

THE AVIATION LAW
REVIEW

TENTH EDITION

Editor
Sean Gates

THE LAWREVIEWS

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CONTENTS

PREFACE.....	v
<i>Sean Gates</i>	
Chapter 1 UNLAWFUL INTERFERENCE IN CIVIL AVIATION RIGHTS, AND REMEDIES.....	1
<i>Sean Gates</i>	
Chapter 2 ARGENTINA.....	5
<i>Ana Luisa Gondar</i>	
Chapter 3 AUSTRALIA.....	21
<i>Andrew Tulloch</i>	
Chapter 4 AUSTRIA.....	35
<i>Dieter Altenburger and Georg Schwarzmann</i>	
Chapter 5 BELGIUM.....	48
<i>Dimitri de Bournonville and Dries Deschuttere</i>	
Chapter 6 BRAZIL.....	59
<i>Caroline Guazzelli Queiroz Gomes and Antonio Siqueira Filho</i>	
Chapter 7 CAYMAN ISLANDS.....	69
<i>Wanda Ebanks, Shari Howell and Sorcha O'Keefe</i>	
Chapter 8 CHINA.....	82
<i>Jason Jin</i>	
Chapter 9 CYPRUS.....	94
<i>Christos Clerides and Andrea Nicolaou</i>	
Chapter 10 DOMINICAN REPUBLIC.....	108
<i>Rhina Marielle Martínez Brea and María Pía García Henríquez</i>	

Chapter 11	EGYPT	123
	<i>Tarek Badawy</i>	
Chapter 12	EUROPEAN UNION	134
	<i>Dimitri de Bournonville and Joanna Langlade</i>	
Chapter 13	FRANCE.....	161
	<i>Aurélia Cadain and Nicolas Bouckaert</i>	
Chapter 14	ISRAEL.....	175
	<i>Eyal Doron and Hugh Kowarsky</i>	
Chapter 15	ITALY	193
	<i>Anna Masutti</i>	
Chapter 16	JAPAN.....	216
	<i>Tomohiko Kamimura and Miki Kamiya</i>	
Chapter 17	MALTA.....	229
	<i>Joseph Gbio and Steffi Vella Laurenti</i>	
Chapter 18	ROMANIA	241
	<i>Adrian Iordache, Diana Gaman and Ruxandra-Cristina Duțescu</i>	
Chapter 19	SERBIA	254
	<i>Goran Petrović</i>	
Chapter 20	SOUTH KOREA	272
	<i>Chang Young Kwon, Marc Kyuha Baek and Jane Young Sohn</i>	
Chapter 21	SPAIN.....	287
	<i>Sergi Giménez Binder</i>	
Chapter 22	TURKEY.....	298
	<i>M Ali Kartal</i>	
Chapter 23	UNITED KINGDOM	308
	<i>Robert Lawson QC</i>	
Appendix 1	ABOUT THE AUTHORS.....	325
Appendix 2	CONTRIBUTORS' CONTACT DETAILS.....	339

PREFACE

The Aviation Law Review continues to be among the most successful publications offered by The Law Reviews, with the online version massively increasing its reach within the industry not only to lawyers but to all those involved in the various aspects of management touched by laws and regulations the complexity, mutual inconsistency and occasional judicial incomprehensibility of which provide an endless source of debate and dispute between industry participants and their legal advisers. The *Review* is a source of guidance internationally and its provision of an introduction to experts in so many jurisdictions in this vital and complicated field is something of which we are justly proud.

This year I welcome new contributions from Brazil and Malta, and I extend my thanks and gratitude to all our contributors for their continued support. I would emphasise to readers that the contributors donate very considerable time and effort to make this publication the premier annual review of aviation law. All contributors are carefully selected based on their knowledge and experience in aviation law and we are fortunate indeed that they recognise both the value of the contribution they make and the further value it constitutes in the broader context of the *Review*.

After several years of pandemic-related issues affecting aviation and its insurance-related services, the attention of the aerospace industry has shifted dramatically to Russia's war on Ukraine. In the United States, the United Kingdom and the EU, providing goods and services to Russian entities has been prohibited, as has overflight of EU, UK and US territories. Russia has responded by allowing Russian airlines to re-register on the Russian register from March 14 planes leased from foreign companies and therefore already registered in countries other than Russia, where they will also be issued local certificates of airworthiness. This enables Russian operators to keep their foreign-leased aircraft, valued at over \$12 billion, and to operate the planes on domestic and a few international routes, while making it harder for foreign companies to reclaim their jets without Russian government approval. This action by Russia is in transparent breach of Article 18 of the Chicago Convention, on which I comment further below.

While a small number of such aircraft have been repossessed by leasing companies, clearly such repossessions are unlikely to be permitted in the territories under the control of Russia, nor apparently in the territories of some states that have not adopted the Western sanctions-based approach to Russia's bellicose activity. This has inevitably forced lessors to consider their alternative options. Attention has focused on the possibilities of recovery from insurers and this battle has already been joined in various jurisdictions.

The overwhelming majority of Russian-operated aircraft are primarily insured by Russian companies, which then reinsure all or a large proportion of their risk in overseas markets, primarily in the United Kingdom and the EU. Those reinsurance policies have been affected by the standard AVN 111 Sanctions and Embargo Clause, which provides:

if, by virtue of any law or regulation . . . applicable to an Insurer . . . providing coverage to the Insured is or would be unlawful because it breaches an embargo or sanction, that Insurer shall provide no coverage

Insurers usually have to give notice to cancel a policy and notice was given in many cases when sanctions were first introduced in February, well in advance of the re-registration decision by Russia on 14 March, which could well have been regarded as the event of confiscation called for in those policies that might otherwise respond. However, there are other difficulties for insurers given that such policies have a mechanism for the protection of lessors in the AVN 67b clause, which preserves lessors' rights in the event of cancellation of the policy and may create a stand-alone policy (although this proposition has not been tested in court). Another difficulty arises as to the law governing the reinsurance policy and the jurisdiction in which claims may be made. The underlying policy will in most cases be subject to Russian law and jurisdiction. The reinsurance policy may address this in its terms. If Russian law and jurisdiction apply, the lessor, if it has rights by way of a cut-through or similar clause in the reinsurance policy, may be entitled to sue the reinsurers in Russia but would be unlikely to succeed, given the new Russian law permitting re-registration. If the law is that of the jurisdiction of the lessor or lead reinsurer, or is specified by the reinsurance policy, the lessor may be able to have a hearing where the issues of sanctions, severability of AVN 67b and recoverability under sanctions provisions and policy exclusions for state seizure can be addressed.

As a further complication for lessors, the aggregation provisions in some policies limit the recovery from insurers for each event – a clause of this kind gave rise to extended litigation in the United State following the 9/11 destruction of the twin towers in Manhattan, and in respect of which the mechanism for sharing the available proceeds between lessors has yet to be resolved. Relief may be available to some lessors that may have taken out contingent or possessed policies addressing the failure of the operator's policy to respond to lessors' claims. These policies have an advantage in that the lessor will be the named insured with a clear right to take direct action in its own name, and to recover if the circumstances of the loss are sufficiently clearly addressed in the wording.

Given that there are significant assets in many jurisdictions either in the name of Russian state entities or traceable via third parties to the Russian state, insurers that have identified significant exposure ought to be researching their rights to pursue those assets urgently, as there are likely to be numerous competing claimants. Finally, on a sombre note, it has to be pointed out that all the relevant policies will exclude damage caused by nuclear explosions.

As I have mentioned above, the actions of the Russian state in reflagging aircraft are in breach of that country's obligations under the Chicago Convention. As I explained last year in the context of the actions of Belarus in seizing an overflying foreign aircraft, the Council of the International Civil Aviation Organization (ICAO) has the power to investigate breaches of the Convention, and an obligation to report to contracting states any infraction of the Convention, as well as any failure to carry out recommendations or determinations of the Council. A minimum of 10 states have the power to convene an extraordinary session of the

ICAO Council and a majority of states have the power to take appropriate action, including suspending a Member State. Whether these steps will be taken will depend on the will of the majority.

Readers of the preface in earlier editions of *The Aviation Law Review* will be aware of the recurrent theme relating to the approach of the Court of Justice of the European Union (ECJ) to the interpretation of the EU Flight Compensation Regulation (Regulation 261)¹ governing passengers' rights arising from delays to and the cancellation of flights.

On 21 December 2021, the ECJ decision in *Airhelp Limited v. Laudamotion GmbH* addressed the facts of the scenario in which the carrier brought its scheduled flight forward by six hours and notified the passengers' travel agent more than two weeks prior to departure, although the agent failed to tell the passengers. Improbably, but in further pursuit of its rampage against common sense when the rights of passengers are at issue, the Court held that the carrier had to prove that the passengers had been given notification in due time, regardless of whether the failure to do so was the fault of the passengers' own agent.

In a deeply depressing decision of the UK Supreme Court, in *Bott v. Ryanair*, the Court held by a narrow majority that the claimant solicitor was entitled to recover its costs from the airline regardless of the fact that the firm had undertaken minimal work and that the claim was unlikely to be disputed, primarily by reference to the perceived need to bolster the rights of citizens to access the Court. The decision is presently limited to the rights of solicitors, but it is to be expected that non-solicitor claims companies will pursue their own claims for recovery on analogous principles.

Finally, in what has been described as a populist decision, the UK Department for Transport (DfT) has launched a consultation on post-Brexit passenger rights, including on whether Regulation 261 as applied in the United Kingdom should be changed so that compensation for delayed domestic UK flights is calculated as a percentage of the ticket price, and whether the length of delay that triggers compensation rights for domestic UK flights should be reduced from the existing threshold of three hours. The DfT is seeking views on the introduction of a sliding scale: 25 per cent of the ticket price for a delay of one to two hours; 50 per cent of the ticket price for a delay of two to three hours; and 100 per cent of the ticket price for a delay of over three hours. The DfT is also seeking views on similar rules for flight cancellations and denied boarding. It would seem that the United Kingdom has caught the carrier-critical mindset of the ECJ!

Airlines in Europe need to stand united to resist the continued assault of Regulation 261 on their very existence, for without such unity, to paraphrase Aesop, division can only produce disaster.

1 Regulation (EC) No. 261/2004 of the European Parliament and of the Council of 11 February 2004 establishing common rules on compensation and assistance to passengers in the event of denied boarding and of cancellation or long delay of flights, and repealing Regulation (EEC) No. 295/91.

Once again, many thanks to all our contributors to this volume, including, in particular, those who have newly joined the group to make *The Aviation Law Review* the go-to aviation legal resource.

Sean Gates

Gates Aviation Ltd

London

July 2022

ISRAEL

*Eyal Doron and Hugh Kowarsky*¹

I INTRODUCTION

Israel's geopolitical situation makes air transportation a vital factor in maintaining its connections with the rest of the world.

The Israeli aviation sector has undergone major changes in recent years. The first of these was the enactment of the Aviation Services Law (Compensation and Assistance for Flight Cancellation or Change of Conditions) 2012 (ASL), establishing passenger rights, similar to those under Regulation (EC) No. 261/2004, to compensation and other benefits in the case of flight delays or cancellations and denial of boarding (as a result of overbooking, etc.).

Another major change was the liberalisation of Israel's policy on bilateral and multilateral air services agreements and the resulting signature of the EU–Israel Open Skies Agreement in 2012.² This change in policy has resulted in a significant increase in the operations of foreign airlines (including low-cost airlines) and the frequency of flights to and from Israel, as well as a decrease in air fares. Thus, for example, international passenger traffic passing through Israel's main international airport, Ben Gurion Airport (BGA), increased by more than 90 per cent between 2012 (12.4 million) and 2019 (24.036 million).³ This number was expected to grow further during 2020, taking into account also the opening in January 2019 of Ramon Airport, a new international airport located in the south of Israel close to the town of Eilat, a resort town on the shores of the Red Sea. However, because of the covid-19 pandemic, international passenger traffic through Israel decreased significantly during 2020. There were the first signs of recovery in 2021 and passenger traffic through BGA during the first quarter of 2022 strengthens indications of a return to the pre-covid-19 pandemic figures.⁴

The Israeli Ministry of Transportation (MOT) has primary responsibility for regulation of the aviation sector. In 2005, the MOT established the Civil Aviation Authority of Israel (CAAI) to oversee, regulate and supervise all aviation-related matters, including the issue of aviation licences and permits. The body responsible for airports is the Israel Airports Authority. The Aviation Security Operation Centre (ASOC) in the Security Department of the MOT oversees aviation security. Aviation security is a priority in Israel in the light of

1 Eyal Doron is a partner and Hugh Kowarsky is of counsel at S Horowitz & Co.

2 Signed and initialled by Israel and the EU Member States on 30 July 2012 and approved by the Israeli government on 21 April 2013. Ratified by the European Parliament on 20 June 2020: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A32020D0952>.

3 Ben Gurion International Airport Activity Summary Annual Report 2012 and Annual Report Ben Gurion International Airport for 2018: <http://brin.iaa.gov.il/monthlyreport/ViewReportEng.aspx>.

4 <https://passportnews.co.il>.

constant terrorist threats. Operating permits will not be granted unless ASOC has received and approved written confirmation of compliance with ASOC's security requirements from the relevant foreign airports and airlines.

Allocation of slots at BGA is carried out in accordance with the Aeronautical Information Publication (AIP), which gives priority to scheduled flights and to maintenance of existing allocations.⁵

II LEGAL FRAMEWORK FOR LIABILITY

i International carriage

Israel is party to several international aviation-related conventions governing the liability of air carriers in international carriage, including the Warsaw Convention 1929, the Guadalajara Convention 1961 and the Montreal Convention 1999, as well as their respective protocols. These conventions have been given effect in Israeli domestic law by the Air Transport Law 1980 (ATL). Section 3B of the ATL provides that where both the Montreal Convention and another of the conventions adopted by the ATL apply, the Montreal Convention will govern.

Section 10 of the ATL provides that the liability for damage, including liability for the death of a passenger, of a carrier under the ATL (i.e., the liability of a carrier under a convention made applicable in Israel by the ATL) substitutes the liability of the carrier under any other Israeli law. The Israeli Supreme Court has implemented this rule (the 'exclusivity of grounds of action rule' or 'pre-emption of claims rule'), holding that where a claim is governed by the ATL, a passenger will not be able to rely on other provisions of domestic law.⁶

Israel is also party to the Chicago Convention on International Civil Aviation 1944 (the Chicago Convention), adopted into domestic law by the Air Navigation Law 2011 (ANL), and to the Tokyo Convention 1944 on offences and certain other acts committed on board aircraft given domestic effect by the Air Navigation Regulations (Offences and Jurisdiction) 1971.

In contrast, Israel is not a party to the Convention on International Interests in Mobile Equipment and the Protocol on Matters Specific to Aircraft Equipment concluded in Cape Town on 16 November 2001.⁷

ii Internal and other non-convention carriage

The ATL provides that the Montreal Convention shall apply, *mutatis mutandis*, to internal flights within Israel.⁸ The Aviation Services Regulations (Compensation and Assistance for Flight Cancellation or Change of Conditions) (Internal Flights) 2013 (enacted under the

5 The Aeronautical Information Publication (AIP) is published by the Civil Aviation Authority of Israel (CAAI) and is prepared in accordance with the Standards and Recommended Practices (SARPs) of Annex 15 to the Convention on International Civil Aviation and the Aeronautical Information Services Manual (ICAO Doc 8126).

6 Civil appeal 36/84 (Supreme Court) *Teichner v. Air-France, French Air Lines* (6 January 1987); see also civil file 1818/03 (District Court) *El-Al Israel Airlines Ltd v. David* (7 July 2004).

7 In a decision dated 15 June 2006, the Israeli government approved the accession of Israel to the Convention and the related Protocol, and authorised the Minister of Foreign Affairs to implement the decision (this has not been done to date).

8 Section 5(a) of the ATL.

ASL) provide (in modifying the rule under the ASL applying to international flights) that a flight delay of three hours or more for an internal flight shall be treated as cancellation of the flight and vest passengers with the right to compensation accordingly.⁹

Under Section 338(a)(2) of the Penal Law 1977, the reckless or negligent operation of an aircraft, in a way that could endanger human life or result in injury, is a criminal offence punishable by a prison sentence of up to three years.

iii General aviation regulation

Civil aviation operations (including the operation of helicopters and gliders) are governed by the ANL and the regulations enacted thereunder. The ANL regulates the identification and registration of aircraft, licensing and training of personnel, airworthiness of aircraft, general operating and flight rules, commercial air services and air navigation services.

iv Passenger rights

Passenger rights are regulated pursuant to the ATL by the Montreal Convention (or other applicable convention) and the ASL. The ASL is a pro-consumer act of legislation that regulates passengers' rights and carriers' duties, including those relating to payment of compensation (without the need to prove damage) in the case of flight delays, cancellations, denial of boarding and downgrading.¹⁰ The ASL also provides that in cases of flight delays of two hours or more and flight cancellations, the carrier is obliged to provide passengers with ground assistance, including communications services, food and beverages and, in some cases, hotel accommodation.

Although very similar to Regulation (EC) No. 261/2004, the ASL includes a number of innovations, such as:

- a the determination that a delay of eight hours or more is considered a flight cancellation;
- b the authority granted to the court to impose exemplary damages on the carrier in cases of non-compliance with the ASL; and
- c the obligation of a flight operator to station representatives for the provision of assistance to passengers in the exercise of their rights under the ASL at every airport from which the operator commences flights to and from Israel (including flights to Israel with stopovers and serving passengers holding a return ticket to and from Israel).¹¹

In the spirit of the pro-consumer nature of the ASL, the Israeli courts have given a narrow interpretation to the provision in the ASL exempting the carrier from the obligation to compensate passengers in the case of cancellation of flights where the cancellation was caused by special circumstances beyond the carrier's control that could not have been prevented even if the carrier had done everything in its power to do so. In general, therefore, technical malfunctions in an aircraft will not constitute special circumstances,¹² unless the malfunction is proved to be rare and not to have been preventable by the performance of proper

9 Because domestic flights are relatively cheap, the sums awarded in cases of flight delay or cancellation are low (again modifying the provisions under the ASL for international flights).

10 As in European Regulation 261/2004, the sum of compensation is dependent on the flight distance.

11 The relevant provision has been inserted into the Licensing of Air Services Law 1963 by Section 23 of the ASL.

12 See small claim leave to appeal 60392-02-17 *Ukraine International Airlines v. Sharon Zehavi* (6 December 2017).

maintenance. In a judicial decision reflecting the same approach, the court held that for an airline to avoid payment of compensation for cancellation of a flight and, in particular, for it to prove that it has done everything within its power to prevent the cancellation, it may be necessary for the airline to prove that it was not able to lease an alternative aircraft or to purchase tickets for its passengers on the flight of another airline.¹³

Passengers' rights relating to the purchase and cancellation of flight tickets are regulated by the Israeli Consumer Protection Law 1981 (CPL), which, in certain circumstances, including transactions made at a distance (by telephone, email, etc.) and, subject to certain conditions, entitles consumers to cancel transactions without cause and to the reimbursement of the price paid, minus a small cancellation fee.¹⁴

The carriage of disabled passengers is governed by the Israeli Regulations for Equal Rights for People with Disabilities (Regulation of Access to Public Transport Services), 2003 (RER). The RER lays down certain technical qualifications for the use of aircraft, including a provision that an aircraft shall not be operated for the carriage of passengers if it is not adequately adapted for the disabled.¹⁵ Section 14 provides that disabled persons have the right to a suitable escort at the terminal and at the crossing from the terminal to the aircraft; the right to have the appropriate person at the airport of destination notified regarding their expected arrival; and the right to have their wheelchair loaded in a manner enabling it to be placed at their disposal immediately upon disembarking from the aircraft, provided the carrier has received at least 48 hours' prior notice of the disabled person's expected arrival.

v Other legislation

Loud noise generated on low-altitude flight routes near populated areas may constitute a nuisance to residents of those areas. With a view to reducing the extent of this nuisance, the Israeli Ministry of Environmental Protection, in conjunction with the Israel Airports Authority, has issued rules governing the construction and planning of airports. Other measures directed to the same purpose include the imposition of night and weekend curfews and the requirement that compliance by an aircraft with the Flight Regulations (Aircraft Noise) 1977 is a condition for issue of a flight permit.

Israel has strict anti-bribery rules. It is a member of the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions, and gave domestic effect to the Convention on 11 June 2008 by adding Section 291A to the Penal Law 1977, providing that a person giving a bribe to a foreign public official for an activity

13 See small claim leave to appeal 50976-02-19 *Anat Sharon v. Aeroflot Russian Airlines* (26 February 2019).

14 A report issued on August 2013 by an inter-ministerial committee, appointed by the State of Israel to Examine the Requirement of Israeli Airlines for Regulatory Relief following the approval of the Euro-Mediterranean Aviation Agreement between the Government of Israel and the European Union and its Member States, suggests that the application of the CPL to foreign airlines with no permanent representative office in Israel is neither possible nor desired. Statements of consumer protection bodies such as the Authority for Consumer Protection and Fair Trade (https://www.gov.il/he/departments/general/cpfta_konim_bareshet#anchor1) and the Israel Consumer Council (<http://www.consumers.org.il/category/cancelling-vacation>) do not dispute this view. The issue has been dealt with by an Israeli district court in CA 54491-01-15 *Basban v. EasyJet Airline Company Ltd*, where it was decided that the CPL does not apply in circumstances where a foreign airline has no permanent presence in Israel. An appeal to the Israeli Supreme Court (civil appeal 5089/20) was filed and later withdrawn (2 June 2022) on the Court's recommendation.

15 Chapter 3 of the RER.

related to his or her position to obtain, secure or promote business activity or other advantage in respect of business activity shall be deemed to have committed bribery under Section 291 of the Penal Law.

For competition legislation, see Section VI.

III LICENSING OF OPERATIONS

i Licensed activities

Commercial operation of aircraft

The Licensing of Aviation Services Law 1963 (LASL) and the ANL regulate the licensing of aviation-related activities. An Israeli individual or entity will not be permitted to operate aircraft for commercial purposes without a commercial operating licence (COL) from the MOT and an air operator certificate (AOC) from the CAAI.¹⁶

Foreign individuals and entities are not eligible for an Israeli COL or AC. To obtain a COL, the applicant operator must submit evidence of its financial resources, details regarding its operations, crew qualifications and experience, and consumer-related details. The MOT has the power to grant, suspend and cancel the COL and determine its period of validity.

The issue of an AOC is conditional on possession of a COL and subject to proof that the applicant possesses adequate aircraft and facilities for the operations in question. A detailed list of requirements for the AOC application is set out in the Air Navigation Regulations (Operation of Aircraft and Flight Rules) 1981 (ANR).¹⁷ The CAAI will grant an AOC only if it is satisfied that the applicant is capable of performing the operations in question in a safe manner. The AOC will be valid for a period of two years and may be renewed by an application filed at least 60 days prior to expiry.¹⁸

For commercial aviation operations from, to and within Israel, the operator must obtain operating permits from the CAAI (see Section III.iii).

Licensing of aviation-related activities

According to the ANL, an individual shall not perform a function in connection with the operation of an aircraft, the performance of aircraft inspections or the provision of air traffic management services without possessing a licence from the CAAI unless he or she is in possession of this licence from a competent authority in a contracting party to the Chicago Convention.¹⁹

The following are other activities that require a licence:

- a the training of aviation workers;
- b the operation of an entity for aircraft maintenance and repair of a unit for the provision of air traffic management services and of an airport or a landing strip;
- c the manufacture of aircraft for marketing;
- d the transportation of dangerous goods; and

16 Section 2 of the LASL.

17 Section 374 of the ANR.

18 *ibid.* Sections 373 and 375.

19 Sections 2 and 4 of the ANL.

e training for operating, or the commercial operation of, a hang-glider, powered hang-glider, paraglider, powered paraglider, powered parachute, unmanned flying model, kite or rocket, radio models, small aeroplanes and training aeroplanes.²⁰

The conditions for the grant of licences are set out in the ANL and the ANR. The CAAI has the authority to revoke, suspend and limit licences granted if, inter alia, one of the conditions for receiving the licence has ceased to exist or the licensee has violated any of the conditions of the licence or any of the provisions of the ANR.²¹

ii Ownership rules

According to the LASL, a COL will only be granted to an Israeli operator that is one of the following: an individual who is a permanent resident of Israel without a principal place of business outside Israel or an Israeli citizen who has a principal place of business in Israel; or a company incorporated in Israel without a principal place of business outside Israel and controlled by an Israeli citizen or a permanent resident of Israel, or by another person in accordance with the provisions of an international aviation convention to which Israel is a contracting party.²²

Regarding foreign carriers, there are no explicit rules relating to nationality or citizenship, but the LASL authorises the MOT to refuse to grant an operating permit if the applicant carrier is deemed a potential danger to the security of Israel.²³ For commercial flights, details of the air carrier's ownership, including the nationality of owners and their respective shares of ownership, must be provided in the application for an operating permit.²⁴

iii Foreign carriers

Pursuant to the LASL, foreign carriers must obtain an operating permit from the CAAI for operation of passenger²⁵ or cargo flights²⁶ from, to or within Israel.

Commercial flights

According to the LASL and the AIP, a foreign operator wishing to fly to and from Israel must be eligible to carry out the flights under the provisions of a bilateral or multilateral agreement to which the state of the foreign operator and Israel are contracting parties.

20 Sections 13, 21, 52, 74, 87, 88 of the ANL.

21 Section 8 of the LASL.

22 Section 1 of the LASL.

23 *ibid.* Section 5.

24 ATF 1.1.400A, Commercial specifications of a Foreign Air Carrier applying for an operating permit to and from Israel, Air Transport Handbook, Revision 3 (12 October 2015), Section 4.

25 According to the 'Criteria for the approval of foreign air carrier flights that may constitute operating a base in Israel' (AP 1.1.400, Revision 1, Air Operation Certification, issued by the CAAI on 10 February 2019), as of 31 March 2019, operating permits are not granted to foreign air carriers for passenger air services using a method of operation in which the same aircraft is based in Israel continuously and operates flights to multiple (approved) destinations, thus effectively operating as if it were an Israeli air carrier.

26 See Section III.iii on 'Cargo charter flights'.

An application for an operating permit for commercial scheduled flights must be submitted to the CAAI according to the provisions of CAAI Directive AT.1.1.400.²⁷ The granting of the permit will be subject to the submission of commercial details relating to, inter alia:

- a* ownership;
- b* principal place of business;
- c* an AOC issued by an appropriate foreign authority;
- d* proof of adequate insurance coverage;
- e* confirmation of the appointment of local representatives for service of process and for communications with the Israeli aviation authorities;
- f* confirmation of valid licences and medical certificates for the crew according to the Chicago Convention; and
- g* certifications relating the registration of aircraft, airworthiness and noise.

Additional documents may be required by the Security Division of the MOT for the approval of the operator with respect to security, such as annually renewed confirmations by the operator and the relevant airport that they will comply with the MOT's Security Directive, which prescribes security-related standards on subjects such as passenger and baggage checks, aircraft protection and security procedures for in-flight catering services.²⁸

In addition, the applicant must provide a commitment in accordance with the LASL to appoint a representative for provision of assistance to passengers in the exercise of their rights under the ASL at every airport from which the operator commences flights to and from Israel (including flights to Israel with stopovers and serving passengers holding a return ticket to and from Israel),²⁹ as well as appoint an Israeli representative authorised to act on its behalf under the LASL and constituting an address for service of court documents.³⁰

Non-scheduled commercial flights

To carry out non-scheduled commercial flights, a foreign operator must apply for and be granted an operating permit according to CAAI Directive AT.1.1.402.³¹ The application requirements are similar to those relating to an application for an operating permit for scheduled commercial flights and also include, where applicable, the submission to the CAAI of any relevant charter agreement.

Cargo charter flights

CAAI Directive AT.1.1.402 also applies to cargo charter flights. A cargo charter flight is defined as a flight where a person or a tour operator hires the entire capacity of an aeroplane for the sole purpose of cargo transportation.³² Additional requirements, pertaining specifically to cargo, are stipulated in AIP Israel GEN 1.4,³³ which covers issues relating to customs,

27 Directive AT.1.1.400 Granting an Operating Permit for Scheduled Flights to and from the State of Israel.

28 Security Directive 0101-16 (2016) of the MOT Emergency, Security and Cyber Division.

29 Section 8C(a1) of the ASL.

30 *ibid.* Section 8c(b)(1).

31 Directive AT.1.1.402 'Granting an Operating Permit for Charter Flights to and from the State of Israel' (Directive AT.1.1.402).

32 Section 2.4.3 to Directive AT.1.1.402.

33 AIP Israel GEN 1.4, Entry, Transit and Departure of Cargo (30 January 2020).

agricultural shipments and live animal importation. Further, as part of the approval process, and in obtaining ASOC's approval, the flights must meet the security requirements set out in Security Directive 0303-16, which apply to all commercial flights (scheduled or charter).³⁴ The main purpose of Security Directive 0303-16 is to prevent the loading of explosives, incendiaries and other destructive substances or items onto aircraft.³⁵

Overflight

According to the AIP, prior permission is not required for overflight of Israeli airspace or technical stops in Israel if a flight is operated by an aircraft registered in a country that is party to the International Air Services Transit Agreement or if the relevant bilateral air services agreement allows overflying the Israeli airspace or making stops in Israel for non-traffic purposes. In theory, prior permission should not be required for non-scheduled flights operated by aircraft registered in a country that is party to the Chicago Convention and has diplomatic relations with Israel.³⁶ In other cases, prior permission will need to be obtained. In practice, prior notification of all overflights should be submitted to the ASOC at least five working days prior to the date of the flight.³⁷ In view of Israel's special geopolitical situation, such flights may be made subject to the high-risk security requirements set out in MOT's Security Directive and applicable to flights landing in Israel.

IV SAFETY

Israel complies with the accepted international standards in the field of safety. The Israeli safety regulations are based on the Chicago Convention, the safety rules of the International Civil Aviation Organization and the US Federal Aviation Regulations.³⁸ Israel is a participating state in the European SAFA programme. Furthermore, in 2016, Israel entered into a collaboration agreement with Eurocontrol, the European Organisation for the Safety of Air Navigation, which engages in airspace planning and air traffic management.³⁹ The collaboration agreement provides Israel with access to aviation services, including air navigation services and control, in a way that increases its ability to prevent flight delays and manage air traffic more efficiently and safely.⁴⁰

34 Security Directive 0303-16, Security Measures for Foreign Air Carriers Transporting Air Cargo by Passengers' Flights to Israel, Section 3.1.

35 Security Directive 0303-16, Section 4.2.

36 www.icao.int/publications/Documents/7300_cons.pdf.

37 ASOC controls the security procedures for the arrival of aircraft into and passage through Israeli airspace.

38 Explanatory notes to the ANL Draft, p. 1.

39 www.eurocontrol.int/our-member-and-comprehensive-agreement.

40 <https://web.archive.org/web/20160619001131/http://www.eurocontrol.int/articles/comprehensive-agreement-states>.

i Airworthiness

The CAAI is responsible for the issue and renewal of airworthiness certificates. The grant of an operating permit by the CAAI will be subject to the submission by the carrier of an airworthiness certificate, according to standards specified in the ANL, the LASL and the Air Navigation Regulations (Procedures for Documentation of Aircraft and Aircraft Parts) 1977, and the CAAI's directives.⁴¹

ii Maintenance

The aviation maintenance requirements are regulated in the ANL, in Chapter 7 of the ANR and in the CAAI directives. The air operator is under a duty to perform routine aircraft inspection and maintenance and to repair any malfunctions detected in the aircraft, and to ensure that all staff members have the proper qualifications.⁴² In December 2017, to bring the Israeli standards in line with the European regulations, the MOT enacted the Air Navigation Regulations (Safety Management System) 2017, which deal with organisational aspects of safety management such as assignment of responsibilities, raising awareness, education and documentation duties.

iii Accident reporting

There is a duty in Israel to report to the chief investigator of the MOT and to the CAAI on the occurrence of safety-related incidents in the aviation field.⁴³ The ANL grants the supervisor of the CAAI investigatory powers, including the authority to demand any information or document.⁴⁴ The CAAI maintains and operates a system for reporting investigated incidents for the purpose of improving civil aviation safety.⁴⁵

V INSURANCE

The MOT regulates the insurance obligations of aircraft operators in Israel. The Aviation Regulations (Compulsory Insurance in the Commercial Operation of Aircraft) 2017 (ARCI), which entered into force on 27 June 2018, are based on the European regulations on this subject. According to the ARCI, an operating permit will be granted only if the aircraft is insured.⁴⁶ This insurance cover is required with respect to every aircraft that may be used in the carrier's operations, including under charter arrangements, joint ticketing arrangements or any other similar arrangement between air operators.⁴⁷ The insurance must cover damage caused to passengers, baggage, cargo and third parties, as well as damage caused by terror events.⁴⁸

41 CAAI Directive AW 1.4.103 (2015) Issuance/Renewal/Modification of Certificate of Airworthiness, CAAI Directive AW 1.4.231 (2015) Airworthiness Directives Publication, CAAI Directive AW 1.4.301 (2014) Issuance of Initial Certificate of Airworthiness.

42 Regulation 125 of the ANR.

43 Section 107 of the ANL empowers the MOT to appoint a chief investigator to coordinate the investigation of safety-related incidents.

44 Sections 96 and 114 of the ANL.

45 CAAI Directives GEN 4.0.500 (2014) Report on Safety-Related Incident – Receipt and Handling.

46 Regulations 2-3 and 6 of the ARCI.

47 Regulation 5 of the ARCI.

48 Regulation 2-4 of the ARCI.

According to the ARCI,⁴⁹ confirmation of existing insurance must include a declaration that the air operator complies with the requirements of the ARCI or the European insurance regulations.⁵⁰

VI COMPETITION

Supervision of competition in Israel, including in the aviation sector, is carried out by the Israeli Competition Authority in accordance with Israel's Economic Competition Law 1988 (ECL).⁵¹ The ECL deals with restrictive arrangements, mergers and acquisitions of companies, and monopolies. Entering into a restrictive arrangement is prohibited unless the arrangement is expressly permitted by or pursuant to the ECL, by the Competition Tribunal established under the ECL or exempted by the Commissioner of the Competition Authority.

Amendment No. 10 to the ECL enacted in 2007 rescinded the exemption in that Law applying to arrangements in the field of aviation. As a result, arrangements for cooperation in marketing flight capacity became restrictive arrangements necessitating receipt of regulatory approval. Following signature of the United States–Israel Open Skies Agreement⁵² in 2010 and the EU–Israel Open Skies Agreement⁵³ in 2012, two block exemptions relating to aviation were enacted: a block exemption for code-share arrangements between air carriers relating to destinations covered by the Open Skies Agreements;⁵⁴ and a block exemption relating to technical arrangements between carriers, arrangements for the lease of aircraft, frequent flyer arrangements, interline arrangements and flight capacity marketing arrangements.⁵⁵

A restrictive arrangement that is not covered by the block exemptions or the additional exemptions listed in Chapter B of the ECL requires the prior approval of the Competition Tribunal, although arrangements between air carriers the principal purpose of which is not the reduction or elimination of competition and that do not contain restrictions that are unnecessary for achieving their principal purpose, and whose restrictions do not limit competition in a substantial portion of the market affected by the arrangement or may limit competition in a substantial portion of the market but will not cause significant harm to competition in that market, are also permitted and do not require the approval of the Competition Tribunal.⁵⁶

49 Regulation 12 of the ARCI.

50 Regulation (EC) No 785/2004 (as amended by Regulation (EU) No 285/2010 and Commission Delegated Regulation (EU) 2020/1118).

51 As amended from time to time, most recently in January 2019 (when the name of the Law was changed from the Restrictive Trade Practices Law to the Economic Competition Law and similar changes were made in terms used in the Law).

52 Officially known as the Air Transport Agreement between the Government of the State of Israel and the Government of the United States of America.

53 Officially known as the Euro-Mediterranean Aviation Agreement.

54 Restrictive Trade Practices Rules (Block Exemption for Arrangements between Air Carriers Concerning Marketing Flight Capacity to Destinations Covered by Open Skies Agreement) (Temporary Order) 2012. This block exemption is valid until 9 November 2022.

55 Restrictive Trade Practices Rules (Block Exemption for Arrangements between Air Carriers) (No. 2), 2013 (Block Exemption Rules 2013). This block exemption is valid until 1 December 2023.

56 Section 7a of the Block Exemption Rules 2013.

The ECL provides that any person who is party to a restrictive arrangement that has not been approved or has not been exempted in accordance with the ECL or by a block exemption pursuant to the ECL, or that acts otherwise in contravention of the ECL, will be liable to imprisonment or a fine, or both.⁵⁷

In January 2020, the Central District Court in Israel certified a class action suit against four airlines, alleging that the airlines were parties to a global cartel concerning the carriage of cargo to and from Israel between 2000 and 2006.⁵⁸ According to the action, the airlines coordinated prices of several items in the cargo carriage tariff, agreed to avoid discounts and exchanged information on earnings and prices. The amount claimed in the class action is 613 million new Israeli shekels. Application to the Supreme Court for leave to appeal the certification was filed by the airlines and then withdrawn by them on the Court's recommendation and dismissed (2 June 2022).⁵⁹

Following the exposure of the existence of the alleged cartel in 2006, investigations against various airlines, including the four defendants in the class action, have been initiated around the world; criminal proceedings have been conducted, some of which have ended in convictions in accordance with plea bargains; and several civil lawsuits, most of which, by way of class action, have ended in settlements.

The ECL also regulates mergers and acquisitions. A merger will be subject to notification to and the approval of the Commissioner of the Competition Authority.⁶⁰ A merger will not be approved if there is a reasonable fear that it will significantly affect competition in the sector or will harm the public with regard to the following: the level of prices of an asset or service; low quality of the asset or service; the quantity of the asset or the scope of services supplied; or the frequency and conditions of the supply.⁶¹

In February 2022, it was announced that Israel's flag carrier, El Al Airlines, had entered into a non-binding memorandum of understanding to buy smaller local rival Arkia Israeli Airlines.⁶² This merger between El-Al and Arkia is subject to the approval, inter alia, of the government and the Competition Authority, which previously refused to approve a merger between El-Al and another Israeli airline, Israir, in 2018, largely because of concerns about diminishing the competition for internal flights in Israel.⁶³

VII WRONGFUL DEATH

Owing to the pre-emption of claims rule (also known as the exclusivity of grounds of action rule), which applies by virtue of Section 10 of the ATL,⁶⁴ claims relating to the death of passengers in international carriage by air will be subject only to the provisions of the ATL and the Montreal Convention (or other conventions as applicable) adopted by the ATL. Accordingly, in the event of death of a passenger, the carrier will not be able to exclude or

57 Section 47 of the ECL.

58 CA 10538-02-13 *Hatzlaha Foundation v. El-Al Israel Airlines et al* (19 January 2020).

59 CA 3183/20 *Lufthansa et al v. Hatzlaha Foundation* (18 May 2020).

60 Section 19 of the ECL.

61 Section 21(a) of the ECL.

62 'El Al signs agreement to acquire Arkia' (*Globes*, 3 February 2022). Available at: <https://en.globes.co.il/en/article-el-al-signs-agreement-to-acquire-arkia-1001401050>.

63 'Antitrust [now Competition] Authority nixes El Al-Israir merger' (*Globes*, 11 January 2018). Available at: <https://en.globes.co.il/en/article-antitrust-authority-nixes-el-al-israir-merger-1001219106>.

64 The Air Transport Law 1980 (see Section II.i).

limit its liability for damages not exceeding 100,000 special drawing rights (SDRs).⁶⁵ The carrier is not liable for damages exceeding 100,000 SDRs if the death of the passenger is proved not to have been caused by the negligence or other wrongful act or omission of the carrier, its employees and agents, or is proved to have stemmed from the negligence or other wrongful act or omission of a third party.⁶⁶

The ATL provides that a court dealing with a claim filed for damages resulting from the death of a passenger may issue orders it deems just or helpful having regard to the provisions of the ATL limiting the liability of the carrier, to the rights of other persons entitled to claim damages, whether in or outside Israel, for the death of that passenger and regarding other claims that have been or may be filed, whether in or out of Israel, with respect to the death of that passenger.⁶⁷ The ATL also provides that where there are several claimants as a result of the death of one passenger, and the aggregate amount of damages due to all of them exceeds the liability of the carrier under the other provisions of the ATL, the court will award to each claimant, out of the aggregate amount of damages due, an amount proportionate to the amount of damages that it would have awarded to that claimant.⁶⁸

We are not aware of Israeli case law relating to the death of a passenger during carriage by air and providing an authoritative interpretation of the relevant provisions.

VIII ESTABLISHING LIABILITY AND SETTLEMENT

i Procedure

There is no sector-specific regulation regarding the fora and mechanisms to be used in the settlement of claims, so the general rules of Israeli civil procedure are applicable. In January 2021, new Civil Procedure Regulations came into force (the New Regulations).⁶⁹ The New Regulations provide⁷⁰ that within 30 days of the filing of the last pleading, the parties shall conduct a preliminary meeting the purpose of which is, inter alia, to assess the possibility of resolving the dispute by an alternative dispute mechanism. While not sector-specific, this preliminary hearing is relevant for all civil proceedings, including aviation-related claims. In addition, in claims for over 40,000 new Israeli shekels filed with the magistrate's courts,⁷¹ the parties are required to attend a mandatory 'information, introduction and coordination' meeting with a court-appointed mediator to consider the possibility of conducting mediation.⁷² These regulations apply only to civil claims filed after 1 January 2021, while claims filed prior to that date will continue to be governed by the Civil Procedure Regulations 1984 (although certain provisions in the New Regulations may apply to such claims).

65 Article 21(1) of the Montreal Convention.

66 Article 21(2) of the Montreal Convention.

67 Section 13 of the ATL.

68 Section 14 of the ATL.

69 Civil Procedure Regulations 2018 (the New Regulations), which replaced the Israeli Civil Procedure Regulations 1984.

70 Regulations 34–35 of the New Regulations.

71 Except for claims for compensation due to bodily injuries, or claims based on the Compensation for Road Accident Victims Law 1975.

72 Regulation 37 of the New Regulations.

Claims under the ATL and the Montreal Convention (and other applicable conventions) must be brought within two years of the time the cause of action arises.⁷³ Claims under the ASL⁷⁴ must be brought within four years of the time the cause of action arises.⁷⁵ In other cases, the general rules relating to prescription of claims laid down in the Israeli Prescription Law 1958 will apply. That Law provides, subject to certain qualifications, that any action, other than an action relating to land, shall not be brought after the expiry of seven years from the date on which the cause of action arose.

Subject to the court having jurisdiction to entertain an action filed against the defendant concerned, there is no restriction regarding who may be joined as a defendant to the action (e.g., carrier, owner, pilot or manufacturer).⁷⁶ Where the damage is caused to a claimant by the fault of two or more persons then, in principle, and unless the court directs otherwise, each tortfeasor is liable to the plaintiff for all the damage (i.e., liability is joint and several). However, on the application of one of the tortfeasors, the court may direct the contribution by one tortfeasor to another as it deems just and fit in the circumstances.⁷⁷

ii Carriers' liability towards passengers and third parties

The nature of a carrier's liability will depend on the cause of action concerned. It is strict in respect of convention liability, where the relevant conditions of liability contained in the convention are met.⁷⁸ Any convention liability will also be subject to an applicable limit of liability contained therein.⁷⁹ Otherwise, liability will generally be fault-based.⁸⁰ The plaintiff usually bears the burden of proof, but there are circumstances in which the burden is transferred to the defendant. The requisite standard of proof is the balance of probability.

Even though the plaintiff usually bears the burden of proof, in claims based on negligence, the *res ipsa loquitur* rule may result in the transfer of the burden of proof to the defendant carrier. In claims based on the ASL, the burden to prove that a delay or cancellation was caused because of extraordinary circumstances lies with the flight operator or organiser.

iii Product liability

There is no Israeli legislation dealing specifically with liability for defective or damaged products in the aviation sector, so that such liability is governed by the general regime under the Liability for Defective Products Law 1980 (LDPL) and the Civil Wrongs Ordinance (New Version). The LDPL establishes strict liability and provides that a manufacturer must

73 Section 15 of the ATL and Article 35 of the Montreal Convention.

74 The Aviation Services Law (Compensation and Assistance for Flight Cancellation or Change of Conditions) 2012; see Section I.

75 Section 19 of the ASL.

76 See civil file 2474/86 *Nezer v. Kanfonit* (1994).

77 Sections 11 and 84 of the Civil Wrongs Ordinance (New Version). The allocation of liability between wrongdoers *inter se* may be the subject of a contract between them (e.g., a contract whereby one party undertakes to indemnify and hold another harmless).

78 See Section II.i and II.ii.

79 See, for example, Articles 21 and 22 of the Montreal Convention, as incorporated into Israeli law under Section 6 of the ATL.

80 However, see Section II.iv.

compensate any person who has suffered bodily harm as a result of a defect in a manufactured product.⁸¹ Note, however, that in circumstances where the Montreal Convention applies, liability may be limited in accordance with the provisions of the Convention.

iv Compensation

According to the Israeli aviation legislation (giving effect to the international conventions), the duty of the air carrier to compensate an injured party is based on the principle of strict liability, subject to proof of damage and the monetary limits laid down in the conventions and reflected in the Israeli legislation.

The Supreme Court has held that the term ‘bodily injury’ within the meaning of Article 17 of the Warsaw Convention⁸² should be construed broadly, so as to enable the award of damages for mental injury alone.⁸³ In November 2019, the Tel Aviv District Court rendered a fundamental ruling reaffirming that, in accordance with Israeli law, compensation for mental anguish in baggage claims may be awarded by virtue of the Montreal Convention (which applies in Israel pursuant to the ATL). However, the total compensation would still be limited to the maximum amount specified in the Convention for baggage claims.⁸⁴ An application for leave to appeal this ruling was dismissed by the Supreme Court on 14 June 2022, the Court thus confirming that the Montreal Convention does not exclude the possibility of awarding compensation to passengers for mental distress.⁸⁵

The ASL provides for statutory compensation without proof of damage in the case of denied boarding and delay or cancellation of flights, as well as for exemplary damages in the case a carrier fails to fulfil its obligations under the ASL.⁸⁶ However, according to a temporary amendment to the ASL, enacted as a consequence of the covid-19 pandemic, air carriers are exempt from paying statutory compensation for flights cancelled between 1 March 2020 and 6 July 2021.⁸⁷

In August 2020, a district court, in a decision on seven motions to certify class actions against various airlines, and having regard to the exclusivity of grounds of action rule, held that an air carrier may not be sued on grounds other than the ASL in circumstances in

81 Sections 1 and 2 of the LDPL. Section 4 of the LDPL lists a number of defences available to a manufacturer such as that arising if the manufacturer can prove that the defect that caused the damage manifested itself after the product had left the manufacturer’s control, and provided that the product had undergone reasonable safety inspections.

82 Equivalent to Article 17(1) of the Montreal Convention.

83 Civ app 20/83 *Solomon Dadon v. Air France French Air Lines Ltd* (22 October 1984).

84 Leave to appeal (Tel Aviv) 23465-07-17 *Iberia Airlines v. Flaisher-Peled et al* (20 November 2019).

85 Leave to appeal 8456/19 *Iberia Airlines v. Flaisher-Peled* before the Supreme Court.

86 Section 11 of the ASL.

87 Aviation Services Law (Compensation and Assistance Due to Flight Cancellation or Change in Conditions) (New Corona Virus – Temporary Order – Amendment) 2020. Law Book 2826, page 224, which was in force until 6 July 2021.

which the Montreal Convention applies.⁸⁸ The court also ruled that fixed sum statutory compensation under the First Schedule to the ASL cannot be claimed within the framework of a class action because it is a remedy that does not require proof of damage.⁸⁹

In addition to compensation stemming from aviation legislation, passengers who have sustained physical or mental injury in connection with air carriage may also be eligible for additional compensation under Israeli law. For example, the National Insurance Law 1968 (NIL) provides for payment by the National Insurance Institute of a general disability pension to a person covered by the NIL who has a physical, psychological or mental disability resulting in limited earning capacity.

IX DRONES

Israeli aviation regulations enacted in the 1970s and the beginning of the 1980s currently constitute the regulatory framework for the operation of drones and model aeroplanes (together, unmanned aerial vehicles (UAVs)).⁹⁰ Because of the increasing use of UAVs for various purposes in recent years, and the realisation that UAVs pose a threat to air safety (for example, in February 2019, take-offs and landings at Israel's TLV airport were suspended because of the proximity of drones),⁹¹ the CAAI has circulated two sets of draft regulations governing the public use of drones (weighing from 250 grams to 25 kilograms) and model aeroplanes (weighing up to 150 kilograms).⁹² In view of the simplicity of the US Federal Aviation Administration Regulations⁹³ dealing with this topic, and the experience gained from their implementation since their introduction in 2016, the draft regulations prepared by the CAAI rely on the US model rather than the corresponding European provisions.⁹⁴ The proposed regulations will deal with the central aspects of UAV operation, such as the requirements relating to the UAV operator (principally, minimum age and the need for a licence), requirements regarding UAV software and hardware, and strict rules regarding the operation of drones in public places (including a ban on operation without direct eye contact, in proximity to an airport or within residential neighbourhoods). The draft regulations were published for review, and hearings of objections raised against the draft were held on 10 April 2019 and 6 May 2019. The draft regulations were approved recently by

88 CA 55278-03-18 *Be'er v. Aeroflot* (19 August, 2020; sec. 20-21) (*Be'er Claim*). An appeal was filed with the Supreme Court (civil appeal 7347/20), and the hearing of the appeal is scheduled for 1 August 2022; see also CF (Tel-Aviv) 7262-10-18 *Haziza el al v. Arkia Israeli Airlines* (10 January 2021), paragraph 12.

89 *Be'er Claim*, paragraphs 8-11; a similar conclusion was reached by the District Court in CA 44555-03-19 *Dahan v. Israir Company Ltd* (27 May 2020), paragraph 34; in CA 50259-07-19 *Shalom Itzhak Zoarez v. Israir aviation and Truism Ltd* (20 December 2020), paragraph 23; and in CA 59220-11-16 *Gelbert v. Arkia Israeli Airlines* (22 December, 2021), paragraph 113.

90 Mainly, the Aviation Regulations (Operation of Aircraft and Flight Rules) 1981.

91 'Drones briefly halt Ben Gurion flights' (*Times of Israel*, 2 February 2019), available at <https://www.timesofisrael.com/jets-scrambled-after-civilian-plane-flies-over-sderot-without-coordination/>.

92 The final versions were published on 2 March 2022 after receiving final confirmation from the Ministry of Justice: Aviation Regulations (Operation of a Small Drone), 2022; and Aviation Regulations (Operation of a Model Airplane), 2022.

93 14 CFR §107 – Small Unmanned Aircraft; https://ecfr.io/Title-14/cfr107_main.

94 Explanatory notes to the Draft Regulations, pp. 36–37.

the Israeli Air Force and the Ministry of Justice, and currently await the additional approvals necessary for completion of the process, including, inter alia, approvals by the Minister of Defence, the Minister of Finance and the Economics Committee of the parliament.⁹⁵

X VOLUNTARY REPORTING

To the best of our knowledge, there are no voluntary reporting provisions or initiatives in Israel.

XI THE YEAR IN REVIEW

During the past year, the Israeli aviation market has been recovering from the devastating effects of the covid-19 pandemic. This can be seen, for example, in the steady increase in Israeli passengers flying on international flights, with the first quarter of 2022 showing numbers resembling those from pre-covid-19.⁹⁶ Other developments of interest over the past year include the opening of new commercial routes to and from Israel. Thus, on 13 March 2022, Morocco's national airline, Royal Air Maroc, made its first direct flight to Israel since the two countries normalised ties in 2020,⁹⁷ and in April 2022, for the first time, Philippine Airlines launched direct flights between Manila and Tel Aviv (crossing Saudi airspace).

Developments in litigation and case law include a judgment rendered in September 2021 by the District Court for the Central District in an action filed against Air France and five other carriers by 127 travel agencies and the Israel Association of Travel Agencies and Consultants (IATAC). In its judgment, the Court ruled that airlines have the freedom to fix a 1 per cent (or higher) commission rate as remuneration for travel agencies, under International Air Transport Association Resolution 824, thus bringing to an end a 10-year legal battle between the parties.⁹⁸ This judgment complements an earlier judgment rendered by the District Court⁹⁹ dismissing a claim filed by IATAC and 120 travel agencies against British Airways (BA), in which it was held that the termination by BA of its agreements with travel agencies that did not agree to the cancellation of their entitlement to commissions from BA (as part of a global change implemented by BA) was not in bad faith, and that the termination was therefore lawful.

In June 2021, after a six-year battle, a claim filed by five travel agencies (backed by IATAC) against BA and three operators of global distribution systems (GDS) for allegedly

95 See: <https://www.gov.il/he/Departments/General/department-of-justice>.

96 Michel Raz-Chaimovitz, 'Fares jump as Israelis rush to book vacations abroad' (*Globes*, 21 Feb 2022). Available at: en.globes.co.il/en/article-fares-jump-as-israelis-rush-to-book-vacations-abroad-1001403020.

97 *Globes* correspondent, 'Royal Air Maroc inaugurates Tel Aviv–Casablanca flights' (*Globes*, 13 March 2022). Available at: en.globes.co.il/en/article-royal-air-maroc-inaugurates-tel-aviv-casablanca-flights-1001405375.

98 See Civil Claim 53510-12-11 *The Israel Association of Travel Agencies and Consultants v. Air France* (19 September 2021).

99 Originating Motion 3491-04-08 *The Israel Association of Travel Agencies and Consultants et al v. British Airways PLC* (23 February 2010); a supplementary judgment – which did not change the original outcome – was rendered on 20 February, 2014. An appeal to the Supreme Court (Civil appeal 3236/14) was dismissed with the consent of the parties on the recommendation of the court.

denying the travel agencies access to information about BA's flights on the GDS following the termination of their appointment as authorised BA agents was dismissed with the consent of the parties with respect to BA¹⁰⁰ and subsequently with respect to the GDS operators.¹⁰¹

On 2 June 2022, on the Supreme Court's recommendation, an appeal against a district court judgment dismissing a class action against a foreign airline with no permanent presence in Israel was withdrawn and dismissed. Furthermore, the Court held that in such circumstances (and since in any event the law governing the agreement between the airline and the passengers, as provided therein, was a foreign law), the provisions of the Israeli Consumer Protection Law and, in particular, those dealing with the right of a consumer to cancel an online transaction within 14 days of it being entered into (subject to paying a small fee) do not apply to foreign airlines.

On 14 June 2022, the Supreme Court reaffirmed a district court judgment, holding that, in the context of a claim for damages caused by delay in the carriage of baggage, the Montreal Convention (which applies in Israel pursuant to the ATL) does not exclude the possibility of awarding compensation to passengers for mental distress.

On 24 March 2022, the Tel Aviv District Court granted a joint application to stay the proceedings in a motion to certify a class action filed against EasyJet, claiming a breach of EasyJet's duties under the European General Data Protection Regulation (GDPR) after personal information relating to its passengers was exposed to the public following an attack on EasyJet's computer systems. The court held that the proceedings in Tel Aviv should be stayed until a similar claim filed against EasyJet in the United Kingdom was decided. Notably, in the context of these proceedings and from an Israeli law perspective, as the GDPR is a foreign law it has no binding force in Israel. Israel has its own legislation to safeguard personal information (the Privacy Protection Law 1981). Conducting a class action in Israel based on an alleged breach of a foreign law, against the background of there being binding Israeli legislation governing the same field, is likely to be complicated and to raise issues relating to the conflict of laws.

XII OUTLOOK

Although the impact of the covid-19 pandemic on the Israeli aviation market is rapidly dissipating, the market now faces new challenges: the aviation industry suffers from an acute shortage of staff. This fact, combined with changes made at BGA because of the covid-19 pandemic (such as the conversion of check-in counters to polymerase chain reaction (known as PCR) testing complexes), is causing lengthy delays and long queues for the entry and exit of passengers.¹⁰² Ramon International Airport, which opened in the south of Israel in 2019 after investment of 1.7 billion new Israeli shekels in its construction, is currently empty with no significant activity taking place. To date, the government (namely the Ministry of Transportation and the Ministry of Tourism) has not been able to formulate a plan addressing the problem.¹⁰³ On a more optimistic note, the Israeli aviation sector has undergone major changes in recent years in the wake of positive geopolitical developments the effects of which

100 Civil File 23199-08-16 *Elite Travel and Tourism Ltd et al. v. British Airways et al.* (20 June 2021).

101 Civil File 23199-08-16 *Elite Travel and Tourism Ltd et al. v. British Airways et al.* (10 October 2021).

102 Michal Raz-Haimovich, *Globes* (5–6 April 2022), p. 34.

103 https://www.themarket.com/dynamo/cars/.premium-MAGAZINE-1.10778587?utm_source=App_Share&utm_medium=Android_Native&utm_campaign=Share.

have not yet been felt fully on account of the negative impact of the covid-19 pandemic. Following the signature of the Abraham Accords, establishing diplomatic relations between Israel, the United Arab Emirates and Bahrain, as well as Israel's normalisation agreement with Morocco, new bilateral aviation agreements were signed between Israel and each of these countries, and regular direct flights between Israel and these countries have already begun and are expected to grow in frequency. In December 2020, as a result of the normalisation introduced by the Abraham Accords, Saudi Arabia (which does not have formal diplomatic relations with Israel) granted approval for Israeli airlines to fly over the country's airspace (a similar approval was granted to foreign airlines in March 2018) to the United Arab Emirates and Bahrain. In April 2022, Philippine Airlines launched direct flights (crossing the Saudi airspace) between Manila and Tel Aviv. If this trend continues, it is expected to lead to a positive impact on tourism and trade in and with Israel.

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Eyal Doron is co-chair of S Horowitz & Co's aviation and transport practice group. He is a commercial litigator with extensive experience in acting for international and domestic clients on a broad range of civil, contractual and commercial matters (including class actions) before the entire range of Israeli courts. His clients include large airlines and major participants in the aviation field, financial institutions, universities, high-tech companies and other commercial corporations. Ranked by *Chambers Global* in the transportation category, Eyal has been described by Chambers as 'highly knowledgeable, looks at the broad picture, and thinks strategically and practically', and 'He will go above and beyond to protect his clients' interests.'

Mr Doron is experienced in representing global companies on cross-border high-value and multiparty claims, and has accrued significant experience in the complexities of private international law, including in relation to areas such as banking, inheritance and foreign philanthropic law, breakdowns in agency and distribution agreements, and insolvency.

Mr Doron was the recipient of the prestigious Pegasus Scholarship of 1999, a full-board scholarship awarded to outstanding law students worldwide for master's degree studies at Oxford University. He has had practical training with a City of London law firm and a barrister. He gained his Bachelor of Civil Law degree from Worcester College, Oxford University, as well as Bachelor and Master of Laws degrees (*magna cum laude*) from Tel Aviv University.

He is licensed to practise law in Israel and in New York, and was certified pursuant to the IATA International Air Law for Lawyers training.

HUGH KOWARSKY

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Hugh Kowarsky is co-chair of S Horowitz & Co's aviation and transport practice group. He has vast transactional and litigation experience spanning aviation law, intellectual property, investment banking and financial services, securities law, mergers and acquisitions and corporate law.

Hugh advises airlines, global courier companies, trade associations, global distribution transport ticketing system operators, insurance companies and shippers on all legal, regulatory and contractual issues affecting the transport and aviation industry. His clients include major participants in the aviation and transportation industry.

Ranked in the first tier of *Chambers Global's* transportation category, Hugh has been described by Chambers as 'one of the best' and 'totally dedicated to aviation and very respected'. His work in the field has been by recognised as being 'very impressive, intelligent, and professional' (The Legal 500).

Mr Kowarsky is a graduate of the University of the Witwatersrand, South Africa, and of Magdalen College, Oxford. He has served as the honorary legal adviser to British ambassadors in Israel for more than 40 years and was awarded the OBE in recognition of legal services rendered to the United Kingdom.

Appendix 2
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