

Venezuela

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General

- 1** By what body or bodies is aviation regulated in your country, and under what basic laws?

In Venezuela, the civil aviation industry is regulated by the National Institute of Civil Aeronautics (the INAC). It is an agency of the Ministry of Infrastructure. The basic law of civil aviation is the Civil Aeronautics Law, last modified in 2005. The INAC regularly issues industry regulations, many of which are based on norms of the International Civil Aviation Organisation, referred to as Venezuelan Aeronautical Regulations (RAV).

Regulation of aviation operations

- 2** How is air transport regulated in terms of safety?

In addition to the basic norms established by the Civil Aeronautics Law, there are a number of RAVs that refer to safety issues. These include:

- RAV 43 – maintenance, preventive maintenance, reconstruction of parts;
- RAV 60 – licensing requirements for technical aeronautical personnel;
- RAV 91 – operation of aircraft and flight norms;
- RAV 108 – security measures for aircraft operators;
- RAV 110 – dangerous materials and live animals;
- RAV 111 – specialised airport services;
- RAV 119 – certification requirements for public service and specialised air transport;
- RAV 125 – certification and operation of large aircraft (over 20 passengers or freight of over 6,000 pounds);
- RAV 135 – operational requirements for complementary and emergency flights;
- RAV 141 – instructional centres for pilots;
- RAV 142 – training centres;
- RAV 143 – certification of instructional centres and the training of technical personnel other than pilots and maintenance personnel;
- RAV 145 – aviation maintenance organisations;
- RAV 147 – certification of instructional centres and training of maintenance personnel.

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

Generally, the same licensing and safety regulations apply to both commercial and private air transport activities. Aeronautical personnel are, however, qualified for specific types of aircraft, as well

as for specific types of operations.

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

Access to the market for the provision of air transport services is regulated. All aeronautical personnel directly involved with aircraft must be licensed by the INAC and periodically they are required to update their technical and personal (including health) qualifications. Likewise, all civil aircraft that fly in Venezuelan airspace must be registered with the INAC and they must continue to satisfy regulatory standards.

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

In relation to commercial air transportation, the airline company or entity must be:

- at least 51 per cent owned by Venezuelan citizens;
- the president of the board of directors, or equivalent administrative body, must be a Venezuelan and at least 51 per cent of the members of the board of directors must be Venezuelans; and
- the control and administration of the airline must be under the direction of Venezuelan citizens domiciled in the country.

There is no minimum capital requirement, although generally the airline entity must be in sound financial condition based on the general norms of the Commercial Code.

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

The procedure for obtaining licences or other rights to operate particular routes is to apply to the INAC indicating:

- the route desired;
- the present competition on the route;
- the equipment proposed to be operated on the route;
- the frequency of flights proposed for the route;
- connections with other routes or destinations; and
- any other relevant information.

The INAC encourages both the opening of new routes and a reasonable degree of competition on all routes, domestic and international.

- 7** What procedures are there for hearing and/or deciding contested

applications for licences or other rights to operate particular routes?

Based on the Civil Aeronautics Law and the Law of Administrative Procedures, any decision that is deemed to be adverse or unjust for any reason issued by a lower level official or division of the INAC may be appealed to the president of the INAC. If his or her decision is considered to be adverse, it may be appealed to the minister of Infrastructure. If the minister's decision is also deemed to be adverse, it may be appealed to the administrative courts, of which there are two levels. They will decide on the basis of the applicable law.

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

Since the early 1990s, Venezuela has generally had an 'open-skies' policy both with respect to the entry of new airlines into the market, as well as to competition on particular routes. Accordingly, new airlines that satisfy the conditions will be permitted to enter the market. With regard to domestic routes, it is the general policy of the INAC to encourage a reasonable degree of competition in the interest of satisfying the demand for air travel and reducing costs to the public. In the case of international routes, it is the stated policy of the INAC to seek a general balance between Venezuelan and foreign air carriers on any particular route or to a particular destination.

9 Are there specific rules in place to ensure aviation services are offered to remote destinations when vital for the local economy (public service obligations)?

Rather than specific rules, there is a general policy to ensure that aviation services are offered to remote destinations when vital for the local economy. The INAC may use its administrative discretion to require one or more airlines to service remote destinations as a quid pro quo for authorising flights to more desirable destinations. By virtue of the growing number of smaller airlines operating in Venezuela at present, as well as the diversity of equipment being operated, the INAC has less frequently had to resort to quasi-coercive tactics in recent years. This is also due, in part, to the fact that for extremely remote destinations the government has been providing some air services through the military.

10 Is there any special regulation of charter services?

In the case of domestic and international airlines offering charter services, there is a special procedure for obtaining the INAC authorisation. An application must be filed with the INAC, together with the payment of a special fee (equal to six tax units or approximately US\$100). The application must contain at least the following information, depending on the circumstances:

- route and airport or landing strip;
- loading and flight control;
- the entity contracting the flight;
- the equipment to be used and its registration;
- programmed dates for flights;
- proposed customs services;
- handling of passengers and cargo;
- route and time of flight;
- security measures;
- maintenance support; and
- support at the destination airport.

If charter flights are offered to the same destination on a regu-

lar basis, applications and approvals can be granted for specific extended periods.

11 Are air fares regulated, and if so, how?

Air fares are jointly regulated by the airlines and INAC, although the INAC is authorised to impose maximum air fares in the event of disagreement. Air fares are established on the basis of quality, competitiveness, security, continuity, and costs, and may vary depending on the category of service. At present, air fares are set within a price band of minimum and maximum fares, permitting the airlines to compete on the basis of fares within the band range. First class fares, however, are not regulated, nor are other special services, such as charter flights. The Regulations also provide that certain classes of passengers are entitled to discounted fares: children under two years of age pay no fare, while children under 18 years of age, students, senior citizens over 60 years of age, and persons with disabilities pay discounted fares.

Aircraft

12 Who is entitled to be mentioned in the aircraft register? Are there any requirements/limitations applicable to the owner of an aircraft registered on your country's register?

The persons or entities entitled to be mentioned in the aircraft register include the owner of the aircraft, the person or entity having legitimate possession of the aircraft (such as lessees or purchasers under conditional sales contracts), and any mortgagee or pledgee of the aircraft. Generally, there is no restriction as to nationality, with the exception of the ownership of domestic public air carriers, as referred to in question 5.

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

Mortgages or charges on aircraft must be registered both at the special civil registry designated for the registration of mortgages or charges on aircraft and at the air registry. Additionally, for a mortgage or charge to be deemed valid on an aircraft under Venezuelan law, or for Venezuelan purposes, the mortgage or charge must comply with the requirements of the special Venezuelan law on this matter (the Chattel Mortgage Law 1973). Further, if the mortgagee is other than a Venezuelan financial institution, authorisation to constitute the mortgage must first be obtained from the Ministry of Infrastructure. Accordingly, the procedure is to first obtain the Ministry's authorisation (if relevant), then to file the mortgage or charge with the civil registry, and finally to file it with the air registry in all cases based, essentially, on the text of the mortgage or pledge document.

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

The INAC, as well as the public sector airport authorities, may detain aircraft for unpaid airport or air navigation fees. The detention may continue until the debt is resolved. Likewise, private creditors may seek the sequestration of an aircraft, through judicial order, in the case of unpaid debts. Similarly, Venezuelan law contemplates various other situations in which an aircraft could be detained, especially in the context of regulatory violations regarding the aircraft or illicit activities involving the aircraft.

15 Are there specific rules in place regulating the maintenance of aircraft?

As indicated in question 2, there are various specific regulations relating to both the maintenance of aircraft and to those permitted to undertake such maintenance. Maintenance is highly regulated and there are frequent, periodic inspections carried out by INAC personnel in relation to maintenance standards.

Airports**16** Are all airports state-owned? If not, how are they owned?

Only the principal commercial airports of the country are state-owned. An autonomous airport authority administers the main commercial airports. The respective state governments administer various regional or state airports. There are also a number of private airports that provide services to public air carriers. These private airports must be registered with, and licensed by, the INAC, and they are subject to specific regulations (particularly RAV 139).

17 What system is there for the licensing of airports?

RAV 139 establishes the procedure for obtaining a licence for operating a private airport. In general, it is necessary for the operators to demonstrate a satisfactory knowledge of all procedures, and that they have the required installations and equipment in place. The airport will then be certified by the INAC.

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

The INAC conducts regular inspections and audits of airports to ensure that they comply with all of the requirements for operation. The INAC has the authority to de-certify and close any airport that does not comply.

19 Are there laws/rules restricting or qualifying access to airports?

Laws and rules are in place to restrict or qualify access to airports. With respect to aircraft, all civil aircraft using Venezuelan airspace may only land at designated airports or landing strips. Commercial aircraft may only use airports deemed adequate for the type of aircraft. In relation to access by persons and vehicles, special authorisation is required to enter the non-public areas of airports as these areas are restricted to persons with official justification.

20 How are slots allocated at congested airports?

Priority is given to airlines flying regularly scheduled routes and which pay a fee for access to a runway. In respect of other aircraft, or in the event of delayed arrivals or other situations of congestion, the aircraft will be required to park on the tarmac, and to disembark passengers and cargo away from the terminal, using the services of special vehicles when these are available.

21 Are there any laws/rules specifically relating to ground handling at airports?

There are specific regulations both for ground handling companies and their personnel. The companies must demonstrate that they are capable of offering the services required and their

personnel must be specially licensed, depending on the specialisation of each. Once qualified, the company will be certified by the INAC and authorised to operate within the particular airport by the respective airport authority. These certifications, as well as the licences of personnel, are subject to continued inspection and periodic renewal.

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

All matters involving aeronautical security, including air traffic control, are reserved to the state. Air traffic controllers are under the authority of the INAC, which is responsible for supervising their training and certification.

Liability and accidents**23** Are there any special rules in respect of death of, or injury to, passengers and/or loss or damage to baggage/cargo in respect of domestic carriage?

In the event of death or injury to passengers, loss or damage to baggage and cargo, as well as for damages caused on the ground by aircraft, there are express provisions on liability in the Civil Aeronautics Law and in the aeronautical regulations for aircraft operators. These norms establish both the limits on liability and the procedures for bringing claims. Aircraft operators are required to have approved liability insurance cover, which normally includes reinsurance. Without insurance, aircraft will not be registered and may not be operated.

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

The Civil Aeronautics Law expressly makes the operator of an aircraft liable for damage caused on the ground to persons and property. This liability is for damage caused either from the operation of the aircraft (emergency landings or crashes) or for objects that fall from, or are thrown out of, aircraft. It is also applicable in the event of illicit operation of the aircraft.

25 What system is there for the investigation of air accidents, including procedures?

The Ministry of Infrastructure's Investigative Board for Aviation Accidents is the agency primarily responsible for the investigation of air accidents caused by civil aircraft. It has broad authority to investigate all matters relating to such accidents and may involve any other governmental agencies and security forces as may be required.

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

The Civil Aeronautics Law requires any person who becomes aware of an accident or other irregular incident involving an aircraft to report it to the nearest public authority, which in turn reports the matter to the INAC. Depending on the circumstances, the INAC then has to advise the Investigative Board for Aviation Accidents, if the matter is within its competence.

Competition law**27** Are there sector-specific competition law rules applying to the aviation

sector? If not, do the general competition law rules apply in the aviation sector?

Venezuela does not have sector-specific competition law rules for the aviation sector. Nonetheless, the general competition laws of Venezuela are fully applicable to the aviation sector. In this respect, however, it may be noted that Venezuela has only had a modern competition regime since 1992 and so far there have been no cases involving the aviation sector brought under the competition laws.

28 Is there a sector-specific regulator and/or are competition rules applied by the regular competition authority?

There is no sector-specific competition regulator for the aviation industry. Accordingly, any complaints of a competitive nature are resolved by the general competition authority, which is the Superintendency for the Promotion and Protection of Fair Competition. By virtue of the aviation industry's growth in recent years and the increased number of airlines, the Venezuelan National Assembly (the unicameral national Parliament) is reviewing a possible law to create a sector-specific competition jurisdiction for the aviation industry. It has not yet determined whether this would be a separate entity or a division within the existing Superintendency.

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

As there have been no competition cases involving the aviation industry and as there is no special agency for dealing with such matters, there are no established criteria with respect to defining the relevant market for competition assessment. Accordingly, at present, if a competition complaint were to be filed before the Superintendency for the Promotion and Protection of Fair Competition it would presumably apply the general legal criteria that have been developed for other economic areas. In this regard, Venezuelan competition law is based largely on the criteria and standards developed in the European Union.

30 What are the main standards for assessing the competitive impact of a transaction?

The principal Venezuelan standards, as contained in the Law to Promote and Protect Fair Competition, are that acts and agreements that tend to impede, restrict, falsify or limit fair or unrestrained competition are prohibited. These general principles, which are deemed to be public order norms, are obligatory for all economic actors. Moreover, the Superintendency has developed a substantial body of jurisprudence that provides more specific guidelines in the competition area.

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

The Superintendency has a broad arsenal of remedies that may be applied in situations that are deemed to threaten fair or open competition, or that are deemed to do so. The Superintendency may:

- prohibit or deny authorisation for certain mergers and acquisitions (which, depending on the circumstances, must be reviewed beforehand by the Superintendency) when these would be deemed to result in anti-competitive concentration;

- order the break-up of companies or the severance of certain activities when these are deemed to restrict competition;
- issue cease and desist orders in cases of anti-competitive behaviour;
- issue substantial fines against companies or entities deemed to have violated the norms or the competitive rights of competitors.

Although not directly related to the general laws on competition, it is worth noting that in the early months of 2006, Venezuela, through the INAC, threatened to restrict the number of flights to and from Venezuela by US carriers. This was based on the allegation that the US was not properly and timely considering Venezuela's application to be restored to Category 1 status under the rules of the US Federal Aviation Administration (Venezuela had been placed in Category 2 in the mid-1990s, which restricted the right of Venezuelan airlines to fly into the US market, thereby leaving the majority of flights to US carriers). Venezuela argued that it was both qualified for Category 1 and that this resulted in an anti-competitive situation for Venezuela. This controversy was resolved in April 2006 when, following the required inspections, Venezuela was restored to Category 1 status.

Financial support/state aid

32 Are there sector-specific rules regulating direct or indirect financial support to individual companies by the government or government-controlled agencies or companies (state aid) in the aviation sector? If not, are there general state aid rules that apply in the aviation sector?

The only general, sector-specific financial support offered to the aviation industry by the state is in the form of tax incentives, as contained in the Civil Aeronautics Law. These provide for customs and income tax exemptions for domestic, public air transportation services, and for the definitive importation of aircraft, engines, accessories, spare parts, and aviation vehicles and equipment. Additionally, there is a tax credit equal to 75 per cent of the cost of investments made by national airlines in the incorporation of new technology and the training of aeronautical personnel in such technology. These tax incentives stay in effect for a period of five years from the entry into effect of the Civil Aeronautics Law, or until the end of 2010. Further, there is an indefinite exemption from all taxes related to air services in connection with fire fighting, searches, salvage, and the control and monitoring of air activities.

The current, statist-oriented Government of Venezuela is creating a number of state-owned companies that compete directly, under non-market and preferential conditions, with private sector entities. In the aviation industry the principal example is the launching, in 2004, of the state airline, Conviasa, which enjoys a number of privileges not available to private airlines.

33 What are the main principles of the state aid rules applying in the aviation sector?

The tax incentives referred to in question 32 are applied in accordance with the norms of the customs and income tax laws on a similar basis as for other economic sectors or activities enjoying similar tax exonerations or credits.

With respect to financial aid rules that could be applicable to certain preferred airlines or, especially, to the state-owned or state-affiliated entities in the aviation area, there are a number of situations in which norms or state institutions could be manipu-

lated so as to provide state aid. Generally, the applicable criteria are essentially political.

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

Other than the express tax incentives referred to in question 32, there are no specific rules on state aid for the aviation industry; any exemptions or inapplicability would be limited to qualifying for said tax incentives. Political criteria could be applied on an ad hoc basis, depending on the circumstances.

35 Must clearance from the competition authorities be obtained before state aid can be granted?

In the case of the tax incentives provided to the aviation industry, the competition authority would not be involved. The competition authority could only possibly become involved in the event that there were allegations of unfair or privileged access to sources of financing or other benefits accorded to certain air operators and not to others. Given the present political situation of Venezuela, if such privileges were provided by the state, it is unlikely that the competition authority, or the courts, would act independently.

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

This question is not applicable for the reasons explained in question 35.

37 If no clearance is obtained, what procedures apply to recover state aid unlawfully granted to a particular company?

In the event that it was determined that a company received a customs exoneration or took income tax credits that were not merited, the tax authority may impose the correct tax assessment, plus fines and interest. Further, the tax authority may take judicial action to collect any sums owing to it. Other forms of benefits or privileges improperly granted or accorded to a particular company, could give rise to judicial actions by the state, or by the state entity involved (such as a state bank), to recover sums improperly provided. Such a situation could also give rise to private actions under the competition laws, to the extent that the competitors not accorded similar privileges could demonstrate that they were thereby damaged.

Miscellaneous

38 Is there any aviation-specific passenger protection legislation?

Venezuela does have express regulations with respect to passenger protection. The INAC has created regulations on compensation and assistance to passengers if they are unjustly prevented from boarding a flight, or in the event that the flight is cancelled or delayed beyond a certain period. In addition, Venezuela continues to apply Decision 619 of the Andean Community of Nations, which further establishes the rights of passengers and the obligations of air carriers within the Andean Community, although many of the provisions of this decision have been incorporated into the national regulations. (Regarding Decision 619, Venezuela renounced the Treaty creating the Andean Community in April 2006. Nevertheless, until the particulars of Venezuela's withdrawal from the Andean Community are resolved, or until Venezuela creates substitute regulations, the INAC is continuing to apply the provisions of Decision 619.)

39 Are there any mandatory insurance requirements in respect of the operation of aircraft?

For an air carrier to obtain permission to operate any particular aircraft it must first evidence to the INAC that it has adequate liability insurance covering damages that could be caused by the operation of the aircraft to persons and property on the ground, to the crew, to passengers, and to baggage, cargo and mail. In relation to commercial aircraft, the minimum liability coverage is US\$500 million.

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

There are multiple requirements in relation to aviation security, which generally follow the standards of the International Civil Aviation Organisation. These apply to aircraft, operators and airports, as well as all personnel involved in the aviation industry. The state, through both civilian and police and military authorities, has reserved a broad responsibility with respect to all aspects of air operations, on the ground as well as in the air. All private sector entities involved in any aspect of aviation security must be licensed and are subject to continuous inspection and renewed certification.

41 What serious crimes exist with regard to aviation?

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Both the Civil Aeronautics Law and other special laws establish a number of serious crimes that may be related to aviation. With respect to the former, these include, inter alia:

- flights in prohibited or restricted zones;
- use of unauthorised airports or landing strips;
- interference with operational security;
- throwing things or substances from aircraft in flight;
- deviation from or fraudulently obtaining route authorisation;
- the illegal use of aircraft;
- shooting down or damaging aircraft on the ground;
- environmental contamination;
- the improper transport of harmful substances;
- failure to provide aid to distressed aircraft; and
- the consumption of illicit drugs while operating aircraft.

Otherwise, the special laws that refer to aviation include, in particular, the law against illegal drug trafficking, the law on contraband activities, and laws regarding the security of the nation.