

# Air Transport 2022

Contributing editors  
Thomas van der Wijngaart and Inês Afonso Mousinho



**Publisher**

Tom Barnes

tom.barnes@lbresearch.com

**Subscriptions**

Claire Bagnall

claire.bagnall@lbresearch.com

**Senior business development manager**

Adam Sargent

adam.sargent@gettingthedealthrough.com

**Published by**

Law Business Research Ltd

Meridian House, 34-35 Farringdon Street

London, EC4A 4HL, UK

The information provided in this publication is general and may not apply in a specific situation. Legal advice should always be sought before taking any legal action based on the information provided. This information is not intended to create, nor does receipt of it constitute, a lawyer-client relationship. The publishers and authors accept no responsibility for any acts or omissions contained herein. The information provided was verified between July and August 2021. Be advised that this is a developing area.

© Law Business Research Ltd 2021

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



---

# Air Transport 2022

**Contributing editors****Thomas van der Wijngaart and Inês Afonso Mousinho****Clyde & Co LLP**

---

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](http://www.lexology.com/gtdt).

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

Throughout this edition, and following the unique Lexology Getting The Deal Through format, the same key questions are answered by leading practitioners in each of the jurisdictions featured.

Lexology Getting The Deal Through titles are published annually in print. Please ensure you are referring to the latest edition or to the online version at [www.lexology.com/gtdt](http://www.lexology.com/gtdt).

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

---

Reproduced with permission from Law Business Research Ltd

This article was first published in August 2021

For further information please contact [editorial@gettingthedealthrough.com](mailto:editorial@gettingthedealthrough.com)

# Contents

<b>Global overview</b>	<b>3</b>	<b>Luxembourg</b>	<b>103</b>
Thomas van der Wijngaart and Inês Afonso Mousinho Clyde & Co LLP		Isabelle Charlier Wildgen	
<b>Argentina</b>	<b>7</b>	<b>Malaysia</b>	<b>111</b>
Elizabeth Mireya Freidenberg Freidenberg Freidenberg & Lifsic		Lai Wai Fong Shearn Delamore & Co	
<b>Bahamas</b>	<b>16</b>	<b>Malta</b>	<b>119</b>
Keith O Major, Jr Higgs & Johnson Counsel & Attorneys at Law		Tonio Grech Dingli & Dingli Law Firm	
<b>Brazil</b>	<b>24</b>	<b>Panama</b>	<b>127</b>
Nicole Cunha, Renata Iezzi and Victor de Oliveira Fernandes Basch & Rameh Advogados Associados		Felipe Escalona Delvalle, Escalona, Levy & Corró	
<b>Chile</b>	<b>34</b>	<b>Portugal</b>	<b>135</b>
Francisco Prat Prat & Cía		Pedro Simões Coelho, Marília Frias, Leonor Bettencourt Nunes and Rui Gordete Almeida VdA	
<b>European Union</b>	<b>41</b>	<b>Spain</b>	<b>144</b>
Geert Goeteyn and Charles Sauvage Reed Smith LLP		Sergi Giménez Binder Augusta Abogados	
<b>Greece</b>	<b>59</b>	<b>Sweden</b>	<b>152</b>
Betty Smyrniou Bahas Gramatidis & Partners		Stephan Eriksson and Johan Cederberg Astra law	
<b>India</b>	<b>68</b>	<b>United Kingdom</b>	<b>159</b>
Amir Singh Pasrich and Kshitij Paliwal International Law Affiliates Pasrich & Co		Thomas van der Wijngaart and Inês Afonso Mousinho Clyde & Co LLP	
<b>Ireland</b>	<b>87</b>	<b>United States</b>	<b>168</b>
Rory McPhillips, Stuart Kennedy and Stephen Gardiner Matheson		Jol A Silversmith and Barbara M Marrin KMA Zuckert LLC	
<b>Italy</b>	<b>94</b>		
Laura Pierallini Studio Pierallini			

# Ireland

Rory McPhillips, Stuart Kennedy and Stephen Gardiner

Matheson

## REGULATORY FRAMEWORK

### Regulators and primary legislation

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

The Department of Transport, Tourism and Sport (DTTAS) is the Irish government department charged with the oversight of aviation policy in Ireland. The implementation of certain DTTAS policies has been entrusted to the following bodies:

- the Commission for Aviation Regulation (CAR);
- the Irish Aviation Authority (IAA); and
- the Air Accident Investigation Unit (AAIU).

The CAR was established in 2001 under the Aviation Regulation Act 2001 (as amended). The principal functions of the CAR are to:

- regulate certain airport and air traffic control charges;
- license and issue certain permits for air carriers, travel agents, ground handlers and tour operators;
- allocate airport slots; and
- oversee compliance with EU regulations regarding consumer protection in the aviation industry.

The CAR has a number of statutory powers in these areas to ensure regulatory compliance, including the suspension and revocation of relevant authorisations. The IAA was established under the Irish Aviation Authority Act 1993 (as amended) and has oversight and responsibilities in the areas of:

- air traffic management (in Irish-controlled airspace);
- safety for civilian aviation in Ireland;
- aviation security;
- the certification and registration of aircraft in Ireland;
- the licensing of certain aircraft personnel (including engineers, pilots and air traffic controllers) and aircraft maintenance organisations; and
- the issuance of air operator certificates to air carriers.

The IAA has broad legislative powers in these areas, which extends to the suspension and revocation of licences and powers of enforcement. The AAIU investigates aviation incidents occurring within Irish-controlled airspace and relating to Irish-registered aircraft. It also coordinates and cooperates with safety investigation authorities overseas.

## AVIATION OPERATIONS

### Safety regulations

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

The Irish Aviation Authority (IAA) oversees the administration of aviation safety in Ireland in accordance with standards set by the International Civil Aviation Organization (ICAO), the European Aviation Safety Agency (EASA) and Eurocontrol, among others. The key safety requirements and professional and technical certification standards derive from the EU-wide applicable EASA regulations, the safety objectives set out in both the Aviation Authority Act 1993 (as amended) (section 14 of which sets out the broad objectives of the IAA), and the Chicago Convention, among other domestic and international legislation. The IAA's Safety Regulation Division oversees aviation safety and the regulation of aircraft maintenance in Ireland. The key rules governing aircraft operational safety and maintenance in Ireland are those contained in:

- Regulation (EU) No. 1139/2018 (the EASA Basic Regulation);
- Regulation (EU) No. 748/2012 (on initial airworthiness);
- Regulation (EU) No. 1321/2014 (on continued airworthiness and maintenance);
- Regulation (EU) No. 1178/2011 (on the regulation of aircrew);
- Regulation (EU) No. 965/2012 (on technical requirements for air operations); and
- Regulation (EU) No. 452/2014 (on the regulation of third-country air operators).

There are additional legislative provisions applicable to operational procedures for aerodromes and air navigation services.

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

The EASA Basic Regulation sets out the safety rules applicable for civil aviation and applies irrespective of private or commercial operation. Irish domestic law does not differentiate in this respect; however, certain aircraft that are not covered by the EASA Basic Regulation (eg, vintage and home-built aircraft) are subject to national legislative requirements (the Irish Aviation Authority (Airworthiness of Aircraft) Order 1996 (as amended)) and are required to comply with relevant airworthiness directives, service bulletins, advisory memoranda, statutory instruments and other aeronautical notices issued by the IAA, which is the body tasked with oversight and regulation of aviation safety in Ireland.

## Market access

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

Regulation (EC) No. 1008/2008 on common rules for the operation of air services in the European Community (the Air Services Regulation), which has direct effect in Ireland, regulates the means by which air carrier operating licences are granted to operators in Ireland. This licensing process is overseen by the Commission for Aviation Regulation (CAR). Market access and traffic rights for non-EEA carriers are granted by the Department of Transport, Tourism and Sport in conjunction with the IAA.

## Ownership and control

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

The holder of an air carrier operating licence issued by the CAR must be both:

- majority-owned; and
- effectively managed and controlled by EEA member states or nationals of such member states at all times, except as may be provided for in EU agreements and in accordance with the provisions of the Air Services Regulation).

Pursuant to the Air Services Regulation, a large aircraft operator applying to the CAR for an air carrier operating licence must:

- demonstrate that it can meet actual and potential (financial) obligations for a period of 24 months from the start of its operations;
- demonstrate that it can meet its fixed and operational costs (as foreseen realistically in its business plan) for a period of three months with no income;
- present a detailed business plan covering the first three years of its operation; and
- provide certain financial fitness information as set out in the Air Services Regulation.

## Licensing

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

All commercial air carriers licensed in Ireland must hold a valid air carrier operating licence and air operator certificate to operate commercial flights in, to and from Ireland, whether for the carriage of passengers or cargo. EEA operators in possession of an air carrier operating licence issued in compliance with the Air Services Regulation have automatic traffic rights to operate to and from Ireland and within the European Economic Area. The Chicago Convention regulates market access rights for non-EEA operators, together with certain EU Open Skies agreements. Ireland has bilateral air service agreements with 29 non-EEA countries, providing for traffic rights between Ireland and those jurisdictions. The ability to access a specific route, as opposed to general traffic rights, is subject to commercial negotiation between air carriers and the relevant airports. Operators licensed outside the EEA must apply to the Department of Transport, Tourism and Sport (DTTAS) for traffic rights, which are granted by the DTTAS in conjunction with safety oversight from the IAA.

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

The decisions of public bodies in Ireland relating to the issuance of licences, permits and authorisations in the aviation sector may be judicially reviewed by the Irish High Court.

## Competition policy

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

There are no sector-specific legislative rules in this regard for the aviation sector in Ireland; however, Ireland has traditionally adopted a liberal aviation policy and the Irish government has consistently sought to expand air access and foster greater connectivity. The Competition Acts 2002 to 2017 (as amended) and EU legislation on competition and, in the case of mergers, Regulation (EC) No. 139/2004, are applicable in Ireland, and prohibit anticompetitive agreements and abuse of a dominant market position. The Competition Act 2002 (as amended) implements articles 101 (anticompetitive agreements) and 102 (abuse of a dominant position) of the Treaty on the Functioning of the European Union.

## Requirements for foreign carriers

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

Non-EEA air carriers seeking to operate in and out of Ireland must apply for authorisation from the DTTAS, which it grants in conjunction with the IAA subject to compliance with applicable international safety, operational and insurance standards set out by ICAO, EASA and the Chicago Convention.

## 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?

Yes. The DTTAS administers a public services obligation air services scheme between Dublin Airport and Kerry Airport, and between Dublin Airport and Donegal Airport to support regional economic development and provide transport services that might otherwise not be provided commercially. The operation of such routes is permitted under the Air Services Regulation, which sets out strict criteria. Ireland's regional airports (Donegal Airport, Ireland West Airport Knock, Waterford Airport and Kerry Airport) are all subject to a Regional Airports Programme supported by the Irish government.

## Charter services

### 11 | How are charter services specifically regulated?

Charter air services are regulated in the same manner as those provided by commercial air carriers.

## Regulation of airfares

### 12 | How are airfares regulated?

Airfares are generally not regulated in Ireland, with the exception of certain public service obligation routes. The Air Services Regulation, however, sets out certain requirements relating to airfare transparency, which require airlines to make specific disclosures throughout the booking process.

## Drones

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

Ireland was the first country in the world to introduce mandatory registration for all drones over 1kg. The Small Unmanned Aircraft (Drones) and Rockets Order (Statutory Instrument) 563/2015 (the Drones Order), which came into effect in Ireland in December 2015, set out the

registration requirements and permitted operations for unmanned aerial vehicles in Irish airspace. The Drones Order was superseded from 31 December 2020 by new, directly effective EU-wide legislation on the operation and regulation of drones or 'unmanned aircraft systems' (EU Regulation 2019/945 and EU Regulation 2019/947).

## 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 register of civil aircraft in Ireland maintained by the Irish Aviation Authority (IAA) is a register of nationality, as opposed to a register of ownership. Statutory Instrument 107/2015 (Irish Aviation Authority (Nationality and Registration of Aircraft) Order 2015) sets out the requirements for entry into the IAA's register of civil aircraft. Only the party that has registered the aircraft in Ireland is mentioned in the civil aircraft register. Subject to certain exceptions, an aircraft shall not be registered by the IAA unless the party seeking to register the aircraft is:

- an Irish person;
- a non-Irish person from another EU member state whose main place of business or residence is in Ireland; or
- a company incorporated in Ireland with its main place of business in Ireland or another EU member state and with no fewer than two-thirds of its directors Irish or EU citizens.

### Mortgage register

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

No, there is no specific Irish register of aircraft mortgages or security interests in aircraft or engines. The IAA maintains database of irrevocable deregistration and export request authorisation submissions pursuant to its obligations under the International Interests in Mobile Equipment (Cape Town Convention) Act 2005, which is the domestic legislation that enacted the Cape Town Convention and Aircraft Protocol in Ireland.

Charges, as defined in the Companies Act 2014 (which includes aircraft mortgages, aircraft charges and other security interests) granted by Irish companies are registrable with the Companies Registration Office (CRO) within 21 days of the creation of the security interest. Failure to register the particulars of the security interest created with the CRO in the prescribed format and within the applicable time period will render the security interest void as against a liquidator and creditors of the relevant company. The CRO operate a priority register with priority based on the time of filing. If an aircraft mortgage or charge constitutes an 'international interest' for the purposes of the Cape Town Convention and Aircraft Protocol, it should be registered with the International Registry as such against the applicable aircraft objects (ie, the airframe or engines, as applicable). The registrar of the International Registry, Aviareto Limited, is based in Ireland.

### Detention

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

The Air Navigation and Transport (Amendment) Act 1998 provides airport authorities in Ireland with the power to detain and sell aircraft in respect of which Irish airport charges are outstanding. The Air Navigation and Transport Acts 1936–2005 (as amended) also provide for the seizure of aircraft for unpaid taxes and duties and for non-compliance with relevant safety standards. Pursuant to the Air Navigation (Eurocontrol) Act 1963

(as amended), the IAA (acting as the agent of Eurocontrol) has the power to detain aircraft for unpaid Eurocontrol charges in Irish airspace. The powers of detention and sale bestowed upon the IAA for outstanding Eurocontrol charges relate solely to charges incurred by the operator or registered owner of the aircraft in the airspace under the control of the IAA. In addition, certain liens can arise in Ireland by way of contractual agreement, pursuant to common law, or in accordance with equitable principles.

### Maintenance

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

Yes. The key rules governing aircraft operational safety and maintenance in Ireland are those contained in:

- Regulation (EU) No. 1139/2018 (the EASA Basic Regulation);
- Regulation (EU) No. 748/2012 (on initial airworthiness);
- Regulation (EU) No. 1321/2014 (on continued airworthiness and maintenance);
- Regulation (EU) No. 1178/2011 (on the regulation of aircrew);
- Regulation (EU) No. 965/2012 (on technical requirements for air operations); and
- Regulation (EU) No. 452/2014 (on the regulation of third-country air operators).

## AIRPORTS

### Ownership

**18** | Who owns the airports?

The three key commercial airports in Ireland (Dublin, Shannon and Cork) are owned and controlled by the Irish state under the State Airports Act 2004 and the State Airports (Shannon Group) Act 2014 (the Shannon Act 2014), which set out the rules regarding the governing bodies for these airports. Private companies also own and manage several regional airports in Ireland, the largest of which include Knock, Donegal, Waterford and Kerry airports. The ownership of airports by the Irish state is reviewed every five years.

### Licensing

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

Commercial airports and certain private aerodromes in Ireland are licensed by the IAA under section 60 of the Irish Aviation Authority (IAA) Act 1993 (the IAA Act), as amended by section 61 of the Air Navigation and Transport (Amendment) Act 1998. The IAA may also implement any or all of the requirements of Annex 14 of the Chicago Convention, which covers various matters concerning the operation of various types of airport. The licensing of aerodromes is also conducted in accordance with Statutory Instrument 355 of 2008 – the Aerodromes and Visual Ground Aids Order, the Chicago Convention, Regulation (EU) No. 139/2014 and relevant guidance publications produced by the European Union Aviation Safety Agency (EASA), International Civil Aviation Organization and Eurocontrol.

The State Airports Act 2004 and the Shannon Act 2014 establish airport authorities responsible for the ongoing operating requirements of the three state airports (ie, Dublin, Shannon and Cork). Each airport authority can create by-laws in relation to safety, security and the provision of services at its respective airport. Certain safety and operational standards are regulated in accordance with IAA oversight, as described above. The IAA Act bestows upon the IAA the responsibility for licensing aerodromes engaged in commercial aircraft operations. The licensing of private aerodromes engaged in flying training is also subject to IAA approval and oversight.

## Economic regulation

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

Yes. The Commission for Aviation Regulation (CAR) was established by the Aviation Regulation Act 2001 (as amended) (the 2001 Act) for the principal purpose of regulating airport charges and aviation terminal services charges at Ireland's commercial airports. The CAR sets the maximum level of airport charges that may be charged by the Dublin Airport Authority at Dublin airport. Airport charges include:

- landing, parking and take-off charges;
- charges for air bridge usage;
- passenger processing charges; and
- cargo charges.

Aviation terminal services charges are levied by the IAA on users at Dublin, Shannon and Cork airports and include air traffic control charges, relating to the provision of air terminal services for landing and departing aircraft. The EC (Dublin Airport Charges) Regulations 2011 (Statutory Instrument 116/2011) transposed Directive 2009/12/EC on airport charges into Irish law, with application to Dublin airport only, which is currently the only Irish airport subject to economic regulation of its charges.

## Access

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

The establishment of the EU single market removed many commercial restrictions on airlines flying within the EU and allowed all EU carriers to operate services to and from any destination in the EU. Outside the EU single market, access to the air transport market is regulated by the Chicago Convention and Open Skies agreements between the EU and third countries. Under the Chicago Convention, for example, Ireland has negotiated bilaterally with 29 countries to agree reciprocal access rights for air passenger and cargo services.

## Slot allocation

22 | How are slots allocated at congested airports?

The allocation of airport slots in Ireland is governed by European Council Regulation (EEC) No. 95/93 on common rules for the allocation of slots at community airports, as amended by Regulation (EC) No. 793/2004, which includes the regulation of slot transfers. Pursuant to the 2001 Act, the CAR is responsible for discharging Ireland's obligations under these regulations. Dublin airport is currently the only airport in Ireland designated by the CAR for airport slot regulation.

## Ground handling

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

Ground handling services are regulated by the EC (Access to the Ground Handling Market at Community Airports) Regulations 1998 (Statutory Instrument 505/1998) (the Ground Handling Regulations), which transposed Directive 96/67/EC into Irish law. The Ground Handling Regulations provide that an airport may request that the number of approved suppliers of ground handling services be limited to no fewer than two providers in each core ground handling service at a given airport. Subject to the CAR's approval, airport authorities are entitled to charge a fee for access to airport installations and establish rules of conduct for the proper functioning of the airport. The purpose of the Ground Handling Regulations is to ensure competition is maintained in the market and that operators have a choice in the supply of ground handling services.

## Air traffic control

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

The provision and regulation of air traffic control services fall within the remit of the IAA, which is the designated authority in Ireland responsible for the management of Irish-controlled airspace. The IAA is also responsible for the training and licensing of the relevant personnel in compliance with applicable EU law.

## 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?

Ireland is a signatory to the Montreal Convention, which deals with passenger rights arising from lost, damaged or destroyed luggage.

The Montreal Convention, as enacted in Ireland, sets out the rules regarding liability in the event of any damage caused to cargo, in cases where the flight operates between ratifying states. In other circumstances, the Warsaw Convention (as amended) may be applicable.

Regulation (EC) No. 889/2002 (amending Regulation (EC) No. 2027/97 on air carrier liability in the event of accidents and applying the terms of the Montreal Convention), enacted in Ireland under the Air Navigation and Transport (International Conventions) Act 2004, sets out the rules for liability arising from air accidents and the applicable liability regime in such scenarios.

### Surface damage

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

Yes. The Air Navigation and Transport Acts 1936–2005 (as amended) impose upon the owner of an aircraft liability for material damage caused by that aircraft to any property or persons. In certain circumstances, a person to whom an aircraft is leased for over 14 days may be liable for such damage. Irish and EU law requires that insurance be maintained for such events.

### Accident investigation

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

The Air Accident Investigation Unit (AAIU) is part of the Department of Transport, Tourism and Sport and is responsible for the investigation of aircraft accidents and serious incidents in Ireland as well as international accidents involving Irish registered aircraft. The AAIU comprises approximately 10 staff, including licensed pilots and engineers. The Chicago Convention, the Air Navigation (notification and investigation of accidents, serious incidents and incidents) Statutory Instrument No. 460 of 2009 and Regulation (EU) No. 996/2010 (on the investigation and prevention of accidents and incidents in civil aviation) are the main legal instruments regulating investigations by the AAIU.

### Accident reporting

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

Yes. The AAIU is responsible for investigating all accidents, serious incidents and incidents involving aircraft in Ireland. The reporting of such occurrences in Ireland is subject to the requirements set out in



Regulation (EU) No. 1018/2015 and in Regulation (EU) No. 376/2014 on the reporting, analysis and follow-up of occurrences in civil aviation. Accidents and serious incidents must be reported to the IAA under Irish law, together with all mandatorily reportable occurrences detailed in Regulation (EU) No. 1018/2015. Occurrences can also be reported to the European Commission using an online facility. The commander of an aircraft is responsible for reporting, and if incapacitated, the responsibility falls to the operator of the aircraft. An Garda Síochána (the Irish police force) should also be informed of the accident or serious incident and its location by the person making the report.

## COMPETITION LAW

### Specific regulation

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

There are no sector-specific legislative rules in this regard for the aviation sector in Ireland, other than with respect to airport charges, the regulation of ground handling services, and allocation of slots, which are regulated by the Commission for Aviation Regulation (CAR). The Competition Acts 2002 to 2017 (as amended) and EU competition legislation, and, in the case of mergers, Regulation (EC) No. 139/2004 are applicable in Ireland and prohibit anticompetitive agreements and abuses of dominant market position. The Competition Acts 2002 to 2017 (as amended) implement articles 101 (anticompetitive agreements) and 102 (abuse of a dominant position) of the Treaty on the Functioning of the European Union (TFEU).

### Regulator

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

The CAR's remit under the Aviation Regulation Act 2001 (as amended) extends to the areas of slot regulation, airport charges and licensing of air carriers. The generally applicable Irish and EU competition laws, to which air carriers are also subject, are enforced by the Competition and Consumer Protection Commission (CCPC).

### Market definition

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

There is no specific statutory definition of the relevant market, which would need to be determined by reference to the particular facts of a case having regard to the sector of the market and any relevant decisions of the EU courts and the CCPC. The relevant market in a particular instance could be as narrow as particular type of passenger or as broad as a particular route or routes to a particular market.

### Code-sharing and joint ventures

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

Ireland has no specific rules dealing with code sharing or similar arrangements. Air carrier joint ventures are subject to Irish and EU competition law and the regular rules apply in this regard. The CCPC, which is the Irish body responsible for regulatory oversight in matters of EU competition and merger law, follows EU precedent in relation to air carrier joint venture arrangements. The CCPC can take enforcement action by way of criminal or civil proceedings. Mergers or acquisitions of airlines (including joint ventures and code sharing) fall within the remit of the

Competition Acts 2002 to 2017 (as amended) and, subject to satisfying certain financial turnover thresholds, may require mandatory CCPC pre-clearance or clearance from the European Commission.

### Assessing competitive effect

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

Section 4 of the Competition Act 2002 (as amended) sets out the main standards for assessing whether a transaction could be viewed as an agreement or concerted practice with the object or effect of preventing, restricting, or distorting competition in any part of Ireland. This reflects the standards of assessment under article 101 of the TFEU. Section 5 of the Competition Act 2002 (as amended) sets out the standards for assessing abuses of market positions by dominant market undertakings.

### Remedies

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

The CCPC has wide-ranging powers under Irish law to investigate suspected breaches of competition law, including the power to conduct dawn raids. The CCPC may also initiate criminal proceedings against undertakings and individuals suspected to have breached competition law and can pursue both criminal and civil proceedings in the Irish courts. The Competition Acts 2002 to 2017 (as amended) provide for quite severe penalties for those found to be in breach of competition law, including imprisonment.

## 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?

Yes. In the aviation sector in particular, Ireland applies the European Commission guidelines on state aid to airlines and airports (2014/C 99/03), which establish the conditions under which EU member states can grant state aid to airlines and airports. Although no national laws exist to implement EU state aid rules or guidelines, Ireland applies EU law and follows EU guidance on state aid. The Irish state provides financial assistance to certain regional airports through various assistance programmes and public services obligation air services schemes, such as those with Kerry and Donegal airports, to support and encourage regional economic development. The Irish courts are responsible for oversight and enforcement of state aid rules.

In 2019, the Irish High Court delivered a notable ruling on state aid (*Ireland and another v Aer Arann* [2019] IEHC 545), in which it rejected the arguments of Aer Arann against the recovery of state aid and followed the European Commission's state aid decision (OJ L 119, 30.4.2013, pp 30-39) wherein it ordered the Irish government to recover unlawful aid from benefiting airlines.

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

No specific national laws exist in Ireland to implement EU state aid rules or guidelines. In practice, however, the Consumer Protection Commission and the Department of Transport, Tourism and Sport have regard to the European Commission guidelines in this area, which set out how EU member states can provide aid to airlines and airports. The



regulations on state aid as set out in the Treaty on the Functioning of the European Union also have direct effect in Ireland.

### Exemptions

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

Ireland applies EU rules on state aid. State aid can be permissible in some limited circumstances if compatible with EU law. For example, state aid may be permissible in setting up new strategic air routes and for certain investments in airport infrastructure to foster accessibility to certain regions, under strict conditions.

### 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?

Ireland applies EU law in this respect and European Commission approval must be sought before the granting of state aid that falls within the remit of EU state aid rules.

### Recovery of unlawful state aid

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

Council Regulation (EU) No. 1589/2015 specifies recovery procedures for unlawfully granted state aid. The European Commission may investigate unlawfully granted state aid cases and may require EU member states to suspend and recover such aid from the beneficiary.

## CONSUMER PROTECTION

### Passengers

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

Regulation (EC) No. 261/2004 (the Flight Compensation Regulation) establishes common rules on compensation and assistance to passengers in the event of denied boarding and of cancellation or long delay of flights and sets out the rules relating to the provision of assistance and compensation to passengers for denied boarding, cancellations and delays. The Flight Compensation Regulation applies to all passengers departing from EU or EEA airports, and those departing from outside the European Union or European Economic Area but arriving in an EU or EEA airport on an EU or EEA-licensed carrier (subject to assistance having been received in a third country). A number of European Court of Justice decisions are relevant in determining the application of the Flight Compensation Regulation to a particular scenario. In the case of flight delays extending beyond a certain time period, the passenger must be offered particular assistance (including food, accommodation and telephone calls) and the option of a refund, depending on the extent of the delay. In some circumstances, compensation may also be payable under the Flight Compensation Regulation. In the case of a flight cancellation, the passenger must be offered reimbursement of their ticket and rerouting. Fixed compensation may also be payable for a cancellation, as for a delayed flight, unless the airline can prove that it was the result of certain extraordinary circumstances. A passenger will not be considered to have been denied boarding under the Flight Compensation Regulation if there are reasonable grounds to arouse safety concerns or certain other travel formalities are not complied with (eg, the presentation of required travel documents).

### Package holidays

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

The rules applying to the sale of package holiday products can be found in the Package Holidays and Travel Trade Act 1995, the Transport (Tour Operators and Travel Agents) Act 1982, and Statutory Instruments 80 and 105 of 2019, which require tour operators and travel agents to enter into a monetary bond and be licensed by the Commission for Aviation Regulation (CAR) to buy or sell overseas travel originating in Ireland. The purpose of the bond is to administer claims and refunds for customers in the event of the tour operator or travel agent becoming insolvent.

### Other consumer legislation

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

The consumer protection legislation relating to the aviation sector in Ireland is geared towards:

- consumer protection from insolvencies;
- airfare transparency for the consumer (set out in the Air Services Regulation); and
- consumer protection as regards denied boarding and cancelled flights (as set out in the Flight Compensation Regulation).

Regulation (EC) No. 1107/2006 (the Reduced Mobility Regulation) concerning the rights of disabled persons and persons with reduced mobility when travelling by air applies to certain persons of reduced mobility departing from, arriving to or transiting through an EU airport on a commercial air service. The Reduced Mobility Regulation sets out the rights and responsibilities of air carriers and persons of reduced mobility. The Reduced Mobility Regulation requires that airports and airlines provide affected persons with certain levels of assistance free of charge. The CAR is responsible for the enforcement of the Reduced Mobility Regulation in Ireland.

## INSURANCE AND SECURITY

### Insurance for operators

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

The minimum level of insurance coverage for air carrier operations in Ireland is governed by applicable EU law. In addition to the air carrier operating licence conditions referred to above, Regulation (EC) No. 785/2004 (as amended by Regulation (EC) No. 1137/2008 and Regulation (EU) No. 285/2010) sets out minimum insurance requirements for air carriers and aircraft operators in the EU in respect of cargo, baggage, passengers and third-party coverage. The required level of third-party coverage is calculated according to the maximum take-off weight of the aircraft operated. Regulation (EC) No. 889/2002 (amending Regulation (EC) No. 2027/97 on air carrier liability in the event of accidents) prescribes the minimum insurance requirements for passengers and third-party insurance coverage applicable in Ireland. The minimum insurance levels required are calculated in special drawing rights for:

- each passenger;
- baggage;
- each kilogram of cargo carried; and
- third-party insurances.

## Aviation security

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

As a contracting state to the Chicago Convention, Ireland is required to implement International Civil Aviation Organization security standards and recommended practices. The state's role in aviation security is to ensure that international rules and regulations are adhered to. The State Airports Act 2004 and the State Airports (Shannon Group) Act 2014 establish airport authorities responsible for the ongoing operating requirements of the three state airports (ie, Dublin, Shannon and Cork). Each airport authority can create by-laws in relation to safety, security and the provision of services at their respective airport. Certain safety and operational standards are regulated in accordance with Irish Aviation Authority oversight. The National Civil Aviation Security Committee, which consists of various industry stakeholders, advises the government on aviation security policy matters.

## Serious crimes

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

The Air Navigation and Transport Acts 1936–2005 (as amended) and the Criminal Law (Extraterritorial Jurisdiction) Act 2019 provide that any act that constitutes a criminal offence in Ireland shall constitute that offence on board an Irish-controlled aircraft (which term includes an Irish-registered aircraft outside the Irish state). Air operators in Ireland can be subject to criminal law also for disregarding or failing to comply with certain safety requirements and for anticompetitive practices. Section 2A of the Air Navigation and Transport Act 1973 sets out certain criminal offences deriving from disruptive behaviour on board aircraft in flight and is routinely cited in Irish cases the subject matter of which is passenger intoxication or incidences of 'air rage'.

## UPDATE AND TRENDS

### Emerging trends

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

Increased EU regulation in the areas of lending and anti-money laundering has brought about additional compliance requirements for those involved in aircraft leasing and finance in Ireland, including the recent requirement to disclose beneficial ownership interests in Irish corporate structures. In 2019, certain finance leasing transactions also became reportable to the Irish financial regulator (the Central Bank of Ireland) under domestic Irish law. The Irish government is continually committed in its legislative programme to continue to foster the development of the broader Irish aviation industry and to maintain Ireland's status as the leading global jurisdiction for the aviation industry.

## 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?

The Companies (Miscellaneous Provisions) (Covid-19) Act 2020, which commenced on 21 August 2020, provided for interim measures and for temporary amendments to the Companies Act 2014 to deal with the impact of the covid-19 pandemic on day-to-day actions taken by and in relation to Irish companies. Some measures, including the continuation



#### Rory McPhillips

rory.mcphillips@matheson.com

#### Stuart Kennedy

stuart.kennedy@matheson.com

#### Stephen Gardiner

stphen.gardiner@matheson.com

70 Sir John Rogerson's Quay  
Dublin 2  
Ireland  
Tel: +353 1 232 2000  
Fax: +353 1 232 3333  
www.matheson.com

of virtual general meetings, the increased €50,000 threshold at which a company is deemed unable to pay its debts and the extension of examinership to 150 days, will remain in place until 31 December 2021.

The Irish government and related state authorities have also published guidance and policy material on matters such as the cancellation of package holidays, aircrew and aircraft licencing extensions.

The Irish government has also made provision, with effect from 19 July 2021, for the EU Digital COVID Certificate to facilitate travel within the European Union for:

- passengers who have been vaccinated against covid-19;
- passengers who have received a negative covid-19 test result; or
- passengers who have recovered from covid-19 in the last six months.

## Other titles available in this series

Acquisition Finance	Dispute Resolution	Investment Treaty Arbitration	Public M&A
Advertising & Marketing	Distribution & Agency	Islamic Finance & Markets	Public Procurement
Agribusiness	Domains & Domain Names	Joint Ventures	Public-Private Partnerships
Air Transport	Dominance	Labour & Employment	Rail Transport
Anti-Corruption Regulation	Drone Regulation	Legal Privilege & Professional Secrecy	Real Estate
Anti-Money Laundering	Electricity Regulation	Licensing	Real Estate M&A
Appeals	Energy Disputes	Life Sciences	Renewable Energy
Arbitration	Enforcement of Foreign Judgments	Litigation Funding	Restructuring & Insolvency
Art Law	Environment & Climate Regulation	Loans & Secured Financing	Right of Publicity
Asset Recovery	Equity Derivatives	Luxury & Fashion	Risk & Compliance Management
Automotive	Executive Compensation & Employee Benefits	M&A Litigation	Securities Finance
Aviation Finance & Leasing	Financial Services Compliance	Mediation	Securities Litigation
Aviation Liability	Financial Services Litigation	Merger Control	Shareholder Activism & Engagement
Banking Regulation	Fintech	Mining	Ship Finance
Business & Human Rights	Foreign Investment Review	Oil Regulation	Shipbuilding
Cartel Regulation	Franchise	Partnerships	Shipping
Class Actions	Fund Management	Patents	Sovereign Immunity
Cloud Computing	Gaming	Pensions & Retirement Plans	Sports Law
Commercial Contracts	Gas Regulation	Pharma & Medical Device Regulation	State Aid
Competition Compliance	Government Investigations	Pharmaceutical Antitrust	Structured Finance & Securitisation
Complex Commercial Litigation	Government Relations	Ports & Terminals	Tax Controversy
Construction	Healthcare Enforcement & Litigation	Private Antitrust Litigation	Tax on Inbound Investment
Copyright	Healthcare M&A	Private Banking & Wealth Management	Technology M&A
Corporate Governance	High-Yield Debt	Private Client	Telecoms & Media
Corporate Immigration	Initial Public Offerings	Private Equity	Trade & Customs
Corporate Reorganisations	Insurance & Reinsurance	Private M&A	Trademarks
Cybersecurity	Insurance Litigation	Product Liability	Transfer Pricing
Data Protection & Privacy	Intellectual Property & Antitrust	Product Recall	Vertical Agreements
Debt Capital Markets		Project Finance	
Defence & Security			
Procurement			
Digital Business			

Also available digitally

[lexology.com/gtdt](https://www.lexology.com/gtdt)