

GETTING THE DEAL THROUGH

Air Transport

in 28 jurisdictions worldwide

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General

1 Which bodies regulate aviation in your country, and under what basic laws?

Since 1 January 2005, the regulation of Swedish aviation has been divided between the Swedish Civil Aviation Administration (Sw Luftfartsverket) (Administration), a public service company operating the state-owned civil airports, the air navigation services and other services related thereto, and the Swedish Civil Aviation Authority (Sw Luftfartsstyrelsen) (Authority), supervising and regulating the civil air traffic in Sweden and, inter alia, maintaining the aircraft registration and the aircraft registry (both the Administration and the Authority originally emerged from the same authority).

The primary aviation legislation in Sweden comprises:

- the Aviation Act 1957 (Sw luftfartslagen (1957:297));
- the Aviation Ordinance 1986 (Sw luftfartsförordningen (1986:171));
- the Operational Register Ordinance 1986 (Sw förordning om luftfartygsregistret m.m. (1986:172)); and
- the Registration of Rights to Aircraft Act 1955 (Sw lag (1955:227) om inskrivning av rätt till luftfartyg).

Regulation of aviation operations

2 How is air transport regulated in terms of safety?

The Authority issues Regulations on Civil Aviation (BCLs; Sw Bestämmelser för Civil Luftfart), Swedish Airworthiness Directives (LVDs; Sw föreskrifter om luftvärdighetsdirektiv) and Joint Aviation Requirements (JARs; Sweden is a member of the Joint Aviation Authorities), which contain provisions on all aspects of civil aviation (together the regulations), including safety regulations. Furthermore, some of the BCLs and JARs are supplemented by general advice (Sw allmänna råd). While the BCLs, LVDs and JARs are binding, the general advice provides recommendations, indicating how the BCLs and JARs may or should be applied. The regulations and the general advice are published in the Authority's Statute Book. The Joint Aviation Regulations – Operational (JAR-OPS) apply directly to air carriers operating in Sweden. In addition to the BCLs and the JAR-OPS, air transport safety is subject to the rules of the European Aviation Safety Agency (EASA).

The BCL-SEC refers to EC Regulation No. 2320/2002 on common protection rules for commercial aviation. Including the JAR-OPS and the BCL-SEC, the regulations constitute the rules governing Swedish aviation safety.

3 What safety regulation is provided for air operations that do not constitute public or commercial transport, and how is the distinction made?

The safety regulations in respect of both non-commercial and public air operations are provided by the Authority through its Regulations on Civil Aviations (BCL-D 3.1 - 5.6). These BCLs contain detailed provisions depending on the specific type of air operation.

4 Is access to the market for the provision of air transport services regulated, and if so how?

Under Swedish law, an air carrier must hold the following three types of licences to provide air transport services to and from Sweden: an air operator certificate (AOC); an operating licence (OL); and a traffic licence. The market access for air carriers is provided through their traffic licences, which, in respect of EEA carriers, are issued by the Authority in accordance with EEC Regulation No. 2408/92 on access for Community air carriers to intra-Community air routes. Carriers established outside the EEA may apply to the Authority for corresponding traffic licences or, as regards scheduled cabotage, to the Swedish government. Such corresponding licences are issued in accordance with the applicable intergovernmental agreements.

5 What requirements apply in the areas of financial fitness and nationality of ownership regarding control of air carriers?

To obtain an operating licence, EEA carriers must comply with the financial fitness requirements set out in EEC Regulation No. 2407/92 on licensing of air carriers. Accordingly, air carriers to which operating licences are granted for the first time must be able to demonstrate to the Authority's reasonable satisfaction their ability to meet at any time their actual and potential obligations, established under realistic assumptions, for a period of 24 months from the start of operations, and their ability to meet their fixed and operational costs incurred from such operations according to the relevant business plan and established under realistic assumptions for a period of three months from the start of any operations, without taking into account the income from their operations. Each applicant shall submit a business plan for at least the first two years of operation. The business plan shall also describe the applicant's financial links with any other commercial activities in which the applicant is engaged, either directly or through related undertakings. Furthermore, the initial application shall contain other accounting documents to provide the Authority with information necessary for its assessment. An air carrier is deemed to be an EEA carrier if its principal place of business and, if applicable, its registered office is situated in an

EEA member state, provided that the carrier is owned directly or through a two-thirds majority by EEA member states or nationals. Air carriers which are established outside the EEA can apply to the Authority for operating licences, which may be issued in accordance with relevant bilateral agreements, while the financial fitness requirements in such cases are based upon the Chicago Convention.

6 What procedures are there to obtain licences or other rights to operate particular routes?

EEA air carriers licensed in accordance with EEC Regulation No. 2407/92 may operate within the territories of the EEA member states, subject to the slot availability at the relevant airports.

Non-EEA air carriers can apply to the Authority or, in certain cases, to the Swedish government, for the right to operate particular routes to, from and in Sweden, provided that they hold any required home state licences (such as AOCs).

7 What procedures are there for hearing or deciding contested applications for licences or other rights to operate particular routes?

The Authority's refusal in respect of traffic licences may be brought before the Swedish government. In respect of other licences, authorisations or decisions by the Authority, these may be appealed by the applicant to the Swedish administrative courts.

8 Is there a declared policy on airline access or competition, and if so what is it?

There is no stated policy developed by the Swedish state relating to airline access or competition. However, the system with state-owned airports is currently being evaluated.

9 Are there specific rules in place to ensure aviation services are offered to remote destinations when vital for the local economy (public service obligations)?

EEC Regulation No. 2408/92 provides a possibility for EEA member states to impose public service obligations on air carriers with respect to scheduled air services to regional airports, if considered vital for the economic development within the relevant regions.

10 Are charter services specially regulated?

JAR-OPS 1 regulates all commercial aviation with civil aircraft whose supervising authority is a member of Joint Aviation Authorities, including both charter and scheduled airline services. There are exemptions which apply to aircraft used in military, toll or police duty, parachuting or fire fighting. Accordingly, operators of chartered aircraft must follow the same regulations as scheduled flights.

11 Are airfares regulated, and if so, how?

EEC Regulation No. 2409/92 on fares and rates for air services regulates fares for EU carriers. According to the Regulation, EU carriers shall freely set air fares. Member states concerned may, without discrimination on grounds of nationality or identity of air carriers, require air fares to be filed with the relevant authority in the form prescribed by them before the air fares come into effect. A member state may also decide to withdraw a basic fare

which is excessively high to the disadvantage of users or decide to stop further fare decreases resulting in widespread losses among the air carriers concerned.

Aircraft

12 Who is entitled to be mentioned in the aircraft register? Do requirements or limitations apply to the ownership of an aircraft listed on your country's register?

The Swedish Operational Register, which is maintained by the Authority, is based on the registration of the owner of the aircraft. However, in the register notations are made of possessions of aircraft, either due to purchases under retention of title or due to charters by demise that exceeds two weeks.

An aircraft may be registered in Sweden only if it is owned by one of the following:

- the Swedish government;
- a Swedish local municipality;
- a citizen within the EEA or an estate of such person; or
- a corporate entity, an association, a foundation or an estate of Swedish nationality having its seat in a country within the EEA.

Even if the requirements above are not satisfied, the Authority may allow an aircraft to be registered in the Swedish Operational Register if the aircraft is based in Sweden. Such consent is usually given when a foreign owner has leased the aircraft to a Swedish operator.

The fact that an aircraft is owned by a Swedish or an EEA entity with a foreign controlled interest does not prevent registration. An aircraft that has been registered in a foreign aircraft register cannot be registered in Sweden until it has been de-registered from the foreign register.

13 Is there a register of aircraft mortgages or charges, and if so how does it function?

The Swedish Rights Register for registration of mortgages and ownership of aircraft is maintained by the Authority. The Act regulating the register allows for the transfer of ownership to be publicly registered and for the provision of security in the aircraft to be perfected with valid effect against any third party by an inscription in the register. The register is divided into the following separate sections: notations on the aircraft, acquisitions, right of use, mortgages and other items.

14 What rights are there to detain aircraft, in respect of unpaid airport or air navigation charges, or other unpaid debts?

Sweden has acceded to the Rome Convention 1933. Furthermore, chapter 12, section 2 of the Aviation Act gives the owner of a Swedish airport the right to detain aircraft, if charges have not been paid and security has not been provided in respect of airport duties.

15 Do specific rules regulate the maintenance of aircraft?

Sweden is a member of the EASA, which issues rules on the maintenance of aircraft. To be registered in the Swedish Operational Register, a certificate of airworthiness and a noise and emission certificate must have been obtained in Sweden or, in respect of foreign certificates, been approved by Swedish authorities.

Airports

16 Who owns the airports?

The commercial airports in Sweden are generally owned by either the state (through the Administration) or municipalities, even if some are owned by private owners. There are also a large number of private, non-licensed, airports. The two largest commercial airports, Arlanda and Landvetter, are state-owned through the Administration.

17 What system is there for the licensing of airports?

Public airports may not be established or operated without obtaining a licence from the Authority, and they are classified depending on whether they use an instrumental landing system or not. Such licences are granted only if it is not contradictive in respect of the interests of the community. Specific rules regarding the licensing of public airports are provided by the Authority through certain BCLs. Non-licensed airports have to comply with some of the Authority's regulations.

18 Is there a system of economic regulation of airports, and if so, how does it function?

During the Authority's individual process following an application for establishing an airport in Sweden, the economical conditions of the applicant are considered.

19 Are there laws or rules restricting or qualifying access to airports?

The Authority has issued regulations stipulating which airports certain kinds of aircraft may use in their operations.

20 How are slots allocated at congested airports?

For traffic within the EEA, slots are allocated in accordance with EEC Regulation No. 95/93 on common rules for the allocation of slots at Community airports, which apply in respect of two Swedish airports: the Arlanda Airport and the Bromma Airport. The Administration has been appointed as slot coordinator under the EU Regulation.

21 Are there any laws or rules specifically relating to ground handling?

The ground handling market is governed by Council Directive 96/67/EC on access to the groundhandling market at Community airports. Full conformity within the EU was achieved in December 2002. For certain categories of service there must be a choice of at least two providers at the larger airports in the EU.

22 Who provides air traffic control services and how are they regulated?

Air traffic control services are made available by the Administration, which provides the services through the following subdivisions.

- Flight planning centre – provides pilots with weather reports and other information for flight planning;
- towers and control centres – handle air traffic control; and
- training – held at the academy Entry Point North.

Swedish air traffic control is fully controlled by the Administration.

EC Regulation No. 550/2004 on the provision of air navigation services in the single European sky is directly applicable under Swedish law.

Liability and accidents

23 Are there any special rules in respect of death of, or injury to, passengers or loss or damage to baggage or cargo in respect of domestic carriage?

A carrier's liability is in addition to the Swedish Aviation Act regulated by EC Regulation No. 2027/97 on air carrier liability in respect of the carriage of passengers and their baggage by air, the Montreal Convention and, depending on the individual airline, the IATA Intercarrier Agreement on Passenger Liability.

24 Are there any special rules about the liability of aircraft operators for surface damage?

Regulations in respect of damage to people or property which is not being transported by the aircraft but is caused due to aviation are found in the Liabilities for Damages in relation to Aviation Act 1922 (Sw lag (1922:382) angående ansvarighet för skada i följd av luftfart) which imposes strict liability.

25 What system is there for the investigation of air accidents, including procedures?

Air accidents are regulated by the Accident Investigation Act 1990 (Sw lag (1990:712) om undersökning av olyckor) and the Accident Investigation Ordinance 1990 (Sw förordning 1990:717 om undersökning av olyckor) and are conducted by the Board of Accident Investigation (Sw Statens Haverikommission). An accident shall be investigated if the investigation is appropriate for safety reasons. The Board shall, where this is practicable, see to it that those whose rights may be affected by the investigation receive information about it without delay. In connection with communication to foreign authorities and international organisations about the investigation of an accident or incident and about the participation of such authorities and organisations in the investigation, the Board shall comply with section 15, and the provisions of the Chicago Convention.

Property that is likely to be relevant to the investigation must not be disturbed (except in cases where the property is disturbed to save lives or under exceptional circumstances in other cases) without the permission of the police authority or the investigation authority. Persons who recover such property or property transported by the aircraft shall notify the police authority or the investigation authority thereof without delay.

The Board shall conclude the investigation as soon as possible, preferably within 12 months of the accident or incident, and prepare a report on the investigation. Reports shall be submitted immediately to the supervisory authority. Captains of Swedish aircraft shall, at the request of the supervisory authority, also report any actual or presumed incidents that may have a bearing on aviation safety.

26 Is there a mandatory accident and incident reporting system, and if so, how does it operate?

If an accident occurs, the closest air-traffic control shall be notified as soon as possible. After that, the air-traffic control informs Search and Rescue (SAR) which in turn informs the Board of Accident Investigation together with the Authority. Following

such an accident, the pilot or the owner of the aircraft must fill in an accident report which is filed with the Authority.

The Aviation Act uses the term 'event' which is defined in the Act as an interruption in an operation, defect, fault or any other exceptional circumstance which has affected or can affect aviation security, even though the event has not caused such air accident or near-accident, as further defined in the Accident Investigation Act.

Competition law

27 Do sector-specific competition rules apply to aviation? If not, do the general competition law rules apply?

Swedish competition law does not specifically regulate the aviation sector; general competition law applies. If trade between EU member states is affected, the competition rules of the EU apply as well, including the block exemptions applicable within the EU.

28 Is there a sector-specific regulator or are competition rules applied by the regular competition authority?

The regular Swedish Competition Authority (Sw Konkurrensverket) is the supervisory authority for all matters regarding competition in Sweden. There is no sector-specific regulator.

29 How is the relevant market for the purposes of a competition assessment in the aviation sector defined by the competition authorities?

Under Swedish competition law, the situation with respect to the aviation sector may be considered unclear as to whether the market definitions are in conformity with the definitions that have been laid down under EC case law. One may note that the Market Court in two older decisions between Scandinavian Airlines System and the Swedish Competition Authority (case Nos. A 29/98 and A 14/99) concluded that the relevant market should be deemed to be domestic airline transportation. In the two cases, the court explicitly rejected pleas that each domestic route should be considered a separate market for competition law purposes. However, those decisions were handed down in 1999 and 2001 respectively and concerned a then dominant former monopoly company. Whether such a market definition would, in light of the more competitive environment with respect to domestic airline travel, be laid down today may be an open question.

30 What are the main standards for assessing the competitive effect of a transaction?

When assessing the competitive effect of a transaction a test under the EC Merger Regulation is used, that is, whether a merger would significantly impede effective competition in particular as a result of the creation or strengthening of a dominant position.

31 What types of remedies have been imposed to address concerns identified by the competition authorities?

The Competition Authority may impose an undertaking to cease violation of the prohibitions in section 6-8a or 19 of the Competition Act or article 81 or 82 of the EC Treaty. If the Competition Authority in a specific case decides not to order such imposition, the Market Court may do so on complaint from an undertaking which is affected by the violation. The Stockholm City Court

may, at the request of the Swedish Competition Authority, order an undertaking to pay an administrative fine (amounting to between €550 and €550.000 or higher, but not exceeding 10 per cent of the undertaking's turnover last year) where the undertaking, or a person acting on behalf of the undertaking, intentionally or negligently has infringed the prohibitions in article 6 or 19, or article 81 or 82 in the EC Treaty. Any undertaking which, intentionally or negligently, infringes any of the prohibitions contained in article 6 or 19, or in article 81 or 82 in the EC Treaty, shall compensate the damage that is caused thereby.

Financial support and state aid

32 Are there sector-specific rules regulating direct or indirect financial support to individual companies by the government or government-controlled agencies or companies (state aid) in the aviation sector? If not, are there general state aid rules that apply?

Article 87 and 88 of the EC Treaty regarding financial support and state aid apply in Sweden. Accordingly, as long as the thresholds and criteria set out in the EC Treaty are fulfilled, the EU state aid rules apply. The Swedish State Aid Ordinance 1988 (Sw Förordning (1988:764) om statligt stöd till näringslivet) applies to state aid and financial support.

33 What are the main principles of the state aid rules applicable to the aviation sector?

The EC regime concerning state aid applies. Under domestic law one may note that regional and local authorities are authorised to award directed aid to an individual business if there is an exceptional reason to do so.

Certain domestic airline routes to and from sparsely populated areas are procured by a government agency as part of the official Swedish transport policy.

34 Are there exemptions from the state aid rules or situations in which they do not apply?

The State Aid Ordinance applies to all state aid, regardless of the amount, since the transportation sector is not included in EC Regulation No. 69/2001 on the application of articles 87 and 88 of the EC Treaty to de minimis aid, regarding aid amounting to a maximum of €100.000 during a three-year period.

35 Must clearance from the competition authorities be obtained before state aid may be granted?

The EC regime concerning state aid applies.

36 If so, what are the main procedural steps to obtain clearance?

The EC regime concerning state aid applies.

37 If no clearance is obtained, what procedures apply to recover unlawfully granted state aid?

The EC regime concerning state aid applies.

Miscellaneous

38 Is there any aviation-specific passenger protection legislation?

Passengers' rights in respect of denied boarding, cancellation and delay are regulated by EC Regulation No. 261/2004, which is directly applicable in Sweden. The Swedish Package Holidays Act 1992 (Sw lag (1992:1672) om paketresor) contains specific consumer protective rules regarding damages, including those covered by the Aviation Act.

EC Regulation No. 1107/2006 concerning the rights of disabled persons and persons with reduced mobility when travelling by air shall be implemented in Sweden by 26 July 2008.

EC Regulation No. 2299/89 on Computer Reservation Systems (CRS) is directly applicable in Sweden.

39 Are there mandatory insurance requirements to operate aircraft?

The Aviation Act refers to EC Regulation No. 785/2004 on insurance requirements for air carriers and aircraft operators, being directly applicable in Sweden, sets out common European third-party liability requirements for aircraft. The requirements set out in the Regulation include both insurance in respect of liability for third parties and insurance in respect of liability for passengers, baggage and cargo. The Swedish government may order that in cases falling outside the Regulation, aviation liability insurance must be held.

Furthermore, EC Regulation No. 2407/92 on air carrier liability in the event of accidents is also applicable, stating that an air carrier shall be insured to cover liability in case of accidents, in particular in respect of passengers, luggage, cargo, mail and third parties.

40 What legal requirements are there with regard to aviation security?

The rules within aviation security in Sweden are governed by both international and national supplementary provisions. The international regulations are provided in the ICAO annex 17, EC Regulation No. 2320/2002 and EC Regulation No. 622/2003. These regulations and provisions are collected in a set of rules and regulations called the National Security Program (NASP), which also include certain BCLs (Aviation Security; BCL-SEC). The Administration is responsible for the NASP. An aviation undertaking shall have a security programme, which includes its business in Sweden and describes how the aviation undertaking fulfils the demands stated in the BCL-SEC. The security programme must be filed with the Administration.

Update and trends

The Swedish government has recently decided to appoint a commission which shall prepare and execute the foundation of a new organisation for traffic inspection, including aviation. The new organisation is to be named the Swedish Transport Authority (Sw Transportstyrelsen) and shall come into operation from 1 January 2009. Its operations shall comprise all standard-setting, licensing and supervision rules for aviation, shipping, railway and road traffic.

The regulations of the Authority (excluding the JARs) will be revised to a new format, the so-called 'SFS-format' which is similar to the Swedish laws, where the specific regulations are divided into sections instead of items. The regulations will also be divided into different series. The revision has already started and the regulations will gradually be transformed into the new format. The purpose of the division into a series is to give the users of the regulations historically related information about which area is regulated by a certain regulation in a clear and simple format.

41 What serious crimes exist with regard to aviation?

Under the Swedish penal system, a person who causes an aviation accident and thereby causes danger in respect of it or other like calamity and thereby endangers another's life or health or causes extensive damage of another's property, shall be sentenced for devastation endangering the public to imprisonment for a minimum of two years and a maximum of eight years. If the crime is less serious, imprisonment for at least one year and a maximum of three years shall be imposed. If the crime is gross, imprisonment for a fixed term of at least six years and a maximum of 10 years, or for life, shall be imposed.

A person who, by means of unlawful coercion, seizes or interferes with the operation of an aircraft shall be sentenced for hijacking to imprisonment for a maximum of four years. A person who in other cases destroys or seriously damages an aircraft in traffic or undertakes an action of a nature to present a danger to the safety of such an aircraft during flight shall be sentenced for air traffic sabotage to imprisonment for a maximum of four years. If the crime is considered to be gross, a sentence for a fixed

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term, of at least two years and at most 10 years, or for life, shall be imposed.

A person who uses serious violence or threatens such violence against a person who is at an airport open to international traffic; destroys or seriously damages an installation belonging to such an airport or which is used for its traffic, or an aircraft which is not in traffic but is parked at the airport, or by the use of violence or threats of violence thwarts the operations conducted at such an airport, shall be sentenced, if the act is of a nature to endanger the operations at, or safety of, the airport, for airport sabotage, to imprisonment for a maximum of four years. If the crime is considered to be gross, a sentence of imprisonment for a fixed term of at least two and at most ten years, or for life, shall be imposed.

According to the Aviation Act, a person who is under duty aboard an aircraft and under the influence of alcohol or other substances causing him or her not to be able to perform his or her duties will be sentenced to a maximum of two years' imprisonment.

A number of offences in respect of breach of regulations in the Swedish Aviation Act are punishable by fine or up to six months' imprisonment, such as misleading information, refusing to obey an order, working in aviation without a proper licence or insurance, neglecting conditions tied to the licence and using aircraft which harms the environment, etc.