

Air Transport

In 37 jurisdictions worldwide

Contributing editors

John Balfour and Mark Bisset



2015

GETTING THE
DEAL THROUGH 

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DEAL THROUGH 

Air Transport 2015

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Indonesia

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General

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

The basic law governing aviation is laid down by the parliament, currently through Law No. 1 of 2009 on Aviation (the Aviation Law). The Aviation Law authorises the Ministry of Transport (MoT) to cover not only further implementing regulations but also control and supervision.

Regulation of aviation operations

2 How is air transport regulated in terms of safety?

Air transport safety is regulated by the MoT in accordance with international standards. Strict requirements are mandated by the MoT as to the airworthiness and operations of aircraft, qualification as aircraft operators, airport standards, safe flight operation zones, maintenance of aircraft, technical and operational requirements for flight navigation services (air traffic control), and for the granting licensing schemes for pilots, crew, ground staff, flight procedure design and air traffic controllers.

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

Private operators are subject to regulations that in most respects are identical to the regulations applicable to airlines.

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

The following are the primary restrictions on access to the market for the provision of air transport services:

- domestic scheduled commercial air transport may only be operated by a national airline after securing a licence from the MoT;
- the principal restrictions on access to the international market for national airlines are ownership and control requirements. Foreign shareholdings are limited to 49 per cent of the share capital, and there shall be an Indonesian shareholder as the controlling party (single majority);
- a foreign airline must demonstrate that it is designated by its country and approved by the Government of Indonesia (GoI) under a bilateral or multilateral agreement. In the case of international regular air transport constituting part of a multi-sector multilateral agreement, it still must be established under a bilateral agreement; and
- ownership and possession of a certain number of aircraft, as follows: (i) scheduled airlines shall own at least five aircraft and possess at least five aircraft; and (ii) unscheduled and cargo airlines shall own at least one aircraft and possess at least two aircraft.

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

The MoT already regulated the standards to measure and evaluate the financial fitness of air carriers. The standard is divided into two main criteria: (i) criteria for a commercial air carrier licensee as the applicant of an air operator certificate (AOC); and (ii) criteria for a commercial air carrier licensee as the holder of an AOC. For each of the criteria, the MoT determines the debt-to-equity ratio, debt-to-total-asset ratio, current ratio, working capital turnover and other

applicable standards. However, for an air carrier candidate, no specific standard of financial fitness assessment is currently being regulated.

The Aviation Law restricts foreign ownership for national air carriers to no more than 49 per cent of the share capital and there must be an Indonesian shareholder as the controlling party (single majority).

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

The GoI as the particular route operator will tender the licence to operate particular routes to either a commercial air carrier or non-commercial air carrier, in the absence of commercial air carriers which are willing to serve the routes. The cooperation between the GoI and an entity will be in the form of a contract.

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

As described in question 6, the tender participants (commercial air carriers or non-commercial air carriers) are entitled to submit a written rebuttal with unsatisfactory results of the tender. The written rebuttal is submitted to the tender committee after the announcement of the winner and the tender committee must respond in writing to all of the rebuttals. As a response to the tender committee's response, the entity may further submit an appeal to the MoT, regional head, or head of the institution of the tender organiser by granting a guarantee.

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

Indonesia does not have a detailed declared policy on airline access or competition. However, the Aviation Law adopts two key principles in undertaking aviation business in Indonesia, namely transparency and antimonopoly.

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

For international scheduled air services, a foreign airline must demonstrate that it is designated by its country and approved by the GoI under a bilateral or multilateral agreement. Meanwhile, for international unscheduled air services, a foreign air carrier must first obtain a flight approval from the MoT and other relevant ministries (including the Ministry of Defence). The GoI will tender a licence to operate particular routes to either a commercial air carrier or a non-commercial air carrier.

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

According to the Aviation Law and Directorate General of Civil Aviation (DGCA) decree, the GoI has a public service obligation to connect remote areas (not supported by other means of transport) that are commercially unprofitable, to encourage territorial development and promote defence and homeland security. The GoI will tender a licence to operate particular routes to either a commercial air carrier or a non-commercial air carrier.

11 Are charter services specially regulated?

Charter services are classified as non-scheduled air transport, and are therefore regulated under the regulations pertaining to non-scheduled air

transport services. Such services may be conducted by a national air transport business entity carrying out domestic non-scheduled commercial air transport after getting a non-scheduled commercial air transport business licence after securing flight approval from the MoT.

For foreign non-scheduled commercial air transport activities that are engaged in by national commercial air transport business entities, approval is needed from the MoT, while for foreign non-scheduled commercial air transport activities that are engaged in by foreign air transport companies, approval is needed from the relevant minister (minister of foreign affairs for diplomatic clearance approval and minister of defence for security clearance approval).

12 Are airfares regulated and, if so, how?

The Aviation Law regulates four ways to determine airfares, namely:

- a tariff ceiling for domestic economy class commercial air transport applicable for passengers;
- a market mechanism for domestic non-economy services of scheduled commercial air transport applicable for cargo and passengers;
- an agreement between users and providers of transport services for domestic non-scheduled air transport for passengers and cargo; and
- a bilateral and multilateral air transport agreement for foreign scheduled commercial air transport for passengers and cargo.

Aircraft

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

DGCA shall record details of aircraft owners, operators, manufacturers' designation and serial number of an aircraft in the register.

An owner of an aircraft to be registered in Indonesia must be a citizen or legal entity of Indonesia. A foreign citizen or legal entity is allowed to register its aircraft in Indonesia, provided that the aircraft is operated and/or controlled by a citizen or legal entity of Indonesia under an agreement.

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

There is no register of aircraft mortgages or charges in Indonesia. An Indonesian aircraft, subject to a security agreement, title reservation agreement and/or leasing agreement will be registered in the International Registry.

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

The government normally will not detain an aircraft based on non-payment of debt to the GoI or any other parties. However, for safety and security considerations, an airport has the authority to keep an aircraft from taking off if it does not have flight approval.

16 Do specific rules regulate the maintenance of aircraft?

The Aviation Law and other implementing regulations require that maintenance is mandatory for an aircraft. These regulations manage, for example, maintenance practices, air operator certificate, approved maintenance organisation and aircraft maintenance engineer licences.

Airports

17 Who owns the airports?

Airports in Indonesia are privately and publicly owned. Private airports may be owned by either the GoI (central or regional) or an Indonesian legal entity. Meanwhile, public airports, prior to the enactment of the Aviation Law, could only be owned by the government through a state-owned enterprise, namely PT Angkasa Pura I (AP I) and PT Angkasa Pura II (AP II).

Currently, the Aviation Law has opened up an opportunity for the private sector to participate in operating a public airport business through a public-private partnership scheme. In determining a private partner, the MoT will hold an open tender, and the winning bidder will enter into a concession agreement with the MoT. Under the prevailing laws, there is no priority right granted to AP I and AP II as airport operators, thus putting their status on the same footing as other business entities.

Currently, the Aviation Law has opened up an opportunity for the private sector to participate in a public airport business through a public-private partnership scheme. There is no limitation as to the number of

airports that may be owned by an Indonesian airport business entity. However, Indonesia limits foreign ownership shareholdings to a maximum of 49 per cent on becoming an airport business entity. In line with the opportunity for private participation, a regulation on the public airport business is currently being prepared by the MoT.

18 What system is there for the licensing of airports?

All airports need approval to be established and require licences and certificates to operate the airport. Such licences and certificates are issued either by the MoT or DGCA. The licensing processes involve a general assessment of a national airport master plan, safety and security, environmental aspects, economics and financial worthiness, etc. Detailed rules and requirements are set out by the MoT and DGCA. Meanwhile, airport services licensing will be covered by a ministerial regulation on airport services that is being prepared by the MoT.

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

Yes. The Aviation Law imposes charges for airport services such as landing charges, parking charges, storage charges, passenger service charges, security charges and other applicable charges. The MoT is mandated by the Aviation Law to stipulate the structure and the category for these charges, while the amount of the charges is determined by the airport operator and cannot contravene the MoT stipulation. As mandated by the Aviation Law, the MoT is currently preparing a ministerial regulation on airport service charges.

Airport-related services such as ground handling, cargo and mail handling, aircraft catering and other services will also be required to charge fees. The charges for these services are determined by the service provider based on an agreement between the service provider and service users.

It is also worth noting that air navigation services in Indonesia are also required to charge fees. The charges are based on the structure and category of charges. As well as aviation service charges, the structure and category of charges for air navigation services will be stipulated by the MoT. The charges of air navigation services for airports operated by the GoI are determined by the GoI itself, while air navigation services operated by an air navigation service body will be determined by the air navigation services body concerned.

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

Other than compliance with the requirements on licensed airlines, registered aircraft, flying permits and general safety standards, there are no restrictions to access airports. However, please note that Indonesia adopts the cabotage principle. Consequently a foreign air carrier cannot provide domestic flight within Indonesia.

21 How are slots allocated at congested airports?

Slots are coordinated by the Indonesian Slot Coordinator (IDSC) and regulated by DGCA. Those regulations refer to the International Air Transport Association (IATA) Worldwide Scheduling Guidelines.

DGCA has determined a number of congested airports. Slot clearance in the congested airports is determined by the IDSC in reference to the notice of airport capacity (NAC). Slot clearance is prioritised for scheduled flights.

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

Besides being regulated in the Aviation Law, ground-handling services are further regulated by DGCA. Ground-handling services may be done by Indonesian individuals or Indonesian legal entities, including stated-owned enterprises (being AP I or AP II) and local state-owned enterprises.

The foreign shareholdings limitation in an Indonesian legal entity providing ground handling services is limited to 49 per cent.

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

As of 13 September 2012, air traffic control services are provided by the Indonesian Aviation Navigation Services Agency (LPPNPI) replacing AP I, AP II and the technical execution unit of DGCA as the previous providers. LPPNPI was established in the form of a public corporation in order to prevent it from mere profiteering in providing its services. The air traffic

control services provision by LPPNPI covers two flight information regions (FIRs), namely Jakarta FIR and Makassar FIR. The services provided by LPPNPI include:

- air traffic services, including air traffic control, flight information, and alerting services;
- aeronautical telecommunications services incorporating aeronautical fixed and mobile services, and aeronautical radio navigation services;
- aeronautical information services (AIS) consisting of aeronautical information, aviation maps, public announcements to airmen, and airport aeronautical information;
- meteorological information services; and
- information on search and rescue services.

Liability and accidents

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

The MoT regulates that air carriers can be obliged to pay compensation with regard to:

- accidents resulting in the death of passengers and accidents resulting in permanently disabled passengers;
- flight delays;
- lost, disappeared and damaged cargo and baggage; and
- aggravation to a third party due to an aircraft operation, aircraft accident or the fall of objects from operated aircraft.

The amount of compensation for each event is stipulated precisely under the regulation.

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

In addition to regulating the relationship between the carrier and the customer, the MoT also regulates aggravation to a third party due to an aircraft operation, aircraft accident or the fall of objects from operated aircraft. Further, the MoT determines the amount of compensation payable by the aircraft operator to a third party as a victim.

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

Aircraft accidents are investigated by the National Committee for Transportation Accidents (KNKT). KNKT's tasks are to:

- conduct an investigation at the location of the plane crash;
- collect data and information, explanations and evidence of the plane crash;
- collect data and information about the aircraft and plane crew involved in the crash, data of the flight navigation services, and meteorological and other data related to the operation of the afflicted aircraft;
- evaluate, analyse and make a conclusion as to the most probable cause of the aircraft accident;
- report on the results of the research to the MoT with a copy to the DGCA; and
- make recommendations to the relevant parties in order to prevent accidents with the same cause.

KNKT is not responsible for prosecuting criminal behaviour or assigning blame.

For the advanced investigation of air accidents, the Aviation Law has mandated KNKT to form an aviation profession council. The aviation profession council will be entitled to:

- recommend the MoT on the imposition of administrative sanctions or performance of further inquiry by a civil servant investigator;
- rule over the dispute between the parties as a result of air accidents; and
- recommend the implementation of aviation regulations.

To date, however, the process of forming an aviation profession council is still under way as there has been intensive discussion among aviation stakeholders.

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

The MoT already regulates a mandatory reporting system for: (i) aircraft operators' report for an aircraft accident and incident; and (ii) airport

operators' report for an accident, incident and serious incident occurring at an airport. For an aircraft accident and incident, the report shall be immediately submitted by aircraft operators to KNKT, DGCA and regional governments, and shall cover mandatory minimum information as applicable. Meanwhile, for accidents, incidents and serious incidents occurring at an airport, airport operators shall submit a report to the director general of civil aviation, the director of airports in the DGCA and the AIS Unit by using the applicable format.

Competition law

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

There are no sector-specific competition rules applicable to aviation. General competition law rules do apply, such as Law No. 5/1999 on Prohibition of Monopolistic Practices and Unfair Business Competition (Law No. 5/1999).

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

Competition rules apply to all sectors including the aviation sector by a general competition authority called the Business Competition Supervisory Commission (KPPU).

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

Law No. 5/1999 states that the relevant market consists of the relevant product market and the relevant geographic market. The relevant geographic market is a set of geographical areas where the alternative sources of supply for the relevant product are located. To determine them, the KPPU evaluates company policies, transport costs, duration of trip, tariffs and regulations that limit the trade traffic between areas.

The relevant product market includes the goods or services that are being investigated and their replacements. For the substitution analysis, the KPPU evaluates the consumers' preferences, the goods' characteristics, prices, and functions of the possible substitutes.

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

Substantially, Law No. 5/1999 stipulates three basic prohibitions, namely:

- prohibited agreements;
- prohibited activities; and
- dominant position.

Relevant markets and dominance are the main criteria for assessing the competitive effect of a transaction under Law No. 5/1999. The standards will assess the effective competition and also determine any company having market power in relevant markets. This assessment aims:

- to analyse whether a company or group of companies with significant market power have restricted competition on the relevant market; and
- to assess that there is no abuse of dominant position in the relevant market.

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

The KPPU is tasked with undertaking in-depth examinations on agreements or practices that may be anti-competitive. In carrying out that duty, the KPPU is authorised, upon its initiative or complaints, to investigate practices or acts that may infringe competition rules in Indonesia. If it finds any infringement of competition, KPPU may impose sanctions on the business practitioner. These sanctions may be in the form of:

- administrative sanctions, such as the decision to annul the agreement, impose a fine and compensation;
- penal sanctions; and
- additional penalties such as business licence revocation.

Financial support and state aid

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

In the aviation sector, the GoI will provide financial support for a private company undertaking pioneer air transport activity in the form of aid for

Update and trends

Air liberalisation within the Association of South East Asia Nations (ASEAN) will start in 2015 (ASEAN Open Sky). Thus, it is worth seeing how smooth the implementation of this policy is within the ASEAN countries. Besides liberalisation within ASEAN, ASEAN also paves the way to the possibility of having an open skies agreement with EU as the two regional organisations concluded in a joint declaration early last year. Owing to the development within the region and increase in air traffic, airports and airlines development (including privatisation), labour (flight crew), safety and security, as well as competition, will draw much attention in the forthcoming years. Furthermore, to encourage internal Indonesian and regional air transport development, GoI is now focusing on preparing a set of regulations. The latest update is that, besides preparing some regulations as mentioned above, GoI is also preparing an aircraft mortgage law.

air transport operation costs and/or aid for fuel transport costs. In addition, the GoI may grant a guarantee in respect of airport construction.

In addition, Law No. 17/2003 on State Finances, as the general state aid rule, stipulates that the central or regional government can provide aid to a private company (including a private company in the aviation sector) in the form of loans, gifts or capital participation, provided that the aid must first be set out in the state/regional budget.

The GoI does not only support direct financing but also indirect financing in the form of incentives to be released from paying value added tax (VAT) to companies operating overseas flights.

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

Indonesia does not regulate any main principles related to state aid rules that are applicable to the aviation sector. Nevertheless, Law No. 17/2003 governs several principles in managing state finance, namely good order, compliance with laws and regulations, efficiency, economical, effective, transparent and accountable.

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

Not applicable.

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

Not applicable.

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

Not applicable.

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

Not applicable.

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

Yes, there are a number of passenger protection regulations, concerning the protection of passengers' flight safety and security, airfares, accidents resulting in the death of passengers and accidents resulting in permanently disabled passengers, flight delays, lost, disappeared and damaged cargo and baggage, etc.

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

Insurance is mandatory. No carrier will be allowed to operate an aircraft in Indonesia unless it has the requisite insurance policies that protect:

- operated aircraft;
- personnel of the operated aircraft;
- responsibility for second-party loss;
- responsibility for third-party loss; and
- incident investigation activities.

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

Aviation security requirements are regulated by the government. According to the regulation, the MoT has a vital role in preserving aviation security. The aviation security covers security of airports, aircraft, flight personnel, passengers, cargo, etc. For example, screening must be conducted on passengers, baggage, cargo and mail in order to be able to enter into an airport.

42 What serious crimes exist with regard to aviation?

The Aviation Law contains a number of aviation-related sanctions, including the endangering of aircraft, passenger, cargo or third parties by disregarding aviation rules. The Indonesian Criminal Code, however, contains sanctions for most serious aviation-related crimes, for example:

- air piracy;
- destruction of aircraft;
- air sabotage;
- carrying air hazardous material;
- acts against air traffic; and
- acts against the safety and security of aircraft.

These crimes are subject to penalties.

In line with this, Indonesia has also ratified several conventions in relation to aviation crime, such as the Tokyo Convention of 14 September 1963, the Hague Convention of 16 December 1970 and the Montreal Convention and Protocol of 23 September 1971.

* *Loura Hardjaloka and Anita Patresya Damanik, both associates at Bahar & Partners, have assisted in the preparation of this review.*

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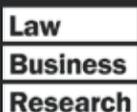
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