

# 38TH ANNUAL

# AIRPORT LAW WORKSHOP



 KAPLAN KIRSCH ROCKWELL  
projects that keep life moving™



Session #

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Basics of Negotiating  
Airport/Airline Use and Lease  
Agreements

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# Today's agenda



- ✓ Preparation – the key to a successful AULA negotiation
- ✓ The legal aspects of AULAs
- ✓ Key issues for airports and airlines
- ✓ Rates and charges are the critical element for all parties
- ✓ The negotiation
- ✓ Q & A



Today's  
Agenda



# Overview of AULAs



- What is an airport/airline use and lease agreement and why enter into one.
- Rates and charges for the privilege of using the airport
  - Landing fees
  - Terminal rentals
    - Holdroom rentals and per use fees
    - Exclusive space
    - Joint use space – e.g., baggage systems
    - Common use space
  - Other fees
- Why have a contract. What should it cover.



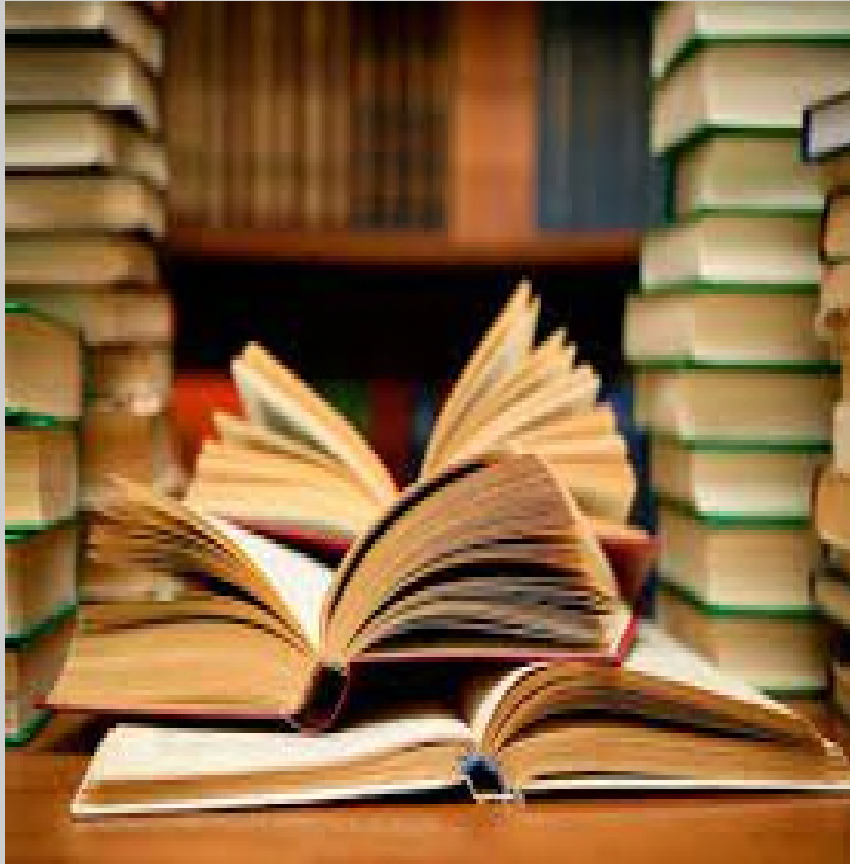
# AULA establishes business relationship with airlines



- What rights are granted to the airlines, and how to differentiate among airline tenants
- How costs are recovered
- Airline role in decision to undertake capital improvements
- Who controls gates and related facilities
- Consider other factors, some unique to airports (e.g., affiliates) and others that are not (e.g., insurance)



# Role of airport counsel – the legal structure



- Federal law
- FAA regulation and policy
- Grant Assurances
- FAA decisions – Part 16 and 13 decisions
- Court decisions – state law issues and Part 16 and 13 appeals
- It pays to prepare! See *Airport Law Desk Reference*



# Preparation – the key to a good outcome



- Take the time internally to work through the issues *before* sitting down with the airlines
- Involve all areas of airport management: Operations, finance, route development, risk management, environmental and more
- Designate a nimble (and small) negotiation team that will consult regularly with internal stakeholders
- Line up your outside experts: financial advisor, counsel, etc.



# Preparation – what are your goals?



- Create a *short* list of goals, along with a “wish list”
- Where is your airport in its CIP – anticipating a major program, in the midst of one, or just completed?
- When was the last time the AULA was negotiated
- What elements of the current AULA should be preserved. What changes are needed.
- What problems need to be solved. Is the AULA the right vehicle.





# Preparation – know your airport



- Cost centers:
  - What are they
  - How are your costs currently allocated. What is your recovery percentage.
  - What other space is not used by airlines. How are costs recovered.
- Current rate methodology
- What capital improvements are needed By whom. Who will (and should) pay for them.



# Preparation – alternatives analysis



- Do airport sponsor’s goals conflict with those of airlines?
- Rates by resolution – is airport sponsor able to and willing to impose rates.
  - Can be the fallback if negotiations fail
  - The airport’s situation will be critical to this analysis
    - Hub for a carrier, or served by multiple airlines
    - Amount of ULCC service
    - Essentiality of airport in route networks; yield
  - How would stakeholders react
    - Board
    - Management
    - Electeds

# Key issues – setting rates and charges



This is *always* the most critical issue!

Understand your current methodology and how changes would affect the airlines operating at the airport

Involve your FA early on  
Manipulate the model to understand it

Understand your current model – residual, compensatory or hybrid

Do you want to transition from one to another? Why?

**AULA must be consistent with bond covenants**



# Rate and charges, continued



- Define the sponsor's financial goals, then modify the rate methodology to achieve them:
  - Days' cash on hand
  - Coverage
  - Increased cost recovery
- Review common use and per turn fees
  - Fixed vs variable component
  - Underlying assumptions
- Consider impacts on signatory and non-signatory carriers, ULCCs and on new entrants

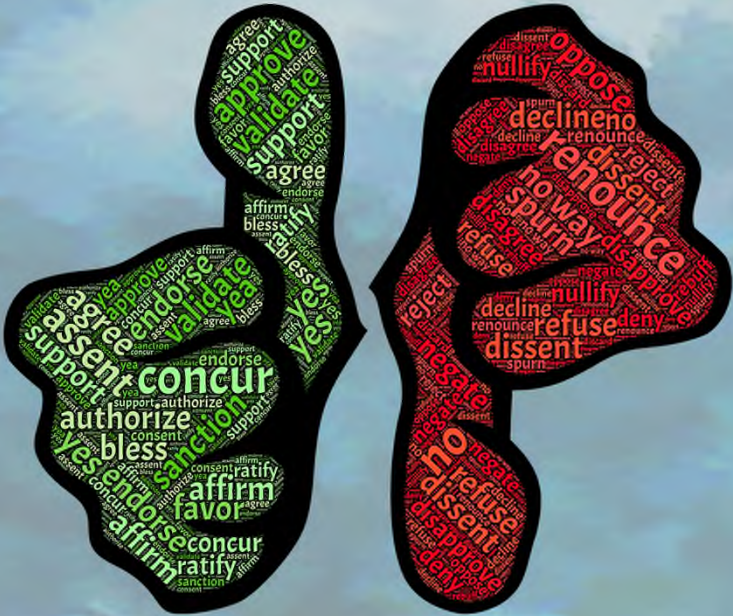


# Key issues – gate allocation



- Is the airport gate constrained?
- What flexibility – in real life – does the sponsor have to allocate gates?
- Where on the range of alternatives should you be?
  - Common use only
  - Strong preferential rights (sponsor or airline)
  - Reservation of minimum common use gates
  - Business model(s) of carriers (legacy, ULCC, hub, etc.)
  - Use of gate use policy

# Key issues – airline input into capital projects



- Airline approval / disapproval rights
  - Wide range of rights, from none to oversight of everything
  - Typically tied to impact on rates
- Majority-in-Interest (MII) approval or disapproval
  - By landed weight, terminal rentals, payments, and/or type of project
- Pre-approval of capital program

# Key issues - definitions



- Drive the remainder of the AULA
- Older agreements likely have outdated definitions
- Use consistency, e.g., Applicable Laws, Airport Parties
- Marry definitions with bond indenture



# Key issues - insurance



- The older the current AULA, the more changes needed
- Consider addition of new coverages, e.g., PLL, cyber liability
- Update limits; consult with experts
- Deductibles and attendant risks
- Past experiences with claims and limits
- Address self-insurance





# Key issues – rights granted and reserved



- What rights do airlines require?
- Review current language in light of current ops – language often inconsistent with reality
- As with all provisions, one size doesn't fit all!
- Reserve all rights not expressly granted to airlines to the airport sponsor



# Key issues – other important terms



Term

Allocation of O&M  
responsibilities

Events of default;  
liquidated damages  
& other remedies

Assignment and  
subleasing

“Most favored  
nation”

Force majeure





# Negotiations – the art of compromise



- Establish opening positions that have flexibility
- Compare positions taken to key airport goals
- Know (and communicate) the bottom line, and why
- Consider the airlines' goals and accommodate them where possible
- Use the schedule to set a pace and a tone of achievement
- Maintain composure – it will end!



# QUESTIONS?

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