordered to be confiscated

under section 19 were directed to be released forthwith. As on the date of submission of this Chapter, no appeal has been listed before the Supreme Court of India.

Some provisions to regulate conduct on board an aircraft also exist in the Aircraft Rules that, read with Schedules VI-A and VI-B, provide for Punishment and Compounding of Offences and Penalties respectively that include imprisonment under the said Rules. Apart from the foregoing statutory provisions, a CAR dated 8 September 2017 on 'Handling of Unruly Passengers' was issued for the first time. It mandated airlines to maintain a database of all unruly passengers (after a decision by the Internal Committee constituted as per clause 6.1) and inform the same to the DGCA and other airlines. The Ministry of Home Affairs may provide to the DGCA and airlines a list of individuals identified as national security threats for inclusion in the no-fly list. It classifies unruly behaviour of passengers into three levels:

- Level 1: inappropriate physical gestures, verbally harassing passengers, or the crew, unruly intoxication, etc.
- Level 2: physically abusive behaviour such as pushing, hitting, grabbing, touching inappropriately, kicking, etc.
- Level 3: life-threatening behaviour, via actions such as eye gouging, damaging the aircraft operating systems, attempting or actually breaching the flight crew compartment, etc.

In *Shankar Shyamnaval Mishra vs. Union of India, through its Principal Secretary, Ministry of Civil Aviation & Ors.,* 2023 SCC OnLine Del 1792, the Petitioner was held guilty of being an unruly passenger onboard an Air India flight on 26 November 2022 and was placed in the no-fly list and banned for travelling for four months. The passenger wanted to appeal the decision but as no appellate committee was constituted, he filed a writ petition in the Delhi High Court for constitution of the same. The Delhi High Court by an order dated 23 March 2023, issued directions for an Appellate Committee to be constituted within two weeks and for the hearing of the appeal before the Appellate Committee to be held shortly thereafter.

Law stated - 20 November 2023

UPDATE AND TRENDS

Emerging trends

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

India stands out as one of the world's most rapidly advancing aviation markets, firmly securing its position as the third-largest domestic aviation market globally. Currently, the country has a network of 30 international airports and is striving to enhance airport facilities and processes to accommodate this growth. Delhi and Mumbai airports led the way with 74 million and 60 million respectively in annual passenger handling capacity. Bangalore's Kempegowda International Airport (BIAL) has an annual passenger handling capacity of 51.50 million while Hyderabad has an impressive annual passenger handling capacity of 21.60 million. Chennai handles an annual passenger volume of 23 million. The government has taken several measures to enhance ease of travel for passengers such as capacity enhancement through infrastructural changes in existing terminals, installation and

commissioning of additional x-ray machines for baggage check, deployment of additional security manpower from the Central Industrial Security Force (CISF), airlines and airport operators, management of slot allocation and co-ordination with airlines to avoid bunching of flights.

According to rating agency ICRA, Indian domestic air passenger traffic rose 26 per cent to around 1.22 crore in July 2023 as compared to 97 lakh in July 2022. 'The net loss is expected to reduce further to Rs 5,000–7,000 crore in 2023–24 as airlines continue to witness healthy passenger traffic growth and improve their RASK-CASK spread through better pricing discipline,' ICRA said.

In the first half of 2023, Air India signed a pact with KSU Aviation to launch TaxiBot operations at Delhi and Bengaluru airports for its Airbus A320 family of aircraft, seeking to cut down on its carbon footprint and save jet fuel. The adoption of TaxiBots envisages a potential saving of approximately 15k tonnes in fuel consumption over three years.

In June 2023, flying training organisation Jetserve Aviation received DGCA approval to impart ab-initio flying training on helicopters at Khajuraho. The move will provide an impetus to the growth and development of the helicopter industry in the country.

Recently, the Civil Aviation Minister in July 2023 launched UDAN (Ude Desh ka Aam Naagrik) 5.2 programme for small aircraft, aimed at enhancing air connectivity to remote areas of the country with a mobile application for chopper operators to seek approvals from government authorities. HeliSewa is an initiative of MoCA under Digital India to create an ecosystem between helicopter operators and district authorities. In the past nine years, 148 airports (including 9 heliports and 2 water aerodromes) have been developed. The fleet size has also registered a 75 per cent growth, from 400 aeroplanes in 2013 to 700 in July 2023. From 28 flying organizations in 2016, the count has now increased to 57. In 2023, 1,135 commercial pilot licences were issued by the DGCA, of which 731 were issued in just five months of 2023.

In August 2023, a parliamentary panel urged MoCA to reconsider its policy on airfare regulation, given the sudden surge in prices on select routes. The panel suggests that MoCA collaborate with airlines and the Ministry of Tourism to establish a mechanism to monitor flight booking portals/aggregators and prevent them from publishing inaccurate information under the guise of selling 'last 16 seats'. The Parliamentary Standing Committee on Transport, Tourism, and Culture's report titled "Issue of Fixing of Airfares' incorporates insights from various private airlines and the Association of Private Airport Operators (APAO). It proposes the formation of a monitoring body akin to the Security and Exchange Board of India (SEBI), endowed with quasi-judicial powers, to enforce reasonable airfare collection.

Low-cost carrier SpiceJet has reportedly sought shareholder approval to issue 5.91 per cent of its stake to Carlyle Aviation Partners, the aircraft financing unit of private equity giant Carlyle Group.

Akasa Air which launched its first commercial flight on 7 August 2022, recently inducted its 20th aircraft, a Boeing 737-8-200 in its fleet, making it eligible to fly internationally. Regulations require airlines to have at least 20 aircraft in their fleet to become eligible for international operations. This makes it the first airline in Asia to receive the Boeing 737-8-200 aircraft.

From 29 October, 2023 (subject to regulatory approval), the Singapore Airlines (SIA) Group plans to increase its services between Singapore and Chennai from 17 times weekly to 21 times weekly, with Scoot (its wholly owned brand) commencing daily operations to the

city after SIA (another wholly brand) transfers some of its Chennai services to the low-cost carrier from 5 November 2023. In addition, SIA will progressively increase its weekly service between Singapore and Hyderabad from seven times weekly to 12 times weekly, taking over Scoot's daily services between the two cities. SIA will also offer daily morning and evening services to Bengaluru.

Law stated - 20 November 2023