

Ecuador

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General

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

Aviation is primarily regulated in Ecuador by the Civil Aviation National Council (Consejo Nacional de Aviación Civil) (CNAC) – which develops commercial aviation policies – and the Civil Aviation Directorship (Dirección General de Aviación Civil) (DAC) – which is the regulatory authority. The basic statutory aviation laws are the Code on Aeronautics (COA) and the Law on Civil Aviation (LCA).

Regulation of aviation operations

2 How is air transport regulated in terms of safety?

DAC regulates the safety of commercial and private air transportation and is in charge of conducting aircraft accident investigation. Safety is regulated in accordance with COA and LCA, and the Civil Aviation Technical Regulations (RDAC).

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

Air transport commercial operation is defined as “the operation of an aircraft involving transportation of passenger, cargo or mail in exchange for a fee or rent”. Other operations are generally considered private operations. Article 109 of the COA determines that any air transport operation requires a concession or operating permit granted by CNAC or DAC, as applicable – exceptions are made for private aircraft in transit in Ecuador.

Commercial carriers and operations are regulated by RDAC parts 119, 121 and 135. Private operations are regulated under RDAC part 91.

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

Yes. Air transport operation requires an operating permit generally granted by CNAC – certain services are subject to authorisation by DAC only. Applicants must evidence legal, financial and technical capacity, as well as their willingness and ability to comply with applicable regulations.

Once the operating permit has been granted, the operator must obtain certification from DAC in order to conduct operations. Such certification shall be obtained within one year of the operating permit being granted.

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

In order to acquire an operating permit, applicants must demonstrate financial fitness. Such financial fitness shall generally be evidenced by a certificate issued by a well known financial institution.

The application to acquire an operating permit or expand operations must include the carrier’s financial statements and a financial feasibility study of the proposed operations, which shall include the investment amount as well as the estimated revenues and expenses; determine certain financial parameters; and determine how the aircraft to be used is to be purchased or leased, among others.

Ecuadorian carriers may be wholly owned or controlled, or both, by foreign individuals or entities, as long as the carrier itself is duly incorporated in Ecuador.

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

An operating permit is required to conduct any air transport activities. Accordingly, an application in writing needs to be filed before the CNAC – or before the DAC, regarding certain specific services – in compliance with the requirements determined by the Regulations on Concessions and Operating Permits for Exploiting Air Transport Services. Such regulations determine the need to comply with legal, financial and technical requirements.

Once the operating permit is granted, the applicant needs to obtain certification from the DAC before being able to start operations.

International routes are also governed by the corresponding bilateral or multilateral aviation treaties. When no treaties are in place, route authority may be obtained on the grounds of reciprocity.

Generally, operating permits for Ecuadorian carriers are granted for a five-year term. In case of foreign carriers, permits are granted for a three-year term. In both cases operating permits may be renewed as many times as required.

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

Any application for new or increased service is subject to a public hearing as part of the review process. Any third party interested in contesting the application may participate in such hearing, although only duly grounded oppositions may be heard.

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

Ecuador lacks a law on competition or antitrust. Besides the general Constitutional principle that no monopolies shall exist and that competition shall be enhanced among the existing players, there is no specific policy on airline access or competition.

- 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)?

No specific rules exist to ensure aviation services are offered to remote destinations, even when vital for the local economy. Nevertheless, TAME – a government-owned airline – has been used as a vehicle to operate to remote destinations on a ‘social service’ basis.

- 10** Are charter services specially regulated?

Yes. The Regulations on Concessions and Operating Permits for Exploiting Air Transport Services contain specific rules on charter services. Generally, charter services may be provided by carriers holding an operating permit to render scheduled or non-scheduled services or by obtaining specific authorisation for individual charter flights. Specific authorisations are generally driven by the public interest principle.

Domestic charter flights may only be operated by local carriers. International charter flights are also governed by bilateral and multilateral treaties.

- 11** Are airfares regulated, and if so, how?

Passenger air fares are not regulated, although every air carrier operating to and from Ecuador must file the corresponding fares with the DAC prior to their availability.

Cargo rates are regulated through the determination of minimum rates by the DAC, but freely fixed by the carriers above this floor. Cargo rates shall also be registered with the DAC.

Aircraft

- 12** 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?

Any aircraft, whether private or state-owned is eligible for registration, apart from those which are used for state security purposes such as police, military and customs aircraft. Private aircraft are eligible for registration in the Registry if they are owned by:

- Ecuadorian nationals;
- Foreign individuals who are domiciled or resident in Ecuador; or
- Ecuadorian legal entities or foreign legal entities domiciled in Ecuador.

Commercial aircraft are eligible for registration in the registry if they are owned or leased to Ecuadorian carriers.

Owner, lessor, lessee and security holders are entitled to be mentioned in the aircraft registry.

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

Yes. The National Aircraft Register (Registro Aeronáutico Nacional) (the Registry), maintained by the Civil Aviation Department, is in charge of registering, among others, mortgages, pledges, liens, or any other type of encumbrance or restriction on the title of an aircraft or attachment thereto.

If there is any encumbrance to be registered, for example, a mortgage, the following documents will be required:

- a certified copy of the mortgage deed;
- if the mortgage is executed in Ecuador by foreign entities or individuals, certified copies of the powers of attorney or other relevant documents evidencing the right to represent such parties; and
- payment of the corresponding government fees.

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

No detention rights exist with respect to unpaid airport or navigation charges. Detention rights are available in favour of the seller of an aircraft or in case of in rem rights over an aircraft.

- 15** Do specific rules regulate the maintenance of aircraft?

Yes. Maintenance of an aircraft is expressly regulated under the Regulation for the Operation of Public Transportation Aircrafts (Reglamento para la Operación de Aviones de Transporte Publico) and the RDACs. Maintenance issues are specifically reviewed by the DAC in order to certify an air carrier prior to starting or modifying service.

Airports

- 16** Who owns the airports?

Airports may be owned by the government or by private entities or individuals. In any case, airports – either private or public – need to be authorised and licensed by the DAC.

- 17** What system is there for the licensing of airports?

DAC is in charge of authorising the construction, and licensing the operation, of airports. The operation of an airport may be in the hands of private entities but DAC is always in charge of air traffic control.

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

In case of government-owned airports operated by DAC, tariffs and fees are fixed by the CNAC. In case of government-owned airports operated or managed by the municipalities, the corresponding municipal body is in charge of the economic regulation thereof. There are no specific rules regarding the operation of privately owned airports.

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

Yes. The Regulations on the Use and Operation of Ecuadorian Airports (Reglamento para Uso y Funcionamiento de los Aeropuertos del País) establish the principle of equal access and non-discrimination for access to public airports.

20 How are slots allocated at congested airports?

No specific regulations exist.

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

Yes. The Regulations on Concessions and Operating Permits for Exploiting Air Transport Services provide for the need of a licence granted by DAC in order to render ground handling services. Legal, technical and economic requisites need to be fulfilled to this effect.

There are no specific rules regarding access to or competition regarding ground handling activities.

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

Air traffic control services are provided by DAC, although they may be delegated to third parties.

Liability and accidents

23 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?

Yes. The COA contains specific rules regarding the carrier's responsibility in case of death or injury to passengers or loss or damage to baggage or cargo. These rules apply to domestic carriage, regarding any event occurring during the operation of the aircraft or while boarding or disembarking the aircraft.

According to COA, regulations shall be enacted determining the compensation amount and limits of responsibility. However, these regulations have not been enacted to date. In practice, limits of responsibility determined under the Chicago Convention apply.

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

Yes. The COA contains specific provisions regarding surface damage. The operator's responsibility is limited to such damage caused by the aircraft, a person or an object falling from the aircraft while in operation – defined as any moment beginning from the time the aircraft starts moving until it stops moving independently.

The operator is responsible for compensating for the damaged caused until such limits as determined by the corresponding regulations. However, these regulations have not been issued to date.

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

The DAC is in charge of verifying and investigating any accidents concerning commercial or private aircraft in Ecuador.

The Regulations on the Investigation of Aviation Accidents and Incidents determine the procedures to be followed for the investigation of air accidents. Such procedures involve, among others, the analysis and verification of the accident, gathering of evidence, and anything else required to produce a final accident report.

A committee is created when an accident occurs in order to conduct the investigation.

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

Yes. It is mandatory to report any accident or incident. The Regulations on the Investigation of Aviation Accidents and Incidents contains specific information on how to report the occurrence of an accident or incident and DAC's responsibility on who and how to inform when dealing with foreign aircraft.

The existing Flight Security Coordination Center is in charge of advising DAC on all matters regarding the investigation and prevention of aviation accidents.

Competition law

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

Ecuador does not have a law on competition or antitrust. Only general rules regarding the avoidance of monopolies exist. The CNAC and DAC are responsible for creating an environment of competition between air carriers and facilitating access to the market. No specific rules exist.

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

See question 27.

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

No specific definition exists.

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

Not available.

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

We do not believe that any remedies have been imposed on a specific case.

Financial support and 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?

No general or specific rules exist.

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

No state aid rules apply.

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

Not applicable.

Update and trends

During the last few years the regulatory authorities have paid special attention to security issues. Enacting the RDAC regulations was a significant step forward in regulating many air security and operations issues which were unregulated. This trend will continue in the future.

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

Not applicable.

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

Not applicable.

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

Not applicable.

Miscellaneous

38 Is there any aviation-specific passenger protection legislation?

COA contains specific rules regarding delay and cancellation of flights, lost baggage and similar events for which the passenger is subject to compensation. The general consumer protection legislation also apply to aviation matters, specially regarding those issues not specifically ruled under aviation-specific legislation.

RDAC regulations contain specific obligations regarding disabled passengers.

39 Are there mandatory insurance requirements to operate aircraft?

Yes. COA provides for all carriers to have in effect aircraft accident liability insurance covering bodily injury or death, and damage to the property of others. No aircraft is authorised to operate without insurance coverage.

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

Aside from applicable international convention rules, the RDAC regulations contain specific and detailed obligations regarding aviation security.

41 What serious crimes exist with regard to aviation?

COA describes crimes with regard to aviation. These include, among other things, air piracy, interference with air navigation equipment, interference with crew members, falsifying aircraft registration and records, air sabotage, issuance of false information regarding crew members, placing a bomb or other artefacts in an aircraft and carrying weapons or explosives on the plane.

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