

Air Transport

Contributing editors

John Balfour and Mark Bisset



2016

GETTING THE
DEAL THROUGH

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Air Transport 2016

Contributing editors
John Balfour and Mark Bisset
Clyde & Co LLP

Publisher
Gideon Robertson
gideon.roberton@lbresearch.com

Subscriptions
Sophie Pallier
subscriptions@gettingthedealthrough.com

Business development managers
Alan Lee
alan.lee@lbresearch.com

Adam Sargent
adam.sargent@lbresearch.com

Dan White
dan.white@lbresearch.com



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Cayman Islands

Louise Groom and Ellie Crespi-McCarthy

Harneys

General

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

Responsibility for regulation of the aviation industry in the Cayman Islands is split between: the Civil Aviation Authority (CAACI), which is responsible for regulating aviation (including the registration of aircraft, safety, air navigation, air traffic and licensing) pursuant to the Civil Aviation Authority Law (2015 Revision) (the CAA Law); and the Airports Authority (CIAA) which has responsibility for managing, developing and controlling airports pursuant to the Airports Authority Law (2005 Revision) (the AA Law).

Regulation of aviation operations

2 How is air transport regulated in terms of safety?

CAACI is responsible for aviation safety oversight throughout the Cayman Islands. The legislation regulating aviation safety in the Cayman Islands is primarily found in the Air Navigation (Overseas Territories) Order 2013 (AN(OT)O). It sets out the procedures and technical requirements with regards to a range of factors such as aircraft registration, airworthiness and equipment of aircraft, personnel (including crew and air traffic controllers), operation, aerodromes and prohibited behaviours. All aircraft must comply with flight crew licence requirements (articles 44 and 45) and aircraft operation requirements (article 74) to operate in or over the Cayman Islands. As the United Kingdom is a signatory to the Chicago Convention, it, and by extension the Cayman Islands as an 'Overseas Territory', is bound by the International Civil Aviation Organization (ICAO) Standards and Recommended Practices (SARPs). Compliance with the AN(OT)O and the ICAO's SARPs is achieved through the publication by Air Safety Support International (ASSI) of the overseas territory aviation requirements (OTARs), which are then gazetted in the Cayman Islands. At present, CAACI has gazetted 27 OTARs. Practical guidance on the application of the OTARs can be found in the overseas territories aviation circulars (OTACs).

Additionally, the AA Law permits the CIAA, with the approval of the Governor of the Cayman Islands (the Governor), to make additional regulations securing the safety of aircraft, vehicles and persons using Cayman Islands airports.

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

Any aircraft in flight operating outside the general rules set out in article 195 of the AN(OT)O or under the exceptions set out in articles 196 to 202 is deemed non-commercial air transport. Non-commercial air transport must still comply with the flight crew licence requirements (articles 44 and 45) and aircraft operation requirements (article 74) irrespective of its purpose.

There are specific provisions for non-commercial air-transport in general within the AN(OT)O which limits low visibility and low altitude operation (article 75), requires additional survival equipment as reasonably considered necessary by the pilot-in-command (article 80) and mandates the use of oxygen in flights with cabin pressure exceeding 10,000 feet during the flight (article 81).

Non-commercial aviation is further separated into aerial work and private flight. Aerial work means any purpose (other than commercial

air transport) for which an aircraft is flown if valuable consideration is given or promised in respect of the flight or the purpose of the flight, but not for remuneration of the services of the pilot of the flight (article 126). Private flight is a flight that is not aerial work or commercial air transport. Corporate operations do not fall under commercial air transport (article 195), but are likely to be deemed private flight instead.

Aerial work operations have more stringent safety regulations that are not applicable to private flights.

Specifically, risk assessment and development of appropriate operating procedures are required before the commencement of any aerial work operation is allowed (article 127).

Private flights are regulated depending on the class and type of aircraft used. Aircraft or aircraft operation of the classes or cases specified under article 132 fall under general aviation, and must comply with the requirements and conditions for approval (articles 133 and 134) as well as OTAR Part 125 on Complex General Aviation including Corporate Operations.

The AN(OT)O also contains safety regulations for flying displays (article 69), balloons (article 70), gliders, kites and parascending parachutes (article 71), airships (article 72) and small unmanned aircraft (article 73).

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

There are different sets of regulations and procedures depending on the country where the aircraft is registered, although all operators must obtain an operating permit issued by CAACI to operate commercial air transport services.

Operators with aircraft registered in the Cayman Islands must obtain an air operator's certificate (AOC) from the Director-General of CAACI in order to operate a commercial air transport service (article 94). The AOC must be issued under OTAR Part 121 or Part 135 for commercial operation as aircraft registered under 'Private Category' are not allowed to be used commercially or for the purpose of 'hire and reward'.

An operator with an aircraft which is not registered in the United Kingdom or any of the Overseas Territories must obtain a Foreign Operator Permission from the Secretary of State in the United Kingdom in order to operate a commercial air transport service with those aircraft in the Cayman Islands. Permission is only required for taking on board or discharging of passenger or cargo where valuable consideration is given or promised in respect of the carriage of such persons or cargo (article 135). The issuance of Foreign Operator Permissions in the Cayman Islands has been delegated by the Governor and thereby to the Director-General of CAACI.

The AN(OT)O does not specify the exact procedures for operators based in other Overseas Territories or the United Kingdom to commence operation in the Cayman Islands. Pursuant to the AN(OT)O, there is mutual recognition of AOCs between the overseas territories. As the AOC and foreign operator permission are both inapplicable to aircraft registered in the United Kingdom, there is no requirement or regulation for their access to the Cayman Islands market.

Note that if the air transport services provided do not fall within the scope of commercial air transport within article 195(1) or is under one of the exceptions to commercial air transport services in articles 196 to 202, the regulations specified above will not be applicable.

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

The Local Companies (Control) Law (2015 Revision) (the LCC Law) may be applicable to a foreign entity that is looking to gain control of or start an air carrier deemed to 'carry on business in the Cayman Islands' within the meaning of the LCC Law. If beneficial ownership and control (whether effective control, by shares, or through director control) of the air carrier is less than 60 per cent Caymanian, the air carrier may need to apply for a local companies (control) licence. These licences are granted by the Trade & Business Licensing Board taking into account a range of matters set out in, but not limited to, section 11 of the LCC Law.

The finances of the company and the economic feasibility of its plans are one of the factors within the LCC Law to be taken into consideration when deciding on applications for a licence.

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

Depending on where the aircraft is registered, the operator may need to obtain either an AOC or foreign operator permission from the Director-General of CAACI to operate commercial routes with that aircraft. An operating permit issued by the CAACI is required to operate air transport operations.

The operator must comply with all of the technical standards set out in AN(OT)O and any OTARs that have been gazetted in the Cayman Islands. The non-gazetted OTARs are not in themselves law, although they repeat or reproduce many provisions of AN(OT)O so failure to comply may constitute a breach of one or more provisions of the AN(OT)O.

An operator may need to obtain a trade and business licence and, if applicable, a local companies (control) licence to operate within the Cayman Islands.

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

There are no specified mechanisms for dealing with contested applications.

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

There is no declared policy on airline access or competition.

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

A foreign air carrier must obtain a foreign operator permission, a trade and business licence and LCC Law (if applicable) in order to operate to or from Cayman Islands. There are further requirements for other certificates, documents and forms to be filed with CAACI.

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

There is no specific public service obligation with regard to air transportation.

11 Are charter services specially regulated?

Special arrangements are available for companies that supply more than one-off ad hoc charters or those who provide air ambulance services through the issuance of blanket permits and verification letters by CAACI.

12 Are airfares regulated, and if so, how?

Airfares are not regulated in the Cayman Islands.

Aircraft

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

Nationality limitations are specified by the AN(OT)O which provides that the following 'qualified persons' may register an aircraft on the Cayman register as owner: the Crown, UK nationals, Commonwealth citizens, nationals of any European Economic Area state, bodies incorporated in any part of the Commonwealth and undertakings formed in accordance

with the law of an EEA State. Accordingly, Cayman aircraft tend to be registered by Cayman Islands and British Virgin Islands owners. The AN(OT)O also provides that if an aircraft is chartered by demise to a qualified person (as above) then it may be possible to register the aircraft in Cayman in the name of the charterer by demise notwithstanding that the owner of the aircraft is not a qualified person provided that all other conditions to registration are met.

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

CAACI maintains a 'Register of Aircraft Mortgages'. Registration can be made in respect of any aircraft mortgage (Cayman or foreign law governed) and registration in the Register of Aircraft Mortgages confers statutory priority on the charge holder. It is also possible to file a priority notice ahead of an aircraft mortgage being taken; a mortgage registered within 14 days shall be deemed to have priority from the time when the priority notice was registered. In addition, any Cayman company that owns an aircraft and creates a security interest over it has a statutory obligation to update its internal register of mortgages and charges.

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

The CIAA and CAACI each have a statutory lien on every aircraft for the recovery of airport dues, fees or other charges imposed for the performance of functions exercised under the AA Law, the CAA Law or any of their respective regulations. In addition, the CAA Law allows CAACI to enter, take control of and arrest any aircraft over which it has a lien.

16 Do specific rules regulate the maintenance of aircraft?

Yes, CAACI issues guidance identifying all of the maintenance requirements for commercial and noncommercial aircraft, which are set out on the AN(OT)O, the OTARs and the ICAOs.

Airports

17 Who owns the airports?

There are three airports located within the Cayman Islands. Owen Roberts International Airport in Grand Cayman and Charles Kirkconnell International Airport in Cayman Brac are owned and operated by the CIAA. The third airport, the Edward Bodden Airfield in Little Cayman, is a private, uncertified aerodrome.

18 What system is there for the licensing of airports?

The Air Navigation Services division of CAACI is responsible for the certification and licensing of airports in the Cayman Islands including Owen Roberts International Airport, the Charles Kirkconnell International Airport in Cayman Brac and the Edward Bodden Airstrip (unlicensed aerodrome) in Little Cayman.

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

The Commercial Affairs Regulation and Administration division of CAACI oversee the economic regulation of the Cayman Islands aviation industry. The primary responsibility is to establish principles in accordance with the ICAOs for economic policy (including non-discrimination, cost-related policy, transparency and consultation with users) to regulate air transport services, service providers and facilities. CAACI are also responsible for licensing scheduled and non-scheduled air transport operators in accordance with the AN(OT)O with an aim to ensure all operators are duly licensed and providing the highest standards of safety for the travelling public. CAACI carries out an audit and inspection programme in order to review compliance with regulations.

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

The Airport Regulations (1995 Revision) prohibit various acts including accessing or leaving the airport otherwise than through designated points of entry and entering parts of the airport that are not designated for public access without leave of an authorised officer. The Airports (Straying Animals) Regulations (1997 Revision) empower authorised officers at airports to remove any animals from any areas of the airport where they might constitute a hazard to the aircraft.

21 How are slots allocated at congested airports?

There are no guidelines or regulations which determine how slots are allocated at congested airports. The IATA Worldwide Scheduling Guidelines do not apply to the Cayman Islands.

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

Section 64(1) of the CAA Law places an obligation on CAACI to keep under review the provision of airport operation services in the United Kingdom and elsewhere with a view to facilitating the carrying out of its functions in relation to competition. Currently, Air Agencies Limited is the leading provider of aviation ground services in the Cayman Islands.

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

The CIAA is responsible for the provision of air traffic services for the entire territory of the Cayman Islands. Under the AN(OT)O, CAACI is responsible for the regulatory safety oversight of the air traffic services unit. Oversight of the training and competence of air traffic services personnel is part of CAACI's role. Air traffic control services are regulated under the following OTARs:

- OTAR 172 (Air Traffic Services Approval); OTAR 173 (Flight Checking Organization Approval);
- OTAR 77 (Activities Affecting Airspace); and
- OTAR 65 (Air Traffic Service Personnel Licenses and Ratings).

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

There are no special rules in the Cayman Islands that deal with death of, or injury to, passengers or loss or damage to baggage or cargo. However, section 35 of the CAA Law provides that if any article is entrusted to the care of the CIAA, the CIAA will not be liable for any loss or damage occasioned unless such loss or damage is due to its wilful neglect or default. This is also the case for the CAACI.

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

There are no special rules about the liability of aircraft operators for surface damage in the Cayman Islands.

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

CAACI is specifically not responsible for the enforcement of laws relating to the investigation of accidents. The CAA Law delegates this responsibility to the Governor or his delegates. The Civil Aviation (Investigation of Air Accidents and Incidents) Regulations, 2007 lays down the system and procedures for the investigation of air accidents.

An investigation is required of either the relevant person or the aerodrome authority to give notice to the Governor. The notice must include the information listed under section 5(3) of the legislation. The Governor may then, at any time, publish information relating to the accident. The Governor can appoint inspectors to carry out investigation of the accident and to draw air safety lessons from it. The extent and the procedure of the investigation are determined by the Governor, and are likely to be case specific.

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

After the completion of the investigation, the appointed inspector is to immediately submit a report to the Governor. The report shall state the objective of the investigation, and where appropriate contain safety recommendations. The persons involved in the incident will remain anonymous in the report. The report of the investigation will then be circulated by the inspector to parties likely to benefit from its findings with regard to safety.

The report will not be published if it is likely to adversely affect the reputation of any person, until the inspector has served a notice upon the person and made the necessary changes as indicated in section 12(1) of the Civil Aviation (Investigation of Air Accidents and Incidents) Regulations, 2007. The Governor shall make the report public in the shortest time

possible and in a manner he thinks fit. The Governor shall communicate the report and its safety recommendations to undertakings or national aviation authorities.

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

There are no sector-specific competition rules for aviation or general competition law.

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

There is no sector-specific regulator or general competition authority.

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

There is no sector-specific regulator or general competition authority.

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

There is no sector-specific regulator or general competition authority.

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

There is no sector-specific regulator or general competition authority.

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

There are no specific rules regulating financial support to companies by the government-controlled agencies or companies in the aviation sector. There are no applicable general state aid rules.

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

Not applicable.

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

Not applicable.

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

Not applicable.

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

Not applicable.

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

Not applicable.

Miscellaneous**39 Is there any aviation-specific passenger protection legislation?**

Other than requirements in the AN(OT)O which provide for a certain number of cabin crew per passenger seats installed on the aircraft, safety belts and safety briefings for passengers and prohibit the carriage of dangerous goods there is no aviation-specific passenger protection legislation.

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

There are no mandatory insurance requirements for aircraft registered in the Cayman Islands (ie, private aircraft). Insurance is required for aircraft

Update and trends

The UK government is set to ratify the Convention on International Interests in Mobile Equipment and the Protocol thereto on matters specific to Aircraft Equipment (the Cape Town Convention). Once ratified, the Cape Town Convention can be extended to the Cayman Islands, with Cayman gaining the status of a territorial unit of a Convention State. In the meantime, the Cayman Islands authorities have been busy preparing all necessary enabling legislation to bring the Cape Town Convention into force so that it interacts harmoniously with existing Cayman registration regimes. The key new statute is the International Interests in Mobile Equipment (Cape Town Convention) Law, 2015.

operating commercially and proof of insurance is required for aircraft requesting permission to fly into the Cayman Islands.

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

The National Aviation Security Committee was established in the Cayman Islands in 1993 to advise and assist with the development and implementation of security measures and procedures at all airports adequate to the requirements of international civil aviation. The National Aviation Security Committee derives its powers under the AA Law. In addition, under the AN(OT)O:

- an operator of an aircraft to which this article applies must establish, implement and maintain a security programme that meets the specified requirements for security for commercial air transport aircraft;
- the person in charge of the provision of an air traffic control service in a Cayman Islands, other than at a military aerodrome, must establish, implement and maintain a security programme that meets the specified requirements for security for an air traffic control service;
- the person in charge of an aeronautical telecommunications service must establish, implement and maintain a security programme that meets the specified requirements for security for the equipment or apparatus operated by that person for such a service; and
- an applicant wishing to operate an aerodrome must have established a security programme that meets the specified requirements for security for aerodromes and must implement and maintain such security programme.

42 What serious crimes exist with regard to aviation?

A number of serious aviation-related crimes exist including negligently endangering safety and human life on an aircraft, wilfully destructing an aircraft or being riotously assembled, unlawfully and with force prevent, hinder or obstruct the loading or unloading of any aircraft or, unlawfully or with force board any aircraft with intention so to do, drunkenness on an aircraft, smoking on an aircraft, acting in a disruptive manner. There is no separate aviation crimes legislation in the Cayman Islands. Crimes related to aviation are prosecuted under the Penal Code (2013 Revision) or the article 22 (Prohibited Behaviour, Offences and Penalties) of the AN(OT)O.

HARNEYS

Louise Groom
Ellie Crespi-McCarthy

louise.groom@harneys.com
ellie.crespi-mccarthy@harneys.com

Harbour Place
103 S Church St
PO Box 10240 George Town
Grand Cayman
Cayman Islands

Tel: +1 345 815 2933
Fax: +1 345 949 4451
www.harneys.com

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