

MOROCCO

**By Nadia Kettani, esq.
Kettani Law Firm**

General Legislation

Moroccan Civil Aviation is governed nationally by Decree n° 2-61-161 dated 10 July 1962, as modified, which stipulates, most notably, the conditions for registration, navigability, and the legal status of aircraft as well as the status of aviation personnel.

It also provides conditions relating to the creation and exploitation of airports, rules and conditions on air circulation, the procedure for aircraft accidents, and air travel services, distinguishing public transportation and private transportation, including air clubs and flight schools.

Furthermore, it addresses the financial liability of aircraft operators including:

- liability for injury to onboard passengers provided the passenger has not contributed to the injury
- responsibility for damage to or loss of checked baggage and cargo
- liability toward third parties on the ground due to an aircraft in flight that fails to follow flight regulations as well as due to objects falling from aircrafts, and
- liability for aircraft collisions that are the fault of the aircraft operator. In case of the fault of two or more operators, each shall be liable up to its respective percentage of responsibility.

Furthermore, the decree includes individual liability of airline employees and management and that of the airline companies for infractions of the decree such as operating without proper authorisation or licenses and which include pecuniary and penal sanctions.

The decree also governs the framework for insurance coverage and warranties.

Governance and Infrastructure

Aviation regulation and its application are the responsibility of the Department of Civil Aviation ("DAC") which works to ensure the development of and compliance with all regulations and in particular, administrative procedures, authorisations and control and certification of airlines.

The National Airport Bureau ("ONDA") is responsible for the establishment, operation and maintenance of civil airports as well as air traffic control. It is also responsible for passenger and cargo transport.

Morocco benefits from airports located in 15 cities and the largest are located in Casablanca, Marrakech and Agadir, recording 5.8 million, 3 million and 1.5 million passengers in 2007, respectively.

Growth Strategy

Royal Air Maroc (RAM), the national Moroccan Airline, was recently transformed into a joint stock company for the purpose of ensuring better management and corporate governance in the face of increasing competition. In addition to RAM, Morocco benefits from three local Moroccan airlines, Regional Airlines and the recently added Jet4You and Atlas Blue.

As a result of the restructure and consolidation of the Casablanca Airport Bureau and regional offices to form the ONDA as well as recent expansion and future planned upgrades made to the airports in Casablanca, Marrakech, and Fez, Morocco is positioned to meet its goal of dramatically increasing the number of airline passengers travelling in Morocco.

For example, by the year 2010, satellite navigational systems are scheduled to be operational as part of the new upgrades. Furthermore, the three aforementioned airports are targeted to be equipped with approach radars.

These changes support the ONDA's growth strategy which includes the continued evolution of Moroccan airports, particularly the Mohammed V Airport in Casablanca, into international "hubs" servicing North and South America, Africa and the Middle East.

International Alignment

In addition to the national regulations governing the aviation industry, as part of its growth strategy, Morocco has ratified numerous international treaties and conventions in order to conform to international standards. These agreements address, among other issues, the conformity of aircraft service procedures, insurance coverage, and security measures.

Morocco is party to the Warsaw Convention of 1929, as amended, on the liability for international carriage of passengers and cargo.

Furthermore, on 8 June 1957 Morocco joined the Chicago Convention on International Civil Aviation signed on 7 December 1944.

Likewise, Morocco ratified the Geneva Convention on the Recognition of International Rights of Aircraft which was signed on 19 June 1948.

The most recent and perhaps the most notable international agreement to which Morocco is a party is the EU-Morocco Open Sky Treaty. This Treaty was signed on December 12th 2006 and is within the context of Vision 2010 which should allow a massive increase of tourist activity.

Indeed, the number of international passengers must grow from 5.8 to 15.6 million per year and the weekly frequency of international flights must increase from 600 to 1300.

The proportion of flights from point-to-point towards Moroccan small towns without a stop over in Casablanca must increase from 40% to 60%.

In order to meet the above mentioned challenges, approximately 60 more aircrafts are necessary (B737 or A320 type).

22 new companies (of which 19 are European) have entered the Moroccan sky with regular flights bringing the number of companies to 44 in 2006.

The Treaty eliminates nationality, capacity and travel frequency requirements for air carriers. This opens the Moroccan skies to any European airline regardless of nationality or travel frequency. Likewise, Moroccan air carriers are able to use any route between Morocco and Europe without limitations regarding capacity or frequency.

It is notable that under Open Sky, investment in Moroccan airlines is permitted, but the airline must remain at least 51% Moroccan owned.

It also provides for a more simplified registration process.

The Treaty shall enter into force once the ratification procedures are accomplished by the parties, and once in force, the EU-Morocco Accord shall supersede all previous air travel agreements between European member states and Morocco.

Industry Concerns

The main issue facing private operators in Morocco is fair competition. The introduction of new local airlines to support travel between cities creates a model that is reflective of competitive markets in Europe and the United States. This expansion provides more options and flexibility for travellers whose numbers continue to climb both within the local market and internationally.

Aircraft Financing

Foreign companies may invest in aircraft provisioning for local airlines which may be done primarily through financing or operating leases. Investors have the choice of foreign law for the governance of the contract provided at least one of the parties to the agreement is a foreigner, and Moroccan courts will recognize and enforce foreign judgments and arbitration awards.

As for the enforcement of the agreement, there are no self-help remedies permitted and all disputes must be settled amicably or through judicial or arbitral procedures.

Finally, foreign investors are permitted to register mortgages to secure the payment by aircraft operators of instalment payments according to the financing of the aircraft.

KETTANI LAW FIRM

Kettani Law Firm is a leader in the transportation field. It is one of the pre-eminent local law firms in the aviation sector. The firm's experience covers aviation finance and leasing, aviation insurance, dispute resolution and aviation corporate finance.

Clients include top Moroccan and international airlines as well as international aviation design and manufacturing companies.