

CorporateLiveWire

AVIATION LAW 2016

VIRTUAL ROUND TABLE

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Introduction & Contents

The Aviation Law Roundtable 2016 features six experts from around the world who discuss the latest regulatory changes in their jurisdiction along with other key topics such as the major developments in the field of unmanned aerial vehicles, how airlines

monitor the mental health of pilots in the aftermath of the Germanwings Flight 9525 incident, and tackling the issue of growing air travel with regards to congestion. Featured countries are: Australia, Austria, Israel, Lithuania, Myanmar, United States,

James Drakeford
Editor In Chief



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MEET THE EXPERTS



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Paulius Docka in his daily works mainly focuses on arbitration and aviation matters and advises local and international clients.

Paulius Docka is nominated as leading aviation finance lawyer by publish the 2016 edition of Who's Who Legal: Aviation Finance Lawyers.

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Who are the main regulators and what are the key legislations that apply to the aviation industry in your jurisdiction?

Berman: In the United States, a variety of institutions and governmental entities are charged with crafting and enforcing rules related to the aviation industry. Federal regulations affecting the industry are promulgated primarily (but not exclusively) by the Federal Aviation Administration or FAA, which is the primary aviation regulator in the country.

Federal aviation regulations (historically referred to as “FARs”) are contained in Title 14 of the Code of Federal Regulations (CFR), promulgated under Title 49 of the U.S. Code, which governs Transportation, generally. CFR Title 14 consists of five volumes devoted to Aeronautics and Space, with each volume, in turn, comprised of “Parts” – over 1,000 in all – regulating different segments of the industry, including Aircraft, Airmen, Airspace, Air Traffic, Air Carriers, Airports, and Space, among others. In recent years specific regulations have been referred to by their 14 CFR Part numbers.

For example, Part 91 prescribes general operating rules for all aircraft, while Parts 119, 121, 125 and 135 relate to certification and operating requirements for various commercial carriers operating aircraft of varying sizes. Other Parts apply to specific activities, such as maintenance, including Part 43, pertaining to aircraft maintenance, rebuilding, and alteration, and Part 145, relating to repair stations. Part 107 contains the newly released (June of 2016) rules for the operation of small unmanned aircraft systems, generally referred to as the commercial small drone rules, first proposed in February of 2015. Drone use is also the subject of various states’ laws.

Greenlee: The main regulator is the Department of Civil Aviation under the Ministry of Transport (“DCA”). The key legislations that apply to the aviation industry in the Republic of the Union of Myanmar (“Myanmar”) are as follows:

- The Union of Myanmar Aircraft Act of 1934;
- The Union of Myanmar Aircraft Carriage by Air Act of 1934;
- The Union of Myanmar Aircraft Rules regarding Aerodromes of 1920;
- The Union of Myanmar Aircraft Rules regarding Aircrafts of 1937;
- The Union of Myanmar Aircraft Rules regarding Public Health of 1946;
- Myanmar Aircraft Manual of 2010; and
- Law relating to International Interests in Mobile Equipment and Aircraft Equipment of 2014 (“Aircraft Equipment Law”).

Janezic: In Austria, the main regulator is of course the European Union. Most of the national legislation is, to a certain extent, based on or intended to implement the law of the European Union. These steps of implementation of the law of the European Union as well as the role of a national regulator are performed by the Ministry of Transport (*Bundesministerium für Verkehr, Innovation und Technologie* - BMVIT) and the Austrian CAA – Austro Control. For air sports there is a separate regulator: the Austrian Aero Club.

The central piece of legislation on the national level is the Aviation Act (*Luftfahrtgesetz* – LFG), a law which rules – or at least tries to – all aspects of aviation (not only civil, but also military). Of course this law is “ac-

companied” by various laws which rule special aspects (e.g. the Law on Safety Investigations, Aviation Security Law etc...).

Based on the Aviation Act the Ministry of Transport is entitled to issue ordinances which have to be published in the Official Journal of the Republic of Austria. Austro Control is entitled to issue a variety of directives and information letters which are published on their website.

In those fields where the competence of legislation is still on a Member State’s level, Austria as a Contracting State to the Chicago Convention, strives to implement the Standards and Recommended Practices issued by ICAO.

Miller: In Australia the main regulators are:

Civil Aviation Safety Authority: Responsible for the safety regulation of civil air operations in Australia and Australian registered aircraft internationally. The primary legislation they administer is the Civil Aviation Act 1988. Powers conferred under other legislation include: Airspace Act 2007; Aviation Transport Security Act 2004; Air Navigation Act 1920; Civil Aviation (Carriers Liability) Act 1959.

Airservice Australia: Responsible for airspace management; air traffic control services; aviation fire and rescue service. The primary legislation they administer is Air Services Act 1995. Powers conferred under other legislation include: Air Navigation Act 1920; Airspace Act 2007; Airports Act 1996; Civil Aviation Act 1988.

Federal Department of Infrastructure and Regional Services: Responsible for aviation security; airspace policy and airport planning. The primary legislation they administer are Aviation Transport Security Act 2004, Airspace Act 2007 and Airports Act 1996.

International Air Services Commission: Responsible: Responsible for the allocation of Australian international air rights. The primary legislation they administer is International Air Services Commission Act 1992.

Australian Transport Safety Bureau: Responsible for air safety investigations. The primary legislation they administer is Transport Safety Investigation Act 2003.

Sharon: Regulations:

The main regulator is the Minister of Transportation.

The Civil Aviation Authority (CAA) is a statutory authority which is part of the Ministry of Transportation.

The CAA was established in May 2005 according to the Civil Aviation Law, 2005.

The CAA’s objective is to regulate the civil aviation in accordance with the Law and with the standards of the international conventions to which Israel is a party.

The CAA engages in various areas such as: licensing, supervision and enforcement, legislation, international activities, aviation, infrastructure, consultation to the Ministry of Transportation, etc.

Legislation:

The Flight Law, 2011 and various regulations:

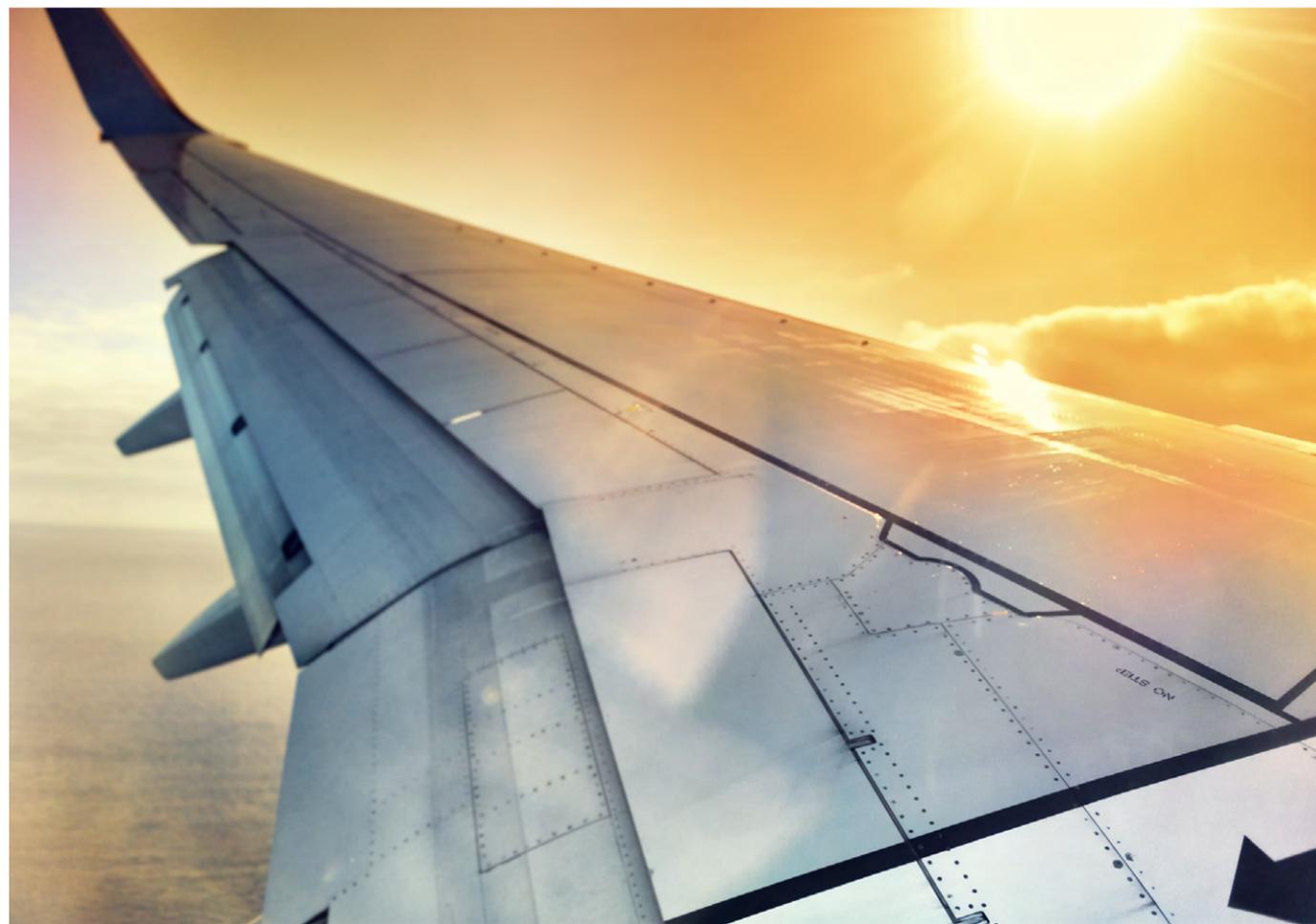
In 2011, the Israeli Parliament legislated a new Law which replaced the previous Flight Law - 1977.

The Flight Law includes more than 600 updated items of legislation which corresponds with the Israeli principle of legislation, the Chicago Convention and the ICAO guidelines.

The Law introduced for the first time, an effective method of supervision and enforcement authority for the CAA, according to international standards.

The Law also deals with reciprocal relations between the Israeli Army and the Civil Aviation, which is necessary for the advancement of the Civil Aviation in Israel.

The Law includes all the recommendations and com-



ments given by the FAA in order to enable Israel to meet the international standards set by the world aviation organisation.

There are several flight regulations which have been enacted over the years, for example:

Flight Regulations (operation of aircraft and Flight rules), 1981

Flight Regulations (investigation of accidents and incidents to aircraft), 1984

Flight Regulations (Maintenance Institute), 2013

Flight Regulations (License to Flight employees), 1981

The Carriage by Air Law, 1980

On 20 March 2011, Israel signed the Montreal Convention, 1999.

The Carriage by Air Law applied the Montreal Conven-

tion into the Israeli Law.

Dockas: The main bodies regulating aviation matters are the Ministry of Transport and Communications of the Republic of Lithuania and the Civil Aviation Administration. Specific regulatory functions are vested to the State Enterprise “Air Navigation” or the Ministry of Environment.

Law on Aviation is the principal national legislation governing aviation matters in Lithuania. The law sets regulatory framework and the secondary legislation such as relevant decrees of the Government, Orders of the Minister of Transport and Orders of the Director of the CAA as well as Instructions of the Director General of the State Enterprise “Air Navigation” set the whole regulatory environment.

European Union legal acts and international treaties also constitute integral part of Lithuanian legal system.

Have there been any recent regulatory changes or interesting developments?

Berman: The new commercial small drone rules in Part 107 were enacted in August 2016. Part 107 sets forth a variety of rules governing the commercial, non-recreational use of drones weighing less than 55 pounds. Among other things (and subject to application for waiver), operators are limited to daylight-only flights and flights must be conducted within the operator’s visual line of sight. Drone pilots are required to comply with certification requirements, and must hold either a remote pilot airman certificate with a small UAS rating or be under the direct supervision of a pilot who does. Part 107 flights are prohibited from operating over persons not directly participating in their operation and from flying under a covered structure or vehicle. There are many other requirements set out in this very lengthy Part, and there will be many more regulations to come, in order to facilitate the growing commercial interest in deploying unmanned vehicles for more extensive use as, for example, package delivery services.

Also of current interest is the pending consideration of the privatisation of air traffic control (“ATC”). As long-term FAA reauthorisation legislation remains in limbo, Congress continues to debate the future of the U.S. ATC system, including whether it should be privatised. Proponents believe that privatisation will provide a more predictable funding stream, and that access to traditional capital markets will spur modernisation and innovation. Air traffic controllers have signalled support because, as currently proposed, privatisation would ensure that they keep their union-negotiated contracts. Some believe that the privatisation measures currently pending in the House would also grant air traffic controllers greater decision-making power over administration of the system than they currently have.

Privatisation foes, however, have significant concerns over control of the new, private ATC entity. They feel that the airlines and their employees may be given a disproportionate amount of control over the system, which could lead to the prioritisation of the needs of those in commercial aviation over those in general aviation. The airlines have also signalled concerns and some have been hesitant to support privatisation measures. For example, commercial airlines believe that these measures may increase the cost to travellers through additional fees tacked on to the purchase of airline tickets, which could depress ticket sales.

FAA is also planning a “NextGen” national airspace strategy looking to enhance the accuracy of reporting of aircraft position, and thus improve the safety and efficiency of flight, among other ways, by safely reducing separation of aircraft in increasingly more crowded airspace, improving air traffic control, reducing the time for landing clearances, and thus reducing pollution and fuel consumption. The new system is a more efficient alternative to radar systems, using broadcast devices referred to as ADS-B out, for automatic dependent surveillance-broadcast, to broadcast position from aircraft to radio antennae placed around the country. The new equipment enables exceptionally accurate positioning of aircraft, but adds considerable cost for commercial and particularly for general aviation owners and operators, prompting AOPA (Aircraft Owners and Pilots Association) to characterise its required use as excessive and unreasonable for a large segment of the general aviation fleet. The FAA has required ADS-B out transmitters in many types of airspace by 1 January 2020.

Greenlee: Myanmar is a signatory to the Cape Town Convention on International Interests in Mobile Equipment of 2001 (the “Cape Town Convention”). On 3 December 2012, Myanmar deposited the instrument of ratification to the Cape Town Convention on International Interests in Mobile Equipment of 2001 (the “Cape Town Convention”) with date of entry into force as applicable to aircraft equipment commencing on 1 April 2013.

As such, the provisions of the Cape Town Convention and the Protocol to the Cape Town Convention on International Interests in Mobile Equipment on Matters specific to Aircraft Equipment of 2001 (the “Protocol”) have been ratified and implemented in Myanmar by the Aircraft Equipment Law, and are enforceable in Myanmar, subject to the terms thereof and to the reservations and declarations that have been made by Myanmar with respect to the Cape Town Convention and the Protocol.

Myanmar has made declarations under Articles 39(1) (a), 40, 52, 53 and 54(2) of the Cape Town Convention at the time it deposited its instrument of accession. It also declared that it would apply Article VIII, Article X in its entirety, Article XI Alternative A in its entirety, Article XII, Article XIII and that the Protocol would apply to all of its territorial units.

Janezic: As said before the main driver for Austrian legislation in the field of aviation is the European Union. Since the law of the EU is a “living thing” and very vital (some might say less speed would not be a disadvantage) this is a permanently ongoing process.

A remarkable step was taken when the rules about “Unmanned Aerial Vehicles” (UAV) came into force on the 1 January 2014. UAV with an operating mass of no more than 150kg still fall into the national competence and Austria was one of the first countries which issued very detailed and fancy rules on this subject, trying on the one hand to integrate this “new category” of aviation safely into the aviation existing already whereas on the other hand this field should be supported to grow and not encumbered.

Miller: The Government commissioned a major aviation safety regulation review in November 2013 which reported in June 2014. The Minister announced the Government’s response in December 2014 and since then the Government has been progressively implementing recommendations it accepted, with the last update issued in January 2016. Other developments are noted in the following answers.

Sharon: The Aviation Services Law - 2012

The Law was legislated in August 2012. The provisions set by the Aviation Services Law are similar to the provisions provided by the European Union in 2004 (Regulation (EC) no/261/2004 of the European Parliament and of the council of 11 February 2004).

The Law deals with compensation to passengers due to cancellation of flights, denied boarding, downgrading, etc.

The Law defines a cancelled flight as a flight which did not take place or a flight which took off with a delay of at least eight hours.

A passenger will not be entitled to compensation in cases where notification of cancellation was given by the operator at least 14 days prior to the flight.

Clause 6(a) exempts the carriers from payment of the compensatory compensation set by the Law due to the following reasons:

In case the cancellation of the flight was due to special circumstances which were not under the control of the operator and even if it had done all in its power the operator could not prevent the cancellation of the flight. Cancellation due to strike or protected striking.

Cancellation in order to avoid desecration of the “Shabbat” (the holy Sabbath) or a religious holiday.

“Open Skies” agreement

On 10 June 2013, Israel signed an “Open Skies” agree-

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On 23 January 2014, Civil Aviation Administration in cooperation with the Unmanned Aerial Vehicle Association adopted regulation on the unmanned aircraft operations in the territory of Republic of Lithuania

- Paulius Docka ”

ment with the European Union which removes restrictions in aviation and encourages competition in the airline industry.

Docka: Taking into account major developments in the field of unmanned aerial vehicles all countries are trying to jump into technological race and regulate this field. It is obvious that drafts of EU regulations are progressing too slowly; therefore each member state tends to regulate UAV’s industry faster.

On 23 January 2014, Civil Aviation Administration in cooperation with the Unmanned Aerial Vehicle Association adopted regulation on the unmanned aircraft operations in the territory of Republic of Lithuania. The regulation defines the general organisation of the operations of UAVs, provisions and procedures of UAV flights, technical requirements applicable to UAV and procedures for the issue of the pertinent authorisations and exemptions. It should be noted, that the requirements defined in this regulation shall apply to any operator performing flights of the unmanned aircraft in the airspace of the Republic of Lithuania and relevant

aircraft with the maximum take-off weight from 300g to 25kg.

On 31 December 2014, Civil Aviation Administration adopted National civil aviation security quality control program rules. The objective of the rules is to determine the procedures and conditions for compliance monitoring and aviation safety investigation. This program helps to determine the level of national civil aviation safety as stipulated in 11/03/2008 Regulation No. 300/2008 on common rules in the field civil aviation security. The rules have been adopted and the investigation procedure has been amended after a virtue of aircraft incidents that took place in Lithuania.

The Passenger Name Record System (PNR) is in the development stage and should start functioning on 2016. Lithuania is making preparations for the implementation of the Directive of the European Parliament and of the Council on the use of Passenger Name Record (PNR) data for the prevention, detection, investigation and prosecution of terrorist offences and serious crime that is intended to be adopted promptly.

How do airlines monitor the mental health of pilots in the aftermath of the Germanwings Flight 9525 incident in March 2015?

Berman: Airline pilots are required to have annual or semi-annual physicals, depending on their age, with an FAA-approved Aviation Medical Examiner (AME). However, these exams are primarily devoted to a pilot's physical, not mental condition. Mental health conditions have been and remain an issue of self-reporting, in response to questions in the health form pilots are required to fill out in conjunction with their examinations. AMEs use such self-disclosures to ask additional questions about mental health issues and can defer the application for medical certificate if he or she is concerned that further evaluation is necessary, or deny to issue the certificate upon a determination that the pilot is not medically fit.

The FAA has ruled out psychological testing as a means to diagnose mental illness in the absence of evidence that it would improve flight safety, concluding that such testing is neither productive nor cost effective. However the FAA has been working with commercial airlines and pilots' unions to improve mental health evaluations and encourage voluntary reporting of pilots' mental health issues and the FAA Administrator chartered an Aviation Rulemaking Committee (ARC) comprised of aviation and medical efforts to addressing the mental health issue. The ARC has just released recommendations agreed to by the FAA, airlines and pilots' unions including, among other things, enhanced training for flight surgeons to improve their knowledge of mental health and their ability to identify warning signs. Recognising that mental illness is often treatable, the FAA, airlines and unions are also cooperating to implement and expand the use of pilot assistance and programs to remove the stigma against mental illness to encourage self-reporting and to promote resources to help resolve mental problems.

Janezic: The work of the Austrian CAA and the Austrian operators is mainly based on the rules of the EU – which in this particular case is *Regulation (EU) No. 1178/2011*, Part-MED, Part-ARA and Part-ORA. Since those rules do not contain a legal basis for the moni-

toring of the mental health of pilots for the operators and since this subject tangles not only aviation law, but also the very sensitive fields of labour law and the law on data protection, the Austrian legislator is awaiting the outcome of the EASA task force in which members of the Ministry of Transport and Austro Control are deeply involved.

Miller: Since the Germanwings incident, Australia has implemented heightened cockpit safety and security arrangements, including a review, with airlines, flight crew associations and Civil Aviation Safety Authority (CASA), of requirements for medical testing of flight crew (including mental health). In Australia, airline pilots have been psychologically tested during the recruitment process for many years and undergo annual medical checks (including mental health checks) as part of their annual licensing requirements.

Docka: Despite the tragic event of Germanwings Flight 9525 there are no major changes in regulation in the field of pilot's mental health in Lithuania or on EU level. The only significant change is that European Society of Aerospace Medicine (ESAM), the European Association for Aviation Psychology (EAAP) and the European Cockpit Association (ECA) reviewed the latest Aerospace Medical Association pilot mental health recommendations and prepared valuable guidance for assessing pilot health.

However, it should be emphasised that despite the fact that no new legislation emerges in the field of pilot's mental health, industry leaders and air carriers domiciled in Lithuania pay significantly more attention to the issue of pilot's mental health and do not treat this as only theoretical threat.

Therefore the issue is in the hands of industry professionals and the problem is well recognised. However, this acknowledged risk faces the challenge of shortage of captains and first officers. Therefore the issue of market self-regulation becomes even more important.



How has the aviation landscape altered following other recent incidents such as the Malaysia Airlines Flight 370 and MH17?

Janezic: After MH17 was shot down, EASA started to issue Safety Information Bulletins (SIB). These SIBs determine geographical areas where operators are required to perform an assessment before entering. The SIBs (mandatorily) have to be obeyed by the Austrian operators.

After the disappearance of MH370 the European legislator started a process to amend the technical rules on “in flight monitoring” of aircraft by telemetry and the rules on underwater location devices. This process has not come to a finish so far.

Miller: These tragic incidents have not made any significant impact on the aviation landscape in Australia. The search for MH 370 in the Southern Indian Ocean continues, although it is winding down with no result to date. In response the Government has arranged for Airservices Australia, with Malaysia and Indonesia authorities, to improve aircraft monitoring, tracking long-haul flights every 14 minutes. There is capability to increase to real time when necessary.

Since the MH17 incident Australia has implement heightened cockpit safety and security arrangements, but these resulted from the Germanwings incident (as discussed in response to Q3), not MH 17 or MH 370.

What are the accident and incident reporting requirements? Can you outline the process for reporting an occurrence?

Berman: In the U.S., federal regulations in FAR (14 CFR) Part 830, require operators of civil aircraft to notify the NTSB (National Transportation Safety Board) immediately of aviation accidents and certain incidents. An accident is defined as an occurrence associated with the operation of an aircraft that takes place between the time a person boards the aircraft with the intention of flight and the time such person has disembarked, in which any person suffers death or serious injury, or in which the aircraft receives “substantial damage,” defined as damage or failure adversely affecting the structural strength, performance or flight characteristics of the aircraft normally requiring major repair or replacement of affected components. An incident, defined as an occurrence other than an accident that affects or could affect safety of operations, need not be reported unless it qualifies as an accident that involves “substantial damage” to an aircraft.

Notice of accidents and reportable incidents (“serious incidents” listed in Section 830.5(a)) must be provided immediately and by the most expeditious means available, to the NTSB office nearest to the accident or incident. Such notice can be provided by phone, to NTSB’s 24-hour Response Operations Center (ROC) at a toll-free number. Written reports must also be filed with the nearest NTSB office, submitted on NTSB Board Form 6120.1, within 10 days after an accident (or within 7 days if an overdue aircraft is still missing), accompanied by a written statement by each crewmember physically capable at the time the report is submitted, or as soon thereafter as physically able. As a practical matter, the NTSB suggests awaiting contact by its assigned investigator before filing the written report. Part 830 also requires preservation of the wreckage, including cargo, and all aircraft records until the NTSB takes possession or a release is granted.

The NTSB may impose civil penalties for failure to re-

port an accident under NTSB Rule 830. Reporting to the NTSB may result in an FAA enforcement action (licensure action against the pilot involved) because the NTSB and the FAA communicate. Likewise, the FAA may advise the NTSB of an incident and may trigger an NTSB inquiry.

Janezic: Austria has implemented the rules of the *Regulation (EU) No. 376/2014*. The competent authority to independently collect, evaluate, process, analyse and store details of occurrences reported pursuant to Articles 4 and 5 of the respective Regulation is the Austrian CAA – Austro Control. Austro Control offers a web based tool to report all kind of occurrences via their website.

We strongly advise all reporters to consider that according to Austrian law there is no legal barrier for the prosecution office or courts to get access to reported data. If there is any danger for reporters that they might be blamed or held liable for the consequences of an occurrence we strongly recommend seeking legal advice before reporting.

Miller: The Australian Transport Accident Bureau (ATSB) is responsible for accident and incident reporting in the first instance. The [Transport Safety Investigation Act 2003](#) requires air crew to immediately notify the ATSB of accidents and serious incidents, with a written notification required within 72 hours. There are heavy penalties for failing to report an accident or reportable incident. Reporting may be by telephone or through an [e-form on the ATSB website](#).

The ATSB collects information for the purposes of enhancing transport safety, rather than for the purposes of attributing blame. However, there are arrangements for the ATSB to share information with the Civil Aviation Safety Authority (CASA) in appropriate circumstances.



Can you outline the standard areas of cover in aviation insurance and examine key market practices and their effect on insurance?

Janezic: Austria has implemented the rules of *Regulations (EC) No. 785/2004* and *2027/97* (the latter implementing the Montreal Convention). Therefore the contract of insurance which needs to be proven to the CAA before registering an aircraft has to cover third party liability and passenger liability. Third party liability is a strict liability up to a certain amount of insurance depending on the maximum take off mass (MTOM) of the aircraft. Passenger liability is a strict liability up to the amount of SDR 113.100,00. Above the amount of SDR 113.100,00 there is a shifting in the burden of proof, so that the operator has to prove that neither him nor his personnel acted negligently.

Anyway, we strongly recommend engaging a lawyer with a strong aviation background because in most liability cases special technical, operational, meteorological knowledge is of major importance.

What investment opportunities currently exist in the aviation finance market?

Greenlee: The current domestic landscape in Myanmar, which includes 10 local airlines for a current market of less than 3 million active passengers, may seem unsustainable. The international market has been impacted by aggressive expansion from foreign airlines along with intensifying competition between Myanmar Airways International (“MAI”) and Myanmar National Airlines (“MNA”).

However, it appears that the market is ripe for a shake-up which should ultimately improve conditions and profitability. Myanmar has a huge potential in the aviation finance market.

Dockka: If we understand aviation finance only as aircraft and engine finance, the booming aviation industry of region needs such instruments and offers such opportunities.

The number of aircrafts operated by local operators is growing significantly each year. The local operators are mainly involved in charter activities and ACMI operations. Local operators are operating as charter companies in growing holiday travel market and have ACMI contracts with reputable representatives of aviation industry in EU or event Asia. For the reasons above, the said operators have gain reputation of reliable lessee and are dealing with world’s leading lessors. The potential cooperation in the field of aircraft lease constitutes potential business opportunity.

Moreover, the Government of Lithuania shall shortly announce PPP (concession) tender of three Lithuanian airports (approximately 4.2 million of passengers). This tender also constitutes potential investment opportunity.

What do falling oil prices mean for the airline industry?

Greenlee: Falling oil prices may mean a profitability boost for the airline industry, however airlines may use this windfall for debt reduction and shareholder returns rather than significantly grow their fleets and/or tackle wage market-share battles.

Therefore, falling oil prices could imply that airlines in Myanmar continue to use older aircrafts rather than retiring them and/or purchasing/leasing new ones.

Miller: Three factors have been primary influences on the fortunes of the airline industry in Australia over the past five years – a high Australian dollar, high fuel costs in the early period and price-based competition. Reducing fuel costs and the high dollar have boosted international travel by Australians at a cost to domestic travel, although the dollar has settled back to its traditional comparative position and domestic price-based competition has reduced. As to fuel costs, in the six months to 31 December 2015, Australia’s largest airline, Qantas, reported net profit after tax of \$US510 million, but a major contributing factor seems to have been a reduction in fuel costs by \$US330 million.

Can you outline the main environmental and sustainability concerns?

Greenlee: There is no specific environmental law in Myanmar. However, there have been more than 50 applicable laws in Myanmar in which environmental protection-related provisions are contained, and there must be compliance with such legal provisions in doing business and investments in Myanmar, depending upon the basis of relevancy.

Sharon: The Main Environmental and Sustainability Concerns are:

Aircraft engines emit particles and gases which contribute to global warming. In recent years, the growth in the number of flights has increased air pollution. Arrivals and departures cause noise nuisance to residents living near airports.

The Civil Aviation Authority and the Ministry of Environmental Protection issued regulations according to which new flight routes are subject to the submission by the airlines regarding an environment review regarding the effect of noise on the environment.

Dockka: Falling oil prices indeed brought a lot of opportunities to the aviation industry. Along with rising number of passengers, falling oil prices significantly influenced financial results of air carriers; especially for charter companies. For example, according to publicly available information, the leading Lithuanian charter company has increase revenue approximately by 30% and increased its profit twice in 2015.

Increasing financial strength of air carriers facilitate growth of the fleet of the carriers and need for quality MRO services. Thus the low oil prices affect positively the whole aviation industry chain.

Also the falling oil prices slowed down to some extent cost cutting policy; therefore this situation is also a challenge for market players. The main challenge is, evaluating whether the current players and their business model are viable when oil prices get back to the previous level. For example, ACMI market is constantly growing, but are the ACMI operators ready for cost cutting?

Are there any environmental compliance incentives or schemes worth noting?

Greenlee: On the whole, to conform with the existing laws of Myanmar, all projects invested in and/or performed in Myanmar by foreign investors and companies, have a responsibility for the preservation of the environment at and around the areas of project sites, in particular controlling air pollution, water pollution, land pollution and other environmental degradation; establishing sewage treatment plants, industrial waste water treatment plants and other pollution procedures; and compliance with sanitary and hygienic rules and regulations.

Janezic: Austria, as a part of the European Union, follows the rules on the European Emission Trading System (ETS).

Recent statistics suggest that air travel is growing by 4-5% annually. What challenges does this pose for air traffic management (ATM) and the looming capacity crunch in airports?

Berman: The management of increasing air travel and the congestion that results is the challenge which the FAA's NetGen national airspace strategy is seeking to alleviate, among other ways, by the safe reduction of separation of aircraft in flight and in the management of airport approaches. The availability of electronic advances for the use of broadcast devices (ADS-B) and receivers will permit aircraft to be still more accurately located – within a matter of feet – not only by Air Traffic Control, but also by aircraft operators. FAA requirements for ADS-B out transmitters by 1 January 2020, is the most substantial change presently in place to confront this challenge of increased air traffic.

Increased air traffic also poses challenges in light of the dramatic increase in the use of drones, the proliferation of which raises obvious risks for increasingly congested air traffic and thus yet further challenges for air traffic management. The FAA has been working to regulate drone use and only recently issued the first wave of regulations in Part 107. However, these apply only to the commercial, non-recreational use of drones weighing less than 55 pounds, and the new rules limit operations considerably more narrowly than operators would like, which will create yet more pressure to accommodate these vehicles. Much remains to be done, among other things, to assure that drone flight activity does not undermine ATM's efforts to deal effectively with increased traffic for both commercial and general aviation.

Finally, proponents of privatisation of air traffic control believe that wresting control from arguably less efficient government operations to private interests will enable ATC to manage congestion safely and more efficiently, in order to cope with increased congestion. There remains, however, a strong divergence in views and, at

this point at least, ATC privatisation appears unlikely.

Greenlee: Myanmar needs to enhance its CNS/ATM system as soon as possible to face several challenges, including:

- Increasing air traffic projections, such as
 1. The traffic growth in the Bay of Bengal airspace; and
 2. The Yangon International Airport ("YIA") capacity limitations, which is anticipated to be reached by the end of 2016.
- Following international standards and regulations, such as:
 1. ICAO standards & Block upgrades ("ASBU"); and
 2. Asia-Pacific Seamless ATM Plan.

To date, there are indicators which show that Myanmar is aware of the foregoing challenges and is aiming to remedy them within their available resources.

Miller: As it is a large country with relatively uncongested airspace, Australia does not have the same air traffic control challenges as many other countries. Nevertheless, there is heavy traffic at peak periods on the main trunk routes and on approaches to major international gateway airports. Although there has been an occasional incident involving aircraft separation, there is no indication that these were impacted by capacity issues with the air traffic management system.

In 2000 Airservices Australia commissioned the current civil air traffic system (TAATS), which operates alongside a separate military air traffic control system. Design contracts have been let for a new, combined and enhanced air traffic management system, OneSKY,

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In 2000 Airservices Australia commissioned the current civil air traffic system (TAATS), which operates alongside a separate military air traffic control system

- Russell Miller ”

scheduled to be operational by 2021.

Docka: In certain regions air travel growth is even larger than the figure of 4-5% annually, which brings several challenges. I would like to outline a few of the most pertinent issues.

First of all, airport authorities should enhance aviation security procedures and maintain aviation security at a high level. There are always temptations to deal with higher number of passengers and to speed up security checks, but the quality of security check is the priority. Therefore airport authorities should review relevant procedures, develop IT and other technological solutions.

The second issue is concerning aviation security staff. Airports, aviation security companies and other companies operating within the clean zone have to pay due attention to the recruitment process, monitoring of staff, vindication etc. Most important issue is to ensure proper working conditions in order to maintain qualified and honest professionals at place. The challenge is to lower turnover of such kind of staff and to get rid of image of temporary-student like position.

The third challenge is sustainable development of infrastructure. This concern is especially valid for regions where the growth exceeds 5%. The infrastructure has to be designed and developed taking into account all the cycles of aviation, i.e. positive influenced by low oil prices, booming low cost carriers and the reverse cycle. The challenge is to develop airports facilities not creating over capacity, which might hit the first to challenges in future.

The fourth challenge is the potential lack of captains and first officers for the most popular aircraft types, like A320 etc. The growing demand is observed from the beginning of 2015 and it continues to grow in almost every region. A lot of air carriers rely on outsourced pilots and are bidding salaries to attract the qualified ones. If the air carries plan to manage their expectation, i.e. fleet growth vs. lack of personnel, they should revise their hiring policy. Most probably air carriers shall look for opportunities to invest into pilot training process, revise their relation with training organisations and consider investing in young cadets (relations with training facilities, loans, future contracts etc.).

What are the national rules on passenger claims in case of denied boarding, cancellation of flights and delays?

Berman: Denied boarding claims are subject to compensation under FAR Part 250, subject to certain exceptions, for passengers with reserved seats who are denied boarding involuntarily from an oversold flight. The details are complicated, requiring reference to section 250.5 and the other sections referenced there, but generally compensation is double the amount of the fare with a \$650 maximum if alternate transportation is offered, and four times the amount of the fare with a \$1,300 maximum if alternate transportation not offered. However, the passenger has the right to reject the statutory compensation and seek recovery in court.

So-called tarmac delays – those which render passengers captive on aircraft – are subject to FAR Part 259, under which carriers are required to adopt contingency plans for lengthy delays. Passengers are entitled to status notifications every 30 minutes, opportunity to deplane if the carrier voluntarily chooses to open the door, snacks and water after two hours and operable lavatories, with a three-hour limit on domestic flights and a four-hour limit on international flights. There are broad exceptions for air traffic control and safety/security issues.

There are no federal regulations for other delays (non-tarmac) [other than notice requirements] or flight cancellations, both of which are governed by each air carrier's contract of carriage or conditions of carriage. The U.S. Department of Transportation (DOT) addresses these issues in "Fly-Rights: A Consumer Guide to Air Travel," which generally informs the traveling public, among other things, that airlines do not guaranty their schedules that many things beyond their control can cause delays, including weather, air traffic and mechan-

ical issues, that the duration of such delays can often be unpredictable, that most airline will rebook passengers whose flights are cancelled at no additional charge, but are not required to do so, and similarly, that some airlines may provide amenities to stranded passengers, but also without any requirements. DOT generally recommends defensive planning where cancellations or delays interfere with passengers' personal or business commitments, given the lack of legal recourse.

Janezic: Austria – as a Member State of the EU – has implemented the rules of *Regulation (EC) No. 261/2004*. There is a special enforcement body which is competent for all types of public transport (railway, coaches, ships and aviation) – the so called Passenger Rights Agency (*Agentur für Passagiere- und Fahrgastrechte*). All cases which cannot be resolved by this special agency need to be decided by Courts.

Miller: Australia does not have national rules in relation to compensation for denied boarding, as such. However, rules applicable in other jurisdictions, such as the USA and the EU, may result in compensation for inbound passengers from those countries if denied boarding on connecting Australian flights booked on the one ticket as a through flight. The Australian airlines each have policies under which, at their discretion, payment for accommodation, meals, transport, etc., may be made if a passenger is off loaded due to overbooking, or a flight is cancelled, but those policies do not include compensation payments as such.

The Australian Consumer Law may apply in circumstances where a passenger suffers loss or damage when a confirmed ticket is not honoured. Courts may award



compensation under that Law.

Dockka: The issues related to denied boarding, cancellation and delays regulated under the *Regulation No 261/2004* as of 11 February 2004 establishing common rules on compensation and assistance to passengers in the event of denied boarding and of cancellation or long delay of flights, and repealing *Regulation (EEC) No 295/91* are directly applicable in Lithuania. Local legal acts make direct reference to the said EU regulation.

Liability for cancellation and/or late arrival/departure of flights may be imposed on the air carriers pursuant to *Regulation No 261/2004* as of 11 February 2004 establishing common rules on compensation and assis-

tance to passengers in the event of denied boarding and of cancellation or long delay of flights.

The CAA is designated authority to carry out and supervise the enforcement of the above mentioned Regulation and is authorised to review submitted passenger's complaints and impose relevant penalties in respect to the air carrier, failing to respect the requirements imposed by the Regulation.

In the event the entity disagrees with decision adopted by the CAA and/or the imposed penalty amount, such air carrier is entitled to challenge the legitimacy thereof at the competent court pursuant to regular civil procedure.



What impact has the global trend towards airport privatisation had on your jurisdiction?

Greenlee: Currently, Myanmar is exploring public-private partnerships and it has announced the planned privatisation of most of the country's airports. There is some confusion as to if foreign developers/sponsors will be permitted to invest however as the trend is to allow more foreign investment generally, it is hoped that foreign investment will be permitted.

Janezic: The Austrian (6) airports are fully privatised, even if the companies which own and run the airports are partly in public ownership. Since the airports were already privatised 10 years ago, there is no impact anymore.

Miller: Airport privatisation has had a significantly positive effect in Australia. Availability of investment capital, robust growth in passengers and increases in international passenger services have all resulted in significant investment in new terminal infrastructure at Australia's major privatised gateway airports. For instance, international passenger traffic rose 5.9% in the past year.

In April 2014 the Government announced that it would proceed to build a second Sydney airport in Western Sydney to commence RPT operations in the mid-2020s. The publicly listed Sydney Airport Group, owner of the Sydney International Airport has a first right to develop the new airport.

Docka: Lithuanian authorities and aviation community have debated for a few years on the topic of privatisation of Lithuanian airports. However, due to the reasons of national security and other legislative limitation, Lithuania opted for public private partnership option.

Previously, the Strategic Committee of the Government of the Republic of Lithuania has supported the idea of the concession of the three international airports (Vilnius, Kaunas and Palanga). On 2 July 2016, Lithuania's Parliament has adopted legislation package that will facilitate the concession of the country's international airports as a PPP project. The current legislative initiatives enable the launching of a bundled concession tender for Lithuania's three international airports.

Are there any exciting technological developments on the horizon?

Greenlee: In October 2015, Myanmar announced that it had plans to modernise its aeronautical information management ("AIM") infrastructure in light of increasing air traffic, essential airspace optimisation and the crucial changeover from aeronautical information services. This appears to have been implemented.

Sharon: According to the CAA's publications, the data relating to passenger traffic and the increase in the number of aircraft in Israel corresponds with the global increase in World Civil Aviation.

The Israeli Airlines substantially expanded by purchasing new and used aircrafts, and recruiting pilots, flight attendants, etc. The limitation on the pilot's age, changes in the regulation relating to the "rest times" for pilots and the purchase of new aircrafts increases the demand for adjoining new pilots to the airlines.

New technologies

It was recently published that the Runwize system, an Israeli development, was installed in a runway which

was recently built in an airport in Seattle.

The system is aimed at automatically detecting foreign objects and Birdwizer which manages ground supervision to risks caused by birds on the runway.

It was also published that Elbit (an Israeli company) signed an agreement with the aircraft manufacturer of Turbo Engine Aircraft ATR for the integration of aerial sight system – clear vision with integrator display installed inside the pilot's helmet SKYLENS in the new serial of ATR - 600.

The system will increase the safety of the flight and will contribute to the operation abilities of the aircraft which are required to take off on many occasions from airports which lack sophisticated infrastructure.

The agreement between the two companies states that the ClearVision system will be presented as an option to aircraft model ATR 42-60 and ATR 72-600. The permission is expected to be approved by 2017.

What key trends do you expect to see over the coming year and in an ideal world what would you like to see implemented or changed?

Berman: To me, one of the biggest issues in front of us, in addition to the others I have addressed in response to these questions, is the shortage of qualified pilots, and the challenges of finding, training and providing sufficient experience to commercial pilots to support the ever increasing volume of commercial air travel.

While these questions and answers have focused primarily on commercial aviation, and although so much attention has been given to drones, I see very substantial issues in general aviation, where safety has been considerably more problematic, and accidents – infrequently publicised and addressed in the popular press – have underscored the need for adequate pilot training. Significant concerns have appropriately been raised over accidents caused by pilots' loss of control, and diminished hand-flying capabilities coupled with increasing reliance upon auto-pilots and increasingly sophisticated electronics.

Our airspace is not congested solely by commercial aircraft. They share that airspace with thousands of military and general aircraft, as well, not to mention the extent to which drones also seek to use it. Aviation is and will always be critical to the global economy, and it is essential that the agencies, like the FAA, responsible for certification and operation of the nation's aviation system, its aircraft, airmen, maintenance and equipment receive the support needed to keep the system fully up to date, well supervised and, above all, safe.

Greenlee: The Hanthawaddy International Airport ("HIA") should be built 80 km northeast of YIA and it is expected to reach 12 million passengers per year, however it may not be fully operational before 2020.

Janezic: After a period of fundamental changes within the last years the European aviation law has to come to a rest. The new European system needs to be settled and the operators as well as the authorities have to learn to "use" this legal framework. The European bureaucracy tends to solve minor problems by hundreds of pages of paper which nobody is able to read or obey.

One part of this process of settlement is that EASA needs to focus on the uniform and harmonised implementation of the European law rather than developing new rules. Furthermore it has to be said that this overflowing mass of the EASA originated so called Acceptable Means of Compliance needs to be dammed up.

To answer your question: nothing should be changed. We should survey the legal framework as it is, analyse it, draw our conclusions and amend it very cautiously (and by the way: with much more legal quality than in the past).

Miller: The trend in Australia is continuing growth of the aviation sector. According to reports by the Bureau of Infrastructure Transport and Regional Economics, total passenger movements will almost double by 2030, with strong growth in international passenger movements and increasing capacity from current and new operators to serve them.

Australia's policy of negotiating air rights to meet future capacity requirements and allow new entry is likely to continue. For instance, in December 2015 the Minister announced an additional 3,000 weekly seats between Canada and Sydney, Melbourne, Brisbane and Perth. This followed announcement in the prior month of



an extra 28 weekly services between Australia and the UAE.

The resulting infrastructure gap, especially in airports and airport access will result in increased investment, including in the announced airport at western Sydney. Investment in infrastructure for regional airports will continue to be a priority.

It is likely that Virgin Australia, Australia's second largest airline, will experience changes in its ownership. Air New Zealand, which owns a stake in the airline alongside Etihad and Singapore Airlines, is planning to dispose of all or part of its 26% holding and Chinese aviation group, HNA seeking approval to acquire a 13% stake.

Docka: I would expect development in IT field, which would facilitate cost saving. The upcoming IT solutions will establish links between airports, ground handling companies, air carriers and even MRO organisations and increase level of passenger self-service.

However, I would expect the biggest breakthrough in UAV field. UAV shall be widely used in public sector for traffic control, area surveillance, border control and even rescue works and this will lead significant economy in resources.

Moreover, the UAV evolution most probably shall be led by artificial intellect solutions. In order to close the chain of effective use of UAV in public and private sector, the advance AI solutions shall be a must.