

Responsibility for passenger security inspections

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1. Introduction

On June 27, 2025, the Aviation Bureau of the Ministry of Land, Infrastructure, Transport and Tourism (the "JCAB") released the Interim Report of the Committee for the Study of Practices for the Smooth Transition of the Main Party in Implementation of Airport Security Screening at Airports (the "Interim Report"). An expert panel on airport security screening commissioned by the JCAB presented policy guidelines in June 2023 to transfer the responsibility for security screenings at airports from airlines to airport administrators, which generally manage airports. The Interim Report outlines the practical tasks required for a smooth transition and provides advice on how to deal with them. This newsletter provides an outline of the Interim Report from a legal perspective.

2. Practical issues with respect to the transfer of responsibility for security screening

(1) Sharing of roles after transfer of responsibility for security screenings

As indicated in the Interim Report, airlines will continue to play a role in security screenings even when the responsibility for security screenings at airports is transferred to the national government of Japan, local governments, airport companies, or airport concession operators (as the case may be), which manage and operate airports (collectively, "airport administrators"). As an example, it states that the following business operations are necessary: ① informing passengers of goods that are prohibited from being brought onto airplanes; ② providing passengers with information on security screenings; ③ identifying passengers in cases where a baggage inspection is required after an in-line inspection; and ④ guiding passengers for re-inspections (when required) and encouraging passengers to cooperate in order to prevent flight delays.

Consequently, it remains unclear who will bear the risk of damages for third party liability, since airlines will continue to provide certain services, and multiple operators will be involved in security screenings. When it is not possible to allocate these risks to the relevant operators, the operator which is primarily responsible for security screenings may ultimately bear the risks. Therefore, it is necessary for the operators involved to clearly agree on the allocation of the responsibilities and risks. The Interim Report also emphasizes the importance of collaboration between airport administrators and airlines because of the shared benefit of security screenings, and this must be taken into account when allocating risks among the airport administrators and airlines.

(2) Role of airport terminal building companies in national government-managed airports and municipally managed airports

The Interim Report states that airport terminal building facilities are currently under the control of airport terminal building companies at airports which are managed by the national government of Japan or local governments, and that terminal building companies have know-how regarding the implementation of security screenings, as airport security screening areas are located in the terminal buildings. At some airports, terminal building



companies install inspection equipment and perform security screenings of employees and crew members. Accordingly, the Interim Report states that airport terminal building companies should also play a role in security screenings at their airports. Some airports and airport operator companies carry out certain administrative tasks (as delegated by airlines), such as administration of contracts entered into with inspection companies and hiring of inspectors. Given this, the Interim Report states that it is appropriate to consider delegating administrative duties after the transfer of responsibility for security screenings to airport terminal building companies for airports that are currently being managed by national and local governments. Therefore, from a legal perspective, it is necessary to consider the tasks to be delegated, the terms and conditions thereof, and the scope of responsibility.

(3) Scope and Process of Transition

The Interim Report also describes, in addition to how the transfer of responsibility for security screenings of general passengers should proceed, how the transfer regarding security screenings of premium customers of airlines, airport employees and the check-in baggage should proceed. Specifically, the Interim Report notes that due to needing to maintain a certain level of security in airports, and to ensure efficient and reasonable security screening in preparation for future increases in air travel, it is advisable for the airport administrators to assume the general responsibility to implement these security screenings.¹

3. Damages and Insurance

(1) Compensation in the event of spoiled passenger baggage

According to the Interim Report, airlines which currently are primarily responsible for security screenings generally outsource the provision of screenings to companies based on the standard agreement created by the Safety & Security Council of the Scheduled Airlines of Japan, and indemnity for damage to passengers' baggage caused by the security inspector is handled in accordance with the terms of the agreement. For this reason, from the perspective of maintaining the same sense of security when undergoing security screenings after the transfer of responsibility for security screenings, it would be appropriate for the airport administrators to carry out the relevant tasks.²³

(2) Compensation in the event of hijacking

According to the Interim Report, the airport administrators currently are responsible for implementing aviation security measures, such maintenance and management of airport facilities and guarding the perimeter of airports, pursuant to the Basic Policy for Preventing Hazardous Actions. A significant amount of damages may be claimed in the event of any defects in such aviation security measures, and this will remain unchanged after

¹ In this regard, security screenings in lanes dedicated to premium customers of airlines (in particular, where the security screenings are performed by airlines and not by airport administrators) are considered part of the airline's customer service, and separate consideration will be necessary with respect to the cost of maintaining service quality and allocating inspection equipment and personnel. Also, in concession airports, additional services will need to be performed and additional expenses will be incurred after the transfer as a result of the revision of regulations, which concession agreements do not generally include. The impact of the transfer, such as the service level and the additional costs, must be reviewed in light of the provisions of each concession agreement.

² The Interim Report proposes that airlines generally handle compensation for passengers, and inspection companies compensate for damages within a certain scope based on the standard agreement above.

³ When the agreements and other documents which airlines enter into with inspection companies are transferred to airport administrators, it is possible to revise the terms and conditions based on the legal relations among the relevant parties (airport operators, airport administrators, and inspection companies, as well as airport terminal building companies, as appropriate).

the transfer of responsibility for carrying out security screenings. Additionally, many airport operator companies have purchased airport operator liability insurance, and it is advisable to continue this practice in light of the airport administrators' responsibilities.⁴

(3) Compensation in the event of flight delay due to re-inspection

The Interim Report states that in implementing aviation security measures, maximum consideration must be given to ensure secure air transportation, and that in the event of any incident which could jeopardize that security (provided that the airport administrator responds to the incident appropriately), there should be no liability for damages caused by flight delays, etc. Although some airlines compensate passengers for flight delays, the Interim Report concludes that this is a voluntary decisions by the airlines, and that there should be no reimbursement issues provided that measures taken by airport administrators are appropriate.⁵

(4) Insurance premium

The Interim Report states that airport operator companies should continue purchasing appropriate airport operator liability insurance in light of the airport operator's responsibilities. However, it also states that individual airports should examine how insurance premiums can be transferred to others.⁶

⁴ Nevertheless, it is true that the level of duty of care as the entity responsible for implementing safety measures based on the Basic Policy for Preventing Hazardous Actions and the level of duty of care as the entity responsible for security screenings will not necessarily be the same. Therefore, it is necessary to carefully consider the scope of liability for damages to be assumed by airport administrators, even after the change in the entity responsible for security screenings, by taking into account specific individual circumstances.

⁵ This idea seems to be consistent with the general principles of the Civil Code of Japan. However, the question of who should be accountable for damage incurred by the airline due to delays resulting from re-inspections, etc., and to what extent, is a matter that should ultimately be determined between the airline and the airport administrator. Therefore, this should be clarified in the contract between the parties or covered by insurance, as necessary.

⁶ After the transfer of the responsibility for security screenings from airlines, airport operator companies will need to take the initiative in carrying out security screenings, and in some cases, will need to assume new roles and incur additional expenses. Therefore, it is necessary to consider whether the risks are sufficiently covered by existing insurance. The parties involved should also discuss how to allocate the risks not covered by existing insurance policies.

(5) Framework for State Compensation in cases damages exceed a predetermined amount

The Interim Report introduces and analyzes the following systems of Germany and France as a framework for state compensation in the event that damages exceed a predetermined amount.

	System	Analysis
Germany	German security screenings at airports are performed by the federal police. There are agreements in place between the federal police and the inspection companies, and if the amount of damages is below a certain threshold, the inspection company is responsible, and the excess amount must be compensated by the government.	The system on the left is based on the allocation of the responsibility for the implementation of safety screenings. If the same principle is applied in Japan, after the transfer of responsibility, the treatment will be the same for both airports managed by the national government and those managed by local governments. If the standard agreement established by the Safety & Security Council of the Scheduled Airlines of Japan is to apply, the burden of the inspection company will be limited to a certain amount of damages, and any excess will be the responsibility of the state or local government, as the body responsible for the implementation of security screening.
France	There is a liability fund which system covers all fields (including aviation) in the event of an act of terrorism (including hijackings).	The system on the left column is established to provide relief to victims, as hijackers and terrorists often lack the ability to pay compensation. However, it is not intended to reduce the compensation by the main entity responsible for conducting security screenings. This also relates to how public and private sectors should share roles in concession airports. ⁷

4. Practical issues in reviewing the burden for cost

The Interim Report states that the implementation of security screenings at airports benefits both airport administrators and airlines. Thus, it is appropriate for airport administrators and airlines to share the expenses, as is the case at many airports. In addition, the Interim Report raises the following points:

- (i) How to ensure transparency for air passengers who are beneficiaries of the security screening and bear the associated costs by way of air fares and airport facilities/security service fees; and
- (ii) Which costs should be passed on to passengers.

In this regard, the Interim Report states that how various types of costs should be allocated should be considered based on international rules on airport usage fees set by ICAO (International Civil Aviation Organization) under the International Rules on Airport Usage Fees, and that consideration must also be given to the basic principles underlying airport usage fees that there must be transparency of the fees and that the coverage of the fees must be limited to actual costs. ICAO was established pursuant to the Convention of

⁷ At concession airports, the shift from the airline to the airport administrator (i.e., the operator of the concession airports) will increase the services which must be provided by the operator. Therefore, as discussed in 2 (3) above, it will be necessary to review the specific details of the services and the responsibility for the additional costs, as well as to revise the concession agreement and the statement of requirements, as necessary. In the case of financial institutions that finance concession airport operators, the risks associated with the revisions in the concession agreement will need to be considered and discussed with the operators in order to determine how to address them.

International Civil Aviation (commonly called the Chicago Convention) adopted in 1944, and Japan joined this organization in October 1953. These rules are based on Article 15 of the Chicago Convention on airport charges. They prohibit discriminatory rate setting and require equality among airlines in the use of airports and navigation support facilities. Also, they have provisions regarding the capping of airport charges.⁸⁹¹⁰

5. Summary

As described above, the transfer of security screening responsibility involves a wide range of practical issues, including the need to clarify the allocation of operational responsibilities, the arrangements for damages and insurance, and the ideal method of charging costs. To address these issues effectively, it is essential to properly establish contract relationships among the related entities and clarify the allocation of operational responsibilities. When designing a system, careful consideration is also required from the perspective of contract practices, while also referring to international rules on airport usage fees set by ICAO and practices abroad, such as those in Germany and France.

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⁸ MOFA Website (https://www.mofa.go.jp/mofaj/gaiko/page22_000755.html)

⁹ ICAO Doc 9082 "ICAO's Policies on Charges for Airports and Air Navigation Services" (ICAO website (https://icao.assyst-uc.com/sites/default/files/2024-12/9082_cons_en.pdf)) are practical guidelines based on the intent of Article 15 of the Chicago Convention. This includes, for example, non-discrimination (treatment must not differ between domestic and foreign airlines), cost-based principles (use fees must match the costs of the facilities and services provided), cost-recovery policy (setting excessive fees is prohibited, and fees only can be charged to the extent of cost recovery), transparency (disclosing information on the basis of the rate setting to airlines), and consultation obligations (the airport operator should consult with the user airlines before any rate revision).

¹⁰ The practical guidelines in Note 10 above, unlike the text of the Chicago Convention, are not legally binding on Member States, but these policies have been developed by international conferences, and Member States have moral obligations to ensure that cost recovery for their own airports and navigation services align with these policies and ideals, and in fact, it has become a common practice for many Member States to comply with these policies (ICAO (<https://www2023.icao.int/sustainability/Pages/eap-im-policies.aspx#:~:text=The%20ICAO%20policies%20on%20charges,practice%20amongst%20ICAO%27s%20Contracting%20States>)).