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**PRIVATISATION OF AIRPORTS -
ROLE OF THE REGULATORY AUTHORITIES - A SAFETY PERSPECTIVE**

By

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1 INTRODUCTION

1.1 The air transport system is an important contributor to the quality of life of people and an essential part of world business globalization. Increasing passenger and cargo traffic places further demands on airports to provide adequate facilities and services to ensure safety, regularity and efficiency of aircraft operations. The average annual growth rate worldwide measured in passenger - kilometres over the period of ten years from 1995 to 2005 is estimated at 5 percent. To meet the ever-increasing growth of air traffic, airports need to expand as and when needed especially for handling larger aircraft carrying more passengers than before. The result is that airport administrations are faced with a heavy financial investment programme for improvement and development to meet these needs in the most efficient manner possible. The rapidly changing economic scenario has led to the view that divestment of airports and air traffic services would bring in the much needed funds while facilitating the State to focus on development of other socially important sectors.

2. CURRENT SITUATION AND CHANGING SCENARIO

2.1 To start with, airports were operated by States through appropriate governmental agencies which had the necessary human and financial resources. It was not very difficult to oversee the operation of such government-owned airports. Over a period of time, this has metamorphosed into the establishment of specialized airport authorities for the operation, management and maintenance of airports. Most airports are still, as a rule, government-owned (by a State, provincial or municipal government or a combination of any of these), although a small number of airports are already under private ownership. Therefore, States have been able to ensure safety of aviation even where direct control of airports has passed on to airport authorities.

2.2 The number of such airport authorities is growing in all regions. Worldwide experience gained from these developments indicates that where airports (and air navigation services) have been operated by autonomous authorities, their overall financial situation and operating efficiencies have generally tended to improve. This has been more pronounced in the case of airports whose management has been passed on to the autonomous authorities whereas air traffic services have been retained under governmental controls. Consequently, ICAO generally recommends that States consider the desirability of establishing authorities to manage airports, air navigation services, or both, where improved efficiency and financial results would be achieved.

2.3 Autonomous airport authorities have functioned well where they have been vested with financial independence. They vary considerably in the degree of freedom they are given to make decisions pertaining to their activities. However, where such independence is lacking, many such authorities continue to seek governmental funding. This places an additional demand on the government resources either leading to scarcity in one sector or delay in the development or maintenance activities due to lack of sufficient funds. It is in this context that private sector participation in airport ownership, operation and management has come into focus.

2.4 There is a growing trend of privatisation of major autonomous airport authorities as well as government operated airports as a whole or in part. Privatisation may offer significant benefits in certain cases. It could relieve States of the burden of heavy capital investment and could give airport management direct access to the open market for loans or capital for investments in new airports, expansion or rehabilitation projects. It may also offer significant benefits by freeing management from certain constraints, particularly regarding the development of non-aeronautical aspects of the airport business. Privatisation of airports also has other advantages, from the government's point of view, of making the government resources available for use in other important sectors such as health, education, agriculture and housing. Nevertheless, the need to ensure safety of operations at all times remains as the most important objective. To this end, the responsibilities of States for ensuring safety cannot be over emphasised.

3. RESPONSIBILITY UNDER THE CONVENTION ON INTERNATIONAL CIVIL AVIATION

3.1 Article 15 of the Convention on International Civil Aviation requires that every aerodrome in a Contracting State open to public use by its national aircraft shall be open under uniform conditions for the aircraft of all other Contracting States. The responsibility for ensuring safety, regularity and efficiency of aircraft operations at aerodromes rests with individual States. In this regard, under Article 28 of the Convention, States undertake to provide the necessary airport and air navigation infrastructure in accordance with the international specifications established from time to time pursuant to the Convention. Being a signatory of the Convention, each Contracting State has the ultimate responsibility to ensure safety of operations within its sovereign territory. Additionally, under Article 37 of the Convention, States also agree to adopt the international specifications developed by ICAO in an effort to harmonize regulations, standards, procedures and organization in relation to, amongst others, airports and air navigation aids. Therefore, the States are obliged to ensure compliance with the applicable standards and regulations in the interest of safety, efficiency and regularity of operations. This obligation on the part of a Contracting State remains unchanged even today.

4. NEED TO RETAIN STATE'S REGULATORY FUNCTIONS

4.1 Traffic growth and safety go hand in hand. With its high profile, the air transport industry's performance, particularly its safety, is always the focus of the media. Notwithstanding a decline in the aircraft accident rates in the last decade, it has reached an almost constant rate leading to a possibility of the number of accidents increasing with the expected traffic volume growth. Hence, there is a need for making all efforts to reduce the accident rate.

4.2 The process of airport privatisation with the control of operation and management passing on from governmental authorities to private entities, usually a conglomerate of companies often led by a financial institution, may have some safety implications. Privatized airports will aim at ensuring that they operate as profitable commercial enterprises. To this end, the focus may not only be on maximizing non-aeronautical revenues but also on attracting additional air services (and establishing inter-airport alliances) through direct or indirect participation in air services agreements. Slot allocation and management may take a new status. It is of paramount importance that State civil aviation administrations exercise greater vigil and control to ensure that safety is not compromised. States should ensure, before awarding the privatisation contract, that the successful applicant has the necessary, well-qualified and experienced staff to ensure, at all times, that safety is not jeopardized. It is also important that the civil aviation administration continues to exercise its prerogatives to intervene and inspect whenever needed from the safety standpoint, keeping in view its obligations under the Convention.

5. NEED FOR APPROPRIATE LEGISLATION TO ENFORCE SAFETY OVERSIGHT FUNCTIONS

5.1 Airports are about to experience significant changes in the years to come. They will have to cope with the possible evolution from being largely State-supported entities to becoming more and more commercial and competitive entities. They will have to face conflicting demands from airlines for increased capacity and from environmentalists seeking to ensure that progress will not be made at the expense of the environment. Passengers will require easy access to airports and improved terminal facilities while regional and local planning authorities will expect increased social and economic activities in terms of opportunities for employment and business ventures. The air transport sector's move towards global alliances will, in some instances, require significant changes to passenger terminal facilities. In addition, privatisation of an increasing number of airports may lead to pressure from shareholders for increased profit margins. At the same time, new technologies will revolutionize airport operations and more comprehensive airport management systems will become instrumental in running airports efficiently in the future.

5.2 Privatisation requires careful consideration of a number of factors. Fundamental among these is that an airport is, in essence, a monopoly on which the users - aircraft operators, passengers and shippers alike - are highly dependent. Consequently, a number of safeguards must be implemented before proceeding with privatisation. All obligations such as freedom of access, non-discrimination between categories of users and conformity with international agreements and obligations should apply to all airports, regardless of ownership. In particular, there is an obligation to conform to ICAO policies and principles, notably those contained in the Convention on International Civil Aviation and its Annexes.

5.3 In order to meet these obligations in the new privatized environment, it is necessary that States have appropriate legislation in place to retain their prerogative to intervene, whenever needed, for ensuring safety. Inclusion in the State's aviation regulations of the requirement of certification of aerodromes open to public use is necessary for the civil aviation administration to be vested with powers to enforce compliance with the applicable rules and procedures. The two pre-requisites for the introduction of the aerodrome certification regulatory system are the existence of basic aviation laws in this regard and of an appropriate State entity with the necessary authority and resources to carry out the task of inspection and

certification of airports. However, it must be noted that even in the privatised environment, aviation security aspects would remain with the State.

5.4 Privatisation of airports will further support the need for a clear division between safety regulator and service provider functions. The effect of privatisation of airports and air navigation services may be felt in the extent of implementation of ICAO provisions by the operators with their new mandate to run these facilities as commercial ventures. Yet, the responsibility of the State towards its obligations to ICAO remains unchanged. Therefore, in this changing aviation safety environment, the role of the regulatory authorities takes a new dimension. Regulators will have to further focus on safety policies and safety oversight through inspection to ensure adequacy of facilities and services available at those airports.

6. CURRENT ICAO UNIVERSAL SAFETY OVERSIGHT AUDIT PROGRAMME

6.1 ICAO's Safety Oversight Programme started as a voluntary programme to assess the safety oversight capability of States in the fields of personnel licensing and training, Aircraft Operations and Airworthiness. Subsequently, as recommended by the Directors General of Civil Aviation when they met in Montreal in November 1997, the 32nd General Assembly of ICAO approved (in 1998) the transformation of the programme into one of mandatory auditing of the safety oversight functions as from January 1999.

6.2 The voluntary safety oversight assessment programme became the mandatory safety oversight audit programme since January 1999 with the establishment of the Safety Oversight Audit Unit within the Operations and Airworthiness Section in the Air Navigation Bureau of ICAO. So far, safety oversight audits have been carried out in forty one States in the above-mentioned fields.

6.3 The DGCA Conference also recommended that potential expansion of the safety oversight programme to cover initially airports and air traffic services be kept under review by the ICAO Council to take a decision at the appropriate time. In addition, the conference also recommended that, meanwhile, ICAO provisions may need to be strengthened to be able to meet the new safety oversight requirements as and when the current safety oversight programme is expanded.

7. ICAO'S WORK ON AIRPORT CERTIFICATION

7.1 The ICAO Secretariat has undertaken a study of the current provisions in the field of airports and air traffic services - the two areas recommended by the DGCA's Conference for possible expansion. In the area of airports, a task on licensing/certification of airport has been approved by the Air Navigation Commission and is in progress. A new manual on the subject is being developed to assist States in their reorganization efforts in the changing environment of privatisation. The study has identified the need for introducing into Annex 14, Volume I, the requirement for airports to be licensed/certified. The Annex currently does not have such a requirement because, so far, most States were operating and managing the airports and air navigation services themselves. With the privatisation of airport operation, management and maintenance activities, however, the airports would need to be certified by the regulatory authorities.

7.2 The manual on licensing/certification of aerodromes will cover the need for certification, the regulatory system required in this regard, model regulations on which States could develop their own

regulatory system, a brief description of the organizational structure of the regulatory authority, and a sample airport certification application forms that could be used etc. The review of the draft manual is in progress and it is hoped that soon it will be possible to bring it to a final stage of maturity to be of assistance to States.

8. CONCLUSION

8.1 Wherever privatisation of airports (and air navigation services where applicable) is contemplated, the regulatory authorities should review their own organizational structure in order to be able to ensure that even in the new environment, safety of operations is assured. To this end, it may be necessary for States to review the national legislation related to aviation and have suitable provisions empowering their civil aviation administrations to be able to inspect, monitor and ensure implementation of ICAO specifications. This also facilitates the State to meet its obligations under the Convention on International Civil Aviation to comply with the ICAO Standards and Recommended Practices (SARPs) contained in the applicable Annexes to the Convention.