

Air Transport 2022

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Published by

Law Business Research Ltd
Meridian House, 34-35 Farringdon Street
London, EC4A 4HL, UK

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No photocopying without a CLA licence.
First published 2006
Sixteenth edition
ISBN 978-1-83862-620-4

Printed and distributed by
Encompass Print Solutions
Tel: 0844 2480 112



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Lexology Getting The Deal Through is delighted to publish the sixteenth edition of *Air Transport*, which is available in print and online at 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.

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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, Thomas van der Wijngaart and Inês Afonso Mousinho of Clyde & Co LLP, for their continued assistance with this volume.



London
August 2021

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This article was first published in August 2021
For further information please contact editorial@gettingthedealthrough.com

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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 2021 (CAA), the Civil Aviation Authority Bahamas Act 2021 (CAABA) and the Airport Authority Act (AAA). The CAA provides that the minister responsible for civil aviation (currently the Minister of Tourism and Aviation) (the Minister) has the general duty of organising, carrying out and encouraging measures for the development of civil aviation.

The CAABA continues an authority formerly known as the Bahamas Civil Aviation Authority (BCAA). The BCAA was established under the Civil Aviation Authority Act 2016, which itself has since been repealed by the CAA. The BCAA is now known as the Civil Aviation Authority Bahamas (CAA-B) and is governed by a board appointed by the Minister. The CAA-B is headed by a Director General of Civil Aviation who is also appointed by the Minister. The CAA-B is responsible for the control and regulation of civil aviation in The Bahamas.

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 2021 (CAA) provides that the competent authority for regulating air transport in The Bahamas is the Civil Aviation Authority Bahamas (CAA-B). Air transport is regulated in terms of safety by the CAA-B in accordance with the Safety Management Systems Regulations (SMSR). The SMSR provides that the CAA-B must establish and maintain a state safety programme that is commensurate with the size and complexity of the CAA-B's civil aviation system, but may delegate safety management-related functions and activities to another authority, a Regional Safety Oversight Organisation or a Regional Accident and Incident Investigation Organisation. Under the SMSR, the following types of aviation service providers must establish a safety management system:

- approved training organisations;
- operators of aeroplanes or helicopters authorised to conduct international commercial air transport;
- approved maintenance organisations providing services to operators of aeroplanes or helicopters engaged in international commercial air transport;
- organisations responsible for the type design or manufacture of aircraft, engines or propellers;

- air traffic services providers; and
- operators of certified aerodromes.

The SMSR also stipulates that the CAA-B must require that the following service providers under their authority implement a safety management system:

- operators of aeroplanes or helicopters authorised to conduct international commercial air transport, in accordance with CAR OPS 1 or CAR OPS 3 respectively; and
- approved maintenance organisations providing services to operators of aeroplanes or helicopters engaged in international commercial air transport, in accordance with CAR OPS 1 or CAR OPS 3 respectively.

In December 2019, the Bahamian House of Assembly passed the Aircraft Accident Investigation Authority Act (AAIAA). The AAIAA follows from the Air Accident Investigation Department, which was a department under the Bahamas Civil Aviation Authority (BCAA) as a separate authority that was responsible for investigating civil aviation accidents and incidents. It is now known as the Aircraft Accident Investigation Authority (AAIA). Additionally, this new authority is also empowered to issue safety recommendations. In February 2021, exercising the powers provided under the AAIAA, the minister responsible for civil aviation (the Minister) (currently the Minister of Tourism and Aviation) as the responsible party for the AAIA, promulgated the Aircraft Accident Investigation Authority Regulations (AAIAR). The AAIAR details the rules governing every aspect of aircraft investigations, including but not limited to:

- accident reporting;
- the form and conduct of investigations;
- the powers of accident investigators;
- the preservation of wreckage and records; and
- preliminary and final accident reports.

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

The Civil Aviation Regulations – Continuing Airworthiness (General Aviation Operations) (CAR AIR 2) address continuing airworthiness for all aeroplanes operated under CAR OPS 2A.

General aviation is defined by the CAA as 'an operation of a civil aircraft for other than a commercial air transport operation or aerial work operation.' Aerial work is defined by the CAA as including but not limited to aircraft operations 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 the Civil Aviation Regulations – Aerial Work Regulations (CAR OPS 5).

General aviation is further regulated under the General Aviation Regulations (Aeroplanes) (CAR OPS 2A) and General Aviation Regulations (Helicopters) (CAR OPS 2H).

Market access

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

Sections 14 and 16 of the CAA provide that no air operator of an aircraft shall engage in commercial air transport unless that air operator holds an air transport licence and complies with the terms of the air transport licence. Air transport licences are granted by the CAA-B.

Ownership and control

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

To be deemed as Bahamian owned or controlled, or both, 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 applied by Air Transport Licensing (ATL), '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.

Pursuant to the new CAA, a new statutory discretion is afforded to the Director General of Civil Aviation to authorise the registration of an aircraft that is privately owned by a person (other than a permanent resident of The Bahamas) or corporation of another state.

The CAA-B must also be satisfied that the applicant is a fit person to operate aircraft under the authority of the licence that the Minister considers should be granted to the applicant, considering:

- the applicant's – and any employees' – experience in the field of aviation and their past activities generally; and
- where the applicant is a body corporate, the experience in the aviation field 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 contracting state to the Chicago Convention or a state that has an air services agreement or another 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 CAA-B 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 depend on the nature of the operation requested by the carrier. Types of operations include scheduled 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 handled by ATL, now a division of the CAA-B.

The application for an air transport licence to operate particular routes must be made to the Minister and is processed by ATL, which provides the application material and to whom completed applications must 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 ATL;
- the granting of an air operators certificate by the CAA-B; and
- the granting of the licence by the Minister responsible for aviation on the advice of ATL.

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

Under the new CAA, the CAA-B is charged with the authority to issue all required aviation documents to persons involved in the provision of aviation services. While the legislation is absent any reference to situations of contested applications, it does address decisions made by the CAA-B that an aggrieved applicant may wish to object to or contest by way of sections 22 (4) and 34 thereof.

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?

Pursuant to section 16 of the CAA, a foreign carrier must be issued an air transport licence in accordance with section 15 of the CAA to operate services to or within The Bahamas. As a matter of practice, the application for a licence is made to ATL and, if successful, that licence will be issued by the CAA-B on the advice of ATL.

A foreign air carrier must be registered in a contracting state to the Chicago Convention or a state that has an air services agreement or another special arrangement with The Bahamas for it to be granted a licence to operate 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 CAA-B 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?

There are no specific rules or programmes in place to ensure that 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 issued by ATL.

The application for permission to operate charter services must be made to and are processed by ATL, which provides the application material and to whom completed applications must 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 ATL;
- the granting of an air operator certificate by the CAA-B; and
- the granting of the licence by CAA-B on the advice of ATL for the applicant to conduct charter services.

Formal regulations are currently under development.

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. The Civil Aviation Regulations – Remotely Piloted Aircraft System (RPAS) Operations (CAR OPS 4), which governs the use of drones, also assigns responsibility to the operator for the safe conduct of operations. CAR OPS 4 also imposes an obligation of maintenance upon the operator.

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?

The aircraft registry in The Bahamas is an owner registry. The Civil Aviation Act 2021 (CAA) provides that 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 company registered under the Companies Act lawfully incorporated in and doing business under the laws of The Bahamas, or a government entity of The Bahamas; or
- an individual citizen or a corporation of another state at the discretion of the Director General of Civil Aviation.

An aircraft is not eligible for a certificate of registration if the aircraft is registered under the laws of any other state.

Mortgage register

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

At present, there are no separate registers of aircraft mortgages, charges or security interests in The Bahamas. All security documents may be recorded at the Bahamian Registrar General's Department pursuant to the provisions of the Registration of Records Act (RRA). Once the document is duly presented for recording, after being processed, it will bear an official stamp certifying its recording and a system reference.

The RRA is the only Bahamian statute that deals with securing priorities. In particular, section 10 of the RRA provides that, where competing interests are involved, a document has priority from the date it is lodged for record at the Registry of Records and not from the date of the execution of the document. However, this protection is afforded only for a document that deals with land, goods and effects situated in The Bahamas. If the assets provided as security are not situated in The Bahamas, then it is not possible to secure priorities in this jurisdiction, although we note that recording the relevant security document may have the benefit of placing a third party on notice of the existence of the same.

However, pursuant to section 9 of the CAA, the BCAA must maintain records of all documents that affect title to or any legal or beneficial interest in:

- 1 any civil aircraft registered in The Bahamas; and
- 2 any aircraft engine, propeller, rotor, appliance, or spare part intended for use on any aircraft registered in The Bahamas.

No document affecting title to, or any interest in, any object listed in (2) shall be valid, except between the parties thereto, unless it is recorded in that system. The validity of any document so recorded, unless otherwise specified by the parties thereto, shall be determined under the laws of The Bahamas.

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 would have to be embarked under the common law. Related to the area of detention is the concept of liens that was introduced in the CAA in 2021.

Maintenance

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

Maintenance and preventive maintenance of aircraft is provided for and dealt with as sub-functions of airworthiness by the Civil Aviation Regulations – Airworthiness Regulations (CAR AIR 1).

The CAR AIR 1 further provides that airworthiness regulations are comprised of the following:

- CAR AIR 1 - General Airworthiness;
- CAR AIR 2 - Continuing Airworthiness (General Aviation);
- CAR OPS 1/3, Chapter 13 - Continuing Airworthiness (Commercial Air Transport);
- CAR 145 - Approved Maintenance Organisations; and
- CAR 21 - Certification of Aircraft.

The CAR 145 provides that maintenance work required to maintain airworthiness is only to be performed by approved organisations. Such approved organisations are licensed by the Civil Aviation Authority Bahamas.

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 section 3 of the Airport Authority (Amendment) Act 2016 and section 8 of the Airport Authority (Amendment) Act 2021, provides 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 2021 (CAA) provides that the minister responsible for civil aviation (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?

Section 35 of the CAA provides that no person shall operate, permit the operation of, or construct or commence to construct any private aerodrome in The Bahamas without first obtaining the relevant aviation documents from the Civil Aviation Authority Bahamas (CAA-B). Aerodromes are also governed under the Civil Aviation Regulations – Aerodromes and Ground Aids (CAR AGA).

The CAR AGA provides that all locations within The Bahamas used for the take-off and landing of aircraft shall be registered with the CAA-B. The aerodrome operator shall formally notify the CAA-B and provide the following minimum registration requirements:

- the name of the aerodrome;
- the location of the aerodrome including its geographical coordinates;
- the owner and operator of the aerodrome;
- the types of aircraft operating; and
- a description of the main activities carried out at the aerodrome.

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 is responsible for 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 variance 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?

Section 45 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. Further, as an operator of public airports, the Airport Authority is empowered under the CAA to regulate how an air operator's ground handling operations shall be carried out, within the limitations established due to the constraints of limited space or capacity. 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 Bahamas Air Navigation Services Authority Act, 2021 (BANSAA) and the Civil Aviation Regulations – Air Traffic Services (CAR ATS). CAR ATS is set out under the CAA. The BANSAA provides for the establishment of an independent authority known as The Bahamas Air Navigation Services Authority (BANSAA). BANSAA is headed by a director who reports directly to the board of the BANSAA, operates autonomously from the regulatory oversight divisions within the CAA-B and has, as its sole objective, the provision of air navigation facilities and services. Generally, air traffic services are administered under Annex 11 to the Convention on International Civil Aviation. Other regulations involving air navigation services are:

- CAR AIS – Aeronautical Information Services;
- CAR CNS – Aeronautical Communications;
- CAR MAP – Aeronautical Charts;
- CAR MET – Aviation Meteorology Services;
- CAR SAR – Search and Rescue; and
- CAR IFFPD – Instrument Flight Procedures and Design Services.

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 38 of the Civil Aviation Act 2021 (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. However, in instances where an aircraft involved in surface damage was let or hired out for a period exceeding 14 days under a dry lease, such liability should statutorily be shifted to the lessor or operator.

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, headed by a Chief Investigator of Air Accidents. Investigations are conducted pursuant to the provisions of the Aircraft Accident Investigation Authority Act 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 the final report prepared by the Chief Investigator. The final report is submitted to the minister responsible for civil aviation (the Minister), currently the Minister of Tourism and Aviation. The Minister will make the report 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 obligations are provided under section 16 of the Aircraft Accident Investigation Authority (AAIA). Reporting is required to be made to the AAIA and the requirement applies to:

- the owner;
- the operator;
- the pilot-in-command;
- the crew members;
- the operator of an airport;
- the air traffic controller; or
- any other person with knowledge of an accident or incident.

In addition to accidents, the Aircraft Accident Investigation Authority Regulations prescribe certain mandatory reporting obligations in relation to specified incidents that must be reported. 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.

COMPETITION LAW

Specific regulation

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

No sector-specific or general competition rules apply to aviation in The Bahamas and The Bahamas does not have a general competition authority.

Regulator

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

Not applicable.

Market definition

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

Not applicable.

Code-sharing and joint ventures

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

Not applicable.

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?

Not applicable.

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 2018.

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?

Section 19 of the Civil Aviation Act 2021 (CAA) provides that every air operator flying within The Bahamas shall have adequate insurance for their aviation-specific liability in relation to passengers, baggage, cargo and third parties. While the CAA does not quantify a particular amount, it does mandate that such coverage is to extend to:

- acts of war, terrorism, hijacking or sabotage;
- unlawful seizure of aircraft and civil commotion; and
- damage to the hull.

Aviation security

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

Section 36 of the CAA provides that the Civil Aviation Authority Bahamas (CAA-B) 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 CAA-B 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. Under section 49 of the CAA, every person in The Bahamas is required to comply with all instructions provided to them concerning security procedures at or on an aerodrome. Section 49 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;
- the 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?

The CAA

In February 2021, the Civil Aviation Act 2016 was repealed and replaced by the new CAA. The new CAA also provides for:

- the extra-territorial effect of the CAA;
- the creation of a registry setting out each locally registered aircraft; and
- details of the classes of aviation persons or operations which require licensure, permission or certification under the CAA.

With respect to matters of private law, the CAA makes provision for the statutory assigning or non-assigning of liability (through immunity) with respect to trespass, nuisance and damages claims against aircraft owners towards aircraft operators. Of considerable note is the fact that the CAA introduces a new statutory discretion in favour of the Director General of Civil Aviation to authorise the registration of an aircraft privately owned by a person (other than a permanent resident of The Bahamas) or corporation of another state. However, and perhaps most innovatively, the CAA includes (for the first time in Bahamian aviation legislation) statutory footing for the minister responsible for civil aviation to promulgate subsidiary legislation regulating spaceflight or sub-orbital flight.

The Civil Aviation Authority Bahamas Act 2021 (CAABA) is a new introduction to the Bahamian aviation landscape and, under the CAABA,

the Civil Aviation Authority Bahamas (CAA-B) is mandated to expand its public registries from only a listing of all aerodromes in The Bahamas to also setting out:

- every application for and grant of an aviation license, permit or certificate (inclusive of an air operator certificate);
- all civil aircraft registered in The Bahamas; and
- every exemption granted under the CAA.

Of particular note is the statutory immunity provided to officers and employees of the CAA-B, and the statutory establishment of ministerial responsibility for search and rescue operations in the event of an aircraft accident or aircraft in distress.

While the detention of aircraft was previously provided for in the now repealed Civil Aviation Act 2016, the introduction of statutory liens is another newcomer with respect to Bahamian aviation legislative provisions under The Bahamas Air Navigation Services Authority Act 2021 (BANSAA). Under BANSAA, the director of BANSAA is empowered to enter a statutory lien for any aircraft regarding any portion of a service charge or late payment penalty imposed under BANSAA that remains unpaid by its due date. Particularly worthy of mention in relation to the BANSAA is the mechanism set out therein for the establishment and collection of overflight fees with respect to Bahamian airspace. The collection of overflight fees has become increasingly popular in recent years.

On 15 April 2021, upon being assented to by the Governor-General, the Airport Authority (Amendment) Act 2021 (AAAA) came into force. The AAAA facilitated the government's acquisition of the Grand Bahama International Airport that was previously owned by Hutchison Ports and the Grand Bahama Port Authority. An additional effect of the AAAA was also that the local Airport Authority's mandate and number of airports, for which it is charged with responsibility, increased to 30.

New regulations and guidance materials, which replace the now outdated civil aviation regulations and schedules (repealed by the CAA) were promulgated on 25 March 2021 by the Director General of Civil Aviation. These new regulations and guidance materials cover civil aviation matters including, but not limited to, definition and measurements, environmental impact, airworthiness, search and rescue, aerodromes, licensing and registration of aircraft, and remotely piloted aircraft operations.

Other updates

On 4 May 2021, negotiations between the United States and The Bahamas regarding control of Bahamian airspace and the collection of overflight fees that are charged to air carriers that fly over Bahamian territory came to a conclusion. They were documented by way of an air navigation services agreement. Through this agreement between The Bahamas Air Navigation Services Authority (BANSAA) and the US Federal Aviation Administration, The Bahamas has obtained management of its sovereign airspace.

The prospect of The Bahamas joining the 2001 Cape Town Convention for the purposes of facilitating the registration in The Bahamas of international interests in mobile equipment such as aircraft is being discussed.

The possibility of a Bahamian Air Passenger Bill of Rights being introduced has become more apparent, in line with legislation introduced in the US Senate in 2019 and enacted into Canadian law also in 2019 regarding passenger compensation and further air carrier obligations.

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, has been considered.

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 the 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 to 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 based 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 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, under this order, the landing at or departing from of any aircraft at any family island airport was prohibited except flights for a medical emergency, transport of freight, return of residents to New Providence or flights approved by Bahamian aviation authorities.

By 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 was scheduled to extend from 15 until 30 June 2020, entailed the return of private aviation being allowed to enter the destination. Additionally, in Phase 1, the government allowed 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.

By way of the most recent Emergency Powers (Covid 19 Pandemic) (Management and Recovery) (No. 2) Order 2021, which came into force on 22 June 2021, air travel in and throughout The Bahamas has been impacted by several introductions. These introductions include the requirement for travellers to obtain a health visa before entering The Bahamas unless otherwise exempted, the obligation of operators of aircraft to ensure that individuals are not able to board without a travel visa or negative RT-PCR test, and the obligation on travellers to wear a face mask throughout the entirety of the flight.

Best practices in The Bahamas have been enshrined in the various emergency orders and rules that prescribe the wearing of face masks, the maintenance of social distancing and frequent sanitisation.



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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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