

# GATES AND PARTNERS

**A Practical Guide to Starting an Airline Business in the UK**

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## So You Think You Can Fly?

### Introduction

Starting and running an airline profitably is arguably one of the most difficult challenges in today's aviation market. "By their nature, airlines are highly capital-intensive, fiercely competitive, fossil-fuel dependent, labor intensive, government controlled, politically influenced, and weather vulnerable." [Boeing]

Quite apart from being discouraged by such negativity, the aviation industry provides a unique challenge to the entrepreneurial spirit and the rewards when they come are plentiful.

All startups must secure key funding, receive approvals and licenses, organise a management team, and commence hiring well before the first flight is made. The process can take many years of planning, or re-planning if the correct approach is not taken in the first instance.

At Gates and Partners we adopt a proactive role in the delivery of high quality, practical and commercial legal advice to our clients to ensure that your concept becomes a reality in an efficient, timely and controlled manner. We have assembled a highly professional, diverse and committed team of lawyers to assist entrepreneurs with the launch of new airlines. From concept through to launch, we provide advice, contractual review, resources, contacts, guidance and referrals to qualified startups.

Below are the key areas in airline planning and development where Gates and Partners can assist in starting an airline from scratch.

- Corporate structure
- Financing – debt/equity
- Regulatory advice from concept to delivery of all necessary licences
- Insurance
- Asset acquisition and securitisation
- Employment – management/key people
- Operational pre-requisites
- Commercial agreements
- Marketing and branding
- Ongoing corporate responsibility



## Corporate Structure

Getting your house in order is essential to a successful enterprise. Doing so from the outset not only saves you a lot of time and money but in a start-up situation is crucial to your success.

At Gates and Partners we have a strong reputation as leaders in the private equity field. We have advised investors and financiers on all aspects of corporate structures and exits to ensure that all parties to an enterprise remain committed and yet can withdraw at agreed appropriate times or upon reaching agreed milestones, the key to a successful investment.

The structure of your business, whether by way of partnership, group company structure, single purpose vehicle or joint venture will need to be carefully examined and incorporated from the outset.

Furthermore the actual location of your business will need to be considered - your structure will be dictated by regulatory and taxation concerns of your country of establishment for the airline. In the UK, an operating license (permitting carriage of passengers, mail and cargo) may be granted only to an air operator whose principal place of business and registered office (if any) are within the territory of the UK. Further, the main occupation of the license holder must be solely air transport or air transport combined with other aviation-related activities.

The key regulatory conditions to obtaining an operating licence from the Civil Aviation Authority in the UK rest on concepts of nationality, ownership and control. Whether this concept is approached from the mindset of the institutional financier, the entrepreneur or the management of the airline, all parties will need to ensure they are complying with the basic tenets or policies of the CAA to ensure a successful and swift application. The fundamental question of who owns your business in fact and in substance must be clearly set out in your application to the CAA and will explain such nuances as your shareholder or partnership base and each of the ownership structures of your key shareholders or partners. The question of ownership rarely tests the applicant as much as the "control" hurdle and indeed applications may be rejected by the CAA immediately, despite many months or even years of hard graft where it is found by the CAA that the business is in fact controlled by non-UK entities. A core lack of understanding of the concept of control will not only mean wasted effort and time; it may also involve your having to unravel complicated investment structures designed with the sophisticated investor and his exits in mind but without paying heed to the requirements of the CAA licensing authority, necessary to get the underlying or target airline business off the ground.

With our strategic and commercial advice we can assist you in establishing the appropriate taxation and corporate finance structure for your business and avoid any necessary and cumbersome unravelling at a later stage in order to adhere to CAA policies.



## Financing

The airline industry can at times be horrendously costly and yet again richly profitable. Before a Type A Operating Licence is granted by the CAA (more below), airlines must demonstrate that they have enough funding for the first two years of operation. Once a licence is granted, the CAA will in most cases continue to monitor their finances and may revoke the license of any licence holder that it considers no longer has sufficient resources to carry on its business or obligations to fare-paying passengers.

There is little doubt that without some form of external financing or backing you will most likely fail at the first hurdle. Our experience and contact base with the finance houses, banks and even other like minded investors will assist you in obtaining the appropriate levels of comfort and commitment you need to make your business projections a reality.

Our private equity department specialises in advising on the equity financing of companies at many stages in the life of a company from start-up through expansion all the way through to buy-outs of established companies.

We have been very successful in bringing a lot of these companies to the Alternative Investment Market in the UK at the right time in the company's profile which can in turn enable a key opportunity for seed funding to exit and a new wider shareholder base to embrace the continuing success of the airline.

## Regulatory Issues

In order to carry passengers, cargo or mail for payment, air operators based in the European Economic Area (EEA) must hold an Operating Licence granted by the Member State in which they have their principal place of business. For UK airlines, licensing is undertaken by the CAA.

In order to qualify for an Operating License, an operator must meet a number of requirements, including those in respect of its safety and insurance arrangements and its nationality of control; for operators of larger aircraft with 20 or more seats, there are also financial criteria to be met. The CAA grants two classes of Operating Licence – Type A (required by operators of aircraft with 20 or more seats) and Type B (required by operators of aircraft with 19 or fewer seats).

Operating Licences do not themselves authorise air operations, but holders of Operating Licences are entitled to take advantage the Market Access Regulation which enables EEA air carriers to fly on most routes within the EEA, with no further licences being required. Operations outside the EEA will normally require a carrier to hold an additional licence (a Route Licence), which is also granted by the CAA.

Finally, an Operating Licence cannot be granted until the applicant holds an Air Operator's Certificate (AOC) granted by the CAA's Safety Regulation Group.

The legal framework for licensing is contained in a number of separate pieces of legislation, regulations and other sources. Guidance on this legislation and how to



approach the relevant sections of the CAA is available from the team at Gates and Partners.

Our lawyers have a wide range of experience in regulatory matters including airline licensing, airworthiness, route licensing, AOCs, Air Travel Organiser's Licensing, UK and EU competition rules and regulations, EU aviation regulations and international aviation conventions.

We will take you through each step of the process and assist in your applications to the authorities to help you meet your envisaged timelines for launch.

### Insurance

Before an Operating Licence is granted by the CAA, an applicant must also provide evidence that it has in place adequate passenger insurance to cover any potential liability in respect of death or injury to passengers in the event of an accident, as well as insurance against third party damage.

The CAA's requirements follow Regulation (EC) No 785/2004 which applies to all air carriers and to all aircraft operators flying within, into, out of or over the territory of an EC Member State to which the Treaty applies. Its objective is to establish minimum insurance requirements for air carriers and aircraft operators in respect of passengers, baggage, cargo and third parties including cover for risks of war and terrorism.

Additionally, you will have obligations to insure the hull of the aircraft against loss and/or damage as well as surface damage as part of your aircraft lease agreements.

Our aviation insurance lawyers are pre-eminent in their field, regularly winning worldwide acclaim for their work. We can help you understand the intricate and complicated structures of the aviation insurance market and assist you in obtaining a suitable comprehensive and commercial coverage for your fleet and business.

Other areas our aviation insurance lawyers can assist you on are as follows:

- General policy interpretation and coverage issues
- Negotiations with worldwide brokers, insurers and underwriters
- Intermediary liabilities
- War and all risk disputes
- AVN1C Breach of Warranty, Misrepresentation and Non-Disclosure Issues
- AVN28B & 67B Aviation Financier Endorsement Disputes
- Coverage arbitrations and mediation
- Subrogated claims



## Asset Acquisition and Securitisation

The development of a robust airline will require a detailed aircraft acquisition strategy. You will need to make decisions relating to the type of aircraft you wish to acquire, the size and age of your proposed fleet, budget for procurement and enhancement costs and put in place a realistic delivery schedule.

Our dedicated team provides objective and reliable expertise on all aspects of aircraft purchase. This includes a detailed legal review of documentation, performance criteria, purchase capital costs, operating costs, purchase transaction and ownership options. We can ensure you receive a totally balanced and objective assessment from us at all times to assist in your negotiations with manufacturers and seller/lessors.

Our commercial aviation lawyers can assist you with the preparation of documents relating to the sale, purchase, finance and leasing of aircraft, spare engines, aircraft parts and other equipment; and other commercial documentation arising within the aviation industry including:

- aircraft leasing (operating, finance and wet leasing);
- aircraft and engine sales and purchasing;
- aircraft and engine financing;
- engine leasing.

## Employment – Management

The Gates and Partners employment team can assist you on all sides of contentious and non-contentious employment advice. As a new business you will be obliged to comply with UK employment laws and regulations. On the non-contentious side, our lawyers advise on setting up HR policies/standard employment contracts, in addition to advising on employers and employees senior executive contracts and arrangements. We also advise on corporate and business immigration in relation to international group restructuring.

The range of work involved in this area of law is diverse, and may be intricate and complex. Some areas we can advise you on include:

- **Employment contracts:** Drafting contracts of employment including standard and executive service agreements as well as atypical arrangements for part-time and casual workers.
- **Restraint of trade:** Advice on setting up a new business in competition with a former employer, but avoiding breaches of confidentiality; challenging the enforceability of post-termination restrictive covenants.
- **Business immigration:** Advice on corporate immigration work, including sole representative, work permits and employment advice, company executives and key staff; and co-ordinating and structuring timescale for activating a new company in the UK.
- **Employee share schemes:** Advice on employee incentives, including executive share option plans (Revenue approved and unapproved); creating and funding



employee benefit trusts, an LTIP for senior executives; phantom option schemes and tax implications of share schemes. We liaise with accountants in considering the tax implication and practicability of different schemes.

- **TUPE:** Advice on TUPE-related information and consultation obligations and on the implications of failing to observe them. TUPE (or the Transfer of Undertaking (protection of Employees) Regulations) arise on the transfer of a business and has far reaching repercussions on a business that fails to observe its provisions. We can advise on inherited and protected employment liabilities; on compromise agreements and harmonisation of employment contract, including outsourcing and change of contractors.
- **Boardroom disputes:** we can advise you on employment law issues arising upon the removal, for example, of a director from office. Legal issues to be considered include the impact on share options; the effect on pre-emption provisions under the articles of association and shareholders' agreement; the negotiation of tax-efficient compromise and severance agreements.
- **Dismissal:** we are well equipped to advise you on potential wrongful unfair and constructive dismissals, race, sex and disability discrimination, unfair redundancy selection, breaches of restrictive covenants, director's duties and disqualification claims as well as negotiating and drafting a compromise agreement.

### Commercial Agreements

Our lawyers can assist you in all your commercial agreements such as airline franchise agreements, aircraft operating agreements, fuel and catering supply agreements, flight crew training agreements, slot exchange agreements, charter agreements, sales agreements, agency agreements, ground handling agreements; aircraft and engine maintenance, engineering, overhaul and support including "power by the hour" agreements and general operational and commercial advice including in relation to conditions of carriage and commercial claims.

### Marketing and Branding

Marketing and branding your airline business is a key consideration. At Gates and Partners we can help you protect your business and the goodwill it generates. Our lawyers have experience in protecting all aspects of intellectual property of a business from copyright protection through to branding.



### Ongoing Responsibilities

- Corporate governance – directors duties and responsibilities
- Personal liability – “corporate killing”
- Legal aspects of disaster handling - we have initiated an innovative auditing service to evaluate airlines’ disaster preparedness before a disaster strikes, in a joint venture with Kenyon International Emergency Services.
- Review of disaster manuals to reflect latest legal developments and recommended practices
- Experience in handling, coordinating and supervising public enquiries and hearings
- Rapid response and direct support to airline’s public relations department in legal/insurance elements of public statements

### Why Use Gates and Partners?

- Combination of experience in the aviation domain together with a commercial approach
- Client focused and responsive
- High level of partner/senior associate involvement
- Competitive fees and flexible charging structures
- International outlook and contacts within industry and government bodies
- Progressive and innovative
- Good contacts with other professionals and investors

### About Our Team

The Gates and Partners law practice comprises six partners and eleven associates supported by trainees and paralegals. Together, our team has decades of combined experience in representing major international carriers and their insurers. Individually, our aviation partners have developed internationally-recognised practices and are well-respected in their areas of expertise. Our lawyers advise on a broad spectrum of aviation legal matters including aviation finance, insurance, reinsurance, regulatory and liability issues; as well as disaster management and preparedness.

In addition to our aviation insurance practice, Gates and Partners has a commercial law/aircraft finance department which works with the aviation team on aviation commercial legal matters such as airline startups, aircraft purchase and lease arrangements, commercial agreements, employment and immigration including contentious and non-contentious advice.

Currently, Gates and Partners is directing the disaster management of three recent major crashes including the Gol Airlines Boeing 737-800 loss which occurred in Brazil in September 2006, the Helios Airways Boeing 737 accident near Athens in August 2005, and the Copterline crash involving a Sikorsky S76 helicopter, also in August 2005.



Gates and Partners is also currently advising on the destruction of an Armenian Airways Boeing 737 in the Sabena hangar fire.

Recently, we have initiated an innovative auditing service to evaluate airlines' disaster preparedness before a disaster strikes, in a joint venture with Kenyon International Emergency Services.

Besides being admitted in England and Wales, various Gates and Partners team members are also admitted in the US, China, Hong Kong, Greece, the Caribbean, various jurisdictions in Australia, as well as registered to practice in Singapore. The legal work that we do regularly on behalf of airlines and their insurers often requires that our lawyers direct the legal management of multi-jurisdictional cases involving several countries. Worldwide, we have advised in Europe, North America, South America, Asia, the Middle East, Australia and Africa. The majority of our lawyers have excellent foreign language skills, and together are proficient at conducting business in Spanish, German, French, Greek, Galician, Arabic, Mandarin, Sichuan, Cantonese, Fujian/Taiwanese, Chow Zhou, Croatian, Hebrew, Serbian and Portuguese.

A significant part of the Gates and Partners aviation vision is conflict avoidance. The firm's aviation team is dedicated to advising airlines and their insurers, thereby avoiding the conflicts inherent in representing various aviation interests such as manufacturers, airports and other aviation service providers.

This brochure is not intended to provide legal advice and does not necessarily deal with all important topics. It is intended as a guidance note only and should not be relied upon without our specific written agreement. If you require any further assistance or more detailed information on any of the matters discussed in this brochure please do not hesitate to contact us.

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### Contact Details:

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