

Air Transport

Contributing editors

John Balfour and Mark Bisset



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**GETTING THE
DEAL THROUGH** 

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Air Transport 2016

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Dominican Republic

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General

1 Which bodies regulate aviation in your country, under what basic laws?

Commercial and civil aviation in the Dominican Republic is governed by the Civil Aviation Board (JAC), the Civil Aviation Institute (IDAC) and the Specialised Body of Airports and Civil Aviation Security (CESAC).

JAC is the consulting body for government authorities concerning air transport policies and the ruling and executive body for economic matters.

IDAC is a specialised independent and technical body in charge of aviation safety. It supervises and controls civil aviation, particularly the enforcement of relevant rules and regulations.

CESAC is the authority for civil aviation security, and the body responsible for enforcement and compliance with the National Programme of Civil Aviation Security.

The basic legal framework includes the following laws:

- Law No. 491-06, dated 28 December 2006, on Dominican Republic Civil Aviation (LAC);
- Law No. 188-11, dated 22 July 2011, on Airport and Civil Aviation Security; and
- Law No. 8-78, dated 17 November 1978, on Airport Commission.

The following international conventions are applicable to Dominican civil aviation:

- Warsaw Convention 1929;
- Chicago Convention 1944;
- Montreal Protocol 1947;
- Montreal Protocol 1954;
- Hague Protocol 1955;
- Tokyo Convention 1963;
- Hague Convention 1970;
- Montreal Convention 1971 and its supplementary protocol;
- London Convention 1972 (on regulation to prevent collisions at sea) and its appendices;
- Montreal Convention 1991;
- Montreal Protocol 1988; and
- Montreal Convention 1999.

The Dominican Republic has entered into bilateral agreements with 40 countries for opening commercial airlines routes.

Regulation of aviation operations

2 How is air transport regulated in terms of safety?

IDAC is responsible for air navigation safety and takes all measures and regulations to guarantee aviation safety.

IDAC supervises the fulfilment of the safety rules set out in appendices 1, 2, 11, 14 and 68 of the Chicago Convention.

The main safety rules are contained in LAC and the Dominican Aeronautical Rules (RAD) Nos. 2, 61 and 110.

IDAC has the authority to check the fulfilment of flight rules and inspect mechanical conditions and aircraft airworthiness.

According to the LAC, the pilot shall have final authority concerning all matters related to the aircraft while he or she is in charge of the aircraft.

IDAC is authorised to validate licences issued by other member countries of the International Civil Aviation Organization (ICAO) to pilots, crew and mechanics that are going to support or operate Dominican aircraft.

Surveillance and air traffic control rules accord with ICAO rules, while safety rules accord with provisions set out in the Chicago Convention and its appendices.

3 What safety regulation is provided for air operations that do not constitute public or commercial transport and how is the distinction made?

Article 184 et seq of LAC defines aerial works by differentiating them from civil and commercial operations. Aerial work means all commercial activities different from air transport.

Aerial work operators cannot perform civil and commercial air activities.

Aerial work operators must have an aerial work certification issued by IDAC. Initially only Dominican citizens are authorised to undertake aerial work. Occasionally, IDAC will authorise companies and foreign staff to undertake such work.

RAD 137 governs the safety rules for aeronautical service of aerial work.

Article 4 of LAC provides that it is not applicable to aircraft owned by the Dominican state, save in specific cases and by particular reference to such specific aircraft.

4 Is access to the market for the provision of air transport services regulated and, if so, how?

Access to the market is regulated. National air operators must obtain an economic authorisation certificate (CAE), issued by JAC, and they must also obtain an air operator's certificate (AOC), issued by IDAC.

Foreign air operators need an operation permission issued by the JAC, which shall be issued after confirming that they comply with safety specifications provided by IDAC and the security aviation rules provided by CESAC.

JAC could refuse to issue permissions or authorisations for certain routes, if it considers traffic needs are satisfied.

5 What requirements apply in the areas of financial fitness and nationality of ownership regarding control of air carriers?

Article 220 of LAC provides that air transport services are reserved to national air operators, but they could be granted to foreign air operators from countries that have entered into agreements or treaties with the Dominican Republic.

To determine and guarantee the capacity and economic and financial suitability of national air operators they must apply for an economic authorisation certificate from JAC.

Foreign air operators prove their financial and economical capacity by submitting the permissions issued by the relevant authorities in their countries.

On 24 April 2013, the Dominican Republic enacted Law 67-13, which amended certain aspects of the Civil Aviation Law (Law 491-06).

The main goal of this amendment is to change the requirements for a national air operator. Pursuant to this new law a company with foreign capital in full (100 per cent) can be considered as a national air operator, provided, however, that the investment is coming from an internationally known airline.

Nowadays most operating airlines are from abroad. Dominican authorities have an open and flexible policy to allow the entry of new foreign air operators into the market.

6 What procedures are there to obtain licences or other rights to operate particular routes?

Licensing and permissions are ruled by the LAC.

To operate a route, national air operators need a CAE issued by JAC, and an AOC issued by IDAC.

National air operator applicants must prove to JAC that they comply with nationality requirement in connection with company ownership and control, as set out in question 5.

Furthermore, the national air operator must prove compliance with the National Civil Aviation Security Programme as set forth by CESAC, which has been drafted in accordance with Appendix 17 of the Chicago Convention, as well as financial and economic supporting information, feasibility studies, etc.

Licences for foreign companies are issued according to reciprocity agreements entered into by the Dominican Republic and the operator's country. However, the JAC is authorised to issue an operation licence without an agreement or reciprocity statement.

Operation licences are issued for a 10-year maximum term.

7 What procedures are there for hearing or deciding contested applications for licences or other rights to operate particular routes?

Once the licence application is submitted and the applicant has proved compliance with requirements, JAC shall hold a public hearing in relation to the application. Any interested party that considers itself affected can appear at the hearing and oppose the licensing.

When the hearing is over, JAC shall pass a resolution approving or refusing the licence.

JAC decisions are appealable before the Administrative Litigious Court. The appeal can be filed within 15 days.

8 Is there a declared policy on airline access or competition and, if so, what is it?

There is no specific access and competition policy in the transport field. In the Dominican Republic there is a very flexible licensing and permission granting system, which is based on reciprocity criteria and open skies treaties and conventions that have been entered into with several countries.

JAC authorities could refuse to issue licences or authorisations for certain routes if air traffic necessities are completely satisfied.

JAC authorities could refuse or cancel operation licences when air transport services without schedule or isolated frequency are an unfair competition to airlines established in the market.

9 What requirements must a foreign air carrier satisfy in order to operate to or from your country?

A foreign air carrier that desires to operate from and to the Dominican Republic must have an operation licence from JAC. It also has to comply with the guidelines on safety and airworthiness set forth by IDAC and the National Security Civil Aviation Programme (PNSAC), which supervises the CESAC.

To obtain an operation licence, a foreign air operator must prove to JAC the following:

- that it is suitable, willing and qualified to perform international commercial air transport and to comply with the legal provisions, rules and regulations;
- that it is qualified and it has been designated by its government to be engaged in international commercial air transport under the terms of an agreement entered into with the Dominican state or that such transport is in the public interest; and
- that its government has granted or is able to grant reciprocity to Dominican air transport companies.

10 Are there specific rules in place to ensure aviation services are offered to remote destinations when vital for the local economy?

There are no legal provisions for aviation services to remote destinations.

11 Are charter services specially regulated?

Charter flights are regulated by LAC, RAD 121 and Decree 832-09, which states any foreign air operator not having an operation licence shall apply for a charter flights authorisation through a foreign air operator aircraft by a consignee in charter flights.

The requirements to obtain a charter flights authorisation are less than those required for regular flights, therefore it is a quicker and easier proceeding.

12 Are airfares regulated and, if so, how?

Airfares shall be approved by the JAC. Airfares are typically ruled by air transport agreements entered into by the Dominican Republic and other countries.

Aircraft

13 Who is entitled to be mentioned in the aircraft register? Do requirements or limitations apply to the ownership of an aircraft listed on your country's register?

The LAC regulates any matters related to aircraft registration. To that end the Nation Aircraft Registry was created by IDAC. An aircraft could be registered by Dominicans and foreign citizens who are domiciled in the Dominican Republic.

Before an aircraft is registered in the Dominican Republic, the previous registration must be cancelled.

Those aircraft owners who comply with the legal requirements could apply for a definitive registration.

14 Is there a register of aircraft mortgages or charges and, if so, how does it function?

Mortgages and charges on Dominican Republic aircraft can be recorded in the National Aircraft Registry. Mortgages are recorded by notarised documents, in accordance with Civil Code provisions.

15 What rights are there to detain aircraft, in respect of unpaid airport or air navigation charges, or other unpaid debts?

According to the LAC, an aircraft can be detained only with the relevant court authorisation, based on debts derived from airport and air navigation services rendered.

16 Do specific rules regulate the maintenance of aircraft?

Aircraft maintenance is regulated by the LAC and RAD No. 43. These regulations are applicable to aircraft with registration issued in the Dominican Republic.

IDAC must ensure the proper maintenance of aircraft registered in the Dominican Republic.

Likewise the law provides that an air operator must ensure that aircraft maintenance and operations are performed in the public interest and according to LAC provisions, rules, regulations, directives and orders issued by IDAC.

When aircraft are registered overseas, IDAC is not directly involved in their maintenance and it is just involved in control and ramp revisions.

Airports

17 Who owns the airports?

In the Dominican Republic airports are both state and privately owned. Those owned by the state are administrated by concessionaire companies.

18 What system is there for the licensing of airports?

According to the LAC airports are classified as public, private and military. Public airport are intended for general air navigation use; private airports are those intended for particular use by a person or a company; military airports are those intended to be exclusively used by Dominican Republic armed forces.

To operate any public or private airport, an operator must have an authorisation issued by IDAC. When an airport is a public aerodrome, it also requires previous authorisation from the president of the republic.

RAD 19 defines aerodrome guidelines and airport certification, while RAD 14 defines regulations related to their design and operation.

Furthermore, the Airport Commission, an independent body created by Law No. 8-78, is involved in licensing and permission granting.

19 Is there a system of economic regulation of airports and, if so, how does it function?

By a presidential decree, the Dominican state sets the airport fees and charges. Both private airports and state airports operated under concession are subject to airport fees determined by the Dominican state.

Airport services charges shall be paid directly by air transport operators to the airport administration.

20 Are there laws or rules restricting or qualifying access to airports?

The LAC provides that any aircraft entering to or departing from Dominican territory shall comply with the airworthiness rules provided by IDAC. RAD 25 provides that IDAC shall accept the airworthiness certificates issued by the European Safety Aviation Agency and the Federal Aviation Administration of the United States. Airports are bound to comply with safety rules set by IDAC.

21 How are slots allocated at congested airports?

There is no specific guideline for assigning a slot; airport operators usually assign the slots by arrival time order or as agreed with air operators.

22 Are there any laws or rules specifically relating to ground handling?

The Airport Commission rules ground handling, which approves contracts and services fees in all Dominican Republic airports.

23 Who provides air traffic control services? And how are they regulated?

According to the LAC, IDAC has to offer, supervise and monitor air traffic control services and ensure they are performed at an optimum safety level, as per ICAO rules. RAD 11 rules all matters related to air traffic control services.

Liability and accidents

24 Are there any special rules in respect of death of, or injury to, passengers or loss or damage to baggage or cargo in respect of domestic carriage?

The LAC, Chapter X, Part I provides rules on civil liability of air operators for national and international flights. Article 194 states that air operators are bound to compensate for damage arising from death or any injury suffered by a passenger related to transport.

Air operators shall also compensate for damage derived from loss, destruction, breakdown or cargo or baggage delay.

The Law provides that air operators shall have mandatory insurance, which has to be in accordance with the Montreal Convention 1999 and guideline set by local aviation authorities.

Dominican civil law provides for compensation not only for material damages but also for damages for pain and suffering.

When damage or loss occurs on international flights, the operator's liability shall be limited as provided in international treaties to which the Dominican Republic is a party.

25 Are there any special rules about the liability of aircraft operators for surface damage?

An air operator shall compensate any person suffering damage caused by something falling from or coming off an aircraft in flight over national territory.

Occasionally the air operator shall not be liable if the damage is not a direct consequence of those facts from which they are derived.

26 What system and procedures are in place for the investigation of air accidents?

The Aviation Accidents Investigation Commission (CIAA) was created to conduct the technical investigation into any serious accident involving civil aircraft in Dominican Republic territory and in international waters when Dominican-registered aircraft are involved. CIAA is an independent body from IDAC and JAC and follows the guidelines set out in Appendix 13 of the Chicago Convention.

In addition, CIAA has powers to investigate serious accidents occurred abroad where aircraft registered in the Dominican Republic are involved

providing, however, that a convention or agreement has been entered into by the Dominican Republic and the state where the accident occurred.

CIAA must take all measures to prevent accidents happening again.

27 Is there a mandatory accident and incident reporting system and, if so, how does it operate?

According to the LAC any authority having knowledge of an accident must report it to IDAC. Likewise, any owners, operators or crew members shall report promptly to IDAC any accidents or incidents in aircraft under their responsibility within Dominican territory and in Dominican-registered aircraft abroad.

Competition law

28 Do sector-specific competition rules apply to aviation? If not, do the general competition law rules apply?

There are no aviation sector-specific regulations in the Dominican Republic related to this matter, therefore the general guidelines provided in Law No. 42-08 on the defence of competition apply.

29 Is there a sector-specific regulator or are competition rules applied by the general competition authority?

There is no specific regulator for aviation competition. However, JAC regulates some aspects of competition such as airfares, air traffic and frequencies. Regulations on competition are applied by the National Commission for the Defence of Competition (Pro-Competition), an independent body created under Law No. 42-08 for the defence of competition. However the application of this law has been put on hold until the appointment of the executive director.

30 How is the relevant market for the purposes of a competition assessment in the aviation sector defined by the competition authorities?

There is no particular definition of a relevant market for aviation.

According to the general law on competition defence, the relevant market comprises the economic activity and a specific geographic zone, in a scenario that includes all replaceable or interchangeable goods and services, and all immediate competitors with whom customers could come into contact in the short term, without restriction or abuse, which should cause a significant increase in prices.

31 What are the main standards for assessing the competitive effect of a transaction?

The main object of regulation is to promote and defend competition to increase the economical efficiency in the market, to benefit consumers.

The legal system recognises and protects the freedom to engage in business, commercial and industrial activities. Regulations for the defence of competition are in the public interest, which is binding and required of any economic agent.

The law prevents and sanctions agreements and practices against competition and abuse of dominant position in connection with a relevant market. Likewise, unfair competition is prevented and sanctioned by law.

32 What types of remedies have been imposed to remedy concerns identified by the competition authorities?

Pro-Competition can impose the following measures and sanctions:

- suspension and termination of factors or behaviour causing the damage to competition;
- fines from 30 to 3,000 minimum salaries depending on the breach of free completion; and
- obligations against the economic agent or sanctioned person to correct the market distortion and recover the competition.

The law provides for the absolute nullity of acts, anti-competition agreements and agreed practices.

Financial support and state aid**33 Are there sector-specific rules regulating direct or indirect financial support to companies by the government or government-controlled agencies or companies (state aid) in the aviation sector? If not, do general state aid rules apply?**

The Dominican state does not provide any financial support to aviation activities.

The LAC provides tax exemptions for oil and fuel products, parts and engines.

34 What are the main principles of the state aid rules applicable to the aviation sector?

Not applicable.

35 Are there exemptions from the state aid rules or situations in which they do not apply?

Not applicable.

36 Must clearance from the competition authorities be obtained before state aid may be granted?

Not applicable.

37 If so, what are the main procedural steps to obtain clearance?

Not applicable.

38 If no clearance is obtained, what procedures apply to recover unlawfully granted state aid?

In any cases when state support had been rendered, the prosecutor's office is empowered to recover funds by legal action and to sanction those liable, when applicable.

Miscellaneous**39 Is there any aviation-specific passenger protection legislation?**

The Dominican Republic has no special legislation for protecting passengers.

These rights are protected and regulated by Law No. 358-05, the Consumer Rights Protection Act.

Authorities have the power to regulate fees according to air transport treaties to which the country is a signatory, which act as a protection mechanism for passenger in such matters.

The Dominican Republic is signatory to the Warsaw Convention, which limits air carrier liability in connection with an accident causing injury or death to passengers. It also limits liability when loss or damage to baggage occurs.

40 Are there mandatory insurance requirements for the operators of aircraft?

The LAC provides that any air operator shall contract an insurance policy or auto-insurance plan. The term of an operation licence depends on fulfilment of this obligation.

The amount and cover of the insurance policy must be in accordance with the guidelines in the Montreal Convention 1999.

41 What legal requirements are there with regard to aviation security?

Law No. 188-11 is the legal framework on which civil aviation security is based. These legal guidelines are based on provisions included in appendix 17 of the Chicago Convention.

The main object of this law is to prevent and sanction the actions and unlawful interference against passengers, crew, ground staff and public security. Aviation infrastructure services are included, as well as aircraft, airports and aerodromes.

This law reinforces and raises the legal status of CESAC, which has the responsibility to prepare, apply and enforce the national security programme.

42 What serious crimes exist with regard to aviation?

Crimes and offences related to aviation are included and sanctioned by Law No. 188-11. Within more serious crimes are included:

- hijacking by violence and intimidation;
- taking an aircraft hostage and hijacking;
- intentional total or partial destruction of an aircraft, airport or communications equipment that causes death and serious injury; and
- spreading false information to jeopardise aviation, passenger and crew security at an airport or civil aviation installation and causing serious injury or death.

Other actions are defined as less serious offences and infringements, but may also result in penal sanctions, including imprisonment.

The Dominican Republic is a party to several conventions and treaties to prevent and sanction crimes and offences affecting aviation (see question 1).



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