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# THE AVIATION LAW REVIEW

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FOURTH EDITION

EDITOR  
SEAN GATES

LAW BUSINESS RESEARCH

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This article was first published in The Aviation Law Review, 4th edition  
(published in August 2016 – editor Sean Gates).

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Fourth Edition

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LAW BUSINESS RESEARCH LTD

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Published in the United Kingdom  
by Law Business Research Ltd, London  
87 Lancaster Road, London, W11 1QQ, UK  
© 2016 Law Business Research Ltd  
[www.TheLawReviews.co.uk](http://www.TheLawReviews.co.uk)

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ISBN 978-1-910813-15-7

Printed in Great Britain by  
Encompass Print Solutions, Derbyshire  
Tel: 0844 2480 112

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# ACKNOWLEDGEMENTS

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The publisher acknowledges and thanks the following law firms for their learned assistance throughout the preparation of this book:

ALLEN & OVERY LLP

ANJARWALLA & KHANNA

ASSEGAF HAMZAH & PARTNERS

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YOMI OSHIKOYA & CO (LEGAL PRACTITIONERS)

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# EDITOR'S PREFACE

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The reach of *The Aviation Law Review* continues to expand and I welcome contributions from Felsberg in Brazil, Conyers Dill and Pearman in Bermuda, The Air Law Firm for Spain and the Chambers of Robert Lawson QC, who now takes up the cudgels for the UK. My thanks to you all for volunteering and to our seasoned contributors for their continued support in what I believe is becoming acknowledged as a 'go-to' publication in our field.

In litigation and regulatory terms the themes of previous years continue to predominate. The Court of Justice of the European Union (ECJ) (i.e., the alternative legislature for Europe) continues to bear down on operators, and indirectly passengers, with judicial activism in the sphere of Regulation (EC) No. 261/2004. All rational defences on the basis of exceptional measures have been dismissed by the court in favour of what seems to be the theory that if it happens it was not exceptional! Ultimately passengers will bear the cost of this through increasing fares but this will be a bullet easily dodged by the judges, who, of course, have no electorate and no accountability.

Unmanned aerial vehicles also continue to be a hot topic, with regulation barely keeping up with their proliferation. The need for regulation is highlighted by ever more frequent near-miss reports; though the latest may have been in respect of an unmanned aerial plastic bag rather than one that was under control. Privacy regulations are also coming into force but the difficulty of identifying the particular operator of any unlicensed drone still poses difficulties that are likely to lead to registers created at the point of sale or by transferors to new users.

We have introduced a couple of new topics in this year's *Review* that I hope will be of interest and value to readers. The first of these concerns compensation levels for personal injury and fatal accidents in the various jurisdictions of the contributors. I first attempted an international review of comparative compensation more than 20 years ago, and looking back on it can be depressing from an inflationary prospective! The product then was greatly appreciated in various quarters of our industry and I am hopeful that we will provide a useful service with this edition.

'Just culture' remains a subject of warm debate in various quarters. The tension between confidential reporting and criminal prosecutions post-accident has in no way diminished and the International Civil Aviation Organisation and Flight Safety Foundation, among others,

are working hard in the interests of flight safety to develop the practice. As a guide to the issues I have invited contributions on issues of discoverability of reports from contributors to this edition and the responses will usefully inform the debate. The task of convincing prosecutors of the desirability of affording the greatest possible respect to the confidentiality of voluntary reporting is a considerable challenge to those of us interested in advancing safe flying and anything that assists the cause should be embraced.

This preface would not be complete without a brief mention of 'Brexit', which will continue to provide the substance of much speculation in the coming years. The precise terms of the ongoing relationship between the UK and the EU in this sphere will be the subject of prolonged negotiation. In the interests of safety and security it is clearly desirable for the UK to continue to play an important role in the oversight and regulation of aviation in the region. If Brexit means that the influence of the ECJ will be diminished for those operators in the UK, that will at least be a silver lining for them.

Finally, I would like to express my gratitude to Tom Thornton from Florida for his contribution on *forum non conveniens* in the United States. As many readers will know, after any accident, plaintiffs will seek out the jurisdiction for resolution of their claims that will afford them a combination of the highest level of compensation with the lowest upfront cost, and with a reasonably predictable outcome. These considerations lead many plaintiffs to the courts in the United States, notwithstanding the tenuous links some accidents have with that jurisdiction, where they are ably assisted by some of the most inventive plaintiff lawyers worldwide. Tom has spent a lifetime resisting those efforts on behalf of airlines and others and is an acknowledged expert as is clear from his contribution to this area in the current edition.

Again, many thanks to our contributors and I hope that our readers will derive great benefit from the fourth edition as they have from its predecessors.

**Sean Gates**

Gates Aviation Limited

London

July 2016

## Chapter 10

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# DOMINICAN REPUBLIC

*Rhina Marielle Martínez Brea and Mayra Carolina Jacobo Troncoso<sup>1</sup>*

### I INTRODUCTION

Civil aviation is an activity of fundamental importance for the Dominican Republic, having an enormous impact on the country's commercial activities in general. In particular, civil aviation constitutes one of the principal tools for the development of tourism in our country. In 2015 alone, 6,231,834 international passengers visited the Dominican Republic,<sup>2</sup> mainly through two of the eight international airports: Punta Cana International Airport (located in the resort area of Punta Cana, on the east side of the island) and Las Americas International Airport (located approximately 22 kilometres east of Santo Domingo, the capital city of the Dominican Republic).

The geographical location of the Dominican Republic makes it a potential hub for international passenger traffic, as it provides easy access to and from major cities in the Americas and Europe. Currently approximately 55 international airlines have authorisation to operate regular flights to and from the Dominican Republic.<sup>3</sup>

In our country, civil aviation is governed by the provisions of Dominican Law No. 491-06<sup>4</sup> (the Civil Aviation Law) and its Regulations, without prejudice and by several international treaties and conventions duly ratified by the Dominican Republic. The scope of the Civil Aviation Law includes the inspection, oversight and control of all domestic or foreign civil aircraft, their owners, operators, crew, passengers and cargo transported in

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1 Rhina Marielle Martínez Brea is a partner and Mayra Carolina Jacobo Troncoso is an associate at Squire Patton Boggs Peña Prieto Gamundi.

2 [www.sectur.gob.do/Estad%C3%ADsticas/Estadistica2014/tabid/422/Default.aspx](http://www.sectur.gob.do/Estad%C3%ADsticas/Estadistica2014/tabid/422/Default.aspx).

3 [www.jac.gob.do/](http://www.jac.gob.do/).

4 Law No. 491-06, on Civil Aviation. Official Gazette No. 10399 of 28 December 2006, as amended by Law No. 67-13, Official Gazette No. 10713 of 25 April 2013.

such aircraft, as well as any person that is involved in aviation activities within Dominican territory, that departs from, lands on, overflies, or in any other way is under the jurisdiction of national sovereignty.<sup>5</sup>

Pursuant to the provisions of Articles 5 and 6 of the Civil Aviation Law, the Dominican State has complete and exclusive sovereignty over its territory. Consequently, it exercises jurisdiction over its territory, its jurisdictional waters and airspace.

Article 7 of the Civil Aviation Law sets forth an ample list of acts, events and behaviours that are subject to Dominican jurisdiction;<sup>6</sup> these include all acts performed, events, offences, misdemeanours, crimes or any of the following violations of Dominican laws and regulations:

- a* violations committed on board Dominican aircraft within the Dominican territory, or while they overfly the high seas or over territory not submitted to the sovereignty of another state;
- b* violations committed on board Dominican aircraft while they overfly the territory of a foreign state, excepting those cases of interest to the security or public order of the underlying state;
- c* violations committed on board foreign aircraft that overfly Dominican territory or are stationed in Dominican territory, when such acts, events, offences, misdemeanours or crimes are of interest to or affect the security or public order of the Dominican Republic, or when they occur or have effects within Dominican territory; and
- d* violations committed during a flight of a foreign aircraft, when such a foreign aircraft lands first in the Dominican Republic after the crime is committed.

International public air transportation services are by law reserved for Dominican air operators. However, such services may be granted to foreign air operators when the Dominican Republic has signed and ratified agreements or treaties with the country of origin of the requesting foreign air operator. The Dominican Republic currently has formal bilateral relationships with over 40 sovereign states through the execution and ratification of air service agreements.<sup>7</sup>

There are three regulatory bodies that oversee civil aviation activities in the Dominican Republic: the Civil Aviation Board (JAC);<sup>8</sup> the Dominican Institute of Civil Aviation (IDAC);<sup>9</sup> and the Dominican Aviation Security Body (CESAC).<sup>10</sup>

The main civil aviation regulatory body of the Dominican Republic is the JAC, which is the advisory body to the Executive branch regarding commercial aviation. It is also the main regulatory body with respect to the economic aspects of commercial aviation.

The IDAC is a technical and specialised public body in charge of the supervision and control of civil aviation in Dominican Republic, except when the JAC has jurisdiction over specific matters.

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5 Article 2 of the Civil Aviation Law.

6 Article 7 of the Civil Aviation Law.

7 [www.jac.gob.do/index.php/sobre-nosotros/historia](http://www.jac.gob.do/index.php/sobre-nosotros/historia).

8 The JAC was created on 2006 by Law No. 491-06.

9 Created by the Civil Aviation Law.

10 CESAC was created by Law No.188-11 on Aviation Security and Civil Aviation. Official Gazette No. 10628, dated 22 July 2011. CESAC was created in response to security recommendations under the Chicago Convention on International Civil Aviation.

The Dominican Aviation Security Body is a dependency of the Ministry of the Armed Forces and is in charge of the security of the passengers, crew, ground staff and the general public, the aircraft, airports and aerodromes, and of the infrastructures and facilities that provide civil aviation services.

An air carrier may obtain the corresponding authorisation to operate as an air operator<sup>11</sup> in the Dominican Republic as a national air operator or as a foreign air operator.<sup>12</sup>

National air operators must comply with the following two requirements:<sup>13</sup>

- a* the obtainment of a certificate of economic authorisation issued by the JAC; and
- b* the obtainment of an air operator certificate issued by the IDAC.

Foreign air operators must fulfil the following two requirements:

- a* the obtainment of an operation permit<sup>14</sup> issued by the JAC; and
- b* the obtainment of the operations specifications issued by the IDAC based on the characteristics of the operation permit.

In addition, in both cases, each air operator's security manual has to be validated and approved by the CESAC.

## **II LEGAL FRAMEWORK FOR LIABILITY**

### **i International carriage**

The Dominican Republic is party to the following multilateral agreements relating to international carriage:

<i>Agreement</i>	<i>Date signed by the Dominican Republic</i>	<i>Date ratified by the Dominican Republic</i>	<i>Effective date of the agreement</i>
Beijing Convention on the Suppression of Unlawful Acts Relating to International Civil Aviation	10 September 2010	27 November 2012	Not in force
Beijing Protocol to the 1971 Hague Convention on the Suppression of Unlawful Seizure of Aircraft	10 September 2010	22 March 2013	Once ratified by 22 states
Chicago Convention on International Civil Aviation	7 December 1944	25 January 1946	4 April 1947
Hague Hijacking Convention	29 June 1971	22 June 1978	14 October 1971

11 An air operator is any national entity directly or indirectly dedicated to national or international commercial air transportation.

12 A foreign air operator is any non-national operator directly or indirectly in charge of carrying on commercial air transportation to or from the Dominican Republic.

13 Both certificates may be requested concurrently.

14 The operation permit is the permission granted to foreign air operators by the JAC.

<i>Agreement</i>	<i>Date signed by the Dominican Republic</i>	<i>Date ratified by the Dominican Republic</i>	<i>Effective date of the agreement</i>
Warsaw Convention for the Unification of Certain Rules Relating to International Carriage by Air	12 October 1929	25 February 1972	25 May 1972
Hague Protocol to Amend the Convention for the Unification of Certain Rules Relating to International Carriage by Air	16 March 1957	25 February 1972	25 May 1972
Montreal Convention	28 May 1999	21 September 2007	20 November 2007
Multilateral Open Skies Agreement – Members of the Latin American Civil Aviation Commission	5 November 2010	2 February 2011	

The Civil Aviation law, Law No. 188-11 on Airport Security and Civil Aviation (Law No. 188-11) and the regulations issued by the JAC, IDAC and CESAC, to an important extent have implemented the international treaties listed above.

The application of the Civil Aviation Law and its regulations may not contradict the application of the provisions of international treaties and multilateral agreements duly ratified by the Dominican Republic.<sup>15</sup> Likewise, pursuant to the provisions of Paragraph I of Article 2 of Law No. 188-11, in the event of a contradiction between Law No. 188-11 and the provisions of an international treaty, the provisions of the international treaty shall prevail.

The Dominican Republic is also a party to air service agreements and memoranda of understanding regarding the degree of openness of traffic rights with the following countries:<sup>16</sup> Antigua and Barbuda, Argentina, Aruba, Austria, Belgium, Brazil, Canada, Chile, Colombia, Costa Rica, Cuba, Czech Republic, Dubai, Ecuador, El Salvador, Finland, France, Germany, Guatemala, Hungary, Iceland, India, Ireland, Israel, Italy, Jordan, Kuwait, Luxembourg, Mexico, Netherlands, Panama, Paraguay, Peru, Portugal, Qatar, Russia, Saint Martin, Serbia, Spain, Switzerland, Trinidad and Tobago, Turkey, United Arab Emirates, United Kingdom United States, Uruguay and Venezuela.

## **ii Internal and other non-convention carriage**

Pursuant to the provisions of Article 191 of the Civil Aviation Law, the operator of any aircraft that flies over the territory of the Dominican Republic shall be liable for all damage caused to third parties or to the property of third parties located on the ground. The affected party has the right to receive compensation when the damage was caused by an aircraft in flight or by any part or any object that falls from such an aircraft.<sup>17</sup>

## **iii Passenger rights**

National and foreign air carriers shall indemnify the damage caused by the death or by any injury suffered by a passenger as a consequence of the transportation. Such damage includes

<sup>15</sup> Article 2 of the Civil Aviation Law.

<sup>16</sup> [www.jac.gob.do/index.php/sobre-nosotros/cuadro-de-acuerdos](http://www.jac.gob.do/index.php/sobre-nosotros/cuadro-de-acuerdos).

<sup>17</sup> Article 193 of the Civil Aviation Law.

physical as well as mental injuries. Air carriers shall also compensate passengers for the damages arising out of the loss, destruction or delay of the cargo or baggage.<sup>18</sup> The obligation to compensate for the damage described above includes damage caused by *force majeure*.<sup>19</sup>

**iv Other legislation**

For cases not contemplated by the Civil Aviation Law or by the regulations, rules and norms governing the IDAC and the JAC, the general principles of aviation law shall be applicable; and, in the absence of such principles, then the general principals of the ‘common law’ of the Dominican Republic shall be applicable.<sup>20</sup>

**III LICENSING OF OPERATIONS**

**i Licensed activities**

Pursuant to the provisions of the Civil Aviation Law (1) all activities relating to civil, national or foreign aircraft, its owners, operators, crew, passengers, cargo; and (2) any person involved in aviation activities within Dominican territory, that departs from, lands on, overflies, or in any other way is under the jurisdiction of national sovereignty will be regulated by this law and will be subject to the jurisdiction of the JAC, the IDAC and the CESAC.

The following types of authorisation are granted by the above-mentioned institutions:

- a* economic authorisation certificate for national air carriers;
- b* operation permit for foreign air carriers;
- c* air operator certificate for national air carrier;
- d* consignee licences;
- e* aircraft registration for national aircraft;
- f* mortgage registration for national aircraft;
- g* charter flight authorisations;
- h* code-share agreement authorisations;
- i* security manual approval; and
- j* operations specification approval.

Most of these authorisations must be renewed after a specific period. For example, the operation permit must be renewed every three years. In addition, most of these authorisations require that the air carriers keep current their security manual, corporate documents, tax obligations in the Dominican Republic and payments to the corresponding authorities.<sup>21</sup>

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18 Article 194 of the Civil Aviation Law.

19 Article 197 of the Civil Aviation Law.

20 Article 3 of the Civil Aviation Law.

21 The requirements for these authorisations may vary depending on the type of air carrier and activity.

**ii Ownership rules**

In principle, international public air transportation services are reserved for Dominican air operators. Such services may be granted to foreign air operators when the Dominican Republic has signed and ratified agreements or treaties with the country of origin of the requesting foreign air operator.<sup>22</sup>

Pursuant to the provisions of the Civil Aviation Law,<sup>23</sup> to be considered a national air carrier, companies incorporated and in existence pursuant to the laws of the Dominican Republic shall also comply with the following requirements:

- a* at least 35 per cent of the company's capital or substantial property shall be owned by Dominican physical persons or entities, and 35 per cent of the members of the board of directors shall be Dominican;
- b* at least 51 per cent of the company's managers (who are not members of the board) must be Dominicans;
- c* the principal place of business shall be located in the Dominican Republic; and
- d* 100 per cent of the company's capital may be owned by foreign investors, as long as such investment belongs to an internationally recognised foreign air carrier or to a branch controlled by such an air carrier, authorised by the executive branch of the Republic.

To obtain the corresponding certificate of economic authorisation, the JAC requires that national air carriers file the following documents:<sup>24</sup>

- a* the company's three most recent sets of financial statements, audited by a certified public accountant.<sup>25</sup> The financial statements must include: (1) a general balance, (2) income statement, (3) details of the working capital, and (4) details of financing sources. The statements must also include explanatory notes in accordance with international accounting standards. The financial statements must be presented in the most detailed manner possible. In this respect, the JAC has the right to request additional information;
- b* a business plan and feasibility study including, among other requirements: (1) an operational study showing the capacity to operate the business (aircraft, capacity, human resources, etc.); (2) a financial study showing the financial capacity to operate the business; and (3) estimated results for the upcoming 12 months;
- c* the funds for the financing of the first three months of operations must be available in a bank account; and
- d* the funds for the financing of the following nine months of operation must be backed by cash, securities or a dedicated line of credit.

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22 Article 220 of the Civil Aviation Law.

23 Article 237 of the Civil Aviation Law, as amended by Law No. 67-13.

24 Resolutions No. 221-2104, dated 1 October 2014, and No. 237-2014, dated 15 October 2014, issued by the JAC.

25 The information contained in the most recent financial statement shall not be older than four months before the date of the request.

**iii Foreign carriers**

Foreign air carriers interested in operating in the Dominican Republic shall be duly approved to carry out international air transportation services by the corresponding civil aviation authorities of the country of origin. In addition, it is necessary that a bilateral agreement between the country of origin and the Dominican Republic has been executed and ratified. In the event that a bilateral agreement has not been executed, the foreign air carrier must present proof of reciprocity issued by the government of the country of origin in favour of Dominican air transportation companies.<sup>26</sup>

Once the existence of a bilateral agreement or proof of reciprocity with the Dominican Republic is confirmed, all foreign air carriers are required to obtain the following authorisations to operate in the Dominican Republic: (1) establishment of a branch, (2) operation permit issued by the JAC, (3) operations specifications issued by the IDAC, and (4) certificate of compliance with the aviation security standards (AVSEC) requirements issued by the CESAC.

***Establishment of a branch***

To establish a branch in the Dominican Republic, a foreign air carrier must obtain a mercantile registry certificate, a taxpayer identification number and a presidential decree authorising the establishment of domicile. This process takes approximately two months. Once this process is completed, the foreign air carrier must proceed with filing for the obtainment of the corresponding operation permit from the JAC.

***Operation permit issued by the JAC***

Before the JAC grants the operation permit it will evaluate whether the foreign air carrier is qualified and competent to carry out international commercial air transportation services, and complies with the provisions of the Civil Aviation Law. To fulfil these requirements, the foreign air carrier must file the following documents:

- a* authorisation for the exploitation of the requested routes from the country where the foreign air carrier is established;
- b* incorporation documents of the foreign air carrier (certificate of formation, operating agreement, articles of association, etc.) notarised and legalised at the nearest Dominican consulate (or legalised according to the Apostille Convention, if applicable);
- c* power of attorney for the local representative indicating that its domicile for any notification will be its local representative's domicile, duly notarised and apostilled;
- d* copy of its mercantile registry certificate;
- e* copy of the air operator's certificate;
- f* original of the insurance certificate;
- g* certificate from the CESAC, indicating that the foreign air carrier's security complies with the AVSEC requirements;
- h* copy of the taxpayer identification card;
- i* marketing study of the requested routes indicating: (1) passenger projections, (2) cargo (demand), (3) competence analysis (the different airlines that cover these routes), (4) destination (offer), (5) market shares, and (6) the schedule of the requested routes;

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26 Article 240 of the Civil Aviation Law.

- j* certificate from the tax authorities, indicating that the foreign air carrier is in compliance with its tax obligations; and
- k* payment of a fee of US\$5,000.

The foreign air carrier must acknowledge in the request letter that it is subject to the provisions of the Civil Aviation Law. The JAC may request additional documents or information it considers necessary. Once the filing is completed, the JAC legal department will review the request and submit it for the approval of the board at their next meeting. The board usually holds two meetings per month. The JAC approval takes approximately 30 days from the filing of all the documents. The operation permit will be valid for three years. Once this process is complete the foreign air carrier must proceed with the application for the operations specifications from the IDAC.

***Operations specifications issued by the IDAC***

To obtain the operations specifications the following documents and information will be required:

- a* the company's name, address, main base of operations abroad and in the Dominican Republic, fax number, email addresses and website information;
- b* map with the routes authorised by the JAC, indicating the destination and alternative airports in the Dominican Republic;
- c* copy of its mercantile registry certificate;
- d* copy of the taxpayer identification card;
- e* name, telephone number, fax, email and address of the maintenance director, chief pilot and quality control director, or equivalent officers;
- f* name, telephone number, fax, email and address of the executive technical staff in the Dominican Republic;
- g* copy of the air operator's certificate;
- h* copy of the operation permit issued by the JAC;
- i* copy of the maintenance and ticket-counter service agreement with the provider in the Dominican Republic, if applicable;
- j* letter authorising the person who will execute the operations specifications;
- k* Name, telephone number, fax, email and address of the operations inspector and maintenance inspector, from where the foreign air carrier is established;
- l* runway analysis of the destination and alternative airports in the Dominican Republic;
- m* compliance letter in accordance with RAD 129;
- n* copy of the operations specifications issued by the relevant civil aviation authorities of the country where the foreign air carrier is established;
- o* copy of the maintenance manual and maintenance programme for each type of aircraft;
- p* reduced vertical separation minimum;
- q* registration certificates of all the authorised aircraft;
- r* Configuration of the aircraft: number of passengers, cargo capacity, maximum take-off weight, and proof of compliance with the traffic collision avoidance system; and
- s* minimum equipment lists.

The IDAC approval takes approximately 30 days from the filing of all the documents.

*Certificate of compliance with the AVSEC requirements, issued by the CESAC*

To obtain the certificate of compliance, foreign air carriers must file their security manual for their operations in the Dominican Republic in Spanish. This process may be undertaken jointly with the application for the operations specifications approval, and usually takes 30 days.

#### **IV SAFETY**

The safety aspects of civil aviation in the Dominican Republic are regulated by two different institutions: the IDAC and the CESAC.

The IDAC is, among other things, responsible for the oversight of security in air navigation and for ensuring operational safety, including the operation of aircraft, crew and air transportation services in the Dominican Republic. In particular, safety issues are regulated by the Dominican Aviation Regulations, which are issued by the IDAC in accordance with international treaties and agreements.

The CESAC, as indicated above is in charge of the security of the passengers, crew, ground staff and the general public, the aircraft, airports and aerodromes, and of the infrastructure and facilities that provide civil aviation services. The CESAC will only grant a certificate of compliance if the security manual of the air carrier complies with the AVSEC requirements. To obtain the certificate of compliance, foreign air carriers must file the security manual for their operations in the Dominican Republic. The security manual must contain at least the following:

- a* organisation of and regulations regarding air security;
- b* passenger and cabin baggage security;
- c* baggage security;
- d* crew security;
- e* passenger and cargo collation;
- f* aircraft security;
- g* catering, shops and airlines supply security;
- h* security of the aircraft cleaning operations;
- i* cargo, mail and packages security;
- j* correspondence;
- k* staff hiring;
- l* staff training;
- m* contingency planning; and
- n* incident reporting procedures.

In addition, Aeropuertos Dominicanos Siglo XXI (Aerodom) – a private entity benefiting from an exclusive concession to operate, maintain and develop six airports in the Dominican Republic, including Las Americas International Airport – has implemented several supervision measures to increase trust in commercial aviation and to improve security regarding passenger movement and the handling of baggage and cargo. Among other measures, Aerodom has created a security committee, a security audit programme, a baggage security programme and a security equipment maintenance programme.<sup>27</sup>

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27 [www.aerodom.com](http://www.aerodom.com).

## V INSURANCE

Before it grants an operation permit to a foreign air carrier or an economic authorisation certificate to a national air carrier, The JAC will verify the existence of an insurance certificate in accordance with the following provisions:<sup>28</sup>

- a* policy liability coverage, which could be established by a combined single limit, for any occurrence, in the event of damage, death and bodily injury to passengers; destruction or loss or damage to baggage and cargo; delays in the air transportation of passengers, baggage or cargo; indicating the following limits of liability:
- death, injury to passengers; damage to baggage (Articles 17 and 21 Montreal Convention of 1999);
  - damage to passengers, baggage or cargo due to air carrier delays (Articles 19 and 22 pt. I Montreal Convention of 1999);
  - damage caused by destruction, loss or harm to the cargo (Articles 18 Pt. I and 22 Pt. III, Montreal Convention 1999);
  - damage caused by destruction, loss or harm to checked baggage, when it occurs on board the aircraft or in the custody of the air carrier (Articles 17 and 22 Montreal Convention of 1999);
  - death and injury of passengers; and
  - damage and injury caused by the air carrier to third parties or their property when the aircraft is grounded (Article 191 of the Civil Aviation Law).

The minimum amount of the certificate of liability insurance for national or foreign air carriers that operate international flights will be established by the Convention for the Unification of Certain Rules for International Carriage by Air, dated as of 28 May 1999, as follows:

<i>Coverage</i>	<i>Special drawing rights (SDR)</i>	<i>Amount in US dollars (1 SDR = US\$1.39)<sup>29</sup></i>
Death, injuries to passengers; damage to baggage (Articles 17 and 21 Montreal Convention of 1999)	100,000 SDR per passenger	US\$139,000
Damage to passengers, baggage or cargo due to air carrier delay (Articles 19 and 22 Pt. I Montreal Convention of 1999)	4,150 SDR per passenger	US\$5,769
Baggage transport – destruction, loss, harm or delay of checked baggage (Article 22 Montreal Convention of 1999)	1,000 SDR per passenger	US\$1,390
Cargo transport – destruction, loss, harm or delay (Article 22 Montreal Convention of 1999)	17 SDR per kilogram	US\$23.63 per kilogram

## VI COMPETITION

Dominican law does not include specific competition regulation for the aviation industry. However, all industries are subject to the provisions of Law No. 42-08 on the Defence of Competition (Law No. 42-08), which has the primary objective of promoting and defending

<sup>28</sup> Requisites Manual, JAC 001.

<sup>29</sup> Rate as of 29 May 2015: [www.convert-me.com/es/convert/currency/XDR.html](http://www.convert-me.com/es/convert/currency/XDR.html).

the effective competitiveness of all industries to increase the economic efficiency of all markets of goods and services, and to create benefit and value in favour of consumers within the Dominican territory.<sup>30</sup> In addition, the Dominican Constitution reserves the right to create monopolies in favour of the Dominican government.<sup>31</sup>

Law No. 42-08 applies to all areas of economic activity and to all economic agents, including acts or agreements that may have originated outside the Dominican Republic but restrict competition within the Dominican territory.<sup>32</sup> All acts, agreements and arrangements among competing economic agents, express or implied, verbal or written, with the objective or effect of imposing unjustified barriers in the market are considered as ‘concerted practices’ and ‘anticompetition agreements’ and are prohibited by Law No. 42-08. In that regard, the following activities are considered to be concerted practices and anticompetition agreements:<sup>33</sup>

- a* to agree to impose prices, discounts, extraordinary charges or other selling conditions, as well as to exchange information that would produce the same objective or effect;
- b* to coordinate or agree on offers or on the withdrawal from bidding processes, tenders or contests;
- c* to distribute or assign segments or sections of goods or services markets assigning specific time or space, providers or clients;
- d* to limit the production, distribution or commercialisation of goods or the rendering or frequency of services, without regard to their nature; and
- e* to eliminate competitors from the market or limit their access.

Law No. 42-08 does not set forth any provisions on mergers or corporate reorganisations.

Under the Civil Aviation Law, code-share agreements, which are common in the aviation industry, require the approval of the JAC, who, as part of the approval process, will evaluate the competition aspects of such agreements and their implications for consumers in the Dominican Republic. Foreign air carriers applying to the JAC for an operation permit to operate in the Dominican Republic are also subject to this evaluation process.<sup>34</sup>

## **VII ESTABLISHING LIABILITY AND SETTLEMENT**

### **i Procedure**

In the Dominican Republic the mechanisms to settle claims are the following: judicial procedures; arbitration; mediation; and conciliation.

For the cases where the Montreal Convention is applicable, any action must be brought within a period of two years, reckoned from the date of arrival at the destination, or from the date that the aircraft ought to have arrived, or from the date on which the carriage stopped.<sup>35</sup>

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30 Article 1 of Law No. 42-08.

31 Article 50, Paragraph 1 of the Dominican Constitution.

32 Article 3 of Law No. 42-08.

33 Article 5 of Law No. 42-08.

34 Articles 214 and 257 of the Civil Aviation Law.

35 Article 35 of the Montreal Convention.

The determination of the parties that may be joined in actions for compensation will depend on the type of claim and the situation that caused such a claim. For instance, if the claim is for loss of baggage, the carrier will be the only one involved.

The allocation of liability will be determined by the participation of each defendant in the chain of liability.

**ii Carriers' liability towards passengers and third parties**

The liability of the air carrier towards passengers and third parties will depend on the type of case at hand. For cases involving international, carriage the provisions of the Montreal Convention would be applicable. These provisions are widely recognised by Dominican courts.

**iii Product liability**

In addition to the provisions of (1) the Montreal Convention, (2) the Civil Aviation Law regarding passenger rights described earlier in this article, and (3) Articles 198 through 203 of the Civil Aviation Law regarding damages caused by the collision of aircraft or during boarding or disembarking, there are no other relevant provisions in Dominican legislation specifically regulating manufacturers' and owners' liability to passengers and operators.

Notwithstanding the above, the Dominican Consumer Law<sup>36</sup> – which aims to protect the economic interests of consumers through equitable treatment and through the prevention of discriminatory or abusive behaviour on behalf of providers of goods and services – contains general principles that shall be followed by all services providers in the country.

**iv Compensation**

In addition to the compensation set forth by the Montreal Convention, the Dominican Republic recognises:<sup>37</sup>

- a* material damages, which include corporal damages; and
- b* moral damages, which are those concerning mental capabilities.

The Dominican Republic does not have state-founded social security or medical support for those incapacitated in aviation accidents.

## **VIII THE YEAR IN REVIEW**

In 1993 the Dominican Republic was downgraded to Category III by the Federal Aviation Administration (FAA). As a consequence, Dominican air operators lost the right to fly to the country's main destinations (i.e., New York, Miami and Puerto Rico), and many of them closed operations shortly thereafter. During the following years, foreign carriers, mainly American Airlines and American Eagle, dominated the routes to and from New York, Miami and Puerto Rico.

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36 Law No. 358-05 on Consumer Protection, dated 6 September 2005.

37 Article 196 of the Civil Aviation Law.

After 14 years of sanctions imposed by the International Air Transport Association and the FAA, in 2007 the Dominican Republic was finally upgraded to Category I, allowing Dominican registered aircraft the option to operate once again commercial flights to and from the territory of the United States.

However, it was not until May 2015 that the Dominican Republic was finally able to have a Dominican air carrier authorised to operate international flights to and from the territory of the United States, with the renewal by the JAC of the Certificate of Economic Authorization of Pan Am World Airways Dominicana, SA (PAWA Dominicana). PAWA Dominicana has since been operating regular flights to Antigua, Saint Martin, Curacao, Aruba and more recently to Havana, Cuba. It is expected that PAWA Dominicana will start operating regular international flights from the Dominican Republic to Miami, New York and Puerto Rico before the end of 2016.

## **IX OUTLOOK**

Air carriage operations in the Dominican Republic increased by 4.02 per cent in 2015, with 98,000 flights between January and December, compared with 94,296 flights in the same period in 2014<sup>38</sup> and are expected to continue to grow in 2016. As of March 2016, the JAC had approved 777 new air operations, of which 686 were tourist charter flights and 91 were cargo flights that will land in different airports of the US and other nations.<sup>39</sup>

More than 200 recently approved operations correspond to SWIFT Air and over 100 to TEM Enterprises, for flights departing from different cities of the US (including Atlanta, Baltimore, Charlotte, Cincinnati, Cleveland, Dallas, Houston, Nashville and New Orleans). In addition, 122 charter operations were approved for Aerolineas Argentinas, SA including routes to Buenos Aires, Caracas and Punta Cana, that began on 1 April 2016 and will continue until 31 October 2016, with four weekly flights.<sup>40</sup>

In addition to charter flights, the JAC has recently authorised the operation of regular passengers and cargo flights to Orbest (with approved flights between Madrid and Punta Cana) and to Aerolitoral, SA (with approved flight between Mexico City and Santo Domingo).<sup>41</sup>

Finally, it is expected that by the end of 2016, routes from Cologne, Germany to Puerto Plata, Santiago and Punta Cana in the Dominican Republic will be operated regularly by Eurowings, a subsidiary of the Lufthansa Group.

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38 <http://suelocaribe.com/index.php/2013-12-17-01-27-52/3912-aeropuertos-dominicanos-registraron-12-3-millones-de-pasajeros-durante-el-2015>.

39 [www.listindiario.com/la-republica/2016/03/31/413540/aviacion-civil-aprobo-777-nuevas-operaciones-aereas](http://www.listindiario.com/la-republica/2016/03/31/413540/aviacion-civil-aprobo-777-nuevas-operaciones-aereas).

40 Ibidem.

41 Ibidem.

## Appendix 1

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# ABOUT THE AUTHORS

### **RHINA MARIELLE MARTÍNEZ BREA**

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Ms Martínez focuses her practice on corporate, lending, banking and securities, civil aviation, and real estate matters. She advises and assists clients with the drafting and negotiation of a variety of contracts including joint venture, shareholder, stock purchase, escrow, services, aircraft lease and mortgage, consulting, stock pledge and chattel mortgage agreements. Ms Martínez also provides legal advice to non-Dominican and Dominican corporate clients, including US and European banks, in the structuring, implementing and securing of international financial transactions.

Rhina was recently recognised in *The Legal 500 – Latin America* guide (2014 edition) as being ‘responsive’ and praised for being ‘knowledgeable on aviation law matters and international finance’. Ms Martínez is a member of the Dominican Bar Association and of the Bar Association of Madrid.

Ms Martínez has more than 15 years of experience in the aviation field, including the structuring, implementing and securing of aircraft sales, financing, leases, and advice on obtaining necessary permits and authorisations from the Dominican Republic civil aviation authorities, as well as the rendering of general advice on regulatory, corporate, tax, contractual and labour matters to foreign and national air carriers.

### **MAYRA CAROLINA JACOBO TRONCOSO**

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Mayra Jacobo focuses her practice on corporate law, mergers and acquisitions, intellectual property and civil aviation. Mayra represents multinational clients regarding the structuring and reorganisation of their business interests and investments in the Dominican Republic, and assists sellers and purchasers in mergers and acquisitions of business entities and assets. Mayra also assists clients in creating and implementing corporate structures.

Mayra obtained her LLM in American law with a specialisation in international business practice (Boston University).

Mayra is a native Spanish speaker, she speaks French and is fluent in English.

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