



ICLG

The International Comparative Legal Guide to:

Aviation Law 2017

5th Edition

A practical cross-border insight into aviation law

Published by Global Legal Group, with contributions from:

Advokatfirman Eriksson & Partners AB
Alexander Holburn Beaudin + Lang LLP
ARNECKE SIBETH
Arnold & Porter Kaye Scholer LLP
Azmi & Associates
Cervantes Sainz, S.C.
Christodoulou & Mavrikis Inc.
Clyde & Co
Condon & Forsyth LLP
DDSA – De Luca, Derenusson,
Schuttoff e Azevedo Advogados
Dingli & Dingli Law Firm
GDP Advogados
GRATA International

Kubes Passeyrer Attorneys at Law
Locke Lord (UK) LLP
Maples and Calder
McAfee & Taft, A P.C.
MMMLegal Legal Counsels
Mori Hamada & Matsumoto
ONV LAW
PRIMUS attorneys at law
Salazar & Asociados
Sayenko Kharenko
Studio Pierallini
Ventura Garcés & López-Ibor Abogados
VISCHER AG





global legal group

Contributing Editors

Alan D. Meneghetti, Locke Lord (UK) LLP and Philip Perrotta, Arnold & Porter Kaye Scholer LLP

Sales Director

Florjan Osmani

Account Directors

Oliver Smith, Rory Smith

Sales Support Manager

Paul Mochalski

Sub Editor

Nicholas Catlin

Senior Editor

Rachel Williams

Chief Operating Officer

Dror Levy

Group Consulting Editor

Alan Falach

Group Publisher

Richard Firth

Published by

Global Legal Group Ltd.
59 Tanner Street
London SE1 3PL, UK
Tel: +44 20 7367 0720
Fax: +44 20 7407 5255
Email: info@glgroup.co.uk
URL: www.glgroup.co.uk

GLG Cover Design

F&F Studio Design

GLG Cover Image Source

iStockphoto

Printed by

Ashford Colour Press Ltd
February 2017

Copyright © 2017

Global Legal Group Ltd.

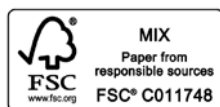
All rights reserved

No photocopying

ISBN 978-1-911367-35-2

ISSN 2050-9839

Strategic Partners



General Chapters:

1	The Use of Personal Data in the Commercial Aviation Industry – Alan D. Meneghetti, Locke Lord (UK) LLP	1
2	The Aviation Industry – Constant Change Leading to Tales of the Unexpected – Philip Perrotta, Arnold & Porter Kaye Scholer LLP	5
3	Digital Signatures, Subordinations and Drones – Erin M. Van Laanen & Brian A. Burget, McAfee & Taft, A.P.C.	10
4	The Need to Extend WALA's Presence in the Airport Industry – Alan D. Meneghetti & Michael Siebold, Worldwide Airports Lawyers Association (WALA)	15

Country Question and Answer Chapters:

5	Austria	Kubes Passeyrer Attorneys at Law: Dr. David Kubes & Mag. Marko Marjanovic	17
6	Bolivia	Salazar & Asociados: Sergio Salazar-Machicado & Ignacio Salazar-Machicado	23
7	Brazil	DDSA – De Luca, Derenusson, Schuttoff e Azevedo Advogados: Ana Luisa Castro Cunha Derenusson	30
8	Canada	Alexander Holburn Beaudin + Lang LLP: Michael Dery & Darryl G. Pankratz	37
9	France	Clyde & Co: Maylis Casati-Ollier & Benjamin Potier	45
10	Germany	ARNECKE SIBETH: Holger Buerskens & Ulrich Steppeler	53
11	Ireland	Maples and Calder: Donna Ager & Mary Dunne	62
12	Italy	Studio Pierallini: Laura Pierallini & Francesco Grasseti	71
13	Japan	Mori Hamada & Matsumoto: Hiromi Hayashi	80
14	Kazakhstan	GRATA International: Marina Kahiani & Kamila Suleimenova	89
15	Lithuania	PRIMUS attorneys at law: Paulius Docka	104
16	Malaysia	Azmi & Associates: Norhisham Abd Bahrain & Rosinah Mohd Salleh	110
17	Malta	Dingli & Dingli Law Firm: Dr. Tonio Grech	117
18	Mexico	Cervantes Sainz, S.C.: Luis A. Cervantes Muñoz & Alejandro Zendejas Vásquez	123
19	Poland	MMMLegal Legal Counsels: Krystyna Marut & Anna Burchacińska-Mańko	129
20	Portugal	GDP Advogados: Francisco de Sousa Alves Dias	137
21	Romania	ONV LAW: Mihai Furtună & Ioana Anghel	142
22	South Africa	Christodoulou & Mavrikis Inc.: Chris Christodoulou & Antonia Harrison	150
23	Spain	Ventura Garcés & López-Ibor Abogados: Alfonso López-Ibor Aliño & Pablo Stöger Pérez	165
24	Sweden	Advokatfirman Eriksson & Partners AB: Stephan Eriksson & Martin Thysell	174
25	Switzerland	VISCHER AG: Urs Haegi & Dr. Thomas Weibel	180
26	Ukraine	Sayenko Kharenko: Andrei Liakhov & Vasyl Liutyi	187
27	United Kingdom	Locke Lord (UK) LLP: Alan D. Meneghetti & Arnold & Porter Kaye Scholer LLP: Philip Perrotta	195
28	USA	Condon & Forsyth LLP: Bartholomew J. Banino & Nicole M. Smith	207

Further copies of this book and others in the series can be ordered from the publisher. Please call +44 20 7367 0720

Disclaimer

This publication is for general information purposes only. It does not purport to provide comprehensive full legal or other advice. Global Legal Group Ltd. and the contributors accept no responsibility for losses that may arise from reliance upon information contained in this publication. This publication is intended to give an indication of legal issues upon which you may need advice. Full legal advice should be taken from a qualified professional when dealing with specific situations.

Kazakhstan

Marina Kahiani



Kamila Suleimenova



GRATA International

1 General

1.1 Please list and briefly describe the principal legislation and regulatory bodies which apply to and/or regulate aviation in your jurisdiction.

In the Republic of Kazakhstan, the aviation industry is regulated by the following main legislative acts:

- (1) the Convention for the Unification of Certain Rules for International Carriage by Air, Montreal, 28 May 1999 (ratified by the Law of the Republic of Kazakhstan No 297-V dated 19 March 2015) (the “**Montreal Convention**”);
- (2) the Convention on International Civil Aviation, Chicago, 7 December 1944 (ratified by the Decree of the Supreme Council of the Republic of Kazakhstan No 1503-XII dated 2 July 1992) (the “**Chicago Convention**”);
- (3) the Convention on International Guarantees in relation to Mobile Equipment (Cape Town, 16 November 2001) ratified by the Law on Ratification of the Convention on International Interests in Mobile Equipment and Aircraft Equipment Protocol to the Cape Town Convention No 29-V dated 5 July 2012 (the “**Ratification Law**”) (the “**Cape Town Convention**”);
- (4) the Protocol on Aviation Equipment ratified by the Ratification Law (the “**Aviation Protocol**”);
- (5) the Constitution of the Republic of Kazakhstan dated 30 August 1995;
- (6) the Civil Code of the Republic of Kazakhstan (General Part dated 27 December 1994; Special Part dated 1 July 1999) (the “**Civil Code**”);
- (7) the Commercial Code of the Republic of Kazakhstan No 375-V dated 29 October 2015 (the “**Commercial Code**”);
- (8) the Law of the Republic of Kazakhstan “On Transport” No 156-XIII dated 21 September 1994;
- (9) the Law of the Republic of Kazakhstan “On Use of Airspace of the Republic of Kazakhstan and Aviation Activity” No 339-IV dated 15 July 2010 (the “**Aviation Law**”);
- (10) the Order of Acting Minister of Investments and Development of the Republic of Kazakhstan “On Approval of the Certification Requirements to Operators of Civil Aircraft” No 153 dated 24 February 2015 (the “**Order on Certification Requirements**”);
- (11) the Order of the Minister of Investments and Development of the Republic of Kazakhstan “On Approval of the Rules of Certification of Aircraft Operators” No 1061 dated 10 November 2015 (the “**Rules of Certification of Aircraft Operators**”);
- (12) the Order of the Minister of Investments and Development of the Republic of Kazakhstan “On Approval of the Rules for the Transportation of Passengers, Baggage and Cargo by Air Transport” No 540 dated 30 April 2015 (the “**Air Transportation Rules**”);
- (13) the Resolution of the Government of the Republic of Kazakhstan “On Approval of the Rules of Investigation of Air Accidents and Incidents” No 828 dated 18 July 2011 (the “**Air Accident Rules in Civil Aviation**”);
- (14) the Order of the Minister of Defence of the Republic of Kazakhstan “On Approval of the Rules for Investigation of Air Accidents and Incidents in State Aviation of the Republic of Kazakhstan” No 145 dated 18 March 2015 (the “**Air Accident Rules in State Aviation**”);
- (15) the Order of the Minister of Defence of the Republic of Kazakhstan “On Approval of the Rules for Registration of Aircraft of State Aviation of the Republic of Kazakhstan” No 220 dated 18 May 2011 (the “**State Aircraft Registration Rules**”);
- (16) the Order of the Minister of Transport and Communication of the Republic of Kazakhstan “On Approval of the Rules of State Registration of Civil Aviation Aircraft of the Republic of Kazakhstan” No 613 dated 18 September 2012 (the “**Civil Aircraft Registration Rules**”); and
- (17) other legal acts mentioned in this chapter.

The Aviation Law is the main legislative act regulating aviation in Kazakhstan and it sets out the norms relating to: state regulation and state control of airspace management and aviation operations; the organisation of airspace management, international flights, aircraft, aviation personnel, operators, airports, air services and aviation work; and legal liability in the sphere of air services, actions and activities which affect flight operating services, air accidents and their investigation, rescue works in relation to aircraft, their passengers and crew members.

Aviation in the Republic of Kazakhstan is divided to civil aviation, state aviation and experimental aviation (article 6 of the Aviation Law).

State aviation is aviation used for the purpose of defence, security of the state, and protection of public order. **Experimental aviation** is aviation intended for use in conducting design, experimental work, scientific research work and tests in the field of aviation and other equipment. **Civil aviation** is aviation other than state aviation and experimental aviation, used for: (a) the transportation of passengers, luggage, cargo and postal matters (air transportation); (b) the performance of aviation works; (c) conducting educational, sport, social activities and developing technical creativity; (d) personal use by an aircraft operator; (e) conducting search and rescue and accident rescue operations and rendering assistance in

case of natural disasters; (f) the provision of aeronautical services; (g) the maintenance of operations and repair of aircraft; (h) carrying out airport activities and/or aerodrome (helicopter aerodrome) services; or (i) designing aerodromes and objects of civil aviation.

The main regulatory body in the sphere of **state aviation** in Kazakhstan is the Ministry of Defence of the Republic of Kazakhstan (article 15 of the Aviation Law).

The main aviation regulatory body in the sphere of **civil and experimental aviation** in Kazakhstan is the Committee of Civil Aviation of the Ministry of Investments and Development of the Republic of Kazakhstan (the “CAC”) (articles 1.16 and 14 of the Aviation Law).

1.2 What are the steps which air carriers need to take in order to obtain an operating licence?

Under Kazakh law, only an air carrier holding the valid civil aircraft operator certificate (the “**Aircraft Operator Certificate**”) issued by the CAC is authorised to carry out the air transportation of passengers, luggage, cargo and postal matters for payment or on hire (commercial air transportation) (article 74.1 of the Aviation Law). The Aircraft Operator Certificate is equivalent to the operating licence, i.e. it is a legal basis for the air operator to perform its activity and no additional operating licence is required.

In order to obtain the Aircraft Operator Certificate, the air operator shall satisfy mandatory certification requirements established by the Order on Certification Requirements (articles 17 and 2.4 of the Rules of Certification of Aircraft Operators). The minimum certification requirements are that the air operator be located in Kazakhstan and have financial resources (or access thereto) sufficient to perform its activities for three months without any profit (article 3 of the Rules on Certification of Aircraft Operators). Other requirements relate to the flight safety system, production facilities, and technical, organisational, ecological and personnel requirements.

The procedure for the issuance of the Aircraft Operator Certificate is regulated by the Rules of Certification of Aircraft Operators that have been developed based on the Chicago Convention.

Individuals or legal entities to which the Aircraft Operator Certificate has been issued for the first time, shall register with the International Civil Aviation Organisation (“ICAO”) by sending the relevant request through the CAC (section 4 of the Rules of Certification of Aircraft Operators).

Article 6 of the Rules of Certification of Aircraft Operators outlines the following order of certification of air operators in Kazakhstan:

- (i) Phase preceding the submission of the application to the CAC for issuance of the Aircraft Operator Certificate.
- (ii) Submission of the application to the CAC for issuance of the Aircraft Operator Certificate, together with relevant documents, the list of which is established by the Rules of Certification of Aircraft Operators.
- (iii) Assessment of the documents and making a decision as to whether the application is accepted for review by the CAC.
- (iv) Certification examination of the air operator by the CAC.
- (v) Making the decision and issuance/refusal of issuance of the Aircraft Operator Certificate.

The Aircraft Operator Certificate is issued by the CAC for a period of two years and cannot be transferred to a third party (section 3 of the Rules of Certification of Aircraft Operators). After each two-year period, the air operator shall renew the Aircraft Operator Certificate by the relevant application to the CAC (section 13 of the Rules of Certification of Aircraft Operators).

The overall period for certification and issuance of the Aircraft Operator Certificate shall not exceed 90 calendar days from the submission of the application (section 7 of the Rules of Certification of Aircraft Operators).

Phase preceding the submission of the application to the CAC for the issuance of the Aircraft Operator Certificate

This phase provides for a preliminary appeal to the CAC with the intention of obtaining the Aircraft Operator Certificate.

At this stage, the CAC will provide the applicant with information on the types of flights allowed, the procedures that the applicant would have to go through during the certification process and all documents which are required for it.

In turn, the applicant would need to go through a preliminary examination which comprises provision to the CAC of information on the applicant’s financial capacity to provide security of flights, the types of aircraft it intends to use and structure of the air itineraries, planned profitability, qualified air crew and the level of service it intends to provide (article 9 of the Rules of Certification of Aircraft Operators).

The CAC should, within 10 working days from the date of the application for preliminary examination, provide the applicant with the results of such examination and the positive result serves as grounds for initiation of the applicant’s certification (article 10 of the Rules of Certification of Aircraft Operators).

Submission of the application to the CAC for the issuance of the Aircraft Operator Certificate

The application should be submitted to the CAC 90 calendar days prior to the planned start date of the flights.

The application shall be in the form established by the Rules of Certification of Aircraft Operators and the applicant shall attach to the application certain documents, a list of which is established by the Rules of Certification of Aircraft Operators (articles 11 and 12 of the Rules of Certification of Aircraft Operators).

Assessment of the documents and making a decision as to whether the application is accepted for review by the CAC

The decision on acceptance/refusal of the application for review by the CAC should be made within 20 working days. In the case that the documents do not correspond to the requirements, the CAC grants the applicant a period of 10 working days for correction of the documents. If the application is accepted for review, it goes through the stage of certification examination (articles 14, 15 and 16 of the Rules of Certification of Aircraft Operators).

Certification examination of the aircraft operator by the CAC

The certification of the aircraft operator is conducted by the commission especially established by the CAC for this purpose (article 16 of the Rules of Certification of Aircraft Operators).

As a result of the certification examination, the CAC should issue the Act of Certification Examination, which is used as grounds for issuance/refusal to issue the Aircraft Operator Certificate. The Aircraft Operator Certificate is issued only if the aircraft operator meets the certification requirements as determined in the course of certification examination by the commission established by the CAC (articles 20 and 22 of the Rules of Certification of Aircraft Operators).

Making the decision and issuance/refusal in issuance of the Aircraft Operator Certificate

Based on the Act of Certification Examination and conclusion on the possibility to issue the Aircraft Operator Certificate issued by the commission established by the CAC for certification purposes, the CAC, within three working days from the moment of making the relevant decision, shall issue the Aircraft Operator Certificate in the

form established by the Rules of Certification of Aircraft Operators or provide the applicant with the decision on refusal to issue the Aircraft Operator Certificate (articles 23 and 26 of the Rules of Certification of Aircraft Operators).

In case of issuance of the Aircraft Operator Certificate, the air operator shall comply with the operating requirements and limitations established by the Aircraft Operator Certificate (article 27 of the Rules of Certification of Aircraft Operators).

1.3 What are the principal pieces of legislation in your jurisdiction which govern air safety, and who administers air safety?

Air safety in the sphere of civil aviation and experimental aviation is generally governed by:

- the Aviation Law;
- the Decree of the Government of the Republic of Kazakhstan “On Approval of Aviation Safety Rules” No 746 ДСІІ dated 25 July 2003 (the “**Aviation Safety Rules**”);
- the Decree of the Government of the Republic of Kazakhstan “On Approval of the Program for the Safety of Flights in the Sphere of Civil Aviation” No 136 dated 11 March 2016; and
- the Order of the Minister of Transport and Communications of the Republic of Kazakhstan “On Approval of the Typical Instructions for the Management of Safety of the Flights of Civil Aircraft Operators, in the Airports, in Air Traffic Service, in Technical Service of the Aircraft” No 173 dated 28 March 2011.

Air safety in the sphere of civil aviation and experimental aviation is administered by the CAC.

Air safety in the sphere of state aviation is generally regulated by:

- the Aviation Law; and
- the Aviation Safety Rules.

Air safety in the sphere of state aviation is administered by the Ministry of Defence of the Republic of Kazakhstan.

1.4 Is air safety regulated separately for commercial, cargo and private carriers?

No. Commercial, cargo and private carriers’ air safety is jointly regulated by the legislative acts in the sphere of civil aviation mentioned in question 1.3.

1.5 Are air charters regulated separately for commercial, cargo and private carriers?

No. Air charters for commercial, cargo and private carriers are jointly regulated by the provisions of the Civil Code and the Aviation Law.

1.6 As regards international air carriers operating in your jurisdiction, are there any particular limitations to be aware of, in particular when compared with ‘domestic’ or local operators? By way of example only, restrictions and taxes which apply to international but not domestic carriers.

Foreign air carriers willing to carry out their activity in the sphere of civil aviation (commercial, cargo and passenger carriers) should be registered by the CAC. From the moment of such registration, the capacity of the foreign air carrier is officially recognised in the territory of Kazakhstan. Foreign air carriers may operate in

the territory of Kazakhstan through the establishment of either a representative office, a branch, or through the appointment of a general agent (a legal entity resident in Kazakhstan, authorised by the foreign carrier to sell the shipments in the territory of Kazakhstan, responsible to the foreign carrier for the services rendered by the foreign carrier by virtue of either agreement or a power of attorney (“**PoA**”) on behalf of the foreign carrier). As a result of its registration with the CAC, the foreign air carrier obtains a certificate of registration of foreign air carrier and the information about the foreign air carrier is enrolled in the Register of Foreign Carriers kept by the CAC (article 81 of the Aviation Law). In addition, the CAC shall approve the schedule of regular international flights of the foreign air carrier (article 14.23 of the Aviation Law).

The following general restrictions apply to international air carriers as opposed to local operators:

- Domestic flights in the territory of the Republic of Kazakhstan can be performed only by domestic air carriers (i.e. air carriers registered in Kazakhstan and holding the Aircraft Operator Certificate issued by the CAC) (sections 7.1 and 7.2 of the Order of the Acting Minister for Investments and Development of the Republic of Kazakhstan “On Approval of the Rules for the Admission of Air Carriers for the Operation of Regular Internal Commercial Air Transportation” No 352 dated 27 March 2015 and section 8.3 of the Rules of Certification of Aircraft Operators).
- Foreign air carriers are, generally, prohibited from operating international irregular (charter) commercial flights to/from Kazakhstan, unless otherwise is (i) provided by international treaties, or (ii) permitted by the CAC (article 40.4-1 of the Aviation Law). This measure has been introduced in 2013 specifically for the purposes of protection of domestic air carriers. The CAC permission to foreign operators for international irregular (charter) commercial flights to/from Kazakhstan shall be issued in accordance with the Order of the Acting Minister of Transport and Communications of the Republic of Kazakhstan “On Approval of the Rules for Issuance and Grounds for Refusal in Issuance of Permissions for International Irregular Flights” No 359 dated 13 August 2010 (the “**International Irregular Commercial Flight Permission Rules**”). Under the International Irregular Commercial Flight Permission Rules, the CAC issues its permission to foreign operators in a limited number of cases, for example if the flight is not commercial or cannot be performed by a Kazakh airline (article 18 of the International Irregular Commercial Flight Permission Rules).
- It is prohibited to lease Kazakhstan-registered aircraft to the foreign lessee without the bilateral agreement between Kazakhstan and the country of registration of the foreign lessee, unless there is an agreement between the CAC and the relevant aviation authority of the country of the lessee providing for a transfer of duties and functions, and the corresponding responsibilities, from Kazakhstan to the state of the lessee (article 51.3 of the Aviation Law).
- The Government provides subsidies for the expenses of the domestic carriers related to unpopular routes, in order to support the domestic air carriers.

Generally, there are no tax advantages applicable to domestic air carriers as opposed to international air carriers.

1.7 Are airports state or privately owned?

Airports can be owned by the state and/or private legal entities, including foreign legal entities (articles 5 and 64 of the Aviation Law).

Currently, there are 20 airports in Kazakhstan. Generally, either the airports’ assets or share ownership in the airports are considered

strategic objects (i.e. objects of socio-economic significance for the development of Kazakh society, ownership of which may affect national security), provided that the relevant airport is included in the list of strategic objects established by the Government of the Republic of Kazakhstan.

Transfer of ownership to airports that have been included in the strategic objects list is subject to the approval of the Government of the Republic of Kazakhstan.

1.8 Do the airports impose requirements on carriers flying to and from the airports in your jurisdiction?

In the Republic of Kazakhstan, carriers are subject to the Air Transportation Rules. We note, however, that such Air Transportation Rules are established by the Government rather than the airports themselves, and are generally applicable to domestic air carriers rather than foreign air carriers.

We are not aware of any specific requirements established by the airports themselves with regard to carriers flying to and from airports in Kazakhstan.

1.9 What legislative and/or regulatory regime applies to air accidents? For example, are there any particular rules, regulations, systems and procedures in place which need to be adhered to?

Air accidents in Kazakhstan are regulated by the Aviation Law, the Air Accident Rules in Civil Aviation and the Air Accident Rules in State Aviation.

The regulatory regime applicable to air accidents and incidents in civil aviation has been developed based on the Chicago Convention and ICAO standards.

Investigation of air accidents and air incidents is compulsory. The main purpose of such investigation is determination of the reasons of the accident/incident and drawing up recommendations for the prevention of air accidents/incidents in the future. The ascertainment of guilt and the punishment of liable persons for air accidents/incidents does not constitute the purpose of the investigation (article 93 of the Aviation Law).

For the purposes of investigation, special commissions in the sphere of state and civil/experimental aviation (depending on which sphere the accident/incident occurred in) are created.

1.10 Have there been any recent cases of note or other notable developments in your jurisdiction involving air operators and/or airports?

Please see question 5.1 below.

2 Aircraft Trading, Finance and Leasing

2.1 Does registration of ownership in the aircraft register constitute proof of ownership?

In Kazakhstan, there are two aircraft registers – the register of aircraft of state aviation kept by the Administration of the Commander of Air Defence Force of the Republic of Kazakhstan Armed Forces (article 1 of the State Aircraft Registration Rules) (the “**Register of State Aircraft**”) and the register of aircraft of civil aviation kept by the CAC (the “**Register of Civil Aircraft**”). Registration of aircraft in the Register of State Aircraft and in the Register of Civil Aircraft

is regulated, respectively, by the State Aircraft Registration Rules and the Civil Aircraft Registration Rules.

Registration of ownership right to the aircraft in the relevant register constitutes proof of ownership over the aircraft (article 45.3 of the Aviation Law). Any transactions with the aircraft registered with the Register of Civil Aircraft shall also be registered with the Register of Civil Aircraft.

It is worth mentioning that an aircraft cannot be simultaneously registered with the Register of Civil Aircraft and the register of aircraft of a foreign state. Accordingly, before registration of the aircraft with the Register of Civil Aircraft, the owner needs to make sure the aircraft is not registered anywhere else (article 45.4 of the Aviation Law).

The following aircraft and transactions with aircraft are subject to registration with the Register of Civil Aircraft (article 45.2 of the Aviation Law, articles 29, 41 and 44 of the Civil Aircraft Registration Rules):

- (i) aircraft owned by individuals and/or legal entities of the Republic of Kazakhstan;
- (ii) aircraft in temporary possession and use by individuals and/or legal entities of the Republic of Kazakhstan, provided that the take-off weight of such aircraft does not exceed 45.5 tons;
- (iii) change of ownership right to the aircraft indicated above;
- (iv) change of purpose of the aircraft after its re-equipment;
- (v) change of operator of the aircraft;
- (vi) mortgage agreements in relation to the aircraft indicated in (i) and (ii) above; and
- (vii) irrevocable deregistration and export authorisations (“**IDERA**”).

For registration of ownership of aircraft in the Register of Civil Aircraft, the person who acquired rights of ownership of the aircraft should submit an application to the CAC in the form established by the Civil Aircraft Registration Rules and the list of documents stipulated by section 8 of the Civil Aircraft Registration Rules.

State registration of the aircraft is made only after payment of the fee for state registration of the aircraft. Upon registration of the aircraft in the Register of Civil Aircraft, the owner/temporary possessor of the aircraft is granted, by the CAC, the Certificate of State Registration of the Aircraft (articles 45.2 and 45.3 of the Aviation Law).

In practice, the requirement of article 45.2 of the Aviation Law creates a problem for the Kazakh companies – lessees of the aircraft registered abroad. As mentioned above, under article 45.2 of the Aviation Law, aircraft temporarily possessed or used by Kazakh individuals or legal entities and with a take-off weight of less than 45.5 tons “are subject to registration with the Kazakh state register of civil aircraft”. It is not clear whether the wording “are subject to registration” means that such aircraft *shall be* mandatorily registered with the Register of Civil Aircraft or *may be* registered with the Register of Civil Aircraft at the option of the parties. Our interpretation of the law suggests that the wording “are subject to registration” means that aircraft with a take-off weight of less than 45.5 tons shall be mandatorily registered with the Kazakh Register of Civil Aircraft.

International lessors and financiers, however, prefer registration of aircraft located and operated in Kazakhstan with the state registers of foreign countries, due to the following reasons: (1) better technical oversight: the technical inspections of the aircraft are generally performed by the authorised body of the country of aircraft registration. Certain foreign countries such as, for example, Aruba, are often used in international practice for the registration of aircraft, since Aruban inspectors have developed experience

and high standards in the technical oversight of aircraft. The same practice applies in Kazakhstan. According to public sources, most of the air fleet of JSC Air Astana, the national air operator, is leased and registered with the Aruban air authority. Operation of such aircraft in Kazakhstan by Kazakh aircraft operators is performed based on bilateral agreements (under article 83 *bis* of the Chicago Convention) between the CAC and the aviation authority of Aruba; and (2) better protection of creditors' interests.

Kazakhstan has made a big step towards better protection of international creditors' interests by its ratification of the Cape Town Convention and the Aviation Protocol; however, there is still no precedent or established practice of implementation of these international treaties. In addition, it is international practice to register aircraft in an "independent" country different to the country of the lessee and the lessor.

As mentioned above, in the case of aircraft with a take-off weight of less than 45.5 tons, the lessees seem to be obliged to register such aircraft with the Kazakh Register of Civil Aircraft and will not be able to provide international lessors and financiers with the benefits indicated above. We believe this issue shall be removed by relevant amendments to the legislation or official clarification from the CAC.

2.2 Is there a register of aircraft mortgages and charges? Broadly speaking, what are the rules around the operation of this register?

There is no separate register of aircraft mortgages and charges. Information on mortgages (charges) over aircraft shall (and can) be reflected in the Register of Civil Aircraft only if the relevant aircraft is itself registered with the Register of Civil Aircraft. Under article 117.2 of the Civil Code, aircraft that are subject to state registration are treated in the same way as immovable property, i.e. the legal regime applicable to immovable property in Kazakhstan shall also apply to aircraft that are subject to state registration in Kazakhstan.

If the relevant aircraft itself is *not* registered with the Register of Civil Aircraft, it is not possible to register a mortgage (charge) over such aircraft in Kazakhstan, e.g. a foreign-leased aircraft with a weight of over 45.5 tons and mortgages thereof *cannot* be registered with the Kazakh Register of Civil Aircraft, even if it is operated by a local airline. Such mortgages are to be registered in the relevant foreign aircraft register.

In cases of Kazakhstan-registered aircraft, the registration of a mortgage (charge) over such aircraft is quite a straightforward procedure that requires the submission of a minimal package of documents (application, mortgage agreement, copy of the passport of the individual mortgagor/certificate of registration of the mortgagor – legal entity) and is subject to a state fee. The registration of a mortgage (charge) over the aircraft shall be performed within two business days from the moment of filing the application (articles 41 and 42 of the Civil Aircraft Registration Rules).

As mentioned above, under Kazakh law aircraft registered in Kazakhstan are treated in an equal way to immovable property. Any rights to immovable property (i.e. title, encumbrance, etc.) are, generally, subject to registration with the legal cadaster maintained by the Ministry of Justice. The law is not clear as to whether an aircraft (and rights thereto) should be registered with the Register of Civil Aircraft only, or if, in addition, they may be registered with the Ministry of Justice as immovable property. Though it seems that registration with the Register of Civil Aircraft only is possible and sufficient for aircraft, one may argue that, in theory, in addition to registration with the Register of Civil Aircraft, it is also possible to register title to aircraft and encumbrances on it with the legal cadaster of the Ministry of Justice. In the absence of official clarification and

court practice on the issue, our interpretation of the law suggests that registration only with the Register of Civil Aircraft is feasible and sufficient (i.e. it seems that registration of aircraft with the Ministry of Justice is not required by law); however, we normally recommend our clients to at least try to register aircraft with the Ministry of Justice (in addition to the registration with the Register of Civil Aircraft), just to be on the safe side.

Since Kazakhstan is a party to, and has ratified, the Cape Town Convention, in order to protect the interests of foreign lessees and financiers in cross-border leasing of aircraft to Kazakh lessors, it is recommended to register a mortgage (charge) over relevant aircraft with the International Registry, pursuant to the Cape Town Convention. Apart from the mortgage (charge), registration with the International Registry is possible in relation to other creditors' rights, including lease and assignment of lease over aircraft.

2.3 Are there any particular regulatory requirements which a lessor or a financier needs to be aware of as regards aircraft operation?

The following points may be of interest for a foreign lessor or a financier in relation to aircraft operation under the lease agreement:

Financial Lease Considerations

Kazakh law generally provides for two types of lease agreement – "lease agreement" and "financial lease agreement". If a lease agreement is qualified as a "financial lease agreement" for the purposes of Kazakh law, certain tax exemptions and better protection of creditors upon the lessee's insolvency will apply as described below. In order to qualify as a "financial lease agreement", the lease agreement shall meet certain mandatory requirements of Kazakh law.

Under Kazakh law, "financial lease" means a type of investment activity in which the lessor transfers the acquired property to the lessee for a certain price and on certain terms and conditions for temporary possession and use for not less than three years for entrepreneurial purposes if such transfer complies with at least *one* of the following conditions:

- (i) Transfer of the leased asset into the ownership of lessee and/or provision of the right to acquire the leased asset to the lessee for a fixed amount set out by the financial lease agreement.
- (ii) The term of the financial lease exceeds 75% of the term of utility of the leased asset.
- (iii) The current (discounted) price of lease payments for the whole duration of the financial lease exceeds 90% of the price of the leased asset transferred (article 2 of the Law of the Republic of Kazakhstan "On Financial Lease" No 78-II dated 5 July 2000 (the "Financial Lease Law")).

Please also note that one may argue that, in addition to above requirements, a lease agreement has to be governed by Kazakh law and provide for mandatory provisions stipulated in article 15 of the Finance Lease Law, in order to be recognised as a "financial lease" for the purposes of Kazakh law.

Currency Control Requirements

Depending on the terms of the relevant loan agreement and the aircraft lease, such agreements may need to be registered with the National Bank of Kazakhstan (the "NBK") for the purposes of currency control. Generally, under Kazakh law any financial loan (including financial lease) shall be registered with the NBK provided that it is executed (i) for an amount of more than 500,000 USD (or equivalent in other currency), and (ii) for a term exceeding 180 days.

If the relevant lease agreement contemplates provision of the security deposit by the lessee, such lease agreement shall also be

registered with the NBK provided that (i) the amount of the security deposit exceeds 100,000 USD (or equivalent in other currency), and (ii) the term of the security deposit exceeds 180 days.

Absence of registration may lead to refusal by the Kazakh bank to service the relevant transaction to transfer the money under the loan agreement/lease agreement. Registration with the NBK is quite a straightforward procedure and shall be completed by the NBK within 10 business days from the moment of application. Registration shall be performed by the Kazakh resident (the borrower or lessee) and no action from the foreign lessor or financier is required in relation to such registration.

In addition, any agreement that (i) provides for delivery of the goods to Kazakhstan, and (ii) exceeds 50,000 USD, is subject to the assignment of a so-called “record registration number” by the Kazakh bank servicing the relevant transaction.

2.4 Is your jurisdiction a signatory to the main international Conventions (Montreal, Geneva and Cape Town)?

Kazakhstan is a signatory to, and has ratified, the Chicago Convention, the Montreal Convention, the Cape Town Convention and the Aviation Protocol.

2.5 How are the Conventions applied in your jurisdiction?

In Kazakhstan, international treaties (including the Conventions mentioned above), once ratified by the Republic of Kazakhstan, should have prevailing force over domestic Kazakh legislation.

The provisions of international treaties shall be directly implemented, except in cases when the application of an international treaty requires the promulgation of the law (article 4.3 of the Kazakhstan Constitution, article 3.8 of the Civil Code and article 2 of the Aviation Law).

We believe that the most important international treaties in terms of cross-border aircraft finance transactions are the Cape Town Convention and the Aviation Protocol.

The Cape Town Convention and Aviation Protocol in Kazakhstan: Kazakhstan has acceded to and ratified the Cape Town Convention and Aviation Protocol pursuant to the Ratification Law, and has amended its legislation to bring it into line with these international treaties. In case of default under the lease agreement, the repossession and recovery of aircraft will take place in accordance with the Cape Town Convention/Aviation Protocol and relevant provisions of local Kazakh law that comply with the Cape Town Convention/Aviation Protocol as described below.

The Ratification Law contains a list of reservations of the Republic of Kazakhstan with respect to certain provisions of the Cape Town Convention and the Aviation Protocol (for instance, in accordance with the reservations of the Republic of Kazakhstan relating to clause 1(b) of article 39 of the Cape Town Convention, nothing in the Cape Town Convention may affect the right of the Republic of Kazakhstan or the Kazakhstan state organisation, the intergovernmental organisation or other private social services supplier to foreclose or hold the aircraft in accordance with the laws of Kazakhstan for payments due to such organisation or supplier, which payments shall relate directly to the servicing of this aircraft or any other aircraft).

In accordance with the reservations of the Republic of Kazakhstan relating to clause 1(a) of article 39 of the Cape Town Convention, the following non-contractual claims or warranties of creditors shall be prioritised by Kazakhstan:

- (i) salary claims; and
- (ii) repair work claims.

In particular, according to the Ratification Law the following rights shall have priority over the rights of creditors under the international interests registered with the International Register (as this term is defined in the Cape Town Convention):

- (i) rights of employees for unpaid wages arising from the moment of default declared by an employer under the contract for finance or lease of the Object (as defined in the Cape Town Convention);
- (ii) rights of persons performing the repair works during their possession of the Object, for the amounts due for such repair works and the amount by which the value of the Object increased; and
- (iii) the right of the Republic of Kazakhstan, its state authority, an intergovernmental organisation or other private provider of public services to arrest or detain the Object under Kazakh law for the payment of amounts due to such entity, organisation or provider that are directly related to such public services for such Object or another Object.

3 Litigation and Dispute Resolution

3.1 What rights of detention are available in relation to aircraft and unpaid debts?

Kazakhstan has declared that, pursuant to article 39(1)(b) of the Cape Town Convention: “Nothing in this Convention shall affect the right of the Republic of Kazakhstan or state entity, or intergovernmental organisation or other private provider of public services to arrest or detain an object under the laws of the Republic of Kazakhstan for payment of amounts owed to such entity, organisation or provider directly relating to those services in respect of that object or another object.”

Accordingly, air navigation, airport organisations and tax authorities are entitled to retain any property held by the aircraft operator (including the aircraft operated by such aircraft operator) in case of its default on relevant payments.

3.2 Is there a regime of self-help available to a lessor or a financier of aircraft if it needs to reacquire possession of the aircraft or enforce any of its rights under the lease/finance agreement?

A regime of self-help is generally available in Kazakhstan, pursuant to the Cape Town Convention and the Aviation Protocol.

Repossession of Aircraft – IDERA

Under the Cape Town Convention/Aviation Protocol, the Kazakh Aviation Law and the Civil Aircraft Registration Rules, in order to repossess and recover an aircraft from Kazakhstan, the operator of such aircraft shall issue an Irrevocable Deregistration and Export Request Authorisation in the form provided by the Civil Aircraft Registration Rules (“**IDERA**”) in advance, and register the IDERA with the CAC. The IDERA shall be issued in favour of the person who will be authorised, upon default of the lessee, to file a deregistration and export request with the CAC and repossess and export the aircraft from Kazakhstan (the “**Authorised Person**”).

Registration of IDERA with the Civil Aircraft Register of Kazakhstan means that only the Authorised Party (or its attorney based on a PoA) is authorised to claim exclusion of the aircraft from the Civil Aircraft Register of Kazakhstan and export of aircraft from the territory of Kazakhstan. The IDERA cannot be withdrawn by

the debtor without the consent of the Authorised Person. The CAC can exclude the IDERA from the Civil Aircraft Register only upon written consent of the Authorised Party (articles 47 and 48 of the Civil Aircraft Registration Rules).

In case of default of the debtor, the Authorised Person shall file the following documents with the CAC for the purposes of deregistration and export of the aircraft from Kazakhstan (see article 49 of the Civil Aircraft Registration Rules):

- (1) Application for deregistration in the form established by the Civil Aircraft Registration Rules.
- (2) Original IDERA or its notarised copy.
- (3) PoA (if another person (attorney) applies on behalf of the Authorised Person).
- (4) Identification documents for the Authorised Person/its attorney individuals or certificate of registration if they are legal entities.
- (5) Confirmation that all international interests (as provided by Cape Town Convention/Aviation Protocol) ranking first in the registered international interest (aircraft mortgage) in favour of the Authorised Person have been satisfied in the form of the relevant certificate issued by the International Registrar or written confirmation from each relevant secured person, or written consent of all prior ranking secured persons for the deregistration and export of the aircraft from Kazakhstan.
- (6) Confirmation of written notification of the interested parties by the Authorised Person at least 10 business days prior to the filing of the IDERA with the CAC (if no court order has been issued for the deregistration and export of the aircraft from Kazakhstan).
- (7) Confirmation of removal of identification signs from the aircraft, with photos to evidence this.
- (8) Consent of the mortgagee for the deregistration of the aircraft.

Documents provided by foreign legal entities shall be notarised/legalised/apostilled, as appropriate.

The CAC considers the above documents and gives written notification to the owner/operator of the aircraft who issued the IDERA. The owner/operator, within 10 business days from the moment of such notification, shall provide to the CAC the following documents required for the deregistration and export of the aircraft:

- (1) Certificate of state registration of the aircraft with the CAC.
- (2) Certificate of airworthiness.
- (3) Noise certificate.
- (4) Radio station certificate.

The CAC, within 10 business days from the moment of filing for deregistration and export, issues the certificate on exclusion of the aircraft from the Register of Civil Aircraft in the form established by the Civil Aircraft Registration Rules (article 38 of the Civil Aircraft Registration Rules).

For the purposes of export of the aircraft from Kazakhstan, the Authorised Person will need the airworthiness export certificate issued by the CAC (article 47.12 of the Aviation Law).

In order to obtain the airworthiness export certificate, the Authorised Person or his/her attorney shall file the following documents with the CAC:

- (1) Application in the form established by the Resolution of the Government of the Republic of Kazakhstan No 962 dated 25 August 2011 "On Approval of the Rules of Certification and Issuance of Airworthiness Certificates of Aircraft of the Republic of Kazakhstan".
- (2) Copy of the certificate on exclusion of the aircraft from the Kazakh state register of civil aircraft issued by the CAC.
- (3) Original of the certificate of airworthiness.

The CAC shall issue the airworthiness export certificate within 10 business days from the moment of filing the above documents. The airworthiness export certificate is valid for one month, i.e. the Authorised Person or his/her attorney has one month to export the aircraft from Kazakhstan.

During the process of export of the aircraft from Kazakhstan, the Authorised Person may be required to pay export duties and perform export filings.

We note that, to date, there has been no relevant practice in Kazakhstan of applying the Cape Town Convention/Aviation Protocol and Kazakh state bodies, including the CAC, are inexperienced in such matters. Notwithstanding that the Cape Town Convention/Aviation Protocol does prevail over any conflicting law or regulation of the Republic of Kazakhstan, may be applied directly and that, according to Kazakhstan's declaration under article 54 (2) of the Convention the Republic of Kazakhstan, any remedies available to the creditor under the Cape Town Convention which are not expressed under the relevant provision thereof to require application to the court may be exercised without court action and leave of the court or other court action, we believe it might be necessary to apply to a local court for a court decision outlining, among other things, the procedure for re-export customs clearance of an aircraft.

Repossession of Aircraft – PoA

Issuance of IDERA and its registration with the CAC in order to facilitate repossession and export of the aircraft from Kazakhstan is only possible if the aircraft is registered with the Register of Civil Aircraft.

In cases where the aircraft is registered with the aircraft register of a foreign country, the parties use a PoA issued by the aircraft operator in advance and authorising the relevant person to repossess and export the aircraft outside Kazakhstan, by analogy to IDERA. Such PoA cannot, however, be registered with the Register of Civil Aircraft.

The issue with PoAs is that Kazakh law does not recognise irrevocable PoAs; a PoA can be revoked by the lessee at any time and cannot exceed three years. In addition, a PoA does not survive insolvency or liquidation of the lessee. It is recommended, accordingly, that such PoA is governed by the foreign law that does recognise the concept of irrevocable PoAs (e.g. UK law).

3.3 Which courts are appropriate for aviation disputes? Does this depend on the value of the dispute? For example, is there a distinction in your country regarding the courts in which civil and criminal cases are brought?

As mentioned above, aircraft registered in Kazakhstan are treated equally to immovable property (article 117.2 of the Civil Code), i.e. the legal regime applicable to immovable property shall apply to aircraft. Article 467.1.1 of the Civil Procedure Code provides that Kazakh state courts have exclusive jurisdiction over the disputes in relation to immovable property located in Kazakhstan. There is a minor and theoretical risk that disputes in relation to aircraft registered in Kazakhstan are subject to the exclusive jurisdiction of the Kazakh courts. We believe, however, that this shall not be the case, since:

- (i) Kazakhstan ratified the Cape Town Convention and Aviation Protocol, which supersede the provisions of Kazakh law based on article 4.3 of the Constitution of the Republic of Kazakhstan. Under articles 42 and 43 of the Cape Town Convention and article XXI of the Aviation Protocol, the parties can choose any court as the competent court in relation to the disputes under the relevant agreement, and such court's jurisdiction will be

exclusive unless the parties agree otherwise; the requirement of exclusive jurisdiction of Kazakh courts over disputes related to aircraft seems not to be applicable.

- (ii) Aircraft are treated equally to immovable property, but are not immovable property, whereas (a) article 177.2 of the Civil Code states that legal norms applicable to immovable property shall apply to the property equalled to immovable property *only if specifically provided by relevant legal acts*, and (b) the Civil Procedure Code specifically provides for the exclusive competence of the Kazakh courts *in relation to immovable property (and is silent about property equalled to immovable property)*.

Aviation disputes are generally business disputes, i.e. disputes between the individuals and/or legal entities involved in business activity. Under article 27 of the Civil Procedure Code of the Republic of Kazakhstan No 377-V dated 31 October 2015 (the “**Civil Procedure Code**”), civil disputes in relation to proprietary and non-proprietary disputes where the parties are individuals that conduct business activity and legal entities, are generally subject to consideration by so-called specialised inter-district economic courts (the “**Economic Courts**”). Accordingly, if the parties opted for the jurisdiction of the Kazakh state courts, the dispute shall be resolved by the Economic Court. The jurisdiction of the court does not depend on the value of the dispute.

There is no distinction in Kazakhstan between the courts in which civil and criminal cases are brought. In Kazakhstan, there is no criminal liability of legal entities. In case of any criminal offences (fraud, etc.), criminal liability will arise in relation to individuals involved in the offence (e.g. management or employees of the relevant legal entity).

Arbitration

Kazakhstan is a party to the 1958 New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards (the “**New York Convention**”). Accordingly, a foreign arbitral award obtained in a state which is party to the New York Convention should be recognised and enforced by a court of Kazakhstan, subject to the terms of the New York Convention and compliance with the rules of civil procedure of Kazakhstan and the procedures established by the legislation of Kazakhstan on commercial arbitration for the enforcement of arbitration decisions.

Article 9.5 of the newly adopted Law of the Republic of Kazakhstan “On Arbitration” No 488-V dated 8 April 2016 (the “**Arbitration Law**”) states that the parties have the right to unilaterally refuse an arbitration clause that has previously been agreed contractually based on the grounds listed in article 404 of the Civil Code. Namely, a party can unilaterally refuse arbitration if: (i) it is impossible to execute its contractual obligation to resolve the dispute in arbitration; (ii) the other party is recognised by the court as a bankrupt; and (iii) the state act that served as the basis for the contractual choice of arbitration is changed or terminated. Our interpretation of the law suggests that provisions of the Arbitration Law should apply only to Kazakhstan arbitration (as opposed to international commercial arbitration, for example through the London Court of International Arbitration); however, the provisions of the Arbitration Law are vague and can be interpreted to cover international commercial arbitration as well. In the absence of any court practice or official clarification issued by the authorised bodies on this matter, it is therefore difficult to predict with certainty how certain provisions of the Arbitration Law (article 9.5 in particular) would be interpreted by the relevant state authorities and courts in Kazakhstan.

3.4 What service requirements apply for the service of court proceedings, and do these differ for domestic airlines/parties and non-domestic airlines/parties?

Pursuant to article 127.4 of the Civil Procedure Code, service of

process must be sent to: (a) the address, mobile number and email address of the individual who is a party to the proceedings, or his/her work address if the person is not found at the known address; and (b) the location of the legal entity which is a party to the proceedings (its address according to constitutional documents or the state database of legal entities (article 29.2 of the Civil Procedure Code).

There is no distinction between the service requirements in relation to court proceedings for domestic or non-domestic airlines/parties.

Appointment of an agent for service of process is not prohibited under Kazakh law. However, given the above service requirements of the Civil Procedure Code, it is not clear how the Kazakh courts may interpret provisions regarding the appointment of such process agent by a Kazakh counterparty. It should be noted, however, that the appointment of a process agent is common practice in Kazakhstan in cases where transaction documents include a foreign legal entity as a party.

3.5 What type of remedies are available from the courts or arbitral tribunals in your jurisdiction, both on an i) interim and a ii) final basis?

Interim measures

The following interim provisional remedies are available from the Kazakh courts on an interim basis (article 156 of the Civil Procedure Code):

- (i) arrest over the property owned by the defendant and held by the defendant or the third parties (except money in the corresponding bank account, property that is a base asset of repurchase transactions concluded in the trade systems of stock exchanges by the so-called “open trades” method, money placed in the bank accounts designated for salary accrual, mandatory pension contributions, pension assets and payments, social payments payable from the state budget or the state fund of social insurance, residential payments, notary deposits related to educational deposit agreements, and assets of the social medical insurance fund);
- (ii) prohibition of the defendant from carrying out certain actions;
- (iii) prohibition of third parties from transferring property to the defendant under due obligations, or otherwise performing their legal or contractual obligations to the defendant;
- (iv) suspension of property sale in case of a claim on release of the property from arrest and/or a challenge to the defendant’s property evaluation results;
- (v) suspension of the effectiveness of the challenged legal act issue by the state body or local government (except certain acts of the National Bank of the Republic of Kazakhstan);
- (vi) suspension of the execution under writ of execution that is being challenged by the debtor in the court;
- (vii) suspension of the out-of-court sale of the pledged property;
- (viii) suspension of the acts and actions of the marshal of the court which are being challenged, in relation to levying execution over the property, in the course of an execution proceeding; and
- (ix) other interim measures where necessary and at the discretion of the court.

In the case of an arbitration proceeding, the parties are entitled to apply to the court for the introduction of the provisional remedies indicated above (article 39 of the Law of the Republic of Kazakhstan “On Arbitration” No 488-V dated 8 April 2016 (the “**Arbitration Law**”). In addition, the arbitral tribunal can issue the order on application of provisional measures itself unless the parties have agreed otherwise (article 20.6 of the Arbitration Law). However, the Arbitration Law does not specify what particular measures can be applied by the arbitral court. Our interpretation of the law suggests

that the arbitration court may issue the order for the application of any measure at its discretion.

In the cases covered by the Cape Town Convention (leasing, mortgage, preliminary purchase with reservation of the ownership right to the aircraft – article 2 of the Cape Town Convention), the claimant is specifically authorised to apply for a court order authorising or directing that it may:

- (a) take possession or control of any object charged to it;
- (b) sell or grant a lease of any such object; and/or
- (c) collect or receive any income of profits from the management or use of any such object (article 8.2 of the Cape Town Convention).

Further, article 13 of the Cape Town Convention provides for the right of the creditor that has presented evidence of default by the debtor, to claim to the court and receive a court order for the following interim remedies:

- (i) Safekeeping of the object and its value.
- (ii) Transfer of the object into possession, control or storage.
- (iii) Prohibition of change of location of the object.
- (iv) Transfer of the object to leasing or, except in the cases indicated in points (i)–(iii) above, to the management with receipt of income.

These interim remedies are in addition to the interim remedies available to the creditor under Kazakh law (article 13.4 of the Cape Town Convention).

In taking any of the decisions indicated above, the court can establish such conditions as it deems fit to protect the interests of the third parties in the case that the creditor:

- (a) upon execution of any of the decisions indicated above, commits non-performance of any of its obligations to the debtor under the Cape Town Convention; or
- (b) does not, entirely or partially, form its position in the course of making the final decision on the case (article 13 of the Cape Town Convention).

Final measures

The decision issued by the relevant Kazakh state court on the arbitration award issued by the arbitral tribunal is considered as the remedy available to the parties on a final basis, subject to the right of the parties to appeal the court decision/arbitration award (please see question 3.6 below).

3.6 Are there any rights of appeal to the courts from the decision of a court or arbitral tribunal, and, if so, in what circumstances do these rights arise?

Appeal of court decision

Kazakh civil procedure includes three stages: first instance; appeal instance; and cassation instance.

Generally, court decisions on civil cases are issued by the courts of first instance – district courts (*raionnye sudy*) (article 8.1 of the law of the Republic of Kazakhstan “On Court System and Judges Status” No 132-II dated 25 December 2000 (the “**Court System Law**”)).

Any decision issued by the court of first instance can be appealed to the court of appeal (which is the court of higher level in the court system of Kazakhstan) without any particular ground. The applicant shall justify why the appealed court decision is illegal or incorrect and shall state what particular changes shall be made to the court decision by the court of appeal (article 404.1 of the Civil Procedure Code).

For district courts, the courts of appeal are the regional courts (*oblastnye sudy*), court of Almaty and court of Astana (article 402 of the Civil Procedure Code). An appeal can be filed before the relevant court decision enters into legal force, i.e. within one month from the moment of issuance of the relevant court decision or, if the applicant is not a party to the court proceedings, from the moment a copy of the court decision is sent to the applicant (article 403.3 of the Civil Procedure Code).

Cassation instance is executed by the Supreme Court of the Republic of Kazakhstan (the “**Supreme Court**”). Cassation claims can be submitted to the Supreme Court subject to prior consideration of the appeal claim on the same case by the court of appeal (article 434.1 of the Civil Procedure Code), i.e. it is not possible to apply directly to the cassation instance without using the appeal instance first.

A cassation appeal in relation to decisions of the court of appeal can be filed within six months from the moment such decisions of the court of appeal enter into legal force (article 436.1 of the Civil Procedure Code).

The following cases cannot be appealed in cassation instance (article 434.2 of the Civil Procedure Code):

- (i) cases considered in a so-called “simplified proceeding” (generally, indisputable cases, e.g. cases of payment of an indisputable amount, etc.);
- (ii) cases resolved by amicable agreement, settlement agreement or agreement on settlement of the dispute through the so-called “participative procedure”;
- (iii) cases connected with proprietary interests of individuals, provided that the amount of the case is less than 2,000 times the monthly calculation index* (approximately 14,000 USD); or legal entities, provided that the amount of the case is less than 30,000 times the monthly calculation index (approximately 210,000 USD);
- (iv) cases resolved by refusal from the claim; and
- (v) cases for settlement of indebtedness and in relation to disputes arising in the court of rehabilitation and insolvency proceedings, including on invalidation of the transaction concluded by the debtor, upon the return of the debtor’s property, on execution of debtor indebtedness based on the demands of the insolvency and rehabilitation manager.

* The monthly calculation index is a special index established on an annual basis by the Law on Republican Budget, for the calculation of state fines, social benefits, taxes, etc. In 2017, the monthly calculation index is equal to 2,269 Kazakh Tenge or approximately 7 USD.

Appeal of arbitration award

The Republic of Kazakhstan is a party to the 1958 New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards (the “**New York Convention**”). Therefore, foreign arbitral awards obtained in a state which is a party to the Convention will generally be recognised and enforceable in the Republic of Kazakhstan, provided that the conditions to enforcement set out in the Convention and procedures applicable under Kazakh law are observed.

Under the New York Convention and the Arbitration Law that has been brought into compliance with the New York Convention, an arbitral award is final and may not be reconsidered on its merits. The state court may set aside the award exclusively in the case of certain procedural violations (e.g. failure to notify the parties to the dispute, or where the dispute between the same parties on the same subject and under the same grounds has already been resolved by a court decision or another arbitration award that has entered into legal force, etc. – see article 5.1 of the New York Convention and

article 52.1 of the Arbitration Law). Also, the arbitration award can be set aside if the court holds that the arbitration award contradicts the public order of Kazakhstan or the dispute resolved by arbitration award cannot be resolved through arbitration under Kazakh law (article 5.2 of the New York Convention and article 52.2 of the Arbitration Law).

In addition, domestic arbitration awards can be reconsidered based on newly discovered evidence (article 51 of the Arbitration Law). The grounds for such reconsideration are:

- a) A court decision based on evidence drawn from deliberately false witness statements or expert conclusions, deliberately incorrect translation, falsification of documents or other evidence that led to the issuance of an illegal or groundless arbitration award.
- b) A court decision based on criminal actions of the parties to the dispute, third parties, their representatives or the arbiter which were committed in the course of the consideration of the case.
- c) A decision by the Constitutional Council of the Republic of Kazakhstan on non-compliance with the Constitution or other normative legal act that serves as a basis for an arbitration award (article 51.1 of the Arbitration Law).

The application for reconsideration of an arbitration award based on newly discovered evidence shall be filed and considered by the arbitration court that issued the initial arbitration award within three months from the moment of establishment of the circumstances that are the grounds for reconsideration, unless a different term is established by the arbitration rules or by agreement between the parties. The case on reconsideration of the arbitration award based on newly discovered evidence shall be considered and resolved by arbitration court within one month (article 51.2 of the Arbitration Law).

4 Commercial and Regulatory

4.1 How does your jurisdiction approach and regulate joint ventures between airline competitors?

There is no industry-specific regulation which is applicable to joint ventures between airline competitors. Thus, general competition rules will apply to such joint ventures.

Under Kazakh law, competition is regulated by the Commercial Code and legal acts issued by the antitrust authority – the Committee for Regulation of Natural Monopolies and Protection of Competition of the Ministry of National Economy of the Republic of Kazakhstan (the “CREMZK”).

In the sphere of joint ventures, the CREMZK regulates so-called “economic concentration”, as discussed in question 4.4 below.

4.2 How do the competition authorities in your jurisdiction determine the “relevant market” for the purposes of mergers and acquisitions?

There is no specific definition of “relevant market” for the purposes of mergers and acquisitions. The general definition of a “goods market” is “the sphere of circulation of goods or interchangeable goods determined based on economical, territorial and technological possibility of a consumer to purchase the goods” (article 175.2 of the Commercial Code).

It is worth mentioning that the antitrust provisions of the Commercial Code have extraterritorial effect; namely, they can apply to actions made outside Kazakhstan if, as a result of such actions, one of the following conditions is met:

- (1) The actions directly or indirectly concern fixed or intangible assets located in Kazakhstan, shares (participatory interests) in Market Participants, or proprietary and non-proprietary rights in relation to the legal entities of Kazakhstan.
- (2) Competition in Kazakhstan is limited (article 161.2 of the Commercial Code).

4.3 Does your jurisdiction have a notification system whereby parties to an agreement can obtain regulatory clearance/anti-trust immunity from regulatory agencies?

Yes. The subjects of the market which intend to conclude an agreement and would like to make sure that such agreement would comply with antitrust provisions of Kazakh law can apply to the CREMZK with a request to consider the draft of such agreement and confirm that it is fine from antitrust law perspective. The CREMZK issues the decision as to whether the draft agreement complies with Kazakh antitrust law within 30 calendar days from the date of relevant application by the Market Participant (article 171 of the Commercial Code).

4.4 How does your jurisdiction approach mergers, acquisition mergers and full function joint ventures?

In the sphere of mergers, acquisitions and joint ventures, the CREMZK regulates so-called “economic concentration”.

Economic concentration requires prior approval or a *post factum* notification (depending on the type of the transaction) from the CREMZK.

The following events are considered as “economic concentration” and are subject to regulation by the CREMZK:

- (1) reorganisation of a market participant (the “**Market Participant**”) via merger and acquisition transactions. The Market Participant is a legal entity incorporated under Kazakh law, as well as a foreign legal entity (its branch or representative office), performing entrepreneurial activity;
- (2) acquisition by a person (or group of persons) of voting shares (participating interests) in the charter capital of a Market Participant when such person (or group of persons) obtains a right to dispose of more than 50% of the said shares (participating interests) if, prior to the acquisition, such person (or group of persons) has not disposed of shares (participating interests) of the given Market Participant or disposed of 50% or less of the voting shares (participating interests) in the share capital of the given Market Participant (except for acquisition at the stage of incorporation of a legal entity);
- (3) acquisition by a Market Participant (group of persons) of the fixed production assets and/or intangible assets of another Market Participant into ownership, possession or use, if the book value of the assets constituting a subject of the transaction (or interrelated transactions) exceeds 10% of the balance value of the fixed production assets and intangible assets of the Market Participant disposing of or transferring its assets;
- (4) acquisition by a Market Participant of rights (including on the basis of a trust management agreement, joint venture agreement or agency agreement) which allows it to give mandatory instructions to another Market Participant when carrying on business activity, or to perform functions of its executive authority; and
- (5) participation of the same individuals in executive authorities, boards of directors, supervisory boards and other management authorities of two or more market entities, provided that these individuals direct the business of the said market entities (article 201 of the Commercial Code).

Certain transactions, including, *inter alia*, intra-group transactions in the same group of persons, do not constitute economic concentration and, therefore, are exempt from the requirement to obtain prior approval or a *post factum* notification from the CREMZK.

Prior approval of the CREMZK is required in cases (1), (2) and (3) above; notification is required in cases (4) and (5) above provided that the total book value of the assets *or* the total goods turnover (sales) of a target company *and* an acquirer (its group of persons) for the last financial year exceeds 10,000,000 times the monthly calculation index, which is equal to approximately 70,000,000 USD (article 201.3 of the Commercial Code).

4.5 Details of the procedure, including time frames for clearance and any costs of notifications.

In order to obtain the prior approval of the CREMZK for the transactions indicated in (1), (2) and (3) above, the person who made the relevant decision or the founders (participants) of the Market Participant (in the case of (1)) or the acquirer (in case of (2) and (3)) shall submit the application together with the documents and information, the list of which is established by the Commercial Code (articles 202 and 203 of the Commercial Code). Such documents and information are quite detailed and, in practice, it takes a while to prepare all the documents for the filing.

The CREMZK shall check the submitted filing documents and information on their completeness and either accept the filing for consideration or return the filing to the applicant if the filing provided is not complete.

The application must be reviewed by the CREMZK no later than 30 days after acceptance of the filing for consideration by the CREMZK, subject to suspension if the CREMZK requests additional documents or information from the applicant (article 205 of the Commercial Code).

The transactions indicated in (1), (2) and (3) above shall be concluded within one year from the moment of CREMZK approval, otherwise new CREMZK approval must be obtained (article 208.4 of the Commercial Code).

The notification of the CREMZK on the transactions indicated in (4) and (5) above shall be done no later than 45 days after execution of the transaction (article 201.8 of the Commercial Code).

Obtainment of the prior approval/*post factum* notification of the CREMZK is free of charge.

4.6 Are there any sector-specific rules which govern the aviation sector in relation to financial support for air operators and airports, including (without limitation) state aid?

There are no sector-specific rules which govern the aviation sector in relation to financial support for air operators and airports, including state aid, other than those described below.

Local air companies can receive state subsidies in respect of particular routes as described in question 4.7.

The provision of such subsidies is governed by the following legal acts:

- the Aviation Law;
- the Resolution of the Government of the Republic of Kazakhstan “On Approval of Rules for Subsidising of Air Routes” No 1511 dated 31 December 2010 (the “**Air Subsidy Rules**”);
- the Resolution of the Government of the Republic of Kazakhstan “On Approval of Rules for Conducting of

the Tender for Subsidised Air Routes and Issuance of the Certificates for the Subsidised Air Routes for Provision of Services for the Transportation of Passengers, Luggage and Postage” No 69 dated 31 January 2013 (the “**Air Subsidy Tender Rules**”).

4.7 Are state subsidies available in respect of particular routes? What criteria apply to obtaining these subsidies?

As mentioned in question 4.6 above, local air companies can obtain subsidies in respect of particular routes.

The regular routes in relation to which state subsidies can be provided, are determined based on the resolutions of the Government, the CAC and the local governments of Kazakhstan’s regions as well as Almaty and Astana, if performance of air services on such routes does not provide the air companies with the level of income necessary for the effective functioning of the air route (article 2 of the Air Subsidy Rules). The subsidies are provided from the Republic’s budget or the local budgets of Kazakhstan’s regions, as well as Almaty and Astana, depending on the route (article 3 of the Air Subsidy Rules). The subsidies are provided for the difference between the income received by the air company from the transportation of passengers, cargo, postage, luggage and the amount of expenses incurred in relation to such air transportation, within the annual amount of budget subsidies per air route (article 2 of the Air Subsidy Rules).

In order to receive the subsidy, the air company shall win the tender for the right to carry out cargo flights, passenger carriage, carriage of baggage, freight and postage on the air routes under the state subsidy. This tender is organised and conducted by the CAC.

In order to participate in the tender, the air company must comply with the following criteria:

- (1) it must be registered in Kazakhstan and have the Aircraft Operator Certificate;
- (2) it must have permission to carry out regular internal commercial carriage;
- (3) it must not have any tax debts; and
- (4) it must have a permanent reserve of financial assets, which is required for carrying out regular air carriage (article 9 of the Air Subsidy Tender Rules).

The air company that complies with the above requirements and that has been determined as the winner by the special tender commission established by the CAC receives the certificate for the subsidised air route (article 43 of the Air Subsidy Tender Rules).

The winner of the tender and the administrator of the relevant budget programme enter into the subsidy agreement in the form established by the Air Subsidy Rules (article 9 of the Air Subsidy Rules).

4.8 What are the main regulatory instruments governing the acquisition, retention and use of passenger data, and what rights do passengers have in respect of their data which is held by airlines?

There is no specific legal act that regulates the acquisition, retention and use of passenger data.

The Law of the Republic of Kazakhstan “On Personal Data and its Protection” No 94-V dated 21 May 2013 (the “**Personal Data Law**”) is the legislative act which generally regulates the collection, processing and protection of personal data and its distribution.

Under article 1.2 of the Personal Data Law, personal data means information related to a *definite subject* or to a *subject definable on the basis of such information*, recorded on an electronic, paper and/

or other tangible form (article 1.2 of the Personal Data Law). Name, passport details and other personal information on the passenger collected by the airline shall be considered as personal data and protected by the Personal Data Law.

Airlines shall use personal data of the passengers only for the particular purpose indicated by the airline (presumably, only for the purpose of air transportation of the passengers and related purposes) (article 14 of the Personal Data Law).

The airlines shall ensure the confidentiality of personal data collected from the passengers through compliance with the requirement not to disclose personal data without the consent of the passenger or based on legal requirements (article 11 of the Personal Data Law). Airlines are also obliged to protect the personal data held by them by taking the protective measures contemplated by the Personal Data Law, including prevention of unauthorised access to the personal data (article 22 of the Personal Data Law).

Collection and processing of personal passenger information can be done only with the consent of the passenger, subject to certain exceptions (e.g. if such collection and processing is required by state bodies of Kazakhstan) (article 7 of the Personal Data Law). Consent can be given or withdrawn in written or electronic form. Cross-border transfer of personal data is permitted only to the territory of a country that protects personal data, upon the consent of the passenger and if such transfer is performed under international treaties with Kazakhstan (article 16 of the Personal Data Law).

The main rights of subjects of personal data (including passengers) in relation to their personal data are (article 24 of the Personal Data Law):

- (1) To be aware of the holding of his/her personal data by the airline, and to receive information confirming the fact, purposes, sources, ways of collection and processing of his/her personal data, as well as a list of the personal data held by the airline and the period during which the personal data is to be stored by the airline.
- (2) To demand amendments to their personal data based on documents confirming such amendments.
- (3) To demand that their personal data be blocked or deleted if its collection or processing was made in breach of the legislation on personal data.
- (4) To withdraw his/her consent on the collection, processing or use of personal data.
- (5) To give/withdraw his/her consent to distribute his/her personal data via public data sources.
- (6) To protect his/her rights and interests, including compensation of damages including moral damages.

4.9 In the event of a data loss by a carrier, what obligations are there on the airline which has lost the data and are there any applicable sanctions?

In the event of loss of personal data of passengers, the airlines may bear civil (be sued for damages including moral damages), administrative and criminal liability.

As mentioned above, the airlines shall protect the personal data held by them. Failure to comply with the obligation to protect personal data, if such failure led to the loss of personal data, may result in an administrative fine of up to 1,000 times the monthly calculation index (approximately 7,000 USD) (article 79.4 of the Code of the Republic of Kazakhstan "On Administrative Violations" No 235-V dated 5 July 2014) (the "**Administrative Code**").

If a loss of personal data results in substantial damage to the rights and interests of a passenger, it may result in criminal liability, which could be either a fee of up to 3,000 times the monthly calculation

index (approximately 21,000 USD) or correctional works for the same amount, limitation of freedom for up to two years, or imprisonment for up to two years with or without deprivation of rights to perform certain activities for up to three years (article 147.1 of the Criminal Code of the Republic of Kazakhstan No 226-V dated 3 July 2014).

4.10 What are the mechanisms available for the protection of intellectual property (e.g. trademarks) and other assets and data of a proprietary nature?

Kazakhstan is a party to, and has ratified, the following major international treaties in the sphere of intellectual property protection: (i) the Paris Convention for Protection of Industrial Property dated 20 March 1883; (ii) the Madrid Agreement Concerning International Registration of Marks dated 14 April 1891 and the Protocol to it (the "**Madrid Convention**"); (iii) the Nice Agreement on International Classification of Goods and Services for Registration of Marks dated 15 June 1997; (iv) the Eurasian Patent Convention dated 9 September 1994; and (v) the Patent Cooperation Treaty dated 19 June 1970 (the "**PTC**").

The main legislative acts in the sphere of intellectual property protection are: (i) the Civil Code of the Republic of Kazakhstan (Special Part dated 1 July 1999) (the "**Civil Code**"); (ii) the Law of the Republic of Kazakhstan on Patents No 427-I dated 16 July 1999 (the "**Law on Patents**"); (iii) the Law of the Republic of Kazakhstan on Copyright and Related Rights No 6-I dated 10 June 1996 (the "**Copyright Law**"); and (iv) the Law of the Republic of Kazakhstan on Trademarks, Service Marks and Names of Places of Origin of Commodities No 456-I dated 26 July 1999 (the "**Trademark Law**").

The authorised body in the sphere of protection of intellectual property is the Ministry of Justice of the Republic of Kazakhstan (the "**Ministry of Justice**").

Article 970 of the Civil Code provides the following general remedies for protection of intellectual property in Kazakhstan:

- (1) through the courts and arbitration;
- (2) withdrawal of material objects which were used for acts that led to infringement of exclusive rights and material objects created as a result of infringement of exclusive rights;
- (3) compulsory publication about infringement of exclusive rights, with the inclusion of information on the holder of exclusive rights; and
- (4) other remedies and measures stipulated by the legislation.

Such other remedies and measures are described below.

Trademark protection

The legal protection of trademarks in the territory of Kazakhstan is secured upon their registration in the State Register of Trademarks kept by the National Institute of Intellectual Property, which reports to the Committee on the Intellectual Property Rights of the Ministry of Justice (the "**NIIP**"). Registration of the trademark is evidenced by extracts from the State Register of Trademarks. Trademarks without registration can also be protected if provided by the international treaties to which Kazakhstan is a party. The owner of a registered trademark has an exclusive right to use and dispose of the registered trademark in the territory of Kazakhstan, and no other person can use the registered trademark without the consent of its owner (article 4 of the Trademark Law).

To ensure protection of trademarks in the territory of countries which are parties to the Madrid Convention, the trademark shall be registered with the International Bureau of the World Intellectual Property Organisation (the "**WIPO**"). International registration of a trademark with the WIPO in Kazakhstan is made through the NIIP. The NIIP is authorised to accept international applications

prepared in accordance with the Madrid Convention and to send them to the WIPO (article 1 of the Madrid Convention, article 3-1 of the Trademark Law).

Copyright protection

Copyright extends to scientific, literary and artistic works which are the results of artistic activity irrespective of their aim, content and value, as well as the ways and forms of their expression. Protection of copyright is ensured by the laws of Kazakhstan; mainly the Copyright Law. Article 49.1 of the Copyright Law stipulates that the protection of copyright and related rights is performed by the courts through:

- (1) recognition of the rights;
- (2) restoration of the situation that existed before the violation of rights;
- (3) suppression of actions that lead to infringement of rights or pose a threat of infringement of rights;
- (4) compensation of damages, including the loss of profits;
- (5) recovery of income, received as a result of infringement of copyright and/or related rights;
- (6) payment of compensation in the amount of between 100 and 15,000 times the monthly calculated index, as determined by the courts, or double the size of the cost of the right to the use of a work (creation), which is determined on the basis of costs normally applied to the legal use of a work (creation). The amount of compensation is determined by the court instead of recovery of losses or recovery of income; and
- (7) other measures provided by the legislation.

The copyright to scientific, literary and artistic works is created due to the creation of the scientific, literary and artistic works and does not require their registration or any other formal steps (see article 9 of the Copyright Law). The copyright holder can register its rights to the scientific, literary and artistic works in the State Register of Copyrights at any time by evidencing such rights; the Register is kept by the Ministry of Justice (see article 9-1 of the Copyright Law).

Patent protection

In order to protect the rights of the author of an item of industrial property (invention, utility model or industrial prototype), the author can register the patent for such objects in the State Register of Inventions, the Register of Utility Models and the Register of Industrial Prototypes kept by the NIIP (see articles 16–26 of the Patent Law).

Kazakhstan is a party to the PTC, which ensures the protection of patent rights in the territory of countries which are parties to the PTC. In order to ensure such protection, one may register the patent with the WIPO through the NIIP by filing an international application in accordance with the PTC. The NIIP is authorised to send the international application to the WIPO (see article 3 of the PTC and article 4-1 of the Patent Law).

General protection

The customs authorities keep a special register of intellectual property rights. Owners of intellectual property objects (e.g. trademarks) can request that the customs authorities include such objects in this register. The customs authorities will be able to delay the import of any goods bearing such registered intellectual property objects for 10 business days. The customs authorities then notify the legal holder of the rights to intellectual property objects on the proposed import, to give it a chance to challenge it or request interim relief. If the holder of the rights does not take any actions within this 10-business-day period, the customs authorities no longer suspend the import (section 53 of the Code of the Republic of Kazakhstan “On Customs Activity in the Republic of Kazakhstan” No 296-IV dated 30 June 2010).

Disputes in the sphere of intellectual property protection are resolved at the civil courts of Kazakhstan. However, in certain cases provided by the Law on Trademarks, the Law on Patents and the Law on Selective Breeding Results, there is special pre-trial dispute resolution organised by the Appeal Counsel of the Ministry of Justice (see article 41 of the Trademark Law).

4.11 Is there any legislation governing the denial of boarding rights?

The Aviation Law and the Order of the Minister for Investment and Development of the Republic of Kazakhstan “On Approval of the Rules of Transportation of Passengers, Luggage and Cargo by Air Transport” No 540 dated 30 April 2015 (the “**Passenger Transportation Rules**”) is the main legislative act that regulates the denial of boarding rights.

The airline is entitled to deny boarding of a passenger in the following circumstances:

- (i) refusal of the passenger to undergo inspection prior to the flight;
- (ii) breach by the passenger of the Passenger Transportation Rules and/or actions of the passenger that may influence the safety of the flight;
- (iii) alcohol, narcotic or inhalant intoxication of the passenger, which creates a threat to the health of the passenger himself/herself, the safety of other passengers/property and which causes inconvenience to other passengers;
- (iv) non-performance by the passenger of his/her on-board obligations established by the Aviation Law (e.g. to fasten the safety belt, to follow on-board procedure, etc.) (article 78.2 of the Aviation Law and article 22 of the Passenger Transportation Rules);
- (v) if the transportation is technically impossible in the following cases (that shall be notified by the passenger to airline five calendar days prior to the flight): (a) limited excursion of the passenger; (b) accompaniment of a guide dog; (c) infectious disease; (d) transportation of animals/birds; (e) luggage with a weight above the established standard or oversized luggage; (f) luggage that may be transported only in the salon of aircraft; and (g) transportation of weapons and ammunition (article 15 of the Passenger Transportation Rules); or
- (vi) the passenger is a pregnant woman and the birth is expected within seven calendar days (based on a medical certificate) (article 34 of the Passenger Transportation Rules).

In case of denial of boarding right by the airline, the cost of the ticket is returned to the passenger in accordance with the air transportation agreement concluded between the passenger and the airline (article 78.3 of the Aviation Law).

If passengers are denied boarding due to late arrival and departure of a flight, cancellation of a flight or a change to the airline, the airline should (depending on the length of the period for which the passengers are denied boarding) provide passengers with food, drinks, phone calls, accommodation, compensation, transportation by the next flight to the place of destination, etc. (article 86 of the Aviation Law).

4.12 What powers do the relevant authorities have in relation to the late arrival and departure of flights?

The CAC is entitled to consider administrative cases against the airline for undue performance or non-performance of their obligations indicated in question 4.11 above in case of late arrival and departure of flights. Undue performance or non-performance of such obligations is subject to a fine of up to 1,000 times the monthly calculation index (approximately 7,000 USD) (articles 567 and 691.3 of the Administrative Code).

4.13 Are the airport authorities governed by particular legislation? If so, what obligations, broadly speaking, are imposed on the airport authorities?

Under Kazakh law, airports are managed by so-called “airport operators” (*ekspluatant aeroporta*) that use airports based on an ownership right or other legal grounds. The following persons can act as airport operators: (i) legal entities of the Republic of Kazakhstan; and (ii) foreign legal entities based on an international treaty ratified by Kazakhstan (article 64.1 of the Aviation Law).

The airport operator shall:

- (1) ensure and control the safety performance of flights and aviation security in the territory of the airport, including by individuals and legal entities carrying out activities in the territory of the airport;
- (2) establish a committee on control of activities that may constitute a threat to flight operating safety in the vicinity of the aerodrome;
- (3) keep a daily plan on the arrival and departure of aircraft, ensure their performance, keep records and analysis on the regularity of departures, take-offs and landings of aircraft;
- (4) present reports on the safety performance of flights, aviation security, audits and accounting reports at the request of the CAC;
- (5) have the right to close the airport for receipt and departure of civil aircraft due to technical and meteorological conditions which threaten the flight operating safety of aircraft; and
- (6) have the right to carry out navigational activity; by this the expenses for carrying out such activity shall not have an impact directly or indirectly on tariffs on the regulated services (article 64.1 of the Aviation Law).

Any candidate for the position of chief executive officer of the airport operator shall conform to qualification requirements established by the CAC (article 64.2 of the Aviation Law).

The airport operator shall be obliged to implement the safety management system of flights, depending on the volume and difficulty of the flights performed (article 64.3 of the Aviation Law).

It is worth mentioning that under Kazakh law, certain services provided by airports (except services in the sphere of air transportation for transit through the territory of Kazakhstan with technical put-downs in Kazakh airports for non-commercial purposes) are regulated as services provided in the sphere of natural monopolies (article 4.1.9 of the Law of the Republic of Kazakhstan “On Natural Monopolies” No 272-I dated 9 July 1998).

The exhaustive list of particular services which are regulated is established by the Joint Order of the Minister of Transportation and Communication of the Republic of Kazakhstan No 119 dated 5 March 2011 and the Order of the Chairman of the Agency of the Republic of Kazakhstan on Regulation of Natural Monopolies No 81-OJ dated 3 March 2011 (the “List of Regulated Airport Services”). Such list includes services for take-off and put-down of aircraft, procurement of aviation safety and provision of parking places for aircraft in certain circumstances (article 11 of the List of Regulated Airport Services).

The services included in the List of Regulated Airport Services are regulated by the state authority in the sphere of natural monopolies – the CREMZK. In particular, the CREMZK establishes tariffs for regulated airport services and prescribes the methodology as to the calculation of such tariffs, issues approvals in relation to certain transactions by airports or involving airports, receives various reports from the airports on their regulated activity, etc.

Services not included in the List of Regulated Airport Services are carried out on a competitive basis and are regulated by general civil law provisions.

In addition, certain services in relation to internal flights are referred by Kazakh law to the so-called “socially important market”. Prices for such services are regulated by the CREMZK and the airports providing such services are subject to additional regulation by the CREMZK (article 124-5.1.4 of the Commercial Code). Such services include boarding/deplaning of passengers by telescopic passageway, lease of airport facilities used for the transportation process, processing of cargo, provision of the area for passenger check-in, and provision of aircraft with aviation fuel and lubricants.

4.14 To what extent does general consumer protection legislation apply to the relationship between the airport operator and the passenger?

Under Kazakh law, the following main legal acts regulate general consumer protection: the Civil Code; and the Law of the Republic of Kazakhstan “On Protection of Consumers’ Rights” No 274-IV dated 4 May 2010. Both legal acts generally apply to the relationship between the airport operator and the passenger unless their provisions contradict specific legal acts in the aviation sphere.

4.15 What global distribution suppliers (GDSs) operate in your jurisdiction?

Airlines and travel agents mainly use the following GDSs in Kazakhstan: Amadeus and Galileo.

4.16 Are there any ownership requirements pertaining to GDSs operating in your jurisdiction?

There are no ownership requirements pertaining to GDSs in Kazakhstan.

4.17 Is vertical integration permitted between air operators and airports (and, if so, under what conditions)?

There are no restrictions on vertical integration between airport operators and air operators, provided it does not violate antimonopoly legislation.

5 In Future

5.1 In your opinion, which pending legislative or regulatory changes (if any) or potential developments affecting the aviation industry more generally in your jurisdiction are likely to feature or be worthy of attention in the next two years or so?

It seems that 2017 will be the year of development of the Kazakh aviation industry, and a few important trends have recently been observed.

Introduction of IOSA

As of 1 January 2016, all airlines are subject to the International Air Transport Association (“IATA”) Operational Safety Audit (“IOSA”) programme, which is the internationally recognised and accepted evaluation system designed to assess the operational management and control systems of an airline. Before 1 January 2016, IOSA audit was voluntary; now it is a mandatory requirement for all airlines. The introduction of the IOSA programme is supposed to induce the airlines to comply with the international standards of air safety.* Apart from the improvement of safety indicators, successful IOSA certification will allow airlines to conclude interline agreements

with other airlines, which will enable further development of the aviation industry in Kazakhstan. The introduction of the IOSA audit requirement has already assisted in removing Kazakh airlines from the EU blacklist (please see below).

Removal of Kazakh airlines from the EU blacklist

On 23 November 2016, the EU Committee on Air Safety made the decision to remove all Kazakh airlines from its so-called "EU blacklist". From 19 to 23 September 2016, the European Commission carried out a technical evaluation of the air safety of flights in Kazakhstan, the results of which showed that Kazakhstan is successfully implementing ICAO's standards. This happened as a result of work carried out since 2009 by the Kazakh Government, together with ICAO specialists, towards making Kazakhstan compliant with international aviation standards. The level of compliance with the standards of International Civil Aviation Organization has increased from 65 to 74%, the average European rate being 76%.* From now on, any Kazakh airline company will be able to fly to European countries, subject to certain requirements established by the European Commission. For instance, SCAT

Airlines have already announced their plans to fly to Greece, Italy, Israel, the Czech Republic and Germany.*

Plans by the national carrier to extend its air fleet

Air Astana – the main Market Participant of the Kazakh airline industry – continues its growth and is planning to expand its aircraft fleet with 60 new aircraft by 2026. The main focus of Air Astana is to purchase cost-effective aircraft with fuel-efficient engines.* In 2015, Air Astana purchased seven new Airbus jets through operational leasing.*

Introduction of "open skies"

The Ministry of Investments and Development of the Republic of Kazakhstan stated that it intends to implement an "open skies" system in 2017, at least for the period of EXPO 2017, which should lead to more foreign airline companies gaining entry into the Kazakh market. It is already expected that at least five new airline companies will enter Kazakhstan's aviation market: Austrian Airlines; Czech Airlines; FinAir; as well as airlines from Poland and Hungary.*

*See public sources.



Marina Kahiani

GRATA International
104, M. Ospanov Str.
Almaty 050020
Kazakhstan

Tel: +7 701 725 12 69
Email: mkahiani@gratanet.com
URL: www.gratanet.com

Marina Kahiani is a partner in GRATA's banking and finance group. She joined the firm in its London representative office in September 2008, and relocated to the head office in Almaty in September 2009. Ms. Kahiani received her LL.M. from the London School of Economics and Political Science (LSE), her Kazakh Master's degree with distinction from the Kazakh Humanitarian Law University (specialising in international and European law), and a Bachelor's degree with distinction from the Kazakh State Law Academy (specialising in civil and corporate law). Marina focuses her practice on a wide range of finance and M&A transactions, including project finance and capital markets, infrastructure transactions, and work-outs and restructurings in many industries.



Kamila Suleimenova

GRATA International
104, M. Ospanov Str.
Almaty 050020
Kazakhstan

Tel: +7 701 762 51 75
Email: ksuleimenova@gratanet.com
URL: www.gratanet.com

Kamila Suleimenova joined GRATA International as an associate in September 2016. Before joining GRATA, she was an associate in a prominent local law firm.

Kamila's practice focuses on banking and financial markets transactions, including structured products, M&A transactions, financial services regulation and debt restructurings.

Ms. Suleimenova received her LL.M. in Corporate Law from the University of Edinburgh (the United Kingdom) and her Bachelor's degree from the Kazakh University of International Relations and World Languages (specialisation – International Law).



GRATA International ("GRATA") was founded on 22 April 1992. It is one of the leading Eurasian law firms, with more than 100 lawyers and a network of offices in Kazakhstan, Russia, Azerbaijan, Kyrgyzstan, Tajikistan, Uzbekistan, as well as representatives in China, the United Kingdom and the USA. GRATA also has associated offices in Belarus, the Czech Republic, Georgia, Switzerland and Turkey.

Having established a reputation as the most reliable partner in the region, GRATA is proud of its outstanding experience in dealing with important regional projects implemented in cooperation with various international law firms.

GRATA lawyers have been recognised by leading international ratings publications, including *The Legal 500*, *Chambers Global*, *Chambers AsiaPacific*, *IFLR1000*, *Who's Who Legal* and *Asia Law Profiles*.

GRATA's Banking & Finance Group is a leading legal counsel in the area of capital markets, project finance and infrastructure project development and financial transactions in Central Asia, and in Kazakhstan in particular.

Other titles in the ICLG series include:

- Alternative Investment Funds
- Business Crime
- Cartels & Leniency
- Class & Group Actions
- Competition Litigation
- Construction & Engineering Law
- Copyright
- Corporate Governance
- Corporate Immigration
- Corporate Investigations
- Corporate Recovery & Insolvency
- Corporate Tax
- Data Protection
- Employment & Labour Law
- Enforcement of Foreign Judgments
- Environment & Climate Change Law
- Family Law
- Fintech
- Franchise
- Gambling
- Insurance & Reinsurance
- International Arbitration
- Lending & Secured Finance
- Litigation & Dispute Resolution
- Merger Control
- Mergers & Acquisitions
- Mining Law
- Oil & Gas Regulation
- Outsourcing
- Patents
- Pharmaceutical Advertising
- Private Client
- Private Equity
- Product Liability
- Project Finance
- Public Procurement
- Real Estate
- Securitisation
- Shipping Law
- Telecoms, Media & Internet
- Trade Marks
- Vertical Agreements and Dominant Firms

glg global legal group

59 Tanner Street, London SE1 3PL, United Kingdom
Tel: +44 20 7367 0720 / Fax: +44 20 7407 5255
Email: info@glgroup.co.uk

www.iclg.co.uk