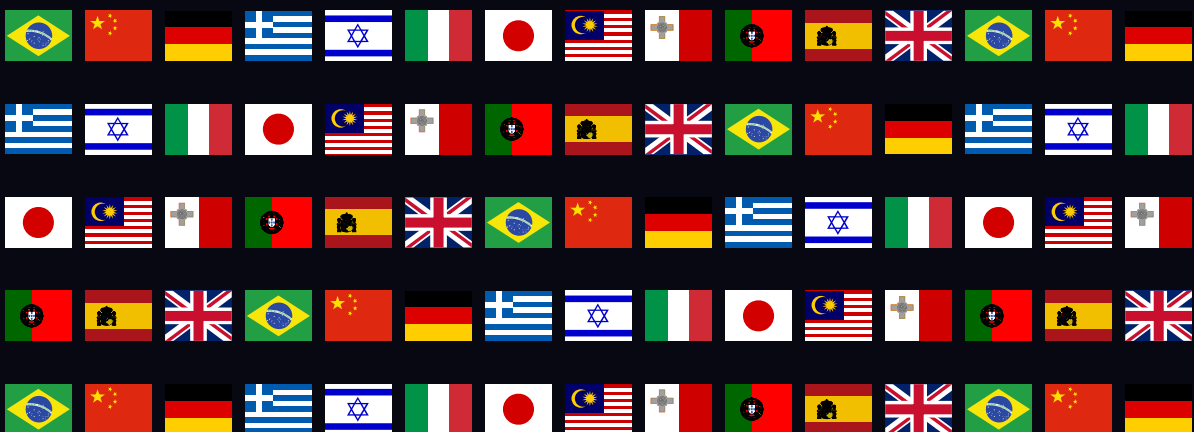


AIR TRANSPORT

Japan



Air Transport

Consulting editors

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Quick reference guide enabling side-by-side comparison of local insights into the applicable regulatory framework; safety regulations; market access; ownership and control; licensing; competition policy; requirements for foreign carriers; public service obligations; charter services; regulation of airfares; regulation of aircraft and airports; liability and accidents; competition law; financial support and state aid; consumer protection; insurance and security issues; and recent trends.

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REGULATORY FRAMEWORK

Regulators and primary legislation

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

The main authority that regulates aviation in Japan is the Civil Aviation Bureau, an internal bureau of the Ministry of Land, Infrastructure, Transport and Tourism (the MLIT). The Civil Aviation Bureau's authority includes, but is not limited to, the development and coordination of air transport and other aviation related businesses, aircraft registration, aviation safety, and establishment and management of airports (article 15 of Order of the Organisation of the Ministry of Land, Infrastructure, Transport and Tourism (Cabinet Order No. 255 of 2000)). The MLIT maintains two Local Civil Aviation Bureaus in Tokyo and Osaka (customarily referred to as Japan Civil Aviation Bureau (JCAB), together with the Civil Aviation Bureau), to which day-to-day operations of the Civil Aviation Bureau (eg, maintenance of airports and processing an airmen certificate application) are delegated. These two Local Civil Aviation Bureau have their own area of jurisdiction; Tokyo Civil Aviation Bureau covers operations in the eastern part of Japan, while Osaka Civil Aviation Bureau covers operations in the western part of Japan. The local Civil Aviation Bureau also has its detached office at most of the airports of their area of jurisdiction, which regulates day-to-day operations at the airport.

Separately, Japan Transport Safety Board, an external bureau of the MLIT, is responsible for aviation accident investigation. Japan Transport Safety Board performs its task independently from the MLIT (article 6 of Act for Establishment of the Japan Transport Safety Board (Act No. 113 of 1973)).

Turning to the aviation laws in Japan, the most comprehensive law that regulates aviation in Japan is the Civil Aeronautics Act (Act No. 231 of 1952) (the CAA). The CAA governs a vast area of aviation regulation, including, but not limited to aircraft registration, aircraft safety, airmen standard, aircraft operation in general, licence requirement for air transport and aerial work, and security checks at the airport. In 2021, CAA expanded to regulate drone activity. Another basic aviation law in Japan is the Airport Act (Act of No. 80 of 1956), which regulates the installation and management of the airports.

Law stated - 21 July 2023

AVIATION OPERATIONS

Safety regulations

How is air transport regulated in terms of safety?

The Civil Aeronautics Act (Act No. 231 of 1952) (the CAA) and its subordinate regulations provide comprehensive regulations that aim to ensure the safety of air transport in Japan.

Operators

To operate an air transport service (ie, 'any business using aircraft to transport passengers or cargo for remuneration upon other's demand' (article 2, paragraph 18 of the CAA)), the operator is required to obtain an air transport service licence from the Ministry of Land, Infrastructure, Transport and Tourism (the MLIT) (article 100 of the CAA) (an 'air transport operator'). In the application process for the licence, the MLIT scrutinises the operator's ability to safely operate an air transport service.

Aircraft

Unless an exception applies, an aircraft is forbidden from operating without having a valid airworthiness certificate issued to that aircraft (article 11 of the CAA). While an airworthiness certificate is normally valid for one year, an aircraft operated by an air transport operator may have an airworthiness certificate that continues to be valid as long as the maintenance is conducted in accordance with maintenance methods approved by the MLIT (article 14 of the CAA).

Crew

To serve as a pilot-in-command of an aircraft operated by an air transport operator, the pilot must at least hold a commercial pilot licence or an airline transport pilot licence, depending on the type of aircraft they fly (article 28 of the CAA). In addition, for certain types of aircraft (eg, an airplane with more than 5,700 kg maximum take-off weight), the pilot must also obtain the MLIT's separate approval for each type of the aircraft they fly to act as a pilot-in-command (article 72 of the CAA). The latter requirement of the MLIT to act as a pilot-in-command does not apply to, among others, a foreign air transport operator (article 163 of Regulation for Enforcement of the Civil Aeronautics Act (Order of the Ministry of Transport No. 56 of 1952) (the CAA Regulation)).

Maintenance

After maintenance (or modification) is conducted to certain types of aircraft (eg, airplane with 30 or more passenger seats) operated by an air transport operator, the aircraft is required to be checked and confirmed for its air worthiness by a maintenance facility approved by the MLIT before returning to the sky (article 19 of the CAA).

Law stated - 21 July 2023

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

Besides air transport service (article 2, paragraph 18 of the CAA), there is another category of operation licence in the CAA. More specifically, to operate an aerial work business (eg, aerial shoot for hire), an operator must obtain an aerial work licence from the MLIT (article 123 of the CAA) (an 'aerial work operator'). Private operations that do not constitute either an air transport service or aerial work are still regulated by the CAA.

For air operations other than air transport service, the safety requirements under the CAA share similar characteristics with an air transport service. For example, a valid airworthiness certificate is required for aircrafts operated by a private owner or an aerial work operator, and the pilot is required to at least hold a private pilot licence (for private operations) or a commercial pilot licence (for aerial work). Turning to the maintenance requirement, an aircraft operated by an aerial work operator or a private owner does not need to check or confirm the aircraft at a maintenance facility approved by the MLIT; instead, a check and confirmation by a qualified mechanic will suffice (article 19 of the CAA).

Aerial work is distinguished from an air transport service as no passengers and cargo are transported for remuneration under aerial work (cf, article 2, paragraph 21 of the CAA). Private operation is distinguished from air transport service or aerial work as it is conducted based on the operator's demand (as opposed to its client's demand) and the operator receives no remuneration for the operation.

Law stated - 21 July 2023

Market access

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

As per article 100, paragraph 1 of the CAA, an operator must obtain a licence from the MLIT to conduct an air transport service. The operator is required to submit to the MLIT application documents, which include, among others, a business plan that sets forth items relating to the operations of aircraft and the maintenance necessary for such operation and a financing plan (article 100 of the CAA).

The MLIT scrutinises the application and must issue a licence if it determines that the application meets certain criteria set forth in article 101, paragraph 1 of the CAA. Those criteria include, but are not limited to, the appropriateness of the business plan in terms of safety, the operator's ability to safely conduct the business plan and nationality requirements (eg, a company established outside Japan is not qualified as an air transport operator).

Law stated - 21 July 2023

Ownership and control

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

There are no specific financial fitness requirements for an air transport operator. That being said, the MLIT requires an operator to submit a financing plan when they apply for an air transport operator licence (article 101, paragraph 4 of the CAA) and examines whether the operator's estimates of funds required for its air transport business is appropriate and whether its financing plan is reasonable and reliable (article 101, paragraph 1, Item 3 of the ACA and a MLIT's circular notice issued 1 February 2000).

Turning to the nationality of ownership, from the perspective of national security and industrial and economic policies, the nationality of ownership regarding control of air carriers is regulated under the CAA and the Foreign Exchange and Foreign Trade Act (Act No. 228 of 1949).

Under the CAA, only a Japanese national or a company established in Japan is eligible as an air transport operator (article 101, paragraph 1, Item 5.i of the CAA). Please note, in this connection, a company established in Japan is not eligible as an air transport operator if its representative is, one third or more of its directors are or one third or more of voting rights are held by:

- a foreign national;
- a foreign (local) government, or
- a company established outside Japan.

These same rules apply to a holding company of an air transport operator (article 101, paragraph 1, Item 5v of the CAA).

If the air transport operator is a listed company, it can refuse to reflect in the shareholder register the ownership of the shares acquired by the parties listed above if it would result in the violation of the one-third voting right limitation set forth above (article 120-2 of the CAA). As the transfer of the shares may not be perfected against the company unless the name and address of the person who acquires those shares is recorded in the shareholder register (article 130, paragraph 1, of the Companies Act), foreign nationals (precisely speaking, listed above) may not be allowed to exercise their rights as shareholders if it violates the one-third voting rights limitation.

Under the Foreign Exchange and Foreign Trade Act (FEFTA), if a foreign investor intends to acquire shares of a company conducting air transport operator, they are required to make a prior notification to the Bank of Japan and the relevant

authorities (article 27, paragraph 1 of the FEFA). The foreign investor that has made a notification is not allowed to purchase the shares until 30 days have passed from the day on which the relevant authorities receive the notification (article 27, paragraph 2 of the FEFA). Please note, however, that the explanation in this paragraph is simplified due to complexity under the FEFA rules, and certain exceptions would apply.

Law stated - 21 July 2023

Licensing

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

In general, an air transport operator can operate particular routes by submitting a prior notification to the MLIT, setting forth its operation plan (including, but not limited to, specifying the frequency of the flights and arrival or departure times) (article 107-2 of the CAA).

However, to prevent the overflow of traffic and due to potential safety and environmental problems, this rule does not apply to the routes departing from or arriving at certain congested airports designated under article 219-2 of, paragraph 1 of the CAA Regulation (currently, Narita International Airport (NRT), Tokyo International Airport (HND), Kansai International Airport (KIX), Osaka International Airport (ITM) and Fukuoka Airport (FUK) are designated). If an air transport operator intends to operate a route using one of these congested airports, they need to obtain the MLIT's permission for doing so, as opposed to submitting a prior notification to the MLIT (article 107-3, paragraph 1 of the CAA). Before deciding whether to issue a permit for the air transport operator to operate a route including a congested airport, the MLIT examines, among other things, whether the air transport operator's plan to use this congested airport promotes competition among the operators and diversifies the transport network (article 107-3, paragraph 3 of the CAA).

Law stated - 21 July 2023

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

There is no specific hearing or decision-making procedures for challenging the MLIT's refusal of an air transport operator's application to operate a route using a congested airport.

However, after the MLIT denies such an application, the general procedural rules for disputes concerning dispositions by the government are applied. More specifically, the operator can submit to the MLIT a request for review of the MLIT's decision to deny the application within three months from the date the operator comes to learn of the MLIT's denial of the application (article 4 of the Administrative Complaint Review Act (Act No. 68 of 2014)). Alternatively, the operator can choose, within six months from the date the operator comes to learn of the MLIT's denial of the application, to file a lawsuit against the MLIT, seeking a revocation of the MLIT's rejection of the application and a court's order to instruct the MLIT to issue a permit for the operator's application (article 3, paragraph 2 and paragraph 6, Item 2 of the Administrative Case Litigation Act (Act No. 139 of 1962)). These two actions are not necessarily mutually exclusive; an operator can still file a lawsuit against the MLIT after the MLIT dismisses the operator's request for review.

Law stated - 21 July 2023

Competition policy

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

Before 1985, Japan continued to implement strict regulations restricting competition between domestic airlines. Whereas only Japan Airlines, the then-flag carrier, which was partially state-owned until 1987, was allowed to operate a scheduled international flight, other airlines were allowed to operate certain major or local domestic routes (on the other hand, Japan Airlines was not allowed to operate local domestic routes).

Facing growing and diversified consumer's demands, the Japanese government decided to relax this policy, allowing airlines to operate international and domestic routes based on their business judgement. In parallel, as the geography of Japan requires air routes connecting mainland Japan with its remote islands, the government has continued to support airlines operating local routes by subsidies and tax breaks.

When Japan Airlines suffered through a financial crisis in 2010, the government led its rehabilitation, injecting substantial amount of public funds.

Law stated - 21 July 2023

Requirements for foreign carriers

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

A foreign air carrier can operate an international flight departing from Japan or arriving in Japan and a domestic flight that is connected to such an international flight if they obtain the MLIT's permission (article 129, paragraph 1 of the CAA). To obtain the MLIT's permission, a foreign air carrier is required to submit to the MLIT an application that sets forth, among others, the information of the company and the operation plan (including, but not limited to the information on the route, the type of aircraft, the flight schedule, and the maintenance facility), together with certain documents including a document that certifies the necessary traffic rights permitted by the country where they are incorporated (article 129, paragraph 2 of the CAA and article 232 the CAA Regulation).

The MLIT mainly examines whether an application submitted by a foreign air carrier conforms with the requirements under the CAA, the CAA Regulations, and the regulations of the country where the foreign air carrier is incorporated. The MLIT may, during the process of examination, contact the aviation authority of the country where the foreign air carrier is incorporated (as per a MLIT's circular notice issued on 7 March 2014).

Law stated - 21 July 2023

Public service obligations

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

Article 19 of Remote Islands Development Act (Act No. 72 of 1953) declares that tax incentives must be implemented to reduce the cost of transportation for the remote islands. By way of example, air carriers operating certain routes between a remote island and the mainland Japan, which the government determines to be particularly necessary for the resident of the remote island are eligible for reduced aircraft fuel tax (article 90-9, Paragraph1 and article 90-8 of the Act on Special Measures Concerning Taxation and article 11 of the Aviation Fuel Tax Act).

Additionally, to promote the establishment of regional air routes (not necessarily a route including a remote island), landing fees, airport usage fees, and certain other fees are reduced for regional routes and routes using small aircraft in accordance with certain notices issued by the MLIT. The fixed asset tax for small aircraft used for domestic flights is

also reduced based on article 349-3, paragraph 8 of the Local Tax Act (Act No. 226 of 1950).

Law stated - 21 July 2023

Charter services

How are charter services specifically regulated?

To operate charter services, an operator must obtain from the MLIT an air transport services licence, which is the same licence needed by an airline to operate scheduled domestic flights (article 100 of the CAA). Like a domestic airline, a charter service operator must, among others, (1) pass an inspection of its operating facilities by the MLIT, (2) establish safety management rules, and notify the MLIT of them and (3) obtain the MLIT's approval of its operation rules, its maintenance rules, and the conditions of carriage (articles 102, 103-2, 104 and 106 of the CAA).

Law stated - 21 July 2023

Regulation of airfares

How are airfares regulated?

For domestic flights, an air transport operator is required to make a prior notification to the MLIT of its airfares (article 105, paragraph 1 of the CAA). Accordingly, an operator can offer multiple types of airfares to its customers within the scope of the notification and can change them as needed based on its business judgement. However, the MLIT has the power to order an operator to change the airfares if the MLIT determines that the airfares: (1) are unfair and discriminatory for specific passengers or consigners, (2) are extremely inappropriate in light of social and economic conditions, potentially making it extremely difficult for passengers or consigners to use the operator's services or (3) might create unfair competition against other operators (article 105, paragraph 2 of the CAA).

For international flights, an air transport operator (or a foreign air carrier) is required to obtain the MLIT's approval on its airfares (article 105, paragraph 3 and article 129-2 of the CAA). The MLIT must approve the operator's airfares if they do not fall under conditions (1) through (3) above, and they are in line with international agreements applicable to the international flight at issue (article 105, paragraph 4 of the CAA). As the MLIT exercises its power to approve airfares only in relation to the maximum airfare charges, an operator can sell tickets at a discounted prices if they simply make a prior report of these discounted rates to the MLIT (as per MLIT's circular notice issued on 29 October 2010).

Law stated - 21 July 2023

Drones

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

Regulation under the CAA

Under the CAA, drone operations (except those that involve drones that weigh less than 100 grams) fall under one of three categories (namely, category I, category II and category III) depending on the potential risks these operations pose to persons, property or manned aircraft. The two factors that determine the applicable category are (1) whether the drone operations fall under the scope of a specified flight (eg, operation over densely populated areas or BVLOS (beyond visual line-of-sight) operation, as defined in article 132-87 of the CAA) and (2) whether there are entry control measures (ie, measures to prevent a third party from entering the area below the flight path of the drone, as defined in article 132-85 of the CAA and article 236-70 of the CAA Regulation).

Category III operations

Category III pertains to drone operations falling under a specified flight without taking entry control measures (eg, BVLOS operations over cities without deploying observers who establish a no-entry zone for a third-party). To conduct category III operations:

- the drones must have a first-class airframe approval (article 132-13 of the CAA);
- the drone operator must have a first-class drone pilot certificate (article 132-42 of the CAA); and
- the drone operation must be approved by the MLIT (article 132-85, paragraph 2 and article 132-86, paragraph 3 of the CAA).

Category II operations

Category II is for drone operations falling under a specified flight while taking entry control measures (eg, BVLOS operations over a mountain or a lake). Some category II operations do not require the MLIT's approval if the operation meets the following three conditions (article 132-85, paragraph 3 and article 132-86, paragraph 4 of the CAA; article 236-73 of the CAA Regulation):

- the drone has first-class or second-class airframe approval;
- the operator has a first-class or second-class drone pilot certificate; and
- the weight of the drone is less than 25kg.

Category I operations

Category I pertains to drone operations that do not fall under either categories III or II (eg, VLOS (visual line-of-sight) operation during the daytime over a mountain and below 150 metres). Category I operations do not require approval from the MLIT even if the drone utilised in the operation does not have airframe approval or the operator does not have a drone pilot certificate, or both.

Drone Regulation Act

The Drone Regulation Act (Act No. 9 of 2016) prohibits the operation of drones, unless prior permission is obtained, over and in vicinity of certain facilities important to national security (eg, the prime minister's official residence, nuclear power plants, military bases, major airports).

Law stated - 21 July 2023

AIRCRAFT

Aircraft register

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 name and address of an owner of the aircraft is registered in the aircraft register (article 5 of the Civil Aeronautics Act (Act No. 231 of 1952) (the CAA)).

If an owner of the aircraft falls under one of four categories below, the aircraft is not eligible to be registered in the aircraft register (article 4, paragraph 1 of the CAA):

1. a person who does not have Japanese nationality;
2. a foreign (local) government or its equivalent;
3. a company established outside Japan; or
4. a company established in Japan if its representative is, one third or more of its directors are or one third or more of its voting rights are held by a person or an entity falling under (1) through (3) above.

Separately, any aircraft with a foreign nationality is not eligible to be registered in the aircraft register (article 4, paragraph 2 of the CAA).

Law stated - 21 July 2023

Mortgage register

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

The Aircraft Mortgage Act (Act No. 66 of 1953) regulates the function and process of aircraft mortgages. The acquisitions of, forfeitures of and changes in aircraft mortgages cannot be duly asserted against any third parties unless the same are registered in the aircraft register (article 5 of the Aircraft Mortgage Act). In general, to register an aircraft mortgage in the aircraft register, a joint application by both the mortgagee and mortgagor is required (article 9 of the Regulation on Aircraft Registration (Cabinet Order No. 296 of 1953)). One notable exemption for this is registration by a court judgment, in which case an application by a mortgagee (if it is to register an aircraft mortgage) or a mortgagor (if it is to remove an aircraft mortgage from the aircraft register) (article 10, paragraph 1 of the Regulation on Aircraft Registration) is required.

Law stated - 21 July 2023

Detention

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

Between persons (or entities) regarded as merchants pursuant to article 4 of the Commercial Code (Act No. 48 of 1899), a category under which an owner of an aircraft and its creditor are likely fall in in respect of the debts arising in relation to the aircraft, the creditor may retain (ie, continue to detain) the aircraft until the creditor's claim against the owner is satisfied (article 521 of the Commercial Code). This only applies to the situation where the creditor previously obtained possession of the aircraft in accordance with a commercial transaction with the owner (eg, an owner hands over an aircraft to a maintenance company for repair).

Separately, if a creditor creates an aircraft mortgage over an aircraft by an agreement with an owner and the creditor does not receive the payment specified under the mortgage agreement, the creditor can exercise the aircraft mortgage by applying for a court order. The court may detain the aircraft, sell it through an auction, and distribute the sale proceeds to the creditor (article 180 of the Civil Execution Act (Act No. 4 of 1979) and article 175 of the Rules of Civil Execution (Rules of the Supreme Court No. 5 of 1979)).

In the context of aircraft financing, where the aircraft is leased from the owner to an airline, collateral is commonly established in the form of mortgage by transfer by an agreement among the parties ('jouto-tampo', which is a type of collateral recognised by the court and but not explicitly stipulated in Japanese statutory laws). Typically, to exercise the mortgage by transfer, the creditor can instruct the lessee to hand over the aircraft to the creditor (by paying the difference between the value of the aircraft and the amount the lessee owes to the creditor, if the former is greater than

the latter). If the lessee refuses to hand over the aircraft, the creditor can file a lawsuit against the lessee, demanding the handover of the aircraft.

Law stated - 21 July 2023

Maintenance

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

An operator of an aircraft is required to conduct the maintenance of the aircraft and make modifications to the aircraft as needed so that it keeps its airworthiness (article 16 of the CAA). The maintenance and modification of the aircraft are categorised based on significance (eg, major maintenance, minor modification, preventive maintenance) (article 5-6 of the CAA Regulation). Before returning to fly, an aircraft may be required to pass inspection or confirmation by the Ministry of Land, Infrastructure, Transport and Tourism (the MLIT), or an approved maintenance facility, or a certified mechanic based on the category of the maintenance or the modification, the type of aircraft, and the type of operator (articles 17 through 20 of the CAA).

Law stated - 21 July 2023

AIRPORTS

Ownership

Who owns the airports?

Under the Airport Act (Act No. 80 of 1956), an airport is defined as 'an aerodrome for public use' (article 2 of the Airport Act). The airports under the Airport Act are grouped into three categories, namely: hub airports, municipally managed airports (also recognised as class 3 airports) and other airports.

Hub airports

Hub airports serve as hubs for international air transportation networks or domestic air transportation networks and are further divided into three sub-categories. First, company-managed airports (also recognised as class 1 Airports) are those established and managed by a private enterprise. Currently, four major airports (eg, Narita International Airport (NRT)) fall under this category. Second, about 20 major airports (eg, Tokyo International Airport (HND)) fall under the subcategory of government-managed airports (also recognised as class 2(A) airports) and are established and managed by the government. Third, specified municipally managed airports (also recognised as class 2(B) airports) are established by the national government but managed by a local government.

Municipally managed airports

Municipally managed airports (class 3 airports) are established and managed by the local government, playing an important role in forming international air transportation networks or domestic air transportation networks.

Other airports

Other airports are airports under the Airport Act other than hub airports and municipally managed airports. Other airports are usually relatively small airports with less traffic.

Joint-use aerodromes

Separate from these three types of airports, there are joint-use aerodromes, which are airports for public use jointly managed by the Japan Self-Defence Forces (JSDF) (or the US Forces in Japan) and the national (or local) government.

Airport concessions, in which a private enterprise operates airport facilities owned by the national government or a local government, have been introduced at some airports. Under this scheme, whereas the national (or local) government retains ownership of the land and other assets of the airport, the private entity operates and manages both the aviation business (eg, management of the runways) and non-aviation businesses (management of the terminal building) at the airport in an integrated manner.

Law stated - 21 July 2023

Licensing

What system is there for the licensing of airports?

Under the Civil Aeronautics Act (Act No. 231 of 1952) (the CAA), any person or entity other than the Ministry of Land, Infrastructure, Transport and Tourism (the MLIT) who intends to establish an airport must obtain permission from the MLIT (article 38, paragraph 1 of the CAA). To obtain permission, they must submit to the MLIT an application describing, among others, the location and the plan for installation of the airport (article 38, paragraph 2 of the CAA). The MLIT will examine the application by considering, among other factors, whether the airport would not be extremely detrimental to the interests of others, whether it meets the standards set forth in the CAA and the CAA Regulation, and whether the applicant has or is expected to acquire ownership of or the legal right to use the land on which the airport is to be established (article 39, paragraph 1 of the CAA). In addition, the MLIT will hold a public hearing and give persons who have an interest in the establishment of the airport an opportunity to express their opinions on the establishment of the airport (article 39, paragraph 2 of the CAA).

Traditionally, in Japan, airport terminal buildings (ie, the non-aviation business at the airport) were managed by private entities (often partially funded by the local government where the airport was located) which the MLIT designated as airport functional facility operators under the Airport Act. An airport functional facility operator is given permission to use national property (ie, the land on which the airport is located) under the National Property Act and to establish an airport terminal building. As a result, the operators of aviation business (eg, the runway) and non-aviation business (eg, the airport terminal building) were separate entities.

In 2011, the Act on Promotion of Private Finance Initiative (Act No. 117 of 1999) was amended to allow the establishment of airport concessions, where a private entity can operate both the aviation and non-aviation business of a government-managed airport while the government keeps the ownership of the land and other assets of the airport.

Law stated - 21 July 2023

Economic regulation

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

An airport administrator must submit a prior notification to the MLIT when they intend to collect a landing fee (article 13, paragraph 1 of the Airport Act). The MLIT can order that the airport administrator change the landing fee if it is unfairly discriminatory to specific users of the airport (article 13, paragraph 2 of the Airport Act).

Pursuant to the Basic Policy on the Establishment and Management of Airports established in accordance with article 3 of the Airport Act, the MLIT publishes the revenue and expenditure of government-managed airports annually on its website. The local governments follow this practice for municipally managed airports. For company managed airports,

the legislative act that established the company managing the relevant airport (eg, the Narita International Airport Corporation Act (Act No. 124 of 2003) for Narita International Airport (NRT)) requires the company to submit a balance sheet, a profit and loss statement, and a business report to the MLIT annually within three months after the end of each fiscal year.

Law stated - 21 July 2023

Access

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

There are no specific laws or rules regulating airport access. That being said, the MLIT has been taking the initiative to develop access to airports, especially in connection with the airports in the Tokyo metropolitan area. More specifically, the MLIT has developed an overall plan to improve access to airports while supporting the efforts of infrastructure providers to expand access to the airports.

Law stated - 21 July 2023

Slot allocation

How are slots allocated at congested airports?

Currently, Narita International Airport (NRT), Tokyo International Airport (HND), Kansai International Airport (KIX), Osaka International Airport (ITM), and Fukuoka Airport (FUK) are designated as congested airports (article 219-2 of, paragraph 1 of the CAA Regulation). If an air transport operator intends to operate a route using one of these congested airports, they need to obtain the MLIT's permission for doing so (article 107-3, paragraph 1 of the CAA). Before deciding whether to issue a permit for the air transport operator to operate a route including at a congested airport, the MLIT examines, among other things, whether the air transport operator's plan to use such congested airport promotes competition among the operators, and diversifies the transport network (article 107-3, paragraph 3 of the CAA).

For example, in connection with Tokyo International Airport (HND), for purposes of promoting competition among airlines, slots were preferentially allocated to newly incorporated airlines. At the same time, slots have also been allocated to major airlines that have contributed to a diverse transportation network by maintaining low-demand routes.

Law stated - 21 July 2023

Ground handling

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

There are no laws or regulations specifically regulating ground handling.

Law stated - 21 July 2023

Air traffic control

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

Air traffic control services are provided by air traffic controllers who are certified and employed by the government. Air traffic services provided by air traffic controllers can be divided into five categories, namely, airways control services,

airport control services, approach control services, terminal radar control services and ground-controlled approach services (article 96 of the CAA; article 199 of the CAA Regulation). Separately, flight information services, operation support services (including checking flight plans filed by aircraft operators), and airport adviser services are provided by air traffic operational information providers who are also certified and employed by the government.

Law stated - 21 July 2023

LIABILITY AND ACCIDENTS

Passengers, baggage and cargo

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?

In general, the rules under the Civil Code (Act No. 89 of 1896) and the Commercial Code apply in respect of death of, or injury to, passengers or loss or damage to baggage or cargo in respect of domestic carriage. However, the conditions of carriage established by an air transport operator can supersede the rules under the Civil Code and the Commercial Code.

In light of the importance of conditions of carriage in respect of the passenger's right, air transport operators must establish their own conditions of carriage and obtain approval from the Ministry of Land, Infrastructure, Transport and Tourism (the MLIT) (article 106, paragraph 1 of the Civil Aeronautics Act (Act No. 231 of 1952) (the CAA)). To be approved by the MLIT, the conditions of carriage must (1) not include provisions that potentially harm the legitimate public interest or (2) include provisions regarding the operator's liability and the collection of fares (article 106, paragraph 2 of the CAA). In addition, in accordance with article 591 of the Commercial Code, any special provision that releases or reduces an aircraft operator's liability for death of or injury to a passenger is void except for certain extreme situations. In light of these, it is possible for an air transport operator to reasonably limit its liability for damage to baggage or cargo (but not for damage arising from death of or injury to a passenger).

Turning to the general rules under the Civil Code and the Commercial Code, in respect of damage to cargo, an aircraft operator is liable for the damages arising from lost, damaged, or delayed cargo, provided that the aircraft operator is released from liability if they prove that they did not neglect to exercise its duty of care (article 575 of the Commercial Code). In addition, the amount of damages due to lost or damaged cargo is determined by the market price of the cargo unless the damages arise from the operator's wilful misconduct or gross negligence (ie, usually, loss of profit is not recoverable) (article 576 of the Commercial Code).

In respect of death of or injury to passengers, the passenger (or the passenger's heirs if the passenger dies) can claim compensation for damages arising from the accident, provided that the aircraft operator is released from liability if it proves that it did not neglect to exercise its duty of care (article 590 of the Commercial Code). The damages recoverable from the operator usually include actual damages (eg, medical expenses), lost income and any reduction in future earnings capacity, and damages due to emotional distress (articles 415 and 709 of the Civil Code).

Law stated - 21 July 2023

Surface damage

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

There are no special rules that apply to surface damage. Under article 709 of the Civil Code, an aircraft operator is liable for surface damage as long as the operator's negligence or wilful misconduct is a proximate cause of the

damages.

Law stated - 21 July 2023

Accident investigation

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

The Japan Transport Safety Board, an external bureau of the MLIT, is responsible for investigations of aviation accidents. The Japan Transport Safety Board conducts the investigation of air accidents in accordance with the provisions of the Chicago Convention and the standards and methods stipulated in the annexes of the Chicago Convention (article 18 of the Act for Establishment of the Japan Transport Safety Board).

Law stated - 21 July 2023

Accident reporting

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

Upon the occurrence of an accident or a serious incident, the pilot-in-command (or the operator of the aircraft if the pilot-in-command is unable to report) must file a report with the MLIT (articles 76 and 76-2 of the CAA). An accident report must provide the details of, among others, the time and date and location of the accident, the nature of the accident, the nature of damages arising from the accident, and the names of and relevant information on killed or missing persons (article 165 of the CAA Regulation). For a serious incident, a report must include, among others, the time and date and location of the serious incident and the nature of the incident (article 166-5 of the CAA Regulation).

Law stated - 21 July 2023

COMPETITION LAW

Specific regulation

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

As a general competition rule, the rules under the Act on Prohibition of Private Monopolisation and Maintenance of Fair Trade (Act No. 54 of 1947) (the Antimonopoly Act) apply to the aviation sector. The Civil Aeronautics Act (Act No. 231 of 1952) (the CAA), however, provides certain exceptions for the application of the Antimonopoly Act in connection with the aviation sector.

More specifically, in connection with domestic routes, an air transport operator can enter into an agreement on joint management with another air transport operator to ensure the continuance of passenger transport services for an air route, which is necessary for local residents but faces declining demand (article 110, Item 1 of the CAA). Separately, in connection with international routes, an air transport operator can enter into an agreement with another air transport operator on joint carriage, fare agreements and other agreements relating to transportation to promote public convenience (article 110, Item 2 of the CAA). Such agreement includes, but is not limited to, a code sharing agreement between an airline in Japan and a foreign airline and a joint business agreement between these airlines.

If an air transport operator intends to enter into one of these agreements, they must obtain approval from the Ministry of Land, Infrastructure, Transport and Tourism (the MLIT) (article 111, paragraph 1 of the CAA).

Law stated - 21 July 2023

Regulator

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

There is no regulator that exclusively enforces competition rules against the aviation sector. Rather, competition rules are applied to the aviation sector by the general competition authority, which is the Japan Fair Trade Commission (JFTC). It is an independent administrative commission consisting of the chair and four commissioners, who have the authority to perform their duties independently and without direction or supervision from any other organisation.

Law stated - 21 July 2023

Market definition

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

There are no specific standards to define the relevant market in connection with the aviation sector. Generally, the relevant market is defined based on demand-side substitution and supply-side substitution. The factors taken into consideration include whether the suppliers are able to supply the goods or services at issue or similar goods or services to the consumers and whether the consumers consider and choose the goods or services as alternatives. These general rules of market definition also apply to the aviation sector.

Law stated - 21 July 2023

Code-sharing and joint ventures

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

According to the publicly available information on the case where JFTC examined the code-sharing and joint ventures between an airline (ANA) and another airline (ADO) that was undergoing rehabilitation procedures in 2002, JFTC considered the three factors set out below and concluded that the contemplated code-sharing and joint ventures did not violate the rules under the Antimonopoly Act.

Code sharing

Under the code-sharing agreement the airlines intended to enter into, (1) both companies would independently set their fares and the number of seats sold under certain types of fares, (2) ANA would purchase half of the seats and would not sell them back to ADO and (3) both companies would report to JFTC on the change of the terms and conditions of the code-sharing agreement from time to time and when ADO's rehabilitation procedures ended.

Computer reservations system (CRS)

Whereas ANA allows ADO to use ANA's CRS, ANA sets up a Chinese wall so that either party cannot access the confidential business information possessed by the other party.

Outsourcing

Whereas ADO outsources, among others, its maintenance work, training and ground handling operations to ANA, both companies intend to remain independent from each other.

Law stated - 21 July 2023

Assessing competitive effect

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

The Antimonopoly Act mainly regulates the prohibition of private monopolisation and unfair restraint of trade (article 1 of the Antimonopoly Act).

A private monopoly means a situation where a business operator substantially restricts competition by excluding or controlling the business activities of other business operators. In determining whether a private monopoly exists, the following criteria are considered: (1) whether the business operator, solely or jointly with other business operators, attempts to monopolise the market by selling goods or services at unreasonably low prices, excluding competitors from the market or obstructing new entrants and (2) whether the business operator, solely or jointly with other business operators, attempts to control the market by imposing restrictions on the business activities of other business operators through the acquisition of shares or other means.

Unfair restraint of trade means a situation where the competition among business operators in a certain sector of trade is substantially limited and against the public interest due to the business operators' mutually binding business activities or business activities conducted in concert with other business operators. The following factors are taken into consideration when determining whether an unreasonable restraint of trade exists whether there is a communication of intent between the business operators and whether the business operators mutually restrict their business activities.

Law stated - 21 July 2023

Remedies

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

JFTC may order a business operator to take necessary measures to cease an act that is in violation of the rules under the Antimonopoly Act (a 'Cease and Desist Order') (article 7 of the Antimonopoly Act). In addition, a surcharge may be imposed by the government on a business operator that has committed an action that is in violation of the rules regarding private monopolies, cartels, and certain unfair trade practices under the Antimonopoly Act (article 7-2 of the Antimonopoly Act). Furthermore, a business operator is also liable for the damages incurred by third parties arising from the business operator's acts that are in violation of the rules regarding private monopolisation, unreasonable restraint of trade, or unfair trade practices (article 25, paragraph 1 of the Antimonopoly Act). This liability owed by a business operator is a strict liability (article 25, paragraph 2 of the Antimonopoly Act). Criminal penalties may also be imposed on executives of companies or industry associations that engage in cartels or private monopolies (articles 89 through 100 of the Antimonopoly Act).

Law stated - 21 July 2023

FINANCIAL SUPPORT AND STATE AID

Rules and principles

Are there sector-specific rules regulating direct or indirect financial support to companies by the government, government-controlled agencies or companies (state aid) in the aviation sector? Is state aid regulated generally?

Although there are no sector-specific rules regulating financial support in the aviation sector, the government has been implementing multiple ad-hoc financial support measures for the aviation industry.

By way of example, in October 2020, the Ministry of Land, Infrastructure, Transport and Tourism (the MLIT) compiled a package of support measures to support aviation and airport-related companies that were facing difficult business conditions due to the significant decrease in aviation demand caused by the pandemic. These measures included reductions in landing fees, financial support through the crisis response loans from the Development Bank of Japan, and deferment of payments of national and local taxes. As a result of this policy, in fiscal year 2021, landing fees, stopover fees, and navigation aid facility fees for domestic flights were reduced by approximately 90 per cent.

Another example is the subsidies provided by the MLIT for the purpose of attracting foreign tourists to visit the less popular regions in Japan. This subsidy programme provides financial assistance for regional airports, provides funds for the payment of landing fees and provides assistance for the installation or expansion of check-in counters and check-in machines.

Law stated - 21 July 2023

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

Not applicable. There are no general laws or regulations on state aid for businesses, let alone specific ones applicable to the aviation sector, and accordingly there are also no established principles of state aid rules applicable to the aviation sector.

There are multiple ad-hoc state aid programmes, each of which has its own rules (eg, the amount of aid and the conditions for granting aid).

Law stated - 21 July 2023

Exemptions

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

Not applicable.

Law stated - 21 July 2023

Clearance of state aid

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

There are several systems of state aid for aviation-related businesses, but there are no state aid measures that must be approved by the competition authorities.

Recovery of unlawful state aid**If no clearance is obtained, what procedures apply to recover unlawfully granted state aid?**

The Act on Regulation of Execution of Budget Pertaining to Subsidies (Act No. 179 of 1955) (referred to as the 'Act' in this section) provides procedures applicable to the recovery of unlawfully granted state aid.

If a recipient of the state aid uses the state aid in violation of the relevant restriction (eg, spends the state aid for unrelated business), the government can rescind the decision to grant the state aid (article 17 of the Act) and order the recipient to return the state aid (article 18 of the Act). In such case, the recipient is required to return the state aid to the government with a surcharge of 10.95 per cent per annum that applies from the date of receiving the state aid to the date of returning it to the government (article 19 of the Act). In addition to the sanctions set forth under the Act, an individual subsidy programme may impose additional sanctions (eg, being prohibited from bidding on related projects for a certain period or the payment of penalties).

Law stated - 21 July 2023

CONSUMER PROTECTION**Passengers****What rules regulate denied boarding, cancellation or (tarmac) delay?**

As there is no specific consumer protection legislation that aims to address aviation-related issues (eg, denied boarding, cancellation, or delay), general consumer protection laws apply to these issues. More specifically, in accordance with article 10 of the Consumer Contract Act (Act No. 61 of 2000), a provision of a consumer contract that restricts a consumer's rights and unilaterally prejudices the interests of the consumer is rendered void. Separately, if denied boarding, cancellation or delay constitutes non-performance of the airline's obligation under the passenger transportation contract, the airline is liable for the damages incurred by the passenger unless the airline can prove that it is not negligent (article 590 of the Commercial Code).

Law stated - 21 July 2023

Package holidays**What rules apply to the sale of package holiday products?**

Under the Travel Agency Act (Act No. 239 of 1952) (referred to as the 'Act' in this section), a travel operator is required to be registered with the Japan Tourism Agency to engage in tour business (article 3 of the Act). For package holiday products created by a registered travel operator, the registered travel operator is responsible for the management of itineraries.

Separately, the terms and conditions applicable to package holiday products are typically standardised because a registered travel agency does not need to obtain separate approval from the Japan Tourism Agency if they use the standard travel agency terms and conditions established by the Japan Tourism Agency and the Consumer Affairs Agency (articles 12-2 and 12-3 of the Act). Under the standard travel agency terms and conditions, a registered travel operator is required, in the event of an itinerary change (including, but not limited to, overbooking), to compensate the traveller by paying a certain percentage of the travel cost set forth in the standard travel agency terms and conditions. The standard travel agency terms and conditions also provide that a registered travel operator shall pay to the traveller

a certain amount set forth in the said terms and conditions for death of or bodily injury to the traveller or damage to the traveller's belongings that occur during the tour even if the registered travel operator is not negligent.

Law stated - 21 July 2023

Other consumer legislation

Is there any other aviation-specific consumer legislation?

Under the Act for Promoting Easily Accessible Public Transportation Infrastructure for the Aged and the Disabled (Act No. 91 of 2006), an air transport operator (or an entity that establishes and manages an airport terminal building) is required to modify or maintain aircraft (or an airport terminal building) so that it complies with the barrier-free standards for purposes of facilitating smooth mobility for the aged and disabled persons. More specifically, these standards include the installation of boarding and disembarking facilities that allow smooth access for aged and disabled persons as well as the provision of wheelchairs on board.

Law stated - 21 July 2023

INSURANCE AND SECURITY

Insurance for operators

What mandatory insurance requirements apply to the operation of aircraft?

For private operations of aircraft, the Civil Aeronautics Act (Act No. 231 of 1952) (the CAA) does not provide a mandatory insurance requirement. After a high-profile accident in 2015 where a private airplane crashed in a densely populated area, the Ministry of Land, Infrastructure, Transport and Tourism (the MLIT) has been exercising its authority to manage the government-managed airports, refusing to allow uninsured private aircraft to use those airports. The MLIT also requested the managers of other airports to implement the same measures, most of whom we believe follow the MLIT's request.

Turning to air transport operators and aerial work operators, the MLIT, in accordance with its internal rules, will not issue a licence required to operate air transport operations or aerial work unless the operator has entered an appropriate insurance contract that covers the operator's liability in the case of an air accident. More specifically, if there is no such an insurance contract, the MLIT will determine that the operator does not have an appropriate business plan to carry out air transport operations or aerial work as required under article 101, paragraph 1, Item 2 or article 123 of the CAA. Separately, air transport operators and aerial work operators must maintain appropriate insurance contracts since the MLIT can order them to enter into insurance contracts even after the issuance of the licence if the MLIT determines that the operator's failure to maintain such insurance contracts adversely affect the public interest (article 112, Item 6 and article 124 of the CAA).

Law stated - 21 July 2023

Aviation security

What legal requirements are there with regard to aviation security?

In 2019, a high-profile incident relating to aviation security occurred, where a person on bail hiding in a musical instrument case escaped Japan by exploiting a loose security check for private jet users. In response to the heightened need for effective security measures, the CAA was amended in 2021, under which it is now mandatory for all persons (subject to certain exceptions) to undergo a security check at the airport before entering the restricted area or before

boarding the aircraft (articles 131-2-5 and 132-2-6 of the CAA). The violation of this requirement would result in imprisonment for a term of not more than one year or a fine of not more than 500,000 yen (article 157-5 of the CAA).

Law stated - 21 July 2023

Serious crimes

What serious crimes exist with regard to aviation?

Act on Punishment of Unlawful Seizure of Aircraft (Act No. 68 of 1970)

This act sets forth the requirements and punishments for hijacking. More specifically, a person who unlawfully seizes aircraft in flight or controls the operation of aircraft at his or her will through the use of assault or intimidation or by any other means that render another person incapable of resistance is punished by imprisonment for life or a term of not less than seven years. If another person dies in the process of the hijacking, the penalty becomes more severe: the death penalty or imprisonment for life.

Act on Punishment of Acts to Endanger Aviation (Act No. 87 of 1974)

This act sets forth the requirements and punishments for serious crimes relating to the operation of aircraft, which includes, but is not limited to, the destruction of airport facilities, the destruction of aircraft in operation, and the unlawful bringing of an explosive device into aircraft in operation. The destruction of aircraft in operation that results in the death of a person is punishable by the death penalty or imprisonment for life.

The CAA

The CAA provides multiple criminal penalties for not complying with the rules under the CAA. A few examples include:

- The operation of unairworthy aircraft (imprisonment for a term of not more than three years or a fine of not more than one million yen) (article 143 of the CAA);
- The operation of aircraft under the influence of alcohol or drugs (imprisonment for a term of not more than three years or a fine of not more than 500,000 yen) (article 148-3 of the CAA); and
- The conduct of air transport operations (or aerial work) without obtaining the MLIT's approval (imprisonment for a term not more than three years or a fine of not more than three million yen) (article 155 of the CAA).

Law stated - 21 July 2023

UPDATE AND TRENDS

Emerging trends













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

Drone regulations have rapidly evolved since 2015. The amendment to the Civil Aeronautics Act (Act No. 231 of 1952) (the CAA) that became effective in 2022 provides comprehensive drone regulations, including the categorisation of drone operations, mandatory drone registration, the establishment of a drone pilot certification system, and airworthiness requirements for drones. This amendment also enabled BVLOS drone operations over cities without deploying assistant observers. The first drone flight of this kind was conducted on 24 March 2023, for a delivery of cargo over a residential area in western Tokyo.

Research and development of eVTOLs are another hot topic. With the aim of realising eVTOL operations at Expo 2025 in Osaka, the MLIT has taken the lead in developing legislation on eVTOLs in coordination with private companies developing eVTOLs. The legislation on eVTOLs, which the MLIT is currently working on, covers, among others, certification of eVTOLs, a pilot licence requirement, eVTOL ports, operation of eVTOL and eVTOL transport business. In respect of the pilot licence requirement for eVTOLs, the MLIT is considering utilising the pilot licence requirement currently in place as a base and adding further requirements reflecting the characteristics of eVTOLs. In parallel with this, the MLIT is also considering a future option of introducing an independent licence requirement for eVTOLs.

Law stated - 21 July 2023

Jurisdictions

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