

Deficiencies of China's General Aviation Law and its Improvement

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Contents

- I. Introduction
- II. Definition of general aviation
- III. Overview of global and China's general aviation development
- IV. China's legal framework on general aviation
- V. Deficiencies of the prevailing legal framework
- VI. Necessity of an improved legal framework for general aviation
- VII. Suggestions for improvement and conclusion

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I . Introduction

General aviation is an integral component of civil aviation and has played a key role in contributing to a nation's economic growth. In particular, general aviation provides flexible and accessible transport services to the public in contingent circumstances and assists to fulfil government duties in search and rescue, surveillance, and policing. Using smaller aircraft, general aviation is usually regulated by individual sovereign state government, though the principles of Chicago Convention must be honoured, the Standards and Recommended Practices of International Civil Aviation Organisation (ICAO) must be adhered to as the minimum standards to be implemented in ICAO member states.

As a contracting state of ICAO, China has developed a comprehensive legal framework governing its civil aviation activities, both operated domestically and internationally. However, laws pertaining to general aviation operation are not coherent, consistent, and systematic. This paper attempts to examine China's prevailing collection of regulations on general aviation with an aim to identify the deficiencies and suggest improvements. The paper is organised as follows. After the introduction, definition of general aviation is discussed followed by an overview of general aviation development in China with some comparisons made with the United States (US), European Union (EU) and Australia. A close examination of the existing legal framework on civil aviation, especially on general aviation, is then conducted where deficiencies are identified and analysed. The paper concludes with explicit suggestions to improving China's legal framework governing general aviation activities.

II. Definition of general aviation

What is general aviation? Although the term is widely used, there is hardly a universally-accepted definition. When it is used in different countries, it carries different meanings. Many consider it to mean “all aviation activities except that performed by commercial airlines and the armed services. Others find it helpful to recognise that all operations below a particular weight/mass threshold (5700kgs for aeroplanes) share much in common, irrespective of the purpose of flight¹⁾.

1. ICAO's definition

Even ICAO uses two definitions for different purposes in different contexts. In Annex 6 Part II, International Aeroplane Operations, General Aviation, to Chicago Convention, general aviation operation is defined as an aircraft operation other than a commercial air transport operation or an aerial work operation²⁾. While in order to satisfy its statistical purposes, ICAO defines general aviation as all civil aviation operations other than scheduled air services and non-scheduled air transport operations for remuneration or hire, whose activities are classified into instructional flying, business flying, pleasure flying, aerial work and other flying. It argues that the adoption of a different definition of general aviation in different contexts is rational and acceptable because both definitions serve different purposes with each being adequately and accurately articulated and stipulated for the benefits of satisfying a particular requirement³⁾.

1) Civil Aviation Authority of United Kingdom, Final Report/Regulatory Review of General Aviation, 2006.

2) ICAO, Annex 6 to the Convention on International Civil Aviation, Operation of Aircraft, Part II, International General Aviation—Aeroplanes, July 2008, Seventh Edition.

3) ICAO, Review of the Classification and Definitions used for Civil Aviation Activities, Working Paper presented to the Tenth Session of the Statistics Division, November 2009, Montreal, p.6.

2. US, EU and Australia's attempts

As a catch-all phrase with such a generic definition by ICAO, the term leaves more room for individual member states to leverage and interpret in its own political and economic context so as to meet its regulatory and operational requirements. Overall, general aviation is commonly defined along two primary lines, namely activity and aircraft, with most countries approaching the definition along the line of activity. For example, the US refers general aviation as all aspects of the aviation industry except scheduled passenger and cargo airline operations and military flying⁴). The Federal Aviation Administration (FAA) in its annual General Aviation and Part 135 Survey categorises general aviation activities by use, including corporate, business, instructional and personal flying, as well as air medical, aerial observation and application, sightseeing, and recreational flying⁵).

The EU adopts a similar approach by grouping certain types of aviation activities under the category of general aviation. The European Commission stated that general aviation involved a wide spectrum of aircraft ranging from gliders to complex business jets and provision of high value services as aerial works or emergency and business door-to-door transportation⁶). Along the line, when the Civil Aviation Authority of the United Kingdom (UK CAA) reviewed its general aviation regulation in 2006, it adopted a simple and identical definition of general aviation by referring it to an aircraft operation other than a commercial air transport operation⁷).

In Australia, general aviation is not legally defined in its legislation. The industry holds that it is impossible, nor necessary, to agree to a single definition as the industry would demarcate along different lines for different purposes⁸). Nevertheless, the

4) The National Air Transportation Association of the US, General Aviation in the United States, 2009, p.1.

5) Shetty K. I. and Hansman R. J., Current and Historical Trends in General Aviation in the United States, 2012, pp.15-16.

6) European Union: http://ec.europa.eu/transport/modes/air/internal_market/general_aviation_en.htm

7) Ibid 1. p.24.

8) Department of Infrastructure and Regional Development of Australia, General Aviation Industry Action Agenda, Issues Paper, April 2007, pp.4-6.

Australian Civil Aviation Safety Authority (CASA) refers general aviation to all non-scheduled flying activity in aircraft allocated a VH-registration⁹⁾, but excluding VH-registered sail planes (powered or non-powered). Also excluded are ultralight aircraft, non VH-registered military aircraft, hand gliders, balloons and gyroplanes¹⁰⁾. General aviation business include charter operators, aeromedical operators, agricultural aviation businesses, aviation-based fire-fighting services, training and aerial work such as aerial photography and surveying. It also includes private, business, recreational and sports aviation activity and supporting businesses such as maintenance provider s¹¹⁾. In recognising the significant changes and challenges faced by the general aviation sector, CASA established a General Aviation Task Force (GATF), which will look at various aspects of existing and proposed legislation and the activities regulated by the legislation. It will canvass the views of industry representatives and participants with the intention of gathering fresh perspectives from those most directly involved in the regulated activities under review¹²⁾.

3. China's definition

Not surprisingly, the Chinese definition of general aviation has its own bearings which is different from any of the above. The Civil Aviation Act of China 1995 defines "general aviation as any civil aviation operation conducted by an aeroplane other than public air transport operation. Such non-public air transport operation embraces specialised services such as industrial, agricultural, forestry, fishing and construction aerial work as well as flight operation for the purpose of medical treatment, search and rescue, meteorological surveillance, oceanic observation, scientific research and experiment, education and training, cultural and recreational activities".

9) VH is the prefix allocated by International Commission for Air Navigation to Australia for civil aircraft registration. See "Registration Markings of Australian Aircraft" available at <http://www.airwaysmuseum.com>

10) Civil Aviation Safety Authority of Australia, CASA Corporate Plan 2006-7 to 2008-09

11) Ibid 8, pp.4-6.

12) Civil Aviation Safety Authority of Australia, General Aviation (GA) task force terms of reference, available at <http://www.casa.gov.au/scripts>

4. Summary

To summarise, despite the variations of the definition of general aviation, it is universally accepted that the essence of general aviation is the non-commercial aircraft operation encompassing a wide range of activities from recreational flying with non-powered light aircraft to very specialised aerial works. It is one of the most dynamic and diverse sectors undergoing rapid changes bringing forward magnificent and unprecedented challenges to the industry and society. Yet it constitutes such an important part of the global aeronautical industry and contributed significantly to the economic growth and sustainable development.

III. Overview of global and China's general aviation development

Over the century, general aviation, like commercial aviation, has experienced phenomenal growth worldwide, with its aggregate levels of operation and growth being affected and driven by different factors including economic development, volatility of fuel prices, tax incentives for aircraft ownership, the costs of owning and operating personal aircraft, the total private pilot and general aircraft population, and many more¹³⁾. According to ICAO, around 338,820 general aviation aircraft were registered by 183 contracting Member State in 2005, nearly 7 times more than commercial aircraft. Though complete data describing general aviation activities worldwide is not available, the following provides a valuable glimpse in some selective countries including the US, EU and China.

13) Ibid 4, pp.2-4.

1. General aviation market in the US and EU

Overall, the US general aviation accounted for approximately 77 percent of all aircraft operations, while commercial aviation only contributed a much smaller percentage¹⁴). Of its 19,100 airports, only 651 are for commercial aviation operations. With more than 300,000 general aviation aircraft and nearly 600,000 pilots flying 23.7 million flight hours, general aviation contributed more than 0.3 percent to the country's GDP¹⁵). Between 1960s and 2000s, general aviation activities on average trended upwards along with the growth in GDP, recording more than \$40 million of towered operation in 2000, despite a seemingly persistent decline of aggregate level of activities since 2001, with around \$25 million towered operations being registered¹⁶).

In Europe, general aviation represented around 50,000 motor-powered aircraft as compared to about 5,000 aircraft in its commercial airline fleet in 2007¹⁷). In addition, nearly 200,000 micro-light and non motor-powered aircraft were used for sport and recreation. Since 2003 the number of aircraft movements in general aviation registered by Eurocontrol has been growing almost twice as quickly as the rest of the traffic (22 percent more flights in 2006 than in 2003, compared to a 14 per cent increase for the rest of the traffic). In 2005, about 100,000 airport/aerodrome pairs were served by general and business aviation traffic as opposed to about 30,000 linked by scheduled airline connections. In 2006, almost 9 percent of all aircraft movements in Europe accounted for general aviation¹⁸).

14) Sobieralski J. B., *The Cost of General Aviation Accidents in the United States*, Transportation Research Part A, 47 (2013), pp.19-27.

15) *Ibid*, 10.

16) *Ibid* 5, pp.16-18.

17) Commission of the European Communities, *Communication from the Commission: An Agenda for Sustainable Future in General and Business Aviation*, COM (2007) 869.

18) *Ibid* 13. pp.2-3.

2. General aviation market in Australia

Aviation sector is a vital part of Australia's economy, which employs in excess of 100,000 people and contributes an estimated \$17.3 billion to its economy¹⁹⁾. General aviation is particularly important to Australia both economically and culturally, given its vast geographical landscape with majority of population residing along the coastlines. Overall, general aviation has experienced rapid growth and prosperity over the century but some stagnancy over the last decade. In 2010, Australia registered 12,564 general aviation aircraft compared to 307 commercial aircraft used for regular public transport. The total hours flown by Australia-registered aircraft in the general aviation and regional airline sector was recorded 2.1 million, an increase of 3.2 per cent compared with 2 million in 2009. However, this was only a moderate increase than the year 2000, which registered 2.05 million²⁰⁾. The industry comprises a diversity of businesses and individuals in terms of activity, location and size of business. In 2005-06, the sector employed 3,800 people in 1,200 enterprises. Industry turnover was \$923.8 million, representing a 15.3 per cent increase over the previous three years, with export earnings of \$65.2 million²¹⁾.

3. China's development

China has experience exponential economic growth over the last three decades, which is also a driving force for its rapid commercial air transport development, with an average growth rate of more than 17 percent per annum. However, its general aviation sector has remained disproportionately underdeveloped compared with its commercial aviation. Figures from Civil Aviation Administration of China (CAAC) showed that by April 2011, China only registered 1,100 general aviation aircraft and

19) The Coalition's Plan for Aviation, August, 2013, available at <https://www.liberal.org.au>

20) Bureau of Infrastructure, Transport and Regional Economics, Department of Infrastructure and Transport, General Aviation Activity 2010, Statistical Report, pp.13-18.

21) Ibid 8, pp.27.

150 private aircraft, completing 140,000 hours of flight, compared with its more than 4,000 commercial airliners in its fleet. There were 140 general aviation enterprises, most of which were small and medium sized businesses, being inadequately equipped with modern technology or aircraft. About 70 airports were classified as general aviation airports and 216 were temporary aerodromes for general aviation activities, with vast majority being located in Northeast, Northern and Eastern China²²).

Of the more than 30,000 licensed pilots by CAAC, only 20 percent worked for general aviation sector, while 80 per cent were employed by commercial airlines. Among those working for general aviation sector, about half were flight instructors, 600 air taxi and charter pilots, 600 aerial work pilots, and about 1,000 were private pilots²³).

4. Demand for general aviation in China

As the world's second biggest economy, China has no doubt the greatest potential for general aviation growth. "Opinions on Deepening the Reform of Low-Altitude Airspace" jointly issued by the State Council and China Central Military Committee in October 2010 stimulated the zest for general aviation operation across the country. Setting a timeline to relax its low-altitude air space by early 2013, the central government recognised general aviation as a strategic industry which was set to boom.

To take advantages of the policy in favour of the sector, more than 20 provinces have established a specialised aviation industry zone, in an attempt to stimulate the robust development of general aviation. The Xi'an's National Aviation Economic Zone alone has attracted more than 500 aviation-related businesses, with core business being aviation manufacturing²⁴). The Zhuhai Aviation Industry Zone in Southern China's

22) General Aviation Committee of China Air transportation Association, Representatives at China's Congress Proposing Improvement of Legal System to Encourage Low-Altitude Airspace, <http://www.cgaa.com.cn/templates/news/detail.aspx?nodeid=30&page=ContentPage&contentid=610>, 15th March 2012.

23) General Aviation Committee of China Air transportation Association, Representatives, <http://www.cgaa.com.cn>

24) Ibid 15.

Pearl River Region has secured General Aviation Branch of China Aviation Industry Corporation to base in the zone, enabling activities such as research and development, assembling and test flying, sales and marketing, and maintenance and operation to be conducted under one roof²⁵⁾.

Research conducted by Sino-US Aviation Cooperation Programme found that China's general aviation market would welcome its peak period of growth as of 2015, provided that policies are formulated and infrastructure are improved to encourage and facilitate its development²⁶⁾. The fleet of general aviation aircraft will increase to 2000, half of which would be flight training aircraft. The sector will contribute up to 24 billion Yuan (\$4 billion) to the country's economy, generating up to 240,000 jobs.

The demand for private jets is also accelerating. More than 2 million millionaires and 65,000 billionaires rapidly emerged since China's economic reform are considered the most prospective private aircraft and business jets buyers. Bombardier (2012) predicted that China would receive 600 business jets over the next 5 years, bringing the total number to 710 in 2019²⁷⁾. Booz Allan and Company in 2009 projected that China would need more than 2,500 general aviation aircraft by 2015 and 6,000 by 2020²⁸⁾.

Yet the rosy future also underpins the urgent need to address the unprecedented challenges to the industry. One of the biggest challenges is its distorted and obsolete legal framework regulating the general aviation activities. The following is a detailed analysis of the country's current legal framework where its deficiencies are examined and improvement are suggested.

25) Ibid 15.

26) Ibid 15.

27) Ibid 15.

28) Ibid 15.

IV. China's legal framework on general aviation

Over the years, China has formulated more than 100 acts, directives, regulations, rules, guidelines, procedures, and orders governing the operation of air transport. Some of them are developed pursuant to the provisions of international conventions, which China has ratified, while others are promulgated as a domestic initiative in order to ensure a progressive and orderly development of the industry.

1. Chicago Convention and its annexes as a fundamental basis of China's aviation legal framework

One of the key features of air transport is that it is an international operation which requires unified, consistent, systematic and standardised regulations and technical standards and practices to follow. Chicago Convention, together with its 18 Annexes, is the most important international convention regulating international air transport and has been recognised by 191 countries by 2012, including China.

Although Chicago Convention itself does not address the operation of general aviation, Article 37 empowers ICAO to “adopt and amend from time to time, as may be necessary, international standards and recommended practices and procedures dealing with various aspects of air transport operation such as communication systems and air navigation aids, licensing of operation and mechanical personnel, aircraft in distress and investigation of accidents, and such matters concerned with the safety, regularity, and efficiency of air navigation as may from time to time appear appropriate, with the sole purpose of ensuring that each contracting state undertakes to collaborate in securing the highest practicable degree of uniformity in regulations, standards, procedures, and organisations in relation to aircraft, personnel, airways and auxiliary services in which such uniformity facilitate and improve air navigation”²⁹).

Pursuant to the above provision, “Standards and Recommended Practices for the Operation of Aircraft—International General Aviation” was first adopted by the Council on 2 December 1968 and designated as Annex 6, Part II, to the Convention. They became effective on 2 April 1969 and applicable on 18 September 1969³⁰). To date, around 31 amendments and revisions have been made with the latest being done in November 2012 concerning carriage requirements for flight recorders. These modifications are essential and necessary to ensure that the Annex reflects the significant dynamics and magnificent changes in general aviation sector over the last 5 decades, as a consequence of globalisation, economic growth, and technology advancement.

The first major amendment was made in 1986 to refine the definition of general aviation. A review of the provisions of Annex 6 by ICAO found that aerial work should be excluded from the definition of general aviation to recognise its distinct aspect of civil aviation, thus being excluded from the applicability of Annex 6, Part II.

This was understandable in that in 1965 when Annex 6 was developed, ICAO was not aware of any degree of international aerial work operation which would necessitate the development of international standards and recommended practices. The modified definition of general aviation and aerial work and the revised applicability chapter was submitted to Member States and approved by the Council in March 1990³¹).

A second major amendment to the Annex was made in 2005 and 2006 to reflect the new general aviation dynamics, including the increasing use of large, technically advanced turbine-engined aeroplanes in international general aviation operations. Endorsing the philosophy established during the initial development of the Annex, ICAO agreed that the provisions of Annex 6, Part II, should remain applicable to all general aviation operations, but updated to reflect current technologies and

29) ICAO, Article 37 of Chicago Convention.

30) ICAO, Proposed Actions to Enhance States’ Regulatory Distinction between Commercial and General Aviation, Working Paper presented to the Twelfth Air Navigation Conference, 19-30 November 2012, Montreal.

31) Ibid 23.

operational procedures and the use of safety management systems where appropriate³²). The Standards and Recommended Practices represent minimum provisions and cover the operation of all aeroplanes in international civil aviation, except in aerial work operation.

Implementing its international obligations in good faith has been a fundamental principle of Chinese law³³). China's "Act of Procedures of Concluding International Treaties 1990" requires that international treaties to which China is a party are binding in its domestic law, except those provisions to which China has made reservations³⁴). China ratified Chicago Convention in 1947. It has also recognised their subsequent revisions and amendments afterwards as a fulfilment of its international obligations. Article 184 of China's Civil Aviation Act 1995 provides that "where the provisions of an international treaty concluded or acceded to by the People's Republic of China are different from those of this Act, the provisions of that international treaty shall apply, except provisions for which reservation has been made."

2. Domestic legislation governing general aviation

China's domestic legislation governing civil aviation operation is formulated at three levels. At the top of the hierarchy are acts promulgated by National People's Congress, for example, the Civil Aviation Act of People's Republic of China 1995. Those in the middle are the directives, orders, and regulations issued by State Council. "Directive on General Aviation Flight Management 2003" (Decree No. 371 jointly issued by the State Council and China Central Military Committee) is a manifest. Those at the bottom level are the regulations, procedures, and notices issued by CAAC and its functional departments within CAAC. The "General Operation and Flight Regulation" (Civil Aviation Regulation, CCAR-91, CAAC Order No 120) is a good

32) Ibid 2.

33) Xue H., and Jin Q., International Treaties in the Chinese Domestic Legal System, Chinese Journal of International Law (2009), Vol. 8, No. 2, pp.299-322.

34) Ibid 26.

example at this level. The hierarchical collections of legislation have served as a fundamental legal framework governing general aviation operation in China. The following provides a comprehensive overview.

2.1 Legislation

The Civil Aviation Act of People's Republic of China was adopted on 30 October 1995 and became effective on 1 March 1996. Being the first legislature regulating civil aviation activities in China, it was heralded nationwide as the most comprehensive law covering such areas as sovereignty, aircraft registration, personnel licensing, safety and security, insurance, general aviation, consumer protection, and international obligations.

Of its 214 articles in 16 chapters, only 6 articles from Articles 145 to 150 in Chapter 10 are devoted to general aviation, which provide the definition of general aviation, conditions for enterprises to engage in general aviation activities and requirements to safeguard flight safety, protection of environment and ecological balance, and maintenance of valid insurance policies. The Act, without doubt, has played a critical role in regulating the industry and facilitating its healthy and progressive growth. However, due to globalisation, the rapid economic growth and dynamics of the industry, the Act has failed to address and tackle emerging issues.

Over the last 17 years, voices calling for revision and modification of the Act have been increasingly getting louder and louder, with the very prominent one being heard in 2003, when China was accepted in the World Trade Organisation (WTO). The commitment requires the country to align its domestic legislation in line with international norms so as to safeguard its commitment to implementing its obligations. Other crisis that happened in the following years, including the compensations demanded by the families and relatives of air crash victims, the disputes between China Eastern Airlines and its pilots who wanted to change jobs, have made the amendment an urgent need.

Encouragingly, in November 2012, the Financial Committee of National people's

Congress confirmed that modification of the Civil Aviation Act is now underway, with CAAC reinforcing that significant resources have been invested in the endeavour.

2.2 Directives, Orders and Regulations

Two directives have been issued by the State Council concerning general aviation operation. The first was issued on 8 January 1986 “The State Council’s Provisional Directive concerning General Aviation Management” (Guofa No 2, 1986), well before the promulgation of China’s Civil Aviation Act 1995.

The Directive for the first time replaced the term “professional aviation” with “general aviation”, thus bringing the terminology in line with international practice. It also specified that CAAC would be the authority empowered to administer general aviation activities. Requirements and procedures are stipulated for businesses to satisfy and follow to be eligible for engaging in general aviation operation. To date, the Directive still applies to general aviation organisations with an intention to apply for a license to expand its general aviation activities into international arenas.

The second one was “Directive on General Aviation Flight Management” (Decree No. 371 by State Council and China’s Central Military Committee), jointly issued by the State Council and China Central Military Committee on 19 January 2003, which entered into effect on 1 May 2003.

Containing 45 articles in 7 chapters, the Directive provides detailed description concerning air space allocation and management, management and service provision of flight activities, and legal liabilities. It articulates in detail specific requirements for and procedures of applying for general aviation flight plans.

The Directive is an important measure taken by the central government to facilitate the rapid growth of the sector by advocating an optimal utilisation of air space resources. Since the issuance, the Directive has played a key role in promoting general aviation activities and paved way for further relaxation of the low-altitude air space restrictions. The modifications to the Directive have also been completed which will be released shortly, according to the National Air traffic Control Office.

2.3 Industry-specific regulations, rules and procedures

Over the years, CAAC has issued more than 30 industry-specific regulations, rules, procedures and notices applicable to general aviation sector to supplement Civil Aviation Act 1995 and the two Directives issued by the State Council. The collection of these regulations covers a wide spectrum of areas ranging from economic regulations, safety management and operation, licensing management, to technical standards and practices. The following are some of the key regulations and rules.

The first is “General Operation and Flight Regulation” (Civil Aviation Regulation, CCAR-91, CAAC Order No 120), which became effective on 1 June 2004 and applies to all civil aircraft registered in China engaging in civil aviation operation in its territory. The Regulation divides civil aviation into three components, e.g. public aviation, general aviation and aerial work, though no definition is given to general aviation. The Regulation classifies general aviation operators into three groups, namely commercial non-traffic operator, private operator using large aeroplane, and aeroplane charterer. Along the line of activities engaged by general aviation businesses, the Regulation categorises them into commercial flight, training flight, air-sightseeing, and aerial work for agriculture. In defining a super-light aeroplane, the Regulation stipulates that it is a small aeronautical device to be engaged in recreational and sports activities flown by a single pilot, which does not require an airworthiness certificate.

By streamlining distorted rules on flight and operation scattered in various documents into one comprehensive and all-embracing legal document and setting definite business scopes of commercial aviation, general aviation and aerial work, CCAR-91 serves as an effective operational manual providing guidelines for general aviation enterprises in their business engagement. It is also regarded as a milestone in the rule-making of general aviation which has since become more formalised to follow legitimate procedures.

A second important regulation is the “Regulation concerning the Issuance of Air Operator Certificate for General Aviation” (CCAR-135TR-R3, CAAC Order No. 176). Entering into effect in February 2007, the Regulation specifies the conditions of and

requirements for establishing a general aviation enterprise in the territory of China. It describes specifically the eligibility of businesses to engage in general aviation, documentation to submit, and procedures to follow when such applications are processed. The Regulation ensures that the issuance of a general aviation operator certificate is an important economic regulation mechanism to encourage market entry, and to safeguard fair competition and safety operation in general aviation sector. The third is "Management Regulation concerning Non-Commercial General Aviation Registration" (CCAR-285, CAAC Order No 130), which became effective in November 2004. It articulates the requirements for businesses to register with the authorities when engaging in non-commercial general aviation activities.

The Regulation provides that Chinese citizens, entities and/or other organisations established in the territory of China are required to register with CAAC's regional administrative offices, when engaging in non-commercial general aviation operation. These non-commercial general aviation activities refer to aircraft flights that are not operated for remuneration. They include but are not limited to the following: medical treatment flight, self-used business jet flight, search and rescue, oceanic observation, fishing flight, meteorological observation, scientific research and experiment, firefighting, air policing and patrolling, air photographing, recreational and individual flight, aerial work for agriculture and fishing such as air planting and air fertilising.

In addition to the above, a series of 4 regulations were issued concerning foreign investment in aviation industry. They are "Regulation concerning Foreign Investment in Civil Aviation Industry (CCAR-201, CAAC Order No. 110), Additional Regulation concerning Foreign Investment in Civil Aviation Industry (CCAR-201LR-R1, CAAC Order No. 139), The Second Additional Regulation concerning Foreign Investment in Civil Aviation Industry (CCAR-201LR-R2, CAAC Order No. 174), and the Third Additional Regulation concerning Foreign Investment in Civil Aviation Industry (CCAR-201LR-R3, CAAC Order No. 189). Collectively, they specify the requirements for foreign investment in civil aviation industry including general aviation sector in China and outline the procedures of and criteria for approving such

foreign investment in the industry. In particular, the Regulations advocate and encourage foreign investment in the construction of civil airports to engage in general aviation activities such as agricultural, forestry and fishing aerial work. The Regulations welcome the establishment of general aviation businesses to engage in business and corporate flight, air sightseeing and other services supplementary to other industries. In regulating the proportion of foreign investment in the business, the Regulations require that the Chinese party should be the major shareholders provided the proposed business is to engage in corporate flight, air sightseeing and supplementary services to other industries. Should the proposed business be to engage in agricultural, forestry and fishing aerial work, the parties can negotiate an agreement in terms of investment proportion and share structures.

V. Deficiencies of the prevailing legal framework

The collection of China's aviation legislatures has significantly facilitated the rapid growth of the industry. It ensures a fair competition and safety management and safeguards a progressive development. However, a close examination has revealed that there is a lack of uniform and consistency in the prevailing legal framework, and to some extent, contradictions in the provisions. The following deficiencies have been identified.

1. Variation of definition and inconsistency with international practice

A definition is a formal statement of the meaning or significance of a word, phrase, idiom, or a term, attempting to be an accurate, distinct, detailed and clear description

of the meaning so as to avoid any confusion or ambiguity. In legislation, although definition does not have independent status, it is one of the most crucial elements as it ensures that the scope and connotation of a word or term is clearly and accurately defined in its context, and that it will not be interpreted otherwise by its expanded or referred meanings. A change in the meaning of the word or term would affect the specifications³⁵).

Annex 6, Part II to Chicago Convention defines general aviation operation as an aircraft operation other than a commercial air transport operation or an aerial work operation³⁶). By commercial air transport operation, Annex 6 explains that it refers to an aircraft operation involving the transport of passengers, cargo or mail for remuneration or hire, while aerial work is an aircraft operation in which an aircraft is used for specialised services such as agriculture, construction, photography, surveying, observation and patrol, search and rescue, aerial advertisement, etc³⁷). By excluding aerial work operations from the definition of general aviation, ICAO argues that aerial work operations are not characterised with international features, thus there is no need of formulating any international standards or recommended practices. It is therefore viewed appropriate to be framed and worded in such a manner as to facilitate its extension to cover aerial work operations at a later stage, should such extension prove desirable³⁸). The burden of regulating aerial work is thus left with individual member states.

In contrast, the Chinese definition of general aviation, which appears in several legislatures, is much wider than that in Annex 6, Part II to Chicago Convention and treats aerial work as an integral component of general aviation activities. As elaborated in preceding analysis, Article 145 of Civil Aviation Act of China defines general aviation as any civil aviation operation conducted by an aeroplane other than public air transport operation. Such non-public air transport operation embraces specialised

35) Ibid 2.

36) Ibid 2.

37) Ibid 2.

38) Ibid 2.

aerial works for industrial, agricultural, forestry, fishing and construction purposes as well as flight operation for the purpose of medical treatment, search and rescue, meteorological surveillance, oceanic observation, scientific research, education and training, and cultural and recreational activities.

Furthermore, there is no consistency when the definition is used in different legislatures. Article 3 of the “Directives on General Aviation Flight Management 2003”, 8 years later after China’s Civil Aviation Act 1995 was adopted, attempts to expand the scope of exceptions which is not considered as general aviation activities by specifying that general aviation is any civil aviation operation except military, policing, customs patrolling, as well as public air transport operation, rather than quoting the original definition in the Civil Aviation Act. The general aviation operation, according to this Directive, includes not only specialised aerial works for manufacturing, agriculture, forestry, finishing, mining, construction but also flight operation for the purpose of medical treatment, search and rescue, meteorological surveillance, oceanic observation, scientific research and experiment, surveillance and survey, education and training, cultural and recreational activities, and air sightseeing.

The broader Chinese definition fails to recognise one of the key features of aerial work, which, on many occasions, is provided for remuneration and hire, despite some common grounds are shared between general aviation and aerial work. In addition, when different operation leads to different interpretation of legal definitions, such divergence would affect efficacy and cause confusion and inconsistency with a potential risk to endanger safety.

In legislation, such errors should be avoided and minimised for the benefits of judiciary interpretation, effective implementation and enforcement. Policy makers are, thus, accountable to ensure that legislation is formulated in a clear, accurate, coherent and transparent manner to minimise any ambiguity and confusion.

2. Lack of specialised laws regulating general aviation activities and operation

Although more than 100 laws and regulations have been adopted in China concerning civil aviation, about one third are formulated to regulate general aviation activities, with the rest being concerned with public air transport and can be applied to both public air transport and general aviation. Provisions of these industry-specific regulations and procedures read more like policy announcements, which are lack of legitimate grounds that can be served as guidelines to be referred to and implemented to regulate the sector. The technical standards and practices of operation, the rules on issuance of certificates and licenses on general aviation are borrowed from those applicable to public commercial aviation. Some regulations and rules are issued in the manner of a notice, which lacks the legitimate ground for implementation and enforcement. There is also a gap between the provisions of the standards and practices adopted by China and those adopted by ICAO.

For example, “Directive on General Aviation Flight Management” adopted in 2003 is a detailed articulation regulating general aviation flight operation. However, there have been no specific procedures to be promulgated ever since then to address the implementation of the Directive. “Regulations concerning General Aviation Operation and Flight”, (CCAR-91), “Regulations concerning Licensing and Certifying Pilots, Flight Instructors, and Ground Instructors” (CCAR-61), and “Regulations concerning Licensing and Certifying Small Aircraft Commercial Operator” (CCAR-135) are important industry-specific rules regulating licencing, flight standards, flight safety and aircraft airworthiness. However, these provisions are too generic and generalised, with no explicit specifications, thus making them unrealistic and impracticable for implementation and enforcement.

3. There exists a legal vacuum in some areas concerning general aviation activities

Scrutinising the prevailing legal framework reveals that there exists a legal vacuum regulating certain types of general aviation activities. For example, there is no rule regulating the establishment and operation of aero-clubs, the licensing of dispatchers for such flight, and the airworthiness requirements of the aircraft used for such flight.

China's economic booming has produced tens of thousands of superrich entrepreneurs, who have purchased their private aircraft. To cater their taste, an increasing number of aero-clubs have been set up across the country. These clubs, instead of engaging in activities prescribed in their business licences issued by the competent authorities, have engaged in activities for remuneration that are not listed in their business scope. Their pilots and maintenance engineers do not hold the appropriate licences for the work they do. The aerodromes used are not certified for aero-club activities, nor do the aircraft used meet airworthiness requirements for certain types of activities such as taking on passengers for air sightseeing for remuneration. There is no safety management system or contingency measures in place. Hence, some fatal accidents and injuries have happened, causing a number of casualties and significant damage.

Another void area is that there are no laws regulating the standards and practice of construction and operation of airports exclusively used for general aviation activities, resulting in excessive capital investment, facilities and equipment. Such inefficacy has resulted in higher charges in general aviation airports, which increased the operational cost to be borne by general aviation businesses.

4. Majority of regulations governing general aviation operation are formulated at industry level rather than at national level.

Although there is a good collection of legislatures concerning general aviation, majority of them are industry-specific issued in the manner of procedures, notices, and guidelines, except Civil Aviation Act 1995 which is promulgated at the national level. Such an un-proportionate structure of legislation fails to raise the awareness of the significance of the sector, nor be able to exert influence on a wider range of public in society.

Legislation has played a key role in facilitating an industry's growth and development. This has been manifested in both the USA and the EU. For example, between 1980 and 1987 the production of general aviation aircraft in the US fell from 11,877 to 1,085, a decline of 90 percent, which caused some 20,000 job losses along with 80,000 related jobs in sales, services and relevant industries³⁹⁾. The passage of the General Aviation Revitalisation Act in 1994 had not only put an end to the long tail of product liability that has haunted manufacturers of general aviation aircraft, but also revitalised other industries such as engineering, repair and maintenance that were supportive to general aviation⁴⁰⁾.

Recognising the specific social and economic benefits provided by European general and business aviation, the Council of European Union issued a Council Conclusion on the Commission communication on an agenda for sustainable future in general and business aviation in April 2008. It provided an overview of the sector and presented a coherent position as regards its future development. It reiterated the need for regulations to be proportionate and ensured that safety would not be compromise^{d41)}. The review conducted by UK CAA on general aviation sector in 2006 led to some modification of regulations and revival of the industry in the following years⁴²⁾.

39) Clay D. A., Resuscitating a Dying Industry: the General Aviation Revitalisation Act of 1994, *Airplanista Magazine*, March 2011.

40) *Ibid* 32.

41) Council of the European Union, Council Conclusions on the Commission Communication on an Agenda for Sustainable Future in General and Business Aviation, April 2008, Luxembourg.

VI. Necessity of an improved legal framework for general aviation

A comprehensive and coherent legal framework is a safeguard of a healthy and orderly development of general aviation sector to contribute to the robust economic growth. The last few decades have seen China's tremendous efforts in improving its legal framework through formulating new legislation and modifying prevailing laws and regulations. Nevertheless, it is undeniable that there exist deficiencies in the current legislation as the preceding analysis reveals.

Commercial air transport is usually provided by commercial airlines and requires bigger aircraft, aerodromes with adequate facilities. General aviation, in contrast, tends to use smaller aircraft and can be accommodated in smaller airports. The different features and characteristics of general aviation compared with commercial aviation are sufficiently great which deserve separate treatment for regulation, operations and facilitation, in order to allow them to fulfil their respective roles effectively.

The initial attempt to distinguish between general aviation and commercial aviation was made by ICAO as early as 1969, when Annex 6 Part II to Chicago Convention was formulated. Since then, such distinctions between the two types of aviation operations have been further recognised, recorded and incorporated in other Annexes such as Annex 9 Facilitation, and Annex 17 Security, as well as numerous ICAO documents.

While much of ICAO's work concentrates on the commercial aviation operation of scheduled international services, regulating general aviation operation is to a great extent left to individual member state, though the fundamental principles of Chicago Convention and its Annexes must be honoured and adhered to. For example, the US adopted "The General Aviation Revitalisation Act of 1994", which not only resuscitated airplane manufacturing, engineering, sales, marketing, repair, maintenance, and related

42) Ibid 1.

industries supporting general aviation, but also set standards for general aviation operations⁴³). Australia has encapsulated general aviation operations in its Air Navigation Act and Civil Aviation Act. The UK's Civil Aviation Act 1982 provides a legal framework governing general aviation operations with assurance of appropriate standards of airworthiness, pilot qualification, rules for the movement of aircraft, and equipment to be carried.

China's rapid economic growth and industry dynamics has demonstrated that its current legal framework is unable to meet the needs to foster a healthy growth of general aviation sector. The engagement in un-legitimate general aviation activities and frequent outburst of incidents has necessitated an urgent need to review and modify its general aviation laws to ensure that a comprehensive and coherent legal framework is in place to facilitate a healthy and orderly growth of the sector.

VII. Suggestions for improvement and conclusion

Law and regulatory reform is a necessity in every society and economy in order to ensure laws and related processes are more equitable, modern, fair and efficient. Good regulations carry the following features. The first is proportionality, which means that regulators should only intervene when necessary. Remedies should be appropriate to the risk posed, and costs identified and minimised. The second feature of good regulation is accountability, which indicates that regulators must be able to justify decisions and be subject to public scrutiny. Thirdly, good regulations should be consistent which assures that government rules and standards must be joined up and implemented fairly. Transparency is another important feature which requires that regulations should be open, simple and user friendly. Furthermore, a good regulation

43) Ibid 32.

should be targeting, e.g. the regulations should be focus on the problem and minimise side effects. Finally, good regulations should be written in such a way that they are easily understood, implemented, and enforced. All interested parties should be consulted when they are being drafted⁴⁴⁾.

General aviation is an emerging aviation sector in China but is set to boom. Current legal framework governing general aviation activities fails to attend issues and address concerns of both the industry and public, thus, is unable to facilitate its robust and sustainable growth in the long term. An urgent need is required to rectify the legal deficiencies in the prevailing legal framework and actions must be taken to ensure a sustainable and progressive development in general aviation sector. In this exercise, best practice of regulation development and reform should be followed in order to achieve an optimal outcome and leverage resources. The following suggestions are proposed to rectify the deficiencies identified in the proceeding analysis.

1. Aligning Chinese definition with ICAO's definition and maintaining consistency across all laws and regulations

First of all, it is crucial that one clearer, more accurate, concise and non-ambiguous definition of general aviation should be adopted in order to align with Annex 6 to Chicago Convention and be applicable to all contexts. To this effect, aerial work should be excluded from general aviation. In so doing, it will not only ensure the consistency of the Chinese definition with Chicago Convention but also safeguard an effective and legitimate regulation of flight activities of general aviation and aerial work, which carry different operational features and require distinctive safety requirements. The following wording can be considered regardless of circumstances in which the definition is used. General aviation operation is an aircraft operation other than a commercial air transport operation or an aerial work operation. General

44) Ibid 1.

aviation operation includes but is not limited to air taxi service, business and corporate flight, private flight, and sports and training flight. Aerial work operation refers to the specialised service such as manufacturing, agriculture, forestry, fishing, and construction, as well as flight operation for the purpose of medical treatment, search and rescue, meteorological surveillance, oceanic observation, and scientific research and experiment.

The proposed amendment of the Chinese definition should be adopted in the Civil Aviation Act of China. As a legislature promulgated at national level, the Act serves as a guideline and foundation for all regulations, rules, procedures and orders governing the operation of the general aviation sector. To avoid any unnecessary misunderstanding and arbitrary interpretation, the wording of the definition should be applied to all regulations and rules to ensure consistency, hence improve effective implementation and enforcement.

2. A specific law focusing on the regulation of general aviation activities should be enacted or more provisions to be included in the prevailing Civil Aviation Act to promote the development of the sector

The Chinese government has recently issued a handful of policies to encourage the development of general aviation sector, but these policies cannot be used as laws regulating the general aviation activities. China could learn from the US which passed the General Aviation Revitalisation Act in 1994, which revitalised the industry and its supportive sectors. A specific law focusing on general aviation activities at national level should be enacted to regulate every aspect of general aviation operation, which includes but is not limited to manufacturing, sale and marketing, engineering, research and development, and other supportive services.

Should this be a challenging task that cannot be achieved in the short term,

modification of the current Civil Aviation Act should be made to address emerging issues such as safety and security, liability, environment protection and government subsidy to general aviation.

3. New laws and regulations are needed to fill in the legal vacuum in general aviation operation

The increasing demand for general aviation calls for authorities to act quickly and effectively to regulate its activities and growth. Specifically, regulations in the following areas should be considered. First, regulations should be formulated concerning flight and aircraft operation, aircraft registration and airworthiness, ground handling services, licensing of engineers and professionals working for general aviation sector, liability of general aviation products and operators, environment protection and safety and security. Second, regulations and procedures should be developed concerning the establishment and management of aero clubs, the licencing and certifying of their pilots, engineers and aerodromes used. Criteria of setting up aero clubs and their scope of business should be stipulated explicitly to avoid misconduct and ensure operation safety. Third, economic regulations such as market entry, pricing, service provision and customer service should be formulated or modified to encourage fair competition. Fourth, regulations on safety and accident investigation applicable to general aviation need to be modified to reflect the operational features of the sector. Requirements for the establishment of an effective safety management system should be clarified and specified and operational procedures and manuals should be developed for an effective implementation. Fifth, security regulations and procedures need to be developed to be commensurate with the most current risk and threat environment without imposing unnecessary costs on the sector. Sixth, regulations concerning the construction and operation of general aviation airports should be formulated. Mechanism should be established to encourage private investment in smaller and private airports for general aviation purposes. And

last, rules on training requirements for general aviation pilots and professionals should be developed in order to meet the demand and make sure that these professionals will progress in their career development to contribute a source of qualified staff to the whole aviation industry.

4. Existing laws and regulations should be modified and streamlined

Majority of the existing laws and regulations concerning general aviation operation were formulated in 1990s and 2000s. Recently some new regulations have been developed in order to promote the growth of the sector, with one example being “Opinions on Deepening the Reform of Low-Altitude Air Space Management” jointly issued in 2010 by the State Council and China Central Military Committee. This requires amendment and modification of the prevailing regulations to ensure that the new rules can be implemented. For example, “Directive on General Aviation Flight Management” issued in 2003 would require urgent modification to reflect the change⁴⁵). Accordingly, “Regulations concerning General Aviation Operation and Flight”, (CCAR-91), “Regulations concerning Licensing and Certifying Pilots, Flight Instructors, and Ground Instructors” (CCAR-61), and “Regulations concerning Licensing and Certifying Small Aircraft Commercial Operator” (CCAR-135) need to be streamlined and modified. Provisions should be amended to ensure that licensing of personnel, flying procedures and air traffic management, ground handling services, and airport operation would not hinder the reform of the low-altitude air space management.

In particular, Regulation concerning the Issuance of Air Operator Certificate for

45) On 18th November 2013, “Regulations on General Aviation Flight Task Approval and Management” was jointly issued by the Department of General Council of the People’s Liberation Army of China and CAAC. The Regulation specifies that general aviation flight tasks of generic nature would not require approval except nine types of general aviation flight tasks of special natures. The generic flight tasks need to submit flight plans with explanation of the flight nature in advance for clearance. Available at <http://industry.jrj.com.cn/2013/11>

General Aviation” (CCAR-135TR-R3, CAAC Order No. 176) needs to be modified. Provisions concerning the following areas should be amended. Capital threshold of market entry should be lowered to encourage the establishment of general aviation enterprises. However, safety requirements should be enhanced to ensure a safe and responsible operation. Expansion into international market should also be encouraged. Protections of consumers and third parties should be reinforced. Legal liabilities should be specified to protect passengers and any parties involved in the operation.

5. Regulations should be formulated to ensure investment in general aviation including investment in the construction of general aviation airports and enhance ground handling service capability

Unlike commercial aviation, general aviation has its own characteristics which require different operational facilities, standards and procedures to follow. It has played a crucial role in contributing to China’s economic growth, promoting employment opportunities and providing contingency services to the public. Nevertheless, compared with the US, EU and Australia, China’s general aviation is still at its infant stage, which requires policy support, sound regulation and significant investment. When “Provisional Procedure to Levy Aviation Development Fund” was issued by the Ministry of Finance in March 2012, it provided that the fund could be used to support general aviation development, to subsidise freight operation, regional operation, international operation, medium and smaller airports, and those airport for joint military and civilian use. However, to date, no implementation procedures have been formulated to stipulate in detail in what circumstances the fund can be used to support general aviation and how to support general aviation. From this perspective, the Procedure became non-operational.

To ensure that the fund can be used to support general aviation, CAAC should

coordinate with other government authorities and agencies to develop regulations, guidelines and procedures to attract investment in general aviation including investment in the construction of general aviation airports and ground handling facilities to enhance service provision capabilities.

6. Principles of government subsidy should be stipulated and specified

General aviation has a specific economic and social role to play in that it offers private individuals, companies and local communities suitable, flexible and high quality transport services. These services increase people's mobility, business productivity and regional cohesion⁴⁶). One of such services is to provide transport for medical treatment, search and rescue, surveillance and patrolling. It is fulfilling government's commitment to make available public security services and enhance overall benefits to the public. General aviation has played a crucial role in enabling public in remote and less populated regions to have access to such contingent public services, when regular public transport service is not available or difficult to be provided.

To this effect, the principle of government subsidy to general aviation services should be established in the law. The importance of the principle is highlighted by the case when a captain of Hainan Airline refused to take on-board a minor who lost her leg in an accident in Jiayuguan, Guansu province in January 2006. The case provoked a hot debate in society: who should provide transport service to save the life of a minor, is the commercial carrier in question obliged to do so, or should there be a different type of business such as a general aviation company that should do the job?

Despite providing air transport for contingent medical treatment is one of the general aviation activities recognised in China's prevailing legal framework, the fact is that there are no existing general aviation enterprises that are engaged in this type of

46) European Union: http://ec.europa.eu/transport/modes/air/internal_market/general_aviation_en.htm

operation. One of the key considerations is who is paying the cost and who is coordinating such flight tasks to involve professional resources including first-aid specialists, pilots, equipment, and police. The injuries and casualties resulted from the frequent happening of catastrophes and natural disasters call for an urgent need to have this principle of government subsidy to be in place in order to ensure that the public have access to medical treatment in emergencies.

7. Principles of environment protection should be clarified to ensure a sustainable growth of the sector

The contribution of general aviation to economic growth is apparent and observable. However, the operation also has a significant impact on environment and habitat balance, affecting residents, crops and animals. Like most other forms of transport, it produces noise and gaseous emissions which have a negative impact on the environment. The responsibilities and obligations of operators and users of general aviation in protecting environment has become a critical issue to be clarified and addressed in China's aviation law.

The "Environmental Protection Act of China" provides that "environment is a compound collection of natural resources which may have an effect and impact on the existence and development of human beings, and may be affected, impacted or endangered by human beings' activities. The resources include but are not limited to atmosphere, water, ocean, earth, minerals, forestry, grassland, wild life, natural heritage, natural protection areas, cultural heritage, cities and countries". When natural resources are exploited, environment must be protected.

Although Article 149 of Civil Aviation Act stipulates that effective measures should be in place when aerial work is provided so as to ensure flight safety, protect environment and habitat balance, and avoid negative impact on environment, residents, crops, and animals, there are no explicit articulation as to what constitutes effective

measures in the Act. Thus, it becomes the responsibility of an individual operator to determine what mechanism should be in place, what measures are considered effective and how effective they are.

The “Noise and Pollution Protection Act of China” also requires that “all organisations and individuals are obliged to protecting the public from noise pollution”. Yet, there are no detailed and unified descriptions as to how to measure and calculate noise levels produced by aircraft. Nor are there any rules concerning how to address and justify the lawsuits of noise pollution and how to compensate the noise-affected residents. The past few decades have seen a sharp increase in complaints from residents in flight corridors and unresolved legal cases on aircraft noise due to the lack of legal grounds for a legitimate judicial decision.

To address the above issues, new provisions are required to be either incorporated into the prevailing legislatures or formulated in new regulations to specify what responsibilities and obligations the general aviation operators should bear in protecting the environment to ensure a sustainable aviation growth. In particular, environmental standards applying to aviation should be established. Certification standards concerning aircraft should be reviewed and pilot education should be improved which in turn could further contribute to reduction of negative impacts.

To summarise, law and regulatory reform is a challenging task as there are always new phenomena that laws and regulations fail to recognise or address. General aviation is an important component of aviation in China. It is also a considerable component of the national airspace and airport system and is relevant to issues in air traffic management, air transport infrastructure, and aviation safety and security. Furthermore, it is of significance to society as a whole and to other stakeholders, including pilot groups, aircraft manufacturers, and the work force. A sustainable and progressive development of the sector could only be ensured when a comprehensive legal system is in place. The Chinese authorities have made significant efforts in its legal reform and modification regulating the general aviation activities. However, there is still a long way to go.

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Abstract

Deficiencies of China's General Aviation Law and its Improvement

General aviation is an integral part of civil aviation and involves the widest range of aviation segments except commercial aviation. Featured with different operational procedures and practices to satisfy the economic needs and safety requirements of a sovereign state, general aviation tends to be regulated by an individual state. The last three decades have seen exponential growth of commercial air transport in China, but its general aviation sector has remained disproportionately underdeveloped. With the deepening of the reform of low-altitude airspace, the sector is poised for a radical change and rapid growth. However, legislation governing general aviation activities in China is distorted causing inconsistency and confusions in their application and implementation. This paper aims to analyse China's prevailing legislation regulating general aviation activities. It first discusses the various definitions adopted by ICAO and its member states and reviews the development of general aviation in the US, EU, Australia and China. It then examines the sources of China's general aviation laws, e.g. Chicago Convention and its annexes, and Chinese domestic legislature which covers legislation, laws, directives, rules and procedures. The paper continues to analyse and establish the deficiencies of its prevailing legal framework by pointing out the following: variation of definitions in different regulations, inconsistency of principles in existing laws and regulations, legal vacuum concerning government subsidy, environment protection, safety and security, and other operational areas such as aerial club, sightseeing, and search and rescue. In this process, the paper argues that a coherent, consistent and systematic legal framework is required in order to ensure fair competition and safety for a healthy, progressive and sustainable general aviation growth. Suggestions for rectification and improvement are proposed.

Key Words : air transport, general aviation, legislation and law, regulatory reform, China

초 록

중국 일반항공법의 법적 흠결과 개선방향

Chrystal Zhang · Weimin Diao

일반항공은 민간항공분야의 중요한 구성요소로서 상업비행을 제외한 광범위한 분야를 아우르며 주권국의 경제적 수요와 안전 요구사항을 충족시키기 위하여 각기 상이한 운항 절차와 방식으로 개별 국가들에 의해 규제되는 특징을 가지고 있다. 지난 30년간 중국의 상업항공은 중국의 경제 발전과 함께 급속한 성장을 이루어 왔지만 일반항공분야는 이와 함께 발전해오지 못하고 상업항공분야에 비해 상대적으로 경시되어왔다고 할 수 있다. 그리하여 현재 중국의 일반항공산업은 최근 중국정부의 저고도공역 개선 정책과 더불어 근본적인 변화와 성장을 맞이할 준비가 되어있지만 현재 관련 산업을 규율하고 있는 중국 일반항공법의 흠결이 일반항공 부문의 발전을 가로막고 있으며 일관되지 못한 법의 적용이 여러 혼란을 야기하고 있는 실정이다. 따라서 본 논문은 다음과 같이 중국 일반항공법의 흠결을 분석하였다.

국제민간항공기구(ICAO)와 여러 ICAO 회원국이 채택한 일반항공에 대한 다양한 정의를 검토한 후 미국, 유럽연합(EU), 호주 그리고 중국의 일반항공산업 발전에 대하여 살펴보았다. 또한 시카고 협약과 부속서 그리고 그 외 다양한 중국내 관련법을 분석하며 중국 일반항공법의 법원(法原)에 대해서 고찰하였다. 마지막으로 여러 관련 규정들 내의 각기 다른 정의조항과 법리적 모순, 정부보조금 집행 원칙의 개선 필요성, 온실가스 배출이나 소음문제와 같은 환경보호 문제등을 예로들며 현재 중국 일반항공법의 결함을 지적하였다. 이에 따라 본 연구는 건전하고 진보적이며 지속가능한 일반항공분야의 발전을 위해 공정경쟁과 항공안전이 보장될 수 있는 일관성있고 체계적인 법률체제가 뒷받침 되어야 한다는 결론을 도출하였으며 이를 위한 다양한 개선방안을 제시하였다.

주제어 : 항공운송, 일반항공, 항공법, 규제개혁, 중국