

Doc 9980



Manual on Privatization in the Provision of Airports and Air Navigation Services

Approved by the Secretary General
and published under his authority

First Edition — 2012

International Civil Aviation Organization

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FOREWORD

1. Many changes have occurred in the past two decades in ownership and management in the provision of airports and, to a lesser extent, air navigation services. The changes have generally been thought of as “privatization.” However, these changes can take various forms, and while they generally reflect a move away from government ownership and management, they do not necessarily (and indeed rarely) denote outright privatization per se, particularly as regards ownership. This underlies the need expressed by States for guidance from ICAO in this area.

2. This manual responds, in part, to that need. It: a) presents information on developments taking place in various parts of the world in ownership and management in the provision of airports and air navigation services; b) provides definitions and analyses of the options available, together with the possible implications of these options; and c) discusses major issues to be examined by States when considering a change in ownership and management. It also brings to the notice of States important provisions of the *Convention on International Civil Aviation* (Doc 7300) and other ICAO policy and guidance documents regarding regulatory measures and the need for providing safeguards.

3. The guidance in this manual takes into account the wide range of circumstances faced by providers of airports and air navigation services in various regions and individual States. It is nevertheless based on the international policies and principles on airports and air navigation services management that States have developed through ICAO. The basis for these policies and principles is set forth in Article 15 of the Convention. Extensive guidance for Contracting States was developed by the Council and is contained in ICAO’s *Policies on Charges for Airports and Air Navigation Services* (Doc 9082), the last edition of which was released in April 2012. The guidance material presented in this manual is consistent with and complementary to the guidance provided in both the *Airport Economics Manual* (Doc 9562) and the *Manual on Air Navigation Services Economics* (Doc 9161), and takes into consideration relevant recommendations adopted during the Conference on the Economics of Airports and Air Navigation Services (CEANS, Montréal, 15–20 September 2008) and subsequently approved by the Council.

4. ICAO’s first publication on this subject was the circular *Privatization in the Provision of Airports and Air Navigation Services* (Cir 284) which appeared in March 2002. In view of the developments that have taken place in the past decade, it was decided that the material should be updated and issued in the form of a manual. This publication was prepared by the Secretariat. Other ICAO publications referenced in the text were the principal sources, along with the *Case Studies on Commercialization, Privatization and Economic Oversight of Airports and Air Navigation Services Providers*, available on the ICAO website. These case studies describe the commercialization/privatization of airports and air navigation service providers (ANSPs) and explain the mechanisms of economic oversight for 26 States.

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EXECUTIVE SUMMARY

INTRODUCTION

1. Changes in the ownership and management structure in the provision of airports developed slowly until the late 1970s and were primarily limited to the establishment of autonomous authorities owned by governments. Private participation and privatization of airports began in the 1980s, gained momentum in the late 1990s and early 2000s, and slowed down in the late 2000s.
2. With privatization and private participation in the provision of airports and air navigation services, it is important for governments to ensure that service providers do not abuse any dominant position they may have.

DESCRIPTION OF TERMS

3. In the context of changes in ownership and management in the provision of airports and air navigation services, a number of terms are currently being used in various forums with different meanings. Accordingly, it is necessary to define the principal terms used in this context to eliminate any ambiguity. Privatization, which is the most commonly used word in connection with the changes taking place, connotes either full ownership or majority ownership of facilities and services by the private sector. Two common phrases, private participation and private involvement, which are basically synonyms, describe situations in which the private sector plays a role in ownership, management or both, but majority ownership remains with the government. A number of other terms are defined in the Glossary.

DEVELOPMENTS IN OWNERSHIP AND MANAGEMENT

4. Privatization and private participation in the provision of airport services have been part of the general process of globalization and liberalization of the economies of the world and the movement toward privatization of commercially oriented industries and services managed by States or State-owned entities. A number of other factors, such as financial problems faced by States in airport development, the need to reduce budgetary deficits and the emergence of a global airport management industry, have motivated States to move towards privatization and private participation (paragraphs 3.3 and 3.4 refer).
5. In almost all States in which privatization or private participation have taken place, regulatory authorities exist or have been established in some form to ensure that providers do not abuse any dominant position they may have, especially in the case of aeronautical charges. However, regulations in regard to rents and other non-aeronautical rates and fees are generally lax or non-existent (paragraph 3.8.5 refers).

ICAO'S POLICIES AND GUIDANCE

6. The Convention on International Civil Aviation ("the Convention") is binding on all Contracting States, and while it does not prevent them from delegating functions to autonomous or private entities, the responsibility for ensuring that all the provisions of the Convention are fully complied with rests with States (paragraph 4.1.1 refers).

(x)

7. Certain safeguards are considered essential if privatization or private participation is to be undertaken. Of special significance is Article 28 of the Convention, which places on each Contracting State the responsibility for the provision of airports and air navigation services in its territory in accordance with ICAO's Standards and Recommended Practices. Articles 11 and 15 of the Convention provide for non-discrimination between Contracting States. Article 15 deals with basic charging principles (paragraph 4.1 refers).

8. ICAO's guidance material developed on the basis of the principles of the Convention, including policy guidance on charges for airports and air navigation services, is contained in Doc 9082, *ICAO's Policies on Charges for Airports and Air Navigation Services* (paragraph 4.4.7 refers). The *Airport Economics Manual* (Doc 9562) and the *Manual on Air Navigation Services Economics* (Doc 9161) provide practical guidance. Detailed information on commercialization and privatization of providers is contained in the *Case Studies on Commercialization, Privatization and Economic Oversight of Airports and Air Navigation Services Providers*, available on the ICAO website.

OWNERSHIP AND MANAGEMENT OPTIONS

9. This manual does not specify the best option for global application. The choice of option would need to be country-specific and probably airport-specific. The most appropriate choice can be determined only after a specific study (paragraph 5.1.2 refers).

10. Broadly, States have the following ownership and management options for their airports:

- a) government ownership;
- b) management contract;
- c) lease or concession;
- d) transfer of minority ownership;
- e) public-private partnerships; and
- f) private sector ownership and control.

11. Theoretically, the same options apply to the provision of air navigation services. However, when considering privatization or private participation in the provision of air navigation services, a more cautious approach is required (paragraph 5.3 refers).

PREPARING FOR CHANGE IN OWNERSHIP AND MANAGEMENT STRUCTURE, INCLUDING REGULATORY ASPECTS

12. A change in the ownership and management structure in the provision of airport services may not necessarily solve all the problems that an airport or a group of airports may be facing. The change may be harmful in the long run if poorly planned. The objectives of any change should be clearly defined (paragraph 6.1 refers).

13. A number of major issues need to be considered before embarking on privatization or private participation. An in-depth analysis of the present state of the aviation infrastructure in the State, including a detailed profit and loss account, should be conducted. This analysis should also take into account growth forecasts. Simultaneously with a decision to place profitable airports in a different category, consideration should be given to how the remaining airports

and other services are to be managed and financed. Moreover, consistent with the increasing responsibility of the State consequent to privatization, the existing regulatory body should be suitably strengthened (paragraphs 6.3, 6.4 and 6.7 refer). Finally, States are ultimately responsible for the economic oversight of their airports and air navigation services providers, and should consider establishing an independent mechanism to perform this function (paragraph 4.4.4 and 6.8 refer).

SELECTION OF A PRIVATE PROVIDER

14. In order for privatization or private participation to be successful, careful planning is required. The entire process of privatization or private participation should be transparent. Tender documents should be well prepared and include all information necessary for taking a decision. Careful consideration should be given to the short-listing of suitable bidders. Moreover, the contract document should provide, inter alia, for the termination of the contract and the resumption of control of facilities and services in grave situations without paying undue compensation to the private sector. Since private participation and privatization in the provision of airport services is a complex process in which many States may not have sufficient expertise, it may be desirable and advantageous to obtain the advice of external consultants (paragraphs 7.3 through 7.6 refer).

GLOSSARY

This glossary provides a brief explanation of the more common terms and acronyms used in this manual and in the context of ownership and management of airport and air navigation services. These definitions should be viewed as an aid to the general understanding of the reader and are not necessarily officially endorsed by ICAO.

Autonomous entity. An independent entity established for the purpose of operating and managing one or more airports and/or air navigation services, which is empowered to manage and use the revenues it generates to cover its costs.

Best practices. Practices that, over time, have proven cost-effective, efficient and successful in bringing quality products and services to the marketplace.

Build-Operate-Transfer (BOT). An ownership and management system by which a private entity obtains the right to finance, build and operate a certain facility (including land and/or buildings) over a long period, and on expiry of the right returns it to the owner.

Build-Own-Operate (BOO). A system of ownership and management by which a private entity builds a certain facility, owns it and operates it on a perpetual basis.

Build-Own-Operate-Transfer (BOOT). An ownership and management system similar to BOT except that the private entity takes over ownership of the facility during construction according to an agreement, operates it, and on expiry of the agreement, returns the ownership to the original owner.

Build-Transfer-Operate (BTO). An ownership and management system by which a private entity designs, finances and builds a certain facility and retains its ownership during the construction period. After completion of construction, ownership is transferred to the original owner and thereafter the private entity leases the facility and operates it.

Business principles. An approach to management of facilities and services in which commercial considerations are given emphasis.

Buy-Build-Operate (BBO). An ownership and management system similar to BOO except that some facility may be existing, which the private operator buys before building commences.

Charge. A levy that is designed and applied specifically to recover the costs of providing facilities and services for civil aviation.

Civil aviation authority. An autonomous authority that performs regulatory functions. Sometimes it is also made responsible for management of airports and/or air navigation services.

Commercialization. An approach to management of facilities and services in which business principles are applied or emphasis is placed on development of commercial activities.

Concession. The right to operate a certain commercial activity at an airport, commonly on an exclusive basis and usually at a specified location.

Corporate governance. Overseeing the running of a company or an entity by its management and its accountability to shareholders and other interested parties.

Corporatization. Creation of a legal entity outside government to manage certain facilities and services, either through a specific statute or under an existing statute such as company law. Once corporatized the entity becomes autonomous.

Economic oversight. The function by which a State supervises commercial and operational practices of an airport or an air navigation services provider.

Joint venture. An enterprise with more than one major partner. The partners may be private entities, States (governments) or both.

Lease. The right to occupy certain defined premises or possess some equipment for a fixed period, which may be used for business purposes. The premises or equipment are returned to the owner on expiry of the lease, generally without paying any compensation.

Management contract. A system of management by which an entity (usually private) takes over the management of a facility for a fixed period on the basis of predetermined payment terms.

Minority participation in equity. Less than 50 per cent share in the equity of a company.

Private entity. A firm, a company or any other organization with full or majority ownership by legal persons other than the public sector.

Private participation/private involvement. Minority participation or involvement of a private entity in the ownership of certain facilities and services. Private participation or involvement may also take the form of management contract or lease.

Privatization. Transfer of full or majority ownership of facilities and services from the public sector to the private sector.

Public-private partnership (PPP). An ownership and management structure in which the private and the public sectors both participate. PPPs refer to arrangements where the private sector supplies infrastructure assets and services that traditionally have been provided by the government. This technique provides private financing for infrastructure investment without immediately adding to government borrowing and debt, and can be a source of government revenue. PPPs also present business opportunities for the private sector in areas from which it was in many cases previously excluded.

Rental of premises. The right to occupy certain defined premises or a specific area of land against payment of a fee.

Sale of equity. Sale of shares in a company.

Share flotation. The first offer of shares in an entity on the stock market.

Tax. A levy that is designed to raise national or local government revenues that are generally not applied to civil aviation in their entirety or on a cost-specific basis.

Users. This term refers to aircraft operators as users of airports and air navigation facilities and services. The term “end-users” refers to ultimate consumers in general (for example, passengers and shippers).

Chapter 1

INTRODUCTION

1.1 The primary objective of airports and air navigation services is to provide safe, secure, efficient and cost-effective services to aircraft operators, passengers, shippers and other users. There are several ownership and management options for the provision of these services. This manual analyses the developments taking place in various parts of the world in ownership and management in the provision of airports and air navigation services, clarifies the concepts and terms used in this context and describes different forms of private participation and privatization. It provides guidance to States by presenting ownership and management options and their implications, and major issues to be considered when preparing for a change in ownership and management if the choice is private participation or privatization.

1.2 Many airports enjoy a dominant position and air navigation services are of a monopolistic nature. Regardless of the organizational structure or the legal status given to airports or air navigation services, the State remains ultimately responsible for safety, security and economic oversight of these entities.

1.3 As safety and security are a major concern, this manual brings to the notice of States important provisions of the Convention on International Civil Aviation (the Chicago Convention) and other ICAO policy and guidance documents regarding oversight measures and the need for providing safeguards.

1.4 Changes in the ownership and management structure in the provision of airports developed slowly until the late 1970s. During that period, comprehensive government involvement was reduced in a few States through the establishment of autonomous entities owned by governments. In many States, airports continued to be directly managed by governments. Further changes in favour of private participation and privatization of airports began in the 1980s but movement in this direction continued to be slow. It gained momentum in the late 1990s and early 2000s but slowed down in the late 2000s. Recently, private participation and privatization in the provision of airports are gaining momentum again all over the world.

1.5 In the case of the provision of air navigation services, changes in ownership and management have mainly taken place through the establishment of autonomous ANSPs. Currently, there are some 60 autonomous ANSPs in the world. In most other States, air navigation services continue to be State-owned and are provided directly by governments.

1.6 With privatization and private participation in the provision of airports and air navigation services, it is important that market power is not abused. States should ensure that service providers do not abuse any dominant positions they may have.

1.7 Airports and air navigation services in different States are operated under various organizational formats. Considering the diverse circumstances among States, ICAO does not recommend one organizational format over another. However, in view of the experience gained worldwide, paragraph 5 of Section 1 of Doc 9082 recommends that States consider establishing autonomous entities to operate their airports or air navigation services where it is economically viable and in the best interest of providers and users.

Chapter 2

DESCRIPTION OF TERMS

2.1 In the context of changes in ownership and management in the provision of airports and air navigation services, a number of terms and phrases are used with different meanings. For example, when an airport is handed over on a lease, it has been called a sale. However, a lease is not a sale but a temporary transfer of certain facilities and services for a fixed period under certain terms and conditions. The facilities and services revert to the owner upon expiry of the lease, subject to any option to extend it. The definition of privatization also varies. Accordingly, a description of various terms and phrases is provided below and a Glossary, giving specific definitions, is included at the beginning of this manual.

2.2 **Privatization** is the word most commonly used in connection with the changes taking place in ownership and management in the provision of airports and air navigation services. Often, the word privatization is loosely interpreted as any movement away from government ownership and management of facilities and services. This is too liberal an interpretation. Strictly, privatization connotes either full ownership or majority ownership of facilities and services. Therefore, a management contract, a lease or minority participation in the equity of airports and air navigation services should not be described as privatization but rather as private participation or private involvement since the ownership control rests with the government.

2.3 **Private Participation/Private Involvement** are two phrases commonly used in connection with changes in ownership and management in the provision of airports and air navigation services. The usual meaning of these two phrases, which are in essence synonyms, is that the private sector has a role in the ownership and/or management in the provision of airports and/or air navigation services but that majority ownership remains with the government.

2.3.1 Private participation or involvement can take different forms. It can be a management contract, lease or minority participation in equity. Management of a commercial concession at an airport by a private entity is not, however, considered as private participation or involvement.

2.4 **Corporatization**, in the context of airports and air navigation services, means creating a legal entity outside the government to manage airports and/or air navigation services, either through a specific statute or under an existing general statute such as company law. The functions and powers of the corporatized body are defined in the specific statute of a Memorandum of Association or in a similar document if it is established under company law.

2.4.1 Normally, ownership of the corporation remains with the government. However, in a corporatized body, private sector participation is possible. It depends upon the provisions of the statute under which it is established and the policy of the government.

2.4.2 Corporatization is a legal organizational structure in which airports and/or air navigation services are vested for operation and management. It does not refer to any specific approach to management, which depends upon the provisions of the statute under which it is established and the policy of the government.

2.5 **Autonomy** refers to the powers of the managers of airports and ANSPs in regard to utilizing revenues generated from the operation of various services and taking independent managerial decisions on issues falling within the charter of the organization.

2.5.1 Autonomy does not refer to any specific organizational format, such as private participation, privatization, corporatization or leases. However, in the context of the provision of airports and air navigation services, the word is used in relation to government-owned facilities and services. Thus, autonomy can be related to a unit within the government, a corporate entity or a company wholly owned by the government.

2.6 **Commercialization** is an approach to the management of facilities and services in which business principles are applied or special emphasis is placed on developing commercial activities. In the context of airports and air navigation services, commercialization generally refers to a change in the approach to management of facilities and services. It can be achieved by establishing a corporation or a company under company law, normally without involving the private sector in the ownership or management. Sometimes a unit within the government can also be commercialized.

2.6.1 Commercialization should not be equated to private participation or privatization. While the former connotes an approach to management, the latter refers to change in the ownership or control of management.

2.6.2 Commercialization is often considered an alternative to private participation and privatization in the provision of airports and air navigation services for improving the quality and delivery of services, as well as the financial performance of the entity.

Chapter 3

DEVELOPMENTS IN OWNERSHIP AND MANAGEMENT

3.1 GROWTH OF AIR TRANSPORT

3.1.1 The Convention on International Civil Aviation, which was signed in Chicago in December 1944, created the foundation for the development of international air transport. The growth of the aviation industry since then can be recognized from the fact that in 1945, only nine million passengers travelled on scheduled services, whereas in 2011, over 2.7 billion passengers were carried, representing a 300-fold increase.

3.1.2 Air transport is expected to continue to grow during the coming years. A growth rate of 4.7 per cent per annum, measured in total scheduled passenger kilometres, is forecast up to 2030, compared to an average growth rate of 4.6 per cent for the 1990-2010 period.

3.1.3 Initially, the requirement for airport infrastructure was minimal, governed by the size of aircraft and the volume of traffic. Runways were short and narrow and the strength of pavements was low. Terminal buildings were small with minimum facilities and were considered only as transit points.

3.1.4 Airports were owned and operated by governments or local bodies. They were generally considered as public utilities, and governments and local bodies provided the funds for their development and operation, without necessarily any consideration of their financial or economic viability. Airports were also considered by governments as having strategic importance.

3.1.5 The introduction of jet aircraft in the late 1950s led to radical changes in the aviation industry and a surge in the demand for air services. This precipitated the redesigning of runways, taxiways and parking aprons at major airports throughout the world. Passenger terminal buildings were expanded or new terminals built and at some locations entirely new airports were built. Cargo complexes were established, and expansion and modernization of air navigation services also commenced. These developments placed heavy demands on States' financial resources, which often could not be met because of fiscal constraints.

3.2 AUTONOMOUS AUTHORITIES

Establishment of autonomous authorities. Although airport infrastructure developments continued at a greater speed, changes in ownership and managerial aspects were much slower to take place. The British Airports Authority, a government-owned corporate authority established in 1966, was the first major public corporation to manage airports. The objective of the Government of the United Kingdom in establishing this authority was to give managerial and financial autonomy to the airports and provide access to capital markets without foregoing ownership. The British Airports Authority was privatized in 1987 as BAA plc. Many States followed the example of the United Kingdom and established autonomous airport authorities, and the number of airports managed by autonomous authorities has gradually grown. While the establishment of an autonomous entity would not necessarily result in an unprofitable airport becoming profitable, experience gained worldwide from these developments indicates that the autonomous entities:

- a) ensure that the revenues generated through the use of airport resources are transparently re-invested in operating and developing the facilities;
- b) ensure that the users of the airports contribute directly to the upkeep and development of the facilities that they use (user pays principle);
- c) reduce the financing burden on governments;
- d) encourage the growth of a business culture (for example, closer control over revenues and expenses, quicker decisions and more responsive actions, and good governance), thereby increasing efficiency and improving the quality of services;
- e) enable access to private capital markets, which may only become possible with a change in organizational format because of public sector borrowing restrictions; and
- f) establish a clear separation of the regulatory and operational functions.

3.3 PRIVATE PARTICIPATION AND PRIVATIZATION AS PART OF GLOBAL TRENDS

In the recent past, there was further movement towards liberalization in ownership and management in the provision of airports and, to a limited extent, air navigation services, by involving the private sector. This is part of the general process of globalization and liberalization of the economies of the world, and the movement towards privatization of commercially oriented industries and services formerly managed by States or State-owned entities, especially those related to infrastructure. A number of factors inherent in airport management and development, identified in the following paragraphs, provide further incentive for private participation and privatization.

3.4 MOTIVATION FOR PRIVATE PARTICIPATION AND PRIVATIZATION

3.4.1 **Financial problems.** Government financing of airports is becoming increasingly difficult in many States. Governments are under pressure to finance other high-priority services, especially social services. In some States, neglect arising from financial difficulties has led to a deterioration of airport infrastructure that States are unable to rectify. Some States are unable to provide the large investments required to create additional capacities to meet the continuous increases in air traffic. The purchase, lease or reclamation of land is expected to become increasingly costly, and expectations of the airlines and other users in regard to the quality of service at airports are growing. Airports may become more costly not only to develop but also to operate.

3.4.2 **Privatization as a source of revenue.** Governments are realizing that where traffic volumes are relatively high, it may be possible to pass the burden of financing airport development programmes to the private sector. Moreover, private participation and privatization in the provision of airport services has been seen as a source of revenue to cover or reduce budgetary deficits. Profit-making airports can provide a regular source of tax revenue. Financial bids for private participation and privatization of airports have further encouraged States to move in this direction.

3.4.3 **Major airports as commercial entities.** The current approach of governments is to move away from the ownership and management of non-core public utilities. Airports, at least the major ones, are considered as commercial entities rather than public utilities. Larger airports are turning into cities in themselves, so called "aerotropolis", with

marketplaces and meeting points for people and business. There is the perception that privatization leads to improvement in the management of airports.

3.4.4 **Emergence of a global airport management industry.** The business and financial communities have realized that an airport can be a sound investment. Many airports hold a dominant position within their market. In 2010, growth in global traffic was almost double the growth of gross domestic product. The credit ratings of airports are generally high, and they have strong cash flows. Investors realize that airports are subject to government regulations but commercial activities at airports, which produce significant revenues, are less regulated or not regulated at all. Consequently, there has been a gradual emergence of a global airport management industry.

3.5 MOVEMENT TOWARDS PRIVATE PARTICIPATION AND PRIVATIZATION IN STAGES

3.5.1 In most States, private participation and privatization in the provision of airport services has taken place in stages. For example, in the United Kingdom, major airports were initially transferred to a government corporation. Several years later they were transferred to a government-owned company. Soon thereafter, the shares of this company were sold to the private sector. In some European countries, the airports were first transferred to separate, autonomous entities owned by the State and the divestiture of shares was gradual, with governments still holding the majority of shares.

3.5.2 In New Zealand, airports were first transferred to companies owned by the government and, a few years later, a major portion of the shares was sold to private entities. Local bodies continue to hold some shares. In Australia, major airports were first transferred to the Federal Airports Corporation, a government-owned corporation. A few years later, these same airports were divided into groups and were offered separately for lease in stages.

3.5.3 In Latin America, private participation is mainly taking place directly from government ownership, primarily through long-term leases either for groups of airports or for individual airports. For example, airports in Mexico have been divided into four groups, while Argentina decided to lease most of its airports as a group.

3.6 FORMS OF PRIVATE PARTICIPATION

3.6.1 Private participation in the provision of airport services has basically taken four forms: management contract; lease (which is sometimes called concession); transfer of minority ownership; and public-private partnership (PPP).

3.6.2 **Management contract.** Management contract is not a common method of private participation. Examples are Algiers-Houari Boumediene International Airport in Algeria, which is managed by Aéroports de Paris Management (a member company of Aéroports de Paris), and Cairo International Airport in Egypt, which is managed by Fraport AG Frankfurt Airport Services Worldwide.

3.6.3 **Lease.** In Australia, Canada, Latin America and western Africa, private participation is generally taking place through long-term leases or concessions. In Australia, 17 major airports were leased to private entities, usually a consortium. Sydney, along with four other smaller airports, was offered for private participation. In Canada, the major airports included in the National Airports System were leased on a long-term basis to local, non-share, not-for-profit corporations.

3.6.4 In Latin America, private participation through leasing has taken place in Argentina, Bolivia, Chile, Colombia, Costa Rica, the Dominican Republic, Ecuador, Honduras, Mexico, Peru and Uruguay, and the leasing process is in progress in a number of countries. Brazil has also decided in favour of private participation for a number of its airports.

3.6.5 In western Africa, States such as Cameroon, Côte d'Ivoire, Gabon, Mauritania and Togo, as well as Madagascar in eastern Africa, whose airports were formerly managed and operated by l'Agence pour la Sécurité de la Navigation Aérienne en Afrique et à Madagascar (ASECNA), have leased their major airports to public or private companies. In some of these companies, the government has a share in the equity. For example, in Cameroon, in 1993, seven airports were transferred on lease to Aéroports du Cameroun, a joint venture whose shareholders were: Aéroports de Paris Management (34 per cent), the government of Cameroon (29 per cent), ASECNA (20 per cent), three domestic airline operators and a major bank (17 per cent). Aéroports de Paris Management sold its shares in 2004, but the three domestic airlines and the major bank have remained shareholders of Aéroports du Cameroun.

3.6.6 The payment terms of leases or concessions vary widely. In some cases it is all downpayment while in other cases it is partly downpayment and partly annual payment, or only annual payment. In Australia, a one-time payment was made; while in Canada, it is an annual payment for ground rent. In Latin America, it is generally a combination of downpayment and annual payment. In some cases, more than one government organization receives payments.

3.6.7 The duration of the leases also varies. In Australia, the period of lease is 50 years with an option for an additional 49 years. In Latin America, the periods of leases are shorter. For example, in Argentina the period of lease is 30 years with an option of 10 additional years; in Chile it varies from 8 to 20 years; in Colombia it varies from 15 to 17 years; and in Mexico, leases are for 50 years.

3.6.8 In almost all cases, the responsibility for expansion and development of airports rests with the lessee or the concessionaire. In some cases, the details of development work to be undertaken are listed in the contract, while in other cases this is left to be decided on the basis of traffic growth.

3.6.9 **Transfer of minority ownership.** Private participation through transfer of minority ownership has taken place either through the sale of shares to a strategic partner or through share flotation. Minority private participation has taken place at Osaka-Kansai International Airport in Japan, at airports in South Africa, and at airports in a number of European States. The European model, other than in the United Kingdom, is minority sale of shareholdings, although transfer of majority shareholdings is gradually developing favour; for instance, a majority of shares at several European airports, such as in Belgium, Denmark, or Italy, were transferred to the private sector. In other regions, the transfer of minority ownership remains an attractive option. Malaysia decided to float its 28 per cent share in Malaysia Airports Holdings Berhad (MAHB) in stages. It transferred its shares to Khazanah, a government-owned public limited company. Khazanah, which is the investment holding arm of the Government of Malaysia, was already a shareholder in MAHB, and it currently holds 60 per cent of its shares. China has floated part of its shares in Beijing Airport. Thailand has decided to have private participation in some of its airports through sale of equity.

3.6.10 **Public-private partnership.** A fourth alternative for private participation in the provision of airport services is public-private partnerships (PPPs), which refer to arrangements where the private sector supplies infrastructure assets and services that traditionally have been provided by the government. This technique provides private financing for infrastructure investment without immediately adding to government borrowing and debt, and can be a source of government revenue. PPPs also present business opportunities for the private sector in areas from which it was in many cases previously excluded. PPP contracts can be very complex, and balancing public and private interests can be challenging. Nevertheless, PPPs can be used to build airport infrastructure, a technique widely used in India (for example, with the Cochin International Airport (Kochi) or the Mumbai-Chhatrapati Shivaji International Airport). In Japan, public authorities operate the airside of Tokyo-Haneda International Airport and Osaka-Itami International Airport

(runways, taxiways, aprons), while private companies own and operate the passenger terminals. In the air navigation services sector, an example of a successful PPP is the United Kingdom's ANSP (National Air Traffic Services Ltd., UK NATS).

3.7 PRIVATE SECTOR OWNERSHIP, CONTROL AND MANAGEMENT

3.7.1 Apart from airports originally owned by private entities, there are a growing number of fully privatized airports or airports with majority private ownership. These primarily include the BAA and certain other airports in the United Kingdom that are wholly owned by the private sector. In Canada, smaller airports have been sold to local communities.

3.7.2 Airports with majority ownership in the private sector include Auckland and Wellington airports in New Zealand, as well as airports in China and Macao (Special Administrative Region). In Switzerland, a majority of the stakes in Zurich Airport is in the hands of the private sector.

3.7.3 Only about 20 airports/airport groups, whether fully or partially privatized, are publicly listed on stock exchange markets, of which six are located in China.

3.8 PRICING REGULATION

3.8.1 In almost all the States where private participation or privatization in the provision of airport services has taken place, regulatory authorities have been established to ensure that dominant position is not abused, especially in the case of aeronautical charges. For example, in the United Kingdom, aeronautical charges are controlled by the Civil Aviation Authority. The control is exercised by applying a Retail Price Index (RPI) minus X formula (i.e. the charges are capped on an annual basis according to a percentage X, set by the authority, usually less than general inflation). The X factor is adjusted every five years, taking into account, inter alia, major investment projects. The Civil Aviation Authority is also required to refer the rates for review by the Competition Commission.

3.8.2 In some other States, similar formulae with more parameters, including growth in traffic, have been adopted. For example, Vienna Airport takes a tariff basket approach in which inflation and traffic are the guiding parameters. In Portugal, the tariff basket includes airport costs, traffic growth, commercial income and inflation. In South Africa, an RPI minus X formula is used to adjust aeronautical charges, and guidelines have been provided to the Regulating Committee in regard to the valuation of X which differs from airport to airport. In Colombia, a system of indexing has been provided which takes into account a number of parameters.

3.8.3 In some States, specific provisions exist to cap aeronautical charges for a limited number of years. In Argentina, aeronautical charges were frozen for five years. However, in Canada, no defined mechanism has been established, and the airport operators and the airlines are left to settle the issue through consultation. The government considers that as major airports and air navigation services are managed by not-for-profit corporations, the opportunity for abuse of dominant position does not exist.

3.8.4 The logic behind such RPI minus X provisions is that certain airport costs do not increase in the same proportion as the rate of inflation or they remain unaffected.

3.8.5 None of the formulae for price regulation can be considered perfect. Some do not fully take into account the cost of providing the airport services as recommended by ICAO's policies on charges (Doc 9082), and some arbitrariness in the determination of the value of X cannot be completely avoided. Nevertheless, all the formulae include a desirable objective of reducing aeronautical charges in future in real terms. To enable the system to work effectively, it

is necessary that the base level of charges is fixed correctly on the basis of comprehensive and transparent cost data. Moreover, there should be a general review of charges every few years, taking into account both the cost of providing the services and the need to provide a reasonable return on investment.

3.8.6 Regulation in regard to rents and other fees, including ground handling charges, is limited or non-existent. Reportedly, at certain airports, non-aeronautical rates and fees have increased several-fold after a change in management consequent to leasing the airports.

3.9 USE OF REVENUES

3.9.1 In several States, such as in European States, Australia and New Zealand, funds generated through private participation and privatization in the provision of airports are credited to the treasury without any commitment to use them for the development of the aviation industry.

3.9.2 In developing States, which often have airports that are required to be maintained on economic, social and political grounds regardless of financial viability, many governments have indicated their intention to use the proceeds from private participation for the operation and development of financially weaker airports. For example, in India the revenue earned from leasing the major airports does not go to the general exchequer but to the Airports Authority of India to finance the development of smaller airports across the State. Similarly, in Côte d'Ivoire, the funds generated from private participation and privatization of the major airport, Abidjan, are being utilized for the development of other airports. In Malaysia, the airport operator MAHB was given the exclusive right to operate and manage Malaysia's commercial airports under the condition that it continue providing airport services to rural and remote communities, thus keeping responsibility for about 20 loss-making airports throughout the country. In Mexico, the government granted concessions for the operations of several groups of airports: each group formed around one airport with traffic exceeding five million passengers a year and with an important regional role, and also comprising less profitable or unprofitable airports.

3.9.3 Revenues generated when air navigation service providers are government departments are consigned to treasury coffers. In some instances, this means that aeronautical charges are being used to fund non-aviation activities for policy and financial reasons. The investment plans are determined according to the government's general financial situation rather than by the requirements of the infrastructure.

3.10 SPECIAL CONSIDERATIONS REGARDING AIR NAVIGATION SERVICES

3.10.1 The basic characteristics of air navigation services operations differ fundamentally from those of airport operations in several respects. Unlike airports, air navigation facilities and services provided by a State generally extend over the entire territory of the State concerned and sometimes beyond, and frequently depend on facilities and services provided by other States. In most States all or most of the air navigation services are provided by more than one entity although only a few would be major service providers. Air navigation services are considered more closely connected with the safety of aircraft operations. Furthermore, air navigation services have national defence and external relations implications with respect to the sovereign airspace of States. Consequently, most governments favour maintaining their control over air navigation services.

3.10.2 Many of the air navigation service providers are government departments, usually civil aviation administrations that operate on an annual budget allocated by the government. The government controls the charges and retains control over air navigation services charges and other issues. Private participation in the provision of air navigation services is minimal to date. There is minor participation of airlines in the equity of Thailand's air navigation services, AEROTHAI, for historical reasons, and the government controls the charges. Canada privatized its air

navigation services through Nav Canada, a not-for-profit organization that is monitored by airline customers through membership on the board of directors. It is unique as it has no shareholders and accordingly no dividends to pay. In the United Kingdom, the UK NATS was established as a PPP in 2001 and is owned 49 per cent by the government, which also maintains a special share, 42 per cent by the Airline Group, a consortium of UK airlines, 5 per cent by its employees and the remaining 4 per cent is owned by the airport operator, BAA.

3.10.3 Compared to airports, the movement towards establishing autonomous entities for managing air navigation services has been slow, although the benefits have been recognized and have given way to liberal concepts of management. More than 60 States have established autonomous entities in the form of corporate authorities or companies wholly owned by government for managing their air navigation services. It appears that the financial position of these organizations is relatively sound. In addition to the autonomous entities managing air navigation services, there are a number of civil aviation authorities or autonomous airport authorities that, in addition to managing airports, are providing air navigation services.

3.10.4 An important characteristic of autonomous entities operating air navigation services is the international dimension not found in the operation of airports. There have been technical factors and operational constraints that could not be adequately solved without international cooperation in the provision of air navigation services, in particular route facilities and services. This has led to the establishment of autonomous international agencies to which the operations of air navigation services, notably route facilities and services, have been assigned.

International cooperation in the provision of air navigation services

3.10.5 Autonomous international operating agencies are assigned the task of providing air navigation services, principally route facilities and services, within a defined area on behalf of several States. The services they provide are usually in the category of air traffic services, communications, search and rescue, and aeronautical information services but can extend to meteorology as well. These agencies are also responsible for the collection of air navigation charges on behalf of their Member States. Examples are the Agence pour la Sécurité de la Navigation Aérienne en Afrique et à Madagascar (ASECNA), the Corporación Centroamericana de Servicios de Navegación Aérea (COCESNA), and the European Organisation for the Safety of Air Navigation (EUROCONTROL). Some consideration has been given to establishing similar agencies for the provision of air navigation services in other regions or sub-regions, for example, in eastern Africa and the Pacific Islands.

3.10.6 Experience indicates that international operating agencies have contributed, often significantly, to improved efficiency in the provision of facilities and services at lower costs to both providers and users. Among the advantages offered is a more efficient use of personnel, facilities and equipment, as well as savings in research and development through economies of scale and the elimination of duplication at the national level. This has particular relevance for States with less advanced economies where trained personnel and financial resources are scarce. Such operating agencies are usually more successful than individual States in the collection of amounts due for overflights owing to the larger geographical areas usually covered by their activities. Moreover, since such agencies represent a number of States, they tend to be in a stronger negotiating position in their financial and commercial dealings and may therefore be able to secure more advantageous terms.

3.11 IMPACT OF PRIVATE PARTICIPATION AND PRIVATIZATION

The impact of private participation and privatization in the provision of airports and air navigation services must be viewed from the perspective of all the stakeholders in the provision of these services. These include the State, the private participants, aircraft operators, passengers, shippers, employees of the airports and air navigation services organizations, concessionaires, and the local community. However, information in this regard is limited. Since the impact of private participation and privatization in the provision of airports and air navigation services varies over time and is not

the same in all States, it would be difficult to draw any definite conclusions. Nevertheless, the impact for governments appears to be positive in the sense that they have generated some funds and transferred the responsibility for the development and operation of major airports to the private sector. The shareholders of companies holding a stake in the equity of airports have generally gained substantially because airport company shares have increased more than the overall index of other shares in the equity market. Aircraft operators generally welcomed private participation in the provision of airports as they expected improvements in efficiency. However, they feel that there have been unreasonable increases in airport charges and rates in many cases. Overall, it has been reported that aeronautical charges have generally decreased in real terms and services have improved after private participation and privatization.

Chapter 4

ICAO'S POLICIES AND GUIDANCE

4.1 OBLIGATIONS OF STATES UNDER THE CONVENTION ON INTERNATIONAL CIVIL AVIATION

4.1.1 The provisions of the Convention are binding upon all Contracting States, and while they do not prohibit Contracting States from delegating some of the functions for which they are responsible to private entities, the responsibility for ensuring that all the provisions of the Convention and the Annexes are fully complied with rests with States. Article 28 of the Convention places on each Contracting State the responsibility for the provision of airports and air navigation services in its territory in accordance with the standards and practices recommended or established pursuant to the Convention. Thus, the ownership and management of airports and air navigation services may be delegated to the private sector, but the overall responsibility for the provision of services in compliance with the Convention and Standards and Recommended Practices (SARPs) remains with States.

4.1.2 Article 11 of the Convention sets forth that the laws and regulations of a Contracting State relating to the admission to or departure from its territory of aircraft engaged in international air navigation, or to the operation and navigation of such aircraft while within its territory, shall be applied to the aircraft of all Contracting States without distinction as to nationality.

4.1.3 Article 15 of the Convention establishes the basic policies on airport and air navigation services user charges and reinforces the concepts of freedom of access and non-discrimination set forth in Article 11 with respect to the use of facilities and services for the aircraft of Contracting States in the operation of international air transport. It sets forth that every airport in a Contracting State that is open to public use by its national aircraft shall likewise be open under uniform conditions to the aircraft of all other Contracting States. The uniform conditions shall apply to the use, by aircraft of every Contracting State, of all air navigation facilities. Article 15 further sets forth that any charges that may be imposed or permitted to be imposed by a Contracting State for the use of such airports and air navigation facilities by the aircraft of any other Contracting State shall not be higher than those that would be paid by its national aircraft of the same class engaged in similar international operations. Also, no fees, dues or other charges shall be imposed by any Contracting State in respect solely of the right of transit over or entry into or exit from its territory on any aircraft of a Contracting State or persons or property thereon. Finally, Article 15 sets forth that Contracting States shall publish and communicate to ICAO the airport and air navigation services charges imposed or permitted to be imposed. In this respect, ICAO collects and publishes such charges in Doc 7100, *Tariffs for Airports and Air Navigation Services*.

4.1.4 Under Article 37, Contracting States undertake to collaborate in securing the highest practicable degree of uniformity in regulations, standards, procedures and organization in relation to aircraft, personnel, airways and auxiliary services in all matters in which such uniformity will facilitate and improve air navigation.

4.2 OTHER INTERNATIONAL TREATIES AND AGREEMENTS

In addition to the Convention, there are likely to be other international treaties and agreements signed by a State that refer to some aspect of the provision of airports or air navigation services, notably bilateral or regional air services agreements. Accordingly, it is essential that before any movement towards private participation or privatization in the

provision of airports and air navigation services is made, legislative or regulatory arrangements should be made to ensure that the provisions of the Convention and other international obligations of the State are fully complied with by the provider of airports and/or air navigation services.

4.3 SAFETY AND SECURITY

4.3.1 The travelling public attaches high priority to the safety and security aspects of air transport operations. States must have appropriate legal powers to intervene whenever necessary to ensure the safety of operations. State aviation regulations should include a requirement for the certification of public use aerodromes. With private participation and privatization in the provision of airport services, the airports would need to be certified with respect to safety and security by the regulatory authorities.

4.3.2 ICAO has developed the *Manual on Certification of Aerodromes* (Doc 9774) to provide guidance to States in establishing their regulatory system for the certification of land aerodromes.

4.4 ICAO'S POLICIES ON CHARGES FOR AIRPORTS AND AIR NAVIGATION SERVICES

4.4.1 On the basis of principles contained in the Convention, ICAO has developed policy guidance on charges for airports and air navigation services (*ICAO's Policies on Charges for Airports and Air Navigation Services*, Doc 9082). An important observation made in this document is that there should be a balance between the respective interests of airports and ANSPs on one hand and aircraft operators and end-users on the other, in view of the importance of the air transport system to States (paragraph 8 of the Foreword to Doc 9082 refers). This guidance is applicable to airports and air navigation services whatever their organizational format or ownership.

4.4.2 Doc 9082 (paragraphs 4 to 7 of Section I refer) notes that experience gained worldwide indicates that where airports and air navigation services are operated by autonomous entities their overall financial situation and managerial efficiency have generally improved. Therefore, Doc 9082 recommends that where it is economically viable and in the best interest of providers and users, States consider establishing autonomous entities to operate their airports or air navigation services. Further, it recommends that when considering the commercialization or privatization of airports and ANSPs, States bear in mind that they are ultimately responsible for safety, security and economic oversight of these entities, and that whenever an autonomous entity is established, whether by a government or by private interests, to operate an airport(s) and/or provide air navigation services, the State should ensure that all relevant obligations of the State specified in the Convention, its Annexes and in air services agreements are complied with, and that ICAO's policies are observed.

4.4.3 Regarding economic oversight, Doc 9082 (paragraphs 12 to 15 of Section I refer) states that the main purpose should be to achieve a balance between the interests of airports and ANSPs and those public policy objectives that include, but are not limited to, the following:

- i) minimize the risk of airports and ANSPs engaging in anti-competitive practices or abusing any dominant position they may have;
- ii) ensure non-discrimination and transparency in the application of charges;
- iii) ascertain that investments in capacity meet current and future demand in a cost-effective manner; and
- iv) protect the interests of passengers and other end-users.

To promote these objectives, consistent with the form of economic oversight adopted, Doc 9082 recommends that States ensure that airports and ANSPs consult with users and that appropriate performance management systems are in place. It further recommends that States adopt an approach to economic oversight that meets their specific circumstances (the degree of competition between providers, the costs and benefits of different forms of oversight, as well as the legal, institutional and governance frameworks should be taken into consideration when selecting the appropriate approach, and regulatory interventions should be used only when required and kept to a minimum).

4.4.4 Among the basic principles included in Doc 9082 concerning the cost basis for airport charges is the principle that it is desirable, where an airport is provided for international use, that users shall ultimately bear their full and fair share of the cost of providing the airport (paragraph 1 of Section II refers). The cost to be allocated is the full cost of providing the airport and its ancillary services, including appropriate amounts for cost of capital and depreciation of assets, as well as the costs of maintenance, operation, management and administration. Consistent with the form of economic oversight adopted, these costs may be offset by non-aeronautical revenues.

4.4.5 Doc 9082 also includes a similar principle for air navigation services charges, which states that as a general principle, where air navigation services are provided for international use, the State may require the users of such services to pay the portion of costs properly allocable to them, but international civil aviation should not be asked to meet costs that are not properly allocable to it (paragraph 1 of Section III refers). The cost to be allocated is the full cost of providing the air navigation services, including appropriate amounts for cost of capital and depreciation of assets, as well as the costs of maintenance, operation, management and administration (paragraph 3 i) of Section III refers).

4.4.6 Doc 9082 also emphasizes the importance of consultation with airport and air navigation services users before changes in charging systems or levels of charges are introduced, as well as regarding capacity development planning and investment planning, in order to ensure that the provider gives adequate information to users relating to the proposed changes and gives proper consideration to the views of users and the effect the charges will have on them (paragraphs 17 to 19 of Section I refer).

4.4.7 Doc 9082 differs in status from the Convention in that Contracting States are not bound to adhere to its provisions and recommendations. However, because of the widespread endorsement of the policies therein by worldwide economic conferences, the Council, and Assembly Resolutions, and their practical value in avoiding discrimination and potential disputes, there is a strong moral obligation for States to ensure that the cost recovery practices of their airports and ANSPs conform to the policies and philosophy set out in Doc 9082. Indeed, the Council of ICAO strongly encourages States to apply ICAO's policies on charges for airports and air navigation services (paragraph 1 of Section I of Doc 9082 refers). Further, as per a recommendation adopted by the Conference on the Economics of Airports and Air Navigation Services (CEANS 2008) and endorsed by the ICAO Council, States are encouraged to incorporate the four key charging principles of non-discrimination, cost-relatedness, transparency and consultation with users into their national legislation, regulations or policies, as well as into their air services agreements, in order to ensure compliance by airport operators and ANSPs (paragraph 1 of the Foreword to Doc 9082 refers).

Chapter 5

OWNERSHIP AND MANAGEMENT OPTIONS

5.1 APPLICATION OF OPTIONS

5.1.1 Airports and air navigation services in different States are operated under various organizational formats. The options discussed below are being exercised in different parts of the world to a greater or lesser degree. This reflects the diverse social and economic environments that exist in various States. Moreover, the volume of air traffic and financial viability, which can considerably influence the choice of ownership and management options, may differ from airport to airport and from ANSP to ANSP.

5.1.2 The available data do not establish that one particular option is better than another. What is best for a State depends upon the situation in that State, including volume of traffic and growth potential, condition of the existing infrastructure, improvement and expansion requirements, access to capital markets, managerial skill, and the overall policy of the government on changes in ownership and management of infrastructure.

5.1.3 A particular option may cover some or all airports, either individually or in groups. In the same State, it is possible to have one option for one airport or a set of airports and another option for another airport or another set of airports. A combination of options is also possible. For States with limited air transport development, air navigation services may also be considered for inclusion in the preferred option for airports. Under each option, variations are possible.

5.1.4 Finally, it is important that States exercise their economic oversight responsibilities clearly separated from the operation and provision of airports and air navigation services, with roles and powers clearly defined for each function.

5.2 APPROACH TO THE SELECTION OF AN OPTION

The ownership and management structure of the airport(s) should be considered as a means to achieving the objective of providing safe, secure, efficient and economical service to aircraft operators and end-users. Financial and operational autonomy, as well as the use of best practices of good corporate governance, are key to the success of ownership and organizational structure.

5.3 OPTIONS AVAILABLE TO STATES

5.3.1 States have various ownership and management options for their airports, each presenting different features and advantages. Detailed guidance material on ownership, control and governance of airports is included in Chapter 2 of the *Airport Economics Manual* (Doc 9562). The most common organizational forms of airports at the national level are the following.

5.3.2 **Government ownership.** This may take the form of direct control and management, management by a government body with financial and operational autonomy, an autonomous corporation established under the provisions of a special statute or a company established under company law. Under this option, airports basically remain under the overall ownership and control of the government. A government-owned organization is generally expected to act with public interest in mind rather than profit. This option may provide flexibility to States in ensuring that the development of airports will suit their political, social and economic requirements. An autonomous organization is preferable to a government organization directly managing the airports.

5.3.3 **Management contract.** Under this option, the management of an airport is transferred to a private entity for a limited period of time for a fee. The airport benefits from professional management, but under this option management does not undertake development of the airport from its own funds. This option may be suitable for airports with limited development requirements but for which financial and operational management needs improvement.

5.3.4 **Lease.** Leases can be short-, medium- or long-term. Under this option, an airport is transferred for management and development to a private entity for a fixed period. However, under this system, the arrangement is final for the period of the lease. For an arrangement with a longer lease period, the amount of lease money can be expected to be higher than that from a short-term lease. Build, operate and transfer (BOT); build, own, operate and transfer (BOOT); and build, transfer and operate (BTO) are essentially leasing arrangements (see Glossary).

5.3.5 **Transfer of minority ownership.** Under this option, ownership of an airport is partially transferred to the private sector. The advantage of this system is that the transfer of ownership can be carried out in stages depending upon local circumstances and needs.

5.3.6 **Private sector ownership and control.** Under this option, majority or full ownership of the airport is transferred to a private entity or to a consortium, including non-profit corporations or trusts. Once the equity shares are transferred, the State may only regain ownership of the airport by buying back the shares, provided that private investors are prepared to sell them. In such an event, the government may have to pay a price higher than the original sale price of the shares. It is noteworthy that many private airports are not quoted in the stock exchange.

5.3.7 **Public-private partnership (PPP).** Under this option, public authorities conclude an agreement or an arrangement with private sector companies to supply assets and services previously provided by the government. The advantages of this technique are the following: the private sector assumes the financing of the infrastructure investment (it does not immediately add to the government borrowing and debt, and may be a source of government revenue); and the private sector management and capacity to innovate can also lead to better quality and lower cost services. Nevertheless, it should be noted that PPP contracts can be very complex and balancing public and private interests can be challenging.

5.4 AIR NAVIGATION SERVICES

Theoretically, the same options apply to ANSPs, although at the present time, some of the options may be considered impractical for most States. When considering privatization or private participation in the provision of air navigation services, a more cautious approach is required because of cross border and other implications. Detailed guidance material on ownership, control and governance of ANSPs is included in Chapter 2 of the *Manual on Air Navigation Services Economics* (Doc 9161).

Chapter 6

PREPARING FOR CHANGE IN OWNERSHIP AND MANAGEMENT STRUCTURE, INCLUDING REGULATORY ASPECTS

6.1 PLANNING

A number of issues will need to be considered by a State contemplating a change in the ownership or management structure of its airports or ANSP. A change in the ownership or management structure may not solve all the problems that an airport or a group of airports or an ANSP may be facing and could have adverse effects in the long term if poorly planned. It is therefore necessary to be clear about the short-term and long-term objectives of any change.

6.2 CONSULTATION

When considering a change in the ownership and management structure of airports or ANSPs, existing airport or ANSP management should be involved at every stage of the process. Users of the facilities and other concerned parties should also be consulted.

6.3 STUDY OF FINANCIAL AND MANAGERIAL SITUATION

6.3.1 An in-depth analysis needs to be made of the existing airport or air navigation services infrastructure in the State and the problems faced by it, including financial and managerial problems. This should include preparation of detailed profit and loss accounts for both the airports and air navigation services, even if they are managed together. As situations at the various airports may not be the same, it is desirable to do separate analyses of individual airports, especially of the larger airports with substantial traffic volumes.

6.3.2 It is not sufficient to base a change in the ownership and management structure solely on the existing situation. It is important to understand what could be expected in the future without a change in the ownership and management structure. For this purpose, it is necessary to make a forecast of air traffic for the coming ten years, if feasible. It is desirable to prepare such forecasts for the individual airport(s) or ANSP considered for private participation or privatization. Based on the expected traffic, a forecast of revenue and expenses can be made, taking into account the possibilities of improving the tariff structure and generating new sources of revenue. In addition, an assessment of the capital development requirements needs to be made. Simultaneously, the managerial and training needs must be assessed and the possible options to meet financial and other requirements considered.

6.4 SELECTION OF AN OWNERSHIP AND MANAGEMENT OPTION

The most appropriate option can only be determined after a specific study, taking into account the financial and managerial situation of the airport(s) or ANSP, the political and economic system in the State, and short- and long-term objectives. The selection will therefore be State-specific and likely airport-specific. In most States, change in airport

ownership and management has taken place with caution and in stages. The evidence suggests that States have generally benefited from this approach.

6.5 MANAGEMENT OF RESIDUAL FACILITIES AND SERVICES

6.5.1 The private sector is interested in profit-making facilities and services or in facilities and services with the potential to generate a profit. It may be possible to group unprofitable airports with profitable airports so long as there is overall profitability, although care must be taken to ensure that this does not compromise international principles on non-discrimination. Governments may decide to place profitable airports in a separate category. It is important to decide simultaneously how the remaining airports and other services are to be managed and financed. Much will depend on what facilities and services remain and their financial requirements.

6.5.2 It may be necessary to first assess whether non-viable airports are essential by considering whether the social and economic benefits derived from their operation justify the losses to be covered. This is especially important in developing States, where improvements in surface modes of transport can sometimes alter the economic viability of an airport.

6.5.3 Options for residual facilities and services include retaining government ownership and management of the airports and creating an autonomous authority, or creating an autonomous authority for air navigation services and airports remaining with the government. It may also be possible to have subsidized private participation in the remaining airports and select an agency that demands the least subsidy to operate them.

6.6 UTILIZATION OF REVENUE FROM PRIVATE PARTICIPATION AND PRIVATIZATION

6.6.1 The revenue generated from private participation and privatization is generated from the sale or lease of government assets. Accordingly, the government should be able to use such revenue to meet the cost of capital development programmes and recurring revenue deficits of the remaining airports and other services. It may be appropriate to place the revenue generated from private participation or privatization in a fund to be drawn upon for this purpose. This should not be considered as cross-subsidization since the revenue generated is not from the operational profits of airports and air navigation services.

6.6.2 In a State with a limited volume of traffic, the revenue generated from private participation or privatization may not be sufficient to meet the financial requirements of the residual facilities and other services. In such cases, the State would need to consider options to provide resources for the remaining essential requirements.

6.7 CHANGES TO THE LEGAL FRAMEWORK

In most States, a change in the ownership and management structure of airports and air navigation services would require changes to the legal framework for civil aviation, the nature of which will depend upon the existing legal system, including constitutional provisions, and the objective of the proposed change. As legal systems differ from State to State, and the choice of ownership and management structure may also vary, it is not possible to develop a model legal framework to be applied in all States. After selection of an option, immediate action should be taken to provide the necessary legal framework, either through an amendment of the existing law or enactment of new legislation. It may be desirable to provide for flexibility in the new legislation by including enabling provisions so that the government can make minor changes in the ownership and management structure without amending the law. The new legal framework may need to include provisions for the following:

- a) the transfer of ownership or management of airports to the private sector;
- b) a system of management of remaining airports and other services;
- c) non-discrimination in access to facilities and services;
- d) setting of airport charges, especially aeronautical charges, and safeguards against abuse of dominant position, through economic oversight;
- e) uniformity of standards, procedures and organizations;
- f) reporting requirements; and
- g) security and safety requirements.

6.8 ECONOMIC OVERSIGHT

As noted above, States are ultimately responsible for the economic oversight of their airports and ANSPs. In other words, States bear the responsibility for supervising commercial and operational practices of airport and ANSPs. The main purpose of economic oversight should be to achieve a balance between the interests of airports/ANSPs and public policy objectives. The approach to economic oversight should meet the specific circumstances in each State.

6.9 OTHER REGULATORY ASPECTS

6.9.1 **Strengthening of the regulatory organization.** With growing private participation and privatization in the provision of airports and air navigation services, the responsibility of States to monitor and take corrective action as a regulator has increased considerably. The economic oversight function should be supported by an adequate legal framework and where an economic regulating body is established it should be independent, at least in States with high volumes of traffic, to avoid conflicts of interest. The costs for safety, security and economic oversight that are directly related to the provision of airport and air navigation services may be included, at the State's discretion, in the airport's and in the ANSP's cost basis for charges, respectively, provided that such costs are imposed on the providers of services.

6.9.2 **Dominant position.** Airports and air navigation services hold, in essence, a dominant position on which the users — aircraft operators, passengers and shippers — are highly dependent. In certain States, such as landlocked States with a single international airport or States isolated by water or other physical barriers, airports play a critical role in the economy. If these services are privatized or private participation is permitted, it should be ensured that dominant position is not abused. An unregulated private monopoly can be more harmful than a relatively inefficient public monopoly. Accordingly, the economic oversight function should provide for price controls or capping in regard to user charges. Competition should be encouraged with respect to major services required by the aircraft operators, such as ground handling services.

6.9.3 **Quality control.** In order for airports and ANSPs to operate efficiently in both the public and private sectors, there is a need to monitor the quality of services provided to the various users. When services are provided by the private sector, the responsibility to closely monitor the quality of services provided devolves to the State, especially because a conflict may arise between, on one hand, the need to maintain and improve the quality and the quantity of infrastructure and services, and, on the other hand, the financial interests of the provider. Doc 9082 recommends that

States ensure that their airports and ANSPs develop and implement appropriate performance management systems that include:

- i) defining performance objectives with the purpose to continuously improve performance in four key performance areas (KPAs), i.e. safety, quality of service, productivity and cost-effectiveness;
- ii) selecting and reporting at least one relevant performance indicator and its target for each of the KPAs selected;
- iii) using the results to evaluate and improve performance; and
- iv) undertaking consultations with users and other interested parties to achieve a mutual understanding and consensus, where appropriate, on performance objectives, level of performance targets and plans to achieve the targets (paragraph 16 of Section I of Doc 9082 refers).

6.9.4 **Dispute settlement.** With the growth in financial and organizational autonomy in the provision of airports and air navigation services, disputes between users and service providers, particularly regarding user charges, are likely to increase. In the interest of airports, ANSPs and users, there may be a need for a neutral party at the national level to pre-empt and resolve disputes on user charges before they enter the international arena (a “first resort” mechanism). Such a mechanism should be flexible, with focus on conciliation or mediation but with the possibility of arbitration if the State concerned so decides. The mechanism, if required, should be established in a manner consistent with the form of economic oversight adopted (paragraph 22 of Section I of Doc 9082 refers).

6.9.5 **Balancing the interests of stakeholders.** While regulating the civil aviation industry, it should be borne in mind that regulations place constraints on the private operator. Discretionary powers of States increase the risks to the private operator, and these increased risks may lead to a higher expectation of return on investment. Regulations should be minimal, transparent, precise and simple to understand and administer. The overall objective of the State should be to balance the interests of the various stakeholders, including the private service provider, passengers, shippers, aircraft operators, local communities and the wider public. General aviation and aerial work communities, in particular, may be adversely affected in some States by private participation and privatization of airports as benefits they enjoyed when the airports were owned and operated by the government may be curtailed. They may face problems of access or large increases in charges (on the basis of related costs incurred). General aviation and aerial work activities provide an essential service in many States. It will be for individual States to consider how any difficulties faced by general aviation and aerial work communities should be mitigated.

6.10 HUMAN RESOURCE ISSUES

6.10.1 Privatization and private participation in the provision of airports and air navigation services may have some impact on the future of the personnel currently employed in these services. It is necessary to consider whether any safeguards are required for their continued employment, alternative employment or compensation in the event of loss of employment with respect to legal, social and political requirements existing in the State.

6.10.2 Whether the airports and air navigation services are managed by the government, autonomous providers or the private sector does not materially change the requirement for qualified and trained personnel. However, there may be an increase in the training requirements in certain disciplines depending upon the background of new managers and other personnel employed by a private operator.

6.10.3 The priority attached to training aspects may differ from one operator to another. Their philosophy and policies in regard to the training of their personnel should be given due consideration by governments during the selection process. However, it should be left to the private provider to decide details such as the institutions to be utilized

for training purposes. The State should be interested primarily in the quality of services, ensuring that safety and security are provided, and that necessary licensing and other requirements are adequately met.

6.10.4 Private participation and privatization of airports and air navigation services may have some impact on the future of training institutions owned and operated by the government because a private provider may not use these facilities. On the other hand, a private provider may wish to manage and/or own the existing training institutions, either partially or fully. States would therefore need to consider the impact of private participation and privatization on training requirements and facilities. In the past, with the government owning the airports and the training institutions, cost recovery of the training facilities was not given much importance. With private participation and privatization in the provision of airports and air navigation services, this aspect becomes important, as cost recovery could mean subsidizing the training facility.

Chapter 7

SELECTION OF A PRIVATE PROVIDER

7.1 GENERAL

Selection of a private provider under the lease approach is normally done through a system of competitive bidding. A strategic partner under transfer of part ownership may also be selected using the same system.

7.2 REQUIREMENTS OF THE BIDDING PROCESS

7.2.1 At the outset, it is necessary to determine the essential requirements for the bidding process, such as whether:

- a) majority shareholding in the company should be by nationals of the State;
- b) any restrictions should be placed on the size of individual shareholdings;
- c) the bidding company should be registered in the State;
- d) there should be any limit on the number of foreign directors of the company;
- e) any restrictions should be placed on the transfer of shares if private participation or privatization is through the sale of shares;
- f) airline participation in the bidding company should be permitted; and
- g) restrictions should be imposed on airline shareholdings in the bidding company, and if so, what they would be, and should this limit apply to foreign airlines, national airlines or both.

7.2.2 It may also be preferable to restrict the participation of airlines in the ownership and management of airports and air navigation services to avoid conflicts of interest that may arise when the users become the owners.

7.3 TRANSPARENCY

7.3.1 The entire process of private participation and privatization should be transparent, including dissemination of information and bidding. This may help to increase the economic value of the transaction. It would create confidence in the process and enable bidders to submit realistic bids.

7.3.2 The government should provide potential bidders with all relevant information, including traffic, finances, user charges, concessionaires, organizational structure and personnel, physical condition of the infrastructure and the planned regulatory framework. Any supplementary information provided in response to a query by a bidder should be copied to all other bidders. If possible, the criteria for taking a decision should also be indicated in the tender documents.

In the lease approach, it is especially important to state clearly what the government expects from the bidders, such as fixed fees or annual fees or a combination of the two, and financing of capital development programmes.

7.3.3 The tender document submitted by the bidders should provide all the relevant information for evaluating bids and taking a decision. Care should be taken to avoid requesting information that is too detailed and that is sometimes difficult or costly to provide.

7.4 SHORT-LISTING OF BIDDERS

The selection of a suitable provider through a tender system is normally done in two stages: a) drawing up a shortlist of bidders; and b) inviting financial bids from the shortlisted bidders. The preparation of the shortlist is by far the most crucial stage and must be done carefully. Once the shortlist has been completed, the leverage left with the government is limited, since it has only to compare the financial bids.

7.5 CONTRACT DOCUMENTATION

7.5.1 The contract document between the government and the private provider is the key operative document for the smooth management and operation of the facilities and services and, accordingly, must be prepared very carefully. It is particularly important to ensure that the government has a right to terminate the contract and resume control of the facilities and services in certain grave situations without paying undue compensation to the private provider. It is also necessary that the government has the power to impose penalties for relatively minor but continuing breaches of the important provisions of the contract.

7.5.2 It is essential to include in the contract that only the courts in the State where the airport(s) or the ANSP are located will have jurisdiction in case of a legal dispute and will deal with the dispute in accordance with national laws.

7.6 EXPERT ADVICE

7.6.1 Since private participation and privatization in the provision of airport and air navigation services is a complex process in which many States may not have sufficient expertise, it may be desirable and advantageous to obtain the advice of external consultants who have the required expertise and who are familiar with ICAO's policies and guidance.

7.6.2 The consultants must not have any affiliation with the bidders. The government should work closely with the consultants, regularly monitor their work and carefully review any reports produced by them. It should be noted that consultants are advisers only, and that all decisions must ultimately be taken by the government.

7.7 CORPORATE GOVERNANCE AND PERFORMANCE MANAGEMENT

7.7.1 The change of ownership, control and/or management of an airport can have implications on its corporate governance. Corporate governance refers to the oversight of a company or an entity by its management and the entity's accountability to shareholders and other interested parties. Policies on best practices of good corporate governance are described in paragraphs 9 and 10 of Section I of Doc 9082, and detailed guidelines for an efficient corporate governance system are included in Chapter 2 of Doc 9562 and Doc 9161.

7.7.2 Corporate governance principles and codes have been developed worldwide. Some of the most influential guidelines are the *OECD Principles of Corporate Governance* (2004) by the Organization for Economic Co-operation and Development. It is a major code to ensure good corporate governance of commercialized providers. The recommended principles include:

- a) clearly defined objectives and responsibilities as set out in legislation or a license;
- b) an equitable treatment of shareholders and protection of shareholders' rights (where all or a part of the capital is held by private shareholders);
- c) an independent, professional supervisory board to provide overall direction to management;
- d) empowered and accountable management to make timely decisions regarding finances, operations, technology, human resources, investments and services in line with corporate objectives and board directions;
- e) good relationships with all interested parties through consultation; and
- f) timely and accurate disclosure of information to enhance transparency.

7.8 RISKS TO STATES

7.8.1 Every business activity has certain risks, and airports and air navigation services are no exception. The major risks to States in private participation or privatization in the provision of airport services are that:

- a) the leasing company may become insolvent;
- b) the private provider may not be fully aware of safety and security requirements, or of ICAO's policies on user charges;
- c) a provider owning or managing a group of airports may ignore the developmental needs of airports that are likely to yield less profit;
- d) the private provider may not honour the lease payments or may delay the development programmes to which it committed;
- e) the private provider may pressure the State to renegotiate the terms of the lease after quoting unrealistic payment terms or if the expected traffic does not materialize.

7.8.2 Unlike an aircraft or an operator, airports and ANSPs are fixed assets that cannot be moved. Risks to the private provider could be greater than those to the State. If the private provider is well regarded, financially sound and experienced, the risks to the State would be minimal. Finally, the risks to States can be minimized if the contract documents have been well prepared with suitable provisions for termination in grave circumstances, and if the legal framework and the regulatory agency are strong and effective.

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