

# Air Transport 2021

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# Air Transport 2021

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Lexology Getting The Deal Through is delighted to publish the fifteenth edition of *Air Transport*, which is available in print and online at [www.lexology.com/gtdt](http://www.lexology.com/gtdt).

Lexology Getting The Deal Through provides international expert analysis in key areas of law, practice and regulation for corporate counsel, cross-border legal practitioners, and company directors and officers.

Throughout this edition, and following the unique Lexology Getting The Deal Through format, the same key questions are answered by leading practitioners in each of the jurisdictions featured. Our coverage this year includes new chapters on Luxembourg and Sweden.

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Every effort has been made to cover all matters of concern to readers. However, specific legal advice should always be sought from experienced local advisers.

Lexology Getting The Deal Through gratefully acknowledges the efforts of all the contributors to this volume, who were chosen for their recognised expertise. We also extend special thanks to the contributing editors, Tom van der Wijngaart and Inês Afonso Mousinho of Clyde & Co LLP, for their continued assistance with this volume.



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## REGULATORY FRAMEWORK

### Regulators and primary legislation

1 | Which bodies regulate aviation in your country? Under what basic laws?

The aviation industry is governed principally by the Civil Aviation Act 2016 (CAA), the Civil Aviation (Licensing of Air Services) Regulations (the Air Services Regulations) and the Airport Authority Act (AAA). The CAA provides that the Minister responsible for aviation (who is currently the Minister of Tourism and Aviation) has the general duty of organising, carrying out and encouraging measures for the development of civil aviation.

The CAA also establishes an authority known as the Civil Aviation Authority of The Bahamas (BCAA). The BCAA is governed by a board appointed by the Minister. The BCAA is headed by a Director of Civil Aviation who is also appointed by the Minister. The BCAA is responsible for the control and regulation of civil aviation in The Bahamas.

The Air Services Regulations establishes the Air Transport Advisory Board, which is responsible for advising the Minister on matters relating to licensing of air services.

The AAA is an act that provides for the establishment of a body corporate known as the Airport Authority, which has oversight and management of public airports.

## AVIATION OPERATIONS

### Safety regulations

2 | How is air transport regulated in terms of safety?

The Civil Aviation Act 2016 (CAA) provides that the competent authority for regulating air transport in The Bahamas is the Civil Aviation Authority of The Bahamas (BCAA). Air transport is regulated by the BCAA in accordance with the Civil Aviation (General) Regulations 2017 (the General Regulations). The General Regulations include a series of schedules (the Schedules) that prescribe in detail a broad range of safety-related requirements including but not limited to operators, aircraft operations, crew maintenance and air traffic control. The Schedules provide specific technical safety requirements in support of the General Regulations to ensure that operations in The Bahamas meet international standards for aviation safety.

Additionally, section 26 of the CAA provides that every aircraft operator (domestic and foreign) operating within The Bahamas shall establish and maintain an aircraft operator security programme (AOSP) approved in writing by the BCAA, and shall not operate without, or contrary to, an approved AOSP. It is further provided that an AOSP approved by the BCAA shall provide adequate procedures, training, contingency planning and other measures to protect the security of aircraft, aircrews and passengers, before and during flight operations.

The AOSP shall also comply with the National Civil Aviation Security Training Programme and with any model aircraft operator security programme provided by the BCAA for adoption and use by aircraft operators. In December 2019, the Bahamian House of Assembly passed the Aircraft Accident Investigation Authority Act. This Act continues the Air Accident Investigation Department, which was a department under the BCAA as a separate authority that is responsible for the investigation into civil aviation accidents and incidents. Additionally, this new authority is also empowered to issue safety recommendations.

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

Schedule 10 to the General Regulations (Operations of Aircraft) prescribes requirements for operations conducted by an airman licensed in The Bahamas while operating aircraft registered in The Bahamas and also operations of foreign-registered aircraft by Bahamian air operator certificate (AOC) holders. Schedule 10 includes provisions for manuals and markings, flight crew requirements, flight plans and flight rules. Schedule 10 is applicable to both aerial work and general aviation.

Aerial work is defined in Schedule 1 to the General Regulations as including but not limited to an aircraft operation in which an aircraft is used for specialised services such as agriculture, construction, photography surveying, observation and patrol, search and rescue and advertising. Aerial work operations are regulated under Schedule 11 to the General Regulations. An aerial works certificate issued by the BCAA is required for the conduct of aerial works.

Conversely, Schedule 1 defines general aviation operation as an aircraft operation of a civil aircraft for other than a commercial air transport operation or aerial work operation. General aviation is regulated under Schedule 28 to the General Regulations. Schedule 28 applies to the general aviation operations of:

- large aircraft (ie, aeroplanes having a maximum certified take-off mass of over 5,700kg/12,500lbs);
- turbojet-powered aircraft; and
- other aircraft configured for more than nine passengers.

### Market access

4 | How is access to the market for the provision of air transport services regulated?

Section 63 of the CAA provides that no aircraft shall be used for the carriage by air of passengers or cargo for hire, remuneration or other valuable consideration unless the operator of the aircraft holds an air transport licence and complies with the terms of the air transport licence. Air transport licences are granted by the Minister responsible for aviation. The Air Services Regulations empower the Minister to grant

permission to operate scheduled journeys and charter services, being journeys other than scheduled journeys.

### Ownership and control

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

A Bahamian air operator must provide adequate proof that he or she is a national of The Bahamas or a body incorporated under the laws of The Bahamas that is substantially owned and effectively controlled by nationals of The Bahamas. As a matter of policy established by the Air Transport Advisory Board, 'substantially owned and effectively controlled' means:

- not less than 60 per cent of a company's shares are beneficially owned by Bahamian nationals;
- at least two-thirds of the board members are Bahamian citizens;
- the chair of the board is a Bahamian citizen;
- the carrier's head office is in The Bahamas; and
- the carrier's operational base is in The Bahamas.

The Minister must also be satisfied that the applicant to be granted a licence to provide air carrier services is a fit person to operate aircraft under the authority of the licence that the Minister considers should be granted to the applicant, having regard to:

- the applicant's, and any employee's, experience in the field of aviation and their past activities generally; and
- where the applicant is a body corporate, the experience in the field of aviation and past activities generally of the persons appearing to the Minister to control that body.

The applicant must also be able to demonstrate that the resources of, and any financial arrangements made by, the applicant are adequate for discharging the applicant's actual or potential obligations in respect of the proposed business activities that the applicant intends to engage in. This includes its ability to ensure that aircraft under its operations will be operated safely and the ability to provide satisfactory equipment, along with adequate organisation and staffing arrangements. A new applicant for a licence to provide air carrier services may be required to demonstrate that it possesses sufficient resources to operate for six months without income.

A foreign air carrier must be registered in a state that has an air services agreement or other special arrangement with The Bahamas for it to be granted a licence to operate in The Bahamas. The foreign air carrier must also possess among its required documents a copy of the operations specifications issued by the BCAA permitting its operations in The Bahamas.

### Licensing

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

Procedural requirements for air carriers to operate in The Bahamas will depend on the nature of the operation requested by the carrier. Types of operations include schedule journeys and journeys other than scheduled journeys (ie, charter operations). The granting of licences for scheduled journeys (including short-term and provisional licences) and for permits for non-scheduled journeys is governed by the CAA Part XII (Air Transport Licensing) and applicable regulations which include the Air Services Regulations.

The application for an air transport licence to operate particular routes must be made to the Minister responsible for civil aviation and will be processed by air transport licensing personnel (ATL) who provide the application material and to whom completed applications are to be

submitted. The application is made in writing on the prescribed form stipulating the requested routes the applicant wishes to operate and will be accompanied by additional financial and aircraft-related documents required to support the application.

The application process involves:

- securing economic authority from ATL on behalf of the Minister responsible for aviation, which is granted on the advice of the Air Transport Advisory Board;
- the granting of an air operators certificate by the BCAA; and
- the granting of the licence by the Minister responsible for aviation on the advice of the Air Transport Advisory Board.

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

Pursuant to the provisions of the Air Services Regulations, after receipt of an application for the granting of a licence the Minister shall cause to be published (in at least two issues of a newspaper published and circulating in The Bahamas, at an interval of not less than one week, and twice in the official government gazette) such particulars of any application received by him or her as he or she thinks fit. A responsible person or body, who may reasonably be considered by the Minister to have any interest in the grant or refusal of a licence, may make representations or objections with regard to any application for a licence.

The Minister shall, for the purpose of determining applications for licences, hold a public inquiry unless he or she otherwise decides in relation to the whole or part of a particular case. Before any such inquiry is held, the Minister shall give notice in writing to the applicant and to any person who has made representations or objections with regard to the application, and shall give the applicant and any such person an opportunity of being heard at the inquiry. Further and pursuant to the CAA, should an application be denied, appeals to the Minister's decision shall lie to the Supreme Court on questions of law alone.

### Competition policy

#### 8 | Is there a declared policy on airline access or competition? What is it?

There is no declared policy on airline access or competition.

### Requirements for foreign carriers

#### 9 | What requirements must a foreign air carrier satisfy to operate in your country?

A foreign carrier must be issued an air transport licence by the Minister responsible for aviation in order to operate in The Bahamas. As a matter of practice, the application for a licence is made to ATL and will be granted by the Minister on the advice of the Air Transport Advisory Board.

A foreign air carrier must be registered in a state that has an air services agreement or other special arrangement with The Bahamas for it to be granted a licence to operate in The Bahamas.

Schedule 20 to the General Regulations prescribes requirements for foreign operators. The foreign air carrier must possess among its required documents a copy of the operations specifications issued by the BCAA permitting its operations in The Bahamas.

No foreign person or operator may conduct commercial air transportation operations involving cabotage between aerodromes in The Bahamas and no foreign person or air operator may conduct commercial air transport operations from an aerodrome in a foreign country to and from aerodromes in The Bahamas unless those operations are authorised by the BCAA in accordance with the five freedoms specified in the International Air Transit Agreement or as provided in applicable

bilateral agreements. Additionally, foreign carriers must land in The Bahamas at designated ports of entry.

### Public service obligations

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

The Air Services Regulations provides at Regulation 8(3)(b) that the holder of a licence shall perform all such reasonable services as the Postmaster General may from time to time require in regard to the conveyance of mails and of any persons who may be in charge thereof upon journeys made under the licence. There are no other specific rules or programmes in place to ensure aviation services are offered to remote destinations when vital for the local economy.

### Charter services

11 | How are charter services specifically regulated?

The granting of permission for non-scheduled journeys is governed by the CAA Part XII (Air Transport Licensing) and applicable regulations, which include Part III of the Air Services Regulations.

The application for permission to operate charter services must be made to the Minister responsible for civil aviation and will be processed by ATL, which provides the application material and to whom completed applications are to be submitted. The application is made in writing on the prescribed form stipulating the requested routes the applicant wishes to operate and will be accompanied by additional financial and aircraft-related documents required to support the application.

The application process involves:

- securing economic authority from ATL on behalf of the Minister responsible for aviation, which is granted on the advice of the Air Transport Advisory Board;
- the granting of an AOC by the BCAA; and
- the granting of the licence by the Minister responsible for aviation on the advice of the Air Transport Advisory Board for the applicant to conduct charter services.

### Regulation of airfares

12 | How are airfares regulated?

Airfares are not regulated in The Bahamas.

### Drones

13 | How is the operation of unmanned aircraft systems (drones) regulated?

The Bahamas recognises a distinction between an unmanned aircraft system (a drone) used for recreational and hobby use and a drone used for remuneration, compensation or aerial work. Schedule 27 to the General Regulations provides parameters for the use of an unmanned aircraft system (UAS) for recreational and hobby use. Schedule 11 to the General Regulations stipulates requirements for use of a UAS for remuneration, compensation or aerial work.

The use of drones for aerial works requires the granting of an aerial works certificate and a licence issued by the Minister responsible for aviation.

## AIRCRAFT

### Aircraft register

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

Schedule 3 to the General Regulations provides for the registration of aircraft. An aircraft must be registered by its owner under the provisions of the Laws of The Bahamas. An aircraft is eligible for registration if it is: owned by:

- a natural citizen of The Bahamas;
- an individual citizen of a foreign state who is lawfully admitted for permanent residence in The Bahamas;
- a corporation lawfully organised and doing business under the laws of The Bahamas; or
- a government entity of The Bahamas; and
- not registered under the laws of any foreign country.

### Mortgage register

15 | Is there a register of aircraft mortgages or charges? How does it function?

There is currently no designated register for aircraft mortgages, encumbrances and other interests in aircraft. Aircraft mortgages, encumbrances and other interests may be lodged for recording with the Registrar General's Department pursuant to the provisions of the Registration of Records Act.

### Detention

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

There is no express provision under Bahamian law that permits an aircraft to be detained and sold for unpaid airport charges or non-payment of air navigation charges. As a result of this, in The Bahamas, the detention of an aircraft to secure satisfaction of unpaid airport or air navigation charges (or for any other purpose outside out of Regulation 18 under the Civil Aviation (General) Regulations 2017), would have to be embarked under the common law.

### Maintenance

17 | Do specific rules regulate the maintenance of aircraft? What are they?

Maintenance and preventive maintenance of aircraft is provided for by Schedule 5 to the General Regulations. Schedule 5 prescribes the rules that govern the continued airworthiness of civil aircraft registered in The Bahamas whether operating inside or outside the borders of The Bahamas. The owner's maintenance responsibilities are detailed along with the requirements for aircraft maintenance and inspections, the maintenance of records and entries and the standards to be applied during the issuance and renewal of airworthiness certificates and the continuing airworthiness of aircraft.

## AIRPORTS

### Ownership

18 | Who owns the airports?

Airports in The Bahamas may be privately owned, owned by the government of The Bahamas or owned by the Airport Authority established under the Airport Authority Act (AAA). The AAA, as amended by the section

3 of the Airport Authority (Amendment) Act 2016, provides at section 3 that certain airports specified in the First and Third Schedules to the AAA are in effect transferred to the Airport Authority. Section 32(1) of the Civil Aviation Act 2016 (CAA) provides that the Minister may procure the establishment and maintenance of aerodromes and the provision and maintenance in connection therewith of roads, approaches, apparatus, equipment and buildings and other accommodations. The Minister may for the purpose of exercising the powers conferred by section 32(1) acquire land or any right in or over land by agreement or in accordance with the Acquisition of Land Act.

## Licensing

### 19 | What system is there for the licensing of airports?

The CAA provides at section 35 thereof that no person shall construct or commence to construct any private aerodrome in The Bahamas without the prior permission in writing of the BCAA.

Subsequent to the construction of the airport with the permission of the Civil Aviation Authority of The Bahamas (BCAA), the operator of the airport should make application to the BCAA for an Aerodrome Certificate in accordance with Schedule 21.050 to the General Regulations, which will include:

- the operator's aerodrome manual;
- plans of the aerodrome;
- an environment impact assessment report;
- proof of financial capability of operating the aerodrome;
- any details of non-compliance with relevant regulations;
- the appropriate air space classification requirements;
- the certificate of occupancy; and
- where applicable, evidence of the settled arrangements between the applicant and customs, immigration and the Airport Authority for agreed contributions towards the costs for services to be provided by such agencies.

The BCAA will respond to the application by conducting necessary inspections and, if appropriate, certify and register the aerodrome pursuant to section 36 of the CAA and the provisions of Schedule 21.

## Economic regulation

### 20 | Is there a system of economic regulation of airports? How does it function?

Section 6 of the AAA, as amended by section 5 of the Airport Authority Amendment Act 2016, provides that the Airport Authority has, as part of its functions, the setting of fees and charges for airports in accordance with International Civil Aviation Organization recommendations and also the collection of aeronautical and non-aeronautical fees and charges.

Airport charges include landing fees, aircraft parking fees, airport loading bridge fees, terminal fees, passenger facility charges, security fees and a passenger processing fee. The imposition and varying of fees and charges are regulated by the Airport Authority (Fees and Charges) Regulations 2009.

## Access

### 21 | Are there laws or rules restricting or qualifying access to airports?

Aerodrome operators in The Bahamas are required, in accordance with section 25 of the CAA, to establish and maintain an Aerodrome Security Programme approved in writing by the BCAA. The Aerodrome Security Programme is to provide adequately for security protection of the aerodrome in compliance with the National Civil Aviation Security Programme, including the programme's requirement for access control

for persons and vehicles and the control and issue of aerodrome security passes and vehicle passes. Section 41 of the CAA provides that, where appropriate notices are posted, a person who trespasses on land forming part of a government aerodrome or an aerodrome registered, licensed or certified pursuant to regulations made under the CAA commits an offence and shall be liable on summary conviction to a fine not exceeding B\$5,000 or to imprisonment for a term not exceeding six months or both.

## Slot allocation

### 22 | How are slots allocated at congested airports?

There is no formal regime governing the allocation of airport slots. Currently, airport capacities are considered adequate to meet the demands of users.

## Ground handling

### 23 | Are there any laws or rules specifically relating to ground handling? What are they?

Pursuant to section 6 of the AAA as amended by section 5 of the Airport Authority (Amendment) Act 2016, the functions of the Airport Authority include making provision for aircraft ground handling services on a commercial basis. There are, however, no published Bahamian ground handling regulations.

## Air traffic control

### 24 | Who provides air traffic control services? And how are they regulated?

Air traffic control services are regulated under the CAA and the General Regulations. The CAA provides for the establishment of an independent division known as The Bahamas Air Navigation Services Division (BANSD). BANSD is headed by a general manager who reports directly to the board of the BCAA, operates autonomously from the regulatory oversight divisions within the BCAA and has as its sole objective the provision of air navigation facilities and services. Generally, air traffic services are administered having regard to Annex 11 to the Convention on International Civil Aviation.

## LIABILITY AND ACCIDENTS

### Passengers, baggage and cargo

#### 25 | What rules apply in respect of death of, or injury to, passengers or loss or damage to baggage or cargo in respect of domestic carriage?

Liability for death or injury to passengers and loss or damage to baggage or cargo arising from air accidents in respect of non-international journeys is governed by the Carriage by Air (Non-International Carriage) (Colonies, Protectorates and Trust Territories) Order 1953. For domestic carriage, liability for lost, damaged or destroyed luggage may also be subject to determination on the basis of contractual arrangements between the airline and the passenger. Liability for death, injury and loss arising from air accidents in respect of international journeys is, however, governed by the Carriage by Air (Colonies, Protectorates and Trust Territories) Order 1953, which incorporates certain provisions of the Warsaw Convention.



## Surface damage

### 26 | Are there any special rules about the liability of aircraft operators for surface damage? What are they?

Section 49(2) of the CAA makes provisions for loss or damage caused to any person or property on land or water by a person in, or an article or person falling from, an aircraft while in flight, taking off or landing. Damages are recoverable without proof of negligence or intention, or other cause of action as if such loss or damage had been caused by the wilful act, neglect or default of the owner of the aircraft, provided that the damage was not caused or contributed to by the negligence of the person by whom it was suffered.

## Accident investigation

### 27 | What system and procedures are in place for the investigation of air accidents?

Air accidents are investigated by the Aircraft Accident Investigation Authority created pursuant to Part II of the Aircraft Accident Investigation Authority Act and headed by a Chief Investigator of Air Accidents. Investigations are conducted pursuant to the provisions of the Aircraft Accident Investigation Authority Regulations, 2019. The Chief Investigator shall designate the investigator in charge of the investigation, who will be vested with powers and duties for the purpose of carrying out an investigation in the most efficient way and within the shortest time possible. On completion of an investigation the Chief Investigator shall prepare a draft report for circulation to and comments from certain authorities, including the state of registry, the state of design, the state of manufacture, the state of the operator and any other state that participated in the investigation. Comments are considered and included or appended to final report prepared by the Chief Investigator. The final report is submitted to the Minister responsible for civil aviation. The Minister will cause the report to be made public. The sole objective of the investigation of an accident or incident is the prevention of future accidents and incidents and in no case is the purpose to apportion blame or liability.

## Accident reporting

### 28 | Is there a mandatory accident and incident reporting system? How does it operate?

Mandatory reporting requirements are provided under Schedule 23 to the General Regulations. The requirements apply to persons and organisations involved in the:

- operations, maintenance and support of Bahamas-registered aircraft worldwide;
- operations, maintenance and support of aircraft operating in The Bahamas; and
- the provision of services to aircraft and crews in the operational airspace controlled by The Bahamas and the aerodromes located in The Bahamas.

The BCAA is authorised to prescribe certain mandatory occurrences that are to be reported under Schedule 23. A person required to make a mandatory report of an occurrence shall report any occurrence of which he or she has positive knowledge, even though this may not be first-hand, unless he or she has good reason to believe that appropriate details of the occurrence have already been, or will be, reported by someone else.

Schedule 23 also provides that a report should also be submitted on any occurrence that involves a defective condition or unsatisfactory behaviour or procedure that did not immediately endanger the aircraft but that, if allowed to continue uncorrected, or if repeated in different, but likely, circumstances, would create a hazard to aircraft safety. Further

the Aircraft Accident Investigation Authority Act mandates that the owner, operator, pilot-in-command, crew member, operator of an airport, air traffic controller, or any other person having knowledge of an accident or incident shall report to the Authority and provide as much information as soon as possible and by the quickest means available.

## COMPETITION LAW

### Competition law

#### 29 | Do sector-specific or general competition rules apply to aviation?

No sector-specific or general competition rules apply to aviation in The Bahamas.

### Regulator

#### 30 | Is there a sector-specific regulator, or are competition rules applied by the general competition authority?

The Bahamas does not have a general competition authority.

### Market definition

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

The Bahamas does not have competition authorities.

### Code-sharing and joint ventures

#### 32 | How have the competition authorities regulated code-sharing and air-carrier joint ventures?

The Bahamas does not have competition authorities.

### Assessing competitive effect

#### 33 | What are the main standards for assessing the competitive effect of a transaction?

There are no standards for assessing the competitive effect of a transaction.

### Remedies

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

The Bahamas does not have competition authorities.

## FINANCIAL SUPPORT AND STATE AID

### Rules and principles

#### 35 | 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? Is state aid regulated generally?

There are no 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. Generally, provisions of the Fiscal Responsibility Act 2018 requires that state aid, be managed prudently in accordance with general principles of fiscal management. Holders of public office are required to expend public money in a manner that is fiscally sustainable.

### 36 | What are the main principles of the state aid rules applicable to the aviation sector?

The Bahamas has no state aid rules specific to the aviation sector, but the principles which relate to the allocation of state aid generally are: accountability, intergenerational equity, responsibility, stability, transparency and inclusive growth.

#### Exemptions

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

During exceptional circumstances brought about by sudden and unexpected external shocks the normal rules governing state aid will not apply.

#### Clearance of state aid

### 38 | Must clearance from the competition authorities be obtained before state aid may be granted? What are the main procedural steps for doing so?

The Bahamas does not have competition authorities. Allocation of state aid is at the discretion of the government in line with the principles espoused in the Fiscal Responsibility Act.

#### Recovery of unlawful state aid

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

The Bahamas has no rules for the recovery of unlawfully granted state aid.

## CONSUMER PROTECTION

#### Passengers

### 40 | What rules regulate denied boarding, cancellation or (tarmac) delay?

There are no special Bahamian rules that govern incidents of denied boarding. Passenger rights will be determined on the basis of contractual arrangements between the airline and the passenger.

Liability for flight delays for non-international journeys is governed by the Carriage By Air (Non-International Carriage) (Colonies, Protectorates and Trust Territories) Order 1953. Flight delays in respect of international journeys are governed by the Carriage by Air (Colonies, Protectorates and Trust Territories) Order 1953. For international journeys certain provisions of the Warsaw Convention, as annexed to the relevant Order, apply. Flight delays and cancellation may also be subject to determination on the basis of contractual arrangements between the airline and the passenger.

#### Package holidays

### 41 | What rules apply to the sale of package holiday products?

Fares in the Bahamian aviation market are unregulated. While there are no express provisions mandating the disclosure of the duration of a special promotion or holiday package or service; section 35 of the Consumer Protection Act, 2006 mandates that a service that has been advertised at a specified price shall be offered at that price for a period that is reasonable having regard to the nature of the market. Additionally, section 31 of the Consumer Protection Act 2006 prohibits engaging in conduct likely to mislead. As such the same can be applied as a requirement to include all applicable fees and taxes, so as to obviate such a finding of misleading conduct.

#### Other consumer legislation

### 42 | Is there any other aviation-specific consumer legislation?

There is no other aviation-specific consumer legislation.

## INSURANCE AND SECURITY

#### Insurance for operators

### 43 | What mandatory insurance requirements apply to the operation of aircraft?

There are no specified mandatory insurance requirements that apply to the operation of aircraft.

#### Aviation security

### 44 | What legal requirements are there with regard to aviation security?

Section 20 of the Civil Aviation Act 2016 (CAA) provides that the Civil Aviation Authority of The Bahamas (BCAA) is the designated authority for civil aviation security in accordance with the requirements of the Convention on International Civil Aviation concluded in Chicago on 7 December 1944.

The BCAA has the power to appoint aviation security inspectors who shall have unimpeded direct access to all aerodromes and aircraft in The Bahamas in accordance with prescribed procedures and to interview directly any person within The Bahamas who may have information applicable to aviation security activities.

Aircraft operators and aerodrome operators are required under the CAA to establish and maintain security programmes. By section 29 of the CAA, every person in The Bahamas is required to comply with all instructions provided them concerning security procedures at or on an aerodrome. Section 29 also provides restrictions on carrying prohibited weapons and entering security-restricted areas at airports.

#### Serious crimes

### 45 | What serious crimes exist with regard to aviation?

The Bahamas has enacted the Protection of Aviation (Tokyo, Hague and Montreal Conventions) Act, which provides for the suppression of unlawful acts against the safety of civil aviation and consolidates the law relating to matters affecting the security of civil aviation. Serious crimes include:

- hijacking;
- specified offences involving violence against passengers or crew including murder, attempted murder, manslaughter or assault;
- use of a firearm with the intent to commit a hijacking or other indictable offence;
- destroying an aircraft in service or damaging an aircraft in service as to render it incapable of flight or as to be likely to endanger its safety in flight;
- committing on board an aircraft in flight any act of violence that is likely to endanger the safety of the aircraft;
- in certain circumstances placing on an aircraft in service any device or substance that is likely to destroy the aircraft, or is likely so to damage it as to render it incapable of flight or as to be likely to endanger its safety in flight;
- unlawfully and intentionally committing an act to destroy or damage property used for the provision of air navigation facilities, whether it is on board an aircraft or elsewhere;
- intentionally communicating any information that is false, misleading or deceptive in a material particular, where the communication of the information endangers the safety of an aircraft in

flight or is likely to endanger the safety of aircraft in flight (unless he or she believed and had reasonable grounds for believing the information to be true or the information was communicated in good faith in the performance of employment duties); and

- piracy.

## UPDATE AND TRENDS

### Emerging trends

#### 46 | Are there any emerging trends or hot topics in air transport regulation in your jurisdiction?

There are several emerging trends or hot topics in air transport regulation relative to The Bahamas. These include the following:

- the re-opening of borders and resumption of international aviation to The Bahamas in the wake of covid-19 border closures;
- The conclusion in January 2020 of an Air Transport Agreement between The Bahamas and the United States; and The Bahamas' plans to conclude dozens more during 2020;
- US-Bahamas negotiations with respect to the control of Bahamian airspace, and collection of overflight fees that are charged to air carriers that fly over Bahamian territory;
- the accession of The Bahamas to the 2001 Cape Town Convention for the purposes of facilitating the registration in The Bahamas of international interests in mobile equipment such as aircraft;
- the possibility or viability of a Bahamian Air Passenger Bill of Rights being introduced, in line with legislation recently introduced in the US Senate in 2019 and enacted into Canadian law also in 2019 regarding passenger compensation and further air carrier obligations; and
- the appropriate response to control and mitigate the aviation activity locally referred to as 'hacking' (which is the carriage by air of passengers for reward by persons not licensed to do so).

### Coronavirus

#### 47 | What emergency legislation, relief programmes and other initiatives specific to your practice area has your state implemented to address the pandemic? Have any existing government programmes, laws or regulations been amended to address these concerns? What best practices are advisable for clients?

As a result of the covid-19 pandemic, The Bahamas was placed in a state of emergency by proclamation of the Governor General on 17 March 2020 who also, pursuant to his powers under the Emergency Powers Act (Ch. 34), made the Emergency Powers (Covid-19) Regulations 2020. The Emergency Powers (Covid-19) Regulations 2020 designated Prime Minister the Most Honourable Dr Hubert Minnis as the Competent Authority and empowered him in this capacity to make such Orders and Rules for any of the purposes for which the emergency regulations relate. The emergency regulations also empowered the Competent Authority to requisition any aircraft during the period of emergency when reasonably required in exchange for adequate compensation thereafter.

By way of the Emergency Powers (Covid-19)(No. 2) Order 2020, which came into effect on 24 March 2020 (except with the prior written permission of the Competent Authority) all airports including private airports and fixed-base operators were closed 'to incoming international flights carrying any visitor'. However, the restrictions in this order did not apply to outgoing flights, cargo flights, commercial courier flights, emergency medical flights or emergency flights approved by Bahamian aviation authorities.

The Emergency Powers (Covid-19)(No. 3) Order 2020 dated 8 May 2020 and as amended, made provisions for the entry of international



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flights returning Bahamians and legal residents under the prescribed protocols. This order also prohibited inter-island domestic travel by or onboard any commercial or general aviation aircraft. Additionally, by this order any aircraft landing at or departing from any family island airport was prohibited except for flights for medical emergency, the transport of freight, the return of residents to New Providence or flights approved by Bahamian aviation authorities.

Under the Emergency Powers (Covid-19)(No. 3) (Amendment) (No. 2) Order 2020 dated 22 May 2020, the requirement for a travel authorisation card for inter-island travel was introduced. The issuance of a travel authorisation card was dependent upon an applicant submitting to a medical exam to confirm their status as covid-19 negative or low risk.

On 2 June 2020, the Bahamas' Ministry of Tourism and Aviation disclosed its two-phased approach to the re-opening of the country's borders. Phase 1, which is scheduled to extend from 15 June to 30 June 2020, entails the return of private aviation being allowed to enter the destination. Additionally, in Phase 1, the government will allow commercial airlines to bring in Bahamian citizens, legal residents, homeowners qualifying for economic permanent residency or the immediate family members or significant others of any of these groups.

Phase 2, which was scheduled to begin on 1 July 2020, will entail resuming international travel upon satisfaction of the covid-19 testing. While no quarantine will be required upon arrival, all travellers will be required to complete an electronic health visa. Also, healthcare personnel will conduct temperature screenings for all incoming visitors at airports. Travellers will be required to wear a face mask in any situation where it is necessary to enforce physical distancing guidelines, such as when entering and transiting airport terminals, while navigating security and customs screenings, and at baggage claim.

Best practices in The Bahamas have been enshrined in the various emergency orders and rules that prescribe the maintenance of social distancing and frequent sanitisation. As a member state, The Bahamas also adheres to the Standards and Recommended Practices promulgated by the International Civil Aviation Organization under the advice of and in conjunction with the World Health Organization and other relevant agencies and entities.

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