

## Aviation Advocacy

# Introduction to Organisational Structures

Wednesday 23 March 2016: Module 8

Andrew Charlton  
Matthew Feargrieve  
Richard Gimblett  
21 - 26 March 2016

# Agenda

- Part A: Overview of Organisational Structures
- Part B: Structural Choices

# Part A: Overview of Organisational Structures

# Organisational Structures (1)

- **IAG bids for Aer Lingus (2015)**
- **Qatar takes 9.99% stake in IAG (2015)**
- **Merger of British Airways and Iberia (2011)**
- This “M&A” activity is underpinned by parties contracting with each other
- M&A is the means by which commercial organisations structure themselves

## Organisational Structures (2)

- Key types of organisational structures in the aviation industry:
  - *partnerships*
  - *agencies*
  - *associations*
  - *alliances*
  - *joint ventures*

# Part B: Structural Choices

# Partnerships (1)

- Partnerships are composed of a minimum of two parties
- Partnerships are essentially underpinned by the laws of contract, with some special provisions particular to partnerships
- The rights, obligations and liabilities of the partners are essentially governed by the partnership agreement (contract)
- In some jurisdictions there is an overlay of statutory law providing for limitations on the liability of partners
- In some jurisdictions partnerships are not independent legal entities (unlike a company) and so cannot enter into contracts in their own name

## Partnerships (2)

- The laws regulating partnerships are complex and vary between jurisdictions
- Partnerships are common in the legal, medical and accountancy industries
- They are not a common organisational vehicle in the aviation industry



# Agencies (1)

- An agency arrangement involves three parties:
  - the principal
  - the agent
  - a third party
- The *agent* is authorized by the *principal* to create binding contractual relations with a *third party*
- This arrangement recognizes the commercial reality that parties often conduct their business through other persons

## Agencies (2)

- The contractual relationships in an agency arrangement are complex:
  - liability of agent to principal and third party
  - scope of agent's authority
  - rights and obligations of agent to principal and third party
  - overlay of common law and statutory principles
  - interface between contractual framework and *fiduciary* relationship between agent and principal: contract law and trust law
- *Lessee*: party that takes a lease of the asset from the lessor

# Associations

- Associations can take the legal form of a company (*ie* be “incorporated”) or can be “unincorporated”
- An unincorporated association is not a legal entity and therefore cannot enter into contracts in its own name
- Associations are typically the structure of choice for non-profit organisational structures, *eg* pilots/aircraft owners/flight instructors associations

# Alliances (1)

- Globalization has led to the industry organising itself into “alliances”
- Major carriers are members of one of the three most significant alliances:
  - **oneworld**
  - STAR
  - SkyTeam

## Alliances (2)

- Alliances are essentially a means of cooperation between airlines:
  - Codeshare
  - Linking of frequent flyer programmes
  - Deeper collaboration
- As well as being a natural response to increasing globalization and consolidation

## Alliances (3)

- A common response to globalization and consolidation in most industries is merger and acquisition (“M&A”): unifying different businesses within a single legal entity
- But the airline industry is subject to complex governmental rules governing foreign ownership and control of airlines, making M&A difficult/costly/impossible
- So strategic alliances between airlines are often formalized as *joint ventures*

# Joint Ventures (1)

- A joint venture is the coming together of two businesses in collaborative partnership, as opposed to their merging, or the take-over by one of the other
- Examples of joint ventures:
  - Northwest Airlines & KLM Royal Dutch Airlines (1992)
  - Qantas Airways/British Airways (“kangaroo” route) (1995)

## Joint Ventures (2)

- The “JV” process is a complex one, involving many factors:
  - assessment of need for JV
  - selection of JV partner
  - handling negotiations with partner
  - regulatory rules
  - legal documentation of the JV: the **contract**
  - essential content of the contract
  - business plan
  - risks of the JV
  - ensuring a win-win outcome for both partners
  - exit/wind-down arrangements



## Joint Ventures (3)

- **Assess the pros and cons of a JV:**
- **Pros:**
  - **jointly focused approach on new business**
  - **risk sharing**
  - **conservation of managerial & financial resources**
  - **work in a flatter structure (level playing field)**
  - **preference of JV partner?**
  - **creating capacity**

## Joint Ventures (4)

- **Assess the pros and cons of a JV:**
- **Cons:**
  - **cost of setting up & managing a new company**
  - **legal complexity**
  - **losing control/ownership of original business, including IP and brand footprint**
  - **reduction in scale of operations**

## Joint Ventures (5)

- **Creation of new JV entity:**
- Two or more parties incorporate a NewCo to start new business activity
- Two parties incorporate a NewCo and the business of one or both parties is transferred to NewCo
- Shares of an existing company are issued or transferred to another company, resulting in mixed ownership

## Joint Ventures (6)

- **Selection of JV Partner:**
  - due diligence: financial, commercial and legal
  - creating framework for competitive bidding process by potential partners
  - handling negotiation process with chosen partner(s)

## Joint Ventures (7)

- **Negotiating with JV partner(s):**
  - Form a core group representing technical/finance/legal/commercial
  - Set business objectives
  - Identify Key Issues/Parameters
  - Prepare draft JV agreement for review by partner(s)
  - Collect data and information, including business intelligence reports
  - Keep records of negotiations by recording the key decisions

## Joint Ventures (8)

- **Post- selection of JV partner(s):**
  - prepare MoU & NDA containing broad understanding with the selected partner(s)
  - preliminary Business Plan
  - begin to develop draft JV agreement
- MoU = Memorandum of Understanding (also known as “Heads of Terms”)
- NDA = Non-Disclosure Agreement (confidentiality)

## Joint Ventures (9)

- **Legal Framework:**
  - Negotiate and agree form of JV agreement in line with MoU and agreed Business Plan
  - Prepare constitutional documents of JV vehicle in line with JV agreement
  - Set up JV vehicle (normally a company)
  - Prepare board resolutions to approve all steps

## Joint Ventures (10)

- **The JV agreement:**
  - Technically referred to as a Shareholders' Agreement (when the JV vehicle is a company)
  - The constitutional documents of the JV vehicle are known as the “Memorandum and Articles of Association” (“Mem & Arts”) (or the “By-Laws” in the US)
  - The JV vehicle will be incorporated using the Mem & Arts



# Joint Ventures (11)

- **The JV agreement (and the Mem & Arts) will contain certain key provisions:**
  - JV objectives
  - Conditions Precedent
  - Permitted Investments
  - JV Management
  - Meetings of Directors & Shareholders
  - Quorum requirement for meetings
  - Voting requirements for carrying Board and Shareholder decisions

## Joint Ventures (12)

- **Key provisions (continued):**
  - Lock-in period
  - Share transfer & exit procedures (“right of first refusal”)
  - Confidentiality
  - Intellectual Property Rights
  - Term and Termination
  - Deadlock Situation
  - Governing Law and Dispute Resolution
  - Representations, Warranties, Indemnities
  - Non-compete clause

# Joint Ventures (13)

- **Risks of Joint Venture:**
  - Partnering with another business can be complex
  - Problems arise if:
    - The partners have different expectations / objectives for the joint venture
    - There is an imbalance in levels of expertise, investment or assets brought into the venture by the different partners
    - Different cultures and management styles result in poor integration and co- operation
    - Inadequate planning for the joint venture

# Joint Ventures (14)

- **Ensuring a Win-Win outcome:**
  - Define role and responsibilities of partners to be defined
  - Ensure unbiased management of JV vehicle
  - Suitable provision for quorums of Board and Shareholder meetings
  - Suitable mechanism to resolve deadlock
  - Clearly defined Exit Strategy & Lock-in period

# Aviation Advocacy

---

Aviation Advocacy Sarl  
Rue de la Gare 17  
1260 Nyon Switzerland  
Phone: + 41 22 361 06 33  
[info@aviationadvocacy.aero](mailto:info@aviationadvocacy.aero)  
[www.aviationadvocacy.aero](http://www.aviationadvocacy.aero)