

International Comparative Legal Guides



Practical cross-border insights into aviation law

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Industry Chapter

1

WALA: Bringing Together Airport Lawyers as We Emerge From the COVID-19 Pandemic
Elizabeth Albergoni, Worldwide Airports Lawyers Association (WALA)

Expert Analysis Chapters

4

The Use of Personal Data in the Commercial Aviation Industry
Alan D. Meneghetti, RadcliffesLeBrasseur LLP

9

Investing in Mid-Life Aviation Assets – The Final Edition
Philip Perrotta, K&L Gates LLP

15

Post-Pandemic Aviation News: Airlines Recover and Passenger Rights
Marc S. Moller, Justin T. Green & Erin R. Applebaum, Kreindler & Kreindler LLP

19

Regulations on Drone Flights in Japan
Hiromi Hayashi & Koji Toshima, Mori Hamada & Matsumoto

24

EU Law: Passenger Rights and Protections
Anna Anatolitou & Rachel Richards, Ince

Q&A Chapters

32

Austria
Benn-Ibler Rechtsanwalte GmbH:
Mag. Irena Gogl-Hassanin, LL.M.

39

Belgium
Goemans, De Scheemaeker & De Wit:
Birgitta Van Itterbeek & Annick Sleenckx

51

British Virgin Islands
Maples Group: Michael Gagie, Rebecca Lee & Ruairi Bourke

59

Cayman Islands
Maples Group: Sherice Arman & Joe Jackson

67

Chile
PRAT & CIA. Abogados: Francisco Prat & Valentina Ravera

76

Cyprus
Phoebus, Christos Clerides & Associates LLC:
Professor Christos Clerides

86

Dominican Republic
Raful Sicard Polanco & Fernández: María Esther Fernández Álvarez de Pou, María Fernanda Pou Fernández & María Gabriela Pou Fernández

96

France
Clyde & Co: Grégory Laville de la Plaigne & Ionna Poirer

106

Germany
Urwantschky Dangel Borst PartmbB: Rainer Amann & Claudia Hess

115

India
AZB & Partners: Anand Shah, Rishiraj Baruah & Abhilasha Agarwal

127

Indonesia
Bahar: Wahyuni Bahar, Fairuz Rista Ismah & Endraswari E. Sayekti

135

Ireland
Maples Group: Mary O'Neill & Mary Dunne

149

Israel
Gross, Orad, Schlimoff & Co. (GOS): Omer Shalev

160

Italy
Vitale & Partners: Professor Salvatore Vitale

177

Japan
Mori Hamada & Matsumoto: Hiromi Hayashi

188

Malaysia
SARANJIT SINGH, Advocates & Solicitors:
Saranjit Singh & Dhiya Damia Shukri

199

Mexico
Canales, Dávila, De la Paz, Enríquez, Sáenz, Leal, S.C.:
Bernardo Canales Fausti & Aldo Álvarez Martínez

206

Nigeria
ÆLEX: L. Fubara Anga, SAN & Rafiq Anammah

213

Panama
Galindo, Arias & López: Cristina Lewis, Daniel E. Sessa & Claudia Juárez

Q&A Chapters Continued

219

Portugal

PLMJ Advogados, SP, RL: Saul Fonseca & Diogo Perestrelo

228

Spain

Augusta Abogados: Sergi Giménez Binder

237

Switzerland

VISCHER AG: Urs Haegi & Dr. Thomas Weibel

247

Thailand

SRPP Limited: Passawan Navanithikul & Viparvee Chaemchaeng

254

United Kingdom

RadcliffesLeBrasseur LLP: Alan D. Meneghetti
K&L Gates LLP: Philip Perrotta

270

USA

Fox Rothschild LLP: Diane Westwood Wilson,
Paul N. Bowles III & Jean M. Cunningham

Chile

PRAT & CIA. Abogados



Francisco Prat



Valentina Ravera

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 two authorities that regulate aviation in Chile are the General Directorate of Civil Aeronautics (DGAC) and the Civil Aeronautical Board (JAC).

The DGAC is dependent on the Chief in Command of the Chilean Air Force, its functions are established in the Chilean Aeronautical Code and in Law No. 16,752, and it is mandated, among other responsibilities, to supervise civil aviation activities, protect flight safety and dictate general application regulation. The JAC is an administrative authority composed of a Council and the General Secretariat. The main functions of the JAC derive from its Organic Law (Decree in Force Law No. 241) and Decree Law No. 2,564, and mainly consist of the execution of the superior direction of civil and commercial aviation in Chile, as well as the administration of the corresponding policies.

The basic aeronautical law in Chile is the Chilean Aeronautical Code, which regulates, among other matters, airports, aircraft registration and airworthiness, aeronautical personnel, air operations, commercial and civil aviation, aircraft- and carriage-related contracts, liabilities, air search and rescue, accident investigations, aeronautical authority, infringements and crimes. The Chilean Aeronautical Code is complemented by Decree Law No. 2,564, which regulates commercial aviation, establishing the basic principles of freedom of airfares and minimising state intervention.

Additionally, Chile has ratified and is a party to several international Conventions, including, among others, the Chicago, Tokyo, Warsaw and Montreal Conventions.

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

According to Decree Law No. 2,564, air transport services, whether international or cabotage, and any other type of commercial air services can be performed by national or international carriers, as long as they comply with the technical and insurance requirements established by Chilean law.

The JAC is responsible for the administration and procedure to authorise or assign the use of traffic rights based on air freedom rights. Traffic rights are owned by the state of Chile and air carriers are authorised by the JAC to operate under a licence or concession.

Chile has developed an ‘open skies’ policy and has signed multiple air services agreements with other countries with a clear focus on fostering free access and competition of air services.

National air carriers do not need to obtain assignments or concessions to operate domestic routes, they only need to comply with the technical and insurance requirements. In the case of international operations, they have to comply with relevant air services agreements and national air carriers shall obtain national designation by the JAC.

The DGAC, through aeronautical regulation DAN 119, sets out the requirements to obtain an air operator certificate (AOC) for national carriers that will perform passenger and/or cargo, regular and/or non-regular, national and/or international air operations, and for foreign carriers that will perform domestic operations in Chile (cabotage). On the other hand, DAN 129 regulates the requirements of foreign AOC recognition for operations of foreign air carriers to and from Chilean territory.

For regular operations of foreign air carriers that will continuously and systematically perform international air transport services to and from Chile, according to pre-established conditions, such as itineraries and schedules, the foreign carrier shall obtain the recognition of its AOC and operation specifications through a detailed and complete procedure brought before the DGAC, which includes, among other requirements:

- to obtain from the JAC the required commercial air services permit and approval of insurance regarding all aircraft to be operated to and from Chile;
- to submit copies of operator manuals, including operation, safety, security, maintenance, training, cargo, aircraft certificates, licences, and legal and financial documentation; and
- to prepare supplements to the operations manual and maintenance manual, as well as an airport security programme and contingency plan for the operations in Chile, among other requirements.

DAN 129 establishes a maximum term of 180 days for the aforesaid procedure, subject to the foreign carrier providing all the required documentation or information, and if the said term is exceeded the foreign carrier will have to submit a new request and commence a new recognition procedure.

On the other hand, non-regular operations of a foreign carrier will require a simpler and more expedited authorisation procedure so long as the foreign air carrier will operate not more than 18 non-regular operations in a calendar year. However, if a foreign air carrier operates to and from Chile more than 18 non-regular operations in a calendar year, it will be required to obtain the recognition of its AOC and operation specifications according to the same procedure set out for regular operations of foreign carriers.

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

Safety is mainly regulated by the Chilean Aeronautical Code, complemented by regulations issued by the DGAC based on the International Civil Aviation Organization (ICAO) recommendations and standards, consisting mainly of aeronautical regulations (DAN), rules (DAR) and procedures (DAP); the following being the most relevant safety regulations:

- DAN 19: operational safety management system, for aeronautical service suppliers;
- DAN 13: aviation accident investigation;
- DAN 17: safety, protection of civil aviation against acts of unlawful interference; and
- DAN 18: safe transport of dangerous goods by air.

Chile, as a member of the Chicago Convention, is responsible for compliance with the norms and regulations contained in the Convention, including its Annexes and the ICAO recommendations.

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

The Chilean Aeronautical Code distinguishes commercial and non-commercial air operations. Non-commercial air operations are nonprofit flight activities, such as instruction, recreation or sport, and do not include any remunerated aerial work or transportation services. Even though the Chilean Aeronautical Code differentiates between commercial and non-commercial transport, when it comes to safety regulations, commercial, non-commercial, cargo and private carriers shall comply with mostly the same set of safety regulations although certain differences apply depending on the size, complexity and impact of their operations and activities.

The DGAC continuously reviews and updates safety regulations for all types of air operations according to the developments and the ICAO recommendations. Some of the most relevant safety aeronautical regulations (DAN) and rules (DAR) are issued by the DGAC.

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

The general conditions for charter (non-regular) commercial passenger, cargo and/or mail international operations of a foreign carrier to and from Chile are established in aeronautical regulation DAN 129.

The charter authorisation process is a somewhat simple and speedy procedure, so long as the foreign air carrier will operate not more than 18 non-regular commercial operations to and from Chile in a calendar year. The non-regular commercial operation approval has to be requested to the DGAC at least 72 hours in advance of the proposed operation.

For obtaining the referred to non-regular flight authorisation, the foreign carrier shall:

- obtain from the JAC the approval of the operation and the required insurance;
- submit the overflight and landing electronic form to the DGAC enclosing copies of certain documents (copies of the AOC and the operation specifications of each aircraft that will operate to/from Chile); and
- comply with certain requirements related to documentation required on board aircraft, and aircraft and equipment conditions check.

However, if a foreign air carrier is to operate to and from Chile more than 18 non-regular international commercial operations in a calendar year, it will be required to obtain the recognition of its AOC and operation specifications according to the same procedure set out for regular commercial operations to and from Chile of foreign carriers as set out in aeronautical regulation DAN 129.

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.

Chile has free and deregulated market access, which allows national and international natural or legal persons to develop air transport services to, from or within Chile.

The 'open skies' policy allows, in practice, both Chilean and international air carriers to operate freely in the country if they comply with the technical requirements demanded by the DGAC and insurance requirements stipulated by the JAC. Therefore, there are no particular limitations applicable to international air carriers operating in Chile when compared to local operators.

In 2012, the JAC declared unilaterally opened cabotage in Chile without the need to apply reciprocity conditions to foreign carriers and agreed to provide access to foreign carriers which required cabotage operations in equal conditions to national carriers.

1.7 Are airports state or privately owned?

According to the Chilean Aeronautic Code, civil aerodromes can be either public or private. Public aerodromes are open to public air navigation activities, while private aerodromes are for private use. Private aerodromes are subject to supervision of the DGAC.

Public aerodromes are owned by the state of Chile subject to supervision of the DGAC and, in some cases, are administered directly by the DGAC. In Chile, airports are public aerodromes and most of them are operated by third-party concessionaires under concession contracts.

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

The requirements are imposed by the DGAC according to applicable aviation regulations. Private airport operators may only impose conditions with respect to matters such as leasing of property (counters, offices, warehouse, etc.) or other airport services permitted under the relevant airport concession contract.

The DGAC will supervise all safety, security and aviation regulatory matters at airports. The air traffic control services and the aid to air navigation services cannot be granted under concession and shall be exclusively operated by the DGAC.

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?

Air accidents are regulated in the Chilean Aeronautical Code and aeronautical regulation DAR 13. According to the Chilean

Aeronautical Code, any person who is aware of a plane accident or incident, or the existence of remains of an aircraft, must notify the nearest police authority. Once it has been notified, the authority will take the appropriate measures for the protection and custody of the aircraft, and will inform the report to the DGAC, which is responsible for the administration of air accident investigations.

According to the Chilean Aeronautical Code, the air carrier is responsible for indemnifying surface damage, due to the mere fact that it results from the action of an aircraft in flight, or when it falls or detaches from it, unless the aircraft has been seized by the authority, the damage is a direct consequence of an act of war or armed conflict, the damage is caused by an act of sabotage or by the illicit seizure of the aircraft.

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

An API-PNR system was implemented in Chile and the data transmission required by the regulatory standard is fully operational.

All airlines that operate passengers' flights to or from the national territory must send the data of passengers on international flights to the competent authority, to facilitate transit and safeguard the security of the country. This information may be transferred through the use of the API-PNR system.

Since every air operator that carries out international flights must satisfy this obligation, and this is related to international commitments whose non-fulfilment would seriously affect the development of air transport in our country, the General Secretariat of the JAC requests companies to join as soon as possible to the API-PNR system. Otherwise, the sanctioning procedures contemplated in Articles 184 and following of the Chilean Aeronautical Code will be initiated, which may be considered until the definitive cancellation of the permits granted.

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 (CORSIA)?

The state of Chile is a party to the United Nations Framework Convention on Climate Change and its associated Protocols, thus recognising that climate change is a problem of all humanity and the importance of having tools to contribute to mitigate its effects.

Chile adopted measures in the air sector to implement CORSIA. The DGAC was specifically granted with the technical authority in matters of CORSIA, requiring air operators to provide information on their emissions and other requirements derived from ICAO standards. For this purpose, DGAC issued DAN 16, which establishes the compensation and emission reduction scheme for international civil aviation.

2 Aircraft Trading, Finance and Leasing

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

The registration of ownership in the Chilean National Aircraft Registry renders the contract enforceable to third parties.

According to Article 49 of the Chilean Aeronautical Code, to register the ownership of an aircraft, a copy of the public deed or the notarised and protocolised private instrument that proves its acquisition (e.g., a notarised and protocolised bill of sale) shall be registered in the Chilean Aircraft Registry. Without this registration, the ownership transfer shall not produce effects with respect to third parties.

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

The Chilean Aeronautical Code establishes a Mortgages and Prohibitions Registry under the National Aircraft Registrar of the DGAC.

The following contracts or acts shall be registered in the Mortgages and Prohibitions Registry:

- mortgages, and other liens and prohibitions over aircraft and privileged credits over aircraft; and
- attachments, retentions and protective measures over aircraft.

Aircraft lease agreements may also be registered in the Mortgages and Prohibitions Registry.

No registration can be made in the Mortgages and Prohibitions Registry if the relevant aircraft is not registered in Chile. However, an aircraft lease agreement of an aircraft registered abroad can be registered in the Mortgages and Prohibitions Registry including a reference to the relevant foreign registration.

Any mortgage or prohibition registered in the Mortgages and Prohibitions Registry shall also be annotated in the relevant aircraft ownership registration.

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

According to the Chilean Aeronautical Code, the owner of an aircraft shall be joint and severally liable together with the operator of any damages that the aircraft may cause, except if the act or contract by which the operation of the aircraft was transferred is registered with the National Aircraft Registrar – registration that will release the aircraft owner of civil liability.

The aircraft operator shall timely pay aircraft aeronautical fees to the DGAC. However, as established in rule DAR 50, the aircraft owner registered with the National Aircraft Registrar will be joint and severally liable with the aircraft operator for the payment of such aeronautical fees related to the aircraft operations.

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?

Aircraft engines are not registered in the Chilean National Aircraft Registry and information on them is not included in aircraft ownership registration.

There is no specific regulation on title annexation. The Chilean Aeronautical Code establishes, however, that an aircraft mortgage will comprise the entire aircraft, including the equipment or parts permanently destined to its service, whether they

are incorporated into it or are temporarily separated. The debtor may not separate the parts of the aircraft included in the mortgage unless it is temporary and for repair or improvement purposes.

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?

As a general rule, import value-added tax (VAT) and customs duties must be paid for imported goods before the goods are released from the Chilean Customs' control. However, Article 8 of Decree Law No. 2,564 of 1979, related to commercial aviation, establishes certain tax benefits for aircraft importation and leasing, consisting of a procedure for placing a guarantee to cover the amount of the applicable VAT and the possibility at expiration of the guarantee to use VAT credits for payment of taxes and customs duties and with the option of requesting reimbursement from the Treasury of the Republic.

Likewise, Chilean Customs' regulations include special provisions for temporary admission of aircraft that vary on the application procedure and duration of the regime depending on the type of aircraft and operations. Subject to meeting the required conditions for temporary admission of aircraft, no VAT, customs duties or guarantee will apply to the aircraft admission.

Stamp tax in Chile is applied only on acts or documents involving a money credit operation.

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

Chile has ratified several international Conventions, including, among others, the Chicago, Tokyo, Warsaw, Geneva and Montreal Conventions, but it is not a signatory state of the Cape Town Convention.

2.7 How are the Conventions applied in your jurisdiction?

A Convention enters into the national jurisdiction with full force, and is equivalent to a local law, once it has been previously approved by the Chilean Congress, and the instrument has been deposited in the country appointed as depository by the Convention. The Chilean Constitution states that the approval of a Convention will require the corresponding quorum in accordance with the provisions therein, and will be submitted to the general legal procedure to pass laws, where the Congress shall rule on the approval or rejection of the Convention. The control of its compliance is handed over to the aeronautical authority, the DGAC, and its normative force is subject to the Courts of Justice.

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?

As a general rule, non-residents are affected by withholding tax

in Chile on their Chilean source income. However, Decree Law No. 2,564 of 1979, related to commercial aviation, has a special withholding tax exemption on income arising from payments (i) made by a Chilean commercial airline company, (ii) to non-residents, (iii) which are due to technical advisory services, services rendered abroad, interests, or any other cause within the regular business line of the payor.

The referred to special withholding tax exemption requires the payor to keep a registry with the owner of the income, amount of the payments, destination, nature and source. The payor also has to store all the documents that support the rental payments in an accessible and organised manner.

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?

Neither the status of lessee of the aircraft nor the payment of rent grants an economic interest in the aircraft or ownership rights over the same.

3 Litigation and Dispute Resolution

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

The DGAC may suspend air navigation services with respect to an air carrier that fails to comply with the timely payment of aeronautical fees, notwithstanding the judicial or extrajudicial rights to collect the debt.

The DGAC, through aeronautical rule DAR 50, allows commercial air carriers with regular operations in Chile to enter into an agreement with the DGAC, which allows them to pay airport and air navigation charges and fees on a monthly basis, provided the air carrier submits a payment guarantee acceptable to the DGAC.

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?

Self-help is generally prohibited by law in Chile. Therefore, the affected party shall generally enforce its rights through court procedures.

Chile is not a signatory country of the Cape Town Convention.

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 Chilean Aeronautical Code states the DGAC shall administratively investigate aircraft accidents and incidents that occur in the national territory. Nevertheless, conflict resolutions that occur in Chilean territory are subject to the jurisdiction of the National Courts of Justice, including disputes that involve national military aircraft regardless of the territory of the incident.

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 service requirements relating to a court proceeding are regulated in the Chilean Code of Civil Procedure. The general regime is established in Article 49, which states that the parties to a trial shall, as a first action, appoint a legal domicile within the jurisdiction of the respective court, which will generally be the domicile of the lawyer. For this purpose, the law does not differ between domestic and non-domestic airlines and parties in court proceedings.

Notwithstanding the foregoing, for those services that need to be performed outside the country, Article 76 of the referred to Code establishes that they must be made by means of an international letter rogatory through which the Chilean court requests the corresponding foreign court to execute the processing of the requested service.

In addition, it should be noted that the requirements and proceedings may vary depending on the specific procedure; for example, an electronic notification system could be applied.

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 main remedies available on an interim basis are established in Article 290 of the Chilean Code of Civil Procedure which are intended to prevent further damages.

If certain conditions required by the law are met, the court may order one or more of the available remedies: the seizure or retention of goods; the designation of controllers; and/or the prohibition on executing acts or contracts on specific assets, notwithstanding other measures that may be established by law.

With respect to remedies provided under local law on a final basis, the court may issue orders, declarations, and award compensatory direct damages.

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?

The Chilean legal system, in general, provides for the right to appeal a court decision. In civil proceedings the affected party may appeal as long as there is a grievance, which is generated by the difference between what is requested and awarded by the court. The rights of appeal from an arbitral award may be limited by the parties of an agreement, except for certain specific legal judicial recourse that cannot be waived by the parties.

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?

The general rule contained in the Chilean Civil Code establishes that a party is not in breach of its obligation under a contract if prevented by an event of *force majeure* or an Act of God. An event of *force majeure* or an Act of God is defined in Article 45 of the Chilean Civil Code as an unforeseeable event that is not possible to resist, such as a shipwreck, an earthquake, arrest of enemies, acts of authority by a public officer, etc.

The Chilean Aeronautical Code states that air carriers, due to safety reasons or events of *force majeure*, such as meteorological phenomena, armed conflicts, civil disturbances or threats against aircraft, may suspend, delay, and cancel flights or modify its conditions. In these cases, any party of the air transport contract may terminate the contract, bearing each party its own losses. The carrier must inform, however, each passenger of the rights that assist him or her in the event of cancellation, flight delay or denied boarding.

The Chilean Aeronautical Code also establishes that in the event of a delay or cancellation of a flight, the affected passenger shall have, among other rights, the right to the reimbursement of the total amount paid for the ticket or the portion not used, as the case may be, if the passenger decides not to persist with the contract, regardless of whether the cause of the delay or cancellation is due to the carrier.

4 Commercial and Regulatory

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

There is no specific competition regulation on code-sharing or air carrier joint ventures; however, the competition authorities have recently reviewed the competitive effect of this type of business arrangement. Joint business agreements (JBAs) entered into by and between Latam Airlines Group and American Airlines and Latam Airlines Group and Iberia and British Airways (IAG) were reviewed and approved by the TDLC subject to certain conditions but eventually brought to the Chilean Supreme Court, which finally prohibited JBAs with respect to air transport of passengers based on the fact that the risks involved were considered higher than the benefits generated by the JBAs.

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

The competition authorities have reviewed the 'relevant market' for the purpose of competition assessment in the aviation sector in certain recent cases considering different elements, such as the differences between air cargo transport and passenger air transport in terms of entry barriers, and the consideration of the air transport network effect in the relevant market.

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

The National Competition Prosecutor's Office (FNE) has set thresholds above which an operation of concentration must be notified, according to Decree Law No. 211 (Competition Law).

The thresholds are a two-pronged test based on sales (not on market share): that merging economic agents have aggregate sales of UF 2.5 million (approx. US\$ 91.8 million) or higher, in Chile, on one hand; and individual turnover of UF 450,000 (approx. US\$ 16.5 million) or higher, in Chile, of at least two of the merging economic agents, on the other.

If one of the two elements of the test is not met, then it will not be mandatory to notify the proposed operation of concentration, but the parties could voluntarily file for a merger review.

If the FNE approves the notified operation, according to Article 32 of the Competition Law, the parties will have no responsibility in this matter (unless, on the basis of new information, they are deemed to be anti-competitive).

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

Article 47 of the Competition Law defines operations of concentration as any fact, act, or agreement, or combination of them, which leads to two or more economic agents, which are not members of the same business group and are independent, ceasing to maintain their independence in any form, by any of the following operations: a) merging, whatever the form of corporate organisation of the merging entities or of the entity resulting from the merger; b) acquiring, one or more of them, directly or indirectly, rights that allow them, individually or jointly, to decisively influence the management of the other; c) associating under any form to create an independent economic agent, different from them, which performs its functions on a permanent basis; and d) acquiring, one or more of them, control over the assets of another to any title.

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

Once the FNE has been notified of an operation of concentration, the FNE will analyse the notification and resolve it within 10 days if it is complete or will give 10 days to correct its errors.

A 30-day investigation period will then begin, which, by a decision of the FNE, can be extended for an additional 90 days.

The FNE may eventually approve the operation requiring (or not) the fulfilment of conditions or mitigation measures or reject the operation if it is found to be able to substantially reduce competition.

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?

There are no state aid rules for the aviation sector and the Chilean Constitution is very restrictive when it comes to state intervention in the economy. Whenever state intervention is required, a special law shall regulate its activity and intervention.

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

There are no state aid rules for the aviation sector, except for very specific and limited tax/customs duties benefits. The Chilean Constitution is very restrictive when it comes to state intervention in the economy. Whenever state intervention is required, a special law shall regulate its activity and intervention.

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?

There is no specific regulation on airline and passenger data protection; however, general regulation on the protection of private life under Law No. 19,628 states that every person has the right to demand the modification of their personal data in case that when proven, their personal data is either erroneous, inaccurate, misleading or incomplete. Notwithstanding legal

exceptions contained therein, any person may also demand their personal data to be eliminated, if their storage lacks a legal basis or when such data has expired. Additionally, the right of individuals to be informed, and to modify, cancel or block their personal data cannot be limited by any act or Convention.

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?

There is no specific regulation on passenger data loss; however, general regulation on the protection of private life under Law No. 19,628 states that private natural or legal persons or the public entity responsible for the personal data bank must indemnify the damages caused by the improper treatment of data, notwithstanding the right to delete, modify or block the data when it is either required by the owner or, where appropriate, ordered by the Court of Justice. Additionally, general regulations on consumer protection under Law No. 19,496 state that consumers have the right to an adequate and timely compensation for all material and moral damages in the event of non-compliance with any of the obligations contracted by the supplier. The legal action to obtain compensation shall be exercised before the competent Chilean justice courts.

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?

Intellectual property is regulated in Chile under general Law No. 17,336, which establishes the framework for protection of intellectual and industrial property, trademarks, and patents. Only the copyright owner or those who are expressly authorised by him or her have the right to use the property. Hence, anyone who publicly uses the private domain without having obtained the express authorisation of the copyright owner will incur the corresponding civil and criminal liability, such as fines and in some cases prison.

The rights granted by Law No. 17,336 to copyright owners, and related rights, do not affect the protection that is recognised by Industrial Property Law No. 19,039, which regulates the existence, scope and exercise of industrial property rights such as trademarks, patents for inventions, utility models, industrial drawings and designs, layout designs or topographies of integrated circuits, geographical indications and denomination of origin, among others established by law. The owner of the industrial property right will be entitled to civil remedies, notwithstanding the criminal actions that may proceed.

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

The rules regulating denied boarding and cancellation are found in the Chilean Aeronautical Code and in the case of denied boarding due to overselling is also expressly permitted in the Consumer Protection Law No. 19,496.

According to the Chilean Aeronautical Code if it is necessary to refuse boarding owing to overselling, and there are no volunteers, or their number is insufficient, and it is necessary to refuse boarding to one or more passengers the following rights shall arise:

- The passenger may opt between: embarking on the next flight that the carrier has available, or on an alternate transportation, if he or she decides to persist with the

air transport contract; or being reimbursed for the total amount paid for the ticket, if he or she reneges the transportation contract whose execution would not yet have begun.

- The carrier must further offer the affected passenger the economic compensation in the cases and terms set forth in the Chilean Aeronautical Code.
- If the passenger decides to persist with the transportation contract, the carrier may be obliged to provide welfare benefits such as communications, food, refreshments and lodging when applicable.

In the event of a delay or cancellation of a flight, the affected passenger shall have the right to:

- board the following flight the carrier may have available, or in an alternate transportation, if the passenger decides to persist with the air transportation contract, whether the flight has not yet begun or it has been initiated and is at a stop or connection;
- welfare benefits, provided that the cause of the delay or cancellation is imputable to the carrier;
- be indemnified if the delay or the cancellation is due to causes imputable to the carrier, if the delay was greater than three hours at the time of cancellation, except if the passenger is informed and another flight is offered, which would allow him or her to arrive at his or her destination with no more than three hours of delay in relation to the expected time; and
- demand the reimbursement of the total amount paid for the ticket or the portion not used, as the case may be, if the passenger decides not to persist with the contract and the maximum delay terms indicated above have expired, regardless of whether the cause of the delay or cancellation is due to the carrier.

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

In case of a delay in the departure of a flight, the affected passenger will have the right to:

- board the following flight the carrier may have available, or in an alternate transportation, if the passenger decides to persist with the air transportation contract, whether the flight has not yet begun, or it has been initiated and is at a stop or connection;
- welfare benefits (e.g., communication, food, refreshments, accommodation, transportation and other benefits necessary to continue the flight), provided that the cause of the delay or cancellation is imputable to the carrier and the delay exceeds three hours;
- be indemnified if the delay or the cancellation is due to causes imputable to the carrier, if the delay was greater than the legal buffer (three or four hours of delay depending on the aircraft size) or at the time of cancellation, except if the passenger is informed and another flight is offered, which would allow him or her to depart to his or her destination within the referred to legal buffer; and
- demand the reimbursement of the total amount paid for the ticket or the portion not used, as the case may be, if the passenger decides not to persist with the contract and the legal buffer expired, regardless of whether the cause of the delay or cancellation is due to the carrier.

Affected passengers may demand enforcement of the above-mentioned rights directly before the Courts of Justice and/or submit a claim to the authority responsible for the protection of consumer rights (the National Consumer Service or SERNAC).

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

According to the Chilean Aeronautic Code, civil aerodromes can be public or private. Public aerodromes are open to the public air navigation activities, while private aerodromes are for private use. Private aerodromes are subject to supervision of the DGAC.

Public aerodromes are owned by the state of Chile subject to supervision of the DGAC and, in some cases, are administered directly by the DGAC. However, most of the airports in Chile are operated by third-party concessionaires under concession contracts.

The DGAC, according to Law No. 16,752, can enter into airport concession contracts under certain conditions set out in the referred to law and in aeronautical rule DAR 50, while most of the air services and non-air services of airports administered by the DGAC can be included as part of an airport concession or lease contract, considering certain concession payments. However, the air traffic control services and the aid to air navigation services cannot be granted under concession and shall be exclusively operated by the DGAC.

In addition, the Ministry of Public Works, under its Organic Law Decree in Force Law No. 850, may assign to a private concessionaire the administration and operation of the state-owned airports by means of a public concession process and in coordination with the DGAC, which will have the supervision of all safety, security and aviation regulatory matters. The legal framework for public works concessions is established in the public works concession law contained in Decree in Force Law No. 164, its amendments and regulation.

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

Passenger claims associated with an airport operator's or an airport concessionaires' services are generally governed by the Consumer Protection Law No. 19,496.

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

Some of the most relevant GDSs operate in Chile, such as (but not limited to) Amadeus, Sabre, and Travelport.

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

There are no specific laws or rules relating to ownership requirements pertaining to GDSs' operations.

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

There are no specific provisions in Chilean law in relation to vertical integration between air operators and airports. However, the Court for the Defence of Free Competition (TDLC) in connection with public airport concessions restricted vertical integration between commercial airlines and airport concessionaires, except for 'small aircraft commercial airlines' if they are not relevant users of the airport or of its infrastructure.

According to the DGAC, ‘small aircraft commercial airlines’ are those whose aircraft have a maximum take-off weight of less than 5,700 kg and a capacity of less than 19 passengers.

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?

There are no nationality requirements in Chile for application for an Air Operator’s Certification under aeronautical regulation DAN 119. Nevertheless, the DGAC, through aeronautical regulation DAN 129, regulates the requirements for international operations of foreign air carriers to and from Chilean territory and the recognition of a foreign Air Operator’s Certification.

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?

A Bill currently in the National Congress, the Pro-Consumer Agenda, Bulletin No. 12409-03, which is at the final stage and near to being enacted as a law, establishes important measures to encourage the protection of consumers’ rights.

The Pro-Consumer Bill includes amendments to the Aeronautical Code, such as:

- the duty of the operator to inform passengers of their rights in accordance with the conditions established by the JAC, after consultation with the National Consumer Service (SERNAC);
- higher compensation for denied boarding due to overselling;
- welfare benefits being further regulated, including the affected passenger’s right to receive meals and refreshments equivalent to at least UF 0.5 (approx. US\$ 19) when such time is equal or more than two hours (and thereafter the same obligation applies every three hours of delay);
- the establishment of the obligation for operators to actively (not only upon request) refund taxes, charges or aeronautical rights, in case of no-shows or if the flight does not take place for any reason, including specific conditions and timing for reimbursement; and
- the establishment of the passenger’s right to modify or request the refund of the amount paid for a ticket, if he/she proves, through a medical certificate, that he/she is unable to travel. The same right will have certain close family members of the affected passenger included in the same booking.



Francisco Prat is the Managing Partner and founder of PRAT & CIA. Abogados. Recognised for his practice in the aviation, travel, and tourism sectors, particularly in air law on regulatory, finance and contentious matters, corporate and commercial, consumer protection, and hotel transactions and projects. He has more than 15 years of experience in corporate and commercial law, advising national and international clients on corporate issues, foreign investment, projects, transactions, associations, mergers and acquisitions, restructurings, and real estate transactions. Francisco is Member of the Chilean Bar Association, Member of the New York State Bar Association, Member of the Latin American Aviation Law Association (ALADA), and Member and Director of the Institute of Aviation and Space Law of Chile (IDAE). He has been recognised by the British publication *Who's Who Legal in Aviation* (2019) and *Transport-Aviation* (2020, 2021 and 2022) in all sectors: regulatory; finance; and contentious.

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PRAT & CIA. Abogados is a law firm based in Santiago, Chile, forefront leaders in the aviation law services, with a team that stands out for offering effective and innovative solutions to our clients.

In the aeronautical sector, we advise and represent passenger and cargo air carriers, aircraft lessors, suppliers and financial institutions. We have relevant experience in international transactions and contracts on aircrafts, engines and components, maintenance contracts, concessions and airport infrastructure, services and supplies, systems and software agreements, advice on regulatory matters, insurance, customs, certification processes, obtaining permits and registrations with the aeronautical authorities, and day-to-day legal advice.

Likewise, we offer preventive legal support in regulatory, compliance, advertising, consumer rights and personal data protection matters as well as in the event of claims or lawsuits and in administrative procedures before the competent authorities.

Our partner Francisco Prat has been recognised by *Who's Who Legal* in 2019, 2020, 2021 and 2022, in the three areas of the Transport-Aviation sector: regulatory; finance; and contentious.

In the tourism, hospitality, and travel sectors, we have extensive experience advising clients on the acquisition, sale and restructuring of hotel

operations, long-term hotel leases, and public tenders. Additionally, we advise hotel clients, travel agencies and tour operators on the different legal needs of their day-to-day operations. We also provide advice to national and international clients on other matters and projects, particularly on corporate and commercial law, foreign investment, M&A, finance, real estate and administrative law and regulation.

At PRAT & CIA. Abogados, we have an important network of law firms and professionals in Chile and abroad, with different specialties. Our network allows us to offer our clients a comprehensive legal service with regional coverage.

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