

International **Comparative** Legal Guides



Aviation Law **2021**

A practical cross-border insight into aviation law

Ninth Edition

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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.

The principal regulator of aviation is the Ministry of Land, Infrastructure, Transport and Tourism (the “MLIT”). Separate MLIT bureaus regulate specific areas relating to transportation, such as by air, road, railway and water. The MLIT bureau regulating aviation is the civil aviation bureau (*koukuu kyoku*).

The principal laws regulating aviation in Japan are described below.

A. The Civil Aeronautics Act (*Koukuu Hou*)

The purpose of the Civil Aeronautics Act is to ensure the safety of aircraft and develop aviation by establishing order in the aviation business. This law is based on the Convention on International Civil Aviation (Chicago Convention) and its Annexes.

The Civil Aeronautics Act comprises 11 chapters. Chapters 1 to 6 and 9 to 11 apply to both commercial aviation and general aviation. Their provisions include: aircraft registration (Chapter 2); aviation safety, such as airworthiness (Chapter 3); qualifications of airmen (Chapter 4); designation, permission and management of airways and establishment of airports and air navigation facilities (Chapter 5); requirements for operating aircraft (Chapter 6); requirements for operating unmanned aircraft vehicles (Chapter 9); and penalties for violations of this law (Chapter 11). Chapter 7 regulates commercial aviation, such as the aviation transport business and businesses using aircraft (please see question 1.2 below). Chapter 8 regulates aircraft registered outside Japan and businesses conducted by foreign entities.

Certain provisions of the Civil Aeronautics Act do not apply to aircraft used by airmen employed by airports and air navigation facilities established by the Japan Self Defence Forces (*Jieitai*) (Act on Self Defence Forces, Article 107). Similarly, there is an exception for U.S. forces stationed in Japan (Agreement under Article VI of the Treaty for Mutual Cooperation and Security between Japan and the United States of America, regarding Facilities and Areas and the Status of United States Armed Forces in Japan).

B. The Airport Act (*Koukou Hou*)

Under the Airport Act, the MLIT is in charge of policy-making for establishing and managing airports in Japan. With a few exceptions, airports in Japan were built and are owned and managed directly by either the national

government or the local governments. Airports mean basic aeronautical facilities such as runways, aprons and navigation facilities, and do not include airport terminals and car parks. A unique aspect in Japan is that, in many airports, airport terminals and car parks were constructed and are owned and managed by a private entity or a “third sector” entity, i.e., a company jointly owned by a local government and private entities. This is one reason for the enactment of the Airport Concession Act. Please also see question 1.10. The airport operator (*koukou kanrisha*) under the Airport Act is essentially the national government or local government which owns and manages airports. It must submit to the MLIT prior notification of the landing fees and other fees to use the runways or relevant facilities. If the MLIT determines that such fees are (i) discriminatory, or (ii) extremely inappropriate, and the use of the airport is likely to be extremely limited, the MLIT may issue an order to the airport manager to change the fees (Airport Act, Article 13).

C. The Aircraft Mortgage Act (*Koukuki Tetitou Hou*)

Under the Aircraft Mortgage Act, certain aircraft registered pursuant to the Civil Aeronautics Act can be subject to security interests. Please see question 2.2.

D. The Aircraft Manufacturing Industry Act (*Koukuki Seizou Jigyou Hou*)

The Aircraft Manufacturing Industry Act provides that the manufacture and repair of certain aircraft and aircraft apparatuses requires a permit for each factory from the Ministry of Economy, Trade and Industry (“METI”), and must be carried out by methods approved by the METI.

E. Others

The Act for the Establishment of the Japan Transport Safety Board (*Unyu Anzen Inkaei Seachi Hou*) established the said board to investigate aircraft accidents, including their causes. The board also implements measures necessary to prevent such accidents. Please see question 1.9.

The Act on the Prevention of Damage caused by Aircraft Noise in Areas around Public Airports regulates noise problems caused by aircraft.

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

A. Aviation Transport Business (*Koukuu Unsou Jigyō*)

The aviation transport business is the business of transporting persons or cargo by aircraft for a fee (Civil Aeronautics Act, Article 2, Item 18).

A permit from the MLIT is required to start an aviation transport business (*Id.*, Article 100, Paragraph 1). The application for a permit must state the applicant’s name

and address, the name of its representative director, items to be transported by aircraft, maintenance, and the total amount and details of funding and financing (*Id.*, Article 100, Paragraph 2). The MLIT will examine whether the business plan is suitable to ensure transport safety, whether the applicant is competent to conduct the aviation transport business and whether the applicant is disqualified on grounds listed in the Civil Aeronautics Act (*Id.*, Article 101, Paragraph 1). This business is closed to foreign entities and persons. Please see question 1.6.

The application fee is JPY 150,000 and the standard processing period is two to four months after the MLIT has received all necessary documents.

The holder of an aviation transport business permit is referred to as a domestic air carrier (*bonpou koukuu unsou jig'yosha*). It is subject to mandatory inspection by the MLIT in connection with its facilities to control, operate and maintain its aircraft and air transport business; it cannot operate or maintain the aircraft if it fails the inspection (*Id.*, Article 102, Paragraph 1).

As regards international carriers, please see question 1.6 below.

B. Business to Use Aircraft (*Koukuuki Shiyon Jigyo*)

A “business to use aircraft” to provide services, other than transporting persons or cargo by aircraft for a fee, is also regulated (*Id.*, Article 2, Item 21). An example of this business is enabling the taking of photographs by using an aircraft.

A permit from the MLIT is necessary to start a business using aircraft (*Id.*, Article 123, Paragraph 1). The application for the permit must state the applicant’s name and address, the name of its representative director, and the total amount and details of funding and financing (*Id.*, Article 123, Paragraph 2). The MLIT will examine whether the business plan is suitable to ensure safety, whether the applicant is competent to conduct the business and whether the applicant is disqualified on grounds set forth in the Civil Aeronautics Act (*Id.*, Article 123, Paragraph 2).

The application fee is JPY 90,000 and the standard processing period is two months after the MLIT has received all necessary documents.

The business operator is subject to inspection by the MLIT in connection with its facilities to control, operate and maintain its aircraft; it cannot operate or maintain the aircraft if it fails the inspection (*Id.*, Article 124).

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

A. Legislation

The principal legislation governing air safety is the Civil Aeronautics Act, which is primarily based on the Chicago Convention.

i. Requirements regarding aircraft and the operation of aircraft

The law imposes requirements to ensure the safety of aircraft and their operation. These include verification of airworthiness before an aircraft may be used, and restricting the use of aircraft to the purpose and scope stated in the verification of airworthiness. The task of verifying the airworthiness of aircraft registered in Japan falls on the MLIT (Civil Aeronautics Act, Articles 10 and 11). The MLIT also issues certificates of competency which are required by anyone to fly an aircraft. Only persons with such a certificate

can operate an aircraft, and must do so within the scope of the certificate (*Id.*, Articles 22, 28, 65 and 67). Other requirements under the law cover restricted fly zones, minimum safety altitudes and speed limits.

ii. Requirements regarding the aviation business

In addition to permits to start an aviation transport business or a business using aircraft, the conduct of an aviation business is subject to requirements. Any domestic air carrier and any operator of a business using aircraft must pass the MLIT’s inspections on its facilities to ensure the safety of its aircraft operation, including facilities to manage, operate and maintain its aircraft (*Id.*, Articles 102 and 124). Any domestic air carrier must have a manual regarding the operation and maintenance of its aircraft, which must stipulate the matters specified by applicable MLIT ordinances and be approved by the MLIT (*Id.*, Article 104).

iii. Enforcements

The MLIT may: (i) request persons engaging in the manufacture or maintenance of aircraft, airmen, domestic air carriers and operators of businesses using aircraft to submit reports; and (ii) enter aircraft, airports, places where aircraft are located and business offices when it deems it necessary for the enforcement of the Civil Aeronautics Act (*Id.*, Article 134).

Violation of the Civil Aeronautics Act is subject to criminal penalties. A person engaging in an aviation transport business without the MLIT’s permission may be imprisoned for up to three years or fined up to JPY 3,000,000, or both.

Other than the Civil Aeronautics Act, there are other laws such as: (i) the Act on the Punishment of Acts that Cause Danger in the Air, which penalises any person who damages airports or air navigation facilities, destroys aircraft or causes aircraft to crash; and (ii) the Act on the Punishment of an Unlawful Seizure of Aircraft, which penalises any person who hijacks or plans to hijack any aircraft while in operation.

B. Administrator

The civil aviation bureau of the MLIT administers air safety. It established an aviation safety programme which became effective on April 1, 2014, pursuant to ICAO’s policy to introduce State Safety Programmes. The programme applies to general aviation and commercial aviation by a person or a company. It has also started to operate VOICES (Voluntary Information Contributory to the Enhancement of Safety), through which any person may voluntarily report any incident which could have caused accidents by an aircraft, in order to prevent the occurrence of actual accidents.

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

Air safety is regulated by the Civil Aeronautics Act, which regulates aviation generally; however, Chapter 7 regulates only commercial aviation such as the aviation transport business and businesses using aircraft. Please see question 1.1.

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

Yes, as discussed in question 1.2 on aviation transport businesses. Regulations on aviation transport businesses do not distinguish between cargo and persons.

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.

A foreign entity or person cannot be a domestic air carrier (*bonpou koukoku unsou jigyo-sha*) (please see question 1.2). However, it may obtain the MLIT's permission to conduct an international aviation transport business (Civil Aeronautics Act, Articles 129 and 126).

A foreign entity or person who invests in Japan is subject to the Act of Foreign Exchange and Foreign Trade. Under that law, a foreign entity which wants to invest in the business of manufacturing aircraft, conducting air transport or using aircraft must give prior notification, through the Bank of Japan, to the Ministry of Finance, as well as the ministry with specific jurisdiction over the business (i.e., the METI or the MLIT). The foreign entity must wait for 30 days before making the investments; however, this period may generally be shortened to two weeks.

1.7 Are airports state or privately owned?

As described in question 1.1, with a few exceptions, airports in Japan were constructed and are owned and managed directly by either the national government or local governments. As of April 1, 2016, airports in Japan are classified as: (i) national airports established and managed by the national government (19 airports); (ii) special regional airports established by the national government but managed by local governments (five airports); (iii) incorporated airports established and managed by corporations under special laws (Narita, Kansai, Osaka (Itami) and Chubu airports) (four airports); (iv) regional airports established and managed by local governments (54 airports); (v) airports for joint use managed by either the Japan Self Defence Forces or the US forces stationed in Japan jointly with the national government (eight airports); and (vi) other minor airports. Among those airports, Sendai Airport, Kansai International Airport, Osaka (Itami) International Airport, Fukuoka Airport, Takamatsu Airport, Kumamoto Airport and seven airports in Hokkaido are currently being operated by private companies through concessions. Please see question 1.10.

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

An airport operator must establish rules for the operation of the airport and publish them through the internet or other appropriate methods (Airport Act, Article 12). The rules must cover the airport's operating hours, other services it is providing, landing and parking fees and requirements for airport users, among other things.

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 Act for the Establishment of the Japan Transport Safety Board created the Japan Transport Safety Board (*Unyu Anzen Inka-i*). The Board is one of the MLIT's administrative organs, although the National Government Organization Act gave it some independence from the MLIT.

The Board is responsible for investigating: accidents involving aircraft, railroads and vessels; any situation which is likely to cause

those accidents; the causes and extent of damage surrounding those accidents; and for requesting the MLIT or relevant parties to implement necessary measures in response to such accidents. This law is based on Annex 19 of the Chicago Convention. The Board's investigative powers must meet the standards, methods and procedures set by the Chicago Convention and Annex 19 (Act for the Establishment of the Japan Transport Safety Board, Article 18, Paragraph 1).

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

There are two notable developments in connection with regulations on flights by unmanned aircraft vehicles ("UAVs") and the privatisation of airports in Japan.

A. Regulations on flights by UAVs – Amendment of the Civil Aeronautics Act

The Japanese public and government turned their attention to drones after a drone landed on the roof of the Prime Minister's office on April 22, 2015. The Civil Aeronautics Act was amended to introduce safety rules for unmanned aircraft vehicles, and the amended Act took effect on December 10, 2015. A further amendment was made in September 2019 to expand prohibited airspace and operation conditions. In addition, the Act was amended in 2020 to a registration system for drones which will take effect in 2022.

The amended Act introduced restrictions on (i) areas for flight, and (ii) operation.

(i) Prohibited airspaces for flight

The amended Civil Aeronautics Act requires a person who intends to operate a UAV in the following airspaces to obtain the MLIT's permission:

(a) airspace which is likely to affect the safe operation of aircraft; and

(b) airspace which is above densely populated areas.

An "airspace which is likely to affect the safe operation of aircraft" refers to airspaces above airports and their vicinity, and airspaces 150 metres above ground level or water surface level. A "densely populated area" is defined as a densely inhabited district (*jinko shuchu chiku*) ("DID"), designated based on the results of the national census. A DID is, in principle, an area with a population density of 5,000 people or more per square kilometre.

(ii) Operational limitations

The amended Civil Aeronautics Act lists the following operational conditions.

Operators of UAVs must:

(a) not operate UAVs while under the influence of alcohol or medication, including illegal drugs;

(b) confirm that all necessary preparations have been completed, including confirming the externals (e.g., batteries, propellers and cameras being firmly installed onto the drones) and functions of UAVs, weather and other flight conditions prior to operation;

(c) operate UAVs in a manner that prevents any collisions with aircraft or other UAVs;

(d) not operate UAVs in a manner that causes any issues with third parties, including by making unnecessary noise or causing UAVs to nosedive;

(e) operate UAVs only in the daytime;

(f) operate UAVs within the visual line of sight of the operator;

- (g) maintain a certain operating distance (30 metres) between UAVs and persons or properties on the ground or water surface;
- (h) not operate UAVs over event sites where many people gather;
- (i) not transport hazardous materials specified in the Ordinance by UAVs; and
- (j) not drop any object from UAVs except for the goods specified in the Ordinance.

Any person who intends to operate UAVs beyond the limitations of items (e) through (j) must have approval from the MLIT. As for items (a) through (d), these conditions are absolute without exception.

With the MLIT's permission or approval, it is possible to operate UAVs in prohibited airspaces or without meeting operational conditions. An operator must submit the application for permission or approval, in general, 10 business days before the flight of a UAV.

Violations will be penalised with a fine of up to JPY 500,000. Any person who operates UAVs while under the influence of alcohol or medication, including illegal drugs, above any public areas (e.g., roads, parks, public squares and stations) may be subject to imprisonment for up to one year or a fine of up to JPY 300,000.

UAV technology continues to advance rapidly. Hence, although the new regulations were created as an urgent response to the landing of a drone on the roof of the Prime Minister's office, government regulations will continue to evolve to ensure the sound development of the UAV business in Japan, as affirmed in a supplemental provision of the amended Civil Aeronautics Act.

B. Introduction of concessions for operating airports

The Act for the Operation of Government Controlled Airports by Private Sector Entities (the "**Airport Concession Act**"), which took effect on July 25, 2013, allows the private sector to operate airports through concessions under the Act on the Promotion of Private Finance Initiative (the "**PFI Act Concession**").

The need to reform airport management efficiently led to the PFI Act Concession. Under the current system, income from airport charges, such as landing fees, at all national airports is managed within a single national pool (i.e., the airport development sub-account under the social infrastructure development special account). In principle, airport charges are the same in all national airports in Japan, and each airport cannot set its own airport charges. Under the Airport Concession Act, however, the airport concessionaire of a specific airport may set its own airport charges and collect them as income.

Further, the separation between aeronautical and non-aeronautical operations in terms of ownership and management has also been criticised as being inefficient. As mentioned above, in many airports in Japan, the government owns and operates basic aeronautical facilities, such as runways, aprons and navigation facilities, while private or third sector entities own and operate non-aeronautical facilities such as airport terminals and car parking facilities. Accordingly, the government cannot offer lower airport charges to airlines by generating income from non-aeronautical operations. By introducing the Airport Concession Act, the government aims to have one concessionaire manage both aeronautical and non-aeronautical operations under its concession.

A concession under the Airport Concession Act covers: (i) national airports; (ii) regional airports; (iii) civil aviation

facilities at airports for joint use; and (iv) other minor airports established and managed by local governments. In 2014, the government started the bidding process to select the concessionaire who will operate Sendai Airport, one of Japan's national airports. The operation of Sendai Airport, Fukuoka Airport, Takamatsu Airport, Kumamoto Airport and seven airports in Hokkaido by private companies through concessions has started. Incorporated airports are not subject to the Airport Concession Act. However, the government has enacted another special law for the concession to operate Kansai International Airport and Osaka (Itami) International Airport. The operation of both airports by private companies, which include Vinci Airports and Orix Corporation, through concessions, started in April 2016.

2 Aircraft Trading, Finance and Leasing

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

At the owner's application, the MLIT will register its ownership of an aircraft in the Aircraft Register (Civil Aeronautics Act, Article 3). The registration fee is JPY 30,000 multiplied by the weight (in tons) of the aircraft.

Any third party may request to see or have a copy of the Aircraft Register. Hence, the buyer of an aircraft can check whether the seller is registered as the aircraft's owner. Further, as for a registered aeroplane (*bikouki*) or rotorcraft (*kaitenyoku koukukuki*), the buyer or transferee of that aircraft may assert its ownership by registering the acquisition or transfer (*Id.*, Article 3–3). However, if the registration is false and there is a true owner who is not registered in the Aircraft Register, the buyer cannot acquire ownership. In this sense, the Aircraft Register is a very important piece of evidence to prove ownership, but it does not protect a third party who relies on a false registration.

As for other types of aircraft, such as gliders or airships, even if they are registered, the mere delivery of the aircraft to the buyer or transferee enables the said buyer or transferee to assert ownership.

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

There is a register of aircraft mortgages under the Aircraft Mortgage Act (*Koukukuki Teiton Hon*).

Aircraft mortgages shall be made in the Aircraft Register in which the ownership is registered (please see question 2.1). To register an aircraft mortgage, the mortgagee and the mortgagor must jointly apply for registration and submit the document verifying the existence of the mortgage, such as the mortgage agreement, and other necessary documents. The aircraft mortgage registration fee is JPY 0.003 multiplied by the loan amount. It is customary to make a provisional registration of the mortgage and pay only JPY 2,000 as registration fee. As for the enforcement of the mortgage, please see question 3.1.

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

Please see question 2.4.

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?

The Civil Act has a concept similar to title annexation. Under this concept, if a property (whether real property or moveable property) is attached to another property such that it is impossible to separate them without damage, the owner of the primary property acquires ownership of the non-primary property. In that case, the owner of the minor property loses ownership of, and any other right on, that property. However, because an engine can be generally separated from an aircraft without damaging either the engine or the aircraft, then the ownership or security interests on the engine would not be at risk of annexation. In addition, in a precedent case regarding the annexation of buildings, the court decided that security interests on the annexed buildings continue to exist on each annexed building *pro rata* based on the value of each building.

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?

If a business provider transfers or lends any property or provides services to a third party for consideration within Japan, a consumption tax will be basically levied on the transaction. The current rate of consumption tax is 8%. If the transaction is considered an export under the Consumption Tax Law (*Shouhizei Hou*) and the business provider has an export permit, the transaction may be exempt from consumption tax. In the case of an aircraft which delivers people or cargoes outside Japan, the transfer of that aircraft may be exempted if certain requirements under the Consumption Tax Law are met.

The Stamp Tax Law (*Insbizei Hou*) requires that stamps be affixed to certain documents, including an agreement to sell and purchase an aircraft. The amount of the stamp depends on the purchase price. For example, if the price is more than JPY 100,000,000 but not more than JPY 500,000,000, the amount is JPY 100,000; and if the price is more than JPY 500,000,000, the amount is JPY 600,000.

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

Japan is a signatory to (i) the Hague Convention, and (ii) the Montreal Convention, but is not a signatory to the ICAO Geneva Convention or the Convention on International Interest in Mobile Equipment, Cape Town, 2001.

2.7 How are the Conventions applied in your jurisdiction?

Japan essentially applied the Hague Convention through the Law on the Punishment of the Unlawful Seizure of an Aircraft. Japan essentially applied the Montreal Convention through the Law on the Punishment of Acts that Endanger Aviation.

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?

Yes. For example, if a Japanese company leases an aircraft from a company established in the U.S., generally, under the tax treaty between Japan and the U.S., there is no withholding tax on the lease payments which the Japanese company will make to the U.S. company.

3 Litigation and Dispute Resolution

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

Under the Civil Aeronautics Act, the compulsory execution and the execution of provisional seizure of registered aircraft are governed by rules issued by the Supreme Court (Civil Aeronautics Act, Article 8–4, Paragraph 2), and the Civil Execution Rules (*Minji Shikkou Kisoku*) and Civil Provisional Remedies Rules (*Minji Hozen Kisoku*) apply to the compulsory execution, and the execution of provisional seizure, of registered aircraft (Civil Execution Rules, Article 84 and Civil Provisional Remedies Rules, Article 34).

If a court starts the procedures for a compulsory execution, it must order a public auction of the aircraft, get the documents which are necessary to fly the aircraft, including verification of the aircraft's nationality, and prohibit the aircraft's departure (Civil Execution Law, Article 114 and Civil Execution Rules, Article 84).

The execution of a provisional seizure is done by (i) making an entry of the provisional seizure in the registration, or (ii) getting what is necessary to fly the aircraft, including the verification of the aircraft's nationality (Civil Provisional Remedies Law, Article 48 and Civil Provisional Remedies Rules, Article 34).

Because aircraft without any registration certification cannot be used for aviation, they will be detained through the procedures for compulsory execution and execution of provisional seizure.

If it is likely that a compulsory execution will become significantly unfeasible unless the aircraft is in detention, a party may file an application with the district court with jurisdiction over the aircraft's home base (*teichijyo*) before starting the compulsory execution procedures to request a court order for the delivery of the registration certification. If there are pressing circumstances, a party may file the application with the district court with jurisdiction over where the aircraft is located (Civil Execution Law, Article 115 and Civil Execution Rules, Article 84). Even if the certification of registration is delivered, the possession of the aircraft is not deemed delivered to the party or the court. The party may file an application to appoint a custodian to maintain the aircraft until the compulsory execution starts (Civil Execution Law, Article 116).

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?

A lessor or a financier of aircraft is basically required to do a compulsory execution, which needs to be filed with the court, to reacquire the possession of the aircraft or enforce any of its

rights under the lease/finance agreement. If a lessor or financier has security interests on the aircraft or lease receivables, and the agreement has a provision that it may exercise the security interests against a debtor upon the occurrence of an event of default, it may enforce the rights without a court filing, unless the provision is terminated upon the filing of bankruptcy.

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?

A. Civil Cases

Applications for compulsory execution and the execution of provisional seizure of aircraft must be filed with the district court with jurisdiction over where the aircraft is located when the procedures of such executions start (Civil Aeronautics Act, Article 8–4, Paragraph 2). This district court is not necessarily the same as the district court with jurisdiction over the aircraft's home base.

A contractually agreed court to settle disputes between an aircraft financier and the borrower is valid (Civil Procedure Law, Article 11) and the court will be determined pursuant to such provision. If no jurisdiction has been agreed, the competent court will be determined pursuant to the Civil Procedure Law. Depending on the kind of lawsuit, the competent court may be one with jurisdiction over the defendant's address, where the defendant should perform its obligation, or where the aircraft exists (*Id.*, Articles 4 and 5).

B. Criminal Cases

The jurisdiction over criminal cases is where the crime was committed or where the criminal resides (Criminal Procedure Law, Article 2, Paragraph 1). However, if the crime was committed in an aircraft registered in Japan at a time when it was outside Japan, the jurisdiction, in addition to the place where the crime was committed and the criminal's residence, could be the place where the aircraft lands (including on water) after the crime (*Id.*, Paragraph 3).

C. Summary Court

If (i) a plaintiff seeks damages of up to JPY 1,400,000, and (ii) the crime is punishable by fines or lighter penalties, the lawsuit can be filed with the Summary Court (*Kani Saibansho*) (Court Law, Article 33, Paragraph 1).

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?

A. Civil Cases

Generally, the service of court proceedings should be made at the address or business office of the person being served. If a foreign company has a representative to do business in Japan or a branch in Japan, the service of court proceedings to a foreign company can be made at the representative's address or the branch's address (Civil Procedure Law, Article 103, Paragraph 1).

If the service needs to be made outside Japan, the presiding judge will delegate the service of court proceedings to the competent governmental agency of the foreign jurisdiction, or the ambassador, minister or council of Japan in such jurisdiction (*Id.*, Article 108). Japan is a signatory to the Convention Regarding Civil Procedures and the Convention on the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters.

B. Criminal Cases

Service should be made in the way described in Article 108 of the Civil Procedure Law (Criminal Procedure Law, Article 54).

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?

If an obligor does not perform its obligation, the obligee may file a lawsuit for performance. The obligee may also seek payments to force the obligor to perform the obligation, or may use a third party to perform the obligation and make the obligor pay the relevant costs. If the obligee obtains the court's final and binding decision, and that decision is given with a declaration of provisional execution, or an arbitration award to which the competent court has issued an execution order, it can start the compulsory execution against the obligor's properties (Civil Execution Law, Article 22).

The court can issue an interim decision with respect to specific or separate issues (Civil Procedure Law, Article 245), but the obligee cannot start the compulsory execution based on an interim decision.

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?

A party who does not agree with the final decision of the district court at the first instance can appeal to the high court (Civil Procedure Law, Article 281, Paragraph 1). A party who does not agree with the final decision of the high court at the second or first instance can appeal to the Supreme Court. Further, a party who does not agree with the final decision of the district court at the second instance can appeal to the high court. An appeal to the Supreme Court requires specific grounds under the Civil Procedure Law; for example, if the high court's decision violates the Constitution or other laws (*Id.*, Articles 311 and 312).

As to the arbitration procedure, the award is binding on the parties and an appeal is basically unavailable.

3.7 What rights exist generally in law in relation to unforeseen events which might enable a party to an agreement to suspend or even terminate contractual obligations (in particular payment) to its contract counterparties due to *force majeure* or frustration or any similar doctrine or concept?

It is customary in agreements negotiated and agreed between sophisticated parties to have a provision which relieves a party from contractual obligations due to *force majeure*. The Supreme Court recognised a similar principle involving a change of situation (*jijyo-benko-no-gensoku*) where the change (i) could not have been predicted, (ii) is not attributable to the contractual party whose obligations are affected, and (iii) caused that party to fail to perform its obligations in good faith. However, it is very rare for the courts to actually apply this principle to justify a party's suspension or termination of contractual obligations.

4 Commercial and Regulatory

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

The Civil Aeronautics Act grants Antitrust Immunity (“ATI”)

if a domestic aviation carrier obtains the MLIT's approval of the following items (Articles 110 and 111):

- (i) a joint management agreement between a domestic air carrier and another air carrier, in case two or more domestic air carriers operate air transport services to ensure passenger transport that is necessary for local residents' lives, in a route inside Japan where continuing the service is expected to be difficult due to a decreased demand for air transport service; and
- (ii) an agreement between a domestic air carrier and another air carrier on joint carriage, a fare agreement and other agreements relating to transportation to promote public convenience in a route between a point in Japan and a point in a foreign country or foreign countries.

The MLIT will not grant the approval unless the subject agreement conforms to the following standards:

- (i) it does not unfairly impair the interests of users;
- (ii) it is not discriminatory;
- (iii) it does not unfairly restrict participation and withdrawal; and
- (iv) the contents of the agreement are kept to the minimum necessary for the purpose of the agreement.

Before granting any approval, the MLIT will first discuss this with the Japan Fair Trade Commission ("JFTC").

Since 2010, the signing or amendment of a joint venture agreement needs the approval of the MLIT. As of July 2013, ATIs have been granted to four joint venture agreements between Japanese air carriers.

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

Under the Act on the Prohibition on Private Monopolization and on the Maintenance of Fair Trade (the "Antitrust Law"), consolidations of businesses, such as mergers and business transfers, are prohibited if (i) such consolidations will eventually restrict competition in any particular field of trade, or (ii) the consolidations involve unfair trade practices (Articles 14 to 17).

In 2004, the JFTC issued a guideline on how it assesses potential restrictions on competition, and this guideline has been continually amended. The guideline provides that a particular field of trade (*ittei no toribiki bunya*) is determined from the perspective of whether users have alternative goods or services to the subject of the trade, in terms of geographical area where such goods or services are traded. If necessary, the perspective of whether suppliers have an alternative is taken into account. The scope of goods or services is generally determined by examining whether goods or services, similar to those subject to the anti-competition assessment, are available to users. In evaluating similarity, the JFTC will consider, among other things, the uses and the cost of the goods or services.

The geographical area is also generally determined by whether users can have similar goods or services. In evaluating similarity, the JFTC will consider, among other things, where users can avail themselves of goods or services based on accessibility to users, distribution network, ability of suppliers to satisfy demand, whether the goods or services are easily deliverable, and delivery fees or costs.

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

A party planning a business consolidation can have a prior official consultation with the JFTC, by providing the JFTC with

concrete details of the proposed consolidation, the relevant parties consenting to the disclosure of the details of the consultation, and the JFTC's response.

The standard period for the JFTC to deal with any application for consultation is 30 days starting from the day after the JFTC has received the required documents. This period may be shortened pursuant to the acquirer's request and if the JFTC does not see any issue under the Antitrust Law.

It is customary to have an unofficial consultation with the JFTC, which is different from the official consultation mentioned above, before the party planning any business consolidation submits all necessary competition clearance documents to the JFTC.

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

Please see questions 4.1 and 4.2.

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

If a party plans a business consolidation which exceeds certain criteria, it must obtain the JFTC's clearance, which may take 30 days (but may be shortened) from the filing of the application for clearance and before any consolidation can proceed (please see question 4.3). The criteria depend on the type of acquisition. For example, in a share purchase, if: (i) the sales of the acquirer's group in Japan exceed JPY 20 billion; (ii) the sales of the target company and its subsidiaries in Japan exceed JPY 5 billion; and (iii) the resulting voting rights of the acquirer will exceed 20% or 50% after the acquisition, the acquirer must file for JFTC clearance and submit the acquisition agreement, or its draft, the balance sheet, profit and loss statement and business report of the acquirer, a shareholders' resolution to approve the transaction (if any is required) and the financial condition of the acquirer's group.

It is customary to have an unofficial consultation prior to the application. The length of consultation depends on the transaction but, if the necessary information such as sales and market shares of the consolidated businesses is submitted properly, the JFTC will receive the application for consultation promptly.

If the JFTC finds any material problem under the Antitrust Law, the examination process will start. The JFTC will consider whether a cease-and-desist order should be issued to solve the problem until the later of either the lapse of 120 days after the receipt of the application or the lapse of 90 days after the receipt of the documents that the JFTC additionally requested from the acquirer.

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?

A. Air Operators

Air transportation to and from small local airports and isolated islands generally faces financial difficulties, but it is necessary to enable residents to have an ordinary life. To keep such air transportation active, air operators providing such transportation services are subsidised in relation to the purchase price of aircraft and equipment and landing charges, and may avail themselves of tax reductions in terms of fuel aviation tax and property tax.

B. Airports

Income from airport charges, such as landing fees, at all national airports is managed within a single national pool (i.e., the airport development sub-account under the social infrastructure development special account) (please see question 1.10). The pool provides airports with financial support for maintenance and operation.

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

Please see question 4.6.

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 following laws and regulations are the basic legislation in Japan for the protection of personal information:

- (i) the Act on the Protection of Personal Information (Act No. 57 of May 30, 2003, as amended – the “APPI”);
- (ii) the Act on the Protection of Personal Information Held by Administrative Organs (Act No. 95 of 1988 of May 30, 2003, as amended);
- (iii) the Act on the Protection of Personal Information Held by Independent Administrative Agencies; and
- (iv) local regulations (*jyousei*) legislated by local governments.

The APPI is the principal data protection legislation which regulates the use of personal information by private businesses and sets forth the obligations of business operators handling personal information, which apply to all business operators using a personal information database for their businesses. Under the APPI, a passenger may request an airline or the operator of an airport to correct, add or delete his retained personal data, and the airline or the operator of the airport must comply. The MLIT also issued a guideline regarding data protection to business operators conducting a business under the jurisdiction of the MLIT, including airlines and operators of airports.

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?

Please see question 4.8.

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 Basic Act on Intellectual Property provides the framework for promoting measures for the creation, protection and exploitation of intellectual property. This Act defines intellectual property as a patent right, a utility model right, a plant breeder’s right, a design right, a copyright, a trademark right, a right that is stipulated by laws and regulations on other intellectual property or a right pertaining to an interest that is protected by acts. Each of (i) a patent right, (ii) a utility model right, (iii) a plant breeder’s right, (iv) a design right, (v) a copyright, and (vi) a trademark right is protected under (i) the Patent Act, (ii) the Utility Model Act, (iii) the Plant Variety Protection and Seed Act, (iv) the Design Act, (v) the Copyright Act, and (vi) the Trademark Act. Each law has its own mechanism to

protect intellectual property, although each basically protects registered intellectual property. For example, under the Trademark Act, a person holding a trademark may register it, and such registration is effective for 10 years and is renewable. A trademark holder basically has an exclusive right to use the registered trademark in connection with the designated goods or services.

The unfair acquisition or use of know-how or trade secrets, and the unfair creation or use of trademarks or trade names which are similar or identical to others that are well-known by consumers, is prohibited by the Unfair Competition Prevention Act.

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

The MLIT issued a guideline on the necessary measures to prevent acts which may make passengers uncomfortable, embarrassed or unsafe, and in 2002 requested air operators to comply with the guideline. Under the guideline, air operators must not allow passengers who are drunk to excess to board.

Air operators generally lay down their terms and conditions which passengers of domestic and international flights are required to follow. Such terms and conditions typically provide that the operator may deny boarding if a passenger is late. Further, the operator may deny boarding to passengers or may make passengers disembark if the operator finds it necessary to ensure air safety, to comply with laws and requests from administrative bodies, to deal with any act which is making other passengers uncomfortable, embarrassed or unsafe, or to deal with any mental or physical conditions. In addition, the terms and conditions typically provide that the operator may cancel flights based on certain reasonable grounds, and must take appropriate measures for passengers whose flights were cancelled.

Further, a pilot of the aircraft may, during taxiing, order a passenger to disembark if he has reasonable grounds to believe that the passenger has committed or will commit an act that may impede safety, to the extent that it is necessary to ensure the safety of the aircraft, to protect other passengers and property, and to keep order and discipline inside the aircraft (Civil Aeronautics Act, Article 73–4, Paragraph 1). The Civil Aeronautics Act does not explicitly deal with cancellation of flights.

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

The Civil Aeronautics Act does not explicitly impose sanctions directly due to the late arrival and departure of flights. However, the MLIT gathers and publishes information on the frequency of late arrivals and flight cancellations. Further, the MLIT may issue an order to improve the operation of aircraft or the business of air carriers if, for example, the technical ability of the airmen or pilots does not meet the standards of the Civil Aeronautics Act (Articles 20, 29 and 72).

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

Please see questions 1.1 and 1.10.

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

The Consumer Contract Act provides for the protection of

consumers who enter into contracts with business operators. For example, any contractual provision which requires a consumer to pay a cancellation fee at an amount which exceeds the average amount of damages that a business operator would suffer in connection with the cancellation is null and void (Consumer Contract Act, Article 9).

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

Japanese companies and foreign companies such as Fedex, DHL and UPS operate in Japan as global forwarders. Further, Japan has an association which includes international freight forwarders as members (Japan International Freight Forwarders Association Inc.).

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

As a general rule, a foreign person, a foreign entity (whether private or governmental) or an entity of which one-third or more of the directors are foreigners, or one-third or more of the voting rights are held by foreign persons or entities, is prohibited from engaging in the freight forwarding business in Japan (Consigned Freight Forwarding Business Act, Articles 6 and 22), unless they are registered with or permitted by the MLIT (*Id.*, Articles 35 and 45).

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

The JFTC will consider whether the vertical integration is an issue with regard to fair trade in the aviation business, pursuant to the Antitrust Law. There is no precedent regarding such vertical integration. The government has set certain standards for airport concessionaires, such as the disqualification of an aviation transport business operator, and any of its parent companies, subsidiaries and other affiliates, from being an airport concessionaire.

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?

Please see questions 1.2 and 1.6.

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?

Attention should be given to three possible changes or developments:

A. Development of a Business Using UAVs

According to the roadmap published in July 2020 at a conference on UAV business, attended by governmental authorities and private companies, the goal is to be able to deliver goods to urban areas around 2022. To achieve this goal, discussions on better regulations, such as certification of UAVs and licences to operate UAVs, are going on. In September 2017, the MLIT and the METI jointly established the Study Group on the Flying of Unmanned Aircraft (Drones) Beyond Visual Line of Sight and Over Third Parties. This Study Group established the guidelines for the use of UAVs for delivery businesses at the end of March 2018.

B. Possible Expansion of Concession of Airports

Sendai, Kansai, Itami, Fukuoka, Takamatsu, Kumamoto and Hokkaido airports have been privatised through concessions. Further, the concession agreement for one national airport (Hiroshima) was expected to be signed in November 2020.

C. Increase of Flights to and from Haneda

The desirability of increasing flights to and from Haneda, which is closer to Tokyo than Narita, is under discussion. According to the MLIT's website, if the flights are increased as planned, the number of international flights will increase from 60,000 per year (2015) to 99,000 per year (2020), although due to the COVID-19 pandemic, it is uncertain whether this plan will be maintained. The increase will be accompanied by changes in flight routes. In any case, the MLIT plans to continue discussions with residents near Haneda airport and the flight routes, and other concerned people. It plans to implement suitable methods to properly deal with effects that the increase may have on the environment.

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