

# International **Comparative** Legal Guides



Practical cross-border insights into aviation law

## Aviation Law **2022**

**10<sup>th</sup> Edition**

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# Ireland

Maples Group



Mary O'Neill



Mary Dunne

## 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 is assisted in carrying out its functions by the following public bodies:

- 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 European Union (“**EU**”) emissions trading scheme.

### CAR

The key functions performed by 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 in accordance with EU law; and
6. overseeing consumer protection in the aviation sector, including the application of EU Air Passenger Rights and Rights of Persons with 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.

### Principal Legislation

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 (as amended);
3. the Package Holidays and Travel Trade Act 1995 (as amended);

4. the Aviation Regulation Act 2001 (as amended);
5. the Air Navigation and Transport (International Conventions) Act 2004 (as amended);
6. the International Interests in Mobile Equipment (Cape Town Convention) Act 2005 (as amended);
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 (as amended);
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 2008 (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 (as amended by Regulation (EC) 793/2004) 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 (as amended by Regulations (EU) 2018/1139, 2019/2 and 2020/696) on common rules for the operation of air services in the community;
18. Regulation EU/373/2017 (as amended by Regulation (EU) 2020/469) – the Air Traffic Management Common Requirements Implementing Regulation (ATM/IR);
19. Commission Delegated Regulation (EU) 2019/945 (as amended by Commission Delegated Regulation (EU) 2020/1058) on unmanned aircraft systems and on third-country operators of unmanned aircraft systems, and Commission Implementing Regulation (EU) 2019/947 (as amended by Commission Implementing Regulations (EU) 2020/639 and 2020/746) on the rules and procedures for the operation of unmanned aircraft; and
20. Irish Aviation Authority (Standardised Rules of the Air) Order 2019 (S.I.266/2019).

**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.

The applicant must, among other things, have its principal place of business and registered office (if any) in Ireland, and its main occupation must be air transport, in isolation or combined with any other commercial operation of aircraft or repair and maintenance of aircraft.

The applicant must also meet the ownership and control requirements of the legislation (i.e. EU Member States and/or nationals of EU Member States must own more than 50% of the undertaking and effectively control it).

In addition, applicants must meet requirements regarding financial fitness and insurance cover.

### 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"), the European Aviation Safety Agency ("EASA"), EUROCONTROL and the European Civil Aviation Conference ("ECAC").

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 (as amended) 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) 2018/1139 on common rules in the field of civil aviation and establishing a European Union Safety Agency; Regulation (EU) 748/2012 regarding the implementation of essential requirements for airworthiness and environmental protection; Regulation (EU) 2015/640 on additional airworthiness specifications; and Regulation (EU) 1321/2014 (as amended and updated by EU Commission Implementing Regulations 2019/1383, 2019/1384, 2020/270, 2020/1559 and 2021/700), 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.

In April 2019, the European Commission adopted performance targets in respect of the level of effectiveness of safety management to be achieved by air navigation service providers for the period 2020–2024 pursuant to Commission Implementing Decision (EU) 2019/903 of 29 May 2019.

### 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 and CAR regulate the sector.

### 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: <https://www.gov.ie/en/publication/baedcc-air-services-market/>. 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. While progress on this matter has been slow, as part of the EU-UK Trade and Cooperation Agreement signed on 30 December 2020 (the "EU-UK Trade Deal"), the EU and the United Kingdom ("UK") agreed to evaluate options for reciprocal liberalisation during 2021, and again within 12 months of either party so requesting.

### Impact of Brexit on EU Aviation

Since 1 January 2021, EU and UK airlines have been treated as third-country operators in each other's airspace with their rights being provided for in the EU-UK Trade Deal.

The provisions of the EU-UK Trade Deal have preserved traffic rights for UK and EU carriers between the UK and EU. Such traffic rights do not include limitations as to capacity, frequency or aircraft. Code sharing arrangements have also been preserved. However, cabotage rights have not been preserved. As such, EU airlines do not have the right to fly domestic routes within the UK and UK airlines may not fly intra-EU routes.

The EU-UK Trade Deal provides that in order to avail of the traffic rights between the EU and the UK, each EU and UK carrier must be majority owned and controlled by nationals of the EU or UK respectively, must have their principal place of business in the EU or UK respectively, and must hold an aircraft operating certificate from the competent authority in the EU or UK respectively. The EU-UK Trade Deal provides for a level of flexibility for UK carriers that are majority EU owned and controlled and which held a valid operating licence as of 31 December 2020 and also for UK subsidiaries of EU majority owned and controlled groups. For example, British Airways, which is owned by IAG, is deemed to be a UK carrier. Ryanair



UK can continue to act as a UK carrier. These provisions are not reciprocal as EU carriers cannot be majority UK owned and controlled. The EU and the UK agreed to evaluate options for reciprocal liberalisation during 2021, and again within 12 months of either party so requesting.

Since 1 January 2021, the UK ceased to be a member of EASA: the organisation tasked with certifying, regulating, standardising, investigating and monitoring European aviation safety. There is no comprehensive bilateral air safety agreement in place between the EU and the UK. However, the UK-EU trade agreement includes a section on aviation safety which emphasises the aim of close cooperation. EASA and the UK Civil Aviation Authority have agreed on the Technical Implementation Procedures signed in May 2021, as a basis for their future working relationship.

### Impact of Service

The UK's exit from the EU on 31 December 2020 means that enforcement of judgments between Ireland and the UK from now on is likely to be a longer and more complex process. It also has an impact on the service of proceedings, as the EU regimes are no longer applicable.

In particular, EU Regulation 1393/2007 (the “**Service Regulation**”) no longer applies between the UK and EU Member States, and generally service will now have to be effected in accordance with the Hague Convention of 15 November 1965, which addresses the service abroad of judicial and extrajudicial documents in civil and commercial matters (the “**Hague Convention**”) between signatory States.

### Jurisdiction

Within the EU, the rules on which country's courts have jurisdiction over a dispute are found principally in the Brussels Recast Regulation (EU 1215/2012) (“**Recast Regulation**”) (<https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32012R1215&from=EN>). This sets out an effective scheme for determining jurisdiction issues and avoiding multiple proceedings in different EU countries. In general, where parties have agreed that the courts of a particular EU Member State should have jurisdiction, that court will have jurisdiction.

Pre-Brexit, the UK was a party to both the Recast Regulation and the Lugano Convention (“**Lugano**”) ([https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:22007A1221\(03\)&from=EN](https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:22007A1221(03)&from=EN)) by virtue of its EU membership. However, due to Brexit, both the Recast Regulation and Lugano ceased to apply to the UK from 1 January 2021.

The UK applied to join Lugano in April 2020, which would have offered a substantially similar (though not identical) framework to the Recast Regulation. Lugano would have been an attractive post-Brexit alternative to the Recast Regulation, however, on 4 May 2021 the European Commission announced that it was opposed to the UK's accession to Lugano ([https://ec.europa.eu/info/sites/default/files/1\\_en\\_act\\_en.pdf](https://ec.europa.eu/info/sites/default/files/1_en_act_en.pdf)).

The UK has, however, acceded in its own right to the Hague Convention from 1 January 2021. The Hague Convention, to which all EU Member States are party, requires the court designated in an exclusive jurisdiction agreement to hear the case and generally prevents courts of other contracting States from hearing parallel proceedings. It therefore goes some of the way to plugging the gap left by the Recast Regulation.

### Enforcement of Judgments

Brexit means that enforcement of judgements between Ireland, and indeed other EU Member States, and the UK is likely to be more complex. While the UK acceded to the Hague Convention in its own right on 1 January 2021, reliance on the

Hague Convention for enforcement of judgments is not the same as the more straight forward rules and procedures which apply under Brussels Recast and/or Lugano. In particular, the Hague Convention is limited, in that enforcement of judgments in another jurisdiction is reliant upon the parties having agreed an exclusive jurisdiction clause. While most commercial contracts, including leasing arrangements include for this, the Hague Convention has other limitations; most particularly, it cannot be used where protective measures such as injunctions are required.

Where the Hague Convention cannot be used, an application to court under the existing common law rules is required. This means that new proceedings have to be issued in the country where enforcement is required. There are also wider grounds upon which a court can refuse recognition of the judgement compared to the Recast Regulations.

Unlike the Recast Regulation and Lugano regimes, the 2019 Hague Convention is not a double convention. As such, while it deals with the recognition and enforcement of judgments, it does not address the jurisdiction of a court to hear a dispute in the first place. Grounds for refusal to recognise the judgment of a foreign court are also wider under the Hague Convention.

While it is hoped that progress on addressing these issues between the EU and the UK can be made, as matters stand, the potential interaction of any dispute or enforcement scenario with the UK is something that should be carefully considered at the outset of any action or enforcement.

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

The three main airports (Dublin, Cork and Shannon) are publicly owned commercial airports. These airports are owned by State-owned commercial companies, with Dublin and Cork airports owned by daa plc and Shannon Airport owned by Shannon Airport Authority DAC.

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

Aviation terminal services charges are levied by the IAA on users at Dublin, Shannon and Cork airports. Dublin airport is the only Irish airport currently subject to economic regulation of the charges it imposes on airlines. Economic regulation of charges at Dublin airport is based on the Aviation Regulation Act 2001 and is implemented by CAR.

#### 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 AAIU 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 give the AAIU 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 (as amended by Regulations (EU) 376/2014 and 2018/1139) is directly applicable in Ireland.

Following an investigation, the AAIU will issue safety recommendations to the appropriate aviation authority. The AAIU 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?**

COVID-19 has had particularly severe economic consequences for the airline industry. We have already seen and expect to continue to see a significant amount of restructuring and/or enforcement in relation to the airline industry.

In April 2020, Cityjet successfully applied to the Irish High Court for the appointment of an examiner, and the associated protections. The examiner successfully formulated a scheme of arrangement which received the necessary level of support from creditors and was approved by the High Court in August 2020, thereby allowing the business to emerge from examinership.

In July 2020, the High Court approved a scheme of arrangement which was put together by Nordic Aviation Capital (under Part 9 of the Companies Act 2014 (the “**CA2014**”), as distinct from a scheme formulated by an examiner where one is appointed). The scheme involved the restructuring of the terms of debt owed to Nordic’s secured and unsecured creditors. Nordic’s total level of debt exceeded US\$5 billion. In September 2020, the High Court published a detailed written judgment in which it addressed a number of important issues, such as: (i) the jurisdiction of the Irish courts to hear schemes where creditors are located in various jurisdictions; (ii) ancillary releases of the obligations of sureties within a corporate group; and (iii) the possible impact of the Cape Town Convention on this type of restructuring. The *Nordic* decision should lead to an increased use of Ireland as a venue of choice for international restructuring, particularly in the aviation sector, and even though it involved a scheme of arrangement, the judgment goes towards clarifying the approach of the Irish courts as regards the potential impact of the Cape Town Convention and, in particular, the Aircraft Protocol (Alternative A) on restructurings carried out under Part 9, albeit that the Court in *Nordic* did not ultimately have to decide the potential issues arising.

In May 2021, Norwegian Air Shuttle ASA (the “**NAS Parent**”) and related companies (the “**Norwegian Air Group**”) exited the examinership process in Ireland having completed a statutory restructuring procedure for companies in financial difficulty provided for under Part 10 of the CA2014. The Norwegian Air restructuring involved the approval of schemes of arrangement put forward by the appointed examiner. While the NAS Parent is a Norwegian incorporated company, the court determined that the commercial operations of the Norwegian Air Group taken together with the range of legal transactions entered into by both the NAS Parent and its subsidiaries were so closely linked and interdependent that the NAS Parent had a sufficient connection to Ireland. The successful exit of the Norwegian Air Group from the examinership process demonstrates the effectiveness of both the examinership process and the Irish courts in undertaking international restructurings.

**1.11 Are there any specifically environment-related obligations or risks for aircraft owners, airlines, financiers, or airports in your jurisdiction, and to what extent is your jurisdiction a participant in (a) the EU Emissions Trading System (EU ETS) or a national equivalent, and (b) ICAO’s Carbon Offsetting and Reduction Scheme for International Aviation (CORSIA)?**

Irish environmental legislation generally implements EU

environmental policies or directives. EU environmental regulations are also part of national law in Ireland and are enforceable. There is a significant body of environmental legislation which includes general environment-related obligations with which businesses operating in Ireland are required to comply. The legislation includes obligations relating to waste management, chemicals, water, air quality and noise emissions. A financier would be responsible for ensuring compliance with such obligations where a financier takes possession of an asset located in Ireland through appointing a receiver or otherwise. It is important for owners and financiers to be able to monitor environmental compliance of lessees particularly with respect to EU ETS and CORSIA obligations.

The EPA is the primary body tasked with implementing and enforcing environmental obligations in Ireland. The IAA also plays an important role in the context of the aviation sector with a view to maintaining environmental standards that comply with the requirements of the ICAO, the EU and EASA, amongst others. The IAA is responsible for the issue of noise certificates for Irish registered aircraft in compliance with EASA noise certification levels.

**EU ETS**

The EU ETS Directive 2003/87/EC (as amended) (the “**EU ETS Directive**”) has been implemented into national law in Ireland through various statutory instruments. Aircraft operators operating in Ireland are required to monitor, report and verify their CO<sub>2</sub> emissions and to surrender allowances against those emissions. Any shortfall between the allocated sum of free emissions allowances and their actual emissions require the purchase of additional allowances. The EU has limited the scope of the EU ETS to flights within the European Economic Area for the period 2017–2023 (which extended a previous period). The EPA is responsible for administering the EU ETS obligations for aircraft operators assigned to Ireland.

**CORSIA**

Ireland has volunteered to participate in CORSIA for its pilot phase which commenced on 1 January 2021 and runs through to 1 January 2023. The first phase will then take place from 2024 to 2026, in which Ireland will participate. Unlike EU ETS which is a “cap and trade” scheme that sets an upper limit for the total amount of emissions, CORSIA is an “offsetting scheme”, implying that emissions can grow but must be compensated by offsets. CORSIA requires aircraft operators to offset a part of their emissions through the purchase and cancellation of CORSIA eligible emissions units. CORSIA applies to international (not domestic) flights. The European Commission put forward a proposal in July 2021 to implement CORSIA into EU law by amending the EU ETS Directive whereby the existing EU ETS Directive would apply CORSIA to EU-based airlines’ emissions from flights to and from countries outside the EEA.

**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 on 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 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 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 (and this is the option generally chosen). 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 (in respect of the airframe) 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 (and in particular the Commercial Court which is a division of the High Court), regardless of the country in which the claim originates.

The decision in the English law case of *Blue Sky One and Ors v. Mahan Air* remains relevant. There, the courts of England and Wales 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, it is likely that the decision of the English court will continued to be viewed as persuasive by any Irish court should the same issue involving an Irish law mortgage come before the courts.

## 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 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?

The Irish VAT treatment of the acquisition of aircraft will depend on the location of the aircraft at the time of the transfer. Where the aircraft is physically located outside Ireland at the time of the transfer it will be outside the scope of Irish VAT.

If the aircraft is supplied while within the territory of Ireland, Irish VAT at the standard rate of 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.



Irish companies are generally liable to stamp duty on certain instruments that transfer ownership of property (such as aircraft). However, Irish tax law provides an exemption from Irish stamp duty on the acquisition, lease or disposal of aircraft or part of an aircraft (e.g. an aircraft engine).

Therefore, a charge to Irish stamp duty will not arise on the purchase, disposal or leasing of aircraft even where the documents relating to these transactions are executed in Ireland.

**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.

As of 10 April 2018, Ireland has ratified the 2016 Montreal Protocol relating to an Amendment to the Convention on International Civil Aviation Article 50(a) and the 2016 Montreal Protocol relating to an Amendment to the Convention on International Civil Aviation Article, which are not yet in force.

**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 comprehensive double tax treaty network (as of November 2021, 76 treaties have been signed, 73 of which are in force). The vast majority of Ireland's double tax treaties result in a reduction in withholdings (often to zero) on lease rentals and/or debt service costs.

In addition, Ireland's tax regime allows for the disposal of aircraft to be free from Irish stamp duty and Irish VAT in certain cases. For further detail see question 2.5 above, which sets out the tax treatment of aircraft disposals as regards Irish stamp duty and VAT.

**2.9 To what extent is there a risk from the perspective of an owner or financier that a lessee of aircraft or other aviation assets in your jurisdiction may acquire an economic interest in the aircraft merely by payment of rent and thereby potentially frustrate any rights to possession or legal ownership or security?**

Provided an Irish law governed lease is properly drafted, there is no risk for an owner or financier that a lessee of an aircraft or other aviation asset may acquire an economic interest in such aircraft or other aviation asset by payment of rent under such lease. Irish law recognises that the lease rentals paid by a lessee for the lease of an aircraft or aviation asset are not payments to acquire ownership of the aircraft or aviation asset. In the case of an Irish law governed operating lease, the lease provisions should clearly provide that ownership remains vested in the owner. In the case of an Irish law governed finance lease, the provisions regarding any purchase option should clearly provide that the owner retains title to the aircraft or aviation asset until certain conditions are met. Under an Irish law hire-purchase agreement, where a hirer has paid an amount equal to or more than one-third of the total amount payable under the hire-purchase agreement, the owner must seek a court order to enforce any right to recover possession.

### 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 that 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) 1215/2012 on jurisdiction and enforcement of judgements applies to interim relief under the Convention. Consideration should be given to the impact of Brexit, and the status of the UK following its exit from the EU on 31 December 2020, in considering any potential enforcement scenario.

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 significant aircraft disputes, or enforcement scenarios, 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 (Brussels Recast Regulation) on jurisdiction and 1393/2007 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. As matters stand, the Hague Convention addresses the service abroad of judicial and extrajudicial documents in civil and commercial matters, and is now the applicable instrument for the service of Irish legal proceedings in the UK.

### **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.

### 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?

*Force majeure* or frustration may provide a defence for breach of contractual obligations due to unforeseen events, whether in respect of performance obligations in full or otherwise. Whether a particular event or circumstance gives rise to an entitlement to relief as a *force majeure* event is contract-dependent. *Force majeure* clauses tend to be interpreted strictly. Frustration may be available in limited circumstances beyond the parties’ actual agreement.

Where the agreement contains a *force majeure* clause:

The drafting of the specific contract is crucial; there is no standard definition of what constitutes *force majeure*. The wording of the clause will need to be examined to determine whether the event is within its scope. The party relying on the clause must establish that the precise circumstances of the event have caused the failure or inability to perform. The clause will generally set out steps to be complied with to allow a party to claim *force majeure*, such as notice and mitigation provisions. While the effect of successfully relying on *force majeure* will depend on the terms of the specific clause, the relevant party may be exempt from performing certain obligations or have certain obligations under a contract suspended for a period of time.

Where there is no *force majeure* clause:

There is no legal presumption of *force majeure* in Irish law, and it seems unlikely that a court would imply a *force majeure* clause where one has not been expressly provided. In the absence of such clause, a party may be able to claim that the contract has been frustrated. Frustration allows a contract to be set aside where unforeseen

exceptional circumstances cause performance of the contract to become impossible, illegal or result in a party’s obligations in performing the contract becoming radically different to what was originally intended. There is a very high threshold to be met and it is insufficient to show that performance of the contractual obligations has become significantly more difficult or expensive. If successful, a claim for frustration normally results in the termination of the entire contract; unlike a *force majeure* contract claim which normally provides for the suspension of, or relief from, performance.

## 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 complies 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**”).

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 for consumers 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](http://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, using EU case law as precedent.

### 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 merger notification application is lodged by the parties involved in the relevant transaction to the CCPC in relation to the merger, acquisition or joint venture. The application describes the transaction proposed and the roles of each party within the market in question; and gives a breakdown of the horizontal and vertical overlaps of the parties within the market, and the impact of the transaction on such overlaps.

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.

In addition to the standard merger notification procedure, the CCPC introduced a simplified merger notification procedure designed for mergers and acquisitions that require merger clearance because they reach the statutory financial thresholds but clearly do not raise substantive competition concerns; for example, parties that operate in entirely different sectors with no horizontal or vertical crossover. For mergers and acquisitions that fall within the scope of the simplified merger notification procedure, the review period will be shorter and less burdensome for notifying parties. Upon receipt of a complete notification, the CCPC will publish a public notice of the proposed merger. Third parties have 10 days from the publication of the notice to make any submission(s), after the expiry of which, the CCPC will endeavour to make a decision as soon as practically possible.

The simplified merger notification procedure commenced on 1 July 2020 and the CCPC has published guidance on what transactions may fall within the scope of such procedure.

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) (the “**State Aid Guidelines**”), adopted in 2014 and recently prolonged until 2024. The State Aid Guidelines set out the conditions under which Member States can grant State Aid to airports and airlines and provide for flexibility in exceptional circumstances, including COVID-19, as recently confirmed by the EU in non-Irish cases.

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 State Aid 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. 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.

In November 2020, a dedicated funding package for Irish aviation totalling €80 million was announced. This package included the Regional Airports Programme (the “**RAP**”), which provides over €21 million for 2021 to Ireland West, Donegal and Kerry airports and supports the operation of the Public Service Obligation (“**PSO**”) air service between Donegal and Dublin. The COVID-19 regional State airports programme for 2021 provides €32 million to Cork and Shannon airports. A €26 million COVID-19 supplementary supports scheme will compensate airport operators towards the losses caused by COVID-19 and the travel restrictions imposed to limit its spread. This saw €20 million in compensation disbursed to Dublin, Cork, and Shannon, providing the Irish airports with flexibility to roll out route incentives and charge rebates in consultation with airlines, with a view to supporting recovery and growth of connectivity. Of the total, €6 million was provided to Donegal, Kerry and Ireland West airports.

A successor to the RAP, the Regional Airports Programme 2021–2025, was published on 4 February 2021. The Regional Airports Programme 2021–2025 was designed to comply with EU guidelines and regulations such as the General Block Exemption Regulation (“**GBER**”). The financial support under the current programme is targeted at airports that operate scheduled services and have annual passenger numbers of less than 1 million. The Regional Airports Programme is administered by DOTTS through the following schemes:

| Category of Investment | Scheme   | Aid Intensity / Levels of Support                              |
|------------------------|--|--|
| Economic               | Capital Expenditure (“ <b>CAPEX</b> ”)             | Up to 75% support for investment projects in line with GBER    |
| Non-Economic           | Public Policy Remit Capital (“ <b>PPR-C</b> ”)     | Up to 90% support for projects in line with national policy    |
|                        | Public Policy Remit Operational (“ <b>PPR-O</b> ”) | Up to 100% support for activities in line with national policy |



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

Capital funding or investment aid for projects of an economic nature (CAPEX) provides an economic return to airports and is therefore governed by State Aid rules.

Non-economic activities, such as air traffic control, police, customs, security and fire services are supported by the PPR-C and PPR-O schemes. Funding for such activities and investments will fall within Ireland's "Public Policy Remit" and will not constitute State Aid.

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

Two services operate from regional airports under the PSO Air Services Scheme: Kerry/Dublin; and Donegal/Dublin. Both services were operated by Stobart Air pursuant to a franchise agreement with Aer Lingus. Following Stobart Air's collapse in June 2021, both PSO routes will be operated by Emerald Airlines from 1 January 2023 with efforts being made to commence operations earlier in 2022.

The PSO services 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.

**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 S.I.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"), which also apply to the airline industry, and in particular, the collection and use of passenger data in electronic marketing.

The EU PNR Directive (2016/681) was transposed into Irish legislation on 25 May 2018 (the same date as the GDPR became effective) by Statutory Instrument S.I.177 2018. 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 that under Article 2 it can be extended in the future to intra-EU flights.

Following the decision of the Court of Justice of the European Union (the "CJEU") on 16 July 2020 in the *Schrems II* case

(C-311/18), transfers of passengers' personal data outside of Ireland to a non-EU country remain valid under Standard Contractual Clauses ("SCCs") subject to the qualifications set out in the CJEU's judgment. On 4 June 2021, the European Commission adopted two new sets of SCCs to replace the privacy shield data transfer scheme; a set for controllers and processors and another for transferring personal data to third countries.

With effect from 1 January 2021 the UK became a "third country" to EU Member States for data protection purposes. On 28 June 2021, the Commission adopted two adequacy decisions for the UK, meaning that personal data can flow freely from the EU to the UK where it benefits from an essentially equivalent level of protection to that guaranteed under EU law. It must be noted that the Commission's adequacy decisions in respect of the UK will automatically expire in four years, after which they may be renewed. The Commission will continue to monitor the legal situation in the UK and could intervene at any point, if the UK deviates from the level of protection currently in place.

**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, pursuant to Article 33 of the GDPR and section 86 of the Data Protection Act 2018. The notification and reporting requirements vary based upon the specific circumstances of the data loss/breach. Breach notifications are made by way of an online form on the Data Protection Commission's website (dataprotection.ie). This breach notification form is to be updated in late 2021. The Irish Data Protection Commission has approved a personal data security breach Code of Practice as a guide for 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.

**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) 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 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 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 S.A* 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 daa plc.

The airport authority for Shannon Airport is the Shannon Airport Authority DAC. The relevant legislation is the State Airports Act 2004 (as amended) 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.

**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.

**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 AOC.

However, Regulation (EC) 1008/2008 is enforced and implemented in Ireland by Statutory Instrument 426 of 2008. This requires an applicant for an ACOL 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?**

The most noteworthy developments are as follows:

1. In 2015, the Irish Government published its policy document, "A National Aviation Policy for Ireland" (the "NAP"), which had the goal of strengthening the country's appeal as a hub for owning, leasing and financing aircraft, as well as its position as a global centre for aviation through various means, including the enactment of new legislation. According to NAP's Second Progress Report (February 2019), of its mandate, NAP has actioned 84%, completed 12% and the remaining 4% has been classified as "not yet commenced / overtaken by event". In the recently published National Development Plan 2021–2030, it has been noted that a new NAP will be developed to provide a framework for the sustainable recovery and development of the Irish aviation sector over the course of the next decade following the impacts of the COVID-19 pandemic.
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") in order to implement a number of BEPS-related measures. Ireland deposited its instrument of ratification with the OECD on 29 January 2019 and the MLI came into force in respect of Ireland on 1 May 2019. As a general rule, it took effect for Ireland's tax treaties:
  - with respect to taxes withheld at source, from 1 January 2020; and
  - with respect to all other taxes levied by Ireland, for taxes levied with respect to taxable periods beginning on or after 1 November 2019.

The date on which the MLI modifies each treaty depends on when Ireland's treaty partners deposit their own instruments of ratification.

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 implements 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 is also 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. The rules relating to hybrid mismatches have applied in Ireland since 1 January 2020. These changes are unlikely to have a significant impact on the aviation industry in Ireland, although the interest limitation rules may result in changes to the structures used to hold aircraft in certain cases.

Finance Bill 2021, which contains the draft implementing legislation introducing the interest limitation rules, was published in October 2021. The rule applies where interest expenses exceed interest income or interest equivalent income. Where that is the case, a deduction can only be taken for interest up to 30% of EBITDA. The draft legislation confirms that the finance element of finance lease payments will be treated as interest equivalent income which would mean that an interest expense equivalent to the finance lease payments would continue to be available for deduction. The concern is that lease income, other than finance lease income, will not represent interest equivalent income. Until Finance Bill 2021 is finalised and becomes law and the full detail of the interest deductibility limitation rule is known, it is not possible to provide detailed guidance on the impact of the rule on the aviation the structures.

3. The European Union (Anti-Money Laundering: Beneficial Ownership of Corporate Entities) Regulations 2019 were signed into law and came into force in Ireland on 29 January 2019, revoking its 2016 predecessor. The 2019 Regulations has particular application to the aviation industry, in particular the aircraft financing and leasing sector, where professional trust structures are becoming increasingly popular in the ownership of aircraft assets, especially in portfolio and warehouse financing transactions. The 2019 Regulations impose obligations on trustees to obtain information about beneficial owners, including PPS numbers. The 2019 Regulations further require trustees to, *inter alia*:
  - a) keep the information on an internal beneficial ownership register;
  - b) submit the information to certain authorities on request;
  - c) submit the information to the Central Register of Beneficial Ownership of Companies and Industrial Provident Societies (the “**Central Register**”); and
  - d) report any discrepancies on the Central Register.

In cases where the beneficial owner(s) cannot be identified or simply does/do not exist, it remains sufficient to enter the details of the “senior managing officials” of the relevant entity to the internal register.

4. DOTTS is carrying out a review of the role of CAR and IAA in light of Single European Sky regulation, which may change the role of these two bodies and necessitate legislation.
5. Potential Development – Consumer Protection: strengthening enforcement of rights with regard to cancelled flights and denied boarding in the context of COVID-19. In a 2021 Special Report by the European Court of Auditors, an audit was done from March 2020 to March 2021 on air passenger rights during the COVID-19 pandemic. The report found that air passengers were not being informed about their rights during the COVID-19 crisis. It recommended that the European Commission should better protect the rights of air passengers and inform them of their rights, enhance the co-ordination of national measures and better link State Aid

to airlines to the reimbursement of passengers, and improve the tools and legislation for safeguarding air passenger rights.

6. Other potential developments in the Irish aviation industry to watch include:
  - In announcing the Irish Budget 2022, Minister Paschal Donohue noted that the Government will, in the recently published Finance Bill, seek to amend the taxation arrangements that apply to international air crews under section 127B of the Taxes Consolidation Act 1997. This move would be aimed at further supporting the aviation sector in its recovery and at addressing a contentious piece of Irish legislation which results in the double taxation of air crews based outside of Ireland who work for airlines with operations in Ireland, including Ryanair.
  - It was also noted in the Budget 2022 announcement that Ireland’s corporation tax rate is to change to an effective 15% rate for businesses with revenues of over €750 million. How this change affects foreign direct investment levels in the Irish aviation industry remains to be seen.
  - As mentioned above, the new NAP will be developed to provide a framework for the sustainable recovery and development of the Irish aviation sector over the course of the next decade.

## Acknowledgments

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