

GETTING THE DEAL THROUGH

# Air Transport

in 34 jurisdictions worldwide

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# Nepal

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### General

- 1** Which bodies regulate aviation in your country, and under what basic laws?

Aviation in Nepal is regulated by the Ministry of Culture, Tourism and Civil Aviation (the MOCTCA) and the Civil Aviation Authority of Nepal (the CAAN) in accordance with the Civil Aviation Act 1959 (the CAA), the Civil Aviation Authority of Nepal Act 1996 (the CAANA), the Civil Aviation Regulation 1996 (the CAR) and the Civil Aviation Authority of Nepal Regulation 2002 (the CAANR).

The CAA empowers the government of Nepal through the MOCTCA to implement the necessary policies and regulations with regard to aviation and the CAANA empowers the CAAN, an autonomous regulatory body established under the CAANA, to make necessary arrangements in order to make air transport safe, regular, standard and effective. The CAAN is the sole regulatory body empowered to administer and regulate civil aviation in Nepal.

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### Regulation of aviation operations

- 2** How is air transport regulated in terms of safety?

Under section 3 of the CAA, the government of Nepal has the authority to implement the necessary regulations relating to safety of public in connection with civil aviation. The CAAN regulates and supervises all flights to, from and within the territory of Nepal and all other air traffic-related activities.

The CAANA empowers the CAAN with full authority to regulate and supervise the safety of air transport in Nepal. Under section 5 of the CAANA, the CAAN has the authority to issue, renew and cancel air operator certificates, certificates of airworthiness, flight training school licences, repair and overhaul licences, rating and certification of crew members, and registration of aircraft. The Office of Aviation Safety (the OAS) has been established under the CAAN, and formulates and implements air traffic safety enhancement strategies and activities.

The CAAN is responsible for providing air traffic services, flight information services, alerting services, air traffic advisory services, air traffic control services, air navigation services and facilities, area control services and aerodrome control services.

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

Air transport services by air service operators operated under scheduled and non-scheduled flights and domestic and international chartered flights are regarded as public or commercial air transport. Flights other than public and commercial air transport have been defined as private flights, such as diplomatic flights, aerial work flights, test flights, etc.

Safety regulations for flights other than public or commercial air transport are prescribed by the CAAN, which is in line with those of public or commercial air transport, such as registration of aircraft, certificate of air worthiness, private pilot licence, mandatory insurance requirements, etc.

- 4** Is access to the market for the provision of air transport services regulated, and if so, how?

Yes. Rule 4 of the CAR and rule 3 of the CAANR state that no person may operate air transport service within the territory of Nepal without first obtaining an air operator certificate from the CAAN. Under sections 5(A) and 5(S) of the CAANA and rule 3 of the CAANR, the CAAN also holds power to renew and cancel air operator certificates.

The CAANR and the Air Operator Certificate Requirements (the AOCR) lay down provisions relating to issuance of air operator certificates. An application for an air operator certificate must be vetted through two application phases – the pre-application phase and the formal application phase. An applicant for an air operator certificate must satisfy the CAAN of its financial fitness, experience, managerial skills and technical ability to operate air services safely, regularly and efficiently complying with the provisions prescribed by the AOCR. The test for issuing an air operator certificate is whether an applicant has the capacity to operate the air transport service safely, regularly and efficiently.

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

### Financial fitness

The Aviation Policy 2006 (Policy) lays down provision that an applicant must demonstrate that its paid up capital is not less than 500 million Nepalese rupees (approximately US\$6.67 million) for international air transport services and 150 million rupees (approximately US\$2 million) for domestic air transport service. The applicant must also demonstrate that it has at least three aircraft in its operation and at least one of them in its ownership. The CAAN gives consideration to overall financial status of the applicant corporation and the financial background and credibility of the promoters of the applicant corporation and their investment in other businesses. Each applicant corporation must submit a detailed financial projection covering the period of six months after its operation including all revenues, operating and non-operating expenses and the estimated profit and loss for that period. The applicant must also satisfy 'zero revenue test', wherein it must provide the proof of deposit of an amount equivalent to the first three months' operating and non-operating expenses in order to make sure that the applicant will be able to operate its service for the first three months from the date of its operation without making any income.

**Nationality of ownership regarding control**

The AOCR requires that an applicant must also demonstrate that either it: is a Nepalese citizen; or has a principal place of business in Nepal; or has a permanent residence in Nepal if no such principal place of business exists in Nepal. The Aviation Policy 2006 also requires that at least 20 per cent ownership interest in the applicant corporation must be owned by Nepalese citizens.

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

Rule 56 of the CAANR prescribes provisions for obtaining licenses for domestic and international routes. An air service operator must apply in written to the CAAN for a license for a route except for an emergency flight, which can be applied verbally. An applicant for the air operator certificate must submit details of proposed routes while submitting an application for the air operator certificate. Air service operators must submit their domestic and international flight schedules to the CAAN. The CAAN reserves the right to issue permission for domestic and international routes after taking into consideration technical aspects of aircraft, airports and runways.

Permission for international routes is governed by the relevant bilateral aviation agreements or multilateral aviation treaties. The director general of the CAAN grants Air Carrier Operation Specifications specifying approved routes for air service operators.

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

The CAANR empowers the director general of the CAAN as the sole and the final authority to issue and cancel air operator certificates, air worthiness certificates and permission for routes. The director general must provide an opportunity to the air service operators to submit their defence before suspending or cancelling their air operator certificate or air worthiness certificate. An order or decision made by the director general in connection with air operator certificates or air worthiness certificates or permit for routes shall be deemed final.

- 8** Is there a declared policy on airline access or competition, and if so, what is it?

Before implementation of the Aviation Policy in 1993, which was replaced with a new Aviation Policy in 2006, the aviation transport service was monopolised by the state-owned national carrier – Nepal Airlines Corporation. The government of Nepal introduced the first Aviation Policy in 1993, by which the government of Nepal implemented an ‘open sky policy’ and encouraged private participation in the aviation sector. In 2006, the government of Nepal introduced a revised Aviation Policy 2006, which carries an objective to increase domestic and foreign private participation through domestic and foreign investment in aviation transport sector.

One of the main objectives of the Aviation Policy 1996 is to develop competitive air transport services in the country. The Policy also prescribes that procedures shall be developed in issuing air operator certificates and licenses for international air transport services in a way where participation shall be based on competition.

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

Yes. Article 4.5.2 of the Aviation Policy 2006 states that a condition shall be prescribed while issuing an air operator certificate to new air service operators for domestic operation, and while issuing licences for fleet expansion for existing air service operators requiring them to operate air transport services to remote destinations. The Policy requires the air service operators for domestic routes to have at least

one aircraft in its operation that is suitable for operation in remote destinations.

- 10** Are charter services specially regulated?

There is no specific regulation for the charter services. Article 4.9.4 of the Aviation Policy 2006 states that Nepalese air service operators shall be encouraged to operate charter service to those countries whom Nepal has diplomatic relation. Article 4.16 of the Policy states that international charter service shall be encouraged and the procedures to obtain permission thereof shall be simplified. Rule 56 of the CAANR prescribes the procedures to obtain licences for domestic and international charter flights that are identical to those in question 6.

A person or corporation seeking a charter flight must apply to the director general of the CAAN with the prescribed application form along with the supporting documents at least seven days in advance for the permission for a charter flight. The director general has sole discretion in issuing permission for charter flights.

- 11** Are airfares regulated, and if so, how?

Air fares are regulated by the government of Nepal and the CAAN. Article 4.15 of the Aviation Policy 2006 states that the government of Nepal, upon recommendation of the CAAN, shall determine the minimum and the maximum ceilings of air fares for each sector. The Policy also states that the CAAN shall intervene and take necessary legal actions against those air service operators who do not comply with the fares determined by the government and raise higher air fares and are involved in unhealthy competition.

**Aircraft**

- 12** Who is entitled to be mentioned in the aircraft register? Do requirements or limitations apply to the ownership of an aircraft listed on your country's register?

Rule 8 of the CAANR and the Nepalese Civil Airworthiness Requirements (the NCAR) prescribe that the persons entitled to be mentioned in the aircraft register are the owner of the aircraft and the Nepalese air service operator who acquires the aircraft pursuant to an aircraft lease agreement or a lease purchase agreement.

The term ‘owner’ shall include a buyer in possession or a lessee of an aircraft under a contract of conditional sale and the assignee of such person. The CAAN registers the aircraft in its Aircraft Register mentioning both owner and the operator of the aircraft. No aircraft shall be registered in the Nepalese Aircraft Register if an aircraft is registered in any other country.

- 13** Is there a register of aircraft mortgages or charges, and if so how does it function?

There is no specific register for aircraft mortgages under aviation laws. The mortgagee may file a mortgage with the CAAN for information purpose only but not for the purpose of recording and obtaining a lien on the aircraft. The mortgagee may file and record the aircraft mortgage under the Civil Code with the local offices.

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

Neither the government of Nepal nor the CAAN has specific rights to detain an aircraft for unpaid airport charges or unpaid debts. If an air service operator fails to pay airport or air navigation charges or any other charges payable to the government of Nepal or the CAAN, the CAAN reserves the following rights to:

- ground such aircraft;

- cancel the registration of such aircraft;
- deny to register new aircraft in the name of such air service operator;
- deny permission to such air service operator to lease other aircraft;
- deny a transfer of ownership of such aircraft;
- deny the cancellation of the registration of such aircraft; and
- refuse to issue an Export Certificate of Airworthiness.

However, an authorised officer of the government of Nepal may detain an aircraft for the safety of its passengers or any other person or if an aircraft is operated in a restricted zone.

**15** Do specific rules regulate the maintenance of aircraft?

Yes. Rule 22 of the CAANR prescribes that an aircraft shall neither be flown nor be placed in operation without first completing regular repair and maintenance work. Rule 23 of the CAANR empowers the director general of the CAAN to give an order to an air service operator to conduct emergency repair and maintenance work if the director general determines that such repair or maintenance work is necessary for safety reasons. No aircraft shall be flown or be placed in operation without first complying with the order of the director general for repair and maintenance work on the aircraft. Similarly, rule 24 of the CAANR also states that all regular and emergency repair and maintenance work on an aircraft, its engines and other parts shall be performed only through those institutions licensed or recognised under the CAANR.

### Airports

**16** Who owns the airports?

Airports in Nepal are owned by the government of Nepal and the CAAN. The Aviation Policy 2006 encourages private participation through domestic or foreign investment for the development and management of airports. For regional hub airports, investment is allowed as follows: from the government of Nepal 70 per cent, the CAAN 15 per cent and from local institutions and investors 15 per cent.

**17** What system is there for the licensing of airports?

The CAA states that the government of Nepal has the right to declare certain locations as aerodromes. Under rule 82 of the CAANR, the CAAN may prescribe manuals and directives and issue licences for aerodromes. While issuing licences for aerodromes, the CAAN will consider certain factors, including among others, proximity to tourist areas, environmental impact, migration of local people and the impact of the aerodrome on local people.

**18** Is there a system of economic regulation of airports, and, if so, how does it function?

Airports are subject to economic regulations. The chief of the airport is responsible for overseeing the management and raising revenue through various charges, such as aircraft landing charges, parking charges, housing charges, ground handling charges, communication and aviation assistance charges, cargo charges, cargo management charges, passenger entry charges, etc, as prescribed under the Airport Charges Regulation 1981 (the ACR). The government of Nepal has the authority to grant ground handling services and cargo management services at airports to a person or a corporation by entering into agreements for such services.

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

Yes. The CAA states that the government of Nepal may declare certain areas of an airport as restricted areas. Section 10A of the CAA states that access to such restricted areas shall be prohibited except when authorised by the chief of the airport. Rule 76 of the CAANR also states that access to aircraft for the passengers who carry valid travel documents and air tickets shall be permitted through the passages determined by the chief of the airport.

**20** How are slots allocated at congested airports?

The CAAN is responsible for allocating slots to air service operators at airports. Slots are allocated on a first-come, first-served basis. In allocating slots to air service operators, the CAAN will consider various aspects, such as capacity of airports, availability of parking spaces, hangers, etc.

**21** Are there any laws or rules specifically relating to ground handling?

Yes. The Ground Handling Directive 2061 has been implemented in order to regulate services relating to ground handling. The government of Nepal and the CAAN have full power to grant licences for ground handling services. Under the ACR, the government of Nepal may grant ground handling services of any government-owned or privately owned airport to a person or a corporation, either by negotiation or by global bidding.

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

Under the CAANA, one of the major responsibilities of the CAAN is to provide air traffic control services and other related services, such as air traffic services, flight information services, air traffic advisory services, air navigation services, area control services, aerodrome control services, etc. The CAAN provides air traffic control services through its employees – air traffic controllers. The CAAN has implemented the Air Traffic Control Manual (the ATCM) in order to regulate air traffic control services.

### Liability and accidents

**23** Are there any special rules in respect of death of, or injury to, passengers or loss or damage to baggage or cargo in respect of domestic carriage?

No. The CAAN requires that air service providers must have aircraft accident liability insurance covering the risk of bodily injury or death of passenger of not less than US\$20,000 per passenger and loss or damage to baggage or cargo of not less than US\$20 per kilogramme in respect of domestic carriage.

**24** Are there any special rules about the liability of aircraft operators for surface damage?

No. Also, Nepal has not ratified the Convention on Damage Caused by Foreign Aircraft to Third Parties on the Surface 1952.

**25** What system is there for the investigation of air accidents, including procedures?

The government of Nepal has authority to investigate air accidents. There are two types of investigation of air accidents prescribed by the Civil Aviation (Investigation of Accident) Regulation 1967 (the CAIAR), which are general investigation and special investigation. A general investigation is conducted by an investigator appointed to investigate such air accident by the government of Nepal. The investigator shall submit his or her investigation report to the government of Nepal wherein he or she shall describe all aspects of the accident and

the cause of the accident. The investigator must also submit his or her opinion on how such air accidents could be prevented in the future.

The government of Nepal also has the discretion to undertake a special investigation of certain air accidents if the government determines that a special investigation is necessary. For a special investigation, the government shall form a Special Inquiry Commission of three members.

Investigation reports prepared through a general investigation or special investigation shall be of an administrative and technical only, and shall not be presented as evidences in any civil or criminal proceedings.

**26** Is there a mandatory accident and incident reporting system, and if so, how does it operate?

Yes. Under Rule 4 of the CAIAR, the chief pilot or the pilot of the aircraft or the air service operator must immediately report an air accident to the director general of the CAAN along with the date, time and place of the accident and other technical details of such accident.

The owner of the aircraft is also required to report an air accident immediately to the director general of the CAAN along with the details about the registration of the aircraft, date, time, place of the accident, details of pilots and air service operator, air route, physical location of the accident, details of the person injured in the accident, etc. If such accident occurs outside the territory of Nepal, such information shall also be sent to an officer of the diplomatic mission of Nepal in that country in addition to the director general of the CAAN.

Upon receipt of the notice of an air accident, the director general of the CAAN shall inform the government of Nepal. If the accident relates to an aircraft registered in a foreign country, the director general shall also inform the diplomatic mission of such country in Nepal or the country where the aircraft has been registered.

Apart from the air service operator and the owner of the aircraft, the CAIAR also states that any person who witnesses an air accident must inform the nearest airport, the police, the municipality or the district administration office.

#### Competition law

**27** Do sector-specific competition rules apply to aviation? If not, do the general competition law rules apply?

No. There are no sector-specific competition laws or rules applicable to the aviation sector. The general competition law, namely the Competition Promotion and Market Protection Act 2007 (the CPMPA) and the Consumer Protection Act 1997 apply to aviation sector.

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

There are no sector-specific competition laws or rules applied by the competition authorities. The competition authority, the Competition Promotion and Market Protection Board, applies the competition laws and rules as prescribed in the CPMPA.

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

The same general principles of competition assessment apply to aviation sector as to other industry sectors. The CPMPA has not specifically defined the term 'market'; however a market definition shall generally include a product market and geographical market as well.

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

The principal standard for assessing the competitive impact of a transaction is to determine whether:

- the specific transaction or agreement restricts fair competition in the market;
- there is abuse of a dominant position; or
- the merger or acquisition is conducted solely to create a monopoly in the market.

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

The CPMPA imposes certain civil penalties for anti-competition offences. Civil penalties range from 10,000 to 500,000 Nepalese rupees (approximately US\$148 to US\$7,420) depending on the nature of the offences. For repeat offenders, double the normal penalty shall be imposed for each repeated offence. Any agreement entered into in violation of the CPMPA shall be void. An aggrieved person shall also be entitled to reasonable compensation from the person or the corporation engaged in such anti-competitive activities.

#### Financial support and state aid

**32** Are there sector-specific rules regulating direct or indirect financial support to individual companies by the government or government-controlled agencies or companies (state aid) in the aviation sector? If not, do general state aid rules apply?

No sector-specific rules or general rules exist that provide direct or indirect financial support to individual companies from the government or government-controlled agencies in the aviation sector.

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

Not applicable in Nepal.

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

Not applicable in Nepal.

**35** Must clearance from the competition authorities be obtained before state aid may be granted?

Not applicable in Nepal.

**36** If so, what are the main procedural steps to obtain clearance?

Not applicable in Nepal.

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

Not applicable in Nepal.

#### Miscellaneous

**38** Is there any aviation-specific passenger protection legislation?

There are no aviation-specific passenger protection laws or rules.

**39** Are there mandatory insurance requirements to operate aircraft?

Yes. Air service operators who operate domestic or international air transport services must have aircraft accident liability insurance covering the risk of bodily injury or death of passengers covering an amount not less than the amount prescribed in the Warsaw Conven-

**Update and trends**

The air transport sector is one of the most highly regulated sectors in Nepal. In 2006, the government of Nepal introduced a revised Aviation Policy, which aims to develop Nepal as a regional air transit hub for Asia and the Asia-Pacific region, keeping in mind the significant increase in air traffic in Asia and the Asia-Pacific region in the past few years. The Policy adopts a 'liberal sky policy' and encourages private participation through domestic and foreign investment in the aviation sector. The Policy aims to construct and develop a new international airport with modern facilities, making it a regional air transit hub. The new Aviation Policy encourages domestic and foreign investors to invest in and develop airport infrastructure sectors with BOT, BOOT, OT or any other suitable methods.

The government of Nepal introduced the liberal aviation policy to attract foreign investment in the areas of air transport operation by

allowing investment of up to 80 per cent in the international sector and up to 49 per cent in the domestic sector. Similarly, up to 95 per cent foreign investment is allowed in the areas of flight training schools and maintenance industries.

Aviation laws and regulations of Nepal aim to maintain the highest standard of aviation security and flight safety. The Aviation Policy encourages import of new aircraft and puts restrictions on the import of pressurised aircraft that are more than 15 years old and non-pressurised aircraft more than 20 years old.

Nepal is tackling the challenge of developing a new international airport with modern facilities. With the increasing number of domestic air service operators and tremendous increase in air traffic in the past few years, the only international airport in the country, TIA, is facing huge day-to-day air traffic congestion.

tion. The mandatory insurance requirement for air service operators in respect to baggage, cargo and third-party liability insurance is no less than US\$60 million.

**40** What legal requirements are there with regard to aviation security?

The government has the sole authority to implement regulations with regard to aviation security. The administration and regulation of civil aviation and aviation security are the primary responsibilities of the CAAN. The CAAN implements aviation security activities in conjunction with the Nepal Police.

The Aviation Security (Management) Regulation 1989 (the ASMR) has been enforced and exclusively deals with issues relating to aviation security. The ASMR prescribes the formation of a National Civil Aviation Security Committee (the National AVSEC Committee) headed by the minister of culture, tourism and civil aviation. The ASMR also prescribes the formation of airport security committees in international and domestic airports in order to recommend and implement the necessary security measures for the safe operation of each airport.

**41** What serious crimes exist with regard to aviation?

The CAA outlines serious crimes with regard to aviation which include, among others:

- hijacking;
- damaging or destroying an aircraft and its components;
- acts of violence against any person inside the aircraft in flight;
- damaging and destroying communication devices, visual aids and any other security devices at aerodromes or hangers; and
- carrying weapons or explosives, etc.

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