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Aviation in the USA

Global, USA | May 23 2018



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Recent developments and trends

Recent developments

Are there any notable recent developments or trends in the aviation sector in your jurisdiction?

The Trump administration has advocated the privatisation of air traffic control services and functions, which presently are provided by the Federal Aviation Administration (FAA). The air transport industry is divided over this proposal and the outcome remains uncertain.

Travel to Cuba is another rapidly changing issue. Under the Obama administration, the US government significantly relaxed the ban on US citizen travel to Cuba, and reached a new air service agreement with Cuba which authorised the operation of scheduled air services to and from the island. In June 2017 the Trump administration withdrew the authorisation for individual people-to-people travel (eg, educational travel that does not involve academic study pursuant to a degree programme or take place under the auspices of an organisation subject to US jurisdiction). Certain group people-to-people travel programmes remain authorised.

The laws and regulations regarding to drones (small unmanned aerial systems) is rapidly evolving, with the FAA rushing to develop regulations that will keep pace with industry developments.

Regulatory framework

Domestic law

What is the primary domestic legislation governing the aviation industry in your jurisdiction?

The Federal Aviation Act has been recodified and incorporated into the Federal Transportation Code (see 49 USC 40101 and following). The agencies with oversight of aviation services also have issued regulations which implement the various statutory provisions, which are set forth in Sections 14 (Aeronautics and Space) and 49 (Transportation) of the Code of Federal Regulations.

International law

What international aviation agreements has your jurisdiction concluded?

The United States is party to more than 120 open skies aviation agreements with foreign trading partners. The most notable new liberalised air service agreement is between the United States and Mexico, which entered into force in Summer 2016.

Regulatory authorities

Which government bodies regulate the aviation industry and what is the extent of their powers?

The Department of Transportation reviews licence applications and issues economic authority to carriers seeking to serve the United States. The agency also issues and enforces consumer protection regulations. The department maintains general oversight with carrier compliance with its operating requirements and reporting obligations. The agency also assists in the negotiation of international transportation agreements.

The Federal Aviation Administration (FAA) exercises a broad range of safety-related functions, such as licensing pilots and flight crew, overseeing the manufacture, operation and maintenance of aircraft and performing safety certification, surveillance and oversight of air carrier operations. The FAA also provides air traffic control functions, allocates slots at congested airports, funds and regulates airport development and oversees the registration of aircrafts and their parts.

Previously, many of the functions of the Transportation Security Administration (TSA) were performed by the FAA. The TSA prescribes security programmes for domestic and international air carrier operations and assesses security risk. It is responsible for screening airline passengers and their baggage, and oversees the screening of air cargo. Customs Border Protection works to secure US borders.

The National Transportation Safety Board is an independent agency charged by Congress with investigating civil aviation accidents and accidents involving other modes of transportation.

Air carrier operations

Operating authorisation

What procedural and documentary requirements must air carriers meet in order to operate in your jurisdiction?

US carriers must hold either a Certificate of Public Convenience and Necessity or an exemption in order to provide air transportation for compensation or hire, and must obtain an air carrier operations certificate from the Federal Aviation Administration (FAA) in order to perform flight operations. The documents required to apply for US operating authority from the US Department of Transportation are set forth in 14 CFR Part 204, and the requirements for operations certificate are set out in 14 CFR 121 or 135, depending on the scope and nature of the services being proposed.

Foreign air carriers must hold either a foreign air carrier permit or exemption in order to hold out air transportation to or from the United States, and must hold foreign air carrier operations specifications issued by the FAA. The documentary requirements for obtaining a foreign air carrier permit are set forth in 14 CFR Part 211, and for FAA operations specifications at 14 CFR Part 129.

Ownership and control

Do any nationality or other requirements or restrictions apply to ownership or control of air carriers operating in your jurisdiction?

In order to obtain and hold a certificate of public convenience and necessity, an air carrier must be a citizen of the United States. For a corporation to qualify as a US citizen it must:

- be organised under the laws of the United States or a state, the District of Columbia, or a territory or possession of the United States;
- have a president and at least two-thirds of the board of directors and other managing officers who are US citizens; and
- have at least 75% of the voting interest owned or controlled by persons that are US citizens, and be under the actual control of US citizens (see 49 USC Section 40102(a) (15)).

The Department of Transportation engages in a searching review of the management and control of US air carriers, and requires US carriers to apprise the agency of any “substantial change” and a carrier’s post-certification ownership, management or operations to ensure ongoing compliance with these requirements.

Foreign air carriers are generally authorised to serve the United States pursuant to the terms of bilateral air service agreements, or on less frequent occasions, on an extra-bilateral basis at the discretion of the Department of Transportation. Most bilateral air service agreements require that airlines seeking licensure be “substantially owned and effectively controlled” by nationals of their homeland. While the Department of Transportation requires applicants for foreign air carrier permits to provide information about their ownership and management, the department often waives the requirement for carriers from countries which maintain open skies agreements with the United States, or in other cases in which the department finds that the grant of such a waiver would “not be inimical” to US aviation interests.

Financial requirements

What financial thresholds must air carriers meet to obtain operating authorisation?

The financial thresholds to be applied are based on the carrier’s operating plan. The US Air Carrier Fitness Division reviews a new entrant carrier’s proposed business plan, and determines whether the carrier has the financial and managerial resources required to operate successfully. Generally, the regulator expects carriers to have enough cash on hand to sustain three months of operations without receiving any revenue.

The Department of Transportation does not prescribe specific financial criteria for the licensure of foreign air carriers. However, it requires that such carriers provide recent financial reports and details about their proposed operations.

Insurance coverage

What is the required level of insurance coverage for air carrier operations?

Federal law requires US and foreign direct air carriers to have certain amounts of aircraft accident liability insurance coverage to operate in interstate or foreign air transportation (see 14 CFR 205.5). Such air carriers are required to have third-party aircraft accident liability coverage of at least \$300,000 for bodily injury or death, or for damage to property, for any one person in any one occurrence, with at least a total of \$20 million per

involved aircraft for each occurrence. However, aircraft with 60 seats or fewer or with a maximum payload capacity of 18,000 pounds, need only maintain coverage of \$2 million per involved aircraft for each occurrence. Air carriers providing passenger transportation also must have accident liability insurance for bodily injury to, or death of, aircraft passengers of at least \$300,000 for any one passenger and a total of \$300,000 times 75% of the number of aircraft passenger seats, for the involved aircraft in each occurrence.

US air taxi operators registered under Part 298 also must obtain third-party aircraft accident liability coverage for bodily injury to or death of persons other than passengers, with minimum limits of:

- \$75,000 for any one person in any one occurrence, and a total of \$300,000 per involved aircraft for each occurrence; and
- a limit of at least \$100,000 for each occurrence for loss of or damage to property.

US air taxi operators carrying passengers in air transportation also must maintain aircraft accident liability insurance coverage for bodily injury to, or death of aircraft passengers, with minimum limits of \$75,000 for any one passenger, and a total per involved aircraft for each occurrence of \$75,000 times 75% of the number of passenger seats installed in the aircraft.

Safety requirements

What safety requirements apply to air carrier operations, including with regard to professional and technical certifications?

The FAA has comprehensive safety requirements in place, ranging from air carrier certification and operations (14 CFR Parts 110-139), pilot and airmen training and certification (14 CFR Part 20, 61, 63, 65 and 67) and general air traffic and operating rules. The FAA also has promulgated detailed regulations concerning aircraft certification and maintenance.

Environmental obligations

What environmental obligations apply to air carrier operations?

The Environmental Protection Agency recently issued a regulation pertaining to aircraft greenhouse gas emissions. Aviation operations in the United States are subject to many environmental regulations which range from noise to the storage of fuels. Airport operators may be subject to local as well as federal environmental requirements. The FAA's Office of Policy, International Affairs and Environment coordinates environmental policy in the aviation sector.

Air traffic control

How are air traffic control services regulated in your jurisdiction?

The FAA operates and regulates air traffic control services within the United States.

Routes

Do any licensing requirements apply to specific routes?

US carriers typically are licensed to serve all US points, as the domestic air transport market has been deregulated. Many international routes are now governed by open skies agreements, which permit service between all points in the United States and points in the countries covered by these agreements. Route-specific licences remain in force for international routes for which entry is limited.

Are any public service obligations in place with respect to remote destinations?

The United States has a voluntary programme called the Essential Air Service Programme (EAP) which provides financial support for carriers willing to serve certain underserved routes. The EAP is administered by the Department of Transportation.

Charter services

Do any special provisions apply to charter services?

The Department of Transportation regulations define the type of authorised charters, and specify the prior approvals required for each (see 14 CFR Part 212). With regard to passenger charters marketed to the general public, the Department of Transportation has issued regulations which govern the content of airline or charter operator and charter operator or charter participant contracts, and also has detailed regulations in place to protect the funds of charter participants (see 14 CFR Part 380).

Taxes

What taxes apply to the provision of air carrier services?

The taxes which apply depend largely on the nature of the service being provided. Domestic air transport services are subject to excise taxes, which generally do not apply to international air transport services. International services are subject to a panoply of fees and charges. Tax treaties may affect the applicability of taxes to international air transport services. Taxes and fees that might apply to air transport services include the following:

- US excise tax (US ticket tax).
- Travel facilities tax.
- US federal segment fee.
- Passenger facility charge.
- September 11 security fee (also known as US passenger civil aviation security fee).
- US international transportation (arrival/departure) tax.
- US Customs user fee.
- US animal and plant health inspection service fee.
- US immigration and naturalisation fee.

Consumer protection and liability

Airfares

Are airfares regulated in your jurisdiction?

No. Airfares were deregulated pursuant to the terms of the Airline Deregulation Act.

Passenger protection

What rules and liabilities are air carriers subject to in respect of:

(a) Flight delays and cancellations?

Carriers operating scheduled flights to, from or within the United States must provide details of ticketed or reserved passengers and the public notice of known changes in flight status (ie, delays of 30 minutes or more, cancellations and diversions). Information about a change in the status of a flight must be provided within 30 minutes of the carrier becoming aware of the change.

Large US carriers are required to provide data on their websites concerning the on-time performance of their domestic routes, so that a passenger seeking to book a service can be apprised of the on-time performance of the carrier on that route.

(b) Oversold flights?

Carriers are permitted to oversell flights.

(c) Denied boarding?

Persons who are involuntarily denied boarding due to oversales are entitled to receive compensation. The regulations governing denied boarding apply to domestic services, and to international flights which are departing the United States. The regulations, set forth at 14 CFR 250, provide a sliding scale of compensation depending on whether the carrier is able to provide substitute transportation within specified periods.

The compensation varies depending on whether the carrier arranges alternate transportation that is scheduled to arrive at the passenger's next airport:

- within one hour;
- within more than one hour but no more than two hours (four hours for international flights); or
- the carrier is unable to provide alternate transportation within those time constraints.

Passengers are free to bring private legal action for denial of carriage due to oversales.

(d) Access for disabled passengers?

The Air Carrier Access Act sets forth the general prohibition against disability discrimination against airline passengers. The Department of Transportation has promulgated regulations, set out in Part 382 of Title 14 of the Code of Federal Regulations, which cover everything, including the accessibility of air carrier websites, the duties airlines face in the airport environment and the content and substance of responses given to complaints filed by passengers with disabilities.

(e) Lost, damaged or destroyed luggage?

The United States is a signatory to the Montreal Convention, the Warsaw Convention as amended by the Hague Protocol and Montreal Protocol 4 and the Warsaw Convention. When applicable, these treaties exclusively govern the rights and liabilities of passengers and air carriers during international transportation, and limit recoverable damages for lost, damaged or delayed baggage. For example, under the Montreal Convention, damages are limited to 1,131 special drawing rights per passenger. (MC, Article 22(2)).

Where the treaties are not applicable (ie, for domestic air transportation), an air carrier's conditions of carriage generally govern the rights and liabilities of the parties for lost, damaged or destroyed luggage. Under federal law, air carriers may not limit liability for lost, damaged or delayed baggage for less than \$3,500 for each passenger (14 CFR 254.4). These amounts are adjusted for inflation from time to time.

(f) Retention and protection of passenger data?

The Federal Transportation Code does not contain any specific requirements concerning the privacy rights of air passengers. Federal statutes such as the Privacy Act govern the collection and use of personal information by the Federal government. The Department of Transportation required carriers to collect and maintain records that may contain private information, such as:

- passenger lists, including names and emergency contact telephone numbers (14 CFR 243);
- records of disability-related complaints (14 CFR 382.157); and
- records of consumer complaints (air carriers) and customer reservations (charter operators) (14 CFR Part 249).

The Department of Transportation requires carriers to adhere to the terms of their own privacy policies. Failure on the part of an airline to follow the terms of its stated policy would be viewed by the department as an "unfair and deceptive" practice. It has imposed penalties on carriers for failing to adhere to such policies.

*Cargo***What rules and liabilities apply to the air carriage of cargo?**

The United States is a signatory to the Montreal Convention, and the Warsaw Convention as amended by the Hague Protocol and Montreal Protocol 4. Where applicable, these treaties exclusively govern the rights and liabilities of the parties for the international transportation of cargo by air. Which treaty governs will depend on the location of the places of departure and destination of the cargo.

Under the Montreal Convention an air carrier is strictly liable for the destruction, loss of or damage to, the goods "upon condition only" that the event which caused damage occurred during the carriage by air (Montreal Convention, Art 18 (1)).

The carrier's liability is limited to 19 special drawing rights per kilogram based on the weight of the consignment – this limit is unbreakable. The limit may be higher if the consignor makes, at the time the cargo is handed over, a special declaration of interest in delivery at destination and has paid a supplementary sum, if required by the carrier. An air carrier also is liable for damage occasioned by delay unless it proves that it took all reasonable measures to avoid the damage or it was impossible to take such measures (Article 19).

For carriage of cargo by air within the United States, the air carrier's air waybill contains the conditions of carriage that will govern the liability of the air carrier. Similar to the treaty, there are limits of liability and notice of claim requirements. Federal common law generally governs the air carrier's liability for loss of goods and enforcement of the limitation of liability in the air waybill.

Marketing and advertising

Do any special rules apply to the marketing and advertising of aviation services?

Under the Airline Deregulation Act, states may not attempt to regulate the rates, routes or services of airlines. The Department of Transportation regulates airline marketing and advertising under its authority to forbid unfair and deceptive practices in air transportation.

The Department of Transportation's policies are set out in both regulations and administrative decisions. The Department's full-fare advertising rule is codified at 14 CFR Section 399.84, and covers advertising that markets to US consumers in all media, including print, television, radio, billboard and the Internet. The department requires all advertising that states a price for air transportation to state the entire price a customer must pay. Under this rule, carriers must include all government-imposed taxes and fees and all carrier-imposed surcharges in the advertised fare price.

Complaints handling

Do any special rules apply to consumer complaints handling in the aviation industry?

The Department of Transportation has detailed requirements concerning the handling of consumer claims. Its Office of Aviation Enforcement and Proceedings can bring enforcement action against carriers that fail to meet their duties to their passengers.

The Department of Transportation requires airlines to place on their websites and on all e-ticket confirmations either a mailing address or web address where customers may file complaints about a service.

Both US and foreign carriers must acknowledge receipt of a consumer complaint within 30 days of receiving it and send a substantive response to the consumer within 60 days of receiving it. Foreign carriers are required to respond only to complaints from customers that are related to a carrier's services being marketed in the United States, and flights to or from the United States. There are special regulatory provisions concerning disability-related complaints.

Aircraft

Aircraft register

What are the requirements for entry in the domestic aircraft register?

The Federal Aviation Administration (FAA) handles aircraft registration functions. The FAA registry is an 'owner' registry, in that eligibility of aircraft for FAA registration depends on whether the owner is a US citizen. However, in certain types of leasing transactions (eg, a conditional sale contract whereby the buyer or lessee has the right or obligation to become the owner of the aircraft), the owner may be the lessee rather than the holder of legal title and in that case the lessee must qualify as a US citizen in order for the aircraft to be registered.

With respect to citizenship, a corporation or association (which includes limited liability companies (LLCs)) is a US citizen if:

- it is created or organised under the federal laws of the United States, or the laws of a state or possession of the United States;
- the president (if any, for an LLC), two-thirds of the directors (or managers for an LLC) and two-thirds of the other managing officers are US citizens; and
- at least 75% of the voting interests (usually members for an LLC) are owned or controlled by US citizens.

The Transportation Code provides for two alternative means for establishing eligibility for registration where the aircraft is owned by a corporation that does not satisfy all of the citizenship requirements:

- Voting trust – a corporation meeting the other citizenship requirements may meet the 75% US citizen voting interest if its shareholders transfer at least 75% of the aggregate right to vote shares of the corporation to an independent voting trustee who is a citizen (either an individual citizen or entity meeting all citizenship requirements) and who is not related to any other party.
- Usage – if the corporation is organised and doing business under the laws of the United State or any state (regardless of the citizenship of its officers, directors or shareholders), the aircraft may be registered with the FAA if it is based and primarily used in the United States. Under FAA guidelines, this requires that 60% or more of flight hours during each six-month period be accumulated during non-stop (except for emergencies or refuelling) flights between two points in the United States, and the actual hours be certified and reported to the FAA semiannually.

Further, a trustee that meets all of the citizenship requirements for a corporation may own (and register in its name) an aircraft in trust for the benefit of one or more other parties. Pursuant to unpublished FAA counsel opinions and now an FAA policy published on the Federal Register, the FAA has permitted a US citizen trustee to hold aircraft in trust for 100% non-citizen beneficiaries if the discretionary power to vote with respect to the aircraft in the best interests of the United States is vested solely in the trustee, even while the trustee is obligated to follow the directions of the beneficiaries in all other matters.

Mortgages and encumbrances

Is there a domestic register for aircraft mortgages, encumbrances and other interests? If so, what are the requirements and legal effects of registration?

The FAA Registry provides a central system for the recording of any conveyance, bill of sale (as to airframes only), contract of conditional sale, mortgage, lease, equipment trust, assignment of any of the above, notice of tax lien (other than federal tax lien) or of other lien, or other instrument executed for security purposes, affecting title to or any interest in:

- any aircraft registered with the FAA Registry;
- any identified engine of 550 or more rated take-off horsepower or the equivalent (which may be recorded separately or in connection with a US registered aircraft);

- any identified propeller capable of absorbing 750 or more rated take-off shaft horsepower (which may be recorded separately or in connection with a US registered aircraft); and
- any aircraft engine, propeller or appliance maintained by a US certificated air carrier for installation or use in an aircraft, engine or propeller, or any spare part for installation or use in an aircraft, engine or propeller so long as such spare part is maintained by or for such an air carrier at the locations designated in the filing.

There is no US citizenship requirement for a mortgagee, though a mortgagee must meet the aircraft registration requirements in order to register an aircraft in its name as owner if it takes the title after foreclosure.

In order to be recorded, any mortgage or other conveyance or instrument must identify all aircraft, engines and propellers by make, model, serial number and, in the case of aircraft, by US registration number. An assignment, amendment or supplement with respect to any other recorded conveyance or instrument must describe such other conveyance or instrument in enough detail to identify it, including its date, the names of the parties, the date of FAA recordation and the recorded conveyance number.

The principal effect of recordation is that each mortgage or other conveyance filed with the FAA Registry for recordation affecting the applicable aircraft, engine, propeller, appliance or spare parts will cause such conveyance or instrument to be valid against third parties without notice (with whatever priority is given by US state law). If not filed for recordation, such a mortgage or other conveyance will only be valid against the other party to such mortgage (and its heirs and devisees) and will not be valid against third persons except persons having actual notice thereof.

The United States is a signatory to and has ratified the Convention on International Interests in Mobile Equipment (the Cape Town Convention) and the Protocol thereto (the Aircraft Protocol) on matters specific to aircraft equipment. The FAA Registry's role of filing full agreements has been preserved and the FAA Registry works in tandem with the International Registry, which was established pursuant to the Cape Town Convention and Aircraft Protocol.

Detention

What rules and procedures govern the detention of aircraft?

There are no statutory rights of detention in the United States, and there is not a general usage in the statutes of the various US states of a right of detention. However, the effect of some statutory provisions may be to allow the detention of an aircraft. The variety of circumstances that may statutorily create a right of forfeiture, a statutory lien, a right in rem or a right to detain or to use an aircraft include one or more of the following (although the rules and procedures governing the enforcement of such rights vary depending on the jurisdiction):

- Airport landing fees and charges.
- Violations of FAA regulations.
- Customs contraventions – crimes. Under US federal law, aircraft can be detained, and in some cases forfeited, for breaches of customs regulations. The most common customs law violation is the importation of illegal drugs.

- Unpaid tax – liens for unpaid US Federal taxes may be enforced through:
 - levy and distraint (ie, sale of seized property); or
 - a suit to foreclose its rights in the property.

A state tax lien may be enforced in accordance with procedures set forth in the relevant state statute.

- War or national emergency – during war or national emergency the United States may requisition aircraft. However, compensation is payable.

Safety and maintenance

What rules and procedures govern aircraft safety and maintenance?

The FAA has promulgated detailed regulations concerning aircraft certification, which are set forth in 14 CFR Parts 21-49.

Drones

What is the state of regulation on unmanned aerial vehicles (drones) in your jurisdiction?

Small unmanned aircraft systems (sUAS) may be operated by individuals in US airspace in accordance with FAA rules and regulations. An 'sUAS' is an unmanned aircraft weighing less than 55 pounds on take-off, including everything that is on board or otherwise attached to the aircraft (14 CFR 107.3). This comment is limited to civil sUAS and does not address public aircraft operations or military UAS.

The rules which apply to a given operator depend on the purpose of the individual's operation. Until recently, the FAA applied the rules for manned aircraft to unmanned operations. Under these rules, sUAS could be operated only for recreational purposes, and were not permitted to be operated for commercial purposes unless the FAA had granted a specific exemption to the operator. Even when an exemption was granted, the FAA placed strict operational limits on the exemption holder.

The long-awaited FAA final rule on operation of sUAS was published in June 2016 and allows for commercial operation of sUAS in the national airspace under the conditions of the rule without prior approval from the FAA. The rule is codified at 14 CFR Part 107.

In addition, the rule created a new pilot certificate specific to unmanned operations (remote pilot airman certificate with an sUAS rating), which requires only that a UAS pilot pass an initial aeronautical knowledge test. The rule also requires commercial operators to register their UAS with the FAA. Initially, the FAA required model aircraft operators to register their UAS with the FAA, but the US Court of Appeals for the DC Circuit recently vacated the registration rule as it applies to hobbyists.

Accidents

Investigation

How are air accidents investigated in your jurisdiction?

The National Transportation Safety Board (NTSB) is responsible for investigating and establishing the facts, circumstances and cause or probable cause of every civil aviation accident in the United States. The NTSB does not investigate accidents involving aircraft operated by US armed forces or intelligence agencies, but does investigate accidents involving both civil and military aircraft.

On the notification of an accident, the NTSB will determine the scale of the response needed. For smaller aircraft accidents, the NTSB may launch a single investigator-in-charge to gather evidence. For more prominent accidents, the NTSB will launch a 'go team' consisting of an investigator-in-charge and a team of investigators experienced in a broad spectrum of aviation specialties, such as operations, aircraft structures, power plants, avionics, air traffic control, weather, human performance and survival factors.

NTSB investigations typically last 12 to 18 months and conclude with the publication of a final report containing the probable cause or causes, facts and circumstances of the accident. The NTSB may also issue safety recommendations in the report to entities that, in its view, are best able to improve aviation safety. Safety recommendations may also be issued before a final report, and at any time the NTSB decides is warranted for safety purposes.

Liability

What liability regime governs death, injury and loss arising from air accidents?

The United States generally relies on elements of tort law to apportion legal liability for death, injury or loss arising from air accidents. This law can be based on statute, common law precedent or a combination of the two. Procedural aspects of litigation can assume great importance in the multijurisdictional landscape that marks US jurisprudence.

The Montreal Convention, which took effect in 2003, is likely to govern most cases of air carrier liability for personal injury and death claims arising during international transportation. Article 17 of the convention provides that an air carrier is liable for damages resulting from death or bodily injury to passengers "upon condition only that the accident which caused the death or injury took place on board the aircraft or in the course of any operations of embarking or disembarking" (Montreal Convention, Art 17(1)).

A carrier is liable only if a passenger's injury is caused by an accident. Plaintiffs have the burden of proving that the causation was an Article 17 accident.

Where an accident is found, a carrier is presumptively liable for provable damages up to 113,100 special drawing rights. However, where plaintiff's injuries are caused by his or her own conduct and were not due to the negligence, wrongful act or omission of the airline, the airline may be wholly or partly exonerated (Montreal Convention, Art 20). Further, the carrier's liability may be limited to 113,100 special drawing rights if it can prove that it was not negligent or the accident resulted from the sole negligence of another party (Montreal Convention, Art 21(2)(a) and (b)).

Where the Montreal Convention does not apply, the rights and liabilities of passengers and carriers are governed generally by the various tort laws of the relevant jurisdictions.

Regulatory notification

What are the reporting requirements for air accidents?

The NTSB has published regulations requiring immediate notification of any aircraft accident, listed serious incidents or when an aircraft is overdue and believed to have been involved in an accident. The regulations also require a report to be filed within 10 days of an accident, or within seven days if an overdue aircraft is still missing or on NTSB request for a serious incident. Crewmembers must submit a statement of the facts, conditions and circumstances of the accident or incident, either at the time of the report or as soon as possible if incapacitated at the time of the report.

Airports

Ownership

What rules govern the ownership of airports (both public and private)?

Ownership rules governing private airports are based on state transportation policies and authorities, and vary significantly between states. The Federal Aviation Administration (FAA) imposes considerable obligations on airport sponsors, whether public or private entities, that receive direct grants of funds or conveyances of land, and in return, agree to the assurances at 49 USC Section 47107.

Operation

What is the authorisation procedure for the operation of airports?

US airport operations are governed by regulations promulgated by the FAA. Part 139 of the Federal Aviation Regulations sets forth the specific requirements for the certification of airports and the equipment required at US airports. States and municipalities may also prescribe local operating requirements.

What ongoing operating requirements apply (including obligations relating to safety, security and facilities maintenance)?

The FAA regulates airports serving air carrier operations, and imposes significant requirements on any recipient of federal grants. The FAA inspects administrative record keeping, the condition of movement areas (including markings, lighting and control of ground vehicles, aircraft rescue and firefighting procedures), fuel facilities and specific items related to night operations (see 49 USC 139). These inspections usually occur annually, but may be unannounced.

FAA-authorized aviation safety inspectors must be provided free and uninterrupted access to public use airports and facilities, including airport operating areas, security identification display areas, and any other secured or restricted area. A 'public use airport' includes public airports and privately owned airports used or intended to be used for public purposes that are reliever airports, or have at least 2,500 passengers boarding each year and receive scheduled passenger aircraft service (49 USC Section 153.4).

Airport charges

What airport charges apply and how are they regulated?

As a matter of policy the FAA views the amount of airport charges as an issue between local authorities and airport users. Under FAA grant agreements all aeronautical users are entitled to airport access on fair and reasonable terms without unjust discrimination. The FAA prefers to permit the market to determine applicable

rates, but will review rate disputes to ensure rates are fair, reasonable and non-discriminatory, and that revenues of grant recipients are used for allowable statutory uses. Environmental fees are acceptable to the extent that they are tied to an actual cost, as are charges related to debt servicing. Airports often seek to use passenger facility charges (PFCs) to fund facilities development. Before applying for authority to impose a PFC, the public agency running the airport must provide written notice and an opportunity for public comment on the proposed PFC.

Access

What regulations govern access to airports?

As part of its grants programme the FAA requires recipients of grant proceeds to provide and adhere to assurances relating to non-discrimination with regard to access to airport facilities.

Airports that receive federal funds, including conveyance of land, are subject to an exclusive rights prohibition as long as the airport continues to operate. This prohibits an airport from granting an exclusive right for the use of the airport, including the provision of aeronautical services to the public. The exclusive rights prohibition supports the longstanding government policy of promoting airport development by preventing the creation of monopoly services at airports. The prohibition is codified at 49 USC Sections 40103(e), 47107(a) and 47152. Subject to availability of space and safety considerations, any certificated operator may operate from an airport.

Slot allocation

What regime governs the allocation of airport slots (including slot transfer, revocation and disputes)?

Airport infrastructure may not be able to meet the demand by air carriers for take-off or landing times. Where this occurs, the FAA may impose mandatory slot coordination requirements (pursuant to its authority at 49 USC Section 40103(b)) to ensure the efficient use of navigable airspace. A 'slot' is the authority to conduct one take-off or landing under the instrument flight rules each day during a specific hour or 30-minute period at a specific airport. Slots will be lost if not used. The FAA recalls slots not utilised at least 80% of the time over a two-month period. Three US airports are subject to FAA-imposed slot controls:

- Washington Reagan National Airport;
- New York LaGuardia Airport; and
- New York John F Kennedy International Airport.

Ground handling

How are ground handling services regulated?

Ground handling services are not generally subject to federal licensing requirements and regulation. However, the Transportation Security Administration and FAA may have standards which apply to services provided by ground-handlers, such as cargo screening and loading and aircraft refuelling.

Competition issues

Governing regime

Do any sector-specific competition regulatory/legal provisions apply to the aviation industry in your jurisdiction?

Airline mergers and acquisitions used to be subject to review and approval by the Department of Transportation. Airline mergers now are subject to review by the Antitrust Division of the Department of Justice. The Department of Justice also holds authority to review airline pricing behaviour and other competitive practices.

The Department of Transportation has the authority to review unfair and deceptive trade practices (49 USC 41712), and to review and confer antitrust immunity on international airline alliances and joint ventures (49 USC 41708-41709).

*Code sharing and joint ventures***What (if any) competition concerns arise in relation to code sharing and air carrier joint ventures?**

International code-share arrangements are subject to prior review and approval by the Department of Transportation (see 14 CFR Part 212). As a general rule, the department views code-sharing to be pro-competitive. However, it does review international code-sharing arrangements to ensure that they are consistent with the public interest and will not adversely affect airline competition. Competitive concerns have largely when code-sharing partners offer overlapping services, or in city-pairs in which market entry is restricted.

The Department of Transportation has the authority to review and confer antitrust immunity on joint venture and other cooperative agreements between foreign air carriers, or US and foreign air carriers (see 49 USC 41708-41709). The department has indicated that it will only entertain applications for antitrust immunity involving carriers whose homelands have entered into open skies air service agreements with the United States, noting that these agreements eliminate *de jure* barriers to entry in the relevant markets. However, the department also considers *de facto* barriers to entry, such as access to airport landing slots, when reviewing and deciding whether to grant applications for antitrust immunity.

*State aid***What rules govern state aid in the aviation industry? Do any exemptions apply?**

The rules applicable to the aviation sector vary according to the type of service being provided.

International air transport services are governed by bilateral air transport agreements between the United States and the other country. The model US open skies agreement does not prohibit carriers from receiving government support or subsidy, but provides the parties with a mechanism to challenge fares that are artificially low due to direct or indirect subsidy. Air transport services are excluded from coverage under the General Agreement on Tariffs and Trade.

Subsidy allegations have repeatedly been made in the market for aircraft, with claims being filed both by and against US manufacturers due to allegations of improper subsidy.

*Notable cases***Have there been any notable recent cases or rulings involving competition in the aviation industry?**

The Department of Justice recently closed its 2015 investigation into what a department spokesperson at the time called “possible unlawful coordination” among major airlines. The department reportedly launched the investigation in response to public statements by industry executives celebrating the discipline each had exhibited in not adding flights with the improvement in the economy. Although the cloud of the department investigation has been lifted, US airlines continue to face a number of private antitrust class actions that were consolidated in federal district court in the District of Columbia. Discovery in the case is ongoing, and is expected to be completed by April 2018.

American Airlines recently won an antitrust case against Sabre Holdings (*US Airways Inc v Sabre Holdings Corp*, *US District Court, Southern District of New York, No 11-cv-2725*), in which the former US Airways alleged that Sabre had used its excessive market power to charge inflated booking fees to its airline customers. American Airlines was awarded \$15 million in damages.

Dispute resolution

Disputes

What aviation-related disputes typically arise in your jurisdiction and how are they usually resolved?

The most common aviation-related disputes are those related to wrongful death, personal injury, delay (tarmac or otherwise) and damage, loss or delay of baggage. Passengers generally bring an action in state or federal court. Where the air carrier has strong defences the case may be dismissed at an early stage or on summary judgment following discovery. Most cases are settled before trial. Consumer complaints are subject to mixed jurisdiction. The Department of Transportation regulations (which do not provide a private right of action to consumers) pre-empt state consumer law statutes. While consumers remain free to sue carriers for breach of contract, their rights and recourse for regulatory and non-contractual disputes are limited to filing complaints with the Department of Transportation.

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