



International Civil Aviation Organization

WORKING PAPER

A37-WP/80

LE/6

20/8/10

ASSEMBLY — 37TH SESSION

LEGAL COMMISSION

Agenda Item 60: Work Programme of the Organization in the Legal Field

THE TOPIC “CONSIDERATION OF GUIDANCE ON CONFLICTS OF INTEREST” SHOULD BE ADDED TO THE WORK PROGRAMME OF THE LEGAL COMMITTEE

(Presented by the United States of America)

EXECUTIVE SUMMARY

ICAO has promulgated very little guidance on avoiding conflicts of interest among aviation regulatory officials, leaving the matter to inconsistent national legislation. Freedom from conflicts of interest is essential to effective and impartial regulation of civil aviation safety and security. The Legal Committee should study existing ICAO guidance and the practices of Member States, and make recommendations if necessary and appropriate for guidance to be issued on the subject. ICAO guidance in this area would promote consistency among Member States. It could provide a floor for limits on conflicts of interest or for mitigation of conflicts when they might be unavoidable.

Action: The Assembly is invited to add the topic “Consideration of Guidance on Conflicts of Interest” to the work programme of the Legal Committee.

<i>Strategic Objectives:</i>	This working paper relates to Strategic Objective F (Rule of Law).
<i>Financial implications:</i>	Minimal.
<i>References:</i>	None.

1. INTRODUCTION

1.1 ICAO has established very little in the way of guidance on the problems of conflict of interest in safety oversight. This is true of safety oversight in particular, but also of many other areas in ICAO's purview, from airports and air traffic to security, environment, and accident investigation. In the area of safety oversight, this lack of guidance may be a historical legacy. In the early days of civil aviation, the typical model was a State-owned airline that owned all its equipment. There was no arms-length relationship between the regulator and the regulated entity.

1.2 Today, the situation is quite different. Government and industry have close working relationships, as they should, but there should be reasonably consistent rules across the sector to establish and preserve a clear separation between civil aviation authorities and the activities that they oversee. The rule of law, especially the objective, disinterested exercise of regulatory responsibilities, is critical to effective safety oversight.

2. DISCUSSION

2.1 The paucity of ICAO recommendations on conflict of interest among aviation regulatory officials means that these matters are governed by national law, which varies greatly from one State to the next. In one State, a Director General of Civil Aviation (DGCA), for example, might have to divest him- or herself of any financial interest in the industry, including retirement benefits; in another, the DGCA might be an airline captain or executive on paid leave from the company.

2.2 In addition to financial interests in regulated entities, conflict-of-interest rules also typically deal with so-called revolving door situations, the movement of individuals from positions in government to industry and vice versa and associated recruiting practices. Consideration of possible guidance on conflicts of interest must, however, take into account that many Member States have small aviation industries and a limited number of highly experienced candidates for regulatory positions. Conflict of interest guidance might in such cases have to focus on mitigation measures.

2.3 Another concern is the normal practice of designating or seconding personnel to carry out oversight functions on behalf of the Civil Aviation Authority (CAA). ICAO addresses the practice in paragraph 5.3, Staffing, of Doc 8335, *Manual of Procedures for Operations Inspection, Certification and Continued Surveillance*. Check airmen, designated engineering representatives, and medical examiners are typical examples. These practices are essential to effective safety oversight, especially in States with large aviation sectors, because few CAAs can employ sufficient manpower to carry out all necessary oversight activities solely with CAA employees. The designees must be employed on a basis that ensures objectivity, however, and they must themselves have effective oversight in carrying out their functions. ICAO guidance already recognizes this problem and, with respect to secondments, says that "a strategy to mitigate potential conflict of interest issues should be established and documented." Id. Para 5.3.3.

3. CONCLUSION

3.1 The Legal Committee should investigate these issues and make recommendations. It should identify what measures currently exist and gauge whether they are adequate for the current state of the industry. It should do a study to survey the practices among Member States. And it should make recommendations for ICAO to promulgate additional Standards, Recommended Practices, or other guidance materials as appropriate. The Committee should investigate whether it might be sufficient to amend appropriate manuals on safety oversight organization, or whether it might be better to establish a new, concise statement of principles States could or should employ. ICAO guidance in this area would

promote consistency among Member States. It could provide a floor for limits on conflicts of interest or for mitigation of conflicts when they might be unavoidable.

4. **ACTION BY THE ASSEMBLY**

4.1 This Assembly is invited to:

- a) add the topic “Consideration of Guidance on Conflicts of Interest” to the work programme of the Legal Committee, and
- b) direct the Committee to:
 - i) study the treatment of conflict of interest (including financial interests of aviation officials, so-called revolving door situations, and delegation of safety functions to non-CAA persons) in both existing ICAO guidance and in the municipal law of Member States; and
 - ii) develop recommendations, if necessary and appropriate, for guidance to be adopted by the Organization.

— END —