

Air Transport

Contributing editors
John Balfour and Mark Bisset



2019

GETTING THE
DEAL THROUGH

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John Balfour and Mark Bisset
Clyde & Co LLP

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For further information please contact editorial@gettingthedealthrough.com

Publisher
Tom Barnes
tom.barnes@lbresearch.com

Subscriptions
James Spearing
subscriptions@gettingthedealthrough.com

Senior business development managers
Adam Sargent
adam.sargent@gettingthedealthrough.com

Dan White
dan.white@gettingthedealthrough.com



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Preface

Air Transport 2019

Thirteenth edition

Getting the Deal Through is delighted to publish the thirteenth edition of *Air Transport*, which is available in print, as an e-book and online at www.gettingthedealthrough.com.

Getting the Deal Through provides international expert analysis in key areas of law, practice and regulation for corporate counsel, cross-border legal practitioners, and company directors and officers.

Throughout this edition, and following the unique **Getting the Deal Through** format, the same key questions are answered by leading practitioners in each of the jurisdictions featured.

Getting the Deal Through titles are published annually in print. Please ensure you are referring to the latest edition or to the online version at www.gettingthedealthrough.com.

Every effort has been made to cover all matters of concern to readers. However, specific legal advice should always be sought from experienced local advisers.

Getting the Deal Through gratefully acknowledges the efforts of all the contributors to this volume, who were chosen for their recognised expertise. We also extend special thanks to the contributing editors, John Balfour and Mark Bisset of Clyde & Co LLP, for their continued assistance with this volume.

GETTING THE
DEAL THROUGH 

London
September 2018

Panama

Juan José Espino Sagel

Pardini & Asociados

General

1 Which bodies regulate aviation in your country, under what basic laws?

All aviation activities are supervised by the Civil Aeronautics Authority (AAC), an entity under the competence of the Ministry of Government and Justice of Panama.

The AAC exists and operates in accordance with the powers granted by means of Law 22 of 29 January 2003.

All civil aviation activities are considered and defined under the framework of Law 21 of 29 January 2003 (Law 21 of 2003).

Regulation of aviation operations

2 How is air transport regulated in terms of safety?

The AAC of Panama supervises and grants all operational permits and safety related to operators, aircraft operations, crew maintenance and air traffic control.

Within the AAC there are a number of departments that individually supervise all activities related to safety and operations. Panama is signatory to a number of international civil aviation treaties and agreements, such as the Chicago Convention; the AAC follows the recommended Chicago Convention standards as per its article 37 and it is also a participant of the ICAO. All international standards for safety are reflected in the Civil Aviation Regulations (CAR) of Panama, which complement all civil aviation activities considered in Law 21 of 2003.

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

Law 21 of 2003 defines such services in its Title VI. Aerial works, as defined in articles 72 and 93, constitute a commercial operation that encompasses any other civil aviation activity that does not include transportation of passengers or goods and cargo.

Private flights or operations are those that are not for a commercial purpose or for valuable consideration.

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

Yes, commercial activities for civil aviation services are regulated by Law 21 of 2003, Title VI, and the CAR, which establishes distinctions for operations within the territory of Panama as well as for those related to international aviation.

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

AAC Law 21 of 2003 and its regulations demand financial fitness and technical capacities for all air transport applications.

For commercial operations provided within the territory of Panama, a minimum ownership of 60 per cent should be held by Panamanians during the running of the operation.

For operations for companies created in Panama to provide international services, the minimum Panamanian ownership shall be 51 per cent, as per article 79 of Law 21 of 2003.

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

Book XV of the CAR prescribes the rules and requirements for approval of routes and for certification of a licensed carrier, whether conducting operations within Panama or internationally.

Panama maintains a number of bilateral and multilateral aviation treaties, which shall be considered when applying for specific international destinations. The reciprocity principle may also be considered in particular conditions.

7 What procedures are there for hearing or deciding contested applications for licences or other rights to operate particular routes?

Contested applications will be decided through administrative proceedings before the AAC. Once this instance is exhausted and a decision is appealed, it will be passed before the judiciary to consider a final decision and to reach a conclusion on the issues.

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

Panama respects open air policies and the principles of reciprocity. It also maintains a number of bilateral agreements related to aviation.

9 What requirements must a foreign air carrier satisfy in order to operate to or from your country?

As per Book XV, article 47 of the CAR, the requirements to be met for an application to be considered are as follows:

- proof of existence of the company and its permits at the country of domicile;
- a detailed description of the proposed operation, which in general shall cover the following:
 - all information about the aircraft and its equipment;
 - maintenance records, registration certificates and crew member licences and records;
 - all technical and instructional proceedings for maintenance and instruction of crew and personnel; and
 - proposed route, including all technical and geographical details;
- details about the process and methods for supervision of operations;
- nature of business;
- quality controls, compliance and proceedings;
- due diligence disclosure on company structure and composition of shareholder structure;
- letter of commitment and compliance to all applicable laws and regulations in Panama;
- disclosure of financial capacity;
- management appointed;
- directors responsible for the area and their technical experience;
- operational manuals for the aircraft; and
- proposed date for the commencement of operations.

10 Are there specific rules in place to ensure aviation services are offered to remote destinations when vital for the local economy?

Not applicable.

11 Are charter services specially regulated?

Charter operations are defined as per Law 21 of 2003 in articles 89 and 90.

The rules and regulations of the CAR established for such type of commercial operations are also applicable.

12 Are airfares regulated, and if so, how?

Air carriers are free to set airfares. Regulatory approval is not required.

13 Are there any rules regulating the operation of unmanned aircraft systems (drones)?

Regulation (AAC) DSA/DG-01-06 regulates drones in Panama and the principal requirement is the registration of the equipment and owner.

Aircraft**14 Who is entitled to be mentioned in the aircraft register? Do requirements or limitations apply to the ownership of an aircraft listed on your country's register?**

The AAC maintains an aircraft registry, principally for the purpose of maintaining supervision and control of all aircraft registered in Panama.

Ownership and any transaction related to an aircraft is required to be registered at the Panama Public Registry, so it can be acknowledged as valid against third parties (article 30 of Law 21 of 2003).

As per article 32 of Law 21 of 2003, the Public Registry maintains special sections for aircraft, whereby any record as to title, liens, leases, contracts, arrests, claims or any judicial order may be recorded.

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

In order to have a valid charge against third parties, the charge must be recorded in the aircraft section of the Public Registry. As per article 33 of Law 21 of 2003, any charge will be valid from the moment it has been presented for registration.

Any lien or charge must be recorded as a public deed, must include all details pertinent to the charge and the aircraft and all registration charges related thereto must be paid.

Documents produced in a foreign country must follow the process of authentication, to then be converted into a Panamanian public deed, before proceeding with registration.

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

Debts originating within the territory of Panama allow the AAC to detain an aircraft following compliance with applicable proceedings.

Commercial debts, be they foreign or local, must follow the applicable Panamanian judicial procedure.

17 Do specific rules regulate the maintenance of aircraft?

The CAR contemplate maintenance standards applicable to specific types of aircraft, operations and types of uses.

Airports**18 Who owns the airports?**

In principle and by means of article 54 of Law 21 of 2003, international airports are under the direct management and supervision of the AAC and authorities such as customs, immigration and security institutions.

Law 23 of 2003 grants the state and the AAC the power to organise private entities to manage airports and aerodromes, while retaining 100 per cent of the control by the state.

Private aerodromes are considered within the scope of article 58 of Law 23, yet conditioned to the compliance of the standards and requirements established in the CAR.

19 What system is there for the licensing of airports?

The AAC grants licensing that remains under its supervision for the term granted. Additionally, there are two special legislations that have been issued to complement Panama's strategy to become a regional logistics hub. One is for Panama Pacifico International Airport and the other, more recent legislation, is for the Colon Free Trade Zone, which includes the Enrique Adolfo Jiménez Airport.

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

The system of economic regulation is generally controlled by the state. However, in specific situations, as for Tocumen and Panama Pacifico international airports and Enrique Adolfo Jiménez Airport in Colon, administration and autonomy are regulated under specific regulations.

21 Are there laws or rules restricting or qualifying access to airports?

Safety and security is coordinated by the AAC with all authorities involved.

The AAC, through its rules and regulations, has issued and developed a number of manuals and instructions related to access and security for airports.

22 How are slots allocated at congested airports?

Panama considers international standards as per the International Air Transport Association's suggested procedures. The slot allocation regime is most commonly used but slot pools and slot exchanges are also options.

23 Are there any laws or rules specifically relating to ground handling?

Law 23 of 2003 grants the right to contract ground handling services to the board of directors and management of the airports.

The management must request bids for some services when required, and in other instances, such self-handling will be handled by the carrier.

Consideration must also be given to access, taking capacity and space at the airport into consideration.

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

As per Law 21 of 2003, air traffic control services are under the responsibility and supervision of the AAC.

Traffic control services regulations are contained in article i.i.2, Book XXVIII of the CAR, and follow the standards suggested by the ICAO.

Liability and accidents**25 Are there any special rules in respect of death of, or injury to, passengers or loss or damage to baggage or cargo in respect of domestic carriage?**

Article 138 of Title XII of Law 21 of 2003 regarding civil liabilities, establishes all considerations and general rules related to death and injury.

For domestic carriage, article 152 deals with death and injury to passengers. Damage to baggage and cargo are dealt with in article 153 and article 154, respectively. Article 156 establishes the liability exonerations.

Limits of liability are established in article 157 and extra contractual liability is defined in article 158.

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

Article 183 of Chapter IX, Title XI, of Law 21 of 2003 defines the general principle for surface damage.

27 What system and procedures are in place for the investigation of air accidents?

Title X of Law 21 of 2003 establishes the framework for investigation of air accidents.

The AAC is responsible for the investigation of air accidents following the standards established in the Chicago Convention, which are contemplated in the CAR. The AAC maintains a special department for the prevention and investigation of accidents, which manages all investigations in accordance with the established rules and procedures.

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

Yes, it is mandatory to investigate any accident or incident reported in Panama.

The investigation is principally technical and it is the responsibility of the unit for prevention and investigation of accidents.

Any person that has knowledge of any incident or accident is expected to provide information to the local AAC representative.

Competition law

29 Do sector-specific competition rules apply to aviation? If not, do the general competition law rules apply?

Law 45 of 2007, which establishes the general competition law rules, applies to aviation issues in Panama.

30 Is there a sector-specific regulator or are competition rules applied by the general competition authority?

The Panamanian general competition authority and the AAC, depending on the issues, will maintain administrative competence and jurisdiction for aviation matters.

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

The general applicable rule is that the relevant market is determined by the existence of one product or service, or a group of products or services and other substitute products or services within the geographical area in which those products or services are provided. The Panama Antitrust and Competition Authority may have the competence to determine the relevant market.

32 What are the main standards for assessing the competitive effect of a transaction?

Standards for assessing the competitive effect of a transaction are as follows:

- the possibility of substitution of the product or services for others, and the capacity of substitute consumer products or services;
- the distribution cost of the product, its inputs, complements and substitutes within the territory or abroad, taking in consideration the costs and the restrictions enacted by economic agents or their associations and the necessary time to supply the relevant market;
- the costs and possibilities of local consumers sourcing products or services from other markets;
- the restrictions imposed by law, that limit the access to an alternative source of supply or the access of the suppliers to alternative clients; and
- the dynamics of innovation.

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

The authority may proceed as follows:

- order a transaction or activity to be regulated in accordance with terms and conditions of competition law; or

- order the dissolution of any economic concentration or potential economic concentration, terminating any control or any act in accordance with the specific conditions.

Financial support and state aid

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

Panama does not grant subsidies nor any sort of financial aid to the aviation industry.

35 What are the main principles of the state aid rules applicable to the aviation sector?

Not applicable.

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

Not applicable.

37 Must clearance from the competition authorities be obtained before state aid may be granted?

Not applicable.

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

Not applicable.

39 If no clearance is obtained, what procedures apply to recover unlawfully granted state aid?

Not applicable.

Miscellaneous

40 Is there any aviation-specific passenger protection legislation?

In regard to airfares, Resolution No. 13/DTA/AAC, of 5 October 2007, from the CAA requires that any fare announced for commercial means shall include complete details of all charges, in order to avoid any misrepresentation.

41 Are there mandatory insurance requirements for the operators of aircraft?

Title XII of Law 21 of 2003 establishes insurance as a mandatory requirement for aviation operators and their equipment.



Juan José Espino Sagel

jjes@padela.com

10th Floor
Plaza 2000 Tower
50th Avenue
Panama City
Panama

Tel: +507 223 7222
Fax: +507 223 7535
www.pardinilaw.com

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

Panama, through the AAC, follows the recommendations and standards of the ICAO, and will also establish rules taking matters of national security into consideration.

43 What serious crimes exist with regard to aviation?

Law 21 of 2003 initially introduced a number of crimes that have now been adapted in articles 319, 320 and 330 of the Panama Criminal Code.

Major offences include the following:

- the commission of acts against the safety of the aircraft;
- hijacking of an aircraft; and
- commission of acts against air traffic.

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