

# Air Transport

in 34 jurisdictions worldwide

Contributing editor: John Balfour

# 2010



Published by  
**Getting The Deal Through**  
in association with:

Abogados Sierra y Vázquez SC  
Alves Pereira, Teixeira de Sousa & Associados  
Babalakin & Co  
Bahas, Gramatidis & Partners  
Basch & Rameh  
Beaumont & Son – Aviation at Clyde & Co LLP  
Bell Dewar  
Bhasin & Co Advocates  
Bird & Bird LLP  
Buddle Findlay  
Corral & Rosales  
De Brauw Blackstone Westbroek  
De Sola Pate & Brown  
Dillon Eustace  
Donald H Bunker and Associates  
Dugardyn & Partners  
Ehlers, Ehlers & Partner  
Estudio Carvallo Ltd  
Foigt and Partners/Regija Borenus  
Fraser Milner Casgrain LLP  
Freidenberg, Freidenberg & Lifsic – Abogados  
GBF Gerspacher Bühlmann Fankhauser  
Howrey LLP  
HWL Ebsworth Lawyers  
Jarolim Flitsch Rechtsanwälte GmbH  
Katten Muchin Rosenman LLP  
Nassar Abogados SA  
Pardini & Asociados  
Rodriguez & Cavalier  
Rosselló Abogados  
SCP Bouckaert Ormen Passemard Sportes – Cabinet BOPS  
Shanghai Kai-Rong Law Firm  
Sokolov, Maslov and Partners  
Studio Legale Cannata Pierallini & Associati  
Ventura Garcés & López-Ibor



## Air Transport 2010

### Contributing editor:

John Balfour  
Beaumont & Son – Aviation at  
Clyde & Co LLP

Business development manager  
Joseph Samuel

### Marketing managers

Alan Lee  
Dan Brennan  
George Ingledew  
Edward Perugia  
Robyn Hetherington  
Dan White  
Tamzin Mahmoud  
Ellie Notley

### Subscriptions manager

Nadine Radcliffe  
Subscriptions@  
GettingTheDealThrough.com

### Assistant editor

Adam Myers

### Editorial assistant

Nick Drummond-Roe

### Senior production editor

Jonathan Cowie

### Chief subeditor

Jonathan Allen

### Senior subeditor

Kathryn Smuland

### Subeditors

Laura Zúñiga  
Ariana Frampton  
Sarah Dookhun

### Editor-in-chief

Callum Campbell

### Publisher

Richard Davey

### Air Transport 2010

Published by  
Law Business Research Ltd  
87 Lancaster Road  
London, W11 1QQ, UK  
Tel: +44 20 7908 1188  
Fax: +44 20 7229 6910  
© Law Business Research Ltd  
2009

No photocopying: copyright  
licences do not apply.

ISSN 1751-9098

The information provided in this publication is general and may not apply in a specific situation. Legal advice should always be sought before taking any legal action based on the information provided. This information is not intended to create, nor does receipt of it constitute, a lawyer-client relationship. The publishers and authors accept no responsibility for any acts or omissions contained herein. Although the information provided is accurate as of September 2009, be advised that this is a developing area.

Printed and distributed by  
Encompass Print Solutions  
Tel: 0870 897 3239

**Law**

**Business**

**Research**

<b>Overview</b> John Balfour <i>Beaumont &amp; Son – Aviation at Clyde &amp; Co LLP</i>	<b>3</b>
<b>Argentina</b> Elizabeth Mireya Freidenberg <i>Freidenberg, Freidenberg &amp; Lifsic – Abogados</i>	<b>7</b>
<b>Australia</b> Simon Liddy, Matthew Brooks and Richard Westmoreland <i>HWL Ebsworth Lawyers</i>	<b>14</b>
<b>Austria</b> Hannes Jarolim and Stefan Rust <i>Jarolim Flitsch Rechtsanwälte GmbH</i>	<b>22</b>
<b>Belgium</b> Birgitta Van Itterbeek <i>Dugardyn &amp; Partners</i>	<b>30</b>
<b>Brazil</b> Kenneth Basch, Renata Iezzi, Marcelo Takeyama, Roberta Vianna and Renata Montilla <i>Basch &amp; Rameh</i>	<b>35</b>
<b>Canada</b> Laura M Safran QC <i>Fraser Milner Casgrain LLP</i>	<b>40</b>
<b>Chile</b> Emilio Sahurie <i>Estudio Carvallo Ltd</i>	<b>46</b>
<b>China</b> Jin Yu-Lai <i>Shanghai Kai-Rong Law Firm</i>	<b>50</b>
<b>Colombia</b> Bernardo Rodríguez and Catalina Arbeláez <i>Rodríguez &amp; Cavelier</i>	<b>55</b>
<b>Costa Rica</b> Alina Nassar <i>Nassar Abogados SA</i>	<b>62</b>
<b>Ecuador</b> Xavier Rosales <i>Corral &amp; Rosales</i>	<b>67</b>
<b>European Union</b> Geert Goeteyn, Kristian Hugmark and Thomas Wiese <i>Howrey LLP</i>	<b>71</b>
<b>France</b> Carole Sportes and Jonathan Rubinstein <i>SCP Bouckaert Ormen Passemard Sportes – Cabinet BOPS</i>	<b>81</b>
<b>Germany</b> P Nikolai Ehlers <i>Ehlers, Ehlers &amp; Partner</i>	<b>88</b>
<b>Greece</b> Vicky Veli <i>Bahas, Gramatidis &amp; Partners</i>	<b>94</b>
<b>India</b> Lalit Bhasin <i>Bhasin &amp; Co Advocates</i>	<b>103</b>
<b>Ireland</b> Kieran Cowhey, Tom Carney, Andrew Lawless and Lea Devitt <i>Dillon Eustace</i>	<b>110</b>
<b>Italy</b> Laura Pierallini <i>Studio Legale Cannata Pierallini &amp; Associati</i>	<b>117</b>
<b>Lithuania</b> Jurate Rusteikaite-Baksiene <i>Foigt and Partners/Regija Borenus</i>	<b>123</b>
<b>Mexico</b> Carlos Sierra, Antonio Vázquez, Misael Arellano and Viridiana Barquín <i>Abogados Sierra y Vázquez SC</i>	<b>130</b>
<b>Netherlands</b> Berend Crans, Arjan Kleinhout and Maikel van Wissen <i>De Brauw Blackstone Westbroek</i>	<b>136</b>
<b>New Zealand</b> Frank Porter and Anna-Louise Oliver <i>Buddle Findlay</i>	<b>142</b>
<b>Nigeria</b> Olawale Akoni SAN, Elejo H Pitan and Kehinde Daodu <i>Babalakin &amp; Co</i>	<b>149</b>
<b>Panama</b> Juan José Espino Sagel <i>Pardini &amp; Asociados</i>	<b>154</b>
<b>Peru</b> Alberto Villanueva Eslava <i>Rosselló Abogados</i>	<b>158</b>
<b>Portugal</b> João Alves Pereira, João Marques de Almeida and Sónia Martins Gonçalves <i>Alves Pereira, Teixeira de Sousa &amp; Associados</i>	<b>163</b>
<b>Russia</b> Mikhail Sokolov, Anna Arkhipova and Sergey Seliverstov <i>Sokolov, Maslov and Partners</i>	<b>170</b>
<b>South Africa</b> Tania Siciliano and Ashleigh Dawson <i>Bell Dewar</i>	<b>176</b>
<b>Spain</b> Alfonso López-Ibor and Francisco Redondo <i>Ventura Garcés &amp; López-Ibor</i>	<b>182</b>
<b>Switzerland</b> Andreas Fankhauser and Lars Gerspacher <i>GBF Gerspacher Bühlmann Fankhauser</i>	<b>190</b>
<b>United Arab Emirates</b> Donald H Bunker, Ian Veall and Christine Veall <i>Donald H Bunker and Associates</i>	<b>196</b>
<b>United Kingdom</b> Richard Venables, William Morton and Tim Murray <i>Bird &amp; Bird LLP</i>	<b>200</b>
<b>United States</b> Timothy J Lynes, James J Calder and Robert I Fisher <i>Katten Muchin Rosenman LLP</i>	<b>206</b>
<b>Venezuela</b> John R Pate <i>De Sola Pate &amp; Brown</i>	<b>214</b>

# Ecuador

Xavier Rosales

Corral & Rosales

---

## General

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

Aviation is primarily regulated in Ecuador by the Civil Aviation National Council (CNAC), which develops commercial aviation policies, and the Civil Aviation Directorship (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 investigations. Safety is regulated in accordance with the COA, the 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 passengers, 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 the CNAC or the DAC, as applicable – exceptions are made for private aircraft in transit in Ecuador.

Commercial carriers and operations are regulated by the RDAC, parts 119, 121 and 135. Private operations are regulated under the 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 demonstrate 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?

To acquire an operating permit, applicants must demonstrate financial fitness, generally 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; determination of certain financial parameters; and details of how the aircraft to be used is to be purchased or leased, among others.

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

Once an operating permit has been granted by CNAC, the foreign air carrier must obtain its operation specifications from the DAC

before it is allowed to start operation. In order to obtain the operation specifications the air carrier must demonstrate the technical, maintenance and operations capacity of the airline and the aircraft to be operated.

Exempted from the above are charters flights which may be authorised based on an operator's certificate and similar documents granted by the authority in the country of origin of the foreign air carrier.

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

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.

11 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.

12 Are airfares regulated, and if so, how?

Passenger airfares 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 are freely fixed by the carriers above this floor. Cargo rates shall also be registered with the DAC.

#### Aircraft

13 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:

- Ecuadorean nationals;
- foreign individuals domiciled or resident in Ecuador; or
- Ecuadorean 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 Ecuadorean carriers.

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

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

Yes. The National Aircraft Register (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 and its translation into Spanish, when applicable;
- 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.

15 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.

16 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 Aircraft and the RDAC. Maintenance issues are specifically reviewed by the DAC in order to certify an air carrier prior to starting or modifying a service.

#### Airports

17 Who owns the airports?

A new Constitution was enacted in Ecuador in October 2008 whereby all public services shall be rendered, and the facilities owned, by the government, although such rights may be subject to delegation to private entities as an exception. New rules and regulations shall be enacted in the near future in this regard. Meanwhile, the main international airports in Ecuador – Quito and Guayaquil – remain operated by private entities. In any case, airports – both private and public – need to be authorised and licensed by the DAC.

18 What system is there for the licensing of airports?

The 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 the DAC is always in charge of air traffic control.

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

In the case of government-owned airports operated by the DAC, tariffs and fees are fixed by the CNAC. In the 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. New rules are expected in this regard.

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

Yes. The Regulations on the Use and Operation of Ecuadorean Airports establish the principle of equal access and non-discrimination for access to public airports.

21 How are slots allocated at congested airports?

No specific regulations exist.

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

Yes. The Regulations on Operating Permits for Air and Ground Handling Activities provide for the need of a licence granted by the

## Update and trends

New rules regarding the operation of public airports are expected, granting more control to the government.

A competition law is expected to be enacted soon establishing, for the first time in Ecuador, a body of rules on competition and antitrust activities and conduct.

Travel agents have been pushing hard for the government to fix the minimum commission to be paid by airlines. To date the authorities have agreed that such relationship is strictly commercial and that no action by the government is required, but it is expected that travel agents will continue in this endeavour.

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.

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

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

## Liability and accidents

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

## 25 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 up to certain limits as determined by the corresponding regulations. However, these regulations have not been issued to date. Compensation to injured individuals has priority over compensation for damages to surface property.

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

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.

## 27 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 the DAC's responsibility on who to inform and how when dealing with foreign aircraft.

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

## Competition law

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

Ecuador has no law on competition or antitrust; only general rules on the avoidance of monopolies, unfair competition and anti-competitive conduct exist.

The CNAC and the DAC are responsible for creating a competitive environment between air carriers and facilitating access to the market, but no specific rules exist.

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

See question 28.

## 30 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.

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

Not specific standards are available.

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

No remedies have been imposed in a specific case.

## Financial support and state aid

## 33 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?

No general or specific rules exist, except for subsidised fuel for Ecuadorean carriers – both for domestic and international operations. For this purpose an Ecuadorean carrier shall operate with aircraft registered in Ecuador.

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

Not applicable.

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

See question 33.

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

Not applicable.

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

Not applicable.

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

Not applicable.

Miscellaneous

39 Is there any aviation-specific passenger protection legislation?

The COA contains specific rules regarding delay and cancellation of flights, lost baggage and similar events for which the passenger is subject to compensation, which are also expanded in the corresponding regulations.

The general consumer protection legislation also applies to aviation matters, especially regarding those issues not specifically ruled under aviation-specific legislation.

The RDAC contain specific obligations regarding disabled passengers.

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

Yes. The 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.

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

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

42 What serious crimes exist with regard to aviation?

The 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 on an aircraft and carrying weapons or explosives on a plane.

# Corral & Rosales

**Xavier Rosales**

**xavier.rosales@corralrosales.com**

Robles E4-136 and Av Amazonas  
Edificio Proinco Calisto, 12th floor  
Quito  
Ecuador

Tel: +593 2254 4144  
Fax: +593 2250 3743  
www.corralrosales.com

