iclg

Aviation Law 2025

13th Edition

Contributing Editors:

Alan D. Meneghetti Ipeco, Inc.

Philip Perrotta K&L Gates LLP

WALA
WORLDWIDE AIRPORT LAWYERS ASSOCIATION

glg Global Legal Group

Industry Chapters

Expert Analysis Chapters

Q&A Chapters

South Africa

Chris Christodoulou

Afroditi Papasotiriou

Christodoulou & Mavrikis Inc

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.

1.1.1 Principal legislation

- The Civil Aviation Act No. 13 of 2009 and the Regulations, 2011 provides for the control and regulation of aviation within the Republic.
- The Carriage by Air Act No. 17 of 1946 (as amended) gives effect to the Convention for the Unification of Certain Rules for International Carriage by Air, signed in Montreal on 28 May 1999, and for the unification of certain rules relating to international carriage by air.
- The Air Services Licensing Act No. 115 of 1990 provides for the licensing and control of domestic air services, and the International Air Services Act No. 60 of 1993 provides for the licensing and control of international air services.
- The Convention on the International Recognition of Rights in Aircraft Act No. 59 of 1993 provides for the application of the Convention on the International Recognition of Rights in Aircraft.
- The Convention on International Interests in Mobile Equipment Act No. 4 of 2007 enacts the Convention on International Interests in Mobile Equipment and the Protocol to the Convention on International Interests in Mobile Equipment on Matters Specific to Aircraft Equipment (the Cape Town Convention).
- The Mortgage of Aircraft Regulations, 1997 (as amended).
- The Air Traffic and Navigation Services Company Act No. 45 of 1993, and Regulations, 1976, provide for air traffic navigation services.

1.1.2 Regulatory bodies

- The South African Civil Aviation Authority (SACAA) is charged with promoting, regulating and enforcing civil aviation safety and security.
- The Air Service Licensing Council is responsible for regulating domestic air services, and the International Air Services Licensing Council is responsible for regulating international air services.
- The Air Traffic and Navigation Services Company Limited (ATNS) provides air traffic navigation services.

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

Domestic and international air services are governed by the Air Services Licensing Act No. 115 of 1995 and the International Air Services Act No. 60 of 1993, respectively.

1.2.1 International air service licence

An application to the Council in the prescribed format is required. An applicant who wishes to use an aircraft other than a South African aircraft in providing an international air service must satisfy the Council that an appropriate certificate of airworthiness has been issued in respect of the aircraft concerned in the country in which that aircraft is registered.

1.2.2 Domestic air service licence

The granting of a licence is founded on the applicant's ability to satisfy the Council that: the air service will be operated in a safe and reliable manner and that the operator is financially capable of operating an air service; if the applicant is not a natural person who is a national of South Africa, at least 75% of the voting rights are held by residents of the Republic; the person referred to will be actively and effectively in control of the air service; and the aircraft is a South African-registered aircraft.

1.3 What are the principal pieces of legislation in your jurisdiction which govern air safety, and who administers air safety? Does this legislation adequately cover all the issues which tend to arise in your jurisdiction, or do you feel that certain amendments or additional laws would be desirable?

The SACAA has overall safety and security oversight functions, exercised in terms of the Civil Aviation Act, 2009 and the Civil Aviation Security Regulations, 2011. The Civil Aviation Act provides for the establishment of an independent Aviation Safety Investigation Board in compliance with Annexure 13 of the Chicago Convention. (See more at question 1.9 below.)

The current air safety legislation and measures are compliant with ICAO standards and whilst the air traffic navigation systems are in dire need of updating, measures have commenced to address the problems and should be overcome in 2025.

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

All modes of air transport (except for defence) are regulated in the same manner.

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

Passenger charters are classified as a non-scheduled public air transport service (defined as a public air transport service rather than a scheduled public air transport service) in connection with which specific flight or a specific series of flights is undertaken.

Domestic air charters are regulated under the Domestic Air Services Regulations, 1991, issued under Section 29 of the Air Services Licensing Act, 1990.

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. Does the *status quo* tend to create an aviation market which is sufficiently competitive and open?

The limitations to be considered are as follows:

- Shareholding – no shareholding restrictions or limitations are imposed on international air carriers operating in South Africa.
- Slot availability – the Airport Slot Coordination Regulations, 2012 make provisions for the appointment of a Coordinator (the ATNS) who will allocate, monitor and enforce the use of slots at airports and ensure that the capacities of coordinated airports are not exceeded.
- Airport charges – the Airports Company South Africa Limited (ACSA) levies airport charges that comprise landing, parking and passenger service charges, which are regulated by the Regulating Committee. There is a differentiation in airport charges for flights landing at an ACSA airport where the airport of departure of that aircraft was outside of South Africa, but those charges apply equally to both foreign and locally owned carriers.
- Air traffic service charges – the ATNS levies air traffic service charges, which are regulated by the Regulating Committee established by Section 11 of the Airports Company Act. Differentiation in charges applies in respect of flights undertaken by an aircraft (regardless of whether the carrier is foreign or locally owned) where either the airport of departure or the airport of arrival of the aircraft is within any State other than South Africa, and the other airport is within South Africa or elsewhere.

Shareholder restrictions on domestic operators restrict growth by limiting foreign operators from investing locally, although some international carriers have not been deterred, such as Qatar Airways which took up a minority stake in Airlink in 2024.

1.7 Are airports state or privately owned? Are there any plans to alter this position?

Airports in South Africa are both State and privately owned. The state owned Airports Company of South Africa owns and operates the nine major domestic and international airports.

Lanseria International Airport (HLA) is one of the largest privately owned airports, however, talk of further privately owned airports being built is unlikely to materialise.

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

Airports do not impose requirements, save for "conditions of use" agreements.

Foreign aircraft must be operated in terms of:

- the International Air Services Transit Agreement (the Chicago Convention);
- a bilateral air transport service agreement;
- a foreign licence; or
- a foreign operator's permit.

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? Do you believe that there are any changes which would be of benefit to the existing regime?

The SACAA regulates all aspects of aircraft accidents and investigations, and the independent Aviation Safety Investigation Board conducts independent investigations through the Director of Investigations, who has exclusive authority to direct the conduct of investigations on behalf of the Aviation Safety Investigation Board under this Act in relation to aircraft accidents and aircraft incidents.

Subject to the provisions of the South African Maritime and Aeronautical Search and Rescue Act, 2002 (Act No. 44 of 2002) and the Convention, the South African Police Service have rights of prior access to any scene of an aircraft accident or aircraft incident.

No significant changes to the existing regulatory regime are contemplated or which would benefit the current environment.

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

The Airports Company Act of 1993 is still pending amendment by the Airports Company Amendment Act, No. 17 of 2020 (provisions have not yet been proclaimed).

The Economic Regulation of Transport Act, No. 6 of 2024 aims to create a coordinated and transparent regulatory framework across all modes of transport, including aviation, and provides for the creation of a Transport Economic Regulator mandated with overseeing the economic regulation of the transport sector, however, the provisions have not yet commenced.

Long overdue upgrades to numerous ACSA controlled airports have caused significant delays and disruptions to air traffic in 2024 which are due to continue into 2025.

Aviation Co-Ordination Services (ACS) ACSA sought and was granted an interdict against CSA in a case in which ACS sought to declare unlawful, and to have reviewed and set aside the decision by ACSA to 'insource' the provision of hold baggage screening (HBS) and other services currently provided by ACS at all of ACSA's airports.

The South Africa's International Air Services Licensing Council has accused FlySafair of contravening the International Air Services Licensing Act, noting that Ireland-based ASL Aviation Holdings indirectly controls 74.86% of the airline in contravention of the county's foreign ownership restrictions. FlySafair has filed an urgent court application for an interdict against the IASC's finding and another challenge is pending before the domestic Air Services Licencing Council (ASLC), which regulates the licensing of domestic air services.

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)?

Specific environment related obligations are contained in the Civil Aviation regulations, including: Aircraft Engine Emissions [Part 34]; Aircraft Noise [Part 36:]; monitoring of aircraft noise at Aerodromes and Heliports [Part 139]; establishment of aerodrome/heliport environmental programmes; and maintenance of aerodrome/heliport environmental management programmes.

South Africa is not a participant in the EU Emissions Trading System (EU ETS) or national equivalent, nor is it a participant of ICAO's Carbon Offsetting and Reduction Scheme for International Aviation (CORSIA), although it will participate in the Second Phase from 2027.

The SACAA has, however, developed a Roadmap for use by all its stakeholders as guidance on the issues and timelines relating to Aviation Environmental Protection and air transport operators involved in international operations will be required to implement CORSIA and offset their emissions as from 2027.

2 Aircraft Trading, Finance and Leasing

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

South Africa maintains an operator's registry. Registration of an aircraft and the issuing of a certificate of registration under the Civil Aviation Regulations do not necessarily confer or imply beneficial ownership over an aircraft. In terms of Section 8 of the Civil Aviation Act, 2009, the registered owner of an aircraft is deemed to be the owner for purposes of liability for damages caused by the aircraft in certain circumstances. Registration of ownership is obtained by filing the necessary form (CAR47A-2) with the SACAA. The legal effect of registration is to designate aircraft registered on the South African Civil Aircraft Register as being deemed to have South African nationality.

Proof of transfer of ownership is satisfied by either a deed or bill of sale, or an Aircraft Purchase Order or a similar agreement, supported by a deregistration certificate issued by the SACAA if the aircraft was previously registered.

The legal effect of registration is to designate aircraft registered on the South African Civil Aircraft Register as being deemed to have South African nationality.

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

2.2.1 The mortgage register under the Geneva Convention

Section 4 of the Convention on the International Recognition of Rights in Aircraft Act No. 59 of 1993 provides for the opening of a mortgage register with the SACAA, which makes it possible for a creditor to register a mortgage over an aircraft or a share therein, or in respect of aircraft over any spare part including engines.

2.2.2 Registration procedure

Registration is on application to the SACAA with the filing of the prescribed form (MAR 2.1), and payment of the prescribed fee. The prescribed form identifies the mortgagor and mortgagee, the cause of indebtedness, and the amount secured. The application is usually accompanied by the instrument giving rise to the debt or finance transaction, together with a company resolution authorising the registration.

If the mortgage is to be registered under a Power of Attorney from a non-resident, the Power will have to be Notarised and Apostilled under the Hague Convention of 1961 and filed with the SACAA.

The certificate of mortgage does not authorise any mortgage to be made in the Republic or by any person not named in the certificate and contains the prescribed particulars as well as a statement of any registered mortgages or certificates of mortgage affecting the aircraft or share in respect of which the certificate is given.

2.2.3 Registration under the Cape Town Convention

In terms of the Convention on International Interests in Mobile Equipment Act No. 4 of 2007, the SACAA is designated, in accordance with Article 18 (5) of the Convention, as the entry point through which the information required, or registration, may be transmitted to the International Registry.

The following SACAA fees are payable (in South African Rand)* when applying for:

- The recording, transfer, transmission of rights, or discharge of a mortgage in the register of aircraft mortgages: R 2,255.
- A certificate of mortgage: R 1,680.
- Access to the register of aircraft mortgages: R 230.
- The furnishing of information from the register of aircraft mortgages: R 1.60 per page.

**Correct as of 2 June 2024*

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

In terms of Part 48 of the Civil Aviation Regulations, 2011, all aircraft lease agreements involving South African air service operators, South African-registered aircraft and foreign-registered aircraft operated by South African air service operators, or any South African operator who enters into a financial or capital lease agreement as lessee in respect of an aircraft, must provide the Director of the SACAA with a certified copy thereof, and adhere to the provisions of the Convention on the International Recognition of Rights in the Aircraft Act, 1993, where applicable.

Where a dry lease involving a foreign operator is approved by the Director, a copy of the duly completed form must be forwarded to the International Air Services Council or the Domestic Air Services Council, as applicable, for record-keeping purposes. The oversight responsibilities in respect of a dry lease of a foreign-registered aircraft may be fully or partially transferred, in terms of an Article 83*bis* Agreement, from the appropriate authority of the State of Registry to the appropriate authority of the State of the Operator.

When the conditions contemplated in sub-regulation (3) (d) of Part 48.03.1 are not met, the aircraft to be dry-leased must be registered in the Republic as prescribed in Part 47 of the Regulations, and:

(a) the aircraft shall be subject to the airworthiness certification, maintenance, and inspection procedures prescribed by the regulations in respect of South African-registered aircraft;

(b) the responsibility or custody of the aircraft and control of all operations shall be vested in the lessee operator;

(c) the responsibility for the airworthiness and maintenance of the aircraft shall be vested in the lessee operator; and

(d) the registration of the aircraft shall be valid only for the duration of the lease agreement, and for as long as the aircraft is operated in accordance with the Regulations, the terms or conditions specified in the lessee operator's operating certificate, the related operations specifications, and the lessee operator's operations and maintenance control manuals.

The conditions of approval referred to in sub-regulation (3) must be made a part of the lease agreement.

(As regards the right to retake possession of the aircraft either on breach or at the end of the contract, the comments in questions 3.1 and 3.2 below apply.)

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

The common law does not allow the automatic transfer of any rights in an asset, including a component thereof, and a court order is required in all cases. See more at question 3.1 below.

It is also not possible for an owner or operator's rights in a single engine to be separately registered; such rights can only be registered together with an interest in the airframe to which the engine is affixed. A solution may be the registration of a notarial bond over a moveable asset.

In summary, there are no general rules of self-help available.

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?

Generally, there are no taxes or stamp duties applicable to aircraft trades where the aircraft is in South Africa, or by a domestic party if exported between non-residents.

The VAT implications which are applicable are as follows:

- On the sale of aircraft between South African residents, VAT is levied at the effective rate of 15% except when the sale is between two non-residents, and they were not registered for VAT purposes.
- Exported aircraft – a sale of an aircraft that is exported should not attract any VAT, and the transaction may be zero-rated for the purposes of VAT. If the zero rating is not accepted by the Revenue Authority, due in part to inadequate documentation, etc., there is a possibility that the non-resident purchaser may apply to be exempt from registering for VAT.
- Imported aircraft or engines, other than on a temporary basis, attract VAT at 15%.

Leases – aircraft imported for the purposes of a lease will normally attract VAT on the value of the aircraft, based on the 'blue book' value. If the lessor is a non-resident and the lessee a South African resident, this may result in the lessor having to register for VAT purposes.

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

South Africa is a signatory to:

- The Geneva Convention by means of the Convention on the International Recognition of Rights in Aircraft Act No. 59 of 1993 (date of commencement: 1 January 1998).
- The Cape Town Convention by means of the Convention on International Interests in Mobile Equipment Act No. 4 of 2007 (effective date: 1 May 2007).
- The Montreal Convention by means of the Carriage by Air Amendment Act No. 15 of 2006 (date of commencement: 19 June 2007).

2.7 How are the Conventions applied in your jurisdiction?

2.7.1 The Geneva Convention

A mortgage register with the SACAA is open for a creditor to register a mortgage over an aircraft or in respect of aircraft over any spare part, including engines.

2.7.2 The Cape Town Convention

The SACAA is the designated entry point through which the information required for registration may be transmitted to the International Registry.

For the purposes of Article 53 of the Convention, the High Court of South Africa is the court that has jurisdiction, as contemplated in Chapter XII of the Convention.

As aforesaid, practical implementation of the Convention has yet to be achieved due to the inconsistencies in the local laws and regulations, and enforcement of a security interest, at present, must be made by way of an application to the High Court of South Africa.

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?

South Africa is a signatory to over 100 double taxation agreements and protocols for the avoidance of double taxation, including with most EU countries, the UK, and the USA.

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?

There is no provision in the law that the payment of rent creates an economic interest in an aircraft capable of frustrating any right to possession or legal ownership, save for the possible lien over the aircraft for any debts owed by the owner or financier or for maintenance/repairs not due by the lessee under any contract of lease.

3 Litigation and Dispute Resolution

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

In terms of the common law, a creditor may seize an aircraft for debts owing to the creditor by the debtor by means of formal proceedings in the High Court, which has discretion to order the release of the aircraft against the provision of security for the creditor's claim together with costs and interest. An aircraft can be detained under the Criminal Procedure Act if the aircraft is used in the commission of a crime. The tax authorities may also detain an aircraft when there has been a breach of customs import rules, or for non-payment of VAT.

In addition, the holder of a debtor/creditor or salvage and improvement lien over a debtor's property is regarded as a secured creditor on insolvency of the debtor. Other than the form of self-help provisions contained in the Cape Town Convention (see the comments at question 3.2 below), the creditor will, in the normal course, approach the Court for an order to seize and detain the aircraft. Urgent and *ex parte* (without notice) orders are available to the creditor regarding the formal proceedings referred to above. Where a debtor is a *peregrinus* (foreigner) to a local court, assets belonging to the debtor within the jurisdiction of the local court may be attached by an *incola* to find or confirm jurisdiction and to secure the creditor's claim.

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?

No general remedies of 'self-help' are available to financiers or lessors, who must resort to the courts in the event of default or breach of an agreement by means of formal action or motion proceedings.

South Africa has made the necessary Declaration under the Cape Town Convention to include the availability of nonjudicial remedies for a lessor seeking to re-acquire possession of the aircraft, either at the end of the contract or upon the breach thereof, under the Convention; however, practical implementation has yet to be enforced due to the inconsistency between certain provisions of the Convention and local laws. The Airline Working Group is currently hard at work in assisting local authorities to overcome the issues.

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?

Specialised aviation courts are not available in South Africa. The most appropriate courts for hearing aviation disputes are the superior courts and consist of the High Court of South Africa, and Provincial and Local Divisions which have review and appellate jurisdiction in criminal and civil matters.

The apex courts are the Constitutional Court and the Supreme Court of Appeal, which cannot be approached as a court of first instance. The rules of jurisdiction relating to the value of a claim and geographical area are important considerations in approaching the correct superior or inferior court.

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?

Service of court proceedings is obligatory and is affected by the Sheriff of the Court.

The Court Rules require personal service in matters affecting status or in sequestration proceedings, on a residence or place of business of the Defendant, or on a person who is apparently in charge of the premises at the time of service and is not younger than 16 years of age.

Service at a place of employment or at a chosen address (*domicilium citandi*), or at the registered office, is also permissible as a substituted service, or by edictal citation where the details are unknown, to initiate legal proceedings.

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?

Interim orders interdicting and preventing an aircraft from being removed pending the final determination of a court are available and can be extended to include preservation and control of the aircraft.

Article 13 of the Cape Town Convention makes provision for similar interim orders.

Final orders are made in the normal course of events once a matter has been decided upon by the arbitral tribunal or the Court.

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?

Rights of appeal from the higher courts are to the Supreme Court of Appeal and, in applicable cases, to the Constitutional Court.

A judicial review of a decision of a Court or a tribunal may be brought under the Promotion of Administrative Justice Act, 2000 (PAJA).

Decisions of the Director of Civil Aviation may be appealed to the Civil Aviation Appeal Committee, and thereafter to the High Court.

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?

Contractual obligations may be terminated when performance becomes impossible due to unforeseen events, such as acts of God, natural disasters, the actions of third parties for whom the parties are not responsible, or other exceptional circumstances. *Force majeure* clauses typically suspends contractual obligations, rather than terminating the agreement outright.

If performance is objectively impossible at the time the contract is concluded, no obligation will arise. If after the conclusion of the contract performance becomes objectively impossible without the fault of the debtor as a result of an unavoidable and unforeseen event, the obligation to perform is also, as a general rule, extinguished. This is referred to as supervening impossibility of performance.

3.8 Is there any trend developing towards regulatory support in civil justice for out-of-court solutions and the importance of engaging in Alternative Dispute Resolution (or similar)? If so, what (if any) are the implications for the answers in questions 3.1–3.7 inclusive?

The Rules of the Uniform Rules of the High Court, rule 41 A, requires litigants in every new action of application proceedings to indicate whether the parties agree to or oppose referral of the dispute to mediation. The parties may at any stage before judgment agree to refer the dispute to mediation with leave of the Court.

There have accordingly been significant moves to make mediation and arbitration in dispute resolution more mainstream and the judiciary has engaged with key players to create a viable pool of accredited and credible mediators who will offer their services at affordable fees, so that they can play a meaningful role in dispute resolution. Engaging in such alternative dispute resolution methods is increasingly popular in SA mainly due to the lengthy delays which are associated with court proceedings and allowing parties to choose a presiding officer with specialised aviation knowledge, and the proceedings are both private and confidential with a certain degree of flexibility regarding the rules and procedures.

Further, section 166 of the Companies Act No. 71 of 2008 makes provision for any party who would be entitled to apply for relief under the Act, to refer the matter to a to an accredited entity for resolution by mediation, conciliation or arbitration.

Notwithstanding these developments, the detention and self-help rights (including under the Cape Town Convention) discussed in questions 3.1 and 3.2 above may only be exercised by the Courts.

The Court procedures and rights discussed in questions 3.4 to 3.7 may be amended by agreement between the parties in setting out the terms for resolving the dispute by mediation or arbitration.

4 Commercial & Regulatory

4.1 How does your jurisdiction approach and regulate joint ventures or other forms of partnership and/or alliances between airlines? In your opinion, are there any improvements to the existing regime which would be advisable?

Joint ventures fall within the ambit of the Competition Act 89 of 1998 (the Competition Act). Competitors are normally regarded as being in a horizontal relationship. In terms of Section 4(1) of the Act, an agreement between, or concerted practice by firms, or a decision by an association of firms, is prohibited if it is between parties in a horizontal relationship and if the joint venture prevents or reduces competition or, alternatively, constitutes a merger in a manner contemplated in the Competition Act.

The relaxation of local ownership rules will go a long way to promote joint ventures and other forms of partnership and/or alliances between airlines.

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

The 'relevant market' is determined primarily with a specific focus on the aviation sector, but there is scope for a narrower focus as to the specific type of aviation sector in which the transaction occurs, if distinguishable (e.g. cargo transport). To date, there have not been any cases in terms of which a narrower view of a specific type of sector within the aviation industry was applicable.

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

The Commission's Corporate Leniency Policy (CLP) offers a cartel member the possibility to disclose information on a cartel to the Commission in return for immunity from prosecution and fines. Immunity is only available to the first cartel member to approach the Commission.

If other cartel members wish to come clean on their involvement in the same cartel, the Commission will also encourage such cooperation outside the scope of the CLP, which can eventually result in a reduction in the fine to be paid in a settlement agreement. Any member of a cartel can apply for leniency and must comply with the requirements set out in the CLP.

Parties to intermediate and large mergers are required to notify the Commission in the prescribed format, and the parties to such mergers may not implement them until they have been approved by the Commission.

Parties to a small merger may implement the merger without the approval of the Commission (and, as such, are not obliged to notify the Commission of that merger).

An Advisory Opinion may be requested from the Commission by external parties to provide guidance on the position that the Commission is likely to take in respect of certain transactions, agreements or practices (on payment of a fee of R 2,500). An Advisory Opinion is not binding on the Commission.

4.4 How does your jurisdiction approach mergers, acquisition mergers and full-function joint ventures? In your opinion, are there any improvements to the existing regime which would be advisable?

Mergers are generally regulated by the Competition Act; however, where an airline is concerned and foreign ownership results, aviation legislation rather than the Competition Act comes into play.

If the applicant is not a natural person resident in the Republic, at least 75% of the voting rights of a domestic carrier must be held by residents of the Republic (Section 16(4)(c)(ii) of the Air Services Licensing Act, 1990), and the aircraft which will be used in operating the air service is a South African-registered aircraft (Section 16(4)(e) of the Air Services Licensing Act, 1990). The voting rights in respect of a South African-licensed international carrier need to be substantially held by residents of the Republic, and the aircraft which will be used in operating the air service is a South African-registered aircraft (Sections 17(5)(a) and 17(5)(c) of the International Air Services Act, 1993).

Joint ventures will most likely be dealt with under the provisions of the Competition Act dealing with restrictive practices – horizontal and vertical (Sections 4 and 5) – rather than a merger, unless they are constructed in a special purpose vehicle (company), in which case the merger provisions would apply.

No improvements to the existing regime are advised save as what has been mentioned before to lower the foreign ownership threshold from 75% to at the very least, 50%.

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

4.5.1 Procedure

A notification must be made in a single filing by one of the primary firms, and must include:

(i) A Merger Notice in Form CC 4 (1), which must declare the names of the primary acquiring and target firms and whether, in the opinion of the filing firm, the merger is small, intermediate or large.

(ii) For each of the primary acquiring firm and the primary target firm, a Statement of Merger Information in Form CC 4 (2).

(iii) All the required documents must be provided together with payment of the fees.

4.5.2 Timing

The Competition Act does not prescribe a specific time limit within which a merger must be notified. As the parties to a merger may not implement the merger until it has been approved by the relevant competition authority, the parties have an incentive to notify the merger as soon as possible.

The Commission has an initial 20 business days to investigate intermediate and small mergers and can extend the investigation by 40 business days. Regarding large mergers, the Commission has an initial 40 business days to investigate and can extend by a maximum of 15 days.

Under non-binding, indicative Service Standards issued by the Commission, the timeframes given are:

- Phase 1 cases (non-complex) – 20 business days.
- Phase 2 cases (complex) – 45 business days.
- Phase 3 cases (very complex) – 60 business days.

4.5.3 Fees

A filing fee of R 165,000 is required for the notification of an intermediate merger, and R 550,000 is required for the notification of a large merger.

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?

No State aid provisions exist in the Competition Act for air operators or airports.

Government domestic air transport policy includes undertakings to create a competitive domestic air transport market to level the playing field, and equal treatment of State-owned airlines in a competitive market, as opposed to a market that is reserved for a State-owned and controlled monopoly.

The Domestic and International Air Services Council normally requires a 'guarantee' for consumer protection regarding cash receipts for flights not yet undertaken.

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

No State subsidies are available currently. The Airlift Strategy 2006 does, however, create a framework for public service obligations and national interest considerations:

> *"Consistent with the spirit of sound commercial operations, air carriers should have no obligation to provide services below cost to any institutions whether Government or otherwise, unless such intervention is required based on national interest considerations and subject to appropriate financial compensation."*

In terms of the Government's public service obligations, air transport services on routes that are not economically viable should be invited through a transparent public tender process.

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 Protection of Personal Information Act, 2013 is the closest thing to a dedicated piece of data protection legislation such as the EU Data Protection Directive.

There is currently no dedicated data protection legislation in South Africa, although other legislation does provide some protection, these being the Consumers Protection Act, the National Credit Act, the Promotion of Access to Information Act, the Electronic Communications and Transactions Act, and the Regulation of Interception of Communications and Provision of Communications-Related Information Act.

The Constitution of South Africa Act No. 108 of 1996 and the common law continue to provide for the right to privacy and impose certain restrictions on the processing and disclosure of personal information.

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?

No mandatory breach notification procedure exists. Individuals' rights are enforced, and damages are claimed through the common law and the Constitution and enforced by the courts. Normal appeal procedures are available to a carrier against whom damages are granted, as set out in question 3.5 above.

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?

Trademarks and Patents are protected by the Trade Marks Act and the South African Patents Act 57 of 1978 and are registered with the Companies and Intellectual Property Commission. An action for infringement may be brought in the Court of the Commissioner of Patents (an *ad hoc* court set up under the High Courts of South Africa). Unregistered trademarks may be defended in terms of common law.

South Africa is a signatory to the Paris Convention, and therefore protection is afforded to trademarks that are well known, even if they are not registered in South Africa. South Africa is also a member of the Patent Co-operation Treaty (PCT). Copyright is protected under the Copyright Act No. 98 of 1978.

4.11 Is there any legislation governing the denial of boarding rights, delayed flights and/or cancelled flights? Is this legislation adhered to and well monitored?

The Consumer Protection Act 68 of 2009 (CPA) applies to the promotion and supply of goods and services concluded in the ordinary course of business between suppliers and consumers and provides some protection to passengers in the event of a denial of boarding under certain circumstances. The Code of Conduct for Consumer Goods and Services is applicable regarding overselling and overbooking.

The CPA under Section 47 provides for the reasonableness test for overselling and overbooking. In terms of this test, a supplier may not accept payment for goods or services where it has no reasonable intention to supply the goods or services.

Regarding damages suffered because of a supplier's inability to supply goods or services due to overbooking or overselling, the CPA provides for a refund of the amount paid plus interest (usually, this would be the deposit plus interest), as well as any consequential damages that directly resulted from the breach of contract.

The aforesaid legislation and remedies are sparsely applied and not well known by air travellers.

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

There is no applicable legislation or sanction available to authorities currently. It is worth noting that Article 19 of the Warsaw Convention as incorporated in terms of the Carriage by Air Act is applicable to carriers.

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

State airports are governed by the Airports Company Act No. 44 of 1993, which imposes levies and airport charges with the permission of the Regulating Committee and is restricted from having any financial interest, either directly or indirectly, in the provision of any air service and may not unduly discriminate against or among various users, or categories of users, of any company airport.

The Airports Company is obliged to conduct its business in such a manner as to ensure that it: does not engage in any restrictive practice as defined in Section 1 of the Maintenance and Promotion of Competition Act No. 96 of 1979; does not change the level or modify the structure of any airport charge more than twice within a financial year; publishes any airport charge at least three months prior to the coming into operation of such charge; and ensures that relevant activities are performed subject to any relevant activity service standards, which shall conform to internationally accepted and recommended practices.

The Air Traffic and Navigation Services Company Act No. 45 of 1993 transferred certain assets and functions of the State to a public company responsible for the provision and control or operation of air navigation infrastructure, air traffic services and air navigation services. The ATNS is entitled to levy air traffic service charges by virtue of a permission issued by the Regulating Committee.

(Refer also to question 1.6 regarding slot allocations and the introduction of the Airport Slot Coordination Regulations, 2012.)

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

The CPA, as stated in question 4.11 above, applies to the promotion and supply of goods and services to consumers within South Africa, and thus generally applies to the relationship between the airport operator and the passenger.

If a passenger were to cancel a flight, he/she would be entitled to a refund of the airport taxes included in the air fare under the provisions of the CPA.

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

The major global distribution suppliers operating in South Africa are Amadeus, Travelport Distribution Systems via its Galileo and Worldspan distribution channels, Sabre, Airline Solutions, Altéa GDS and Pegasus.

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

There is no ownership requirements placed upon GDSs operating in South Africa.

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

In terms of Section 5 of the Competition Act, an agreement between parties in a vertical relationship is prohibited if it has the effect of substantially preventing or lessening competition in a market, unless a party to the agreement can prove that any technological, efficiency or other pro-competitive gain resulting from that agreement outweighs that effect.

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?

Operating a domestic air service is subject to Section 16(4)(c) and (d) of the Air Services Licensing Act No. 115 of 1990, in that the applicant for an AOC must be: a natural person, who is a resident of the Republic; or if not a natural person, the applicant must be incorporated in the Republic, with at least 75% of the voting rights in respect of such entity held by residents of the Republic; and actively and effectively in control of the air service. NB: The Act makes provision for the Domestic Air Services Licensing Council to exempt an applicant, on the conditions determined by the Minister (of Transport), from the above provisions if the Minister, after considering an application, directs the Council to exempt such applicant; and a resident of the Republic is defined in the Licensing Act as 'a person who has his or her ordinary residence in the Republic and who is a South African citizen by virtue of the provisions of the South African Citizenship Act, 1995'.

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 interpretation of Section 16(4) of the Air Services Licensing Act No. 115 of 1990 is increasingly under the spotlight and the recent decision by the Council against Flysafair's ownership structure will be heard by the Courts in 2025 (see question 1.10 above).

There will be a further focus on the issue of foreign ownership restrictions of local airlines with increasing interest in foreign airline's participation in local carriers such as the 25% stake recently taken by Qatar Airlines in South Africa's Airlink.

Sustainable aviation fuels (SAFs) are expected to play a pivotal role in the decarbonisation of the aviation industry. South Africa has been earmarked as a major player in SAF production technologies, and is actively participating in ICAO's Assistance, Capacity-building, and Training for Sustainable Aviation Fuels (ACT-SAF) programme.

Chris Christodoulou is a dual-qualified Solicitor in England & Wales and a South African Attorney, specialising in aviation and commercial law. He has advised local and international aviation clients including owners and operators, maintenance organisations, lessors and lessees, investment companies and third-party suppliers in all aspects of aviation law and has rendered Legal Opinions in numerous aircraft acquisition transactions for foreign counsel.

Chris previously served as a Non-Executive Director of a commercial airline and was a member of the South African Civil Aviation Authority Appeal Committee.

Christodoulou & Mavrikis Inc
Office 104B, 104 Oxford Building
11–9th Street, Houghton Estate
Johannesburg, 2198
South Africa

Tel: +27 82 377 6631 / +27 113 254 201
Email: chris@cm-attorneys.com
LinkedIn: www.linkedin.com/in/chris-c-698438

Afroditi Papasotiriou is a Candidate Legal Practitioner and has been serving her practical vocational training with Christodoulou & Mavrikis Inc since January 2024.

Afroditi holds B.Com and LL.B. degrees from the University of Pretoria and has recently completed the Fundamentals of Aviation Law course at the University of Cape Town's faculty of law. She has also completed the Practical Legal Training Course and other commercial, litigation and contract law courses.

Christodoulou & Mavrikis Inc
Office 104B, 104 Oxford Building
11–9th Street, Houghton Estate
Johannesburg, 2198
South Africa

Tel: +27 113 254 201
Email: afroditi@cm-attorneys.com
LinkedIn: www.linkedin.com/in/afroditi-papasotiriou-38419a228

Christodoulou & Mavrikis Inc is a corporate and commercial law firm established in Johannesburg in 1991, with expertise in local and international aviation, commercial law, and with litigation and dispute resolution capabilities.

The firm provides a full range of aviation law services including liability and contentious issues, drafting, and negotiating aviation related agreements and other commercial aspects of aviation, including aircraft acquisitions and sales, aviation financing, repossessions, acquisitions and aircraft registrations, and more recently airline insolvencies.

Recent aviation matters include: securing the release of several aircraft attached by judicial means; providing various legal opinions on matters ranging from drone regulatiuons, operator licensing and local ownersship issues; drafting and negotiating aircraft sale and lease transaction; drafting employement agreements; drafting a joint venture memorandum of understanding for a European wet lease operator; and advising the liquidators of a insolvent commercial airline on the diposal of aircraft and aviation assets.

www.cm-attorneys.com

Christodoulou & Mavrikis Inc
ATTORNEYS

iclg International Comparative Legal Guides

The **International Comparative Legal Guides** (ICLG) series brings key cross-border insights to legal practitioners worldwide, covering 58 practice areas.

Aviation Law 2025 features two industry chapters, three expert analysis chapters and 24 Q&A jurisdiction chapters covering key issues, including:

- General Aviation Law
- Aircraft Trading, Finance and Leasing
- Litigation and Dispute Resolution
- Commercial and Regulatory
- The Future of Aviation Law

The International Comparative Legal Guides are published by: glg Global Legal Group