Air Transport

In 37 jurisdictions worldwide

Contributing editors
John Balfour and Mark Bisset

2015

GETTING THE DEAL THROUGH

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Contributing editors

John Balfour and Mark Bisset

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Law Business Research

THE QUEEN'S AWARDS FOR ENTERPRISE: 2012

Published by
Law Business Research Ltd
87 Lancaster Road
London, W11 1QQ, UK
Tel: +44 20 7908 1188
Fax: +44 20 7229 6910

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First published 2006
Ninth edition
ISSN 1751-9098

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

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General

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

Two government bodies regulate aviation in the Philippines: the Civil Aviation Authority of the Philippines (CAAP) by virtue of Republic Act No. 9497 or the CAAP Law and the Civil Aeronautics Board (CAB) by virtue of Republic Act No. 776, as amended by Presidential Decree 1462.

The CAAP acts as the public registry for aircraft and generally regulates the technical, operational, safety and security aspects of aviation while the CAB regulates the economic aspect of air transport, and has the general supervision, control and jurisdiction over air carriers, general sales agents, cargo sales agents and air-freight forwarders.

Regulation of aviation operations

2 How is air transport regulated in terms of safety?

The CAAP, through its director general, prescribes rules, regulations, or minimum standards governing practices, methods and procedures that are necessary to provide adequately safe civil aviation. The director general has the power, among others:

- to issue airmen certificates to individuals who possesses the proper qualifications for, and are physically able to, perform the duties pertaining to the position for which the airman certificate is sought;
- to issue airworthiness certificates for Filipino-registered aircraft, after it is found that the aircraft conforms with the appropriate type of design and construction and is in a condition allowing for safe operation; and
- to issue air operator certificates to air carriers that are properly and adequately equipped and have demonstrated the ability to conduct safe operations.

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

The safety regulations for both commercial and non-commercial air transport are contained in the Philippines Civil Aviation Rules (PCAR) promulgated by the CAAP.

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

Yes. Filipino rules and regulations require that any person or entity wishing to engage in air commerce or transport, whether foreign or domestic, must secure a certificate of public convenience and necessity (CPCN) from the CAB.

Foreign carriers who wish to operate to and from the Philippines must also secure a permit from the CAB before they can operate in the Philippines. These permits ensure that the person or entity wishing to engage in air transport has the financial and technical capability to perform such services. (Please see question 9.)

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

Generally, a permit authorising a person to engage in domestic air commerce or air transport can only be granted to a Filipino citizen. A Filipino citizen is defined as: an individual who is a citizen of the Philippines; a partnership of which each member is such an individual; or a corporation or association created or organised under the laws of the Philippines, of which the directing head and two-thirds or more of the board of directors and other managing officers are citizens of the Philippines, and in which 60 per cent of the voting interest is owned or controlled by persons who are citizens of the Philippines (section 3(r), RA 776). Note, however, that foreigners residing in the Philippines who are members of aero clubs organised purely for recreation, sport, or the development of flying skills, may be issued permits as a prerequisite to any aeronautical activities within Filipino airspace.

Air carriers must seek specific approval from the CAB to operate as such. The CAB requires air carriers to have a minimum paid-up capital ranging from 10 million pesos for carriers with domestic non-scheduled flights to 50 million pesos for carriers with domestic and international scheduled flights.

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

A person or entity wishing to engage in air transport in the Philippines – and specific routes – must submit an application to the CAB, together with the required documentary requirements. The application will be published in newspapers of general circulation in the Philippines and all affected airlines will be notified. A hearing on the application will be conducted by the CAB to determine whether to grant the application to engage in air transport (or specific routes) in the Philippines.

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

All affected air operators are notified of the application for an air carrier's permit and may enter its objection to the application by appearing in the hearing of such application before the CAB.

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

Yes, it is a declared policy that in the exercise and performance of the powers and duties of the CAB and the CAAP that they shall consider, as being in the public interest, and in accordance with the public convenience and necessity, competition between air carriers to the extent necessary to assure the sound development of an air transport system properly adapted to the need of the foreign and domestic commerce of the Philippines, of the postal service, and of the national defence.

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

Only foreign air carriers duly designated by their respective governments with which the Philippines has an air service agreement (ASA) can operate in the Philippines by applying for a foreign air carrier's permit (FACP) with the CAB. The foreign air carrier must submit an FACP application form, together with the required attachments (including articles of incorporation and by-laws of the foreign air carrier, Securities and Exchange licence to conduct business in the Philippines, and a *note verbale* designating the applicant as an official carrier to the Philippines), to the CAB. Upon

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publication of the application and notice to affected airlines, the CAB will conduct a hearing to determine whether it will issue a FACP in favour of the foreign carrier applicant.

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

We are not aware of any such specific rules. However, air transport serving missionary or developmental routes, as indicated in the CPCN may qualify for pioneer status under the Philippines Investment Priorities Plan, which entitles them to avail of incentives such as tax allowances for investments, post-operative tariff protection, tax exemptions and income tax holidays under the Investment Incentives Act.

11 Are charter services specially regulated?

Yes. Economic Regulations No. 2 issued by the CAB specifically regulates charter services, both domestic and international. It provides, among others, rules and regulations as to authorisation for charter trips, limitation on amount of charter trips that may be performed, charter agreements and applicable tariffs.

12 Are airfares regulated and, if so, how?

Yes. The CAB has the power to fix and determine reasonable individual, joint or special rates, charges or fares which an air carrier may demand, collect or receive for any service in connection with air commerce. The board may, however, adopt any original, amended or new individual, joint or special rates, charges or fares proposed by an air carrier if the proposed individual, joint or special rates, charges or fares are not unduly preferential or unduly discriminatory or unreasonable (section 5.01, IRR of EOs 219 and 32).

Aircraft

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

The owner or operator of the aircraft (as the case may be) is entitled to be mentioned in the aircraft register.

The CAAP Law provides that, except as otherwise provided in the Constitution and existing treaty or treaties, no aircraft shall be eligible for registration in the Philippines unless it is owned by or leased to a citizen of the Philippines or corporations or associations organised under the laws of the Philippines at least 60 per cent of whose capital is owned by Filipino citizens (section 44, CAAP Law). Thus, the nationality of the owner or the operator is the principal factor in determining qualification for a Filipino certificate of registry. The owner of the aircraft (if not qualified to be the entity named in the aircraft registry) may still record its interest in the aircraft register and cause the annotation of the Filipino certificate of registry to reflect such interest.

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

Yes. The CAAP maintains the aircraft registry, in which conveyances affecting title to or interest (including mortgages and charges) over Filipino-registered aircraft may also be recorded.

Any conveyance affecting title to or interest in any Filipino-registered aircraft (including a mortgage) or any portion thereof must be recorded with the CAAP in order to be valid and effective against third persons. Otherwise, it will bind only the parties and their successors-in-interest and any person who has actual notice of such conveyance (section 49, CAAP Law).

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

Under Executive Order No. 903, the Manila International Airport Authority (MIAA), which is empowered to levy and collect dues, charges and fees or concessions, or for any service provided by the MIAA, may detain, on its own authority, any aircraft, equipment or furniture belonging to the owner or agent of said aircraft, until the amounts have been paid.

The Civil Code also recognises possessory liens in respect of credits for the making, repair, safekeeping or preservation of personal property on an aircraft thus made, repaired, kept or possessed (article 2241, Civil Code).

Filipino tax authorities may also distrain or sell an aircraft for failure to pay Filipino taxes (section 207, Tax Code). Customs authorities may likewise sell an aircraft for failure to pay customs duties, fees, charges or fines, or for carriage of smuggled or contraband goods unless, in the latter case, such aircraft is used as a duly authorised common carrier (section 2530, Tariff and Customs Code).

The director general may also detain an aircraft if it may not be airworthy or the operation would cause imminent danger to persons or property on the ground, (section 39, CAAP Law) and impose a lien on an aircraft if the charges and other fees are not paid in full on the due date or any part of the charges or the late payment penalty remains unpaid or for failure to pay administrative fines arising from violation of any rules and regulations promulgated by the CAAP (section 73, CAAP Law).

16 Do specific rules regulate the maintenance of aircraft?

Yes. PCAR provides for the regulatory requirements for, among others, the maintenance requirements of aircraft expected to operate in the Philippines.

Airports

17 Who owns the airports?

The majority of airports in the Philippines are owned by the national government.

18 What system is there for the licensing of airports?

Aerodrome or airport operations are regulated by the CAAP through the Manual of Standards for Aerodromes and the Civil Aviation Regulations governing Aerodromes. Aerodrome operators are required to comply with the standards, practices and procedures that are required under the manual, as appropriate to the operations conducted at the aerodrome and the requirements for aircraft using the aerodrome. The CAAP, however, may exempt an aerodrome operator from compliance with specified provisions of the Civil Aviation Regulations or the manual, taking into account any relevant considerations relating to the safety of air navigation.

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

Yes, the CAAP imposes and fixes reasonable charges and fees for the use of government aerodromes or air navigation facilities, and fixes the reasonable charges to be imposed in the use of privately owned air navigation facilities and aerodromes (section 24(k) and (l), CAAP Law).

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

We are unaware of any laws specifically restricting or qualifying access to airports. Airport security regulations and procedures, which may restrict or qualify access to airports to a certain extent, are determined and implemented by each airport authority such as the Manila International Airport Authority and the Mactan-Cebu International Airport Authority. In addition, the CAAP, in coordination with the appropriate government agency tasked to provide airport security, is empowered to prescribe reasonable regulations, methods and procedures to ensure the safety of passengers and property (section 24(s), CAAP Law).

21 How are slots allocated at congested airports?

Slots are allocated at congested airports using the Communication Navigation Surveillance/Air Traffic Management (CNS/ATM) system. CNS/ATM systems are communications, navigation, and surveillance systems, employing digital technologies, including satellite systems together with various levels of automation, applied in support of a seamless global air traffic management system.

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

Ground handling services are also subject to regulation by the CAAP. Ground handling personnel are required to obtain licences from the Licensing Division of the CAAP by undergoing knowledge and skills examinations.

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

Air traffic control services are provided by the Air Traffic Service (ATS) of the CAAP. The ATS adopts international standards in providing air traffic control services. One such international standard is the ICAO Annex 2 on the Rules of the Air.

Liability and accidents

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

Yes. Under the Civil Code, common carriers, including aircraft, are bound to observe extraordinary diligence in the vigilance over the goods and for the safety of the passengers transported by them (article 1733, Civil Code).

In the event of loss, destruction or deterioration of the goods, common carriers are responsible, unless they can prove that the loss, destruction or deterioration was brought about by the causes specified in article 1734 of the Civil Code (article 1734, Civil Code). In all other cases, common carriers are presumed to have been at fault or to have acted negligently, unless they prove that they observed extraordinary diligence (article 1735, Civil Code).

In case of death of or injuries to passengers, common carriers are presumed to have been at fault or to have acted negligently, unless they prove that they observed utmost diligence of a very cautious person, with due regard for all the circumstances (articles 1755 and 1756, Civil Code).

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

We are unaware of any special rules about the liability of aircraft operators for surface damage. Generally, our Civil Code prescribes that whoever by act or omission causes damage to another, there being fault or negligence, is obliged to pay for the damage done (article 2176, Civil Code). The Philippines is also a signatory to the Convention on Damage Cause by Foreign Aircraft to Third Parties on the Surface otherwise known as the 1952 Rome Convention.

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

Investigation of air accidents is within the jurisdiction of the director general of the CAAP and the Aircraft Accident Investigation and Inquiry Board (AAIIB), which is also under the CAAP (section 49, CAAP Law). As its system, the AAIIB follows ICAO Annex 13 on Aircraft Accident and Incident Investigation.

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

The owner, operator or pilot-in-command of the aircraft must report to the AAIIB when an aircraft accident or incident occurs in the Philippines or involves a Filipino aircraft or an aircraft operated by a Filipino operator. The owner, operator or pilot-in-command shall provide all the information listed in PCAR Part 13 when notifying the AAIIB, which has the power to promulgate rules and regulations governing the notification and the reporting of accidents and incidents involving aircraft (section 42(a), CAAP Law). As previously stated, the AAIIB follows ICAO Annex 13 on Aircraft Accident and Incident Investigation.

Competition law

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

The Philippines Constitution prohibits and protects Filipino enterprises against unfair competition. However, there are no sector-specific competition rules that apply to aviation. We note, however, that there are general penal provisions in the Revised Penal Code, which punishes any act that restrains free competition in the market.

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

There is no specific regulator that regulates the aviation sector nor are there specific competition rules that apply to the aviation sector.

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

Not applicable.

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

Not applicable.

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

Not applicable.

Financial support and state aid

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

We are not aware of any sector-specific rules regulating direct or indirect financial support to companies in the aviation sector. There are, however, tax benefits granted to certain importation of aircraft, equipment and machinery, spare part commissary and catering supplies, aviation fuel and oil and such other articles imported by and for use by airlines operating under a congressional franchise.

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

Not applicable.

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

Not applicable.

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

Not applicable.

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

Not applicable.

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

Not applicable.

Miscellaneous

39 Is there any aviation-specific passenger protection legislation?

We are not aware of any aviation-specific passenger protection legislation in the Philippines. However, the CAB has issued an economic regulation providing for a bill of rights for air passengers and carrier obligation (Economic Regulation No. 9).

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

The PCAR provides that there must be a valid insurance policy covering the aircraft hull, each person, freight and mail on-board the aircraft, and liability in favour of third parties. In the absence of these requirements, the aircraft cannot be operated.

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

When the airline or air carrier issues a ticket to a passenger, a condition stating that the 'holder hereof and his hand-carried luggage are subject to search for, and seizure of, prohibited materials or substances. Holder refusing to be searched shall not be allowed to board the aircraft', must be printed in the ticket. Airline companies that operate as public utilities or operators of aircraft are authorised to open and investigate suspicious packages and cargoes in the presence of the owner or shipper or authorised

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representatives. It can refuse the loading of the same if any of the persons mentioned above refuses to have such packages and cargoes opened and inspected.

42 What serious crimes exist with regard to aviation?

Republic Act No. 6235 punishes any person who shall compel a change in the course or destination of an aircraft of Filipino registry, or to seize or usurp the control thereof, while it is in flight. It also punishes any person who shall compel an aircraft of foreign registry to land in Filipino territory or shall seize or usurp the control thereof while it is within the Filipino territory.

It is also unlawful to ship, load or carry in any passenger aircraft operating as a public utility within the Philippines, any explosive, flammable, corrosive or poisonous substance or material. The shipping, loading or carrying of any explosive in any cargo aircraft operating as a public utility within the Philippines should be in accordance with regulations issued by the CAB.

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Air Transport
ISSN 1751-9098

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