

International Comparative Legal Guides



Aviation Law 2020

A practical cross-border insight into aviation law

Eighth Edition

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1 General

1.1 Please list and briefly describe the principal legislation and regulatory bodies which apply to and/or regulate aviation in your jurisdiction.

The principal legislation on aviation in Panama is Law No. 21 of 28 January 2003, which regulates civil aviation activities in Panama. Panama has also adopted the RAC (*Reglamento de Aviación Civil*) which includes regulations for civil aviation.

In addition, Law No. 23 of 28 January 2009 sets out the regulatory framework for the administration of airports.

The principal regulatory body on aviation in Panama is the Civil Aviation Authority, an independent government entity, with legal capacity and its own resources, created by Law No. 22 of 29 January 2003.

1.2 What are the steps which air carriers need to take in order to obtain an operating licence?

In order to operate a passenger or cargo airline in Panama, it is necessary to obtain an Exploitation Certificate and an Operation Certificate, both issued by the Civil Aviation Authority.

There is a set of documents that need to be filed with the Civil Aviation Authority at the time of applying for an Exploitation Certificate and an Operation Certificate.

The evaluation process of the application for an Exploitation Certificate involves a public hearing according to local laws and is subject to the provisions of international conventions.

In addition to payment of the corresponding fees and charges set by the Civil Aviation Authority, the Civil Aviation Authority may require the posting of a bond for the purpose of securing the obligations of the airline to governmental authorities in Panama. The amount of such bond may be for a maximum of 30% of the estimated taxes, fees and charges applicable to two months of operation of the airline.

Once the Civil Aviation Authority grants the exploitation and operation certificates, the airline should meet the following requirements before starting operations:

- Evidence of having liability insurance.
- Airline fares to be applied.
- A bond or surety under the terms established by the regulations, unless an Air Transport Agreement or other rules exempt the airline from this requirement.

The Exploitation Certificate has a validity of three years, and may be extended indefinitely for the same period of time. The Operation Certificate is issued without an expiration date.

1.3 What are the principal pieces of legislation in your jurisdiction which govern air safety, and who administers air safety?

The principal piece of legislation in our jurisdiction governing air safety is Law No. 21 of 28 January 2003, which regulates civil aviation activities in Panama, and the Civil Aviation Authority is the authority that administers air safety in Panama.

1.4 Is air safety regulated separately for commercial, cargo and private carriers?

Commercial, cargo and private carriers are all subject to Law No. 21 of 28 January 2003.

1.5 Are air charters regulated separately for commercial, cargo and private carriers?

Air charters for commercial, cargo and private carriers are regulated equally under Law No. 21 of 28 January 2003.

1.6 As regards international air carriers operating in your jurisdiction, are there any particular limitations to be aware of, in particular when compared with 'domestic' or local operators? By way of example only, restrictions and taxes which apply to international but not domestic carriers.

Ownership of local airlines offering cabotage services (domestic operations) is restricted to national investors. The law requires that at least 60% of the issued and outstanding capital in a local airline offering cabotage services, be owned by Panamanians.

The issued capital of such local airlines must be represented by nominative shares in the name of Panamanians. Also, the effective control of the airline must be exercised by Panamanians, and for such purposes: (i) at least 60% of the shares granting the right to vote must be nominative shares in the name of Panamanians; (ii) the right to vote with such shares must be effectively exercised by Panamanians; (iii) the board of directors or similar administrative body must be composed, in its majority, by Panamanians; and (iv) the domicile or principal place of business of the airline must be in Panama.

In respect to taxes, there is no special treatment by virtue of nationality. Our income tax system taxes income produced within the territory of Panama. Therefore, income from domestic operations would be considered locally produced, and hence, 100% taxable; whereas income produced by international carriers outside of Panama would not be taxed in Panama.

1.7 Are airports state or privately owned?

Generally, airports in Panama are currently owned directly or indirectly by the government. Law No. 23 of 29 January 2003 (which sets the regulatory framework for the administration of airports in Panama) provides that the government may incorporate private companies, whose shares are to be wholly owned by the government of Panama, for the purpose of operating airports, as is the case of Tocumen International Airport, the main and largest international airport in Panama.

1.8 Do the airports impose requirements on carriers flying to and from the airports in your jurisdiction?

Except for requirements and regulations imposed by our general laws, airports do not impose specific requirements on carriers.

1.9 What legislative and/or regulatory regime applies to air accidents? For example, are there any particular rules, regulations, systems and procedures in place which need to be adhered to?

Law No. 21 of 2003 and the RAC (*Reglamento de Aviación Civil*) make up the regulatory regime that applies to air accidents.

1.10 Have there been any recent cases of note or other notable developments in your jurisdiction involving air operators and/or airports?

No. However, we would note that Tocumen International Airport is building new facilities to expand its operations.

2 Aircraft Trading, Finance and Leasing

2.1 Does registration of ownership in the aircraft register constitute proof of ownership?

Yes. Ownership of an aircraft must be recorded at the Public Registry of Panama in order for such interest to be effective *vis-à-vis* third parties. The Public Registry of Panama is a government entity in which titles, mortgages and leases on Panamanian-registered aircraft are recorded.

2.2 Is there a register of aircraft mortgages and charges? Broadly speaking, what are the rules around the operation of this register?

The Public Registry of Panama is a substantive register governing the recognition and priority of interests of owners, lessors and secured parties.

Under Panamanian law, an aircraft mortgage is effective between mortgagor and mortgagee upon its creation and becomes effective against third parties from the date it is filed for recordation at the Public Registry of Panama and such registration is completed (i.e., filing of a mortgage may take place on day one and recordation completed on day three; the effectiveness of the mortgage against third parties will relate back to the date and time it was first filed at the Public Registry (i.e., day one)).

2.3 Are there any particular regulatory requirements which a lessor or a financier needs to be aware of as regards aircraft operation?

Generally, no. However, in the case of lessors, the lessee/operator of the aircraft has to qualify as a Panamanian national (the majority of its issued and outstanding shares must be directly or indirectly in the hands of Panamanian citizens).

2.4 As a matter of local law, is there any concept of title annexation, whereby ownership or security interests in a single engine are at risk of automatic transfer or other prejudice when installed 'on-wing' on an aircraft owned by another party? If so, what are the conditions to such title annexation and can owners and financiers of engines take pre-emptive steps to mitigate the risks?

There should be no risks if the owner of the engine has a valid title in its favour and it becomes possible to replace such engine with another one, without affecting the aircraft.

2.5 What (if any) are the tax implications in your jurisdiction for aircraft trading as regards a) value-added tax (VAT) and/or goods and services tax (GST), and b) documentary taxes such as stamp duty; and (to the extent applicable) do exemptions exist as regards non-domestic purchasers and sellers of aircraft and/or particular aircraft types or operations?

Panama has a territorial tax regime pursuant to which only income produced within the territory of Panama is subject to income taxes. Hence, if the sale of an aircraft is done in the fiscal territory of Panama, it would be subject to payment of income tax (in the case of any income resulting from the sale) and movable assets transfer tax and services (ITBMS) (which is a goods and services tax).

2.6 Is your jurisdiction a signatory to the main international Conventions (Montreal, Geneva and Cape Town)?

Panama is party to the Convention for the Unification of Certain Rules for International Carriage by Air, the Geneva Convention on the International Recognition of Rights in Aircraft and the Cape Town Convention on Interests in Mobile Equipment and its Protocol.

2.7 How are the Conventions applied in your jurisdiction?

They are adopted by law and treated as such.

2.8 Does your jurisdiction make use of any taxation benefits which enhance aircraft trading and leasing (either in-bound or out-bound leasing), for example access to an extensive network of Double Tax Treaties or similar, or favourable tax treatment on the disposal of aircraft?

Yes, Panama has adopted Double Taxation Treaties with several jurisdictions, such as Ireland. Panama has also exchanged diplomatic notes with other jurisdictions such as the United States, in regard to the treatment of certain taxes for aircraft/companies engaged in international transportation.

3 Litigation and Dispute Resolution

3.1 What rights of detention are available in relation to aircraft and unpaid debts?

In the default case for unpaid debts under a facility agreement or a lease agreement, the lender/lessor may take physical possession of the aircraft if the counterparty does not oppose it and there is no breach of the peace. In the absence of the foregoing conditions, the repossession by the lender/lessor must be authorised by the authorities (judicial proceedings and/or permission of a government entity). If the counterparty does not consent to the repossession or opposes the peaceful repossession of the aircraft, the lender/lessor may commence executory and/or summary proceedings in Panama and may also ask for the attachment of the aircraft in order to gain immediate possession of it.

3.2 Is there a regime of self-help available to a lessor or a financier of an aircraft if it needs to reacquire possession of the aircraft or enforce any of its rights under the lease/finance agreement?

Yes. Please see our answer to question 3.1 above.

3.3 Which courts are appropriate for aviation disputes? Does this depend on the value of the dispute? For example, is there a distinction in your jurisdiction regarding the courts in which civil and criminal cases are brought?

In our jurisdiction, commercial aviation disputes should be heard by a civil circuit court. As to procedural rules, our courts will apply the rules set forth in the Judicial Code. Given the current value of aircraft (even in the case of a single-engine plane), it is very likely that Civil Circuit Courts will have jurisdiction to hear cases involving aircraft.

3.4 What service requirements apply for the service of court proceedings, and do these differ for domestic airlines/parties and non-domestic airlines/parties?

In general terms, there are no differences in the serving process on domestic or foreign airlines. The same rules apply to local and foreign companies. It will depend on where the defendant is located (in Panama or abroad) or if its whereabouts are unknown. In the case that the service of proceedings has to be carried out outside of Panama, our courts will resort to letters rogatory.

3.5 What types of remedy are available from the courts or arbitral tribunals in your jurisdiction, both on i) an interim basis, and ii) a final basis?

In Panama, an arbitration tribunal is permitted to award two types of preliminary or interim relief: interim measures; and preliminary orders.

Interim measures are temporary measures that are issued in the form of an award or in another form by which, at any time prior to the issuance of the final arbitral award, the arbitration tribunal orders a party to: (a) maintain or restore the *status quo* pending determination of the dispute; (b) take action that would prevent, or refrain from taking action that is likely to cause,

current or imminent harm or prejudice to the arbitral process itself; (c) provide a means of preserving assets from which a subsequent award may be satisfied; or (d) preserve evidence that may be relevant and material to the resolution of the dispute.

Contrary to interim measures that are issued after the tribunal has heard all interested parties, preliminary orders are requested and decided *ex parte* (without notice to any other party). Preliminary orders are orders whereby an arbitration tribunal directs a party not to frustrate the purpose of a requested interim measure. Preliminary orders shall expire after 20 working days from the date on which they are issued by the arbitration tribunal. However, the arbitration tribunal may issue an interim measure adopting or modifying the preliminary order after the party against whom the preliminary order is directed has been given notice and an opportunity to present its case.

Courts can issue interim measures as well as precautionary measures such as: (i) attachment or seizure of assets; (ii) sequestration of the administration of the company of the counterparty; and (iii) measures to secure or obtain certain types of evidence, among others.

3.6 Are there any rights of appeal to the courts from the decision of a court or arbitral tribunal and, if so, in what circumstances do these rights arise?

Parties are not entitled to appeal an arbitral award in Panama. For awards issued by arbitration tribunals seated in Panama, parties are only entitled to file a motion to set aside the award (to have it declared null and void), which will be heard by the Fourth Chamber of the Supreme Court.

In general terms, judgments and certain interim orders rendered by the judges at the first instance level are subject to appeal to a higher court. In the case of judgments or related orders issued by civil circuit judges, the affected party may appeal to the Superior Tribunal. Our judicial procedure also establishes the right in certain instances for an affected party to appeal against decisions of the Superior Tribunal to our Supreme Court under an extraordinary recourse known as “*casación*” or “*cassation*”.

4 Commercial and Regulatory

4.1 How does your jurisdiction approach and regulate joint ventures between airline competitors?

Mergers and acquisitions of airlines or joint venture agreements between airlines fall within a general merger control regime.

There is no mandatory pre-merger control in Panama for the approval of mergers or other forms of business combinations. However, our Antitrust Law establishes a voluntary notification process for potential mergers or economic concentrations with the Authority of Consumer Protection and Defence of Competition (ACODECO). If prior verification for the economic concentration is sought and approved, the economic concentration cannot be subsequently challenged (anti-trust immunity).

If the potential transaction involves a collaboration agreement between airlines (i.e., interline agreement, code-sharing agreement, leasing agreement, fleet exchange, route exploitation, among others), prior approval from the Civil Aviation Authority (CAA) must be obtained.

Also, airlines must notify the CAA of any changes related to (i) the management and control of airlines, (ii) stockholders and the percentage of stock ownership, (iii) amendments to the constitutional documents, or (iv) any amendment of the operation manuals or technical information.

If advance verification for the economic concentration is sought and approved, the economic concentration cannot be subsequently challenged. In case no advance verification is sought, at any time within the three years immediately following the effective date of the transaction, ACODECO may file an action seeking that certain conditions be imposed on the parties to ensure competitiveness in the marketplace, in case ACODECO considers the economic concentration to unreasonably restrict or harm free competition. In extreme circumstances, the ACODECO may even request a partial or complete divestiture of the concentration.

4.2 How do the competition authorities in your jurisdiction determine the 'relevant market' for the purposes of mergers and acquisitions?

In order to determine the "relevant market" for a specific good or service, the Authority of Consumer Protection and Defence of Competition will consider two components: (1) "Product Market" (what are the competing goods in the relevant markets); and (2) "Geographic Market" (what is the geographic area of the relevant market).

4.3 Does your jurisdiction have a notification system whereby parties to an agreement can obtain regulatory clearance/anti-trust immunity from regulatory agencies?

Yes, please see our answer to question 4.1 above.

4.4 How does your jurisdiction approach mergers, acquisition mergers and full-function joint ventures?

Please see our answer to question 4.1 above.

4.5 Please provide details of the procedure, including time frames for clearance and any costs of notifications.

The filing consists of a written request before ACODECO, attaching the following documents or including the following information:

Documents:

- a copy of the legal act (i.e., the JV agreement), identifying the names of the parties involved (the "Applicants");
- a copy of the financial statements for the last fiscal year with respect to each of the parties duly certified by authorised public accountants;
- Public Registry Certificate (or foreign-issued equivalent) with respect to each of the Applicants certifying the following information as applicable prior to the concentration: legal existence; good standing; legal representation; and capital structure;
- Secretary Certificate issued by the Applicants describing: the capital structure and shareholder participation before and after the concentration; and persons who have and will have control post-concentration; and
- a copy of documents pertaining to the business project analysis and valuation.

Information:

- general information on each of the Applicants;
- information on the participation of Applicants in the relevant market;
- information on the representatives of the Applicants and their respective powers to represent them;

- a description of the concentration, its objectives, and type of operations;
- specific details of the timing and stages relating to the concentration process;
- an outline of any non-compete clauses and their justification;
- a description of main goods or services produced or offered by each Applicant, as well as (i) a list of the substitution goods or services, and (ii) information on the economic agents who produce, distribute, or commercialise such goods or services in the Panamanian territory, including their market participation data;
- legal and economic limitations, or those of any other kind, which should be accounted for to enter the product market in which the Applicants participate;
- information on the companies which have entered or exited the market in the previous three years, if such information is known;
- information on any participation, directly or indirectly, of the Applicants in the capital, administration, or any other activity of any other economic agent that participates in the same market or activities as the Applicants; and principal suppliers and clients of the Applicant;
- notwithstanding the foregoing list, (i) the Applicants may submit any additional information they consider necessary for purposes of the ACODECO analysis, and (ii) ACODECO reserves the right to request additional information it considers relevant within a span of 20 days after the initial filing. With respect to point (i), in order to better present the applicant's arguments, although it is not strictly required, the information and data provided might be backed by an economic analysis which takes into account the areas that are covered by any concentration guidelines issued by ACODECO (e.g. indexes, barriers to entry, economic benefits, etc.). With respect to point (ii), it is very common for ACODECO to request further information as applicable specifically to the relevant market; and
- the cost for notification, which might be between USD25,000 and USD30,000.

4.6 Are there any sector-specific rules which govern the aviation sector in relation to financial support for air operators and airports, including (without limitation) state aid?

No, there are no such sector-specific rules in Panama.

4.7 Are state subsidies available in respect of particular routes? What criteria apply to obtaining these subsidies?

No, there are no subsidies in our country for any particular routes.

4.8 What are the main regulatory instruments governing the acquisition, retention and use of passenger data, and what rights do passengers have in respect of their data which is held by airlines and airports?

Our political Constitution provides that all personal information and documents are confidential and inviolable, and such information may only be given to a competent authority pursuant to an order. This constitutional mandate is applied to all data, information and documents collected by airlines.

Our country has adopted rules regarding the advance delivery of PNR (passenger name record) information to authorities.

In addition to the above, there is no specific regulation related to passenger data in our country.

4.9 In the event of a data loss by a carrier, what obligations are there on the airline which has lost the data and are there any applicable sanctions?

See question 4.8 above.

4.10 What are the mechanisms available for the protection of intellectual property (e.g. trademarks) and other assets and data of a proprietary nature?

In general, intellectual property rights are subject to protection by the law of the Republic of Panama. Our law provides for the registration of trademarks, patents, industrial models and designs, utility models and/or copyright, depending on each case. The law also provides for judicial and administrative remedies to owners of IP rights to safeguard their rights.

4.11 Is there any legislation governing the denial of boarding rights and/or cancelled flights?

Yes. Law No. 21 of 2003 governs such scenarios.

4.12 What powers do the relevant authorities have in relation to the late arrival and departure of flights?

There are no specific powers that relevant authorities have in this regard.

4.13 Are the airport authorities governed by particular legislation? If so, what obligations, broadly speaking, are imposed on the airport authorities?

Yes, Law No. 21 of 2003 and Law No. 23 of 2003 apply to airport authorities. Each airport has its own Operation Manual. Also, the ICAO (International Civil Aviation Organization) annexes apply to airports.

4.14 To what extent does general consumer protection legislation apply to the relationship between the airport operator and the passenger?

The Consumer Law applies to every economic agent that does business and is located in the Republic of Panama. This law will therefore apply to any airport operator in the Republic of Panama.

4.15 What global distribution suppliers (GDSs) operate in your jurisdiction?

The principal suppliers are Amadeus, Galileo and Sabre, among others.

4.16 Are there any ownership requirements pertaining to GDSs operating in your jurisdiction?

No, there are no ownership requirements pertaining to GDSs operating in Panama.

4.17 Is vertical integration permitted between air operators and airports (and, if so, under what conditions)?

There is no provision that prohibits the integration of the air operator and airports. However, ACODECO might challenge or investigate this vertical integration in light of our antitrust laws, in order to determine if there is an antitrust conduct.

4.18 Are there any nationality requirements for entities applying for an Air Operator's Certificate in your jurisdiction or operators of aircraft generally into and out of your jurisdiction?

Please see our answer to question 1.6 above.

5 In Future

5.1 In your opinion, which pending legislative or regulatory changes (if any), or potential developments affecting the aviation industry more generally in your jurisdiction, are likely to feature or be worthy of attention in the next two years or so?

At this moment, there are no pending legislative or regulatory changes that we are aware of, nor any potential development that may affect the aviation industry in our jurisdiction.

Acknowledgment

The authors would like to thank Pilar Castillo for her invaluable assistance in the writing of this chapter. Ms. Castillo joined the firm in 2010, and became a partner in 2017. As an active member of ARIFA's aviation legal team, Ms. Castillo represents leasing companies and investors in the most complex transactions, as COPA, the Panamanian airline, expands its fleet for international transport based at Tocumen International Airport. Ms. Castillo has an LL.M. from Fordham University and an LL.B. from Santa Maria La Antigua University. In 2016, Ms. Castillo was accepted as a member of IAWA (the International Aviation Women's Association).

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Arias, Fábrega & Fábrega's (ARIFA) legal team experience in the aviation sector includes: advising airlines, aircraft owners, aircraft lessors and lessees, banks, and industry providers such as fuel suppliers, in the negotiation and drafting of complex aircraft acquisition and leasing agreements; registration of aircrafts before the Civil Aviation Board; joint venture agreements; international IPOs of leading commercial airlines in the region; as well as airport infrastructure project financing and fuel procurement contracts.

ARIFA's wide range of services in the area of aviation law also includes providing legal advice to industry providers competing in the public procurement and public-private partnerships field, with full understanding of the requirements of the aviation contracting authorities and the various stages of the awarding process.

Over the last 20 years, ARIFA aviation group has been actively involved in the delivery, sale, and financing of aircraft leased to COPA Airlines, representing leasing companies and investors in the most complex transactions, as the Panamanian airline expands its fleet for international transport based at Tocumen International Airport.

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