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The International Comparative Legal Guide to:

# Aviation Law 2019

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## Country Question and Answer Chapters:

# United Kingdom

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## 1 General

### 1.1 Please list and briefly describe the principal legislation and regulatory bodies which apply to and/or regulate aviation in your jurisdiction.

**Regulatory Bodies**

There are a number of bodies which have the authority to regulate, administer and control civil aviation. The UK bodies are chiefly: the Secretary of State for Transport; and the Civil Aviation Authority ("CAA"). The European Aviation Safety Agency ("EASA") has authority in respect of aviation safety regulation within European Union ("EU") Member States pursuant to Regulations having direct application (see Regulation 216/2008).

*The Secretary of State for Transport*

The Department for Transport (in exercising the authority of the Secretary of State for Transport) is the governmental body responsible for civil aviation. The Secretary of State has a general responsibility for organising, carrying out and encouraging measures for the development of civil aviation and the related aviation industry, for the promotion of its safety and efficiency, for research into questions relating to air navigation, and for the safeguarding of the health of persons on board aircraft.

The Secretary of State has statutory powers relating to aviation security (see, for example, the Aviation and Maritime Security Act 1990).

Furthermore, the Secretary of State has responsibility for advising on, and where appropriate, implementing Orders of Council (made by the Crown) to effect international obligations and standards in UK domestic legislation.

*The Civil Aviation Authority ("CAA")*

The CAA is an independent body responsible for economic, safety and consumer protection regulation, and airspace policy. In addition, the CAA advises the UK Government on aviation issues, represents consumer interests, conducts economic and scientific research and produces statistical data. The CAA acts in the regulation of aviation without detailed supervision by the Government. Under current legislation, policy formation in route and air transport licensing is the responsibility of the CAA, although the Secretary of State retains specified powers both of direction and of guidance. The CAA exercises certain licensing and other powers under European Regulations, notably in connection with operational safety and airworthiness. In certain respects, the CAA acts for EASA in the UK. It also has concurrent powers with the Competition and Markets Authority ("CMA") to enforce competition law in relation to air traffic services and airport operation services.

**Legislation**

As with its EU neighbours, legislation is a mix of local law, international treaties and EU Regulations and directives. Some of the principal pieces of domestic UK legislation are:

- Civil Aviation Act 1982 (as amended).
- Civil Aviation Authority Regulations 1991 – Statutory Instrument No 1672 1991.
- Operation of Air Services in the Community Regulations 2009 – Statutory Instrument No 41 2009.
- Air Carrier Liability (No 2) Regulations 2004 – Statutory Instrument No 1974 2004.
- Community Air Carrier Liability Order 2004 – Statutory Instrument No 1418 2004.
- Civil Aviation (Denied Boarding, Compensation and Assistance) Regulations 2005 – Statutory Instrument No 975 2005.
- Civil Aviation (Insurance) Regulations 2005 – Statutory Instrument No 1089 2005.
- Civil Aviation Act 2006.
- Civil Aviation (Provision of Information to Passengers) Regulations 2006 – Statutory Instrument No 3303 2006.
- Civil Aviation (Access to Air Travel for Disabled Persons and Persons of Reduced Mobility) Regulations 2007 – Statutory Instrument No 1895 2007.
- Civil Aviation (Allocation of Scarce Capacity) Regulations 2007 – Statutory Instrument No 3556 2007.

Lastly, Her Majesty's ("HM") Government, from time to time, appoints commissions to investigate certain aspects of the aviation industry, the most recent and highly publicised being the Airports Commission into the expansion of London's airport capacity, which was chaired by Sir Howard Davies and issued its final report in July 2015.

There has been much talk of the impact that Brexit will have and what legislation will continue to apply in the UK once the UK has left the EU. Directives which have been implemented into UK domestic legislation on the date of Brexit (at the time of writing, 29 March 2019) will continue to apply (until repealed), as by being implemented locally they form part of the UK's domestic legislation, as will Regulations which have already taken direct effect as of the date of Brexit. As at the time of writing, little has been agreed by the UK and EU in terms of the future of aviation law.

**1.2 What are the steps which air carriers need to take in order to obtain an operating licence?**

The CAA is the competent licensing authority in the UK in almost all matters relating to the granting of operating licences. There are two types of operating licence: Type A; and Type B. Type B operating licences are for operators of aircraft with 19 or fewer seats; Type A operating licences are for operators of aircraft with 20 or more seats. A Type B operating licence may also be granted to operators of larger aircraft with a limited scope of activity.

In order for the licence to be granted, the CAA must be satisfied that the applicant fulfils the conditions set out in the European Regulation 1008/2008, including that:

- its principal place of business is located in the Member State whose competent licensing authority is to grant the operating licence; for an operator having its principal place of business in the UK, the CAA is the competent authority;
- it holds a valid air operator certificate issued by a national authority of the same Member State;
- it has one or more aircraft at its disposal through ownership or a dry lease agreement;
- its main occupation is to operate air services in isolation or combined with any other commercial operational of aircraft or the repair and maintenance of aircraft;
- its company structure allows the competent licensing authority to implement the relevant provisions of the Regulation;
- Member States and/or nationals of Member States own more than 50% of the undertaking and effectively control it directly or indirectly through one or more intermediate undertakings, except as provided for in an agreement with a third country to which the European Community is a party;
- it meets the financial conditions specified in Article 5 of the Regulation;
- it complies with the insurance requirements specified in Article 11 of the Regulation and in European Regulation 785/2004; and
- it complies with the provisions on good repute as specified in Article 7 of the Regulation.

It is worth noting that the uncertainties around Brexit have led certain airlines headquartered in the UK to apply for operating licences elsewhere in the EU. These are precautionary measures to enable them to continue flights to EU countries in the event that there is no specific deal securing their operating licences post-Brexit. Similarly, Ryanair, with headquarters in the Republic of Ireland, has applied to obtain an operating certificate from the UK CAA to continue their domestic flights in the UK.

**1.3 What are the principal pieces of legislation in your jurisdiction which govern air safety, and who administers air safety?**

UK legislation is contained in the Civil Aviation Act 1982 and the Air Navigation Order 2009 (as amended). Another important source of law is European legislation, which has direct application in the UK concerning safety aspects of aircraft, operators, maintenance and design organisations, and personnel in commercial transport. See, for example, the European Regulations: 216/2008 (as amended; "Basic Regulation"); 7/2013 (rules for airworthiness of aircraft and products and certification of design and production organisations); 1321/2014 (continuing airworthiness and approval of involved organisations and personnel); 2015/445 (aircrew); and 859/2009 ("EU-OPS" – operating safety requirements and standards). The CAA is responsible for administering air safety on a day-to-day basis, in its own capacity and for and on behalf of EASA.

**1.4 Is air safety regulated separately for commercial, cargo and private carriers?**

The CAA regulates all aspects of the aviation industry. Whilst the regulator is the same in all three cases, there are different Regulations and standards which have to be adhered to.

**1.5 Are air charters regulated separately for commercial, cargo and private carriers?**

The CAA regulates all aviation activity (apart from military).

**1.6 As regards international air carriers operating in your jurisdiction, are there any particular limitations to be aware of, in particular when compared with 'domestic' or local operators? By way of example only, restrictions and taxes which apply to international but not domestic carriers.**

The UK is a party to the Chicago Convention 1944, which provides for availability, so far as practicable, of aerodromes in its territory (Article 28) and equality of conditions for use of aerodromes for international and domestic aircraft (Article 15). Article 15 of the Convention further provides for equality of charges for use of aerodromes.

Under the Air Navigation Order 2009, an aircraft registered in a state other than the UK must not take on board or discharge any passengers or cargo in the UK for valuable consideration without an operating permit granted by the Secretary of State. Such permit will only be granted if the necessary traffic rights exist (under bilateral international agreement or otherwise), and is also subject to satisfying the Department for Transport of compliance by the operator with administrative requirements relating to the carrier's aircraft and its insurance arrangements.

**1.7 Are airports state or privately owned?**

They are privately owned. For example, London Heathrow is owned by Heathrow Airport Holdings Limited; Aberdeen, Glasgow and Southampton airports are owned by AGS Airports; and Manchester Airport is owned by Manchester Airports Group plc. They are licensed and regulated by the CAA.

**1.8 Do the airports impose requirements on carriers flying to and from the airports in your jurisdiction?**

Conditions of use are imposed, as well as charges. Users of airports are subject to airport charges, which are regulated by the CAA under the Civil Aviation Act 2012 and Airport Charges Regulation 2011. "Airport charges" means (a) charges levied on operators of aircraft in connection with the landing, parking or taking-off of aircraft at the airport (but excluding charges for air navigation services and certain penalties in connection with aircraft noise and vibration caused by aircraft), and (b) charges levied on aircraft passengers in connection with their arrival at, or departure from, the airport by air.

**1.9 What legislative and/or regulatory regime applies to air accidents? For example, are there any particular rules, regulations, systems and procedures in place which need to be adhered to?**

The UK is a party to the Chicago Convention 1944. Article 26 and Annex 13 to that convention make provisions for the investigation of air accidents. The UK implements the relevant requirements by way of the legislation discussed below.

The Air Accidents Investigations Branch ("AAIB") is responsible for the investigation of civil aircraft accidents and serious incidents in the UK. The AAIB is an independent part of the Department for Transport.

The principal legislation relating to investigation of air accidents includes:

- European Regulation No 376/2014 on the investigation and prevention of accidents and incidents in civil aviation.
- UK Civil Aviation (Investigation of Air Accidents and Incidents) Regulations 1996.
- UK Civil Aviation (Investigation of Military Air Accidents at Civil Aerodromes) Regulations 2005.

The AAIB has the power to require the detention and preservation of evidence, and has powers of enquiry. Assistance of the local police is routinely available to AAIB investigators to secure an accident site. The AAIB reports to the CAA and other civil aviation authorities having responsibility for oversight of any aspect of the accident. Reports of civil air accidents are published.

**1.10 Have there been any recent cases of note or other notable developments in your jurisdiction involving air operators and/or airports?**

In June 2014, the Court of Appeal held that a technical problem is not considered to be an extraordinary circumstance under Regulation EU 261/2004 and accordingly cannot be used as a basis for an airline to escape from its obligation to compensate passengers for long delays, cancellations, rerouting and/or denied boarding (*Jet2.com v Huzar* [2014] EWCA Civ 791). In a similar vein, in October 2017 the Court of Appeal rejected Emirates' arguments and held that non-EU airlines are liable under Regulation EU 261/2004 where a flight departing from the UK is delayed by at least three hours at the final destination, as a result of a missed connection outside Europe (*Gahan/Buckley v Emirates* [2017] EWCA Civ 1530). This case reaffirms the CAA's decision to take enforcement actions against airlines in relation to passenger compensation.

At a "macro" European level, in May 2018 the European Commission (the "EC") dismissed a complaint, brought against Lufthansa's 2015 introduction of a €16 surcharge on seats booked through the global distribution suppliers, such as Travelport, Travelsky, Sabre and Amadeus, which alleged breach of Council Regulation (EC) 2299/89 on a code of conduct for computerised reservation systems (the "Code"). The EC based their decision on the fact that the Code "no longer reflects market reality and that it may be revised in the future". In response to this, the European Technology & Travel Services Association filed a formal complaint with the European Ombudsman against the EC in July 2018. The outcome will continue to be of interest as a number of other airlines have announced similar introductions to incentivise the use of their own, or new distribution capability, booking systems.

A long-running commission of enquiry, chaired by Sir Howard Davies, gave its recommendation in July 2015 that a third runway be built at London Heathrow. In October 2016, HM Government approved a third runway at Heathrow to expand the UK's airport capacity. A public consultation on the effects of the expansion of Heathrow followed that decision. In June 2018, Parliament approved the plans for the third runway at Heathrow. Construction is anticipated to begin in 2021, with the runway completed in 2025. The airport's overall expansion is expected to be operational in 2028.

In October 2018, London Gatwick, the UK's second-busiest airport, published proposals to move its standby runway to use it for short-haul flights by the mid-2020s. In its draft master plan, Gatwick said the standby runway would have to be moved 12 metres to the north away from the main runway at a cost of about £500m to comply with international safety Regulations but predicted that using the second runway could raise the airport's capacity from 281,000 flights in 2017–18 to 375,000–390,000 by 2032–33. Passenger numbers would increase from 45.7m to 68m–70m over the same period if the runway project went ahead. The standby runway would not be lengthened so it could not be used for long-haul flights, according to the plans. Any plans are subject to public consultation and the airport would have to apply for a development consent order.

## 2 Aircraft Trading, Finance and Leasing

**2.1 Does registration of ownership in the aircraft register constitute proof of ownership?**

The United Kingdom Register of Civil Aircraft, maintained by the United Kingdom CAA, is not a register of legal ownership, and therefore registration of ownership does not constitute proof of ownership of a particular aircraft. However, it often provides non-conclusive *prima facie* evidence.

To register aircraft on the United Kingdom Register of Civil Aircraft, a Form CA1 (see www.caa.co.uk) is submitted either by the owner or by the so-called "charterer by demise" (by virtue of a relevant loan, lease, hire or hire purchase) eligible to register in accordance with the Air Navigation Order 2009 [see Endnote 1].

As part of the application procedure, the CAA may request additional information in order to process an application for registration (for example, a certified copy of a bill of sale evidencing the ownership of the aircraft to be registered).

Further guidance on the requirements for registration of aircraft on the United Kingdom Register of Civil Aircraft is available at www.caa.co.uk.

**2.2 Is there a register of aircraft mortgages and charges? Broadly speaking, what are the rules around the operation of this register?**

The CAA maintains the United Kingdom Aircraft Mortgage Register (pursuant to the Mortgaging of Aircraft Order 1972). There are no restrictions as to who can be registered as a mortgagee, and any mortgage charging a UK-registered aircraft by way of security may be registered (and indeed, from a mortgagee's perspective, should be, so as to confirm the security priority referred to in the section headed "**Priority**" below). Leases and other charges not constituting *in rem* rights in a 'G'-registered aircraft (such as mortgages) cannot be registered, and there is no separate register maintained by the CAA for the registration of ownership rights in engines or parts.

**Mortgage Registration**

Applicants for registration of a mortgage must complete and provide to the CAA a Form CA1577 (see www.caa.co.uk), together with a complete copy of the related aircraft mortgage deed (provided it

has been certified as a true copy by the applicant). The CAA will then confirm, in writing, to the applicant once an aircraft mortgage registration application is successful.

The registration fees for an aircraft mortgage by the CAA vary according to the maximum take-off weight ("MTOW") of the subject aircraft. They are currently as follows (and are subject to revision annually):

| Maximum Take-off Weight | CAA Charge |
|---|---|
| 5700 kg and under | £180 |
| 5701 kg to 15000 kg | £356 |
| 15001 kg to 50000 kg | £593 |
| 50001+ kg | £1,062 |

For aircraft mortgages which attach to a number of aircraft, the CAA registration fee is levied on the heaviest aircraft by MTOW, plus £175 for each additional aircraft attached.

**Priority**

An aircraft mortgage registered on the United Kingdom Aircraft Mortgage Register will take priority over all other non-registered or subsequently registered mortgages. It constitutes notice of the relevant mortgage being given to all relevant third parties, and all persons are thereby deemed to have express notice of all of the details appearing in the United Kingdom Aircraft Mortgage Register.

If the relevant mortgagor is a company registered in England and Wales, in order to obtain all the protections conventionally afforded to a mortgagee, it will be necessary to also register the relevant mortgage at Companies House pursuant to the provisions of the Companies Act 2006 as it will become void against an appointed insolvency agent of the mortgagor (whether an administrator, a liquidator or a secured creditor).

It should be noted, however, that this priority position of an aircraft mortgage is nevertheless subject to certain other *in rem* rights ("liens") of third parties to retain or detain the relevant aircraft until a claim for payment (e.g. in respect of maintenance or repair of the aircraft or in respect of an unpaid purchase price for the aircraft) has been satisfied. These liens are created both by statute and under common law, and they are also capable of creation by contract between parties. In addition, certain specific rights are created by statute for relevant regulatory authorities to detain the aircraft (e.g. the CAA for unpaid airport and air navigation charges, the UK Environment Agency for unpaid penalties under the European Emissions Trading Scheme, and HM Revenue & Customs in respect of unpaid taxes). In certain circumstances, these rights of detention will also include a power of sale of the relevant aircraft, or attach to the rest of the operating fleet of which the aircraft is a part despite different ownership.

The limited case law in English law, which applies as precedent to the matter of the priority of aircraft liens and statutory detention rights, suggests strongly that an aircraft lien or statutory detention right will take priority over a registered aircraft mortgage.

Liens are not registrable. However, in dealing with the concerns of mortgagees, it is possible to seek to manage the risks of detention and sale of a registered aircraft by way of contractual obligations of owners and operators limiting the creation of liens to "permitted liens". These obligations are generally complemented by contractual monitoring rights, established in the relevant loan or lease agreements, which include requirements to provide "statement of account" letters, authorising information regarding relevant payments giving rise to liens, to be provided directly to the mortgagee by the relevant regulatory authority. This is generally effective in providing an early warning of any potential detention or retention of a relevant aircraft, and in ensuring the timely termination of the relevant operating agreement before liens are enforced.

**Priority Notices**

A potential mortgagee of a registered aircraft can "pre-register" a mortgage with the CAA by entering a priority notice, utilising CAA Form CA1330 (obtained from www.caa.co.uk). The priority notice remains valid for 14 working days from and including the date of entry, and during this period either the relevant aircraft mortgage must be registered or a further priority notice entered. The relevant aircraft mortgage, once registered with the CAA, will then take its priority from the date of registration of the original priority notice. The registration fees for such priority notices vary according to the maximum take-off weight of the subject aircraft, and are currently as follows (subject to revision annually):

| Maximum Take-off Weight | CAA Charge |
|---|---|
| 15,000 kg and under | £53 |
| Over 15,000 kg | £106 |

The relevant registration fee is applied by the CAA on a "per aircraft" basis.

**Mortgage Searches**

A search of the United Kingdom Aircraft Mortgage Register for entries registered against relevant aircraft can be made by submitting a CAA Form CA350 (obtained from www.caa.co.uk) to the CAA. Search fees are currently £29 per aircraft and are revised on an annual basis. Certified copies of the entries on the Mortgage Register are available at £29 per aircraft.

### 2.3 Are there any particular regulatory requirements which a lessor or a financier needs to be aware of as regards aircraft operation?

As regards the lessor of an aircraft registered with the CAA, theoretically it is permitted to take enforcement action to repossess the aircraft following a default by the lessee concerned on the relevant lease terms, without enforcing through the courts, i.e. as a "self-help" remedy. To that end, lease terms and conditions conventionally contain an indemnification of the owner/lessor of a relevant aircraft against losses and/or claims it incurs as a result of a repossession action. Similarly, the mortgagee of an aircraft registered with the CAA may take peaceful possession of an aircraft following a similar default and it will then, in addition, have the power to sell the relevant aircraft if such power is properly and expressly described in the relevant mortgage agreement.

Nevertheless, in practice it is generally advisable for the lessor or the mortgagee of a relevant aircraft registered with the CAA to pursue an application for repossession of the aircraft in court, particularly if there is any question as to whether a default has actually occurred and/or the relevant mortgagor or lessee of the aircraft concerned resists or is likely to resist repossession. A court order obtained in this way reduces any risk of liability of the lessor or the mortgagee (as the case may be) of the relevant aircraft to third-party claims for compensation for losses due to a repossession (in the case of aircraft in scheduled operation in particular, such losses can be substantial), assists with ensuring the cooperation of the CAA with their issuing of necessary permissions for the continued flight of the aircraft affected, and is also presentable to any prospective third-party purchaser of the aircraft as proof of the right of the mortgagee, or indeed the owner, to sell the aircraft with good title, free of any trailing interests of the relevant mortgagor or lessee (subject to any other third-party rights over the relevant aircraft).

In addition, and by way of further potential protections, if it can be demonstrated to the court that a risk exists or that the relevant aircraft is treated in a way which frustrates the rights of a mortgagee or lessor (for example, removal by an operator of the aircraft

from the jurisdiction or by a clear and material degradation of the condition of the aircraft in the circumstances), it is possible to apply to the court, on an expedited basis, for an interim injunction ordering detention of the aircraft by the mortgagor/lessee until judgment regarding repossession of the aircraft has been given by the court. This type of application may be made without notice to the operator of the relevant aircraft if the mortgagee or the lessor (as the case may be) can demonstrate the urgency of the matter to the court in accordance with the applicable Civil Procedure Rules. In these circumstances, the mortgagee or the lessor (as the case may be) will be required to provide a cross-indemnity for any third-party claims arising from a sudden detention of the aircraft (not, however, in favour of the relevant mortgagor, lessee or operator of the relevant aircraft, on the basis that it is assumed that an appropriate indemnity from such party has already been given in respect of, among other things, losses arising from the repossession of the relevant aircraft following a default).

It should nevertheless be noted that a right to repossess the relevant aircraft would always be subject to any liens and other statutory detention or retention rights of third parties (as described more fully in "Priority" under question 2.2 above).

**2.4 As a matter of local law, is there any concept of title annexation, whereby ownership or security interests in a single engine are at risk of automatic transfer or other prejudice when installed 'on-wing' on an aircraft owned by another party? If so, what are the conditions to such title annexation and can owners and financiers of engines take pre-emptive steps to mitigate the risks?**

English law as a rule recognises the concept of accession, which is similar to the nature of an annexation of title, for example by the owner of an aircraft to which an engine owned by another party is affixed. Nevertheless, limited case law on the subject is exclusively related to real estate (that is, immovable assets) and there is perceived to be little or no risk as a matter of English law to loss of or prejudice to title when aircraft engines are installed on a different airframe.

Nevertheless, it is common market practice (also in order to manage certain risks arising due to conflicts of law and legal systems as they apply to these most mobile assets) for engine owners and financiers to require entry into a contractual "recognition of rights" agreement governed by English law between the relevant parties as a condition to installing an engine on a different airframe. In addition, while aircraft engines are not capable of being registered (and thereby providing constructive notice of ownership to third parties) in the United Kingdom, ratification of the Cape Town Convention affords the opportunity for engine owners and financiers to register an "international interest" in the asset with the International Registry of Mobile Assets.

**2.5 What (if any) are the tax implications in your jurisdiction for aircraft trading as regards a) value-added tax (VAT) and/or goods and services tax (GST), and b) documentary taxes such as stamp duty; and (to the extent applicable) do exemptions exist as regards non-domestic purchasers and sellers of aircraft and/or particular aircraft types or operations?**

In relation to a), the supply, charter or hire of "qualifying aircraft" are zero rated for VAT purposes. The definition of "qualifying aircraft" was narrowed in January 2011 to bring the United Kingdom more in line with the rest of Europe. Since then, a qualifying aircraft must be: i) used by an airline operating for reward chiefly on international routes; or ii) used by a State institution and of a weight of not less than 8,000 kg and neither designed nor adapted for use for recreation or pleasure.

This is broadly the position also in relation to VAT applicable to the importation of aircraft into the United Kingdom, except where the aircraft has been imported previously into a Member State of the EU and is classified to be in "free circulation" for customs purposes.

In relation to b), there are no documentary taxes (e.g. stamp duty) applicable to the buying and selling (i.e. trading) of aircraft in England and Wales).

**2.6 Is your jurisdiction a signatory to the main international Conventions (Montreal, Geneva and Cape Town)?**

**Chicago Convention 1944**

The United Kingdom was a signatory to the Chicago Convention in 1944 and it was ratified on 1 March 1947 prior to its effective date of 4 April 1947.

**Geneva Convention 1948**

The United Kingdom was a signatory to the Geneva Convention in 1948, but has not ratified it.

**Montreal Convention 1999**

The Montreal Convention has legal effect in the United Kingdom through the Carriage by Air Acts (Implementation of the Montreal Convention 1999) Order 2002/263. The limits of liability for air carriers pursuant to the Montreal Convention have been subsequently amended by way of the Carriage by Air (Revision of Limits of Liability under the Montreal Convention) Order 2009.

**Cape Town Convention ("CTC")**

The CTC entered into force in the United Kingdom and thereby became effective as United Kingdom national law on 1 November 2015 following its ratification on 27 July 2015, as implemented by the International Interests in Aircraft Equipment (Cape Town Convention) Regulations 2015 and several declarations.

**2.7 How are the Conventions applied in your jurisdiction?**

The Chicago Convention is integrated into English law and applicable in the jurisdiction as a matter of international law. Any dispute as to its implementation by the United Kingdom would be heard through the International Court of Justice. As a practical matter, the principles of the Chicago Convention are implemented at the national level in the United Kingdom by the CAA.

As detailed above, the Montreal Convention became effective in the United Kingdom pursuant to the Carriage by Air Acts (Implementation of the Montreal Convention 1999) Order 2009 and it can be applied in the UK courts, without particular limitation, on that basis.

The CTC is effective in the United Kingdom but will not be applied retrospectively, i.e. any rights and interests existing prior to ratification of the CTC will retain their priority without the need for registration. This avoids additional administrative hurdles resulting from the ratification of the CTC, but at the same time means that it is not possible to register such pre-existing interests.

It is worth noting that, although it does not change any relevant provisions of English law as regards the creation of *in rem* security interests generally, that law will not apply to determine whether an international interest under the CTC is validly created. This will depend entirely on the CTC and its requirements in the case of an aircraft, debtor location or aircraft registration in a "CTC country" (and compliance with the formalities set out in Article 7 of the CTC), and an aircraft mortgagee may be able to rely on the rights and remedies available under the CTC for such international interest in the relevant aircraft.

It is also worth noting that by adopting the Alternative A insolvency regime (with a 60-day waiting period for the asset to be returned to the creditor), the UK has furthermore decided to grant additional protection to financiers and lessors in a debtor insolvency scenario.

**2.8 Does your jurisdiction make use of any taxation benefits which enhance aircraft trading and leasing (either in-bound or out-bound leasing), for example access to an extensive network of Double Tax Treaties or similar, or favourable tax treatment on the disposal of aircraft?**

The uncertainty created by the ongoing discussions regarding the nature and the timing of the exit of the United Kingdom from the EU (the so-called "Brexit") will necessarily impact on any longer-term planning and reliance on current taxation rules and Regulations. Nevertheless, for the time being the United Kingdom is signatory to a number of Double Tax Treaties with other nations, the effect of which varies but which typically reduces the rate of withholding taxes payable in various jurisdictions of tax residency on outbound operating lease and finance lease rentals, as well as loan repayment interest, connected with the financing of aircraft assets. As regard favourable tax treatment on the disposal of aircraft, no particular tax rules or Regulations apply at present, although the effects of such taxation can be optimised by thoughtful tax planning strategies.

## 3 Litigation and Dispute Resolution

**3.1 What rights of detention are available in relation to aircraft and unpaid debts?**

An unpaid seller in possession of the aircraft may retain possession of the aircraft until payment is received (Sale of Goods Act 1979).

The Civil Aviation Act 1982 provides for a salvage lien on an aircraft where "any services are rendered in assisting, or in saving life from, or in saving the cargo or apparel of, an aircraft in or over the sea or any tidal water, or on or over the shores or any tidal waters", according to the national and international regulatory framework of the law of maritime salvage.

In common law, under specific conditions, a possessory lien arises in favour of a person who has expended labour and skills on the improvement of a chattel. The requirement for "improvement" is now uncertain under English law. Liens in favour of maintenance organisations are widely considered to arise in common law; however, in the majority of cases the right of lien is expressed contractually and there is no requirement for "improvement".

Under the Civil Aviation Act 1982, the person managing or owning an aerodrome may detain an aircraft where its operator has not paid the applicable airport charges in respect of that aircraft, or of any other aircraft, which that operator operates. Customs and excise authorities may detain an aircraft to enforce their charges against an operator.

The Transport Act 2000 provides that an aircraft may be detained and sold where its operator has not paid charges relating to air navigation services provided by the CAA, the Secretary of State or Eurocontrol.

Of less frequent application, a creditor may obtain a freezing injunction, restraining an aircraft pending judgment and execution of the judgment debt. The creditor will have to demonstrate, *inter alia*, that there is a real risk of "dissipation" of the debtors' assets other than in the debtor's usual course of business, and that the value of the debt is commensurate with that of the aircraft. The remedy is equitable and discretionary; a court will exercise considerable caution before granting it.

There is no domestic legislation prohibiting the detention of commercial transport aircraft.

**3.2 Is there a regime of self-help available to a lessor or a financier of an aircraft if it needs to reacquire possession of the aircraft or enforce any of its rights under the lease/finance agreement?**

There is no relevant statutory regime of "self-help" rights (subject to the limited exceptions mentioned below). English law allows the exercise of extant rights to repossess chattels, including aircraft, without the need for a court order. A person seeking to exercise rights on this basis can only do so peaceably and lawfully. There are no collateral rights of enforcement as a matter of law, without a court order. Accordingly, the exercise of such rights on a self-help basis usually requires the person in possession or control of the aircraft to accede to that exercise. The rights must be extant (under the finance instruments or lease) and clearly demonstrable to third parties. The more usual course of action will be to obtain a court order.

The Bills of Sale Acts 1878 and 1882 allow seizure in the event of certain events of default (specified in the Acts) relating to a security bill of sale. Those acts do not apply to a registered mortgage of an aircraft.

**3.3 Which courts are appropriate for aviation disputes? Does this depend on the value of the dispute? For example, is there a distinction in your jurisdiction regarding the courts in which civil and criminal cases are brought?**

Civil disputes concerning personal injury or property damage may be pursued in the Queen's Bench Division of the High Court or in the County Court in accordance with the criteria summarised below. "Commercial claims" (see below) should be pursued in the Commercial Court of the Queen's Bench Division of the High Court, or in the County Court.

Civil proceedings for damages or a specified sum may not be started in the High Court unless the value of the claim exceeds £25,000; if not, proceedings should be started in the County Court.

Civil proceedings which include a claim for damages in respect of personal injuries must not be started in the High Court unless the value of the claim is £50,000 or more.

Subject to the above, pursuit of a claim in the High Court is appropriate where:

- there is a degree of complexity of the facts, legal issues, remedies or procedures involved; and/or
- the outcome of the claim is of importance to the public in general.

A case may be started in the Commercial Court only if it fulfils the characteristics of a "commercial claim"; namely any claim arising out of the transaction of trade and commerce, including any claim relating to a business document or contract, the export or import of goods or the carriage of goods by land, sea, air or pipeline.

Although there is no rigid financial limit, a claim for less than £200,000 is likely to be transferred out of the Commercial Court unless it involves a point of special commercial interest. The majority of cases arising out of the finance or lease of aircraft will be heard by the Commercial Court. The majority of cases concerning death, serious injury or serious property damage claims arising out of air accidents will be heard by a Court of the Queen's Bench Division of the High Court.

Civil and criminal cases will be heard in separate courts.

**3.4 What service requirements apply for the service of court proceedings, and do these differ for domestic airlines/parties and non-domestic airlines/parties?**

Pursuant to Part 6 (*Service of Documents*) of the Civil Procedure Rules, where the claim form is being served in the "jurisdiction" (defined as England and Wales and any part of the territorial waters of the United Kingdom adjoining England and Wales), a claim may be served by a number of methods including (without limitation) by personal service, first class post, or by service on the defendant's solicitors, fax or other means of electronic communication.

The court will serve the claim form (subject to certain exceptions, for example, where the claimant has notified the court that the claimant wishes to serve it).

In the event that the defendant is established out of the jurisdiction, the court may permit a claim form to be served on the defendant's agent provided that an agent for service of process has been appointed and the agent's authority has not been terminated.

It may be necessary for the claimant to obtain the court's permission, in certain circumstances, e.g., where no agent for service of process is appointed, to serve a claim form on a defendant outside the jurisdiction. The claimant must file at court a notice with the claim form containing a statement of the grounds on which it is entitled to serve the claim form out of the jurisdiction.

**3.5 What types of remedy are available from the courts or arbitral tribunals in your jurisdiction, both on i) an interim basis, and ii) a final basis?**

Remedies vary depending on the nature of the dispute. In general terms, there are both (for historical reasons) legal and "equitable" remedies and the following may be available:

- On an interim basis:
  - an injunction order to prevent the other party from doing something until final judgment is reached; and
  - damages.
- On a final basis:
  - damages;
  - injunctions to prevent the other side from doing something or requiring the other party to do something;
  - possession orders to take control of an aircraft and other aviation assets; and
  - orders for the sale of an aircraft.

**3.6 Are there any rights of appeal to the courts from the decision of a court or arbitral tribunal and, if so, in what circumstances do these rights arise?**

**From a Court Decision**

A party requires permission to appeal from a County Court or High Court decision.

A request for permission to appeal can (and if appeal is to be sought, should) be made to the lower court at the hearing at which the decision to be appealed is made. Thereafter, permission may be sought directly from the appeal court.

Permission to appeal will only be given where the court considers that the appeal would have a real prospect of success or there is some other compelling reason why the appeal should be heard. In most instances, the trial judge will be considered best placed to judge the facts of the case. An appeal from factual findings is usually difficult to pursue. The category and level of court to which an appeal is to be made depends on the level of the court making the decision which is being appealed. There is no automatic stay of execution of a judgment or order while appeal is pursued.

A route of appeal lies from the Court of Appeal to the Supreme Court. Again, permission to appeal is required.

**From an Arbitral Tribunal**

As a general rule, an arbitrator has the same powers as any court, and an arbitral tribunal's decision is binding. There is no right of appeal to the courts on a question of fact. There are narrow exceptions to this general rule.

A party may challenge an arbitral award for lack of jurisdiction (section 67 of the Arbitration Act 1996). It is also possible to challenge the arbitrator's award on the basis of a serious irregularity (section 67 of the Arbitration Act 1996). The definition of a "serious irregularity" includes exceeding the arbitrator's powers, failure to comply with the general duties imposed on the arbitrator or failure to deal with all the issues.

A party may appeal to the High Court on a question of law arising out of the arbitral award. The court will only intervene if the arbitrator's decision is obviously wrong or "the question is one of general public importance and the decision of the tribunal is at least open to serious doubt".

## 4 Commercial and Regulatory

**4.1 How does your jurisdiction approach and regulate joint ventures between airline competitors?**

UK competition law reproduces in virtually identical form EU competition law, sections 2 and 9 of the UK Competition Act 1998 ("CA 1998") setting out provisions similar to the prohibition of anticompetitive agreements and the exemption criteria (Articles 101(1) and 101(3) of the Treaty on the Functioning of the European Union ("TFEU")). A joint venture between airline competitors would, therefore, have to satisfy the four exemption criteria of section 9 CA 1998 and/or Article 101(3) TFEU. In summary:

(a) the agreement should generate efficiency gains for the parties or promote economic progress (e.g. costs savings through joint operations or improved services);

(b) consumers should receive a fair share of those benefits (e.g. including the passing on of savings through lower prices);

(c) the agreement should not impose on the undertakings concerned restrictions which are not indispensable to the attainment of these objectives. Restrictions should be proportionate; and

(d) the agreement should not eliminate effective competition. This is a market power test, requiring that there should be effective competition outside of the joint venture.

The EC and the European National Competition authorities (hereinafter referred to as "EU regulators") have not yet blocked airline alliances, which are usually considered to produce substantial efficiencies and consumer benefits, but have, often following lengthy investigations and negotiations with the parties, required commitments from the parties, to be satisfied that the alliance qualifies for exemption, in particular that competition is not eliminated.

In relation to highly integrated airline alliances, the so-called "metal neutral alliances", the EC closed an investigation on 14 July 2010 into the British Airways, American Airlines and Iberia (members of the Oneworld alliance) highly integrated transatlantic alliance, covering all routes between North America and Europe (see case No

39596 *BA/AA/IB*). This alliance involved revenue-sharing and joint management of schedules, pricing and capacity. The EC closed its investigation after the parties offered extensive commitments to make landing and take-off slots available at London Heathrow, which were considered essential to facilitate the entry or expansion of competitors on routes between London and New York, Boston, Dallas and Miami (London-New York: 21 slots weekly (three daily); London-Boston: 14 slots weekly (two daily); London-Miami: seven slots weekly (one daily); London-Dallas: seven slots weekly (one daily)). The parties also offered to conclude with competitors fare combinability and special pro-rate agreements, as well as to provide access to the parties' frequent-flyer programmes.

In May 2013, the EC cleared a revenue-sharing joint venture focusing on transatlantic passenger routes (in particular, Frankfurt-New York), accepting binding commitments from Star Alliance members Air Canada, United and Lufthansa (COMP/39595 *Continental/United/Lufthansa/Air Canada*).

Similarly, in May 2015, the EC decided to make binding commitments offered by Air France/KLM, Alitalia and Delta – all members of the SkyTeam airline alliance – to address concerns over their transatlantic joint ventures with respect to capacity, schedules, pricing and revenue management and sharing of profit and losses, which has the object and effect of restricting competition on three routes, namely: (i) Amsterdam-New York; (ii) Rome-New York; and (iii) Paris-New York (COMP/39964 *AF-KL/DL/AZ*).

In relation to codeshare agreements, neither national nor European competition laws provide specific rules; the legal test applied being based on the exemption criteria of Article 101(3) TFEU and/or the corresponding provisions of the competition laws of the EU Member States.

The current EU case law is limited. In the *SAS/Maersk Air* case, in which the parties notified a codeshare agreement to the EC for clearance, with an underlying cartel agreement in the form of a broad market-sharing agreement between the parties, the EC concluded that this agreement was a serious infringement of competition and fined the parties a total of €52.5m, which was confirmed by the EU Court of First Instance (see COMP/37.444 – *SAS/Maersk Air* and COMP/37.386 – *SUN Air/SAS and Maersk Air*, 18 July 2001 (2001/716 EG) confirmed by CFI decision T-241/01, 18 July 2005). At the national level, codeshare cases were investigated by the Italian National Competition Authority (see the *Alitalia/Volare* case and the *Alitalia/Meridiana* case). In the *Alitalia/Volare* case, the Italian Competition Authority considered the codeshare agreement restrictive but the decision was reversed by the court (both first instance and second instance), and in the *Alitalia/Minerva* case, the Authority considered the codeshare agreement not to be restrictive.

In addition, on 27 October 2016 the Commission closed an investigation it had opened in February 11 on free-flow parallel hub-to-hub codeshare arrangements between Lufthansa and Turkish Airlines, finding that Lufthansa and Turkish Airlines did not have full marketing rights to each other's seat inventory; that they applied differing pricing strategies; and that the codeshare accounted for only a marginal share of the parties' sales on the relevant routes. In February 2011 the EC also opened an investigation on the codeshare arrangement between Brussels Airlines and TAP Air Portugal which is still ongoing.

With regard to non-overlapping block space and interlining agreements, these are viewed by EU regulators as pro-competitive and have been accepted subject to commitments by the EC in several merger clearance decisions pursuant to Regulation 139/2004 (please see: *Air France/KLM*, case COMP/M. 3280, paragraph 158 (j); *Lufthansa/SNAirholdings*, Case COMP/M. 5335, paragraph 441; and *Lufthansa/Swiss*, Case COMP/M. 3770, paragraph 196).

### 4.2 How do the competition authorities in your jurisdiction determine the 'relevant market' for the purposes of mergers and acquisitions?

The UK competition authorities will follow an analysis similar to that of the Court of Justice of the European Union ("CJEU") and the EC. These have defined the relevant market in decisions regarding the aviation sectors as follows:

**Origin and Destination ("O&D") City Pairs**

This evaluation considers a demand-side perspective, whereby customers consider all possible alternatives of travelling from a city of origin to a city of destination, i.e. an O&D city pair (which generally are considered unsubstitutable by a different city pair).

**Premium and Non-Premium Passengers**

The different services appeal to different passenger groups with varying travel needs and price sensitivities. First and Business Class ticket passengers are less price-sensitive than Economy ticket users. The EC considers that Business and First Class tickets on one hand, and Economy on the other, are two different product markets.

**Non-Stop and One-Stop Flights**

EU regulators consider that the degree of competitive constraint imposed by one-stop services varies according to the route and assesses the precise impact of competing one-stop flights on the parties' joint venture on a route-by-route basis.

**Airport Substitution**

Where more than one airport in a city at one end of the route offers passenger air transport services, this must be assessed for market definition purposes. The market definition for airports is based on a catchment area of airports considered substitutable by passengers. The relevant market may vary according to the type of passengers: premium and non-premium passengers; or time-sensitive and non-time-sensitive passengers.

### 4.3 Does your jurisdiction have a notification system whereby parties to an agreement can obtain regulatory clearance/anti-trust immunity from regulatory agencies?

No. The notification system was abolished by Regulation 1/2003, which entered into force on 1 May 2004, and since then it has no longer been possible to notify agreements to the CMA (or indeed the EC) for clearance. Parties now also need to ensure that their agreement satisfies the exemption criteria of section 9 CA 1998 and/or Article 101(3) TFEU, on which section 9 is closely based.

### 4.4 How does your jurisdiction approach mergers, acquisition mergers and full-function joint ventures?

The legislation applicable to UK merger control is the Enterprise Act 2002 (the "Act"). Mergers (including, acquisitions and full-function joint ventures) are not subject to a system of mandatory notification in the UK. However, where a merger falls outside the turnover thresholds of the EU Merger Control Regulation 139/2004, but falls within the definition of "relevant merger situation" within the Act (see below), the CMA will have jurisdiction to investigate it within four months of completion or the date it was made public, whichever is later (discussed below).

**EU Merger Control**

A merger will have an EU dimension and will have to be notified to the EC if either:

- the combined aggregate worldwide turnover of all the

companies concerned is more than €5 billion (this threshold is intended to exclude mergers between small and medium-sized companies); and

- the aggregate Community-wide turnover of each of at least two of the companies concerned is more than €250 million (this threshold is intended to exclude relatively minor acquisitions by large companies or acquisitions with only a minor European dimension); or
- unless each of the companies concerned achieves more than two-thirds of its aggregate Community-wide turnover within one and the same Member State (this threshold – the so-called "two-thirds rule" – is intended to exclude cases where the effects of the merger are felt primarily in a single Member State, when it is more appropriate for the national competition authorities to deal with it) (Article 1(2), Merger Regulation).

Alternatively:

- the combined aggregate worldwide turnover of all undertakings concerned is more than €2.5 billion (instead of €5 billion);
- the aggregate Community-wide turnover of each of at least two of the undertakings concerned is more than €100 million (instead of €250 million);
- the combined aggregate turnover of all undertakings concerned is more than €100 million in each of at least three Member States;
- in each of at least three of these Member States, the aggregate turnover of each of at least two of the undertakings concerned is more than €25 million; and
- unless each of the companies concerned achieves more than two-thirds of its aggregate Community-wide turnover within one and the same Member State (Article 1(3), Merger Regulation).

The relevant legislation applicable to EU merger control is Council Regulation (EC) No 139/2004 of 20 January 2004 on the control of concentrations between undertakings (OJ L 24, 29 January 2004).

**UK Merger Control**

"Relevant Merger Situation"

A relevant merger situation under the UK merger rules arises where:

- two or more enterprises "cease to be distinct" – in essence, the transfer from one party to another of an "enterprise", which is broadly defined to include business activities of any kind; and either: as a result of the merger, the combined enterprises will supply or acquire 25% or more of any goods or services in the UK or a substantial part of the UK; or an existing share of supply of 25% or more will be enlarged (section 23, Enterprise Act 2002) (it should be noted that the "share of supply" test is not a market share test but, rather, focuses on the share of supply of the most narrow reasonable description of goods or services); or
- where the value of the turnover in the UK of the enterprise being taken over exceeds £70 million.

Obligation to Notify

With the exception of special cases of mergers involving newspapers, broadcasters or water companies, there is no obligation to notify proposed or completed mergers. However, it is possible, and will in many cases be advisable, to notify the CMA, since if a merger may result in a "substantial lessening of competition" in the UK market, failure to obtain prior clearance risks a reference to a more in-depth investigation and analysis by the CMA (known as a "Phase 2 investigation"), with the possible consequences described below, which may include a requirement that the purchaser divests.

**4.5 Please provide details of the procedure, including time frames for clearance and any costs of notifications.**

**UK Merger Control Timing and Fees**

The CMA has an administrative (non-binding) timetable, to which it usually adheres, to take a decision on a notified merger within 40 working days of receiving a complete notification. The waiting time for a decision will be greater if the CMA has serious concerns or if undertakings by the parties to address competition difficulties have to be explored.

A fee is payable to the CMA in respect of relevant merger situations. The fees payable are, since August 2012:

- £40,000, where the UK turnover is less than £20 million;
- £80,000, where the UK turnover is between £20 million and £70 million;
- £120,000, where the UK turnover is between £70 million and £120 million; and
- £160,000, where the UK turnover is over £120 million.

A merger fee is not payable if the merger involves the acquisition of an interest that is less than a controlling interest and the CMA has investigated the acquisition on its own initiative. This exception does not apply if the merger parties notified the acquisition by submitting a merger notice.

Furthermore, a person or corporate body acquiring an interest is exempt from paying a merger fee if, in its most recent financial year before the time the fee would become payable, it meets the criteria for small or medium-sized enterprises, as defined by reference to certain provisions in the Companies Act 2006. For financial years beginning on or after 1 January 2016 and, if the directors of the acquirer so decided, financial years beginning on or after 1 January 2015, the acquirer qualifies as small or medium-sized if it, or the group of which it is a member (as defined in section 474 of the Companies Act 2006), has satisfied certain criteria laid down by the CMA (which is more fully detailed in the relevant section of the government website: www.gov.uk).

If the CMA believes that a merger has resulted or may be expected to result in a substantial lessening of competition, and satisfactory undertakings cannot be agreed with the parties, the CMA will evaluate the competitive effects of the merger and may, where it believes the merger has or may result in a substantial lessening of competition in the UK market, refer the merger for an in-depth "Phase 2 investigation". The CMA has a wide range of powers, including to prevent the merger proceeding or divestment if the proceeding has already taken place.

**4.6 Are there any sector-specific rules which govern the aviation sector in relation to financial support for air operators and airports, including (without limitation) state aid?**

At UK level, no. At EU level, yes. The specific rules on state aid for the aviation sector are set out in the Guidelines on State Aid to Airports and Airlines (Communication from the EC, 2014/C 99/03). The Guidelines cover the presence of state aid within the meaning of Article 107 (1) of TFEU, investment aid, public service compensation for airlines and airports and so forth.

**Public Funding of Airports**

In order to assess whether an undertaking has benefited from an economic advantage, the Guidelines set out that the Market Economy Operator ("MEO") test will be applied. The test will

be based on available information and foreseeable developments at the time at which the public funding was granted. When an airport benefits from public funding, the EC will assess whether such funding constitutes aid by considering whether, in similar circumstances, a private-sector funder would have granted the same funding. Should such funding have been regarded as being granted in circumstances which correspond to "normal" market conditions, then it is not regarded as state aid.

**Start-up Aid for Airlines**

The Guidelines acknowledge that state aid granted to airlines for the launching of a new route with the aim of increasing the connectivity of a region will be considered compatible with the internal market pursuant to Article 107(3)(c) of TFEU, if the cumulative conditions in the Guidelines are satisfied. The conditions that will be considered (in relation to start-ups) as contributing to the achievement of an objective of common interest are: (i) if the airline increases the mobility of EU citizens and connectivity as well as the connectivity of the regions by opening new routes; or (ii) if the airline facilitates the development of remote regions.

The Guidelines also acknowledge that airlines are not always prepared to run the risk of opening new routes from unknown and untested airports, and may not have appropriate incentives to do so. Consequently, start-up aid will only be considered compatible for routes linking an airport with less than three million passengers *per annum* to another EU airport. Additionally, start-up aid for routes linking an airport with more than three million passengers *per annum* and less than five million passengers *per annum* and which are not located in remote areas are only likely to be considered compatible with the internal market in duly substantiated (and indeed exceptional) cases. Linking an airport with more than five million passengers *per annum* not located in remote regions, however, cannot be considered compatible with the internal market.

### 4.7 Are state subsidies available in respect of particular routes? What criteria apply to obtaining these subsidies?

Yes. There are specific EU state aid rules as regards public service compensation granted to undertakings entrusted with the operation of services of general economic interest ("SGEI"), which also cover the aviation sector. These rules are set out in EC Decision of 28 November 2005 on the application of Article 86(2) of the EC Treaty to state aid in the form of public service compensation granted to certain undertakings entrusted with the operation of services of general economic interest (OJ No L312/67, 29 November 2005). The EC's decision covers compensation for SGEI generally, but contains the following provisions specifically relating to air transport:

- public service compensation for air links to islands on which average annual traffic during the two financial years preceding that in which the SGEI was assigned does not exceed 300,000 passengers, will be considered compatible with the common market and not requiring notification; and
- the same rule applies to public service compensation for airports, if average annual traffic during the two financial years preceding that in which the SGEI was assigned does not exceed 1 million passengers.

### 4.8 What are the main regulatory instruments governing the acquisition, retention and use of passenger data, and what rights do passengers have in respect of their data which is held by airlines and airports?

The General Data Protection Regulation (Regulation 2016/679) (the "GDPR") and the UK Data Protection Act 2018 ("DPA 2018") govern the collection and use of personal data in the UK. The GDPR came into force in each Member State on 25 May 2018. As a Regulation, it has direct effect in each EU Member State as well as the Member States of the European Economic Area ("EEA"). Among the changes to data protection legislation implemented via the GDPR, some key points include: i) requiring freely given, specific, informed and unambiguous consent from a data subject which must be as easy to withdraw as it is to give; ii) the provision of clear and unambiguous information regarding what the data is to be used for, how long it is to be used for and the requirement to set out exactly what the data subject's rights are in relation to the personal data they provide; iii) maximum fines for breach of the GDPR are the higher of 4% of annual global turnover or €20 million; iv) requiring organisations who engage in "regular and systematic monitoring" of data subjects "on a large scale" to appoint a data protection officer (also known as a "DPO"); and v) the requirement for those processing personal data to be accountable and provide adequate technical and organisational measures to protect any personal data held.

The DPA 2018 repealed the UK Data Protection Act 1998 (the "DPA 1998"). Broadly, the DPA 2018 applies to the processing (such as obtaining, recording, holding, using, disclosing or erasing) of personal data. The obligations under the DPA 2018 are on the "data controller", who is the person that determines how personal information can be processed. A "data processor" is a person who processes data on behalf of the data controller. The data controller remains legally responsible for the processing of personal data by the data processor. The DPA 2018 further sets out derogations and exemptions to the GDPR that will apply in the UK.

The DPA 2018's jurisdictional scope includes persons who:

(a) are incorporated in the UK;

(b) have an office, branch or agency in the UK; or

(c) have a regular practice in the UK.

Data controllers must ensure that data is processed in accordance with six data protection principles in the DPA 2018; namely that personal data is:

(a) fairly and lawfully processed;

(b) obtained only for specified, explicit and legitimate purposes;

(c) adequate, relevant and not excessive for the purposes;

(d) accurate and up to date;

(e) not kept for longer than is necessary; and

(f) protected by ensuring that appropriate technical and organisational measures are taken against the unauthorised or unlawful processing of the personal data, as well as against accidental loss or destruction of, or damage to, personal data.

Whilst there is no longer a principle for individuals' rights in the DPA 2018, this is dealt with separately in Chapter III of the GDPR and states that personal data must be processed in accordance with the rights of data subjects. Similarly, the principle for international transfers of personal data previously contained in the DPA 1998 is now dealt with separately in Chapter V of the GDPR.

Furthermore, there is a new accountability principle in the GDPR which specifically requires you to take responsibility for complying with the principles and to have appropriate processes and records in place to demonstrate that you comply.

Data subjects, such as individual passengers, now have further rights under the GDPR, including the right to:

(a) access a copy of the information comprising their personal data;

(b) object to processing that is likely to cause them damage or distress;

(c) prevent processing for direct marketing;

(d) object to decisions being taken by automated means;

(e) have inaccurate personal data rectified, blocked, released or destroyed;

(f) have personal data deleted where continued processing is unnecessary (the "right to be forgotten");

(g) request that certain data, which is processed by automated means, is transferred to a different controller; and

(h) claim compensation for damage caused by a breach of the DPA 2018.

There is no minimum period for which controllers must hold personal information; rather, they must securely delete personal data when that personal data is no longer necessary for the purposes for which it was collected. On 2 December 2015, a provisional deal was reached by the European Parliament and Council on an EU Directive regulating the use of Passenger Name Record ("PNR") data for the prevention, detection, investigation and prosecution of terrorist offences and serious crime, and was endorsed by the Civil Liberties, Justice and Home Affairs Committee on 10 December 2015. The Directive was approved by Parliament as a whole on 14 April and by the Council of the EU on 21 April 2016.

The PNR Directive obliges airlines to hand EU countries their passengers' data in order to help the authorities fight terrorism and serious crime. It requires more systematic collection, use and retention of PNR data on air passengers, and therefore has an impact on the rights to privacy and data protection.

The Passenger Name Record Data and Miscellaneous Amendments Regulations 2018, which came into force on 25 May 2018, implemented the PNR Directive in the UK.

It is also worth noting that EU countries have bilateral PNR agreements with third countries in the wake of terrorist attacks across the EU and in the USA. Each of the agreements sets out the use of PNR data collected by airlines for law enforcement purposes.

### 4.9 In the event of a data loss by a carrier, what obligations are there on the airline which has lost the data and are there any applicable sanctions?

The GDPR has enhanced notification provisions around data losses and breaches, as well as allowing the relevant data protection regulators the authority to levy significantly increased fines for non-compliance with the provisions of the Regulation.

Under the GDPR there is now a mandatory obligation for an airline to notify the Information Commissioner's Office ("ICO" – the regulatory body in charge of the DPA) of a data breach under Article 33. The data controller must notify the relevant authority without undue delay and, where feasible, not later than 72 hours after having become aware of it.

Where an individual has suffered material or non-material damage due to a data controller's breach of the GDPR, that individual is entitled to claim compensation from the data controller or processor.

The ICO has the power to fine data controllers up to £20 million or 4% of annual worldwide turnover (whichever is higher) for breaches of the GDPR. The data controller may appeal the imposition of a fine to the Information Rights Tribunal.

The DPA 2018 creates several criminal offences, including (amongst others) unlawfully obtaining personal data, selling personal data obtained unlawfully, altering personal data to prevent disclosure to the data subject, failing to comply with an enforcement notice and making a false statement in response to an information notice.

The ICO's other coercive powers include issuing information notices requiring organisations to provide it with information and issuing binding undertakings to organisations with which they must comply.

### 4.10 What are the mechanisms available for the protection of intellectual property (e.g. trademarks) and other assets and data of a proprietary nature?

The UK has an Intellectual Property Office ("IPO"). Trademarks, patents and designs are registrable with the IPO.

Copyright protection applies to original works upon creation of the work, without the need for registration (copyright is not registrable in the UK). The UK has a relatively low threshold of originality for a work to be considered an original work which is protected by copyright. Databases may be protected by copyright and/or database rights.

A patent may be filed online or in hard copy. A patent application should include a full description (including drawings) of the invention, the claims defining the invention, an abstract summarising the invention's technical features and the relevant IPO forms.

Some intellectual property disputes may be heard initially by the IPO. The Intellectual Property Enterprise Court ("IPEC") is a specialist court that deals with lower-value or lower-complexity intellectual property disputes. There is a £500,000 cap on the amount of damages that can be claimed (although this can be waived if agreed by the parties). There is a small claims track within the IPEC which is appropriate if the claim has a value of £10,000 or less. More complex or valuable cases will be heard in the Chancery Division of the High Court.

### 4.11 Is there any legislation governing the denial of boarding rights and/or cancelled flights?

European Regulation 261/2004 ("Regulation 261") provides rules concerning compensation for denied boarding and/or cancelled or delayed flights. Airlines must ensure that a clearly legible and visible notice containing prescribed wording is displayed to passengers at check-in, and must provide passengers affected by denied boarding with a notice setting out the rules for compensation. Proposals to amend Regulation 261 have been under consideration for several years but remain to be finalised. In recognition of the need for more immediate action, in June 2016 the EC published Interpretative Guidelines on the Regulation, to clarify the understanding of passenger rights in this area.

Under the Civil Aviation (Denied Boarding, Compensation and Assistance) Regulations 2005, the CAA is responsible for enforcement of the operators' compliance with these rules; the Air Transport Users Council is the body to receive complaints. It is an offence, subject to a defence of due diligence, for an operating air carrier to fail to comply with the obligations imposed under the above.

### 4.12 What powers do the relevant authorities have in relation to the late arrival and departure of flights?

Regulation 261 establishes common rules on compensation and assistance to be given to passengers in the event of cancellation or long delay. Pursuant to the UK domestic legislation – the Civil Aviation (Denied Boarding, Compensation and Assistance) Regulations 2005 – the CAA is empowered to pursue enforcement proceedings against an airline for non-compliance with the European rules. If proved, an airline will be liable to a fine not exceeding £5,000 for each offence.

**4.13 Are the airport authorities governed by particular legislation? If so, what obligations, broadly speaking, are imposed on the airport authorities?**

The Civil Aviation Act 1982 and the Air Navigation Order 2009 stipulate that where an aerodrome is open for public use, the aerodrome must be available to all, on equal terms, whether they are foreign or domestic carriers. There are numerous other obligations imposed upon an airport operator by law of application not limited to aviation; for example, concerning employment, health and safety and disability discrimination.

The Civil Aviation Act 2012 has introduced a new system of economic regulation of airport operators. Certain airports will require a licence to levy airport charges, and the CAA can impose such conditions on that licence as it deems necessary to promote competition (e.g. capping the percentage by which charges at a particular airport may be increased, by a certain percentage or by reference to a particular index (such as the Retail Price Index)).

The Transport Act 2000 requires airport operators to keep records of aircraft movements in order to facilitate the assessment and calculation of charges. The Civil Aviation (Chargeable Air Services) (Records) Regulations 2001 govern the format and content of the aircraft movement log, which must be kept at any airport pursuant to section 88 of the Civil Aviation Act 1982. Pursuant to the Air Navigation Order 2009, the aerodrome licence-holder must ensure that the messages and signals between an aircraft and the air traffic control unit at the aerodrome are recorded, complete and preserved.

The airport operator is responsible for ensuring that the landing ground and runway remain clear of unmarked and unlit obstructions pursuant to the Air Navigation (Consolidation) Order 1923.

There is also a statutory duty for an airport operator to take care, as in all reasonable circumstances, to see that a visitor shall be safe in using the premises for the purposes for which he is invited, or permitted, by the operator, to be there. Failure to install, maintain and use the proper equipment to enable aircraft to take off and land safely will attract liability, and there may be liability to passengers of aircraft which crash if there is a failure to have or to use adequate rescue equipment.

Airport operators have also been held liable where there was a known hazard and no effective system to discover and disperse birds, leading to bird strikes.

**4.14 To what extent does general consumer protection legislation apply to the relationship between the airport operator and the passenger?**

The Consumer Protection Act 1987 and the Consumer Rights Act 2015 apply to aviation-related matters, providing a cause of action to a passenger against a manufacturer. The Enterprise Act 2002 is also applicable to aviation: it gives the CMA powers of enforcement in relation to consumer legislation.

**4.15 What global distribution suppliers (GDSs) operate in your jurisdiction?**

All the major GDSs operate in the UK, i.e. Travelport, Amadeus, Sabre, etc.

**4.16 Are there any ownership requirements pertaining to GDSs operating in your jurisdiction?**

No, there are no ownership requirements specific to GDSs operating in the UK, beyond the general UK company law applicable to all companies. Foreign-domiciled companies may operate in the UK without registering a UK company or branch. UK-registered companies are not required to have a local shareholder or director; they just need to have a registered address in the UK.

**4.17 Is vertical integration permitted between air operators and airports (and, if so, under what conditions)?**

There is no prohibition of vertical integration between air operators and airports. In such a case, however, competition rules particularly prohibiting abuse of a dominant position (section 18 CA 1998 and/or Article 102 TFEU) will prohibit any discriminatory charges for access to airport infrastructure, or denial of access where this affects trade and is not objectively justified.

**4.18 Are there any nationality requirements for entities applying for an Air Operator's Certificate in your jurisdiction or operators of aircraft generally into and out of your jurisdiction?**

At this time, EU Regulation No. 1008/2008 applies which sets out at Article 4 (Conditions for granting an operating licence) that an undertaking shall be granted an operating licence by the competent licensing authority of a Member State provided that "(if) Member States and/or nationals of Member States own more than 50% of the undertaking and effectively control it, whether directly or indirectly through one or more intermediate undertakings, except as provided for in an agreement with a third country to which the community is a party".

## 5 In Future

**5.1 In your opinion, which pending legislative or regulatory changes (if any), or potential developments affecting the aviation industry more generally in your jurisdiction, are likely to feature or be worthy of attention in the next two years or so?**

It is clear that developments in the data protection space involving the collection, retention, processing and use of personal – specifically, PNR data – will continue to feature as a major area of concern and focus for airlines and airports in the future, let alone the next two years. With the implementation of the GDPR, the DPA 2018 and the PNR Directive (and the national variations) operators need to continue to review and monitor their mechanisms, processes and procedures in place to ensure compliance with new legislative requirements around the collection and provision of data and the secure handling, retention and use of it.

The ICO issued the first UK enforcement notice under the GDPR in July 2018 on a Canadian data company. The number of enforcement notices and penalties issued by the ICO under the GDPR is expected to rise and it is likely that the ICO will investigate the data breach at British Airways in August 2018 that resulted in the account numbers and personal information from around 380,000 customers being stolen.

The Package Travel Directive (2015/2302/EU), which entered into force on 31 December 2015, became effective on 1 July 2018. This has an impact on carriers, as it has a scope which extends beyond the traditional holiday package booked through a tour operator and covers many other forms of combined travel (for example, fly-drive holidays and flight-hotel bookings). These forms of combined travel are protected as a package under the Directive, in particular where the travel services are booked at the same time and as part

of the same booking process or where they are offered for an inclusive price. The Package Travel and Linked Travel Arrangements Regulations 2018 implemented the Package Travel Directive in the UK on 1 July 2018.

Consumer rights legislation will continue to strengthen in the UK as a result of the Consumer Rights Act 2015 and the ever-present bolstering of Regulation 261/2004, primarily by the CJEU's interpretation of the Regulation, as now clarified to an extent by the 2016 Interpretative Guidelines, but also in relation to a revision to the Regulation (which remains to be agreed). In addition, as much of the aviation law in the UK stems from the EU, it will be important to keep a close eye on the development of plans for Brexit and any agreed transition period. The "withdrawal" date of 29 March 2019 is fast approaching; however, as at the time of writing, the UK and the EU have still not agreed the vast majority of the terms of the UK's withdrawal. There is, therefore, still uncertainty around what Brexit will mean for the future of aviation law, including important areas such as the ownership shareholding of airlines, rights to land in and fly over different countries in the EU, and generally what legislation will continue to apply in the UK.

## Endnote

1. Under Part 1 Article 4(3) of the Air Navigation Order 2009, an aircraft must not be registered or continue to be registered in the United Kingdom if it appears to the CAA that:
   (a) the aircraft is registered outside the United Kingdom and that such registration does not cease by operation of law when the aircraft is registered in the United Kingdom;
   (b) an unqualified person holds any legal or beneficial interest by way of ownership in the aircraft or any share in the aircraft;
   (c) the aircraft could more suitably be registered in some other part of the Commonwealth; or
   (d) it would not be in the public interest for the aircraft to be, or to continue to be, registered in the United Kingdom.

   Pursuant to Part 1 Article 5(1), only the following persons are qualified to hold a legal or beneficial interest by way of ownership in an aircraft registered in the United Kingdom or a share in such an aircraft:
   (a) the Crown in right of HM Government in the United Kingdom and the Crown in right of the Scottish Administration;
   (b) Commonwealth citizens;
   (c) nationals of any EEA state;
   (d) British protected persons;
   (e) bodies incorporated in some part of the Commonwealth and having their principal place of business in any part of the Commonwealth;
   (f) undertakings formed in accordance with the law of an EEA state which have their registered office, central administration or principal place of business within the EEA; or
   (g) firms carrying on business in Scotland; in this sub-paragraph "firm" has the same meaning as in the Partnership Act 1890 (c39).

   Under Part 1 Article 5(4) of the Air Navigation Order 2009, if an aircraft is chartered by demise to a person qualified under paragraph (1), the CAA may, whether or not an unqualified person is entitled as owner to a legal or beneficial interest in the aircraft, register the aircraft in the United Kingdom in the name of the charterer by demise if it is satisfied that the aircraft may otherwise be properly registered. There is also a discretion for the CAA to register an aircraft which is owned by a person not qualified under Part 1 Article 5(1) where the owner resides or has a place of business in the United Kingdom, but such aircraft must not be used for commercial air transport, public transport or aerial work (Part 1 Articles 5(2) and (3)).

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Philip Perrotta is a partner in the firm's London office, where he is responsible for the Aviation Finance group and is a member of the Banking & Asset Finance practice group. The nature of his practice is truly international and he frequently works with clients across Europe and South East Asia, specifically in Milan and Singapore, as part of the service provided to clients in this practice area.

He is an aviation finance and aviation specialist, recognised as a "leading expert", regularly receiving commendations in the legal directories, for example for being "very strong" and "dealing with all the big points without ever over-lawyering them". He is "experienced" and ensures "an excellent and accessible service" to clients (*The Legal 500*).

Philip acts for a broad range of significant aircraft lenders, lessors and operators globally, and has successfully concluded literally hundreds of transactions involving commercial and business aircraft, aero engines and other aviation assets in jurisdictions across all the continents.

He is a regular contributor at industry events, and is often requested to comment on relevant developments in a variety of segments of the aviation finance market.

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