



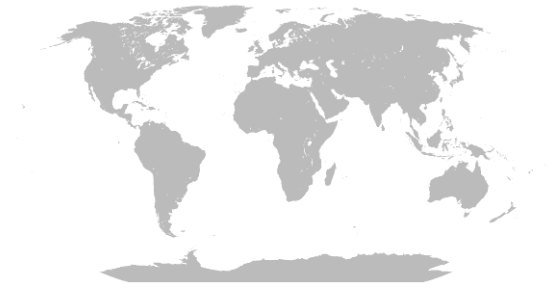
ICAO

Good regulatory practices in air services agreements

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Agenda



- Scene setting
 - No Country Left Behind
 - ICAO's work on Good Regulatory Practices
- Best practice ASA clauses
 - Funds repatriation
 - Pricing Freedoms
 - Taxation
 - User Charges
 - Designation & Authorization
 - Application of Laws



- The ***No Country Left Behind*** (*NCLB*) initiative highlights ICAO's efforts to assist States in implementing ICAO Standards and Recommended Practices (SARPs).
- The primary objective of *NCLB* initiative is to help ensure that SARP implementation is better harmonized globally so that all States have access to the significant socio-economic benefits of safe and reliable air transport.
- It was in the context of the principle of *NCLB* that the ICAO reviewed the “smart regulation” approach advocated by the IATA and adopted by the ICAO 39th Assembly, to come up with “*Good Regulatory Practices*”.

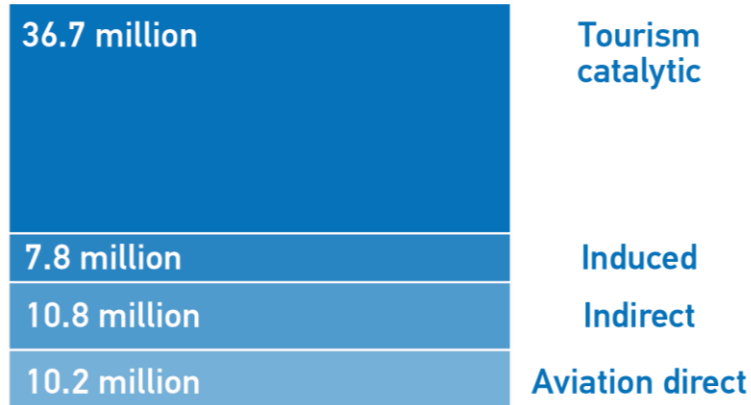


- The *Good Regulatory Practices* are designed to improve policy making and the regulatory process; as well as reduce unnecessary burdens on consumers and businesses
- The *Good Regulatory Practices* are categorized into two sets of principles: one for policy design and the other for regulatory process. Details of these have been incorporated in third edition of the *ICAO Doc 9626 - Manual on the Regulation of International Air Transport*, which would be published in February 2019

Our global support for employment and economic activity

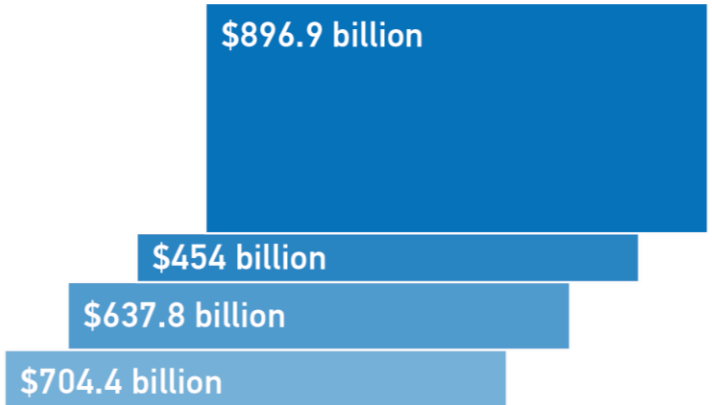


65.5 million



EMPLOYMENT

\$2.7 trillion



ECONOMIC BENEFIT (GDP)

Growth in aviation fuels growth in jobs and opportunities worldwide



2036

A small, stylized airplane in shades of green and blue is positioned above the zero in the year 2036, appearing to fly over it.

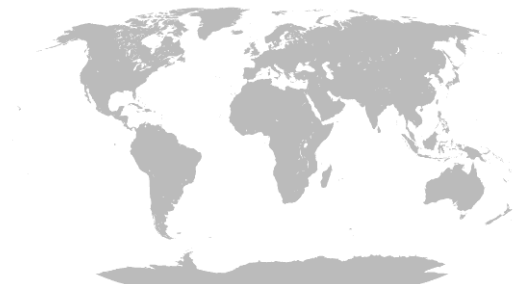
**97.8 million
jobs supported**

**\$5.7 trillion
GDP supported**

IATA Aviation Competitiveness Framework

CONNECTIVITY	OPEN BORDERS	CARGO
Connectivity per \$Bn GDP Propensity to fly Number of airlines	Visa Requirements Air Passenger Information Automated Border Control Air Service Agreements	Trade Facilitation Index E-freight Index
SUPPLY CHAIN COMPETITIVENESS	INFRASTRUCTURE	SMARTER REGULATION
Cost Competitiveness Airport Charges ATM Charges Fuel Charges	Available runway capacity Available terminal capacity Certainty of access Transparency of allocation rules	Regulatory Governance Treaty Compliance Consumer Protection

Funds Repatriation



COUNTRIES WITH BLOCKED FUNDS (USD) AS AT 30 OCT 2018

Venezuela	3780M	Algeria	38M	USD 4.6B
Bangladesh	175M	Libya	29M	
Zimbabwe	160M	XAF Zone	11M	
Sudan	153M	Mozambique	10M	
Angola	126M	Burundi	6M	
Eritrea	72M	T&T	6M	
Ethiopia	55M	Syria	3M	

Funds Repatriation

- Airlines should be allowed to remit funds to their home markets without restriction on amount or timing
- Currencies should be freely convertible at market exchange rates
- Local laws or regulations should not hinder the ability of airlines to repatriate locally earned revenues
- There should not be taxes applied to the act of remitting locally earned funds

Funds Repatriation

- ICAO TASA Article 20: Each Party shall permit airline(s) of the other Party to convert and transmit abroad to the airline's(s') choice of State, on demand, all local revenues from the sale of air transport services and associated activities directly linked to air transport in excess of sums locally disbursed, with conversion and remittance permitted promptly without restrictions, discrimination or taxation in respect thereof at the rate of exchange applicable as of the date of the request for conversion and remittance.
- ICAO ATRP Proposal: **Remittance of locally-earned funds.** All carriers should be free to remit locally-earned funds without restrictions, to the country or countries of their choice, promptly, in freely convertible currency and at the official exchange rate.

Funds Repatriation

- MALIAT: The airlines of each Party shall have the right to convert and remit to the territory of its incorporation, on demand, local revenues in excess of sums locally disbursed. Conversion and remittance shall be permitted promptly without restrictions or taxation in respect thereof at the rate of exchange applicable to current transactions and remittance on the date the carrier makes the initial application for remittance.

Pricing Freedoms

Não há bagagem grátis

Um adágio popular entre economistas afirma que não existe almoço gratuito. No Brasil, esse realismo não parece ter fincado raízes, a julgar pela decisão liminar da Justiça Federal que suspendeu a cobrança por bagagens despachadas em viagens de avião.

Essa possibilidade figurava entre várias novas regras para o transporte aéreo criadas pela Agência Nacional de Aviação Civil (Anac), quase todas favoráveis aos passageiros — como a indenização imediata em caso de perda de vaga em voo por excesso de lotação.

O Ministério Público Federal representou no Judiciário contra a novidade, sob o argumento de que o pacote feriria os direitos do consumidor. A corte acatou liminarmente o pedido, suspendendo apenas a regra da bagagem. O restante do pacote está em vigor.

Ora, a manutenção do suposto direito não se faz sem ônus. O setor estima que o serviço de bagagens custe R\$ 117 milhões anuais às empresas. O valor acaba rateado entre todos os viajantes, mesmo os 35% que não despacham malas — o que não deixa de ser injusto.

Ademais, a Anac não determina que as empresas cobrem pelas ma-

las despachadas, só autoriza que o façam. A medida, que decerto soará antipática para os usuários que hoje usam o serviço “de graça”, tem largo emprego em vários países, onde contribuiu para baratear as passagens.

Com efeito, linhas aéreas que operam no Brasil preveem estratégias diversificadas sob a nova norma. Duas delas prometeram tarifas mais baixas para quem viajar sem bagagem; outra passaria a cobrar R\$ 50 por peça; outra ainda não faria alteração.

O Ministério Público alega não haver garantias de que o valor das passagens seria reduzido de fato. Não há e não pode haver, porque, afinal, não existe controle governamental de preços na aviação civil.

Consumidores e autoridades precisam confiar mais no poder da concorrência, mesmo num setor com tão poucas empresas.

O usuário frequente de aviões tem motivos para incomodar-se com a perda de conforto e serviços nos voos. É fato, porém, que as tarifas vêm baixando em toda parte graças à competição aportada pelas linhas aéreas de baixo custo.

Não existe almoço grátis, nem mesmo a bordo de aeronaves.

- It is the intention of the KFTC to enforce foreign airlines to change their conditions of carriage and cancellation fee policy, so that (i) no cancellation fee is charged if the airline ticket is cancelled 90 days or more before the departure date; and (ii) if the airline ticket is cancelled within 90 days before the departure date, a cancellation fee averaging 10% of the original price (the closer the cancellation date to the departure date, the greater the cancellation fee amount) (collectively, the **“Policy”**).

Sec.11. Overbooking. – Consistent with the globally-recognized revenue-management options of air carriers, overbooking shall be responsively, properly and rationally practiced and done in utmost good faith. The CAB is hereby authorized to set the ceiling for overbooking. All passengers that have been sold overbooked tickets shall have the right to be informed that they are merely “Chance” passengers for that particular flight.

Pricing Freedoms

- ASAs should be drafted, based on reciprocity, to:
 - avoid restrictive pricing provisions and promote market-based provisions;
 - avoid older-style provisions that enable price regulation;
 - waive or limit, to the greatest extent possible, tariff filing requirements;
 - avoid provisions that allow for the double approval of tariffs, country-of-origin tariffs or similar provisions that interfere with market-based pricing decisions.

Pricing Freedoms

US model open skies agreement:

- (1) Each Party shall allow prices for air transportation to be established by airlines of both Parties based upon commercial considerations in the marketplace.
- (2) Prices for international air transportation between the territories of the Parties shall not be required to be filed.

These paragraphs should be read together with the following text (from the definitions provision): [‘price’] or [‘tariff’] means any fare, rate or charge for the carriage of passengers, baggage and/or cargo (excluding mail) in air transportation (including any other mode of transportation in connection therewith) charged by airlines, including their agents; and includes the conditions set by the carrier for availability of such fare, rate or charge.

ICAO DEFINITION: Tax vs. Charge



Taxation

- In 2018, airlines and their customers are forecast to generate USD 136 billion in tax revenues globally
 - Increase of approximately 7.8% over 2017
 - Equivalent of 45% of the industry's GVA
- Passenger demand for air travel is highly price elastic
 - In many instances, a 10% increase in price leads to a reduction in demand of up to 15%.
- In order to address the negative consequences of inefficient taxation, ICAO TASA contains two provisions that address taxation, including:
 - Article 13 on customs duties and indirect taxation; and
 - Article 14 on direct (profit-based) taxation.

Taxation

Article 13 (Customs Duties)

- Provides for a reciprocal exemption from customs duties, excise taxes, inspection fees and other similar duties and charges on: 1) aircraft, 2) fuel, 3) lubricating oils, 4) consumable technical supplies, 5) spare parts (e.g., engines, aircraft equipment) and 6) aircraft stores used in connection with the specified services detailed in the ASA.
- The exemption applies to items and goods that are:
 - 1) introduced into the counterparty territory; or
 - 2) retained on board the aircraft on arrival into or departure from the counterparty territory; or
 - 3) taken on board the aircraft in the counterparty territory.
- The tax exemption applies irrespective of whether or not the item or good is partially or wholly consumed in the counterparty territory, so long as there is no transfer in ownership.

Taxation

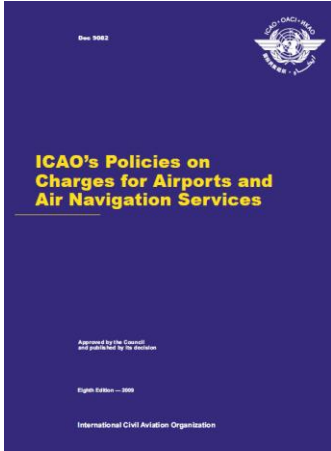
Article 14 (Direct Taxation)

- Provides for the taxation of profits from the operation of international air transport services of passengers and/or goods only in the jurisdiction of effective management (e.g., head office) of the airline. As such, airlines are not subject to profit-based taxes in the counterparty territory.
 - Includes profits associated with inter-airline commercial agreements (e.g., code share arrangements) and joint business ventures.
- Likewise, capital (including capital gains) and assets pertaining to the operation of aircraft in international traffic are to be subject to applicable taxation only in the jurisdiction of effective management of the airline.
- The substance of Article 14 of the Template ASA is similar to the provisions found in Article 8 of a standard bilateral Double Tax Treaty.

POLICY ON TAXATION – basic rationale



[Doc 8632](#)



[Doc 9082](#)

User charges

- Charges are only set following effective consultations with airlines, having regard to the services to be provided and the investments necessary to deliver agreed services
- User charges should be cost-related, non-discriminatory and equitably applied under relevant ICAO principles
- The overarching objective of user charges shall be the recovery of costs, given the need for a reasonable return on assets after depreciation
- In levying user charges, no individual airline or any group of airlines should be given special treatment
- In the case of monopoly providers, parties should ensure effective regulatory controls for user charges

User Charges

Article 12 of the ICAO TASA

- User charges that may be imposed by the competent charging authorities or bodies of each Party on the airlines of the other Party shall be just, reasonable, not unjustly discriminatory, and equitably apportioned among categories of users. In any event, any such user charges shall be assessed on the airlines of the other Party on terms not less favourable than the most favourable terms available to any other airline at the time the charges are assessed.
- User charges imposed on the airlines of the other Party may reflect, but shall not exceed, the full cost to the competent charging authorities or bodies of providing the appropriate airport, airport environmental, air navigation, and aviation security facilities and services at the airport or within the airport system. Such full costs may include a reasonable return on assets, after depreciation. Facilities and services for which charges are made shall be provided on an efficient and economic basis

User Charges

Article 12 of the ICAO TASA

- Each Party shall encourage consultations between the competent charging authorities or bodies in its territory and the airlines using the services and facilities, and shall encourage the competent authorities or bodies and the airlines to exchange such information as may be necessary to permit an accurate review of the reasonableness of the charges in accordance with the principles in paragraphs 1 and 2. Each Party shall encourage the competent charging authorities to provide users with reasonable notice of any proposal for changes in user charges to enable users to express their views before changes are made.

Designation & Authorization

- Any proposed variation by a government to an airline's authorization to serve a market should be notified in advance and subject to an advance consultations requirement
- Authorizations should not be revoked, suspended or restricted in any way without notice and consultations unless this is necessary/essential to avoid an imminent infringement of laws affecting safety or security

Designation & Authorization

- Euro-Med Aviation Agreement: Unless immediate action is essential to prevent further non-compliance with points (c) or (d) of paragraph 1 (*which relates to specific provisions related to market access criteria*), the rights established by this Article shall be exercised only after consultation with the competent authorities of the other Contracting Party.
- ICAO TASA Article 4: Unless immediate action is essential to prevent infringement of the laws and regulations referred to above (*earlier in the Agreement*) or unless safety or security requires action in accordance with the provisions of Articles (Safety) or (Security), the rights enumerated in paragraph 1 of this Article [detailing the right to revoke authorization] shall be exercised only after consultations between the aeronautical authorities in conformity with Article (Consultation) of this Agreement.

Application of Laws

- Generally, unless there is good cause to do so otherwise, the application of domestic law (including rules and regulations) is limited to:
 - navigation of aircraft while within a Party's territory;
 - the airline's entry into or departure from its territory in respect of its passengers, crew, cargo and mail of aircraft, specifically in respect of clearance, immigration, passports, customs and quarantine;
 - such other subject areas that are normally and reasonably regulated in accordance with the Chicago system or the practice of the parties
- The adverse impact of unilateral regulations on operational matters is appropriately recognized and avoided by national governments

Application of Laws

- ICAO A38 Resolution: Certain economic, financial and operational constraints unilaterally introduced at the national level affect the stability of, and tend to create discriminatory trading practices in, international air transport and might be incompatible with the basic principles of the Chicago Convention and the orderly and harmonious development of international air transport. States are urged to avoid adopting unilateral measures that may affect the orderly and harmonious development of international air transport and to ensure that domestic policies and legislation are not applied to international air transport without taking due account of its special characteristics.
- ICAO TASA Article 5: Neither Party shall give preference to its own or any other airline over a designated airline of the other Party engaged in similar international air transportation in the application of its immigration, customs, quarantine and similar regulations.

Application of Laws

- MALIAT: While entering, within, or leaving the territory of one Party, its laws, regulations and rules relating to the admission to or departure from its territory of passengers, crew or cargo on aircraft (including regulations relating to entry, clearance, aviation security, immigration, passports, customs and quarantine or, in the case of mail, postal regulations) shall be complied with by, or on behalf of, such passengers, crew or cargo of the airlines of any other Party.



THANK YOU