

Aviation Advocacy

Introduction to Organisational Structures

Wednesday 15 April 2015: Module 7

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13 - 18 April 2015

Agenda

- Part A: Overview of Organizational 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 organizations structure themselves

Organisational Structures (2)

- Key types of organizational 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 organizational 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 organizational structures, *eg* pilots/aircraft owners/flight instructors associations

Alliances (1)

- Globalization has led to the industry organizing 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)
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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

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