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Privatization in the Provision of Airports and Air Navigation Services

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FOREWORD

1. Many changes have occurred in recent years 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 in this area from ICAO.

2. This circular responds, in part, to that need. It 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, provides definitions and analyses of the options available, together with the possible implications of these options, and 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 circular 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), which was revised and updated by the Council in December 2000. The guidance material presented in this circular 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 (ANSCConf 2000, Montreal, 19–28 June 2000) and subsequently approved by the Council.

4. This circular was prepared by the Secretariat. Various ICAO publications referenced in the text were the principal reference sources, with valuable input being provided by States and international organizations directly or through the ICAO programme of regional workshops on Airport and Route Facility Management (WARFM) and ad hoc seminars.

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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. Recently, however, private participation and privatization in the provision of airport services and, to a limited extent, air navigation services have been gaining momentum (paragraphs 1.2 and 1.3 refer).
2. Airports and air navigation services are, in essence, monopolies upon which users are highly dependent. With privatization and private participation in the provision of these services, it is important for governments to ensure that monopoly power is not abused (paragraph 1.4 refers).

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 of Terms (paragraphs 2.1, 2.2 and 2.3 refer).

DEVELOPMENTS IN OWNERSHIP AND MANAGEMENT

4. Privatization and private participation in the provision of airport services has 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 3.8, 3.9, 3.10, 3.11 and 3.12 refer).
5. In almost all States in which privatization or private participation has taken place, regulatory authorities exist or have been established in some form to ensure that monopoly power is not abused, especially in the case of aeronautical charges. However, regulations in regard to rents and other charges are generally lax or non-existent (paragraph 3.2 refers).

ICAO POLICIES AND GUIDANCE

6. The Convention is binding on all Contracting States, and while it does not prevent them from delegating functions to private entities, the responsibility for ensuring that all the provisions of the Convention are fully complied with rests with States (paragraph 4.1 refers).

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 the 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 (paragraphs 4.1, 4.2 and 4.3 refer).

8. ICAO 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 *ICAO's Policies on Charges for Airports and Air Navigation Services* (Doc 9082). The *Airport Economics Manual* (Doc 9562) and the *Manual on Air Navigation Services Economics* (Doc 9161) provide practical guidance (paragraph 4.8 refers).

OWNERSHIP AND MANAGEMENT OPTIONS

9. This circular 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 5.2 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; and
- e) 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 5.11 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, 6.6 and 6.11 refer).

SELECTION OF 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 shortlisting 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 7.4, 7.5, 7.6, 7.7, 7.8, 7.9 and 7.10 refer).

CONCLUDING REMARKS

15. The primary objective of airports and air navigation services is to provide, safe, secure, efficient and economical services to users. There are several ownership and management options that may be considered to achieve this end. There is no best option for global application. A State should choose an option best suited to it. Selection of an option should be done after a careful consideration and planning. Regardless of the organizational form or legal status, the State remains ultimately responsible for safety and security.

Chapter 1

INTRODUCTION

PURPOSE OF THE CIRCULAR

1.1 This circular 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. As airports and air navigation services are monopolistic in nature, and safety and security are a major concern, this circular brings to the notice of States important provisions of the Convention and other ICAO policy and guidance documents regarding regulatory measures and the need for providing safeguards.

AIRPORTS

1.2 Changes in the ownership and management structure in the provision of airports developed slowly until in the late 1970s. Initially, comprehensive government involvement was reduced in a few States through 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 began in the 1980s and again, movement in this direction was slow. Recently, private participation and privatization in the provision of airports are gaining momentum, especially in Asia, Europe and Latin America.

AIR NAVIGATION SERVICES

1.3 In the case of the provision of air navigation services, changes in ownership and management have been limited and have taken place through the establishment of autonomous entities. In most States, services continue to be provided directly by governments.

MONOPOLY CHARACTERISTICS

1.4 Airports and air navigation services are, in essence, monopolies upon which users are highly dependent. With privatization and private participation in the provision of these services, it is important for governments to ensure that monopoly power is not abused.

**ICAO POLICY ON
THE CHOICE OF ORGANIZATIONAL FORMAT**

1.5 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 but, in view the experience gained worldwide, does recommend in Doc 9082 (paragraph 11 refers) that States consider establishing autonomous authorities to operate their airports or air navigation services where this is in the best interest of providers and users.

Chapter 2

DESCRIPTION OF TERMS

GENERAL

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 currently being 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. The definition of privatization also varies. Accordingly, descriptions of various terms and phrases is provided below and a Glossary of Terms, giving specific definitions, is included at the end of this circular.

PRIVATIZATION

2.2 Privatization is the word most commonly used in connection with the changes taking place in the 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.

PRIVATE PARTICIPATION/PRIVATE INVOLVEMENT

2.3 These 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.

2.4 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.

CORPORATIZATION

2.5 In the context of airports and air navigation services corporatization 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 the Memorandum of Association or in a similar document if it is established under company law.

2.6 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.

2.7 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.

AUTONOMY

2.8 Autonomy refers to the powers of the managers of airports and air navigation services 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.

2.9 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 authority or a company wholly owned by the government.

COMMERCIALIZATION

2.10 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.

2.11 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.

2.12 Commercialization is often considered an alternative to private participation and privatization in the provision of airports and air navigation services for improving the delivery and financial performance of services.

Chapter 3

DEVELOPMENTS IN OWNERSHIP AND MANAGEMENT

GROWTH OF AIR TRANSPORT

3.1 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 realized from the fact that in 1945, only nine million passengers travelled on scheduled services, whereas in 2000, over 1.6 billion passengers were carried, representing a 180-fold increase.

3.2 Air transport is expected to continue to grow during the coming years (1999 to 2010), although at a somewhat slower pace. A rate of 4.5 per cent per annum, measured in total scheduled passenger kilometres, is predicted, compared to an average growth rate of 8.6 per cent for the past 40 years.

3.3 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. Passengers had few expectations with respect to services and cargo traffic was almost negligible. Security and immigration problems were minimal. Competition among the airports was non-existent. Accordingly, the level of investment in airport infrastructure was relatively modest.

3.4 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.

3.5 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 traffic services also commenced. These developments placed heavy demands on States' financial resources which often could not be met because of fiscal constraints.

AUTONOMOUS AUTHORITIES

3.6 *Establishment of autonomous authorities.* Although airport infrastructure developments continued at a greater speed, changes in 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 United Kingdom Government in establishing this authority was to establish managerial and financial autonomy for 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. Doc 9562 states in paragraph 2.9 that “while the establishment of an autonomous airport authority would not necessarily result in an unprofitable airport becoming profitable, experience gained world wide from these developments indicates that where airports (and route facilities) have been operated by autonomous authorities their over-all financial situation has generally tended to improve”. This finding provided further support for the movement to establish autonomous authorities. Nevertheless, for various reasons (national economic policy, limited traffic volume, public service considerations, etc.), a large number of airports are still managed directly by governments.

3.7 *Advantages of establishing autonomous authorities.* The establishment of autonomous airport authorities or entities brought about the following distinct advantages in the management and operation of airports and air navigation services:

- a) empowered service providers through financial and operational autonomy;
- b) encouraged the growth of a business culture;
- c) lowered expenses per traffic unit relative to other airports of comparable size;
- d) recycled various aviation user charges into aviation;
- e) reduced the financing burden on governments;
- f) generally improved the quality of services;
- g) established a clear distinction between the regulator and the provider of services.

PRIVATE PARTICIPATION AND PRIVATIZATION AS PART OF GLOBAL TRENDS

3.8 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.

MOTIVATION FOR PRIVATE PARTICIPATION AND PRIVATIZATION

3.9 *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 which 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.

3.10 *Privatization as a source of revenue.* Governments are realizing that where the 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.

3.11 *Major airports considered commercial entities.* The current approach of governments is to move away from the ownership and management of non-core public utilities, and airports, at least the major ones, are considered as commercial entities rather than public utilities. Larger airports are turning into cities in themselves with market places and meeting points for people and business. There is the perception that privatization leads to improvement in the management of airports.

3.12 *Emergence of global airport management industry.* The business and financial communities have realized that an airport can be a sound investment. Airports are essentially monopolies. Growth in traffic is continuous and almost twice the growth of gross domestic product over the intermediate and longer terms. The credit ratings of airports are generally very 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.

MOVEMENT TOWARDS PRIVATE PARTICIPATION AND PRIVATIZATION IN STAGES

3.13 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 companies owned by the State and the divestiture of shares was gradual. However, in almost all European airports where private participation has taken place, the government presently holds majority shares in the equity. China, Malaysia and South Africa are following the European model and the divestiture is gradual.

3.14 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.

3.15 In Latin America, private participation is mainly taking place directly from government ownership, primarily through 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.

3.16 The limited evidence available suggests that States have generally benefited from a gradual change in ownership and management structure.

FORMS OF PRIVATE PARTICIPATION

3.17 Private participation in the provision of airport services has basically taken three forms: management contract, lease (which is sometimes called concession), and transfer of minority ownership.

3.18 *Management contract.* Management contract is not a common method of private participation. Examples are Indianapolis International Airports in the United States, which is managed by BAA plc and Macau International Airport, which is managed by a private company in which Portugal's Aeroportos e Navegação Aérea and China's Civil Aviation Administration are partners.

3.19 *Lease.* In Australia, Canada, India, Latin America and western Africa, private participation is generally taking place through leases or concessions. In Australia, 17 major airports have already been leased to private entities, usually a consortium. Sydney, along with four other smaller airports, has been offered for private participation. In Canada, the major airports included in the National Airports System have been leased long-term to local corporations. India is reported to have decided to lease its five major international airports on a long-term basis.

3.20 In Latin America, private participation through leasing has taken place in Argentina, Bolivia, Chile, Colombia, Costa Rica, Cuba, the Dominican Republic, Mexico and Uruguay. The leasing process is in progress in a number of countries including Guyana, Panama, Peru, Suriname and Venezuela. Brazil is reported to have decided in favour of private participation for a large number of its airports. In Guatemala and Nicaragua, the issue of private participation is under study. Other States in the region seem to be generally in favour of leasing their airports to the private sector.

3.21 In western Africa, States such as Cameroon, Cote d'Ivoire, Gabon, Madagascar, Mauritania and Togo, 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 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 Cameroon, a joint venture in which Aéroports de Paris (34 per cent), the government of Cameroon (29 per cent), ASECNA (20 per cent), and three domestic airline operators and a major bank (17 per cent) are shareholders.

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

3.23 The duration of 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 much shorter. For example, in Argentina the period of lease is 30 years with an option of 10 additional years, in Chile it varies from 12 to 18 years, in Colombia it varies from 15 to 17 years, and in Costa Rica and the Dominican Republic it is 20 years. In Mexico, leases are for 25 to 50 years.

3.24 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.

3.25 *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 Kansai Airport in Japan, airports in South Africa and airports in European States (mainly in Austria, Denmark, Italy and Switzerland). The European model, other than in the United Kingdom, is minority sale of shareholdings, although transfer of majority shareholdings is gradually developing favour. Malaysia has decided to float its 28 per cent shares in Malaysia Airports Holdings in stages. In the second stage, shares are proposed to be offered to foreign institutional investors, leaving the government with a 52 per cent stake. 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. The new greenfield international airport has been developed in Kochi, India with 49 per cent ownership in the private sector and the balance contributed by the state government. In Mexico, there is a transfer of 15 per cent stake in equity and a lease.

PRIVATE SECTOR OWNERSHIP, CONTROL AND MANAGEMENT

3.26 Apart from airports originally owned by private entities, fully privatized airports or airports with majority private ownership are few. These primarily include the seven airports managed by BAA plc 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. In Germany, one of the airports in Berlin is to be fully developed in the private sector, and in Switzerland, Zurich Airport is soon to be fully privatized.

3.27 Airports with majority ownership in the private sector include Auckland and Wellington airports in New Zealand and a new international airport recently built in Macau.

PRICING REGULATION

3.28 In almost all the States where private participation or privatization in the provision of airport services has taken place, regulatory authorities exist or have been established to ensure that monopoly power 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, less than general inflation). The X factor is adjusted every five years, taking into account, inter alia, major investment projects, when the Civil Aviation Authority is also required to refer the rates for review by the Monopolies and Mergers Commission. For Manchester Airport, it is the average yield per passenger which is capped.

3.29 In other European 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, aeronautical charges may increase at the same rate as inflation for the first two years after private participation, followed by three years at RPI minus X (presently X is equal to 2 per cent). Guidelines have been provided to the Regulating Committee in regard to valuation of X. In Australia, provision

has been made for reduction in aeronautical charges in real terms over a period of five years by capping with RPI minus X. The value of X differs from airport to airport. In Colombia, a system of indexing has been provided which takes into account a number of parameters.

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

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

3.32 None of the formulae for price regulation can be considered perfect. They do not take into account the cost of providing the airport services as recommended by ICAO (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.

3.33 Regulation in regard to rents and other charges, including ground handling charges, is limited or non-existent. At certain airports, such charges were reported to have increased several-fold after a change in management consequent to leasing the airports.

USE OF REVENUES

3.34 In several States, such as the 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.

3.35 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, India has announced that the revenue earned from leasing the major airports would 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 traffic airport, Abidjan, are being utilized for the development of other airports. Thailand has a proposal to utilize the funds generated through the privatization of airports to help fund the building of a new international airport in Bangkok.

3.36 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.

3.37 In the United Kingdom, where there is a proposal to privatize the air navigation services by offering majority shares to the private sector, the proceeds of the sale of the shares are proposed to be used for purposes other than aviation. In Canada, the proceeds from privatization of air navigation services are credited to the treasury but a major part of the ground rent collected from international and other major airports is being reserved for the development of smaller airports.

SPECIAL CONSIDERATIONS REGARDING AIR NAVIGATION SERVICES

3.38 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.

3.39 Presently, the majority of 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. Only Canada has privatized its air navigation services through Nav Canada, a non-profit organization which is monitored by airline customers through membership on the board of directors. It is unique as it has no shareholders and accordingly no dividend is declared.

3.40 While the movement towards establishing autonomous entities for managing air navigation services has been slow compared to airports, the benefits of establishing autonomous entities are being recognized and are giving way to liberal concepts of management. Apart from Canada, New Zealand and Thailand, about twenty 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.

3.41 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

3.42 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 two or more 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 responsible for the operation of charge collection systems for services provided. Examples are ASECNA in Africa, Corporación Centroamericana de Servicios de Navegación Aérea (COCESNA) in Central America and EUROCONTROL in Europe. Some consideration is being given to establishing similar agencies for the provision of air navigation services in other areas, for example in eastern Africa and the Pacific Islands.

3.43 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 the elimination of duplication at the national level and economies of scale. 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.

IMPACT OF PRIVATE PARTICIPATION AND PRIVATIZATION

3.44 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, airlines, passengers, shippers, employees of the airports and air navigation services organizations, concessionaires and the local community. However, information in this regard is limited. Furthermore, since the impact of private participation and privatization in the provision of airports and air navigation services may vary over time and is unlikely to be the same in all States, it is premature to draw any definite conclusions. Nevertheless, the initial 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 in Europe have generally gained substantially because airport company shares have increased more than the overall index of other shares in the equity market. Airlines have generally welcomed private participation in the provision of airports as they expect improvement in efficiency but feel that there have been unreasonable increases in airport charges in some cases. Overall, it has been reported that aeronautical charges have generally decreased in real terms and services have improved after private participation and privatization.

3.45 Air navigation services charges in Canada are reported to have been brought down voluntarily by Nav Canada. In New Zealand, which was a pioneer State in establishing, in 1987, a limited company wholly owned by government to operate air traffic services in the State, air navigation services charges are reported to have been reduced considerably since the establishment of the company.

Chapter 4

ICAO POLICIES AND GUIDANCE

OBLIGATIONS OF STATES UNDER THE CONVENTION

4.1 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 remains with States.

4.2 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.

4.3 Article 15 of the Convention establishes the basic policy on airport and air navigation services 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 the 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.

4.4 Under Article 37, each Contracting State undertakes 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.

4.5 An important obligation of States under Articles 54 and 67 of the Convention is the reporting of financial and traffic data.

OTHER INTERNATIONAL TREATIES AND AGREEMENTS

4.6 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, arrangements through legislation or regulations 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 air navigation services.

SAFETY AND SECURITY

4.7 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.

4.8 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.

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

4.9 On the basis of principles contained in the Convention, ICAO has developed policy guidance on charges for airports and air navigation services (Doc 9082 refers). An important observation made in this document is that there should be a balance between the respective interests of airports and providers of air navigation services, and air carriers in view of the importance of the air transport system to States (paragraph 20 refers). This guidance is applicable to airports and air navigation services whatever their organizational format.

4.10 Among the basic principles included in the 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 21 refers). The cost to be shared 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, but allowing for all aeronautical revenues plus contributions from non-aeronautical revenues accruing from the operation of the airport to its operators.

4.11 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 providers may require the users to pay their share of the related costs, but international civil aviation should not be asked to meet costs that are not properly allocable to it (paragraph 36 refers). The cost to be shared 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 38 refers).

4.12 It also emphasizes the importance of consultation with airport users before changes in the charging systems or levels of charges are introduced or a major investment is envisaged (paragraph 31 refers).

4.13 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 conferences, and their practical value in avoiding discrimination and potential dispute, there is a strong moral obligation for States to ensure that their airport cost recovery practices conform to the policies and philosophy set out in Doc 9082.

Chapter 5

OWNERSHIP AND MANAGEMENT OPTIONS

APPLICATION OF OPTIONS

5.1 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 option, may differ from airport to airport.

5.2 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 the ownership and management of infrastructure.

5.3 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 set of airports and another option for another set. 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.

APPROACH TO THE SELECTION OF AN OPTION

5.4 The ownership and management structure of the airport should be considered as a means to achieving the objective of providing safe, secure, efficient and economical service to the airlines, passengers and other users. Financial and operational autonomy is key to the success of ownership and organizational structure.

OPTIONS AVAILABLE TO STATES

5.5 States have the following ownership and management options for their airports.

5.6 *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 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.

5.7 *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.

5.8 *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; build, own, operate and transfer; and build, transfer and operate are essentially leasing arrangements (see Glossary of Terms).

5.9 *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.

5.10 *Private sector ownership and control.* Under this option, majority or full ownership of the airport is transferred to a private entity 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.

AIR NAVIGATION SERVICES

5.11 Theoretically, the same options apply to the provision of air navigation services, 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.

Chapter 6

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

PLANNING

6.1 A number of issues will need to be considered by a State contemplating a change in the ownership or management structure of its airports. A change in the ownership or management structure may not solve all the problems that an airport or group of airports 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.

CONSULTATION

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

STUDY OF FINANCIAL AND MANAGERIAL SITUATION

6.3 An in-depth analysis needs to be made of the existing airport 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.

6.4 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 at the airports for the coming 10 years, if feasible. It is desirable to prepare such forecasts for the individual airports considered for private participation or privatization. Based on the expected traffic, a forecast of revenue and expenses can be made, with the possibilities of improving the tariff structure and generating new sources of revenues being taken into account. 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.

SELECTION OF AN OWNERSHIP AND MANAGEMENT OPTION

6.5 The most appropriate option can only be determined after a specific study, taking into account the financial and managerial situations of the airport or airports, 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 ownership and management has taken place with caution and in stages. The limited evidence suggests that States have generally benefited from this approach.

MANAGEMENT OF RESIDUAL FACILITIES AND SERVICES

6.6 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 include 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 non-discrimination principles. 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.

6.7 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.

6.8 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.

UTILIZATION OF REVENUE FROM PRIVATE PARTICIPATION AND PRIVATIZATION

6.9 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 for meeting 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.

6.10 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.

CHANGES TO THE LEGAL FRAMEWORK

6.11 In most States, a change in the ownership and management structure of airports would require changes to the legal framework for civil aviation, the nature of which will depend upon the existing legal system, including constitutional provisions, the legal structure for civil aviation 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 monopoly power;
- e) uniformity of standards, procedures and organizations;
- f) reporting requirements; and
- g) security and safety requirements.

INDEPENDENT MECHANISM FOR OVERSIGHT

6.12 States may consider establishing an independent mechanism to oversee the economic, commercial and financial practices of airports and air navigation services as recommended in Doc 9082 (paragraph 15 refers). Such a mechanism would oversee economic, commercial and financial practices and its objectives could be drawn or adapted from, but need not be limited to:

- a) ensuring non-discrimination in the application of charges;
- b) ensuring there is no overcharging or other anti-competitive practices or abuse of dominant position;
- c) ensuring transparency as well as the availability and presentation of all financial data required to determine the basis for charges;

- d) assessing and encouraging efficiency and efficacy in the operation of providers;
- e) establishing and reviewing standards, quality and level of services provided;
- f) monitoring and encouraging investments to meet future demand; and
- g) ensuring user views are adequately taken into account.

OTHER REGULATORY ASPECTS

6.13 *Strengthening of 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. Accordingly, it is necessary that the existing regulatory organization within the State be strengthened, not only quantitatively but also qualitatively. The regulatory body should be supported by an adequate legal framework and should be independent, at least in States with high volumes of traffic, to avoid conflicts of interest.

6.14 *Monopoly.* Airports and air navigation services are, in essence, local monopolies 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 must be ensured that monopoly power is not misused. An unregulated private monopoly can be more harmful than a relatively inefficient public monopoly. Accordingly, regulations should provide for price controls or capping in regard to charges. Competition should be encouraged with respect to major services required by the airlines, such as ground handling services. The government needs to retain an ability to inspect the airport company's accounts to the extent necessary to prevent potential abuse of monopoly power.

6.15 *Quality control.* In order for airports 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 the need to maintain and improve the quality of services and the financial interests of the provider. Doc 9082 recommends that States encourage their airports and providers of air navigation services to develop and apply a number of performance parameters (paragraph 16 refers).

6.16 *Statistical data.* Apart from the reporting requirements included in the *Manual on the ICAO Statistics Programme* (Doc 9060), States may have a need to monitor the performance of the private providers of airports and air navigation services.

6.17 *Dispute settlement.* With the rapid growth in financial and organizational autonomy in the provision of airports and air navigation services, disputes between users and service providers, particularly regarding charges, are likely to increase. There may be a need for a neutral party at the local level to pre-empt and resolve disputes before they enter the international arena (a “first resort” mechanism).

6.18 *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 may lead to 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, airlines, general aviation, 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 the any difficulties faced by general aviation and aerial work communities should be mitigated.

HUMAN RESOURCE ISSUES

6.19 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.

6.20 The requirement for qualified and trained personnel does not materially change whether the airports and air navigation services are managed by the government, autonomous providers or the private sector. 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.

6.21 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, details such as the institutions to be utilized for training purposes should be left to the private provider to decide. The State should be primarily interested in the quality of services, ensuring that safety and security are provided and that necessary licensing and other requirements are adequately met.

6.22 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 would mean subsidizing the training facility.

Chapter 7

SELECTION OF A PRIVATE PROVIDER

GENERAL

7.1 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.

REQUIREMENTS OF THE BIDDING PROCESS

7.2 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 company bidding 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;
- 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.

7.3 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.

TRANSPARENCY

7.4 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.

7.5 The government should provide potential bidders with all relevant information, including traffic, finances, 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.

7.6 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.

SHORTLISTING OF BIDDERS

7.7 The selection of a suitable provider through a tender system is normally done in two stages: drawing up a shortlist of bidders and 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.

CONTRACT DOCUMENTATION

7.8 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 for relatively minor but continuing breaches of the important provisions of the contract, the government has the power to impose penalties.

7.9 It is essential to include in the contract that only the courts in the State where the airports are located will have jurisdiction in case of a legal dispute and will deal with the dispute in accordance with national laws.

EXPERT ADVICE

7.10 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 who have the required expertise and who are familiar with ICAO policies and guidance.

7.11 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.

RISKS TO STATES

7.12 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 ignore safety and security requirements;
- 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.

7.13 Unlike an airline or an aircraft, an airport is a fixed asset 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.

CONCLUDING REMARKS

The primary objective of airports and air navigation services is to provide safe, secure, efficient and economical services to aircraft operators, passengers, shippers and other users. There are several ownership and management options for the provision of these services. A State should choose the option that is best suited for achieving this objective after careful consideration and planning, and preferably introduce changes in stages. Regardless of the organizational structure or the legal status given to airports or air navigation services, the State remains ultimately responsible for safety and security. The State should consider implementing an oversight mechanism to monitor the monopolistic tendencies of airports and air navigation services, to measure performance and productivity and to ensure compliance with fair and equitable cost-recovery as well as with ICAO policies and principles.

GLOSSARY OF TERMS

This glossary of terms provides a brief explanation of the more common terms and acronyms used in this circular 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 airport (or air navigation services) authority. An independent entity established for the purpose of operating and managing one or more airports (or air navigation services), and empowered to manage and use the revenues it generates to cover its costs. The word “authority” does not normally imply regulatory authority when used in this context.

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 Build-Operate-Transfer (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 Build-Own-Operate (BOO) except that some facility may be existing which the private operator buys before building commences.

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.

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.

Equity. An interest of an ownership nature, as distinguished from an interest of a creditor nature.

Joint sector participation (also referred to as a Public-Private-Partnership). An ownership and management structure in which the private and the public sectors both participate.

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.

Lease-Develop-Operate. A system under which a private entity leases a certain facility and develops it under a revenue-sharing agreement with the original owner over a long period.

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.

Majority participation in equity. More than 50 per cent share in the equity of a company.

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.

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

Sale of equity. Sale of shares in a company.

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

— END —

ICAO PUBLICATIONS IN THE AIR TRANSPORT FIELD

The following summary gives the status and also describes in general terms the contents of the various series of publications in the air transport field issued by the International Civil Aviation Organization:

International Standards and Recommended Practices on Facilitation (*designated as Annex 9 to the Convention*) which are adopted by the Council in accordance with Articles 37, 54 and 90 of the Convention on International Civil Aviation. The uniform observance of the specifications contained in the International Standards on Facilitation is recognized as practicable and as necessary to facilitate and improve some aspect of international air navigation, while the observance of any specification contained in the Recommended Practices is recognized as generally practicable and as highly desirable to facilitate and improve some aspect of international air navigation. Any differences between the national regulations and practices of a State and those established by an International Standard must be notified to the Council in accordance with Article 38 of the Convention. The Council has also invited Contracting States to notify differences from the provisions of the Recommended Practices;

Council Statements on policy relating to air transport questions, such as charges for airports and air navigation services, taxation and aims in the field of facilitation;

Digests of Statistics which are issued on a regular basis, presenting the statistical information received from Contracting States on their civil aviation activities;

Circulars providing specialized information of interest to Contracting States. They include studies on trends in the air transport industry at a global and regional level and specialized studies of a worldwide nature;

Manuals providing information or guidance to Contracting States on such questions as airport and air navigation facility tariffs, air traffic forecasting techniques and air transport statistics.

Also of interest to Contracting States are reports of meetings in the air transport field, such as sessions of the Facilitation Division and the Statistics Division and conferences on the economics of airports and air navigation facilities. Supplements to these reports are issued, indicating the action taken by the Council on the meeting recommendations, many of which are addressed to Contracting States.

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