



ICLG

The International Comparative Legal Guide to:

Aviation Law 2013

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Myanmar



James Finch

DFDL

1 General

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

- The Union of Myanmar Aircraft Act, 1934.
- The Union of Myanmar Aircraft Carriage by Air Act, 1934.
- The Union of Myanmar Aircraft Rules, 1920 (Aerodromes).
- The Union of Myanmar Aircraft Rules, 1937 (Aircraft).
- The Union of Myanmar Aircraft Rules, 1946 (Public health).

(The Myanmar Aircraft Act and Rules were amended on 25th August 2004.)

In Myanmar, the Department of Civil Aviation (DCA), under the Ministry of Transport, is the governmental body that regulates and controls civil aviation activities.

The Director General of Civil Aviation Department, who heads DCA with the authority bestowed on him by the President under section 5 (A) paragraph (c) of the Myanmar Aircraft Act 1934, has the power to issue orders, notices, requirements and directives or instructions such as Airworthiness Notices, Flight Operation Notices and Advisory Circulars for the regulation and management of civil aviation.

(Notification 118/2009 dated 9th October, 2009.)

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

The DCA, under the Ministry of Transport, empowered by the President in accordance with the relevant legislation, is the sole competent authority to issue a permit to operate.

An aircraft may be registered in the Union of Myanmar in one or other of the following categories, namely:

- (a) **Category A. If the aircraft is wholly owned:**
- (i) by organisations controlled by the Union or by a State or by local authorities;
 - (ii) by citizens of the Union; or
 - (iii) by companies or other associations organised under the laws in force in the Union, not less than sixty per cent of whose capital is owned by the Union or by any State or by any local authority or by citizens of the Union; and
- (b) **Category B. If the aircraft is wholly owned:**
- (i) by persons, resident in or carrying on business in the Union, who are not citizens of the Union; or

- (ii) by companies or other associations which do not qualify for Category A but are carrying on business in the Union.

No aircraft which do not satisfy the condition required in Sub Rule (2) and/or which are validly registered in another country shall be registered in the Union of Myanmar.

Nature of Application

- (1) Every application for a certificate of registration shall be accompanied by:
 - (a) such particulars relating to the aircraft as may be required;
 - (b) the fee prescribed in Rule 35, which fee shall be returned if the application is not granted; and
 - (c) in the case of aircraft imported by air, a certificate signed by a Chief Customs Officer or Customs Collector that the respective customs duty levied has been paid. Such certificate shall state the type and manufacturer's number of the aircraft and engine, and, if the aircraft has been registered elsewhere, its registration marking.
- (2) An applicant for a certificate of registration may be required to produce proof of the truth of the statements contained in his application.

Licensing of Air Transport Services

Applications:

- (1) Applications for a licence to operate an air transport service shall be made to the Director of Civil Aviation, Myanmar, not less than three months before the date on which it is desired to commence the service unless the President has appointed a last date for the receipt of applications, in which case the applications shall be made on or before that date.

Applications for a temporary licence, i.e., a licence to operate an air transport service for a period not exceeding 60 days, shall be made to the Director of Civil Aviation, Myanmar, not less than 15 days before the date on which it is desired to commence the service, notwithstanding that the President may relax this requirement in case of emergency.
- (2) The application shall be: made on a form which will be supplied by the Director of Civil Aviation, Myanmar, on request; signed by the person applying for the licence or, if made by any corporate body, by a person duly authorised by such body; and accompanied by such information as may be required for the purposes of these Rules.

Documents to be submitted to the Director General of DCA

- the postal address, telephone and fax numbers, as well as telex and e-mail addresses, of the airline's head office;
- a copy of the instrument relating to incorporation of the airline and concise details about equity participation in the airline;

- names and nationalities of the Board of Directors of the airlines;
- a copy of the valid air operator certificate or equivalent document issued by the State of the Operator;
- a copy of the air transport licence or equivalent document authorising the airline to operate scheduled international air services issued by the State which designated the airline;
- copies of valid insurance policies showing the passenger, cargo, baggage and third party liability coverage of the airline;
- details of the fleet of aircraft to be utilised in the operation of the agreed services, together with their registration particulars indicating whether they are owned or taken on lease by the airline. In case of use of leased aircraft, a copy of the relevant lease agreement(s) must be provided;
- the title and the postal address, telephone and fax number, as well as telex and e-mail addresses, of the airworthiness, licensing and accident investigation authorities in respect of the airline; and
- a delegation of authority by the chief executive of the airline to the airline's local representative(s) who will be authorised to act on behalf of the airline in matters (which shall be stated in terms of authorisation) concerning the DCA, Myanmar.

The above documents shall be furnished at least 60 days prior to the proposed date of commencement of the airline services so as to enable the issuance of the permit to operate in good time.

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

The DCA, under the Ministry of Transport, administers air safety in accordance with the legislation, that is, the Union of Myanmar Aircraft Act, 1934 and the Union of Myanmar Aircraft Carriage by Air Act, 1934. All air safety aspects including aircraft, operators, maintenance and personnel are regulated accordingly.

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

As far as air safety is concerned, commercial, cargo and private carriers are regulated by the same legislation.

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

No legislation has been singled out in respect of commercial, cargo and private carriers. It appears that the Aircraft Act, Aircraft Carriage by Air Act and Aircraft Rules regulate all aspects of the aviation industry.

1.6 As regard to international air carriers operating in Myanmar, 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.

Myanmar, being a party to the Chicago Convention 1944, has certain provisions prescribed by its legislation following the obligations of the Convention and exercises the standards and recommended practices of the Convention.

Any aircraft engaged in international navigation shall be registered, provided that, in the case of aircraft not registered in Myanmar, personnel who are in charge of it shall be licensed in accordance

with the regulations of the State in which the aircraft is registered. Also, the following documents issued by the State in which the aircraft is registered shall be carried on board the aircraft, viz.:

- (i) the certificate of registration;
- (ii) the licences of the personnel;
- (iii) the certificate of airworthiness;
- (iv) the journey log book;
- (v) the Aircraft Technical Log;
- (vi) where radio communications equipment is carried in the aircraft, the permit or licence for such equipment;
- (vii) where the aircraft carries passengers, a list of their names showing their place of origin and destination; and
- (viii) where the aircraft carries goods, air consignment notes and manifests in respect thereof.

Use of aerodromes by aircraft registered in Myanmar upon payment of charges shall, to the same extent and upon the same conditions, be open to use by aircraft possessing the nationality of a Contracting State.

At every aerodrome, tariff charges, including charges for landing and length of stay, are applicable alike to all aircraft, whether registered in the Union of Myanmar or in any other Contracting State.

1.7 Are airports state or privately owned?

Airports are State owned.

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

Use of airports is subject to conditions and charges. The charges are made on a per movement basis, and include:

- landing charges;
- parking charges;
- hanger/housing charges; and
- passenger loading bridge (Aerobridge) charges.

"Overflights" are counted as one movement, and arrivals and departures are counted as two movements.

There was a recent notification made by DCA requiring all commercial airline operators to appoint local legal agents (effective as from 1st July 2012).

It has been indicated that DCA, being aware of administrative and monetary affairs in respect of the overflight/landing traffic, is giving priority to airline operators who have appointed a local legal agent for the issuance of clearance such as overflight clearance, landing clearance and monetary issues.

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?

The principle legislation relating to the investigation of air accidents includes:

- The Union of Myanmar Aircraft Act 1934.
- The Union of Myanmar Aircraft Rules 1937.

The above legislation applies to air accidents and, by which, DCA, empowered by the President, has the authority to order the investigation of any air accidents.

Information regarding air accidents is required to be sent both to the

Director of Civil Aviation, Myanmar, and to the District Magistrate and the Officer in charge of the nearest Police Station.

The notice to the Director of Civil Aviation, Myanmar, must contain the following information:

- (i) the nationality and the registration marks of the aircraft;
- (ii) the name of the owner and hirer (if any) of the aircraft;
- (iii) the name of the pilot of the aircraft;
- (iv) the place where the accident occurred;
- (v) the date and time when the accident occurred;
- (vi) the nature of the accident;
- (vii) a brief statement of the extent of damage to the aircraft; and
- (viii) whether death or personal injury was caused by the accident, and, if so, to whom.

2 Aircraft Trading, Finance and Leasing

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

The Union of Myanmar Aircraft Rules, 1937 provides rules to be observed by the aircraft for the purpose of registration (Rule-30).

Registration of ownership does not constitute proof of ownership but does constitute non-conclusive *prima facie* evidence when it comes to dispute of ownership.

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 register of aircraft mortgages and charges.

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

There are no particular regulatory requirements in Myanmar with respect to leasing or financing.

2.4 Is Myanmar a signatory to the main international conventions (Montreal, Geneva and Cape Town)?

Convention on International Civil Aviation, Chicago, 1944 (Chicago Convention)

Myanmar was a signatory to the Chicago Convention in 1944 and it was ratified on 8th July 1948 prior to its effective date of 7th August 1948.

Convention on Offences and Certain Other Acts Committed on Board Aircraft, Tokyo, 1963 (Tokyo Convention)

Myanmar was a signatory to the Tokyo Convention in 1963 and it was ratified on 23rd May 1996 prior to its effective date of 21st August 1996.

Convention for the Suppression of Unlawful Seizure of Aircraft, the Hague, 1970 (The Hague Convention)

Myanmar was a signatory to the Hague Convention in 1970 and it was ratified on 22nd May 1996 prior to its effective date of 21st June 1996.

Convention for the Suppression of Unlawful Acts Against the Safety of Civil Aviation, Montreal, 1971 (Montreal Convention)

Myanmar was a signatory to the Montreal Convention in 1971 and

it was ratified on 22nd May 1996 prior to its effective date of 21st June 1996.

Protocol for the Suppression of Unlawful Acts of Violence at Airports Serving International Civil Aviation, Supplementary to the Convention for the Suppression of Unlawful Acts Against the Safety of Civil Aviation, done at Montreal on 23rd September 1971, Montreal, 1988 (Montreal Supplementary Protocol 1988)

Myanmar was a signatory to the Montreal Supplementary Protocol in 1988 and it was ratified on 22nd May 1996 prior to its effective date of 21st June 1996.

Convention on the Marking of Plastic Explosives for the Purpose of Detection, Montreal, on 1st March 1991

Myanmar was a signatory to the Montreal Convention on the Marking of Plastic Explosives for the Purpose of Detection in 1991 and it was ratified on 1st September 2004 prior to its effective date of 31st October 2004.

Note: Reservation - Myanmar does not consider itself bound by Article XI, paragraph I, of the Convention on the Marking of Plastic Explosives.

Declaration, in accordance with Article XIII, paragraph 2 of the Convention, that Myanmar is not a producer state of plastic explosives.

Convention for the Unification of Certain Rules Relating to International Carriage by Air, Warsaw, on 12th October 1929 (Warsaw Convention)

Myanmar was a signatory to the Warsaw Convention in 1929 and it was ratified on 2nd January 1952 prior to its effective date on 4th January 1948.

Note: in the Instrument of adherence of 20th November 1951 received by the depositary on 2nd January 1952, the Government of Burma (now Myanmar) stipulated that it considered itself bound without interruption by the Warsaw Convention (before Myanmar became independent, acceptance of the Convention was effected by the United Kingdom on 20th November 1934).

The Cape Town Convention on International Interests in Mobile Equipment (Cape Town Convention)

Myanmar acceded to the Cape Town Convention on 3rd December, 2012, with effect beginning 1st April, 2013.

2.5 How are the Conventions applied in Myanmar?

Myanmar, pursuant to Articles 12 and 28 of the Convention on International Civil Aviation, Chicago Convention, undertakes to provide air navigation facilities and standard systems, with the legislation being applicable throughout the jurisdiction as a matter of international law.

3 Litigation and Dispute Resolution

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

An unpaid seller in possession of aircraft may retain possession of the aircraft until payment is received (Sale of Goods Act 1930).

Under the Union of Myanmar Aircraft Act, 1934, the provisions of Part VII of the Myanmar Merchant Shipping Act, 1923, relating to Wreck and Salvage apply to aircraft on or over the sea or tidal waters such as they apply to ships, and the owner of aircraft shall be entitled to a reasonable reward for salvage services rendered by the aircraft in like manners as the owner of a ship.

Under the Union of Myanmar Aircraft Act, 1934, the airport authority who controls the aerodrome may detain an aircraft where its operator has not paid the airport charges in respect of that aircraft, or of any other aircraft, which that operator operates.

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?

There is not a regime of self-help. The usual course of action is to obtain a court order.

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 Myanmar regarding the courts in which civil and criminal cases are brought?

No court has been set up for aviation disputes in particular. In general, any court having jurisdiction is considered as a competent court to hear aviation disputes, if the place of the dispute falls within the jurisdiction of a particular court. Myanmar courts are limited by pecuniary norms, and aviation cases, within these norms, can be heard by the relevant courts.

In Myanmar, courts are empowered to be able to try both civil and criminal cases.

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

Remedies available depending on the nature of dispute in general terms are:

- i) on an interim basis:
 - an injunction order to prevent the other party from doing something until final judgment is reached; and
- ii) on a final basis:
 - reliefs:
 - by delivery of property specially decreed;
 - by attachment and sale or by sale without attachment of any property;
 - by arrest and detention of the judgment-debtor in prison;
 - by appointing a receiver; and
 - and in such other manners befitting the relief granted.

3.5 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?

In Myanmar, the structure of the courts is composed of Township Courts, District Courts, Division/State Courts, and the Supreme Court. Under given circumstances, decisions of each may be appealed to the next higher court.

An appeal to court requires no permission.

In Myanmar, no Arbitration Tribunal is set up separately. The courts are empowered by the Arbitration Act 1944 to execute decisions or awards made by the arbitrators who are appointed by the former.

As for appeals, the Arbitration Act 1944, section 39, provides that the right to appeal arises from an order:

- (i) superseding an arbitration;
- (ii) on an award stated in the form of a special case;
- (iii) modifying or correcting an award;
- (iv) filing or refusing to file an arbitration agreement;
- (v) staying or refusing to stay legal proceedings where there is an arbitration agreement; or
- (vi) setting aside or refusing to set aside an award.

There is no higher appeal that may be taken from an order passed in appeal under this section.

4 Commercial and Regulatory

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

There is no explicit legislative control over airline competition, though, Myanmar, under the Myanmar Company Act 1914, regulates business organisations in general. So far as the airline industry is concerned, it is supervised by DCA.

4.2 How do the competition authorities in Myanmar determine the "relevant market" for the purposes of mergers and acquisitions?

There are no competition authorities under Myanmar law, but any such determination would be made by the Ministry of Commerce under the existing legislation.

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

No, there is no notification system.

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

Under Myanmar law, there is no explicit control of mergers, acquisition mergers and full function joint ventures. In general, however, company law is regulated by the Myanmar Company Act 1914 and the Myanmar Foreign Investment Law 2012.

4.5 Please give an outline of the procedure, including time frames for clearance and details of any costs of notifications.

There is no procedure to be followed in respect of these.

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

No, there is no specific rule on State aid for the aviation sector.

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

No, there are no State subsidies.

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 are no regulatory instruments.

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?

There are no obligations on an airline which has lost data.

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?

There is no Intellectual Property Office in Myanmar, though Myanmar has since become a member of the WTO (1994) and the WIPO (2001).

For copyright protection, no prescriptive formalities are required, such as registration. Under the Copyright Act 1914, the owner of the copyright can seek civil remedies by way of injunctions or interdict. The term for copyright, prescribed by this Act, includes the author's life and 50 years after his death.

No new legislation has yet been enacted for the protection of patents and designs since the abrogation of the Burma Patents and Designs Act, 1945.

A trademark is defined as "a mark used for denoting that goods are the manufacture or merchandise of a particular person" (Penal Code 1861, Section 478; The Burma Merchandise Marks Act, 1889).

Under the Specific Relief Act, 1877, a trademark is a property and belongs to the person who invents and uses it on his goods.

To acquire the rights to trademarks, a trademark must be registered, under the Registration Act, 1908, Direction 13, by means of a declaration of ownership. By doing so, it will give rise to a *prima facie* evidence as an exclusive and prior user of the said trademark.

Both penal and civil actions can be taken against any infringement at a competent court having jurisdiction.

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

There is no legislation governing the denial of boarding rights.

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

So far as the late arrival and departure of flights are concerned, no provisions have been prescribed.

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

There is no particular legislation by which the airport authorities are governed, but they are under the control of the Ministry of Transport.

4.14 What global distribution suppliers (GDS) operate in Myanmar?

No GDS operate in Myanmar.

4.15 Are there any ownership requirements pertaining to GDS's operating in Myanmar?

There is no such ownership requirements (see question 4.14 above).



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James Finch's experience in the legal field spans three decades and has taken him to the Middle East, Latin America, the Caribbean and Asia. Within Asia, James has worked in Hanoi and in 1996 he moved to practice in Yangon, Myanmar. In Myanmar he has advised on energy, hard minerals, corporate issues, tax, aircraft leasing, hotel development, banking and finance matters, among others. During this period he also served on Russin & Vecchi's management committee for several years. In 2005, Jim joined DFDL as Senior Of Counsel to establish DFDL's Myanmar practice, as well as advise clients in Laos and Cambodia. In 2007 the former Russin & Vecchi office in Yangon changed its name to Myanmar Thanlwin Legal Services Ltd and entered into an exclusive affiliation with DFDL. Jim continues to provide advice on Myanmar legal issues in Yangon. He speaks English and Spanish.



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