



JONES DAY
COMMENTARY

CHINA PROMULGATES NEW REGULATIONS ON THE CONSTRUCTION, OPERATION, AND SAFETY OF CIVIL AIRPORTS

The People's Republic of China is in the midst of an airport construction drive that is extraordinary in its scope and ambition—even for China—and that reflects their commitment to building a modern air transportation infrastructure rivaled only by those of the United States and Europe. By 2020, China plans to add a staggering total of 97 new commercial airports, as well as expand and modernize another 144 existing aerodrome facilities throughout the country. This infrastructure expansion will reportedly require an investment of some US\$20 billion by 2010 and another US\$44 billion by 2020, estimates that, if anything, appear to be low.¹ The investments in new and augmented airport facilities complement China's planned acquisition of approximately 2,800 new transport aircraft and the training of about 40,000 pilots by 2023.

The China airport boom has posed a challenge for the Civil Aviation Administration of China (“CAAC”) and other authorities who are charged with ensuring that these rapid investments yield the desired economic, social, and policy outcomes, while also maintaining the country's excellent (and hard-won) safety record. The lack of a consistent regulatory framework for airport development has, to date, made these efforts more difficult, particularly as China has not had in place clear lines of responsibility among the national, regional, and municipal authorities. Arguably, the lack of guidance has also discouraged foreign firms with expertise the Chinese need from making long-term commitments to capital investments in aviation infrastructure. The Chinese government has now addressed this gap.

1. http://www.pfimarketintelligence.com/financing_chinas_airport_expansion/financing_chinas_airport_expansion__overview.aspx.

On April 13, 2009, the State Council promulgated Administrative Provisions for Civil Airports (“Airport Provisions”), a comprehensive set of regulations that govern the manner in which airports are planned, designed, constructed, and operated across China. As with other civil aviation regulations, the Airport Provisions appear to be the product of careful thought and close study of other jurisdictions’ approaches to similar problems. In this *Commentary*, we provide a brief overview of these new regulations, which take effect on July 1.

By providing greater certainty on the regulatory environment, the Airport Provisions should enhance the attractiveness of foreign investment in China’s airport infrastructure market. Since the adoption of Provisions on Investment in the Civil Aviation Industry by Foreign Investors in 2002, foreign direct investment in many aviation and ancillary sectors has been permitted and, in the case of construction of civilian airports, expressly encouraged by the Chinese government. Foreign firms are already allowed to invest (through cooperative joint ventures and various equity vehicles) in the construction of civilian airports, including both air field development (*i.e.*, runways, taxiways, parking aprons, and navigation aids) and terminal development. For firms considering such investments, the new regulations provide much-needed clarity in several areas, including the permitting process for new commercial and general aviation airports, land use restrictions, venue selection, planning, design, construction, and use of civil airports.

AIRPORT CONSTRUCTION APPROVALS

The regulation broadly divides civil airports into two categories: commercial aviation airports (those used for the transport of passengers and cargo) and general aviation

airports (used for medical services, emergency rescue, forestry, weather monitoring, sport, and several other civilian purposes distinct from transportation). Commercial aviation airports are further sub-categorized by size into “4D” and “4E” airports, with the primary difference being that 4D airports can accommodate aircraft with wingspans between 36 and 52 meters, while 4E airports can accommodate aircraft with wingspans between 52 and 60 meters. Both 4D and 4E airports must have standard runway lengths of at least 1,800 meters and accommodate aircraft with main landing gears that span 14 meters between the bogies.²

The Airport Provisions prescribe the various roles and responsibilities for the CAAC and its regional offices in the issuance of permits and approvals for the construction of airports. Approval of the overall planning and design engineering of airports that are 4D or smaller has been given to the regional offices of CAAC, while construction of airports that are 4E or larger must still be approved by civil aviation authorities under the State Council (presumably including the CAAC and other central government bodies). Approval of proposed new general aviation airports is assigned to the regional offices of CAAC, which must decide on applications for permits within just 30 days.

AIRPORT DESIGN

In several respects, the regulations appear aimed at making sure that the kind of land use, environmental, and airspace conflicts that have bedeviled airport development elsewhere in the world do not slow down China’s plans. For example, the regulations provide relatively detailed guidance for airport developers that will encourage careful master planning. One provision requires that the construction, remodeling, and expansion of “safety facilities” shall be coordinated and timed

2. For reference, a Boeing 757, a large narrow-body airplane capable of transcontinental flight, has a wingspan of 38 meters and could be accommodated at 4D airport. The Airbus A330 and Boeing B777-300ER wide-body aircraft have wingspans of 60 and 64 meters respectively and could operate to and from 4E airports.

concurrently with the design, construction, and opening of larger scale projects (for example, the development terminals, fuel farms, and other service facilities). Presumably, this provision was included both to guarantee that expansion or other changes in airport layout do not degrade safety and to minimize out-of-service time for airfield and terminal facilities.

The measures regarding economic planning and related land usage in areas adjacent to airports appear quite thorough. The regulations require that local government authorities, in planning both urban and rural development and in determining land use, accommodate the operational and developmental needs of commercial aviation airports in their venues. By the same token, there are also requirements placed on regional and national authorities to solicit the views of and consult with local governments when approving overall airport development plans.

The Airport Provisions set out detailed restrictions and conditions on activities near airports to eliminate any direct, physical hazard to flight operations and also to prevent interference with electromagnetic signals used for aircraft communication, navigation, and surveillance. For instance, the construction of tall buildings in the vicinity of airports and activities that result in the discharge of large amounts of smoke, dust, flames, or gas are prohibited, as are the installation of lights or other objects that may affect the use of visual flight references. The storage of metal, the installation of high-voltage power lines, and activity that alters the terrain near airports (such as mining) are barred within “electromagnetic environment protection zones.” If noise-sensitive buildings (such as hospitals) are to be constructed near airports in zones designated by local authorities, the developer must take measures to mitigate noise impacts.

AIRPORT OPERATIONS AND CONSUMER PROTECTION

The Airport Provisions impose various duties on airport operators. One article requires that airport managers make provision at their airports for amenities such as food service, waiting lounges, parking, and other facilities. Where these services are to be provided by third-party vendors, the

airport management must enter into agreements with such parties that satisfy State Council regulations regarding service standards, fee standards, and safety criterion.

Airports must also provide training regimes for their staff in connection with the emergency plans set forth by civil aviation authorities and relevant local people’s government. They are also required to implement safety management systems and other protocols to ensure safe operation of the airport. In addition, the rules make airlines and other companies using the airport premises bear joint responsibility to ensure the airport is safely operated based on a division of responsibility between the airport managers and these companies.

The State Council appears to have made protection of Chinese airline passengers a priority, dealing with longstanding customer service problems and extensive flight delays that plague the Chinese air transportation system today. Both civil aviation authorities and airport managers must institute public complaint systems, notify consumers about their availability, and respond to complaints in writing within 10 working days of their receipt. In case of flight delays, airport managers are required to coordinate with airlines and others to serve passengers and provide them with information in a timely manner.

CIVIL PENALTIES

Failure to comply with these regulations can lead to substantial civil penalties. Chapter 5 of the regulations consists of a lengthy schedule of monetary fines for failure to comply with the provisions of the Order. For instance, the failure to conduct contingency training or to properly equip for emergencies may result in fines on airport operators ranging from 10,000 to 50,000 RMB payable to the regional civil aviation authority. Violation of provisions related to provision of aviation fuel can result in fines of 200,000 to 1,000,000 RMB, confiscation of unlawful income, and revocation of business permits. Even the failure to provide amenities such as parking and food services or failure to properly accommodate passengers affected by a flight delay can result in fines between 20,000 and 100,000 RMB.

CONCLUSION

The realization of China's ambitious plans will require the mobilization of capital, highly specialized knowledge, and resources in short order—both inside and outside of China. These new regulations, along with the laws they complement, provide policymakers, businesspeople, and capital markets a guide by which they will or may participate in this rather historic chapter of Chinese aviation.

What remains unanswered by the Airport Provisions is how provincial and municipal governments will fund airport expansions and new construction. The Central Government does not permit provincial and municipal government to issue debt, except in very limited circumstances, so the financing of new infrastructure proves difficult unless the Central Government itself provides the funding. With China's expansive plans for new airports and the clarity of the Airport Provisions as to the design and approval process, it is likely that foreign investment will consider airports a new Elysian field of profit.

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