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Introduction

{1} Mongolia is a large, land-locked, nation located between the People's Republic of China and the former Soviet Union. Politically, Mongolia had been under Communist rule in a system based on that of the former Soviet Union until 1990 when multiple-party elections were permitted and the long-standing bond with the USSR was dissolved. The collapse of Communism in the Soviet Union and the depreciating economy of Russia spurred governmental reformation and massive change in Mongolia, which had depended on the USSR for over fifty years for financial, civil, technological, and military support [1].

{2} Since Mongolia was so strongly linked to the Soviet Union in every way -from the military to civil services to governmental infrastructure- the fall of the USSR left Mongolia almost completely cut off from the rest of the world. Many military and some governmental professional specialty positions (such as medicine and engineering) were staffed by Russian personnel assigned to Mongolia for a tour of duty [2]. When the Soviet Union became engulfed in political turmoil, most of these professionals either returned to their home republics of their own will or were reassigned by the Soviet military [3]. This mass exodus of trained people left Mongolia extremely deficient of medical, dental, veterinary, legal, aviation, engineering, and scientific professionals. Most Mongolians with a college education had elected to go into governmental administrative professions as these were the most promising for advancement in the Communist system [4]. In fact, only about thirty per cent of all physicians in Mongolia in 1985 were Mongolian citizens [5].

{3} With these great losses in trained personnel came losses in equipment and the funds to refurbish or purchase new equipment. Much of the high-technology medical equipment found in Mongolian clinics and hospitals was the property of the Soviet Army and Air Force and was removed when the Soviet military left Mongolia [6]. The same was partially true with the aircraft used by the Mongolian national carrier, MIAT. In this way, the situation of Mongolia after the evacuation of Soviet civil and military personnel was much like one of a host country after being occupied by another nation for an extended period of time even though the Soviet Union never officially put the kind of governmental claim on Mongolia that it had placed on some of the Eastern European countries.

{4} Mongolia's legal infrastructure was very similar to that of the USSR and had in fact been copied almost verbatim from the Soviet system. When Mongolia separated itself from the USSR and started to do away with Communism it found that its entire legal and judicial system would need total reformation - particularly in the areas of international and trade law. Since Mongolia has no sea coast, all Mongolian shipping was controlled by the Soviet Union and was conducted through Soviet ports. With a free market economy, Mongolia was faced with the immediate challenge of meeting the international laws governing shipping and establishing its own standards for maritime commerce. Similar problems, but not to such a great extent, were faced in the area of air transport [7].

Air Transport Service and Aviation in Mongolia

{5} Mongolia's civil aviation system for the transport of passengers and cargo was administered by MIAT, the national carrier, during the 1970s and 1980s. Soviet-supported military air service complemented the civil activities of MIAT, especially in the areas of aeromedical and cargo operations [8]. The Russian national carrier, Aeroflot, also assisted MIAT through the leasing of Aeroflot-owned aircraft, pilot training, and serving international

flights from the Soviet Union to Mongolia [9]. As nearly all of Mongolia's regularly-scheduled, civil international flights are conducted through either the former Soviet Union or the People's Republic of China to this day [10], Aeroflot's support was essential for Mongolian passenger and cargo service to other nations.

{6} Considering the fact that Mongolia has been basically a free-market economy open to international investment since 1990, it is important to realize that efficient air service between Mongolia and the rest of the world is crucial to Mongolia's future [11]. The Mongolian government had done little to encourage a higher level of air transport service than that which was realized under the Communist system up until 1994 when it became apparent that outside investors were desperately needed to fund civil projects, such as new hospitals and roads [12]. The certainty that Mongolia's raw natural resources (mainly coal) would only be of interest to international markets if a dependable means of ground and sea transport could be established for them made it even more imperative for MIAT to be capable of handling nearly all other commercial cargo transport [13].

{7} Mongolia could, in theory, become an important source for coal resources as well as an important centre of light industry -meeting both domestic needs and those of the surrounding former Soviet republics- if reliable communications and transport can be established. Mongolia should be very appealing to international investors because it offers a gateway to the far-eastern former Soviet republics, a market that has not been available to western business for nearly a century. Logically, the first area that will garner the support of outside investment and international loans would be commercial air transport [14].

Legal Considerations for Air Transport Operations of Foreign Corporations in Mongolia

{8} As stated before, Mongolia's legal system was molded after that of the former Soviet Union. Where international trade is concerned, the laws written under Communist rule do little to provide for commerce beyond the USSR and China. While these laws were updated after the governmental reformation of Mongolia to a more democratic state they still are ambiguous and often inadequate in comparison with the similar laws of other developed nations that engage in air transport-based trade.

{9} Although the Mongolian government has professed a need for outside investment at every level the country has not actively supported trade and tourism efforts by foreigners inside its borders [15]. The regulations for obtaining a visa to visit Mongolia (for holders of an American or British passport) are still overly complicated and cumbersome. Communications between Mongolia and the rest of the world are slow and inadequate. Even Mongolia's own consulates are often uninformed on pertinent laws and regulations regarding commerce and tourism due to the poor communications infrastructure [16].

{10} The most important laws concerning air transport service within and to Mongolia are those that have been created or revised over the past four years. These laws, obviously, have arisen out of a perceived need for change or modification to the way things were done under Communist rule [17]. These are the laws that make it possible for free trade to exist within Mongolia and they govern how trade shall be conducted. A fair amount of Mongolia's governmental revenue is derived from fines and taxes levied on foreigners and many of these tolls relate to travel and commerce [18]. Mongolia has realised that it is in a potentially compromising situation where foreign investors could take advantage of its transitory state of governmental affairs and is therefore guarding against this through taxes on the international corporations operating within its borders [19].

{11} Some laws still effective in Mongolia date from the days of Communist rule and are either unnecessary or contradictory to the more recent laws governing air transport [20]. These laws have not been eliminated for a variety of reasons- with the main cause being a lack of a concentrated effort to remove them [21]. Also, since so many of these laws were derived from the Soviet legal system, Mongolian authorities are attempting to determine how these laws can be modified to be useful in the new governmental system. When it is considered that many aircraft used by MIAT were owned by either the Soviet military or Aeroflot, the question arises of exactly what party now owns these aircraft that the Soviets left in Mongolia. What aircraft the Soviets did not take with them can now, under the standing law, be demanded by Aeroflot to be returned. Or can they? The law states that the USSR and Aeroflot as its national carrier had loaned these aircraft to Mongolia but the USSR no longer exists while Aeroflot has been divided up into smaller air lines, some still claiming the Aeroflot name [22]. Would these new "Aeroflots" [23] have a legitimate claim to the aircraft under the Mongolian law? The issue is unclear and since the Mongolian legal system allows for individual cases to be ruled on without regard to precedent, previous cases concerning such aircraft cannot form a definitive standard to which future cases will be judged [24].

{12} Since Mongolia has not up until recent years experienced a great deal of foreign aircraft being brought into the country (except Soviet aircraft), it is very ambiguous as to the regulations that a plane of foreign registry flies under while in Mongolia [25]. If simply flying through Mongolian air space en route to another nation, it is a matter of following the prescribed international rulings pertaining to such air space while not violating any part of Mongolian aviation law [26]. This would be much the same as flying through French or American air space [27].

However, for a plane of foreign registry to fly commercially with its area of service and/or base of operations inside Mongolian borders is a different matter. The law basically states that no aircraft is to conduct business other than that it is regulated to and that only MIAT and Aeroflot can fly regularly scheduled passenger operations within Mongolia [28]. Yet, no clear set of directives has been established to "regulate" the "business" that foreign aircraft may be engaged in and Aeroflot, as stated before, has changed markedly and now sub-contracts smaller air carriers.

{13} To purchase an aircraft in Mongolia would be a senseless action as the few aircraft available for sale are in poor condition and would not meet importation standards in most western nations [29]. So the only viable option would be to import aircraft into Mongolia. In order to do this, a corporation would need to exist to negotiate the needed agreements between both the Mongolian government and the government of the nation selling the aircraft. An individual acting alone probably could not obtain all the pertinent certification from both nations to import an aircraft into Mongolia and fly it internationally [30]. Once a plane is based out of Mongolia, it might be hard to convince other countries to allow it to land at their airports. There have been cases of Aeroflot aircraft being turned away from or detained at airports in India due to a miscellany of problems. The same could happen to an aircraft of Mongolian registry if careful precautions were not taken to avoid such complications [31].

{14} Any commercial aviation would need to be either controlled by a Mongolian or foreign corporation recognized by the Mongolian government. Since the laws governing the operations of foreign air carriers are so ill-defined, the sensible action would be to create a corporation in Mongolia that would be subject to the same regulations as MIAT and thus would be extended the same privileges of operation [32]. According to most current interpretations of Mongolian law governing the establishment of foreign corporations operating as independent subdivisions of international corporations within Mongolia, this could be done with favorable results [33]. While no air carrier has attempted this (except for several mini-Aeroflots that have appeared), Cable and Wireless, Ltd. of Great Britain has negotiated a telecommunications support agreement that would be classified under the same legal considerations [34]. It is important to note again that an air carrier with international service would need to be recognized by all nations which it would desire to have operations within [35]. As stated in the above paragraph, a Mongolian registry and Mongolian recognition may not be enough to obtain acceptance in other countries.

{15} Maintenance for aircraft in Mongolia would have to be the domain of the corporation owning or operating the aircraft and provisions would have to be made to make certain that the manufacture of the aircraft could ship needed parts to Mongolia in a timely fashion. As some European manufactures cannot (or will not) guarantee timely shipment to the United States it would be doubtful that they could ship to Mongolia in an expeditious manner [36]. Some manufactures require periodic supplemental training of airframe and powerplant mechanics to ensure their competence with the particular model of aircraft [37] and such training might be hard to obtain for mechanics located in such a remote area as Mongolia. Without such training, these manufactures may leagly elect not to sell the needed parts to the operator of the aircraft. In the matter of maintenance and safety, the problem lies not in meeting the Mongolian requirements but meeting outside requirements which may be complicated by operating within Mongolia.

{16} Undoubtedly, some official affiliation with MIAT would be crucial to the success of the new aviation corporation within Mongolia. Ironically, such an affiliation could be detrimental to the same corporation as far as their international operations might be concerned. While this has not yet been the case with MIAT, it has happened when in 1993, the Kyrgyzstania national carrier Vozdushnye Dorogi Kyrgyzstana was grounded due to a lack of fuel and other nations of the Commonwealth of Independent States not only refused airport services to this carrier but to any aircraft of Kyrgyzstania registry [38].

Considerations of International Law and Regulation

{17} If the parent corporation responsible for commercial aviation operations is a corporate entity based in the United States of America, the corporation's operations in Mongolia (if international in coverage) would be required to meet FAA FAR 135 [39]. This would be mandatory regardless of if flights exist directly between Mongolia and the United States (which they would almost certainly not). The premise is that a company engaged in aviation activity in the United States is also operating in a foreign nation and that flights originating from said foreign nation are of an international nature and thus the activities of the named corporation would be international in nature and these international, commercial activities would be those of an American corporate entity. There are undoubtedly legal means of getting around the requirement of Part 135 compliance, however. It would behoove any corporation faced with the challenge of operating in a foreign country under FAA regulations to investigate any appropriate legal alternatives to Part 135 compliance. Many experts on aviation and maritime law would attest that while FAR Part 135 serves a need in commercial aviation, it also causes undue complication of some operations without making these operations any more safe or effective [40].

{18} If the parent corporation is similarly based out of Great Britain, CAA regulations would need to be followed if the corporation's operations in Mongolia were directly under the administration of the same corporation's section responsible for domestic flights within the United Kingdom [41].

{19} If Mongolian pilots were to be trained and certified by American-certified or British-certified flight instructors, it would be prudent to ensure that their course of instruction for Mongolian licensure was acceptable to FAA or CAA standards. While no legal action could be taken against a pilot (assuming said pilot is Mongolian and is only applying for Mongolian licensure), it would be possible to charge the flight instructor with improper use of credentials or sub-standard levels of teaching if the level of instruction was suspected to be less than that which said instructor must adhere to in the nation issuing his primary certification to teach (on which subsequent licensure in other nations may have been based) [42]. This follows the commonly accepted theory that if a person's activities in a nation other than his own -even if legal in that foreign nation- can be held as criminal or at least unprofessional of a negligent nature if they violate the laws of the person's home country. This premise is clearly held as law where matters of a professional nature requiring certification by a major federal regulatory agency are concerned [43].

{20} The equipment and maintenance of aircraft owned by an American or British corporation must meet the respective FAA or CAA regulations if the said aircraft is either registered to the respective nation and/or is used in tangible operations for the commercial transport of either passengers or cargo on US or British lands [44].

{21} From the above four paragraphs, it is obvious that operation in Mongolia may be more strictly limited by the laws of the home nation of the investor than the regulations imposed on such activity by Mongolia's own government. However, as long as these issues are investigated before international business is conducted, no legal problems should arise. FAA regulations and other US federal laws pertinent to such operations are, for the most part, very clear in their scope and coverage.

Legal Considerations pertaining to Communications and Navigational Technology

{22} The use of such essential navigational equipment as LORAN (an international standard, precision radionavigational transponder technology) and GPS (Global Positioning System, another navigational system) systems and all essential radio-based telecommunications systems is permitted within Mongolia by law with the provision that no said navigational or telecommunications device interferes with Mongolian telecommunications service or endangers national security [45]. "Essential navigational and communications equipment" can be defined as those considered by the ICAO as required or at least suggested for IFR flight operations. It should be noted that Mongolia suffers from telecommunications problems which include poorly insulated transmission wires that do indeed receive significant interference from normal radio-communications transmittal [46]. Like the Soviets, Mongolia provides for AM and FM radio reception by cable through a system where the radio station is received by a radio unit plugged into a special outlet which carries the broadcast signal [47]. This means that AM and FM signals are transmitting through wires much like a telephone signal would and some very unusual forms of cross-interference are possible. Because MIAT's own navigational systems are rather primitive (early LORAN) by western standards, it can be inferred that more advanced technology may create objectionable levels of interference. Following Mongolia's precedent of penalizing foreigners with fines for activities that while not criminal, are of nuisance to the government, it can be expected that chronic interference with telecommunications and broadcast radio will be met with levies and perhaps new regulations [48].

{23} As GPS equipment is not in common use within Mongolia, this technology may be met with some resistance as it can provide extensive navigational data and is non-dependent on state-owned support facilities [49]. There are reports of police in remote regions of Mongolia arresting foreigners for the possession of high-technology devices [50]. Whether the police are doing this because they truly feel that such devices are a threat to national security or they are simply attempting to milk fines from foreigners is unclear. Such arrest do not occur in major cities so it can be assumed that diplomatic complaint and intervention may be feared. In any case, foreigners dealing with such high-technology should be aware that Mongolia's laws concerning communications technology are still emerging and that what was law yesterday may not be the law tomorrow.

{24} One final area where Mongolian laws pertaining to interference in daily life might affect aviation operations is in the matter of the vast herds of sheep that make up Mongolia's chief source of meat. As sheep (and horses, which are also common) are scared by loud noises, aircraft operations in some areas might disrupt agricultural activities and cause legal problems for the operators of the aircraft in question. Mongolia has an unusual policy in regard to minimum altitudes: while actual minimums are designated, there is the general rule that if the citizenry is offended by the noise the aircraft is flying illegally low. Simply put, this is another area where the law is ambiguous and somewhat flexible so care should be exercised to prevent confrontations which could encourage stricter laws. Individual municipal areas can pass laws regarding such matters and probably will if need

be. MIAT itself has caused some dissent in remote areas so foreign operations are not likely to be greeted favorably by the rural populace [51].

Conclusion

{25} Mongolia is a nation which has finally come to a point of political and governmental development which allows it to interact in international trade and commerce [52]. Unfortunately, some areas of commercial enterprise that could greatly benefit Mongolia are hindered by outdated laws and regulations. One of these areas is the field of aviation. While extensive opportunities exist in Mongolia for civil aviation, such opportunities can only be taken advantage of by foreign corporations if these investors are very attentive to the pertinent laws regulate their industry in Mongolia and elsewhere. Some of the Mongolian laws were never designed to govern free-market, commercial aviation but at the present time apply to these operations nonetheless. Laws regarding high-technology communications devices are also ambiguous. In all matters concerning regulation pertinent to technology the cardinal rule seems to be that technology will be severely regulated if it interferes with governmental or civic activities. Laws, in any nation, at the most fundamental level, are designed to protect the public from harm and annoyance - something the Mongolian legal system accomplishes with admirable efficiency in its own bizarre way.

{26} Corporations interested in establishing any sort of air transport operations within Mongolia will find a nation that presents some challenging legal obstacles but at the same time allows a type of flexibility not found in many other countries these days. The prospect of setting precedent in a large nation that may one day grow into a formidable trading power in the international community is daunting yet exhilarating - a chance certainly worth taking to many investors.

Notes

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