



Lakshmi Kumar
& Sridharan
attorneys

An ISO 9001:2008 and ISO 27001:2005 certified law firm

30
years



Aviation / Aerospace Roundup

MAY
2016

I. REGULATIONS CHECK

A. Revisiting the Chicago Convention

INTRODUCTION



The Convention on International Civil Aviation of 1944 (“**the Chicago Convention**” or “**Convention**”) has been an enduring multilateral treaty showing resilience and vision. The signatories to the Convention had agreed on certain principles and arrangements so that international civil aviation could be developed in a safe and orderly manner and international air transport services be established on the basis of equality of opportunity and operated soundly and economically. It rests on four key elements – peace and friendship through aviation, safety, economical and orderly air transport. It established the rules of airspace, aircraft registration and safety, and details the rights of the signatories in relation to air travel and creation of a specialized agency of the UN charged with coordinating and regulating international air travel called the International Civil Aviation Organization (“**ICAO**”). India is a signatory to the Chicago Convention.

The Convention superseded the “Convention on Regulation of Aerial Navigation” signed at Paris on October 13, 1919 and “Convention on Commercial Aviation” signed at Habana on February 20, 1928. The Convention is divided into 22 Chapters, 96 Articles and supported by 19 annexes containing standards and recommended practices and has been revised eight times so far (*in 1959, 1963, 1969, 1975, 1980, 1997, 2000 and 2006*) to keep pace with the changing times. The Convention is based on the following principles –

- i. It recognizes that every state has complete and exclusive sovereignty over the airspace above its territory, which is the land areas and territorial waters adjacent thereto under the sovereignty, suzerainty, protection or mandate of such State.
- ii. It remains applicable only to civil aircraft and aircraft used in military, customs and police services, collectively the state aircraft are outside its purview.
- iii. No aircraft shall fly over the territory of another State or land thereon without authorization by special agreement or otherwise, and in accordance with the terms thereof.
- iv. States shall give regard to the safety of navigation of civil aircraft while issuing regulations for their state aircraft and make such laws regarding the interception of civil aircraft, mandatory compliances for the registered aircrafts and misuse of civil aviation for any purpose inconsistent with the aims of this Convention.

B. FLIGHTS OVER TERRITORY OF MEMBER STATES

- 1. Right of non-scheduled flight:** Aircrafts of one state have right to make flights into or in transit non-stop across the territory of another state and to make stops for non-traffic purposes without obtaining any prior permission if such aircraft is not engaged in scheduled international air services or if it is engaged in the carriage of passengers, cargo, or mail for remuneration or hire on other than scheduled international air services. The state can require landing of such aircraft and impose such regulations, conditions or limitations as required. **“Stop for non-traffic purposes”** means a landing for any purpose other than taking on or discharging passengers, cargo or mail.
- 2. Scheduled air services:** No scheduled international air service may be operated over or into the territory of another state, except with the special permission or authorization of that state and in accordance with the terms of such permission or authorization. **“International air service”** means air service which passes through the air space over the territory of more than one state.
- 3. Pilotless aircraft:** No aircraft capable of being flown without a pilot shall be flown without a pilot over the territory of another state without special authorization by that state and in accordance with the terms of such authorization. Each state undertakes to insure that the flight of such aircraft without a pilot in regions open to civil aircraft shall be so controlled as to obviate danger to civil aircraft.
- 4. Prohibited areas:** For military necessity or public safety states can restrict or prohibit uniformly the aircraft of other states from flying over certain areas of its territory without making any discrimination between its aircraft and other aircrafts or interfering unnecessarily with air navigation. The state has the obligation to communicate about such territory to other states and ICAO. States can, in exceptional circumstances or during a period of emergency, or in the interest of public safety, and with immediate effect, temporarily restrict or prohibit flying over the whole or any part of its territory, on condition that such restriction or prohibition shall be applicable without distinction of nationality to aircraft of all other states.
- 5. Customs & immigration:** States can designate airports as no-custom airport or for the purpose of customs and other examination both at the time of landing and depart. In both cases, the details of all designated airports is to be published by the state and transmitted to ICAO. Customs and immigration procedures affecting international air navigation is established by states and no fees, dues or other charges can be imposed by any state for the right of transit over or entry into or exit from its territory of any aircraft of another state or persons or property thereon.
- 6. Applicability of air regulations:** The laws and regulations of a state relating to the admission to or departure from its territory of aircraft engaged in international air navigation, or to the operation and navigation of such aircraft while within its territory, shall be applied to the aircraft of all states without distinction as to nationality, and shall be complied with by such aircraft upon entering or departing from or while within the territory of that state.



7. Rules of the air: Every aircraft flying over or manoeuvring within a state should carry its nationality mark and comply with the rules and regulations relating to the flight and manoeuvre of aircraft there in force.



8. Entry and clearance regulations: The laws and regulations of a state as to the admission to or departure from its territory of passengers, crew or cargo of aircraft, such as regulations relating to entry, clearance, immigration, passports, customs, and quarantine shall be complied with by or on behalf of such passengers, crew or cargo upon entrance into or departure from, or while within the territory of that state.

9. Prevention of spread of disease: Each state agrees to take effective measures to prevent the spread by means of air navigation of cholera, typhus (epidemic), smallpox, yellow fever, plague, and such other communicable diseases as the states shall from time to time decide to designate.

10. Facilitation of formalities: Each state agrees to adopt all practicable measures, through the issuance of special regulations or otherwise, to facilitate and expedite navigation by aircraft between the territories of states, and to prevent unnecessary delays to aircraft, crews, passengers and cargo, especially in the administration of the laws relating to immigration, quarantine, customs and clearance.

11. Nationality of aircraft: Aircraft have the nationality of the state in which they are registered. An aircraft cannot be validly registered in more than one state, but its registration can be changed to another state in accordance with its laws and regulations. Every aircraft engaged in international air navigation shall bear its appropriate nationality and registration marks.

12. Customs duty: Aircraft on a flight to, from, or across the territory of another state shall be admitted temporarily free of duty, subject to the customs regulations of the state and the fuel, lubricating oils, spare parts, regular equipment and aircraft stores on board on arrival and retained on board on leaving shall be exempt from customs duty, inspection fees or similar national or local duties and charges. This exemption shall not apply to any quantities or articles unloaded, except in accordance with the customs regulations of the state. Spare parts and equipment imported for incorporation in or use on an aircraft of another state engaged in international air navigation shall be admitted free of customs duty, subject to compliance with the regulations of the state concerned.

13. Aircraft in distress or accidents: States should provide such measures of assistance to aircraft in distress in its territory as it may find practicable, and can also permit the aircraft owner state. In accidents the state where event occurs shall institute an enquiry into the circumstances of the accident.

14. Exemption from seizure on patent claims: International air navigation shall not entail any seizure or detention of aircraft for any claim against the owner or operator thereof on the ground that the construction, mechanism, parts, accessories or operation of the aircraft is an infringement of any patent, design, or model duly granted or registered in the state whose territory is entered by the aircraft. Provided that any patented part or equipment so stored shall not be sold or distributed internally in or exported commercially from the state entered by the aircraft. This Article applies to all member states, parties to the International Convention for the Protection of Industrial Property and states that have patent laws to recognize and give adequate protection to inventions made by the nationals of other states.

15. Air navigation facilities and standard systems: States have to provide, in its territory, airports, radio services, meteorological services and other air navigation facilities to facilitate international air navigation. States should also adopt and put into operation the appropriate standard systems of communications procedure, codes, markings, signals, lighting and other operational practices and rules recommended or established under this Convention.

C. CONDITIONS TO BE FULFILLED WITH RESPECT TO AIRCRAFT

1. Documents carried in aircraft: Every aircraft shall carry its certificate of registration, certificate of airworthiness, the appropriate licences (*like, certificates of competency*) for the pilot & each member of the crew, journey log book, aircraft radio station licence (*if equipped with radio apparatus*) and list of passenger names and places of embarkation and destination or a manifest and declarations of the cargo. It is crucial to note here that –

- States have right to refuse to recognize, for the purpose of flight above its own territory, certificates of competency and licences granted to any of its nationals by another state.
- Certificates of airworthiness and certificate of competency and licences issued or rendered valid by one state in which the aircraft is registered, shall be recognized as valid by the other states, provided that the requirements under which such certificates or licences were issued or rendered valid are equal to or above the minimum standards established under this Convention.
- Each contracting State may prohibit or regulate the use of photographic apparatus in aircraft over its territory.

2. Aircraft radio equipment: Aircraft can carry radio transmitting apparatus to be used only by members of the flight crew who are provided with a special licence for the purpose and only if a licence to install and operate such apparatus has been issued by the appropriate authorities of the state in which the aircraft is registered. The use of radio transmitting apparatus in other states it flies over shall be in accordance with the regulations prescribed by that state.

3. Cargo restrictions: Munitions or implements of war cannot be carried in or above the territory of a state in aircraft engaged in international navigation, except by permission of such state. Each state reserves the right, for reasons of public order and safety, to regulate or prohibit the carriage in or above its territory of any other articles as aforesaid provided that no distinction is made between its aircraft and the aircraft of the other states and provided further that no restriction is imposed which may interfere with the carriage and use on aircraft of apparatus necessary for the operation or navigation of the aircraft or the safety of the personnel or passengers.

D. INTERNATIONAL STANDARDS AND RECOMMENDED PRACTICES

1. Adoption of international standards and procedures: States shall collaborate in securing the highest practicable degree of uniformity in regulations, standards, procedures, and organization in relation to aircraft, personnel, airways and auxiliary services and ICAO shall recommended practices and procedures on communications systems and air navigation, characteristics of airport, rules of the air and air traffic control practices, licensing of personnel, airworthiness of aircraft, registration of aircraft, collection and exchange of meteorological information, log books, aeronautical maps and charts, customs and immigration procedures, aircraft in distress and investigation of accidents and such other matters concerned with the safety, regularity, and efficiency of air navigation as may from time to time appear appropriate. It is crucial to note that –

- State which finds it impracticable to comply with such international standard or procedure, or bring its own regulations or practices with any international standard or procedure shall give immediate notification to ICAO.
- This shall not apply to aircraft and aircraft equipment/prototype submitted to the appropriate national authorities for certification for a period of 3 years prior the date of adoption of an international standard of airworthiness for such equipment.
- This shall not apply to personnel whose licences are originally issued 1 year before of initial adoption of an international standard of qualification for such personnel but they shall in any case apply to all personnel whose licences remain valid five years after the date of adoption of such standard.

2. Validity of endorsed certificates and licences: No aircraft or personnel having certificates or licences so endorsed shall participate in international navigation, except with the permission of the states whose territory is entered. The registration or use of any such aircraft, or of any certificated aircraft part, in any state other than that in which it was originally certificated shall be at the discretion of the state into which the aircraft or part is imported.

E. ICAO

- 1. Structure and Functions:** ICAO was formed by the Convention and has an Assembly and a Council. ICAO has been granted full juridical personality status compatible with the constitution and laws of the each state concerned. ICAO shall develop the principles and techniques of international air navigation and to foster the planning and development of international air transport so as to ensure the safe and orderly growth of international civil aviation throughout the world, encourage the arts of aircraft design and operation for peaceful purposes, encourage the development of airways, airports, and air navigation facilities for international civil aviation, promote safe, regular, efficient and economical air transport, prevent economic waste caused by unreasonable competition, promote safety of flight in international air navigation and the development of all aspects of international civil aeronautics.

The Council was made a permanent body responsible to the Assembly. It composed of 36 states elected by the Assembly. Election happens every 3 years and the members hold office until the next following election. ICAO elects its President for 3 years, which can be re-elected. He shall have no vote. The Council elects from its members Vice Presidents. The President has to convene meetings of the Council, the Air Transport Committee, and the Air Navigation Commission, serve as representative of the Council and carry out on behalf of the Council the functions which the Council assigns to him.

- 2. Obligation of state:** Each state has to file with the Council traffic reports, cost statistics and financial statements showing among other things all receipts and the sources thereof. Each state has to designate route to be followed within its territory by any international air service and the airports which any such service may use. If the Council needs to improve the aviation system of a state, it can consult that state, suggest means and make recommendations but the state shall not be guilty of an infraction of this Convention if it fails to carry out these recommendations.

State may conclude an arrangement with the Council for giving effect to such recommendations and bear all of the costs involved in any such arrangement. If the State does not so elect, the Council may agree, at the request of the State, to provide for all or a portion of the costs. The Council may agree to provide, man, maintain, and administer any or all of the airports and other air navigation facilities including radio and meteorological services, required in its territory for the safe, regular, efficient and economical operation of the international air services of the other contracting States, and may specify just and reasonable charges for the use of the facilities provided.

3. Joint operating organizations and pooled services: Two or more states can start joint operations and from pooling their air services on any routes or in any regions, but subject to all the provisions of this Convention, including those relating to the registration of agreements with the Council. The Council can also suggest to states that they form joint organizations to operate air services on any routes or in any regions. A state may participate in joint operating organizations or in pooling arrangements, either through its government or through an airline company or companies designated by its government. The companies may, at the sole discretion of the state concerned, be state owned or party state-owned or privately owned.

4. Other aeronautical agreements and arrangements: All existing aeronautical agreements between member states or the airline of any other state is necessary to be registered with the Council and the Convention abrogated all obligations and understandings between them which are inconsistent with its terms, and undertake not to enter into any such obligations and understandings. Any subsequent arrangement was allowed if that was consistent with the Convention and registered with the Council. The Convention allowed the lease, charter or interchange of aircrafts or any similar arrangement by an operator of one state where it was registered to another state where it wanted to have or had his principal place of business.

F. SETTLEMENT OF DISPUTES

If any disagreement between two or more states relating to the interpretation or application of this Convention and its Annexes cannot be settled by negotiation, it shall be decided by the Council after an application is made in that regard. Appeal to the decision of Council lies with an ad hoc arbitral tribunal or to the Permanent Court of International Justice. Any such appeal shall be notified to the Council within 60 days of receipt of notification of the decision of the Council.

For arbitration, each state as a party to the dispute can name a single arbitrator who shall name an umpire and if they fail to name an arbitrator within 3 months from the date of the appeal, the President of the Council has the power to appoint the arbitrator for such states from a list of qualified and available persons maintained by the Council. If, within 30 days, the arbitrators cannot agree on an umpire, the President of the Council can designate an umpire. The arbitrators and the umpire jointly constitute an arbitral tribunal, which settles its own procedure and gives its decisions by majority vote.

The decisions of the Permanent Court of International Justice and of an arbitral tribunal shall be final and binding and member states can stop operation of an airline of the state that is not conforming to the final decision. The Assembly shall suspend the voting power in the Assembly and in the Council of the state that is found in default. In case of war, the provisions of this Convention shall not affect the freedom of action of any of the states affected, whether as belligerents or as neutrals. The same principle shall apply in the case of any state which declares a state of national emergency and notifies the fact to the Council.

Conclusion

Aviation is a global industry and the Convention, in its true spirit, gives it a strategic direction of “creating and preserving friendship and understanding among the nations and people of the world”. As cities grow, the need for connectivity and air transport grows. The Convention explicitly recognizes the discretionary right of the states for reasons of military necessity or public safety to restrict the aircrafts from flying over its territory. So, even though the Grotius principle that air is not susceptible of occupation and its common use is destined for all men holds true, the Convention gives prominence to the state policy and protection of national interest over the interest of the user of air transport merely because it is stultified by interests of commercial and national policy.

Author

Neeraj Dubey
Joint Partner
Bangalore office

II. LATEST NOTIFICATIONS/CIRCULARS

Author: Muthukumaran R. G.

1. The Government of India in the Ministry of Finance (Department of Revenue) has issued **Notification No.29/2016 – Customs dated 26.04.2016 and Notification No. 19/ 2016 – CE dated 26.04.2016** to relax certain conditions related to import of parts, testing equipment, tools and tool kits for maintenance, repair and overhauling of aircraft pursuant to the promises related to tax benefits for the MRO sector made in the aviation policy. wherein it.
 - a. **Customs Notification:** Basic Customs Duty (BCD) on parts, testing, equipment, tools and tool – kits for MRO of aircraft will continue to be at nil rate and the condition with respect to following the procedure laid down under Customs (Import of Goods at Concessional Rate of Duty for Manufacture of Excisable Goods) Rules, 1996 is not applicable for import of said goods. Further, other conditions imposed under condition No.73 has been substituted by a new set of conditions wherein the importer can import the goods under Nil rate of duty when:
 - Imported by units approved by DGCA for aircrafts registered in India and elsewhere for MRO which are intended to be removed from India
 - The importer submits documents certified by DGCA approved Quality Managers of aircraft maintenance organisations indicating such items
 - The importer maintains proper account of import, use and consumption of the goods imported for the MRO Activity and submits such account to the Commissioner of Customs
 - The importer submits a bond equivalent to the value of duty saved
 - b. **Central Excise Notification:** Excise Duty exemption was provided for parts, testing equipment, tools, and tool – kits for MRO of aircraft subject to the condition that the manufacturer satisfies the conditions under Central Excise (Removal of Goods at Concessional Rate of Duty of Manufacture of Excisable Goods) Rules, 2001. This condition is lifted by the said Notification and the manufacturer has unconditional exemption for parts, testing equipment, tools, and tool – kits removed for MRO of aircraft.



**Lakshmikumaran
& Sridharan**
attorneys

NEW DELHI

5 Link Road, Jangpura Extension,
New Delhi 110014

B-6/10, Safdarjung Enclave
New Delhi - 110 029
Phone : +91-11-4129 9811
E-mail : lsdel@lakshmisri.com

MUMBAI

2nd Floor, CNERGY IT Park,
Old Standard Mill,
Appa Saheb Marathe Marg,
Prabhadevi,
Mumbai - 400 025
Phone : +91-22-2439 2500
E-mail : lsbom@lakshmisri.com

CHENNAI

2, Wallace Garden, 2nd Street
Chennai - 600 006
Phone : +91-44-2833 4700
E-mail : lsmds@lakshmisri.com

BENGALURU

World Trade Center,
No. 404-406, 4th Floor, South Wing,
Brigade Gateway Campus,
No. 26/1 Dr. Rajkumar Road,
Malleswaram West,
Bengaluru - 560 055
Phone : +91-80-49331800
E-mail : lsblr@lakshmisri.com

HYDERABAD

'Hastigiri', 5-9-163, Chapel Road
Opp. Methodist Church, Nampally
Hyderabad - 500 001
Phone : +91-40-2323 4924
E-mail : lshyd@lakshmisri.com

GENEVA

Lakshmikumaran & Sridharan SARL
Avenue Giuseppe-Motta 35-37
1202 Geneva
Phone: +41 22 919 04 30
Fax : +41 22 919 04 31
E-mail : lsgeneva@lakshmisri.com

AHMEDABAD

B-334, SAKAR-VII,
Nehru Bridge Corner, Ashram Road,
Ahmedabad - 380 009
Phone : +91-79-4001 4500
E-mail : lsahd@lakshmisri.com

PUNE

607-609, Nucleus
1 Church Road, Camp
Pune - 411 001
Phone : +91-20-66801900
E-mail : lspune@lakshmisri.com

KOLKATA

2nd Floor, Kanak Building
41, Chowringhee Road
Kolkata - 700071
Phone : +91-33-40055570
E-mail : lskolkata@lakshmisri.com

CHANDIGARH

SCO No. 59, 1st Floor,
Sector 26, Madhya Marg,
Chandigarh - 160 026
Phone : +91-172-4921700
E-mail : lschd@lakshmisri.com

GURGAON

OS2 & OS3, 5th floor,
Corporate Office Tower,
AMBIENCE Island, Sector 25-A,
Gurgaon- 122001
Phone : +91-0124-477 1300
E-mail : lsgurgaon@lakshmisri.com

LONDON

Lakshmikumaran & Sridharan
Attorneys (U.K) LLP
Octagon Point, St. Paul's,
London EC2V 6AA
Tel : +44 20 38232166
E-mail : ls london@lakshmisri.com



Disclaimer: L&S Aviation/Aerospace Roundup is meant for informational purpose only and does not purport to be advice or opinion, legal or otherwise, whatsoever. The information provided is not intended to create an attorney-client relationship and not for advertising or soliciting. Lakshmikumaran & Sridharan does not intend to advertise its services or solicit work through this update. Lakshmikumaran & Sridharan or its associates are not responsible for any error or omission in this newsletter or for any action taken based on its contents. Unsolicited mails or information sent to Lakshmikumaran & Sridharan will not be treated as confidential and do not create attorney-client relationship with Lakshmikumaran & Sridharan.

If you wish to unsubscribe, please send an e-mail to lsblr@lakshmisri.com
Visit us at www.lakshmisri.com

© 2016 Lakshmikumaran & Sridharan. All rights reserved.