GLP and Civil Aviation in India: Growing Business Opportunities

Dr. V. Balakista Reddy
Professor of Law, Registrar and
Head, Centre for Aerospace and Defence Laws (CADL)
NALSAR University of Law, Hyderabad
E-mail- balakista@gmail.com

Scheme of Discussion

1. Globalization, Liberalization and privatization (GLP) of aviation sector and Indian Responses
2. Liberalization and open skies policy
3. Airport Privatization Legal Issues
4. The Airports Authority of India Act, 1994 (55 of 1994)
5. Privatization of AAI 2003
6. Airport Infrastructure Policy 1997
7. Airports Economic Regulatory Authority of India Act, 2008
9. Airlines Privatization Legal Issues
12. Leasing and Financing in Airlines
13. FDI in Aviation Sector
14. Scope and Opportunities in Aviation Consultancy Issues

Globalization Challenges to Aviation Industry

- Globalization of economies, liberalization of aviation policies, new technological developments in civil aviation, privatization of airlines and airports, and liberal and open "open skies" bilateral agreements, are the some of the new trends emerging on the horizon.
- Deregulation and intensified global competition are forcing airlines to become responsive, competitive and efficient by focusing more closely on their customers and operations.
- The technological, infrastructural, institutional, economic and human challenges have prompted those in charge of airlines and aviation-related agencies to effect a shift in their polices and approaches pursued for years. In fact, civil aviation in the new millennium would be one of the biggest growth sectors.
- New concepts of ownership, financing, management and operation of air transport are emerging.
- Traditional patterns of state involvement are increasingly being questioned.
- Many governments have begun to pursue competitive policies domestically - including the continuing movement to privatize many government-owned airlines - and to expand foreign holdings in airline equity.
- As a result, there is a significant growth in the number of alliances over marketing, code sharing and computer reservation system.

LPG and Its Impact on Civil Aviation

- Privatization, cross-border acquisitions, market alliances, merger and restructuring of airlines in the wake of liberalization of air transport and deregulation are all leading towards market oriented international aviation environment.
- Airlines of many countries are in various stages of privatization·
- Airports Privatization is happening in many parts of the world including developing countries.
- The Asia/Pacific region offers abundant opportunities as the fastest growing aviation region in the world.
- The reasons for this optimism includes the strong economic expansion, significant ethnic ties with various countries, increase in leisure time, moves towards air transport liberalization and vigorous efforts to promote tourism to/from the region.

LPG and Its Impact on Civil Aviation

- New operating environment , Bankruptcy and shut downs of Airlines
- Regulation vs. Liberalization vs. Deregulation
- Rising costs (fuel, labor, maintenance, security)
- New generation airlines vs. legacies (tiers)
- Restructuring and alliances , Excessive capacity , Competition (transport and technology) Customer (target, loyalty)
- Air carrier ownership and control, Sustainability of air carriers and safeguards , Physical and environmental constraints
- Air transport and the global trade mechanism , Consumer protection and passenger rights Impact of technology (aircraft, e-commerce, CRSs and GDSs, Internet) on liberalization process
- Future approaches to regulatory reform etc are the future trends in international air Law

Dr. V. B a l a k i s t a R e d d y
Professor of International Law NALSAR University of Law, Hyderabad

LPG and Aviation Sector

- De regulations, Elimination of Trade Barriers and Harmonization of Laws

Aviation Industry:

- Contribution of technology - lower the cost of air travel.
- Fuel-efficient engines, Low maintenance, an improved materials have progressively allowed airlines to lower air fares and allowing more and more people to use air transportation on a routine basis.

> - Why above Changes?
> - Change in priorities of governments, General deterioration of condition of airports and airlines owned by government, Financial problems faced by States, Managerial problems and desire to improve, Recognition of airports and airlines as business propositions

- Legislative Changes including Monopolies and Restrictive Trade Practice Act, 1969 (MRTP) replaced by the Competition Act, 2002, The Foreign Exchange Regulation Act, 1974 (FERA), replaced by the Foreign Exchange Management Act, FDIs and The Foreign Investment Promotion Board (FIPB) and Export Processing Zones (EPZs) and Export Oriented Units (EOUs):

Scope for Civil aviation growth

- Civil aviation industry in India is experiencing a new era of expansion driven by factors such as low cost carriers, modern airports, foreign direct investments in domestic airlines, cutting edge information technology interventions and growing emphasis on regional connectivity.
- India is the 9th largest aviation market in the world with a size of around US$ 16 billion and is poised to be the 3rd biggest by 2022.
- India aviation industry promises huge growth potential due to large and growing middle class population, rapid economic growth, higher disposable incomes, rising aspirations of the middle class and overall low penetration levels.
- The growing aircraft fleet size, strategic location advantage, rich pool of engineering expertise, and lower labour costs have huge potential to be a global MRO hub.

Growth Factors

- a. growing domestic aircraft demand,
- b. liberalization of civil aviation policies,
- c. offset requirements,
- d. a strong domestic manufacturing base,
- e. cost advantages, talent pool, and
- f. a liberal Special Economic Zones law,
- g. globalization of Maintenance, Repair and Overhaul (MRO) services,
- h. manpower cost competitiveness,
- i. availability of talent,
- j. locational advantages,
- k. use of technologies such as increased use of composites, modern engine technology, all weather capabilities, etc.

Major changes in ownership management and operation of air transport services in India

- Most airlines are now privately owned and government role is declining
- Airports are also being gradually privatized
- Air navigation services are still largely with the government but limited privatization is taking place
- Regulation is in the domain of government but independent entities are being established
- Scope of economic regulation has considerably reduced
- India has also moved along with international trends
- Airport Privatization Legal Issues
- Airport Regulations before the AAI
- The Airports Authority of India Act, 1994 (55 of 1994)
- Privatization of AAI 2003
- Airport Infrastructure Policy 1997
- Joint Ventures, PPP and FDI in Airports
- Airports Economic Regulatory Authority of India Act, 2008

Recent Changes

- The Government of India has brought several recent changes in the civil aviation policy and other related regulatory framework to boost the civil aviation Industry.
- The changes include an attempt to liberalize the regulatory compliances, tax benefits given to those industries, improving regional air connectivity, taking measures to cut cost in operating and building existing and new airports, obtaining 'make in India' policy to further promote the scope and market size of this sector and several other measures.
- With the ever growing fleet size, growing popularity of air travel in Indian population, expansion, growth and modernization of regional and international airports, the Government has finally stepped up to completely revive the civil aviation sector and specially, the MRO sector to stop the outflow of revenue for performing maintenance operations outside India.
- With the new surge of change in the regulatory requirements and possible tax benefits, and the Government's objective to bring the air travel cost within the budget of the huge middle class population of India, Indian MRO industry is finally ready to grow and explore the huge market opportunities available to the sector.
- In the coming year and within 2022, the MRO industry of India is expected to become one of the strongest MRO sector in the whole world and to cater to the needs of not only domestic airlines, but also international airlines operating in and around India.

LPG and Airports

- At present the airport business is experiencing tremendous change to meet the ever-increasing growth of air traffic.
- Airports need to expand as and when needed especially for handling larger aircraft carrying more passengers than previously.
- Globally, there has been aggressive investment programs by airports to satisfy this demand.
- Due to the current economic climate, governments are reducing their funding of large airport projects and are shifting this burden of debt to the private sector.
- This evolution is seen in varying stages around the world in the out sourcing of activities such as: - award of management contracts of airport facilities, initiating public/private joint ventures, - BOT project financing.
- In the Asian region where tourism contributes significantly to the GDP of our nations, Asian airports are slowly accepting the idea of commercialization and privatization of their airport facilities.

Airports Privatization and Legal Issue

- The deregulation movement - brought a new wave of thinking into the management of airports around the world in the mid 1980s.
- Since then, significant changes - in the way airports are owned, managed and operated.
- Attention turned by policy makers towards reforming airport governance.
- Corporatization, commercialization and privatization of airports - became worldwide trend.
- Increasingly different strategies pursued by countries to liberalise airports by means of two forms of freeing industry from government control - privatization and deregulation
- Airport commercialization models appeared to range from partial to full privatization to some form of public-private partnership.
- Privatization means, in a broader sense, usually associated with the transfer of management of an airport, and in many cases the ownership as well, to the private sector by a variety of methods such as
- □Share floatation □Trade sale □Concession □Project finance privatization and □Management contract
- 1990s - airport privatization became a reality.
- •The momentum to privatization of airport - gaining throughout most of the world, however global crisis affected this trends in 2002 and 2007-2008 .

LPG and Airports

- Liberalisation refers to a relaxation of government restrictions usually in the area of social or economic policy.
- Rising passenger demand led to: Airport congestion, The need to invest in additional capacity and Innovation to increase the productivity of existing airport infrastructure
- Priorities were established by government for government spending - airports being at the bottom of the list.
- To respond to these needs.
- Countries around the world - moved toward commercialized airport governance.
- Applying business-like approaches and allowing market forces, incentives and mechanisms to affect the delivery of services.
- Thus 'commercialization' of the airport industry began to take place

Dr. V. B a l a k i s t a R e d d y
Professor of International Law NALSAR University of Law, Hyderabad

Airport Privatization

- In line with the government's open-sky policy, the AAI has collaborated with private entities for operation, management and development under the Public-Private Partnership model.
- The Joint Venture Cell has been formed to ensure compliance under the operation, management and development agreement.
- The AAI operates 126 airports and civil enclaves out of 449 airports and airstrips located throughout India.
- The airports at Bengaluru, Delhi, Hyderabad, Kochi and Mumbai are handed over to private operators.
- The Government of India has granted 'in principle' approval for setting up 18 greenfield airports in the country, to be developed by private parties, State government or other government agencies.
- The government has approved a proposal to manage Ahmedabad, Jaipur, Lucknow, Mangalore, Thiruvananthapuram and Guwahati under the Public Private Partnership (PPP) model to revamp these airports to meet international standards.

Dr. V. B a l a k i s t a R e d d y
Professor of International Law NALSAR University of Law, Hyderabad

Airport Investments & Private Sector

- Private Investments in Airports are increasing
- Why? Driven by strong growth of air travel (Asia/Pacific)
- Pressure on airport infrastructure to adapt to growing demand and changing technology
- Governments facing dilemma of:
- 1.How to finance airport facilities to meet growing demand, on limited public funds?
- 2.How to improve service levels at airports?
- 3.How to operate airports to maximize commercial potential?
- Governments turning to private sector to meet investments/operational requirements for airports' expansion

Dr. V. B a l a k i s t a R e d d y
Professor of International Law NALSAR University of Law, Hyderabad

Privatization of Airports and problems

- Revenue earning opportunities of Airport Authorities of India is lost.
- Discrepancies in floating Tenders.
- Closure of Revenue earning Airports
- Non-compliance of legal provisions under various enactments and the Constitution of India by Concession Agreements.
- Collection of User Development Charges by a Private Company
- Job Security
- Cultivates commercial thinking instead of **national perespectiveness**, a set back to the socialistic pattern of distribution of national income,

Reasons advocating Privatization of Public run Airports

The following are the reasons for privatization of airports in India:

- Changes in international and domestic politics.
- Performance of Public Sector Undertakings.
- Magnitude of fiscal compulsion and external debt.
- Inherent efficiency of Private Sector companies etc.

The primary objective of privatization of airports are:

- To provide efficient, safe and economical services to airlines and passengers.
- The State should choose the option that is best suited for achieving this objective after careful consideration of planning.
- Regardless of the organisational structure or the legal status, the State remains ultimately responsible for Safety and Security

Benefits of Privatization of Airports

- Increased Operating Efficiency
- 2. Additional Operating Revenues
- 3. Improved Customer Amenities
- 4. Reduced Risk of unwise Investment
- 5. Lease Proceeds
- **Risks Involved in Privatization of Airports**
- Monopolistic Abuse by Private Player
- Loss of Governmental Control
- Private players becoming over-sensitive to fluctuations in share price
- Diversification of Operations pursued by Private airports
- Safety and Security may suffer when profits are main objective etc.
- The Leasing Entity (Private Player) may become Bankrupt.

Privatization and Legal Questions

- Whether Privatization of Airports is a part of Public Sector Reform or a Structural Adjustment Program?
- Whether Policy of the Government on Privatization of Airports is converting the Airports Authority of India into a sick industry thereby closing down the AAI leading to socio-economic-legal problems?
- Whether Government of India has adequate legal framework/Policy to deal with the Privatization of Airports?
- Whether an appropriate Policy Document shall be created after having thorough analytical socio-economic and legal research?

Privatization and Legal Questions

- Whether Privatization of Airports:
- a) has led to the transferring employees from PSU to Private Sector?
- b) increases efficiency and employment?
- c) leads to deterioration in labour relations?
- d) gives social and economic protection to labour?
- e) takes place in isolation under ailing economy?
- f) involves complex social and labour issues?
- g) effect employment and job security?
- h) is going to solve the Air Traffic Control Problems?
- What are the legal implications involved due to the impact of Public Private Partnership?
- Whether Privatization of Airports raises doubts about the application and efficacy of the fundamental rights in the Indian Constitution?

Dr. V. B a l a k i s t a R e d d y
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FDI in Aviation Sector

- What is the concept of FDI? What are the likely implications of enhanced FDI in Indian Aviation Sector?
- The concept of FDI is closely linked with the concept of Globalization and is primarily based on want/ requirement of foreign capital by an enterprise that is resident in the economy of the host nation.
- The concept of FDI in general was introduced in India in 1991 with the opening of the Indian economy.
- Positive factors which helped FDI in India include availability of a highly lucrative market, adequate and cheap raw material, reasonably developed infrastructure, trained workforce, low production cost and ease of doing business. The interplay of these factors greatly influences potential foreign vendors' investment decisions

Dr. V. B a l a k i s t a R e d d y
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FDI Cont..

- **FDI: Methods and Classification**
- **Methods.** FDI is feasible in various sectors in different methods as under:
- Joint ventures
- Financial collaborations
- Private equity or preferential allotment
- Capital markets.
- **Classifications.** : **Classification I**
- Inward FDI: Investment made by other countries in the domestic country.
- Outward FDI: Investment made by domestic country in other countries.
- **Classification II**
- Horizontal FDI: Horizontal FDI arises when a firm duplicates its home country-based activities at the same value chain stage in a host country through FDI.
- Vertical FDI: Vertical FDI arises when a firm moves upstream or downstream in different value chains through FDI

Advantages and Disadvantages of FDI

- **Transparency.** Reduced imports are likely to lead to greater transparency with a diminishing role for middlemen.
- **Quality Products.** Infrastructure facilities are likely to improve due to higher capital infusion. Manufacture of improved quality products due to inflow of technology, expertise and better production facilities
- **Reduction of Reserves.** Higher FDI translates into better infrastructure, enhanced capacities and greater self-reliance.
- **Boost to Economy.** The capital base of the country will be positively affected due to inflow of foreign capital. The FDI will spur the GDP growth and boost the economy
- **Employment Opportunities.** The FDI creates employment opportunities, both in organised and un-organised sector, for large number of unemployed people due to increased level of economic activity.
- **Disadvantages: Security Concerns, Competition for Domestic Private Industry, Sharing of Benefits, Emergence of Cartels and Lobbies. Emergence of Cartels and Lobbies etc,.**

Foreign Investment

- Post LPG: India embarked on the path of liberalization and economic reform
- Over the past several years, the policy and procedures regulating and governing the inflow of foreign investments into India have been progressively liberalized and simplified.
- A non-resident entity may invest or participate in India in the following ways:
- Foreign Direct Investment ("FDI")
- As a registered Foreign Institutional Investor ("FII") under the Portfolio Investment Scheme
- As a registered Foreign Venture Capital
- As a holder of American Global Depository Receipts ("ADR") and Global Depository Receipts ("GDR"s) under the ADR / GDR Scheme
- Technology and Trademark Licence Agreements

Foreign Investment Cont..

- Entry Options for Foreign Investors: Basic Norms
- Business Venture could be Incorporated or Unincorporated
- Incorporation only through JV or WOS (overseas wholly owned subsidiaries ("WOS")
- Unincorporated Foreign Company can open business through Liaison Office or Branch Office or Project Office
- Foreign Direct Investments:
- FDI and its mechanisms are regulated by RBI & GoI Policies and are constantly reviewed
- Two routes of FDI: Prior Approval & Automatic
- Portfolio Investment Scheme: through-
- Foreign Institutional Investment
- Non-Resident Investment
- Qualified Foreign Investors

Foreign Investment Cont..

- Foreign Venture Capital Investment:
- Should be registered with SEBI & regulated by FEMA Regulations
- Can contribute up to 100% of the capital of an Indian Venture Capital Undertaking
- can also set up a domestic asset management company to manage the fund.
- ADR, GDR and FCCBs
- These are other means of foreign investment
- GoI issues guidelines for its regulations from time to time
- Foreign Technology and Trademark License Agreements
- The FDI policy and FEMA allows foreign technology collaboration agreements for the acquisition of foreign technology and trademark license agreements for the use of trademarks and brand names without requiring financial contributions on the part of foreign companies

Business Opportunities in Aviation

- At present the existing aviation business is strongly dependent on the general economy.
- The past and projected future growth of general business aviation in India has been driven by the strong economic growth the country has witnessed in the last five years.
- Air travel was once considered a luxury for both business and private needs. This perception has now changed as savings in travel time, comfort and convenience and higher reliability compared to other modes of travel have outweighed the cost differential.
- The poor connectivity between the metros and smaller cities is why more and more companies and individuals are gradually branching out to use private jets and helicopters.
- The business avenues in civil aviation are vast and diverse and given the increasing human dependency on civil aviation, it has become a very crucial aspect of the economic development of any country.

Business Opportunities Cont..

- The tourism and cargo industry of today relies heavily on the enhanced connectivity and cost effective means of distributing goods and services established by the dynamic air transportation industry
- India is poised to experience a rapid upswing in the business aviation sector due to its strategic geographic location, favourable demographics and robust economic growth.
- Located strategically between the Middle East and Europe on one side and the East Asian economies on the other, India's geography offers a lucrative opportunity for growth of general and non-scheduled aviation due to the rising demand from the ever-growing volume of high net-worth individuals and business houses in the country.
- The country has witnessed a significant growth in the number of non-scheduled airline operators with the total number of operators having crossed 400 in 2018 from a mere 36 in 2000.

Business Opportunities Cont..

- The Directorate General of Civil Aviation (DGCA) estimates that the general aviation fleet in India comprises around 800 small aircraft and 300 helicopters. Around 20% of this fleet size is expected to be more than 25 years old and may not be operational.
- Apart from the said scheduled airlines, the trend of private airlines and jets are also on the rise.
- India is one of the strongest markets for private jets with strong economic growth, expanding business interests and increasing number of billionaires.
- The private jets market in India constitutes 12 % of the global market and is bigger than Asian markets in China and Japan.
- As per the Business Aviation Association of India, there are 680 business aviation aircraft including private jets, helicopters, turboprops and piston engines and this number is expected to reach 2000 by 2022.

Scope and Opportunities in MRO

- Alongside, as support to the aviation industry, the opportunity to provide maintenance, repair and operations (MRO) activities will grow with the industry.
- India's MRO segment is estimated to grow at 10% and reach USD 2.6 billion by 2020. Establishing MRO facilities in India will enable operators to achieve faster turnaround times, savings in operating costs and a decline in foreign exchange outflows. 100% foreign direct investment (FDI) is permitted under the automatic route for MRO, flying training institutes and technical training institutions.
- The government has also undertaken a major programme to develop and improve the ecosystem for the civil aviation sector. However, the focus of these efforts has been a scheduled commercial aviation.
- At present, Airlines operating in India get nearly 90% of their MRO done abroad, mainly due to cost advantages resulting from the comparatively high tax burden, cumbersome operating procedures, and the inadequate MRO service facilities available in India.
- A strong MRO industry could achieve lot of benefits including the Create thousands of Jobs for Aerospace engineers and other professionals Save and earn foreign exchange by attracting national and international carriers to Indian MROs, Reduce dependency of Indian carriers on other countries for their MRO requirements.

Dr. V. B a l a k i s t a R e d d y
Professor of International Law NALSAR University of Law, Hyderabad

MRO Industry – New Opportunities

- The MRO Industry will increase the opportunities for employment, leading to considerable saving in foreign exchange, and the revenue earned by taxes will increase every year and Make India an attractive MRO hub in this part of the world.
- The Indian MRO industry is rapidly adapting to new opportunities and challenges that lie ahead in the global aviation marketplace.
- India's MRO sector has set its gear in overdrive by increasing the globalization of supply chains, advancing the technological sophistication of its aircraft, increasing military outsourcing and creating a substantial MRO sector in a low cost economy.
- The Indian MRO sector needs to take a take advantage of all future opportunities to create profitability.
- The Indian MRO industry is projected for substantial growth in the years to come.
- By implementing timely changes in their policies now, could really benefit India in the years to come.
- The seed is already planted, but nourishing the program with proper oversee and policies would make it not only grow but thrive in the global aviation environment.
- The demand is present, the growth is unquestionable, and the only thing left is the overseas that programs and policies are practiced. India's MRO economic boom has only reached the tip of the iceberg.
- There is a lot more work to be done and a lot more revenue to be made in the years and decades to come.

Different kinds of Business models in Aviation Sector

- General Business Model:
- Partnership
- Company (Public, Private and Joint Venture)
- LLP
- Business Models in Aviation Sector:
- Government Owned and Operated
- PPP (Public-Private Partnership)
- Partial/Full Privatization Model
- PPI (Public Private Investor) Peoples Airport

Dr. V. B a l a k i s t a R e d d y
Professor of International Law NALSAR University of Law, Hyderabad

Future Regulatory Changes

- The proposal to replace the DGCA with a new regulator – the Civil Aviation Authority – with financial autonomy and power to address issues relating to consumer protection and environment regulations.
- The government's proposed construction of 17 highways-cum-airstrips; 18 greenfield airports; reviving 50 unserved and under-served airstrips in the next three financial years; starting a new regional connectivity scheme; and reviving an air services agreement with countries an agreement already having been concluded with the Netherlands to operate up to 28 flights each week).
- The Executive Development Programme of Rajiv Gandhi National Aviation University in collaboration with the US–India Cooperation Program to promote skills development for the senior leadership and close the gap of increasing demand for trained people in the aviation sector.
- The Requirements for the Operation of Civil Remotely Piloted Aircraft Systems, 2017, issued by the DGCA.

Future Regulatory Changes

- The MRO industry in India is likely to expand and gain expertise in the likeliness of a fully fledged MRO venture hosted by Thailand. The venture is favoured owing to the fast-growing commercial aviation market in India.
- Government has planned to enter into an ‘Open Sky’ Air Service Agreement as per National Civil Aviation Policy 2016, on a reciprocal basis with SAARC countries and countries with territory located entirely beyond a 5,000km radius from New Delhi.
- The taxes levied on the Aviation Turbine Fuel must be brought within the purview of GST, which will attract input tax credit thereby enabling the airlines to pass down the cost fully to passengers.
- The DGCA until recently had prohibited the use of drones in India citing privacy and security concerns. Past attempts by the civil aviation regulator to draw a framework to govern its operations in India was met with criticism and never saw fruition. In 2014, the DGCA issued a public notice enlisting several approvals required for civil application of an unmanned aircraft vehicle; followed by draft guidelines issued in 2016 and 2017. Although the drafts were not given effect, it largely announced the Government’s intention to permit the use of UAV’s for civilian and recreational purposes in the future. On August 27, 2018, the National Drone Policy has legalised the use of drones in India to be effective from December 1, 2018.

Rise of Litigation in Aviation Sector

- Role of Aviation Attorneys:
- It presents distinct challenges for trial counsel.
- Specialized technical, legal and regulatory knowledge is critical to the effective handling of an aviation case.
- Aviation Attorneys have vast experience in the legal doctrines, conventions and statutes that arise with regularity in the aviation context like :
- Warsaw Convention/Montreal Convention,
- Airline Deregulation Act and Federal Aviation Act preemption,
- the government contractor defense,
- the economic loss doctrine,
- the General Aviation Revitalization Act and
- the Foreign Sovereign Immunities Act.

Rise of Litigation in Aviation Sector

- The nature of aviation cases that go for litigation may vary from design or manufacture of an aircraft or component parts to aircraft and airline operations or aircraft maintenance.
- Aviation Attorneys are enabled to effectively advise their clients on how best to avoid litigation or pitfalls that compromise subsequent litigation.
- They have technical expertise in advising manufacturers of aircraft with respect to such areas as warnings, accident investigation, document retention, documentary privileges, and legal aspects of product integrity programs.
- Aviation Attorneys work towards helping their clients in avoiding practices and procedures that are either "litigation magnets," or which will impair our client's defense in the event of litigation.

Rise of Litigation in Aviation Sector

- Varied Forms of Claims:
- Commercial disputes directly for airlines, including multi-jurisdictional claims, arbitration and mediation
- Claims handling, advice and legal representation arising from accidents including major air disasters and passenger and cargo liability claims
- Disputes arising in other sectors of the aviation industry underwritten by insurers
- Liability and coverage disputes for underwriters
- Disputes arising out of aircraft purchase, sale, leasing and financing, including those concerning re-delivery condition requirements on operating leases

Rise of Litigation in Aviation Sector

- Disputes arising out of alliances, joint ventures, franchising and general sales agencies
- Disputes arising out of the termination of leases and enforcement of security, aircraft repossessions and related issues, including insolvency
- Anti-trust and regulatory investigations including price-fixing and anti-trust issues between airline alliance members
- Regulatory matters, including EU legislation, CAA regulation and licensing
- Intellectual property matters
- Political risk policies and aero-political matters, including access to airports and the application of international embargo rules
- Slot allocation and slot transactions
- Development of emergency response policies for major disasters
- Blacklisting issues – including representation for removal from the EU blacklist

Thank You