

THE AVIATION LAW  
REVIEW

SIXTH EDITION

Editor  
Sean Gates

THE LAWREVIEWS

# THE AVIATION LAW REVIEW

SIXTH EDITION

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# PREFACE

The sixth edition of *The Aviation Law Review* marks the continuation of one of The Law Reviews' most successful publications; the readership of which has been vastly enhanced by making it accessible online since the fifth edition to over 12,000 in-house counsel as well as subscribers to Bloomberg Law and LexisNexis. This year I welcome new contributors from Egypt, Israel, Lebanon and Romania, as well as extending my thanks and gratitude to our seasoned contributors for their continued support. Readers will appreciate that contributors voluntarily donate the considerable time and effort needed to make these contributions as useful as possible to readers.

As this is written, news has come in of an aviation disaster in Cuba where an ageing 737 operated by Mexican carrier Global Air, on behalf of Cubana crashed during a domestic flight, killing 110 of the occupants. The Mexican carrier had assumed responsibility for the liabilities under its agreement with Cubana and reportedly insured the hull and liabilities in Russia. The accident will throw up familiar issues as to the extent to which Cubana audited the operation of Global Air, the latter having apparently been barred for safety reasons from operating in Guyana. Doubtless plaintiff lawyers from Florida will be gathering to secure instructions and seek routes out of Cuba's jurisdiction to maximise compensation, and questions will be asked about the adequacy of oversight of the operator given reports as to its operating history.

In the year since the last review was published, there have been some significant developments with regard to international air carrier liability, with both Russia and Thailand acceding to the Montreal Convention on air carrier liability of 1999 alongside Chad, Indonesia, Mauritius, Sudan and Uganda. Russia, which seems to have had a disproportionate share of recent aviation accidents (Socchi in 2016 and Saratov in 2018), will now face the challenge of persuading its domestic courts to apply the treaty, as they have, historically, awarded moral damages in the absence of bodily injury in Warsaw Convention cases. Thailand's accession brings one of the jurisdictions that has been most resistant to international regulation of carrier legal liability to passengers (ever since the Warsaw Convention of 1929) within the international family. International practitioners will also be aware of the historic resistance of Brazilian courts to the internationally accepted exclusivity of the Warsaw/Montreal system, with many Brazilian courts preferring to apply conflicting provisions of national law. The recent decision of the Brazilian Supreme Court upholding the supremacy of the Montreal Convention may mark a turning point in what has historically been a difficult country within which to defend aviation liability claims.

Inevitably, the European aviation legal scene continues to be dominated by Brexit where reassuring words, at least by regulators in the UK, have yet to be capped by any positive developments in terms of final agreements. This has led major carriers to focus on developing

European air operator certificates and some are also now ensuring they satisfy the European tests for majority ownership, which may cause interesting issues in the future for some of the low-cost carriers that heretofore have been able to operate from the UK – assuming always that the UK continues to apply majority ownership and control rules and that outmoded rule does not fall away.

The other seemingly inevitable development of note within Europe concerns the infamous EU Regulation 261, which from its humble beginnings as a modest attempt to ensure fair treatment of passengers has become, by virtue of the legislative inclinations of the Court of Justice of the European Union (CJEU), a monster devouring the assets of European airlines. Practitioners will be aware that one of the principal focuses of attack of the CJEU has been to decree that although airlines are entitled to a defence based on exceptional measures, nowadays in Europe there are no exceptions.

The latest decision defining extraordinary as ordinary is that of *Kruesemann v. TUI Fly* where the CJEU held that a wildcat strike by flight staff following a surprise announcement of a restructuring does not constitute an extraordinary circumstance releasing the airline from its obligation to pay compensation in the event of cancellation or long delay of flight. The court reasons that the risks arising from the social consequences that go with such measures are inherent in the normal exercise of the airline's activity. The decision is another in a long line of aviation decisions by the CJEU that underscore the proposition that in European jurisprudence, Orwellian doublethink is alive and well! As was made clear at a recent conference of the European Regions Airlines Association, the uninformed extrajudicial legislative impulses of the CJEU in this area threatens regional connectivity and the operation of routes that are only marginally profitable. It can hardly be appropriate to inhibit operations in the regions so as to provide passengers with compensation from events that in any right-thinking person's view would be regarded as outwith the reasonable control of the operator. The European Regions Airline Association continues with other industry groups to lobby for change, which, once Brexit takes effect and the Spanish veto on progress pending resolution to its satisfaction of the Gibraltar dispute falls away, may at last happen.

CJEU 261 decisions are not uniformly in favour of consumers. In May 2017, the Court held in *Marcela Pešková v Travel Service* that a collision between an aircraft and a bird may constitute extraordinary circumstances. The decision is contrary to the EU advocate general's 2016 opinion in the case, which stated that bird strikes do not constitute extraordinary circumstances. The ruling is inconsistent as it appears to contradict the consolidated consumer-friendly court's orientation regarding the interpretation of extraordinary circumstances, and though welcome to carriers and comporting with common sense, underlines that the CJEU does little to ensure the predictability of the court; which of course is in conflict with its own principle of legal certainty, in its supposedly mandatory General Principles of Law.

The year 2017 also posed a number of new old problems for aviation legal practitioners in the context of aviation liquidations; not least of Air Berlin, Alitalia and Monarch Airlines. The collapse of Monarch and the consequent costs incurred by the UK Department for Transport (DFT) posed another challenge to the funds held by the DFT to support passengers stranded in the event of airline collapse. The DFT has announced an independent airline insolvency review to determine whether its system is fit for purpose and adequate to protect passengers after having to repatriate 110,000 passengers following the collapse. The risk for operators is, of course, that the assets of the many will be used to repatriate the passengers

of the few at further and greater cost to the many, which has inevitably resulted in resistance from trade bodies including the International Air Transport Association.

In the regulatory world, the General Data Protection Regulation has been an immense boon to regulatory lawyers while burdening all industries including aviation. Numerous developments have also taken place with regard to unmanned aerial devices following a series of near misses around the world. At the same time, Amazon and Google are collaborating on package delivery by drone and Boeing is actively pursuing the goal of pilotless aircraft. Each of these developments has and will continue to produce new regulations, and developments in this area will continue to be followed closely in this Review.

Once again I would like to extend my thanks to the many contributors to this volume and welcome those who have joined the group. Their studied, careful and insightful contributions are much appreciated by all those who now refer to *The Aviation Law Review* as one of their frontline resources.

**Sean Gates**

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July 2018

# DOMINICAN REPUBLIC

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

## I INTRODUCTION

Civil aviation is an industry that is fundamentally important to the Dominican Republic, as it has an enormous impact on the country's commercial activities. In particular, civil aviation constitutes one of the principal tools for the development of tourism. In 2017 alone, 13,770,551 passengers travelled to and from the Dominican Republic, which is an increase of 4.9 per cent compared to 2016,<sup>2</sup> mainly through two of the seven 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). Of these passengers, 88.1 per cent (12,126,672) were mobilised through regular flights, and 11.9 per cent (1,643,879) through charter flights.

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 66 international airlines have authorisation to operate regular flights to and from the Dominican Republic.<sup>3</sup>

Civil aviation is governed by the provisions of Law No. 491-06 (the Civil Aviation Law) and its Regulations,<sup>4</sup> 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 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.

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

3 Ibidem.

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.

5 Article 2 of the Civil Aviation Law.

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 of government 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.

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>

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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.

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.



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 acknowledgement certificate issued by the IDAC in accordance with the operation specifications from the origin country.

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:

| Agreement   | Date signed by the Dominican Republic | Date ratified by the Dominican Republic | Effective date of the agreement |
|---|---------------------------------------|---|---------------------------------|
| 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                 |
| 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 for Member States of the Latin American Civil Aviation Commission – up to the sixth freedom flights and seventh freedom for cargo | 5 November 2010                       | 2 February 2011                         | –                               |
| Air Transport Agreement – Caribbean States Associations – pending definitive signature  | –                                     | –                                       | –                               |

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

<sup>13</sup> Both certificates may be requested concurrently.

<sup>14</sup> The operation permit is the permission granted to foreign air operators by the JAC.

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

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, Denmark, Ecuador, El Salvador, Finland, France, Germany, Guatemala, Guyana, Hungary, Haiti, Iceland, India, Ireland, Israel, Italy, Jamaica, Jordan, Kuwait, Luxembourg, Mexico, Netherlands, New Zealand, Norway, Panama, Paraguay, Peru, Portugal, Qatar, Russia, Saint Martin, Serbia, Spain, Switzerland, Sweden, 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 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, all activities relating to civil, national or foreign aircraft, their owners, operators, crew, passengers and cargo, and any person involved

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

17 Article 193 of the Civil Aviation Law.

18 Article 194 of the Civil Aviation Law.

19 Article 197 of the Civil Aviation Law.

20 Article 3 of the Civil Aviation Law.

in aviation activities within the 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>

## **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 must 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 government.

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

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

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.

- 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) an 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.<sup>26</sup>

### **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>27</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) certificate of compliance with the aviation security standards (AVSEC) requirements issued by the CESAC, (3) operation permit issued by the JAC, and (4) acknowledgement certificate issued by the IDAC.

#### ***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.

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

26 As of the date of this article, the Requirement Manual is under revision by the Civil Aviation Board, the results of the review may reflect changes on these requirements.

27 Article 240 of the Civil Aviation Law.

***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.

***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;
- 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 45 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.

***Acknowledgement of foreign operator certificate issued by the IDAC***

To obtain the acknowledgement of the foreign operator certificate 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* name, telephone number, fax, email and address of the operations inspector and maintenance inspector, from where the foreign air carrier is established;
- k* runway analysis of the destination and alternative airports in the Dominican Republic;
- l* compliance letter in accordance with RAD 129;
- m* copy of the operations specifications issued by the relevant civil aviation authorities of the country where the foreign air carrier is established;
- n* copy of the maintenance manual and maintenance programme for each type of aircraft;
- o* reduced vertical separation minimum;
- p* registration certificates of all the authorised aircraft;
- q* Configuration of the aircraft: number of passengers, cargo capacity, maximum take-off weight, and proof of compliance with the traffic collision avoidance system; and
- r* minimum equipment lists.

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

#### **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>28</sup>

## **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>29</sup> 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; and delays in the air transportation of passengers, baggage or cargo. These provisions indicate the following limits of liability:

- a* death of and injury to passengers; damage to baggage (Articles 17 and 21, Montreal Convention of 1999);
- b* damage to passengers, baggage or cargo as a result of air carrier delays (Articles 19 and 22, Part I, Montreal Convention of 1999);
- c* damage caused by destruction, loss or harm to the cargo (Article 18, Part I and Article 22, Part III, Montreal Convention 1999);
- d* 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);
- e* death of and injury to passengers; and
- f* 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).

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<sup>28</sup> [www.aerodom.com](http://www.aerodom.com).

<sup>29</sup> Requisites Manual, JAC 001.

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 28 May 1999, as follows:

| Coverage   | Special drawing rights (SDR) | Amount in US dollars<br>(1 SDR = US\$1.39)* |
|--|------------------------------|---|
| Death of and injury 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 as a result of air carrier delay (Articles 19 and 22, Part 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                      |
| * Rate as of 29 May 2015: <a href="http://www.convert-me.com/es/convert/currency/XDR.html">www.convert-me.com/es/convert/currency/XDR.html</a> . |                              |   |

## 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 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.

<sup>30</sup> Article 1 of Law No. 42-08.

<sup>31</sup> Article 50, Paragraph 1 of the Dominican Constitution.

<sup>32</sup> Article 3 of Law No. 42-08.

<sup>33</sup> Article 5 of Law No. 42-08.



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 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>

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 the Montreal Convention, the Civil Aviation Law regarding passenger rights described in Section II.iii, and Articles 198 to 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:

- a* material damages, which include corporal damages; and
- b* moral damages, which are those concerning mental capabilities.<sup>37</sup>

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<sup>34</sup> Articles 214 and 257 of the Civil Aviation Law.

<sup>35</sup> Article 35 of the Montreal Convention.

<sup>36</sup> Law No. 358-05 on Consumer Protection, dated 6 September 2005.

<sup>37</sup> Article 196 of the Civil Aviation Law.

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

## **VIII THE YEAR IN REVIEW**

The year 2017 was an important one for the Dominican Republic, especially for the tourism and hospitality sector. For instance, passenger flow continued to increase, owing in part to the registration of seven new routes: Barcelona–El Prat–Punta Cana; Pajas Blancas–Samaná El Catey; Lansing Capital City–Punta Cana; Moncton–Puerto Plata; Frankfurt–Samaná El Catey; Poznań–Ławica–Punta Cana; and Monterrey, Mexico–Punta Cana. The most prominent of these routes is Barcelona–Punta Cana, which mobilised 30,000 passengers, after commencing operation in June 2017.<sup>38</sup> The number of visitors to the Dominican Republic grew by 4.2 per cent in 2017 on visitors arrivals, which is more than the United States (1.6 per cent), Caribbean (4.1 per cent) and Central America (3.7 per cent).<sup>39</sup> In addition, after an audit performed by the International Civil Aviation Organization (ICAO), civil aviation security in the Dominican Republic was classified as exceptional.<sup>40</sup>

During a visit to the Dominican Republic by the president of the ICAO Council, Olumuyiwa Benard Aliu, it was stated that the country has achieved tremendous progress in terms of compliance with the ICAO's Standards and Recommended Practices (SARPs), with audits showing that it is now a world leader in this area. Compliance with the ICAO's SARPs enables the Member States to access the international civil aviation network and the socio-economic development benefits of air services. Additionally, the Dominican Republic has committed to support its neighbours by acting as a Champion State of ICAO's 'No Country Left Behind' initiative.<sup>41</sup>

In 2017, Pan Am World Airways Dominicana, SA (Pawa Dominicana), the first Dominican air carrier to operate international flights to and from the territory of the United States after the country was upgraded to Category I by the Federal Aviation Administration in 2007, topped the list of fastest-growing airlines compared to the previous year, reflecting an increase of 173,532 passengers, which was mainly a result of new routes to United States and the Caribbean. However, despite this, on 26 January 2018, the JAC suspended Pawa Dominicana's economic authorisation certificate for 90 days because of its failure to comply with tax obligations and airport services fees, leaving 17,000 passengers stuck in several airports and 500 unemployed. Pawa Dominicana has a debt of approximately US\$69 million with public and private institutions.

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38 <http://www.jac.gob.do/transparencia/images/docs/estadisticas/Air%20Transport%20Statistics%20Report%202017.pdf>.

39 <https://www.diariolibre.com/noticias/aviacion-civil-dice-republica-dominicana-crecio-en-entrada-de-pasajeros-por-encima-de-norteamerica-EE9024655>.

40 <http://www.arecoa.com/transportes/2017/04/03/seguridad-de-la-aviacion-civil-dominicana-es-excepcional-oaci/>.

41 <https://www.icao.int/Newsroom/Pages/Dominican-Republics-leadership-on-sustainable-aviation-development-contributes-to-global-momentum.aspx>.

In February 2018, Pawa Dominicana declared itself bankrupt, and filed a restructuring request with the Mercantile Restructuring Court, which was approved in April 2018. At the time of writing, Pawa Dominicana is continuing with the restructuring process, and trying to obtain the best outcome in the circumstances.

## **IX OUTLOOK**

Despite the bankruptcy of Pawa Dominicana occurring in the first half of 2018, the civil aviation authorities continue to be optimistic with regard to the development of the aviation industry because of the progress that has been made in recent years.

Punta Cana International Airport, which is among the busiest airports in the Caribbean, ranked second both in growth (61.2 per cent) and number of passengers (7.3 million) in 2017. On 1 December 2016, the US Customs and Border Protection (CBP) and the Dominican government signed an agreement for the establishment of preclearance operations from Punta Cana International Airport. The owners and operators of CBP and Punta Cana International Airport are currently awaiting final approval of the agreement by the Constitutional Court, where all government-to-government agreements must be referred for final approval, in order to initiate the preclearance operation as soon as possible.

Finally, the air carrier Dominican Wings rebranded itself as Flycana, the first low-cost carrier in the Caribbean. This new airline expects to initiate operations in 2023, and plans to operate a fleet of 28 aircraft to over 50 destinations, carrying 6.5 million passengers a year. The individuals behind this project are Victor Pacheco and William Shaw, former VivaColombia and Viva Air Peru CEO. Both are well informed on low-cost airline start-ups and management. Flycana's executives believe that by introducing this low-cost model to the Dominican Republic, there will be a significant increase in the number of passengers.

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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* (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.

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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.

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