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JAPANESE LAWS RELATED TO AIRPORT DEVELOPMENT AND THE NEED TO REVISE THEM

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I. INTRODUCTION

THE AERODROME Development Law stipulates that, of various aerodromes in Japan, those serving civil aviation routes are to be designated as "airports." These airports are regulated by the Aeronautical Law (1952) with regard to safety, the Noise Prevention Law (1967) with regard to noise measures, and the Airport Development Law (1956) with regard to airport development. The Airport Development Law also regulates the classification of airports that are subject to financing by public funds, as well as those airports' development procedures.

Actual development of an airport is carried out based upon airport development plans, which are worked out by the Ministry of Transport every five years. Though these airport development plans are called "Airport Development Five Year Plans," they are not based on provisions in the Airport Development Law or on any other laws, but are governmental policies established at the administrative discretion of the Ministry of Transport.

The Airport Development Law, which specifies the procedure for establishing airport development plans, has been revised recently to incorporate the use of military aerodromes as civil airports. These military aerodromes are currently operated by Japanese Self-Defense Forces. While conversion of a military airport to a civil airport is not unusual in western countries, it is not a common practice in Japan. Also, the Airport Develop-

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ment Law has been revised to incorporate the use of regional airports in Japan as international airports in order to remain current with the substantive evolution taking place in airport development.

Most of the airports in Japan are established and operated by the Ministry of Transport; however, other modes of operation have recently been adopted. For example, New Tokyo International Airport (Narita Airport) was established and operated by a public corporation; and Kansai International Airport and Chubu International Airports were both established and operated by privately-held corporations. One reason for adopting those alternative modes of operation was that a shortage of national funds had caused landing charges to increase to the highest level in the world.

This article will present both an introduction to the development methods of airports established and operated by the Japanese government, or one of its municipalities, and a discussion of the law governing such methods. A review of the possibility of privatizing existing Japanese airports, in an era where airport privatization has become a worldwide trend, will also be addressed.

II. AIRPORTS IN JAPAN

The Airport Development Law classifies Japanese airports, that serve and schedule commercial flights, as one of the following: Category One (those required for international routes); Category Two (those required for major domestic routes); and Category Three (those required for regional domestic routes).¹

The Airport Development Law provides the requirements for financing the development of airports in each Category. The funds required for development of Category One airports, with the exception of Narita Airport and Kansai International Airport, are absorbed by the government. The funds required for Category Two and Category Three airports are absorbed likewise by the government, but are also partially absorbed by the municipality where the airport is located, at a certain ratio provided in the law.² Further, all airports, with the exception of certain aerodromes operated by the Japanese Self-Defense Forces, certain aerodromes operated by the U.S. Forces, and

¹ See Aerodrome Development Law, Law No. 80 of 1956, art. 2.

² See *id.* arts. 3-5.

other private or public-use small aerodromes, are subject to the provisions in the Airport Development Law.

The current Category One, Category Two, and Category Three airports (Airport Development Law Airports) and their respective owners or operators are shown in the following table:

Table 1

Please note:

1. The status of airports, other than Chubu International Airport (which is under construction) and those operated by the Self-Defense Forces, are as of February, 1998.
2. The information provided is based upon a Japanese Civil Aviation Promotion Foundation booklet entitled "Look into Civil Aviation Through Figures, 1998."

Airport Category	Operator or Ownership	Name of Airport/Aerodrome	Number of Airports
ONE	Ministry of Transport	Tokyo International, Osaka International	4(5)
	Public Corporation	New Tokyo International (Narita)	
	Stock Corporation	Kansai International, (Chubu International)	
TWO	Ministry of Transport	New Chitose, Wakkanai, Kushiro, Hakodate, Sendai, Niigata, Nagoya, Yao, Hiroshima, Takamatsu, Matsuyama, Kochi, Fukuoka, Kita-Kyushu, Nagasaki, Kumamoto, Oita, Miyazaki, Kagoshima, Naha.	20
	Municipality	Asahikawa, Obihiro, Akita, Yamagata, Yamaguchi-Ube.	5
	Defense Agency or Defense Facilities Administration Agency	Tokushima Aerodrome, Sapporo Aerodrome, Komatsu Aerodrome, Miho Aerodrome	4
THREE	Municipalities	(Medium and smaller regional airports)	59
Total Number of Airports Subject to Application of Airport Development Law			92(93)

Aerodromes not subject to Airport Development Law (those not included in the above table) include joint-use aerodromes operated by the Japan Self-Defense Forces or by the U.S. Forces. These airports are also used for commercial purposes and are served by regular commercial flights. Chitose Aerodrome, owned by the Defense Agency, and Misawa Aerodrome, owned by the Defense Facilities Administration Agency, fall into this category. Of the airports listed in the above table, Category Two airports, operated by the Defense Agency, are also joint-use aerodromes.³

Iwakuni Aerodrome, Yokota Aerodrome, and Kadena Aerodrome in Okinawa are large-scale aerodromes not subject to the

³ See Self-Defence Force Law, Law No. 165 of 1956, art. 107.

Japanese Aeronautical Law. These aerodromes were established by Article 6 of the Japan-U.S. Security Treaty and are used exclusively by the U.S. Forces. Liaison matters for these military aerodromes are undertaken by the Defense Facilities Administration Agency, and although these aerodromes are occasionally served by civil aviation aircraft chartered by the U.S. Forces, use of these aerodromes by Japanese civil aviation aircraft is not, in principle, permitted except in emergency situations.

Other small-scale aerodromes, such as those used for specific public purposes, like fire-fighting, or those established by private enterprises for their own exclusive use, are not subject to the Airport Development Law. As of February, 1997, these aerodromes included 88 heliports and 14 small-scale aerodromes.

As explained above, the airports in Japan include: those administered by the Japanese Government or municipalities; those administered by the Defense Agency or the Defense Facilities Administration Agency and served by regular commercial flights; those administered by the Defense Agency or the Defense Facilities Administration Agency (including those exclusively used by the U.S. Forces), where no commercial flights are allowed; small-scale aerodromes established for public purposes by municipalities; small-scale aerodromes owned by private enterprises; and aerodromes established through special legislation, such as Narita Airport, Kansai International Airport and Chubu International Airport.⁴

III. EFFECT OF PRIVATIZATION

Although Japan is witnessing a trend toward airport privatization, such privatization still occurs less frequently there than in Western countries. Currently, only two airports in Japan have been privatized, and one of these airports is still under construction. The costs of establishing and operating airports in Japan are funded by either joint financing by the government and a municipality, or exclusively by the government. The Airport Development Law and other aviation related laws do not allow private enterprises to establish and operate the Category One, Category Two, and Category Three airports. The only exceptions to this rule are Kansai International Airport and Chubu International Airport. The current laws remain because the Japanese government will not easily change its basic philosophy

⁴ See *Statistics of Japanese Aviation 1998*, AVIATION PROMOTION FOUNDATION (1999).

that an airport should, in principle, be established and operated by the government.⁵

The funds required to develop airports in Japan are budgeted and appropriated from the national treasury, which is sustained by the taxpayers; however, the funds are not appropriated from the general account. They are appropriated instead from a special airport development account. In the case of an airport operated by a municipality, the monies from the applicable municipality are added to the special airport development account according to the ratio stipulated for each airport in the Airport Development Law. Therefore, all of the major airports in Japan (i.e. the Category One and Category Two airports, minus Chubu and Kansai, which are both owned by privately-held corporations) are sustained by taxes levied by the government or municipalities. The initial investments for Narita Airport, which is owned by a public corporation, were appropriated from the national treasury.⁶

Furthermore, user charges, such as landing charges, that were applicable at the airports administered by the municipalities, require approval from the government, according to Aeronautical Law. As a consequence, landing charges at these airports, as well as those operated directly by the government, are set at an equal level. Narita Airport, which is operated by a public corporation, and Kansai International Airport, which is operated by a privately-held corporation, are exceptions to this rule. The Chubu International Airport, which is also operated by a privately-held corporation and is under the initial construction stage, will be an additional exception to the rule. These two modes of airport operations, by public and privately-held corporations, were introduced as the exceptions to the conventional mode, in response to the shortage of government airport development funds.

Because the operators of Narita Airport and Kansai International Airport are given the same authority as the Minister of Transport under the Aeronautical Law, they are exempted from the approval of the Ministry of Transport that is normally required for establishment and operation of an airport. Although Narita Airport Authority and the Kansai International Airport Company were founded through respective special laws, their scope of business is limited to the establishment of their respec-

⁵ See Aerodrome Development Law, *supra* note 1, arts. 3-5.

⁶ See Aerodrome Development Accounting Law, Law No. 25 of 1970, art. 3.

tive airports and to business directly related to the operations of those airports. For this reason, their mode of operation is similar to that of airports operated directly by the government or by a municipality. The only significant differences lie in their financing methodology and depreciation procedures.

Narita Airport Authority is financed through direct government investment, through the issuance of bonds, and through its own funding.⁷ As for the financing of Kansai International Airport, 30% of its total funding is shared (20% by the government, 5% by the municipality, and 5% by private enterprises). The remaining 70% was financed through loans. Consequently, the public corporation and privately-held corporation systems both benefit from flexible financing. However, because of constraints on business activities, the repayment of debt is hampered by limited revenues. This has brought about higher charge levels than those charged by Category Two and Category Three airports, which are operated directly by the government or by the municipalities and are supported by the Airport Development Special Account. The Airport Development Special Account is based on the pooling of revenue and the expenditures of all the airports. The charge levels at Narita Airport and Kansai International Airport are currently the highest in the world.

It is expected that, despite this trend, the development of new airports in Japan will continue to be carried out by forming privately-held corporations, because such an operational mode was triggered by the large national deficit. Due to Japan's recent economic stagnation, the deficit is not expected to improve in the near future. Thus, even if user charges become higher, the trend of having a privately-held corporation construct and operate an airport will continue. These operators will continue to establish charge levels high enough to recover the corporations' development costs.

In an environment where competition among the airlines is becoming more severe every day, the three major Japanese air carriers (Japan Airlines, All Nippon Airways, and Japan Air System) are requesting that the Minister of Transport take measures to lower the landing charges and other user charges at Narita Airport, as well as at Kansai International Airport.⁸

⁷ See Ryu Akiyama and Higashi Okuda, *Construction Story of Kansai International Airport*, 1985 KANSAI INT'L AIRPORT CYOSA-KAI 327.

⁸ See Hajime Tosaki, *Deregulation of Aviation*, 1995 KEISO-SYOBO 127-129.

IV. AIRPORT DEVELOPMENT FIVE YEAR PLAN

Normally the airports in Japan are either administered and operated by the government or by municipalities. The business aspects are generally divided between the government or the municipality and a private enterprise. The government or municipality typically establishes and operates air traffic control services and the infrastructure, which includes a runway, a taxiway, and an apron, while the private enterprise constructs and operates passenger terminal buildings. Development of airports with this type of operational structure is planned and implemented according to the Airport Development Five Year Plans, which are subject to decision by a Cabinet council. The policy objectives of the recent Five Year Plans are as follows:

Table 2⁹

Airport Development Five Year Plans	Period	Policy Objectives
First Airport Development Plan	1967 – 1970	To develop Osaka International Airport and Tokyo International Airport (Haneda Airport) due to lack of overall capacities.
Second Airport Development Plan	1971 – 1975	Development of New Tokyo International Airport (Narita Airport), improvement of Osaka International Airport, and development of regional airports.
Third Airport Development Plan	1976 – 1980	Promotion of works related to development of airport surrounding areas, development of Narita Airport.
Fourth Airport Development Plan	1981 – 1985	Ultimate completion of Narita Airport (the first phase of development of which was completed in 1978) development of Kansai International Airport, and of Haneda Airport towards the Tokyo Bay.
Fifth Airport Development Plan	1986 – 1990	Promotion of developing Narita Airport and Kansai International Airport, continuation of the Fourth Airport Development Plan.
Sixth Airport Development Plan	1991 – 1995	Further promotion of the Fifth Airport Development Plan
Seventh Airport Development Plan	1996 – 2002	Further promotion of the Sixth Airport Development Plan (both Narita Airport and Kansai International Airport were commissioned but have not ultimately been completed).

NOTE: Due to a shortage in the national funds, the five-year plan was changed to a seven-year plan by the Seventh Airport Development Plan.

The Airport Development Plans were first developed to promote airport development and to cope with the introduction of

⁹ See Makoto Takahashi, *Airport*, 1998 AVIATION NEWS 60-80.

jet aircraft such as the B727. The latest plan is the Seventh Airport Development Plan. Prior to these plans, emphasis had been placed on Haneda Airport and Osaka International Airport. This period was followed by a period in which the emphasis was shifted to the development of two major airports, Narita Airport and Kansai International Airport, both of which are currently in operation but are not entirely completed.

Development of airports in Japan always requires the establishment of noise measures to protect local residents. These efforts are needed to prevent paying exorbitant amounts for damages caused by noise, sound-proofing work, etc. These damages occur because of the narrowness of the Japanese territories, that contain a population exceeding 100 million people. Airports in major cities, such as Osaka International Airport, are currently seeking settlements to lawsuits raised by local residents.¹⁰

However, establishing a new airport invariably will cause more problems than the noise measures required for the existing airports. For this reason, priority has been given to the enhancement and expansion of existing airports, such as Osaka International Airport and Haneda Airport, which have served large cities for an extended period of time. The same policy was also adopted for the regional airports. The development of airports in metropolitan areas, which took place at only two locations, Narita and Kansai International, has not been carried out smoothly. This is especially true for Narita Airport, which has not yet been completed and is only partially in use thirty-four years after its master plan was officially released in 1966.

For example, construction of a second runway at Narita Airport was stalled because the government and the Airport Authority failed in its negotiations with the local residents. The second runway is a vital infrastructure, needed to meet growing traffic demands. Furthermore, construction of a third runway, a cross-wind runway, was also suspended because of a restriction subjecting its use to the approval of the residents living in areas affected by aircraft noise. This was in spite of the fact that the airport was then experiencing strong southwesterly winds that, in spring-time, result in unfavorable cross-winds for aircraft using the existing runway. For this reason, the incumbent mayor

¹⁰ See Noise Prevention Law, Law No. 110 of 1967; Counter-Measure Against Noise Pollution of Specific Airport Law, Law No. 26 of 1978.

of Tokyo is demanding that Haneda Airport once again be used as an international hub.¹¹

In addition, some regional cities are actively promoting the development of new regional airports to stimulate industrial activities. However, the construction and operation costs of such airports are generally regarded as too high to be economically feasible. In order to avoid expected noise problems, these plans often call for the development of airports on offshore reclaimed land, similar to where the Nagasaki Airport, Kansai International Airport, and Chubu International Airport are constructed, or in areas remote from city centers. However, such a trend is causing access problems between airports and city centers, as well as the problems with costs mentioned above. In 1998, application of the current five-year plan was extended by two years and became a seven-year plan because of national budgetary constraints. Consequently, the extension has delayed the desired growth of airport development.

V. CONCLUSION

Japanese law dictates that the development of airports in Japan must be financed by government and municipality funds. The exception to this rule is Kansai International Airport, which was established by a special law.¹² This system is similar to a system adopted by New Zealand before it began privatizing its airports through public corporations. In New Zealand's earlier system, the governmental policy was to develop and operate airports through governmental and municipal financing. Since the government and/or municipalities currently act as administrators of the major airports in Japan, including Narita Airport and Kansai International Airport, the operational procedures

¹¹ Prior to the opening of Narita Airport, Tokyo Haneda Airport had been the core of the international as well as the domestic networks in Japan. Haneda Airport is located in Ota Ward of Tokyo City and is within 30 minutes of central Tokyo. Narita Airport is located in Narita City in Chiba Prefecture, more than one hour from central Tokyo. The transfer time between these two airports is more than one hour. It is inconvenient for passengers, who are originating in the provincial cities of East Japan and who are taking domestic flights to Haneda Airport, to connect with international flights departing from Narita Airport. The demand made by the mayor of Tokyo is derived from these circumstances and, as mentioned above, from the fact that Narita Airport has not been completed due to selfishness on the part of some local residents, thereby restricting aircraft movement capacity. Whether the demand of the mayor of Tokyo can be met is dependent on the feasibility of extending the airport toward the Bay of Tokyo.

¹² See Kansai International Airport Company Law, Law No. 53 of 1984.

for those airports tend to be uniform and are under the centralized supervision of the Ministry of Transport.

A domestic airline's application for operation into a Japanese airport is approved individually, as are airline business licenses for each domestic route.¹³ Lately, the Ministry of Transport has changed this policy, and bidding by multiple airlines is now taking place for each route. Further, deregulation of air fares is also being considered for future implementation. Although airlines are given certain margins within which they can decide fare levels, so far air fares are still subject to approval by the Ministry of Transport. Similar levels of air fares are established for each route by the airlines. In other words, the supply and demand balance is politically maintained. As a consequence, airports are unable, in reality, to attract airlines on their own, irrespective of whether they have sufficient capacity to serve them or not.¹⁴

As for airport management, airport operators are not allowed to set the levels of landing charges based upon each airport's financial situation. In this respect, municipalities do not have autonomy as airport management. Landing charges for airports, under the Ministry of Transport's administration, are decided uniformly by the Ministry of Transport, taking into consideration the overall costs of all of the airports under its administration. Of the Category Two airports, those under the administration of municipalities are required to obtain approval from the Ministry of Transport in deciding the charge levels. Consequently, with only a few exceptions, all of the Category One, Category Two, and Category Three airports apply the same landing charges.¹⁵

Levels of landing charges at Narita Airport and Kansai International Airport, which are quite high, are also subject to the approval of the Ministry of Transport, with neither airport being allowed to set its own charge levels, even though the entities themselves, whose autonomy is to be respected, were established separately through legislation.¹⁶ The concept of equalizing the levels of landing charges and other user charges, as represented in the above examples, is an important guidepost for the devel-

¹³ See Civil Aeronautics Law of Japan, Law No. 231 of 1953 art. 100.

¹⁴ See *id.* art. 105.

¹⁵ See *id.* art. 54.

¹⁶ See New Tokyo International Airport Authority Law, Law No. 115 of 1965, art. 26; Kansai International Airport Company Law, Law No. 53 of 1984, art. 17.

opment and operation of airports under bureaucratic leadership.

With regard to various policies associated with airport operations, such as noise measures for surrounding communities, the same methodology has been adopted uniformly at every airport in Japan through the supervision of the Ministry of Transport and through the enforcement of the Noise Prevention Law. These policies are being implemented in a similar manner as with landing charges, meaning no specific measures meeting individual airport requirements are being taken. Regulating the development and operation of airports in Japan by the Ministry of Transport in the manner described above is based on the Aeronautical Law, Airport Development Law, and Noise Prevention Law and is at the discretion of the bureaucrats concerned.

In order to eliminate some of the inefficiencies of the airport system in Japan and to establish a system whereby importance is attached to the autonomy of individual airports by introducing the concept of airport privatization in the future, revisions to the Airport Development Law (regarding airport development) and revisions to the Aeronautical Law and Noise Prevention Law (regarding adjustments to supply and demand, safety regulations, and noise measures) must be made, taking into account several factors:

(1) Airport Development Law

Vitalization of airport management activities through privatization would provide:

- (a) flexible funding;
- (b) greater efficiency by introducing cost consciousness; and
- (c) freedom in selecting associated business activities.

(2) Transport Administration

Another change to consider is the elimination of the practice of government agencies appointing retired bureaucrats to airport administration by orders. The establishment of a fair personnel policy through the adoption of the principles of competition is needed.¹⁷

¹⁷ As seen from the historical background after World War II and also from the fact that appointment of any management personnel is decided by the Ministry of Transport, appointment of any person, other than retired high government officials, to a top management post is practically impossible in airports operated by a public corporation or a privately-held corporation with government financing.

(3) Aeronautical Law and Noise Prevention Law

A final recommendation would be to decentralize the authorities currently managing airport business, such as bidding for slots, noise measures that protect local residents, and the establishment of administration regulation. Transferring this control to the airport administration units would be appropriate.

However, the concept of thoroughly free competition has a certain aspect that may be unable to acclimatise to the Japanese culture. In particular, in some local communities, public works virtually support the entire local economy. In those communities, the airport business alone may not be financially sufficient to sustain the local economy. Thus, consideration should be given to the idea of operation by a consortium. Such consortium would ideally contain a municipality and a private entity.

Comments

