

**International  
Comparative  
Legal Guides**



Practical cross-border insights into aviation law

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# Colombia



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## 1 General

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

The regulatory authorities in charge of all aviation-related matters are the following:

- Special Administrative Unit of Civil Aeronautics (Aerocivil): The authority in charge of ensuring the adequate development of all aviation and aeronautical activities. Its functions are set forth in Decree 1294 of 2021.
- The Ministry of Transportation: In charge of defining, regulating, and formulating transportation and infrastructure-related policies.
- Superintendence of Transportation: In charge of the inspection, surveillance and control of compliance with the regulations governing all transportation related matters.
- Migration Colombia: In charge of immigration control.

In addition, the legal framework for aviation activities in Colombia are the following:

- Law 12 of 1947: Whereby the Chicago Convention is adopted.
- Decree 410 of 1971: Code of Commerce.
- Law 105 of 1993: Law that dictates the basic provisions of the transportation sector.
- Law 336 of 1996: National Statute of the Transportation Sector.
- Law 701 of 2001: Adopts the Montreal Convention.
- Decree 087 of 2011: Sets the functions of the Ministry of Transportation.
- Colombian Aviation Regulations.

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

The basic process to obtain an Air Operator Certificate Requirements (AOCR) in Colombia from a foreign carrier, which is established in Part 5 of the Colombian Aviation Regulations, is the following:

1. Initial stage: Present the proposed operation in a public hearing to the Aerocommercial Projects Evaluation Committee (CEPA) which must have, amongst other requirements, the following information:
  - a. The routes to be operated, including, frequencies, schedules, and proposed itineraries, as well as traffic rights (air freedoms) and capacity to be offered of both cargo and passengers.

- b. Type of aircraft that will be used and whether they are owned or leased.
- c. Start date of operations.
- d. Whether there is a bilateral agreement or agreement with the country of the airline that is making the request that provides the proposed operation.
- e. Certificate of existence issued by the competent authority in accordance with the laws of the State of the operator.
- f. Air Operator Certificate of the applicant carrier.
- g. Designation or permit granted by the relevant State to operate the proposed operation to/from Colombia.

Provide the relevant insurance certificates that provide the appropriate coverage in their proposed operation, in line with what is established and required by international standards.

In the case that there is non-compliance in the application, this will be returned to the applicant for improvement.

Also, a branch office in Colombia must be duly incorporated, and relevant authorities will conduct investigations for reports of drug trafficking and illegal activities. Further, the Operational Safety Division of the Civil Aviation Authority (CAA) will conduct relevant studies of the technical, safety and security feasibility of the proposed operation.

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

Pursuant to Law 1955 of 2019, the Colombian CAA (Aerocivil) is the competent authority to ensure the safety and security of civil aviation. The above is derived from the provisions of Parts 3, 5, 8 and 160 of the Colombian Aviation Regulations.

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

The applicable safety standards are provisioned in Part 160 of the Colombian Aviation Regulations (CAR) which complies with Annex 17 of the Chicago Convention. Also, Colombian regulations are in line with the “Universal Safety Operational Audit Program”, which the International Civil Aviation Organization (ICAO) has ratified specifying that all regulatory matters in relation to safety and security are compliant with their standards.

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

Yes, Parts 3 and 5 CAR have the same general requirements but there are some particularities that distinguish between foreign, domestic, and private operators.

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

It is the standard that there is no differential treatment among air operators operating in Colombia; however, there are certain limitations such as cabotage operations that prevent foreign airlines from carrying out this and other activities, including the procedure for obtaining an Air Operators Certificate.

**1.7** Are airports state or privately owned?

Airports in Colombia are state-owned; however, concession contracts are entered into with different private operators for their administration.

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

Most airports comply with international operational, safety and security standards established in international conventions; however, since most airports are operated under concession, they may impose additional requirements but cannot disregard the international practices.

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

If the accident occurs locally, the applicable law is Colombian law, which is in line with international standards.

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

Recently, the Colombian CAA denied the merger between Avianca and Viva Air on grounds that this could affect free competition and the welfare of air transportation users. Also, they denied the existence of the cause of a company in crisis, alleged by the parties to give way to their merger. However, their decision is still under study.

**1.11** Are there any specifically environment-related obligations or risks for aircraft owners, airlines, financiers, or airports in your jurisdiction, and to what extent is your jurisdiction a participant in (a) the EU Emissions Trading System (EU ETS) or a national equivalent, and (b) ICAO's Carbon Offsetting and Reduction Scheme for International Aviation (CORSA)?

Part 216 of the Colombian Aviation Regulations, regulates activities and services related to the environment, including minimising risks to health, safety in accordance with applicable national and international aeronautical standards. This regulation also includes carbon offsetting and a reduction plan for international aviation (CORSA for these regulations).

## 2 Aircraft Trading, Finance and Leasing

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

Yes. According to what is established in the Commerce Code and the National Aeronautical Registry, which is managed by the Colombian CAA.

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

Yes, the National Aeronautical Registry that is in charge of everything related to titles, recording conveyances and particularities of the registry such as leases, mortgages and loans.

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

Aircraft registry regulations and requirements are established in Part 20 of the CAR as well as the requirements of the National Aeronautical Registry.

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

No, annexation is not provisioned under Colombian law.

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

In accordance with Colombian tax regulations, international and operational leases are subject to a 1% GST as long as a purchase option is established in the lease contract.

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

Yes, Colombia is a signatory of most international conventions including:

- Montreal – November 21, 2001.
- Geneva – July 10, 2002.
- Cape Town – July 13, 2005.

**2.7** How are the Conventions applied in your jurisdiction?

Most of these conventions in Colombia, as they have been duly ratified and approved by Congress, have the force of law within the legal system, and are fully applicable.

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

No, there are no taxation benefits that allow better aircraft trading and leasing practices.

**2.9 To what extent is there a risk from the perspective of an owner or financier that a lessee of aircraft or other aviation assets in your jurisdiction may acquire an economic interest in the aircraft merely by payment of rent and thereby potentially frustrate any rights to possession or legal ownership or security?**

The risk of an aircraft acquiring, and economic interest is low. Although the aircraft exploiter has physical possession, he is not the rightful owner, and this is duly recognised and established in the Colombian legal system.

### 3 Litigation and Dispute Resolution

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

In Colombia it is not permitted for the lessor or financier of an aircraft to unilaterally and without consent recover the rightful possession of an aircraft. He is permitted to do so in those events where he has the corresponding authorisation of the debtor, in accordance with the provisions of the Cape Town Convention, to which Colombia is a party.

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

This practice is not permitted in Colombia, for the lessor or financier of an aircraft to unilaterally and without consent recover the rightful possession of an aircraft. He is permitted to do so in those events in which he has the corresponding authorisation of the debtor, in accordance with the provisions of the Cape Town Convention, to which Colombia is a party.

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

The competent judges to rule aviation-related matters, including civil or commercial contract or non-contractual civil liability are the ordinary civil courts. Depending on the claimed amount, the judges may be municipal civil judges, or circuit judges with second instance before the superior district court. The Supreme Court of Justice in its civil chamber may hear the extraordinary appeal in cassation. If an arbitration clause has been agreed between the parties, such disputes must be settled by an arbitration court. Courts that rule civil matters are different from those that hear criminal matters.

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

The official channel of court proceedings, including notifications, are made via emails duly registered in the commercial registry of the defendant's domicile. If the use of emails is not possible, the referred notification may be made personally or through a notice left at the domicile of the defendant. Notices for domestic airlines or branches of foreign companies will be served in the same manner.

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

The appeals established and permitted by law in a dispute resolution process are the following:

- Appeal for reconsideration is one that is filed before the same judge who issued the decision that is being challenged, in writing or orally, with the justification and substantiation of the arguments.
- The General Appeal is presented to the superior judge which may study the decision to revoke or reform the previous decision. This appeal only proceeds against the decisions of the judge expressly limited on the General Code of the Process, among which are the first instance disputes.
- Appeal of Supplication can be interposed against the decisions of the judge that can be appealed or that decide the viability of the Extraordinary Appeal of Cassation or review those that were not granted.
- Extraordinary Appeal of Cassation has the purpose of defending the unity and integrity of the legal system, achieving the effectiveness of international instruments, protecting constitutional rights, controlling the legality of judgments and unifying national jurisprudence and repairing the damages caused to the parties as a result of the appealed judgment.

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

In arbitral tribunals, Colombian law does not consider the possibility of appealing rulings, notwithstanding the foregoing, and there is the possibility of filing an extraordinary appeal for annulment, among others, on the following grounds:

1. Non-existence, invalidity or unenforceability of the arbitration agreement.
2. Expiration of the action, lack of jurisdiction or lack of competence.
3. Failure to constitute the tribunal in a legal manner.
4. Refusal to consider evidence requested.
5. Having ruled a decision based on clarification, addition or correction that has been pronounced after the expiration of the deadline established for the arbitration process.
6. The ruling was made based on conscience or equity, when it should have been in law.
7. The ruling contains contradictory provisions.
8. The ruling has been rendered on aspects not subject to the decision of the arbitrators, has granted more than what was requested or has not decided on issues subject to arbitration.

If there is an appeal, it must be carried out in writing, or orally if the ruling took place in a hearing.

**3.7 What rights exist generally in law in relation to unforeseen events which might enable a party to an agreement to suspend or even terminate contractual obligations (in particular payment) to its contract counterparties due to *force majeure* or frustration or any similar doctrine or concept?**

Contract regulation is based on the theory of unforeseeability, stating that when extraordinary, or unforeseen circumstances, after a contract of successive, periodic or deferred is being executed, and unforeseen causes may alter the due fulfilment of one of the parties to such an extent that it becomes excessively difficult, the latter may request its review. If the judge considers it may evaluate the circumstances that have altered the basis of the contract and will order, if possible, the readjustments in favour of fairness; otherwise, it can decree the termination of the contract.

## 4 Commercial and Regulatory

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

Pursuant to section 3.6.3.7.2 of the Colombian Aviation Regulations, all proposed agreements between companies involving integration, joint operation, consolidation, mergers or collaboration such as joint ventures, must be submitted to the Civil Aeronautics Authority for their approval through the Air Transport Office.

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

Both jurisprudence and doctrine have opted to use the following criteria to determine a relevant market: i) the product market; ii) the geographic market; iii) the temporal market; and iv) the substitutability analysis.

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

No, there is no such system of regulatory clearance/antitrust immunity in Colombia's jurisdiction. According to Article 9 of Law 1340 of 2009, companies shall always notify or request prior authorisation from the antitrust authorities.

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

Also, according to Law 1340 of 2009, to approve these types of transactions, careful consideration is taken on the amount of operational income or total assets, individually or jointly based on the previous fiscal year of both proposing parties. Those seeking to merge, acquire, or to establish a cooperative agreement or joint venture, must seek authorisation from both the Superintendence of Industry and Commerce, and from the Civil Aeronautics Authority, prior to closing any negotiations. If the two parties combined do not have 20% of the relevant market, only a notification is needed to the relevant authorities.

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

The approval process of Parties seeking the approval of acquisition mergers and joint ventures must file an application to the Superintendence of Industry and Commerce (SIC), or to the CAA, containing a preliminary study request and a report of the proposed operation, according to relevant regulations. After this, SIC must publish all details in a newspaper, to allow third parties to participate and provide feedback on the analysis of the projected operation. According to article 10 of Law 1340 of 2009, the established timeframe is three months.

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

A state owned and operated carrier, SATENA, was formed under Decree 2344 of 1971 and Law 2180 of 2014 whose purpose was to provide air services to unserved, isolated regions, remote areas or non-profitable routes in the country. The government provides direct financial support to this carrier to offer air services to communities that are in hard-to-reach places.

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

There are no state subsidies available in respect of specific routes. However, as stated in question 4.6. above, the Government provides financial support to SATENA, allowing it to provide services to unserved, isolated regions, remote areas or non-profitable routes.

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

Section 3.10.1.4 of part 3 of the Colombian Aviation Regulations, establishes that passengers' personal data may only be used for the purposes of handling reservations to ensure the adequate provision of the contract. Carriers must protect personal data to avoid unlawful use, and data may not be commercialised in any case. There are no specific regulations regarding airports for data treatment.

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

While the CAR allow for individuals to file a complaint, there are no specific sanctions or fines regarding the loss of private consumer data within the aviation industry.

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

In Colombia, the authority in charge of protecting intellectual property and legal proceedings in relation to these matters is

the Superintendence of Industry and Commerce. Actions for the protection of this type of rights may be brought before this authority. Likewise, the rules of the Andean Community are the basis for this protection.

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

Part 3 of the CAR establishes the rights and obligations of passengers. In the case of boarding denial with causes chargeable to the airline, it is established that the carrier must arrange for the passenger to travel to their destination on the next available flight on the same date and route. If there are available flights to comply with the above, it must make the necessary arrangements to board the passenger on another airline as soon as possible. In relation with flight cancellation matters, it is provided that in the event of cancellation, if it is due to *force majeure* or meteorological reasons, the carrier should be relieved of all liability by refunding the fare paid. If the passenger is not at his place of residence, he must be provided with lodging and transportation to and from the airport.

Similarly, in cases where the cancellation is not attributable to weather and/or *force majeure*, the airline in addition to the compensation set out above, must compensate the passenger with an additional 30% equivalent to the lowest value leg of the journey payable in cash, unless the passenger accepts a different form. This compensation will not be granted if the passenger travels within six hours after the scheduled departure time of the flight.

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

The Colombian CAA is in charge of management of slot use in Colombia. This authority has a special unit in charge of keeping track of airline operations. Even though the CAA oversees the operational matters, the Superintendence of Transportation is the authority in charge of all relevant cases where delays affect passengers, in which case they have the right to be compensated in case of delays. Also, in the event of irregularities, this authority has the faculty to impose sanctions to carriers.

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

This regulation is mainly found in Part 14 of the Colombian Aviation Regulations, which establishes everything related to airfields, airports, and heliports, establishing the general operating requirements. Also, the Code of Commerce establishes the meaning the basic requirements for airfields and airport operations.

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

The Consumer Statute has a supplementary application. Article 2 establishes that it will apply if there is no specific legal provision. Therefore, regarding the protection of passengers, Law 1480 of 2011 and Part 3 of the CAR must be considered.

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

The three Global Distribution Suppliers that currently operate in Colombia are Amadeus, Sabre and Travelport.

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

The general principle is that foreign investment is permitted without limitation of percentages of shareholding in all industries, except for some specified in the law, and there is no ownership requirement to operate GDS in Colombia.

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

There are no provisions under the Colombian law, however, it is not prohibited.

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

No, in Colombia there are no substantial ownership and effective control requirements for foreign carriers who wish to operate to and from Colombia.

## 5 In Future

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

Two very interesting Bills are currently under study by Congress: one seeks to further regulate the rights and duties of passengers; and another seeks to establish an open skies policy in Colombia, in line with the proposed policies of Smart regulation proposed by ICAO. Also, regulation for matters concerning issues of passengers and operations such as disruptive/unruly passengers and slot allocation are being pursued.

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consecutive years as the number one aviation law firm in its class worldwide, with presence in more than 50 countries, being ours, the only law firm of the network with presence in Colombia.

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