

# Switzerland's aviation industry

By Philippe Wenker, LL.M. and Shawn Richard Gregory, Blum&Grob  
Attorneys at Law, Zurich, Switzerland



**A**s a highly export-oriented country and famous tourist destination, host of the United Nations and headquarter to many multinational organisations and NGOs, Switzerland attaches a great importance to its connections around the world. Aviation is thus an important sector for Switzerland's economy, integrating airlines, business jet operators, airports, maintenance and completion centres but also highly professional and experienced financial institutions rendering worldwide services from their Swiss base. In summary, due to its geographical position in the heart of Europe, its strong and healthy economy,

its sophisticated financial markets and high quality standards, and, last but not least, its most reliable and efficient legal system, Switzerland has been and still is, one of the leading jurisdictions for aviation worldwide.

## **INFRASTRUCTURE**

International air carriers operating to or from Switzerland do not face any limitations as airport concession holders are obliged to grant access to all aircraft flying on international routes. The five international airports of Switzerland are located nearby the cities of Zurich, Geneva, Basel, Berne and Lugano whereby the latter two airports have a reduced role compared to the other three.

The airport of Zurich, Switzerland's financial hub, is the largest international airport with the highest passenger volume. In 2015, the airport of Zurich was host to 26.2 million passengers – which represents a year-on-year increase in growth to 3.2% compared to a growth of 2.5% in the year 2014. Especially during the annual World Economic Forum held in Davos, the airport of Zurich is host to numerous personalities from the worlds of business and politics and an increased number of up to 1,000 movements during that certain week due to business jets and helicopters. To the enjoyment of travellers and plane spotters alike, there are three daily movements of an Airbus A380 at Zurich



airport, which is the biggest civil passenger aircraft of its time produced in series manufacturing. In 2015, Zurich Airport has been awarded the “Skytrax World Airport Award for passengers of 20-30 million”, the “Air Cargo Excellence Award” and, most importantly, the renowned “World Travel Award”, which it now holds for the thirteenth consecutive time.

At Basel-Mulhouse Airport, Switzerland’s third largest airport which is divided into a Swiss and a French sector, AMAC Aerospace, Air Service Basel as well as Jet Aviation have new hangars competing to provide international VIP customers with high quality handling, maintenance and completion services

for corporate aircraft. In May 2016, Basel-Mulhouse Airport displayed both flexibility and its organizing ability hosting the UEFA Europa League Final between the FC Liverpool and the eventual winner Sevilla Fútbol Club, which lead to an additional 17,840 passengers within three days. In this context, Basel-Mulhouse Airport set a new record with 30,930 daily passengers on May 19, whereas on average, around 22,000 daily passengers are counted. Last but not least, Switzerland’s second largest air-port, Geneva International Airport, also known as home of EBAA’s annual European Business Aviation Convention & Exhibition (EBACE), regularly ranks within the top five of

the most popular business aviation departure airports in Europe.

#### **CARRIERS**

In 1998 the internal Swiss market has been deregulated by the fall of the monopoly of Swissair and the Swiss Confederation ceased its support of the national airline. The crisis of the Swiss aviation sector ended with the fall of the Swissair group and the grounding of the airline in early 2002. The Swiss government provided financial aid and got involved in the creation of a new international airline – SWISS. After years of struggling, Switzerland’s “national” carrier, being since 2007 entirely part of the Lufthansa Group, is doing well com-



pared to its European competitors and its affiliates, generating the highest profit of its group, proportionally. However, and like its 'legacy' competitors in Europe, SWISS is faced with a strong competition, especially by the Mid East carriers. Carriers from the gulf region benefit from better surrounding conditions, such as the geostrategic location of their home bases and the financial power of the states, which partly or comprehensively own them. They may also exploit mostly unrestricted operating hours and favourable fuel prices, which results in very competitive ticket prices. Furthermore they acquire minority stakes in regional airlines based in Switzerland which shall act as distributors in Europe for such Mid East carriers. Etihad just recently purchased a minority of Lugano based Darwin Airlines (now operating as 'Etihad Regional') and further invested more than fifty million Swiss francs.

SWISS is operating a fleet of currently 82 aircraft; 31 for long haul and 51 for medium- and short haul routes. The thirty orders of the all new Bombardier C-Series (CS100s and CS300s), regarded as the most innovative aircraft of its time, are beginning to replace SWISS' Avro RJ100 Aircraft (first delivery on July 1, 2016) and, also in 2016, the Airbus A340 fleet has started to be replaced by the nine ordered Boeing 777-300ER. The first 777 with the registration mark HB-JNA has had its first commercial flight on February 21, 2016. Since then, five more 777 have joined the fleet, whereas the last three shall follow in 2017 and 2018. With regard to the Bombardier aircraft, SWISS predicts savings of at least 25%

per seat, also due to a reduction in fuel consumption of 20%. This rejuvenation of the fleet is thus an important step towards more efficient aviation. SWISS has again earned a distinction in this year's World Travel Awards, where it was declared 'Europe's Leading Airline - Business Class' for the sixth consecutive year. EasyJet Switzerland, based in Geneva and an affiliate of the respective UK based carrier, has expanded its network of air routes heavily, operating a fleet of twenty-four aircraft (Airbuses A319 and A320). Another national carrier is Helvetic Airways, which currently operates seven Embraer 190s, five Fokker 100s (four of each are operated under a wet-lease arrangement for SWISS) and one Airbus 319-100. Edelweiss Air (since 2008 a subsidiary of SWISS) is operating a fleet of currently seven aircraft, consisting of two Airbus A330s for long-haul routes and five Airbus A320s for short and medium haul routes. It remains to be a success story as it plans to extend its fleet up to twelve aircraft in 2018.

#### MANUFACTURERS

World known Swiss aircraft manufacturer Pilatus has been famous for its single turboprop engine-powered aircraft such as the PC-12, of which close to 1500 aircraft have been delivered so far. In 2013, Pilatus' first twin-engine business jet PC-24 was revealed to the public, which has been developed entirely in Switzerland. According to the manufacturer, the aircraft is capable of operation from unpaved runways as well as runways as short as 2,690 feet (820m). These unique capabilities for a business

jet give it access to almost 10,000 additional airports worldwide, which other business jets cannot use. During the 2014 Euro-pean Business Aviation Convention & Exhibition (EBACE), Pilatus actually sold off 84 PC-24s, which covers its planned production volume. Since then, Pilatus has not accepted any further orders and is currently sold out until the end of 2019. One aircraft has been ordered by the Swiss Air Force with the intention to use the jet as executive transport for the Swiss Federal Council. The first test flights have been performed successfully and the first deliveries are expected to take place in 2017.

In 2016, the Swiss helicopter manufacturer Marenco tested its prototype of the first helicopter built in Switzerland. Launch customers include Brazil's Helisul Táxi Aéreo, clients in South Africa and renowned Swiss Air Zermatt, with which it collaborates closely in developing its SKYe SH09, so that it will meet the expectations not only regarding in and out of cabin transport flights but also regarding rescue missions. The first such helicopter is expected to be delivered in 2017.

#### BUSINESS AVIATION

Business aviation, as discussed at the first Business Aviation Forum this year in Berne, is seen by many people outside the industry as a luxury. However, the advantages for business purposes are evident when it comes to scheduling a flight on short notice, the flexibility when trying to reach a remote airport and the discretion it offers to its client, allowing also for confidential conversations aboard. Over the last couple of years the demand in Switzerland for the charter of, and ownership in, business aircraft could not match the boom of the former years. Still, Swiss business aviation is of global importance and a significant pillar of its economy with an estimated gross valued added of 3.74 billions in 2015. Despite its size, Switzerland ranks fifth in Europe, regarding the most business aviation movements. In order to meet the needs of business aviation, the Swiss Federal Council intends to transform the former military airport of Dübendorf in the suburb of Zurich into an additional civil airport and is looking for similar opportunities

around Geneva. There are currently around 1800 aircraft registered in the Swiss aircraft registry, many of them corporate and private jets. Switzerland is home base of around 80 high quality business and private jet operators, such as Jet Aviation, G5 Executive, Comlux Aviation, ExecuJet (which has just recently been acquired by Luxaviation, Luxemburg, thus becoming the second largest corporate aircraft operator in the world), Premium Jet, Jet-Link (now a subsidiary of DC Aviation, Germany), Cat Aviation and PrivatAir – just to mention a few. However, contemplating the competitive environment and the density of regulation, it will be interesting to see, who will follow the trend towards consolidation and who will be able to resist the urge to merge.

### FINANCING

The financing situation not only in Switzerland but also across the world has changed in the past decade. The coming together of the financial crisis and the deterioration of aircraft values over the last years has had significant impact on financiers worldwide. As a result it can be observed, that purely asset based aircraft financing has almost disappeared. Financiers do nowadays require additional securities in form of guarantees and other assets, because aircraft values have proven not to be sustainable and reliable collateral. As a further consequence, borrowers or lessees sometimes find themselves unable to pay back their lenders or lessors in case of margin calls due to the deterioration of the aircraft's value, leading to default scenarios and recoveries. However, even in these circumstances Swiss based financiers such as UBS, Credit Suisse, SG Equipment Finance, J.P. Morgan Suisse and others remain strong players and reliable partners, even if faced with new competitors.

### LEGAL FRAMEWORK

The Swiss Federal Office of Civil Aviation (FOCA), as regulating authority, is responsible for the safety and the general aviation matters in Switzerland. The FOCA provides for a well proven, reliable and efficient civil aviation authority which was attested by the last ICAO audit report to provide for an



appropriate organisation, well operating procedures and well qualified personnel to secure supervision of safety. With regards to aviation's legal aspect, even though Switzerland is not a member of the European Union, aviation legislation de-rives from two sources: On the one hand, Swiss national law and on the other hand, the EU legislation according to the bilateral treaty between the European Community and the Swiss Confederation on Air Transport. The latter provides for the formal adoption of the regulation which shall be binding for Switzerland. As a result, Swiss law offers significant advantages, not only from a corporate, contractual or aviation law perspective, but also regarding tax law. The administrative registration of aircraft (certificates of registration etc.) is effected in the Aircraft Register ("Luftfahrzeugregister"). Furthermore, Swiss law does not only recognise foreign mortgages (as Switzerland is a member state of the Geneva Convention on the Recognition of Rights in Aircraft) but also allows the registration and protection of ownership, mortgages, certain leases and other encumbrances in the Swiss Aircraft Record ("Luftfahrzeugbuch"). As a result a registered right can only be altered or deleted by amending the respective registration in the Aircraft Record. Further, the promoted self-help remedies allowed under common law jurisdictions have repeatedly proven not to be as reliable as advocated. Recent recovery cases revealed that enforcing rights privately in most cases leads rather to more liability than offering fast relief to creditors. In comparison, the well established and straight forward

enforcement regime under the Swiss legal system covers not only the needs of aviation financiers but also addresses debtor's and operator's concerns, which results in a more efficient enforcement than in many other jurisdictions. Taxwise, with the loophole for privately managed aircraft to be brought into free circulation within the European Union effectively free from VAT through the United Kingdom being closed as of 2011, Switzerland, with an import VAT of currently only 8%, has become a viable option in the centre of Europe. Furthermore, Switzerland has not (yet) joined the European Emissions Trading System (EU ETS), which covers all aviation activities with take-off and landings within the European Union, and may therewith be considered as a white spot for intercontinental flights. Finally, the Swiss Federal Council has granted a mandate to enter into negotiations with the EU on an extension of air traffic rights to so-called cabotage flights which may pave the way for Swiss commercial aircraft operators to freely serve destinations within any EU country.

### BOTTOM LINE

The aviation sector in Switzerland has been experiencing steady growth within the last years and passenger frequencies in the largest Swiss airports are rising. Being located in the centre of Europe and home to several well-known aircraft financiers and a stable political and legal environment, Switzerland provides for various advantages and a level playing field for many participants involved in the aviation industry.