



ICLG

The International Comparative Legal Guide to:

Aviation Law 2019

7th Edition

A practical cross-border insight into aviation law

Published by Global Legal Group, with contributions from:

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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 Department of Transport, Tourism and Sport (“DOTTS”), is the Government department responsible for aviation policy in Ireland. It has established the following entities to assist it in carrying out its functions:

- The Commission for Aviation Regulation (“CAR”).
- The Irish Aviation Authority (“IAA”).
- The Air Accident Investigation Unit (“AAIU”), which is responsible for air accidents that take place in Ireland and air accidents that occur outside Ireland involving Irish registered aircraft.
- The Environmental Protection Agency (“EPA”), which is responsible for the implementation of the EU emissions trading scheme.

CAR

The key functions performed by the CAR are:

1. regulation of airport charges at Dublin airport and air traffic control charges at airports with more than 1 million passengers per year;
2. licensing of air carriers under EU Regulations;
3. regulation of tour operators and travel agents;
4. approval of ground handlers;
5. overseeing slot allocation at Dublin airport; and
6. overseeing the application of EU Air Passenger Rights and Reduced Mobility.

IAA

The key functions performed by the IAA are:

1. provision of air traffic management and related services in Irish controlled airspace and on the North Atlantic;
2. the safety regulation of the civil aviation industry in Ireland;
3. the oversight of civil aviation security in Ireland; and
4. the registration of aircraft in Ireland.

The principal aviation legislation applicable in Ireland is as follows:

1. the Air Navigation and Transport Acts 1936–1998;
2. the Irish Aviation Authority Act 1993;
3. the Package Holidays and Travel Trade Act 1995;
4. the Aviation Regulation Act 2001;

5. the Air Navigation and Transport (International Conventions) Act 2004;
6. the International Interests in Mobile Equipment (Cape Town Convention) Act 2005;
7. the Aviation Act 2006;
8. the Air Navigation (Notification and Investigation of Accidents, Serious Incidents and Incidents) Regulations 2009;
9. the State Airports Act 2004;
10. the State Airports (Shannon Group) Act 2014;
11. EC (Access to the Ground Handling Market at Community Airports) Regulations 1998 (S.I.505/1998);
12. EC (Common Rules for the Operation of Air Services in the Community) Regulations (S.I.426/2008);
13. EC (Rights of Disabled Persons and Persons with Reduced Mobility when Travelling by Air) Regulations 2008 (S.I.299/2008);
14. Regulation EC/95/93 on common rules for the allocation of slots at community airports;
15. Regulation EC/261/2004 establishes common rules on compensation and assistance to passengers in the event of denied boarding and of cancellation or long delay of flights;
16. Regulation EC/1107/2006 concerning the rights of disabled persons and persons with reduced mobility when travelling by air;
17. Regulation EC/1008/2008 on common rules for the operation of air services in the community; and
18. Regulation EU/373/2017 – the Air Traffic Management Common Requirements Implementing Regulation (ATM/IR) – effective 2 January 2020.

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

An aircraft operator involved in commercial air transport must be the holder of a valid Air Operator Certificate (“AOC”) issued by the IAA and a valid Air Carrier Operating Licence (“ACOL”) issued by CAR.

In order to qualify for an ACOL, an applicant must satisfy all of the conditions for granting an operating licence set out in Article 4 of principal regulation EC1008/2008.

ACOLs are divided into two categories related to capacity and maximum take-off weight being category A and category B licences.

Category A licence holders are permitted to carry passengers, cargo and/or mail on aircraft with 20 seats or more. Category B

licence holders are permitted to take passengers, cargo and/or mail on aircraft with fewer than 20 seats and/or less than 10 tonnes of maximum take-off weight.

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

The IAA is responsible for administering Ireland's international aviation safety obligations and agreements in accordance with standards set by the International Civil Aviation Organisation ("ICAO") and the European Aviation Safety Agency ("EASA").

The Safety Regulation Division of the IAA ensures specific compliance with safety objectives set down under section 14 of the Irish Aviation Authority Act 1993 and the annexes to the Chicago Convention which are implemented through a combination of EU and domestic Irish legislation.

The IAA's remit with respect to safety includes certification and registration of aircraft airworthiness, licensing personnel and organisations involved in aircraft maintenance, incident reporting and management, the protection, storage and collection of information, licensing pilots, air traffic controllers and aerodromes and approving and monitoring air carrier operating standards.

There are EU safety regulations relating to initial and continuing aircraft airworthiness that are directly effective in the EU (including Ireland), for example, Regulation (EU) No 748/2012 regarding the implementation of essential requirements for environmental protection and Regulation (EU) No 1321/2014 relating to the continuing airworthiness of aircraft and aeronautical products, parts and appliances, and on the approval of organisations and personnel involved in these tasks.

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

No, the IAA regulates commercial cargo and private carriers.

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

No, the IAA regulates air charters.

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 creation of the EU single market for aviation in the 1990s removed all commercial restrictions on airlines flying within the EU. Under the single market, all EU carriers can operate services on any intra-EU route.

Outside the EU single market, access to the air transport market is still heavily regulated under the framework set down in the Chicago Convention. Under the Chicago Convention, Ireland has negotiated bilaterally with a wide range of States to agree market access rights for both passenger and cargo services. A list of States with which Ireland has a bilateral air transport agreement is available on DOTTS' website: www.dttas.ie. Following the "Open Skies" judgment in the European Court of Justice in 2002, all market access rights negotiated by each of the EU Member States in their bilateral agreements must be equally available to all EU carriers.

Furthermore, under the EU's external aviation policy, the European Commission has been mandated to negotiate air transport agreements on behalf of the EU and its Member States with certain third countries. Under this process, so-called "Open Skies" agreements have been negotiated, removing restrictions on capacity, routing and other limits, creating a free market for services between the parties to that agreement.

Most bilateral air transport agreements require that substantial ownership and effective control be maintained by nationals of each party to the agreement. Within the EU, community airlines are required to be at least 50% owned by EU nationals. The EU has indicated its willingness to negotiate these current ownership and control limitations with States prepared to similarly waive the requirement on a reciprocal basis. However, progress on this matter has been slow.

1.7 Are airports state or privately owned?

The three main airports, Dublin, Cork and Shannon, are 100% State-owned. Dublin and Cork airports are owned by daa plc. Shannon Airport is owned by Shannon Airport Authority.

The regional airports, the largest of which are Donegal, Knock, Kerry and Waterford, are privately owned.

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

Dublin Airport is the only Irish airport currently subject to economic regulation of its charges. Economic regulation of charges at Dublin Airport is based on the Aviation Regulation Act 2001 and is implemented by CAR.

Terminal charges are levied by the IAA at Dublin, Cork and Shannon airports and until 2015 were regulated by CAR.

Under the Single European Sky ("SES") initiative, economic regulation of *en route* over-flights was introduced by way of performance and charging schemes to drive performance by setting binding targets on Member States Regulation 2017/373, which came into force in March 2017, sets out the requirements for improving air traffic management and air navigation services within Europe which will apply to Member States from 2020.

All airlines must comply with EU legislation on reduced mobility and consumer protection.

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 AAU is responsible for conducting technical investigations into air accidents in Ireland, as well as incidents outside of Ireland involving Irish-registered aircraft.

The Air Navigation (notification and investigation of accidents, serious incidents and incidents) Regulations 2009 ("2009 Regulations") give effect to the requirements of Annex 13 of the Chicago Convention and gives the AAU the powers it needs to carry out full and detailed technical investigations.

EU Regulation 996/2010 on the Investigation and Prevention of Accidents and Incidents in Civil Aviation is directly applicable in Ireland.

Following an investigation, the AAU will issue safety recommendations to the appropriate aviation authority. The AAU does not purport to apportion blame or liability in respect of an accident.

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

Belair Holdings Limited v. Etole Holdings limited & Anor 2015 IEHC 569 – the Irish High Court discharged a non-consensual interest registered on the International Register under the Cape Town Convention.

DOTTS published a Request for Tenders in November 2016 for a Review of Future Capacity Needs at Ireland’s State Airports. A key feature of this review will be the timing and financing of a third terminal at Dublin Airport as well as an analysis of future expansion requirements at the three airports.

DOTTS published a policy statement on airport charges in September 2017 which sets about reforming the prices charged by Dublin Airport to airlines, with the purpose of ultimately benefitting customers.

In an unreported judgment in 2017, the Irish Commercial Court made an order to discharge a validly created and registered international interest relating to a terminated sub-lease agreement on the International Register under the Cape Town Convention.

2 Aircraft Trading, Finance and Leasing

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

The Irish aircraft register is operated and maintained by the IAA. It is a registry of nationality and not of title. Registration of an aircraft in the name of a person does not establish that person’s title to the aircraft and it cannot be regarded as giving notice (whether actual or constructive) of a person’s interest in an aircraft.

In order to register an aircraft in Ireland, the aircraft must have a connection to Ireland and, save in the rare case where the IAA grants a specific exemption, the applicant must demonstrate that the aircraft is either wholly owned by an Irish citizen or EU citizen having a place of residence or business in Ireland or owned by a company registered in and having its principal place of business in Ireland or the EU with not less than two thirds of the directors also being Irish or EU citizens. Notwithstanding the foregoing, an aircraft may also be registered in Ireland if it is “chartered by demise, leased or on hire to, or is in the course of being acquired under a lease-purchase or hire-purchase agreement by a citizen or company” where such charter, lease or hire is to an individual or corporate satisfying the requirements set out above with respect to Irish or EU citizenship. When relying on the operator as a connection to Ireland, the IAA may impose any conditions of such registration as it deems fit.

The IAA has concluded a number of arrangements with foreign civil aviation authorities which serve to delegate the responsibility for regulation and safety oversight for Irish registered aircraft from the IAA to the aviation authority in the operator’s home state. These agreements are entered into pursuant to Article 83*bis* of the Chicago Convention which permits bilateral agreements between two aviation authorities located in the Chicago Convention contracting States.

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

The IAA does not operate a register of aircraft mortgages or third-party rights or interests in aircraft or engines and will not agree to

requests to note a mortgage or third-party interest on the aircraft register or related file. The IAA acknowledges the Irrevocable De-Registration and Export Request Authorisation Register (“**IDERA**”) pursuant to its obligations under the Cape Town Convention as enacted by the International Interests in Mobile Equipment (Cape Town Convention) Act 2005 (the “**CTC Act 2005**”), but this does not serve to notify third parties or perfect any security interest in an aircraft.

Aircraft mortgages and other “charges” (as defined in the Companies Act 2014 (the “**CA2014**”) over aircraft granted by Irish companies and Irish registered branches of foreign companies) are registrable with the Companies Registration Office (the “**CRO**”) in Ireland within 21 days of the creation of the charge. The register maintained by the CRO operates as a priority register with priority based on the time of filing, not the time of the interest being granted. Under the CA2014, priority interests can be filed up to 21 days prior to the date on which the charge is actually granted with a full filing being made upon the charge actually being granted. Parties may elect to make a single filing upon the charge actually being entered into. If the charge is not registered within 21 days of the date on which it is granted, the charge becomes void against a liquidator and any creditor of the party granting the charge.

The CTC Act 2005 provides for the registration of certain interests in airframes and engines with the International Registry of Mobile Assets to ensure priority. Aircraft mortgages are amongst the interests which constitute “International Interests” (as defined in the Cape Town Convention) to the extent the mortgage is granted by an owner in a contracting State or the aircraft is registered in a contracting State. The International Registry is an online register but, due to it being located in Dublin, disputes over registrations are heard or enforced in the Irish High Court regardless of the country in which the claim originates.

In the English law case of *Blue Sky One and Ors v. Mahan Air* the court considered the impact on perfection of an English law aircraft mortgage when the asset was located outside of England and Wales at the time the mortgage interest was granted and concluded that a mortgage granted in such circumstances would not serve to create a right *in rem* in the aircraft. Although this is an English law judgment, unless or until the Irish courts hand down a judgment which takes a different position, the decision of the English court will be considered as persuasive by the Irish court should the same issue be considered by the Irish courts where an Irish law mortgage is involved.

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

Strict liability is imposed on owners under section 21 of the Air Navigation and Transport Act 1936 (as amended) where material damage or loss is caused by any item falling from an aircraft in flight. Lessors and financiers, unless holding an interest akin to an owner, will be unlikely to be held to be liable under section 21 and in any event owners can be indemnified against the risks under section 21 by a third party. Section 21(2) of the Air Navigation and Transport Act 1936 (as amended) also provides that an owner will not be liable where the aircraft is subject to a charter or lease arrangement for 14 days or more and the pilot and crew are not in the employ of the owner.

Save as set out above, liability for financiers, owners and lessors is based in negligence and a failure on the part of the relevant party to discharge a duty of care. Thus, lessors, owners and financiers are unlikely to be held to be responsible for losses resulting from the operation of an aircraft, unless they are actually aware of a defect or

issue and failed to take reasonable action in respect of such defect or issue in order to prevent loss.

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?

Under Irish law, there is no concept of title annexation, therefore title to an engine remains with the engine owner, even where such engine is installed temporarily or otherwise on another aircraft. Title to such engine needs to be expressly transferred by the owner.

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?

Ireland is an EU Member State and, as such, EU VAT rules are relevant to the sale/purchase and leasing of aircraft. The VAT treatment of the sale of an aircraft will depend on the location of the aircraft at the time of sale and the intended use. If the aircraft were supplied while within the territory of Ireland, Irish VAT the standard rate (23%) would apply. However, the supply of aircraft can be zero rated for VAT purposes where either (i) the aircraft is used by an airline operating for reward chiefly on international routes, or (ii) the aircraft is used and enjoyed outside the EU. VAT could arise in another EU jurisdiction if the aircraft was imported into that jurisdiction by an Irish purchaser.

Where an Irish-based lessor is leasing aircraft to an entity outside Ireland, no Irish VAT should arise on the basis that the place of supply under a lease arrangement is the jurisdiction where the lessee is located. VAT may be chargeable in the jurisdiction of the lessee. Where the lessee is located in Ireland, the supply may be zero rated for Irish VAT purposes where the lessee is operating chiefly on international routes. Where the supply is zero rated, the lessor should be entitled to a credit for any VAT incurred on the acquisition of the aircraft and any related costs.

Irish stamp duty generally applies to the transfer or sale of immovable property, intangible assets and shares in Irish companies. However, transfers of direct ownership in an aircraft or part of an aircraft are expressly exempt from stamp duty and this exemption extends, on a concessionary basis, to transfers of shares in a company which owns aircraft.

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

Ireland is a signatory to the following conventions (as amended and updated) in relation to international airline operations:

1. The 1929 Warsaw Convention for the Unification of Certain Rules Relating to International Carriage by Air, as amended by the Hague Protocol of 28 September 1955 – ratified 20 September 1935 and 12 October 1959.
2. The 1944 Chicago Convention on International Civil Aviation – ratified 31 October 1946.

3. The 1956 Geneva Agreements on the Joint Financing of Certain Air Navigation Services in Greenland/Iceland – ratified 3 June 1960.
4. The 1962 Rome Protocol Relating to an Amendment to the Convention on International Civil Aviation – ratified 14 February 1963.
5. The 1971 New York Protocol Relating to an Amendment to the Convention on International Civil Aviation – ratified 15 June 1971.
6. The 1971 Vienna Protocol relating to an amendment to the Convention on International Civil Aviation – ratified 11 July 1972.
7. The 1963 Tokyo Convention on Offences and Certain Other Acts Committed on Board Aircraft – ratified 14 November 1975.
8. The 1970 Hague Convention for the Suppression of Unlawful Seizure of Aircraft – ratified 24 November 1975.
9. The 1999 Montreal Convention for the Unification of Certain Rules for International Carriage by Air – ratified 29 April 2004.
10. The 2001 Cape Town Convention on International Interests in Mobile Equipment – ratified 29 July 2005.
11. The 2001 Protocol to the Convention on International Interests in Mobile Equipment on matters specific to Aircraft Equipment – ratified 23 August 2005.

Ireland has also signed, but has not yet ratified, the 1948 Geneva Convention on the International Recognition of Rights in Aircraft.

2.7 How are the Conventions applied in your jurisdiction?

The Cape Town Convention became law in Ireland on 1 March 2006, following the passing of the CTC Act 2005. The application of the Cape Town Convention was further extended to introduce a bespoke insolvency regime for assets covered by the Cape Town Convention following the granting of an order in May 2017 pursuant to the State Airports (Shannon Group) Act 2014. The court system, and in particular the Commercial Court in Ireland, is the appropriate means of enforcing the Cape Town Convention. The Commercial Court has exclusive jurisdiction to hear any proceedings in connection with any function of the International Registrar under the Cape Town Convention or the Aircraft Protocol as defined in the 2005 Act and the State Airport (Shannon Group) Act 2014.

The Montreal Convention was implemented in Ireland by the Air Navigation and Transport (International Convention) Act 2004. The court system in Ireland is the suitable forum for enforcement of the Montreal Convention. CAR, which has a significant consumer protection role, is the national enforcement body tasked with the monitoring and regulation of EU legislation covering air passenger rights and the provision of assistance to passengers with reduced mobility.

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?

Ireland has a significant double tax treaty network which continues to grow every year. There are currently 74 agreements in place, of which 73 are in force.

The majority of Ireland's double tax treaties provide for reduced withholding tax rates on payments such as lease rental and interest payments and aircraft leasing is a focus when treaties are being

negotiated. In terms of particular treaties and jurisdictions, the rate of withholding tax between Ireland and China can be reduced to as little as 5% under the relevant treaty which compares well with most other countries where the lowest rate achievable is between 10% and 15%. The treaties with the US and India also offer reduced withholding rates of between 0% and 15%. The terms of Irish domestic tax law and relevant double taxation agreements also generally provide credit relief to Irish lessors for foreign tax paid.

3 Litigation and Dispute Resolution

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

Irish law recognises certain liens and rights of detention for unpaid debts or charges. The rights may arise in law, equity, under contract or statute.

At common law, the third-party liens available are similar to other common law jurisdictions such as England and Wales. An unpaid seller may seek to exercise a seller's lien although typical aircraft finance structures mean that aircraft manufacturers are not in a position (and in most instances do not need) to exercise such rights. A possessory lien may be exercised, for example, where aircraft are subject to a claim for unpaid repairs. In order to exercise such a lien, the aircraft must be, and remain, in the possession of the party who carried out the repairs, and the specific aircraft over which the lien is sought to be exercised, must have been improved through the labour of that party, with the knowledge and authorisation of the owner (note maintenance is probably insufficient) resulting in an unpaid debt. Such a lien would only extend to the cost of unpaid repairs to the specific aircraft in question, and would not allow for a right of sale without court intervention. Contractual liens can also be created, and if provided for in the agreement between the airport user and the owner or operator of an airport, aircraft can be detained, and sold, for non-payment of certain airport charges.

The Air Navigation and Transport (Amendment) Act 1998 (section 40) affords certain airports operated by specified Airport Authorities the right to detain and, if necessary, to sell aircraft in respect of certain unpaid airport charges. This power to detain extends beyond the particular aircraft in respect of which the charges were incurred to any other aircraft of the operator or registered owner. This can cause problems for new operators assuming liability for pre-existing debts. If the owner or operator disputes the charges and offers sufficient security pending determination of the dispute, the power to detain is limited. As regards the power of sale, it can only be exercised with leave of the Irish High Court.

Parties in possession of judgments may also be entitled to exercise certain rights against an aircraft or shares in an aircraft holding company, provided appropriate judgment enforcement procedures have been followed, but an Irish court will have regard to prior and superior interests in granting any such reliefs.

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?

Ireland is generally seen as a creditor-friendly jurisdiction, allowing self-help repossession and interim relief and other self-help remedies provided the contractual arrangements between the parties provide

for the same. Standard default remedies under leasing and security agreements often include powers to take possession or control of the aircraft in order to: sell or grant a new lease of the aircraft; receive income or profits that result from the management or use of the aircraft; and/or procure the deregistration, export and physical transfer of the aircraft from the territory in which it is located. In Ireland, provided the requirements of the Convention are met, it is not necessary to make an application to the High Court for leave to exercise that remedy unless the terms agreed between the parties expressly require the creditor to make such an application.

While self-help remedies may be available, there are risks for the lessor associated with non-consensual repossession without ancillary judicial relief, such as a lessee claiming breach of lease terms for quiet enjoyment and use of the aircraft. It is often considered prudent for the lessor to institute recovery proceedings where the lessee is considered uncooperative, or where a liquidator or examiner has been appointed to the lessee.

As a member of the EU, the relevant Declaration pursuant to Article 55 of the Convention and the application of Council Regulation (EC) No 1215/2012 on jurisdiction and enforcement of judgments applies to interim relief under the Convention.

Ireland is a signatory of and has ratified the Cape Town Convention and has given effect to the Aircraft Protocol. In May 2017, the Irish Government made an order giving immediate effect to Article XI (Alternative A) of the Aircraft Protocol, which further enhances Ireland's position as a leading jurisdiction for aircraft finance as it allows creditors to gain access to their aircraft assets in the event of insolvency of a debtor after a 60-day waiting period.

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?

Aviation disputes in Ireland will typically be dealt with in the civil courts, in particular the Commercial Court division of the High Court which deals with commercial disputes where, amongst other things, the quantum of the claim exceeds €1 million, and enjoys enhanced case management procedures. This Court also deals exclusively with proceedings in connection with any function of the Registrar under the Cape Town Convention or the Aircraft Protocol.

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?

As most disputes will invoke the High Court jurisdiction, the Rules of the Superior Courts prescribe the relevant methods of service. Personal service on individuals may be effected in the State. Service on a company in the State must be effected in accordance with section 51 of the Companies Act 2014, by leaving the proceedings at or sending it by prepaid post to the registered office of the Company. Where the company has not notified the Registrar of Companies of its registered office, the documents may be served on the Registrar.

For parties located outside the State but within the EU, Council Regulations (EC) 1215/2012 on jurisdiction and 1348/2000 on effecting service may apply. For parties outside the EU, leave of the Irish Court to issue and serve proceedings may be required, with service thereafter effected pursuant to the Hague Service Convention.

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?

In general, the Irish courts have jurisdiction to order and direct the full range of common law and equitable remedies to include making orders providing for interim and interlocutory relief, together with final orders including declaratory orders, injunctions and associated damages and costs awards.

The Arbitration Act 2010, which adopted the UNCITRAL Model Law, as amended in 2006 (the “**Model Law**”), with some minimal amendments, applies to all arbitrations, both domestic and international, commenced in Ireland after 8 June 2010. Unlike England and Wales, Ireland deliberately avoided wholesale amendments and additions to the Model Law. Therefore, Articles 9 and 17 in respect of interim measures apply.

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?

Appeals of High Court decisions as the court of first instance may be made to the Court of Appeal, and thereafter, on certain limited grounds, to the Irish Supreme Court.

Ireland ratified the New York Convention in 1981 and no reservations have been entered. The relevant legislation is now the Arbitration Act 2010, which does not provide for a right of appeal against an arbitral award.

The grounds for challenging an arbitral award before the High Court under the 2010 Act are limited to those expressly enumerated under Article 34(2) of the Model Law (which mirrors the grounds on which recognition and enforcement might be refused under the New York Convention as per Article 36 of the Model Law). Challenges must be brought within three months from the date of receipt of the award. Section 12 of the 2010 Act, however, requires that any challenge on the basis of public policy must be brought within 56 days of the date from which the circumstances giving rise to the application became known or ought reasonably to have become known. The jurisprudence suggests Irish courts will construe the ground of public policy as extending only to breaches of the most fundamental notions of morality and justice.

4 Commercial and Regulatory

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

Joint ventures between airlines are subject to Irish competition law which implements and is fully compliant with EU competition law. Therefore, joint ventures are subject to Sections 4 and 5 of the Irish Competition Act 2002 (as amended) which implement Articles 101 (anti-competitive agreements) and 102 (abuse of a dominant position) of the Treaty on the Functioning of the European Union. Mergers and acquisitions are subject to a merger notification regime to the Irish Consumer and Competition Protection Commission (“**CCPC**”). The financial thresholds at which the notification of a merger or acquisition to the CCPC is required are set to increase as of 1 January 2019.

There are no particular Irish rules on highly integrated airline alliances, codeshare agreements or similar arrangements. The CCPC follows EU precedent in relation to such alliances and

will not block them unless in the specific instance it will lead to a substantial lessening of competition in Ireland.

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

The relevant body is the CCPC (www.ccpc.ie).

There is no statutory definition of “relevant market” and the market may be defined broadly or narrowly in the context of the particular case.

Market sectors used in EU case law such as origin and destination city pairs, premium and non-premium passengers, non-stop and one-stop flights and airport substitution will equally be considered by the CCPC in Ireland.

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

All mergers and acquisitions of legal entities, including airlines, that fall within the remit of the Competition Act 2002 (as amended) and satisfy certain financial thresholds, require mandatory pre-clearance by submitting a notification to the CCPC.

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

Ireland’s competition policy is closely aligned with EU principles of competition law. The test is whether the merger, acquisition or joint venture will substantially lessen competition in the market for consumers in Ireland.

The CCPC is responsible for enforcing Irish and European competition law in Ireland. They can enforce by way of criminal or civil proceedings with heavy fines and prison sentences available. However, the CCPC applies these sparingly. In the case of a merger or acquisition, the transaction does not become effective until the CCPC has either cleared the transaction, refused to clear it or imposed conditions to the merger or acquisition, the aim of which will be to prevent a substantial lessening of competition in the market as a result of the merger or acquisition.

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

A notification is lodged by the parties involved in the relevant transaction to the CCPC in relation to the merger, acquisition or joint venture. The CCPC then has 30 working days to give a Phase I clearance or to determine that the issues are sufficiently complex to require a Phase II clearance for which the CCPC has 120 working days. These timelines can be extended by the CCPC by requesting further information. If it does this, the clock stops ticking until such time as the CCPC has received satisfactory replies to all questions, at which point time starts to run from the start again i.e. it has 30 working days.

In general, however, the CCPC deals with the majority of cases in Phase I without extending the timeline so the system works efficiently. The CCPC will try to agree conditions or changes with the proposed parties to the merger rather than refuse to clear it.

The fee charged by the CCPC for a Merger Notification is €8,000.

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?

Ireland applies EU law on State Aid.

In the aviation sector in particular, it applies the EU Commission Guidelines on State Aid to airports and airlines (2014/C 99/03). These Aviation Guidelines set out the conditions under which Member States can grant State Aid to airports and airlines.

Key features are:

- State Aid for **investment in airport infrastructure** is allowed if there is a genuine transport need and the public support is necessary to ensure the accessibility of a region. The guidelines define maximum permissible aid intensities depending on the size of an airport, in order to ensure the right mix between public and private investment. The possibilities to grant aid are therefore higher for smaller airports than for larger ones.
- **Operating aid to regional airports** (with fewer than 3 million passengers a year) will be allowed for a transitional period of 10 years under certain conditions, in order to give airports time to adjust their business model. To receive operating aid, airports need to work out a business plan paving the way towards full coverage of operating costs at the end of the transitional period. As under the current market conditions, airports with an annual passenger traffic of below 700,000 may face increased difficulties in achieving full cost coverage during the transitional period, the guidelines include a special regime for those airports, with higher aid intensities and a reassessment of the situation after five years.
- Start-up aid to airlines to launch a new air route is permitted provided it remains limited in time. The compatibility conditions for start-up aid to airlines have been streamlined and adapted to recent market developments.

The Irish Government supports Ireland's regional airports (Donegal, Ireland West Airport Knock ("**IWAK**"), Kerry and Waterford) through the Regional Airports Programme 2015–2019. That financial support is administered by DOTTS through three separate schemes:

- A Regional Airports Capital Expenditure Grant ("**CAPEX**") Scheme.
- A Core Airport Management Operational Expenditure Subvention ("**OPEX**") Scheme.
- A Public Service Obligation ("**PSO**") Air Services Scheme.

All funding of regional airports by the State must comply with the Aviation Guidelines on State Aid to airports and airlines referred to above.

Support under the CAPEX Scheme is only paid to the regional airports for essential safety and security work with an associated economic activity.

OPEX subvention is paid to compensate the regional airports for costs incurred in providing core airport services, insofar as these costs cannot be fully met by prudent commercial management and from any surpluses generated by non-core activities such as car parking and catering.

Two services operate from regional airports under the PSO Air Services Scheme – Kerry/Dublin and Donegal/Dublin.

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

As set out at question 4.6 above, two PSO services from two airports in Ireland are supported by the Irish Government on the

basis that these services are considered necessary for the economic development of their regions and that they would not be provided on a commercial basis. Contracts are in place for air services between Dublin and the regional airports in Kerry and Donegal and will run until 31 January 2022.

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 Data Protection Act 2018 came into force in Ireland on 25 May 2018. That Act and the directly effective EU General Data Protection Regulation (2016/679) ("**GDPR**") are currently the primary pieces of legislation governing data protection in Irish law. In keeping with the relevant EU principles, data collectors and processors in the airline industry must adhere to the core requirements of: fairly obtaining and fairly processing personal data; keeping collected data only for one or more specified lawful purposes; processing such data only in ways compatible with the purpose for which it was given; as well as keeping the data safe and secure; and ensuring that it is kept accurate and up to date.

The GDPR has far reaching extra-territoriality; non-EU carriers will be subject to the GDPR, if their marketing is targeted at travellers within the EU or where they engage in monitoring the behaviour of data subjects in the EU. Data processors will also be directly caught by specific obligations under GDPR.SI 336/2011 European Communities (Electronic Communications Networks and Services) (Privacy and Electronic Communications) Regulations 2011, giving effect to Directive 2002/58 (the "**E-Privacy Directive**"), also apply to the airline industry, and in particular, the collection and use of passenger data in electronic marketing.

It was intended to replace the E-Privacy Directive sometime in 2018 with a new E-Privacy Regulation which will bring more GDPR-type privacy obligations (e.g. similar fines) to this area of regulation; however, this now looks more likely to take place in 2019.

The EU PNR Directive (2016/681) was transposed into Irish legislation 25 May 2018 (the same date as GDPR became effective) by Statutory Instrument S.I.177 2918. That Directive provides for the collection by air carriers of PNR data for all extra-EU flights entering or departing from the EU, as well as the transfer of such data to EU Member States and sharing mechanisms across borders. Note under Article 2 it can be extended in the future to intra-EU flights.

Following on from the Schrems case (which successfully challenged Safe Harbor, the predecessor to Privacy Shield), the Irish High Court, at the request of the Data Protection Commission, has referred a legal challenge to the validity of the EU Standard Contractual Clauses ("**SCCs**") to the Court of Justice of the European Union ("**CJEU**") to determine a number of questions regarding the use of SCCs and their validity under EU law. The outcome of that case may have significant implications for data transfers beyond the EU.

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?

Irish data protection law includes obligations to notify affected data subjects in the event of a data breach and a requirement to report breaches to the Data Protection Commission. The notification and reporting requirements vary based upon the specific circumstances of the data loss/breach. The Irish Data Protection Commission has approved a personal data security breach Code of Practice as a

guide to organisations dealing with breaches of security involving customer or employee personal information. The timeframes for reporting and notification are extremely limited (24 hours in certain instances), and a failure to adhere to the required reporting requirements can lead to regulatory sanction. Irish law also includes a requirement to notify the Irish police where the data breach potentially involves the commission of a crime, i.e. a cybersecurity attack or fraud. The Data Protection Commission is still in the process of updating its website to cater for GDPR and there could be changes to this Code of Practice as a result.

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?

Registration of intellectual property in Ireland is carried out at the Irish Patents Office.

Registration of **trademarks** is governed by the Trade Marks Act 1996 (as amended). A trademark is usually registered for an initial 10-year period but can be renewed indefinitely. Unregistered trademarks may also be protected by the common law tort of passing-off.

Applications for an EU-wide trademark can be made through the EU Intellectual Property Office (“EUIPO”). Applications for international trademarks can be made under the Madrid Protocol and are administered by WIPO.

Patent registration is governed by the Patents Act 1992 (as amended). Irish patents are protected for a maximum of 20 years. Short-term, 10-year patents can also be obtained. Protection can be sought for other countries in Europe by an application for a European Patent through the European Patent Office which includes 40 countries, or throughout the world under the Patent Cooperation Treaty administered by WIPO which covers 145 countries.

Registration of **designs** is governed by the Industrial Designs Act 2001 (as amended). Protection is granted initially for five years, which can be renewed four times, giving a maximum protection of 25 years. Protection throughout the EU can be obtained by applying for a Community Design through EUIPO. Protection in additional countries can be obtained under the Hague Convention operated by WIPO. Protection is also available for unregistered designs for up to a maximum of three years.

Copyright protection in Ireland is governed by the Copyright and Related Rights Act 2000 (as amended). There is no system of registration. Copyright protection for literary works lasts for 70 years after the death of the author. Copyright protection for computer-generated works lasts for 70 years after the date they are first made available to the public.

Other non-registrable intellectual property such as confidential information, trade secrets, knowhow and the like are normally protected by non-disclosure agreements or other forms of contract.

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

Ireland complies with Regulation (EC) No 261/2004 in relation to denied boarding rights.

Where a flight is overbooked and an air carrier reasonably expects to deny boarding, it shall first call for volunteers in exchange for benefits to be agreed. If there is an insufficient number of volunteers, the airline may deny boarding to passengers against their will but must compensate them and offer the following assistance:

- Information: the air carrier shall provide a written notice setting out the rules for assistance in line with Regulation 261/2004. In addition, a sign must be displayed at the check-in area referring to air passenger rights under Regulation 261/2004.
- Passengers shall be offered the choice between reimbursement of the cost of their ticket if they decide not to travel; and rerouting to their final destination at the earliest opportunity. Passengers may choose to travel at a later date at their convenience, subject to the availability of seats.
- Meals and refreshments shall be offered free of charge and in reasonable relation to the waiting time.
- Hotel accommodation shall be provided where a stay of one or more nights becomes necessary, as well as transport between the hotel and the place of accommodation.
- Two free telephone calls, telex or fax messages, or emails shall be offered.
- Compensation as set out in the table (below). The amount of compensation payable may be reduced by 50% if the rerouting offered allows the passenger to arrive at his/her final destination close to the original planned arrival time.

Compensation amounts related to denied boarding

- For flights with a distance of 1,500km or less: €250.
- For intra-Community flights of more than 1,500km and all other flights between 1,500km and 3,500km: €400.
- For all flights with a distance of 3,500km or more: €600.

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

Ireland complies with Regulation No 261/2004 in relation to late arrival and departure of flights.

Whether a delay comes within the terms of Regulation 261/2004 depends upon the distance of the route involved and the delay itself must be at least two hours. The Regulation shall apply to:

- (a) delays of two hours or more in the case of flights of 1,500km or less;
- (b) delays of three hours or more in the case of all Intra-Community flights of more than 1,500km, and of all other flights between 1,500km and 3,500km; and
- (c) delays of four hours or more in the case of all other flights.

The operating air carrier must provide care and assistance in the event of such delays. This must consist of the following:

- Information: the air carrier shall provide a written notice setting out the rules for assistance in line with the Regulation. In addition, a sign must be displayed at the check-in area referring to air passenger rights under the Regulation.
- Meals and refreshments shall be offered free of charge and in reasonable relation to the waiting time.
- Hotel accommodation shall be provided where a stay of one or more nights becomes necessary, as well as transport between the hotel and the place of accommodation.
- Communications: passengers shall be offered free of charge two telephone calls, telex or fax messages, or emails.
- Reimbursement: where the flight delay is at least five hours, passengers shall be offered reimbursement within seven days of the full cost of the ticket at the price at which it was bought for the part or parts of the journey not completed. If, however, the purpose of the journey is no longer attainable, then reimbursement must be offered for the part of the journey already made, e.g., a flight from Cork to Dublin will be reimbursed if the purpose of the flight was to travel on a connecting flight to London for a function at which attendance is no longer possible due to the delay. In addition, there is

a right to a return flight to the original point of departure where relevant. The right to reimbursement applies where the passenger decides not to travel as a result of the delay – it is not possible to travel and also claim reimbursement under the Regulation.

If the airline is unable to provide the above provisions free of charge, the airline should reimburse passengers for expenses incurred.

Compensation

Although the Regulation itself does not expressly state that compensation is payable in cases of delay, the ruling delivered by the European Court of Justice in the cases of *Sturgeon v. Condor Flugdienst GmbH and Bock and Others v. Air France SA* maintains that compensation may be payable to passengers who arrive at their destinations three hours or more after the scheduled arrival time.

The amount of compensation which may be payable in the aforementioned circumstances depends on the distance of the flight, the reason for the delay and, in the case of point (c) above, it may be reduced by 50% where the delay on arrival was less than four hours.

If an airline can prove that the delay was caused by an extraordinary circumstance which could not have been avoided even if all reasonable measures were taken, no compensation will be payable.

The amount of compensation payable depends on the distance of the flight. If the flight is classed as:

- short haul, the amount payable is €250 per person;
- medium haul, the amount payable is €400 per person; and
- long haul, the amount payable is €600 per person.

CAR is the designated enforcement body in Ireland. Section 45 of the Aviation Act 2001 (as amended) gives CAR the right to issue a direction to any airline in breach of Regulation 261/2004 requiring compliance. If the airline fails to comply it is guilty of an offence. Whilst an airline can make representations to CAR during the process, it can only challenge its decision by way of judicial review in the High Court.

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

The airport authority for Dublin and Cork Airports is the daa plc.

The airport authority for Shannon Airport is the Shannon Airport Authority Limited.

The relevant legislation is the State Airports Act 2004 and the State Airports (Shannon Group) Act 2014.

This legislation dictates that the airports are owned by the State and the policy position is that this will not change in the foreseeable future. Governance and structure of the airport authorities is set out in the legislation as well as detailed provision on operation of the airports.

Airport operators are subject to law such as consumer law, health and safety, employment, etc.

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

Ireland implements EU consumer law. The general legislation applicable in Ireland is the Sale of Goods and Supply of Services Act 1980 (as amended). This applies to aviation-related matters also.

The CCPC is responsible for the enforcement of consumer protection laws.

The Package Holidays and Travel Trade Act 1995 also regulates the travel contract between travel operator and consumer.

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

Many of the major GDSs operate in Ireland, including Amadeus, Sabre, Travelport, 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 Ireland.

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

There is no particular prohibition on vertical integration between air operators and airports, though competition law will be relevant.

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?

Currently, there are no nationality requirements imposed by the IAA for entities applying for an Air Operator's Certificate.

However, Regulation EC 1008/2008 is enforced and implemented in Ireland by Statutory Instrument 426 of 2008. This requires an applicant for an Air Carrier Operating Licence to have its principal place of business and registered office in Ireland. It also requires that the applicant is owned and controlled by EU Member States or EU nationals.

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?

1. The Irish Government's expressed and continued support for the wider aviation industry contained in "A National Aviation Policy for Ireland" policy document will ensure that, when enacting new legislation in Ireland, aviation and the significance of the industry to the Irish economy will be at the forefront of the legislators' considerations, whilst the implementation of the "Alternative A" insolvency regime in Ireland, further strengthens the country's appeal as a hub for owning, leasing and financing aircraft, as well as its position as a global centre for aviation.
2. The ongoing OECD/G20 Base Erosion and Profit Shifting Project ("BEPS") is likely to result in changes to international tax treatment of certain tax practices. On 7 June 2017, Ireland and over 70 countries signed up to a multilateral convention (the "MLI") that is intended to implement a number of BEPS-related measures swiftly. The effect of the MLI is that countries (including Ireland) will transpose certain provisions relating to the BEPS project into their existing networks of bilateral tax treaties without the requirement to re-negotiate each treaty individually. The MLI will implement a series of measures to update Ireland's existing network of bilateral tax

treaties with the intention of reducing opportunities for tax avoidance by multinational enterprises. However, the impact on the Irish aviation industry is expected to be minimal due to the robust legislative framework already in place in Ireland and the tax treatment of the aviation industry in Ireland. In fact, the OECD's recommendation may well serve to enhance the appeal of Ireland as an attractive jurisdiction for the owning, financing and leasing of aircraft as compared to competing jurisdictions.

Ireland will also be required to adopt certain measures introduced by the Anti-Tax Avoidance Directive (Directive (EU) 2016/1164) in relation to limitation of interest deductibility and Council Directive (EU) 2017/952 which amended Directive (EU) 2016/1164 as regards hybrid mismatches. These changes are unlikely to have a significant impact on the aviation industry in Ireland.

3. On 15 November 2016, Ireland formerly enacted the European Union (Anti-Money Laundering Beneficial Ownership of Corporate Entities) Regulations 2016 by the introduction of SI/560/2016. The statutory instrument provides for every Irish-incorporated entity (other than those listed on regulated markets and subject to EU (or equivalent) disclosure requirements) to take steps to obtain and disclose information in respect of its beneficial interest holders. In terms of aviation, this may cause an issue where a company and its assets are held in trust structures and there is no discernible

beneficiary; however, in these circumstances it may be possible to rely on an exemption to the requirement and to simply list the company directors and executive officer *in lieu* of the beneficiaries such that these structures can continue to be used.

4. DOTTS is carrying out a review of the role of CAR and IAA in light of SES regulation, which may change the role of these two bodies and necessitate legislation.

Acknowledgment

The authors are grateful to Brian Clarke for his invaluable contribution to this chapter. Brian is a partner in The Maples Group's Litigation and Dispute resolution group. He advises both domestic and international clients on domestic and multinational commercial disputes and enforcement proceedings. He is experienced in acting in both *ad hoc* and institutional forms of arbitration. Brian joined The Maples Group in 2009. (Tel: +353 1 619 2042 / Email: brian.clarke@maples.com.)

The authors are also grateful to Lynn Cramer for her contribution to this chapter from a tax law perspective. Lynn is an associate in The Maples Group's Tax team and advises both domestic and international clients on Irish tax matters. (Tel: +353 1 619 2066 / Email: lynn.cramer@maples.com.)

**Donna Ager**

The Maples Group
11th Floor
200 Aldersgate Street
London, EC1A 4HD
United Kingdom

Tel: +44 20 7466 1712
Email: donna.ager@maples.com
URL: www.maples.com

Donna is Head of the European Aviation practice at The Maples Group, advising on tax-efficient leasing and financing structures, in addition to platform establishments and transportation business acquisitions and disposals, all from an Irish law perspective.

Having worked on the acquisition, finance, leasing and disposal of transportation assets for more than 17 years, Donna has extensive industry and structuring knowledge, notably in the aviation sector where she specialises. Regarded by her clients as practical and commercial, Donna's expertise extends across all transportation assets and her London city training provides for a unique and refreshing approach to the role of Irish counsel.

Donna joined The Maples Group in 2015, following time spent as a partner in the asset finance team of Simmons & Simmons, London. Prior to that, Donna worked for nine years at Clifford Chance, London, having started her career with Freshfields before moving to Airbus S.A.S. in Toulouse, France where she gained sought-after manufacturer's experience as well as technical and commercial knowledge of maintenance, repair and operations.

Donna has been described by *The Legal 500* as being part of a "new generation of partners" who focus on finding innovative solutions to ensure the spirit of the deal remains paramount. She has been ranked by *Chambers Global* and listed as a leading lawyer in her field by *IFLR 1000*.

**Mary Dunne**

The Maples Group
75 St. Stephen's Green
Dublin 2
Ireland

Tel: +353 1 619 2021
Email: mary.dunne@maples.com
URL: www.maples.com

Mary joined The Maples Group in 2012. Prior to this she was a partner with a leading Irish law firm, from 2007 to 2012. Mary also worked as Head of Legal at the NDFA and the Strategic Investment Board in Belfast. She has been highly regarded in independent legal directories such as *Chambers Global* and *The Legal 500*.

Mary's areas of expertise include:

- Infrastructure projects and project finance in the energy, road, rail, education, water, waste health, nursing home and housing sectors, with particular expertise in PPPs.
- Construction law: Mary advises on all forms of Irish and international construction and engineering documentation.
- Public Procurement and Competition law: Mary acts as an expert to the OECD and World Bank on public procurement and project finance and has drafted laws and procedures for many governments seeking to do business with the EU, such as Croatia, Macedonia, Jamaica and Morocco.



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