

Air Transport 2022

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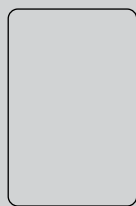
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Air Transport 2022

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Lexology Getting The Deal Through is delighted to publish the sixteenth edition of *Air Transport*, which is available in print and online at www.lexology.com/gtdt.

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

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

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

Lexology Getting The Deal Through gratefully acknowledges the efforts of all the contributors to this volume, who were chosen for their recognised expertise. We also extend special thanks to the contributing editors, Thomas van der Wijngaart and Inês Afonso Mousinho of Clyde & Co LLP, for their continued assistance with this volume.



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REGULATORY FRAMEWORK

Regulators and primary legislation

1 | Which bodies regulate aviation in your country? Under what basic laws?

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 is mandated, among other responsibilities, to:

- control and inspect public aerodromes;
- organise and control air traffic;
- grant concessions or enter into lease agreements or other class of contracts regarding the aerodromes subject to their administration;
- supervise civil aviation activities, protect flight safety and dictate general application regulation;
- administer the National Aircraft Registry;
- grant aircraft-related certification and licences to all aeronautical personnel;
- investigate infractions to the aviation law and regulations, specially related to air accidents; and
- propose or adopt recommendations and international procedures approved by the International Civil Aviation Organization.

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 the 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. Moreover, it represents the Chilean government before international civil aviation organisations and in the international negotiation of air services agreements, compiles the official air traffic statistics, assigns international air frequencies, and is in charge of establishing and controlling the insurance requirements.

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 the 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.

AVIATION OPERATIONS

Safety regulations

2 | How is air transport regulated in terms of safety?

Safety is mainly regulated by the Chilean Aeronautical Code, complemented by regulations issued by the General Directorate of Civil Aeronautics (DGAC) based on the International Civil Aviation Organization (ICAO) recommendations and standards, consisting mainly of aeronautical regulations (DAN), rules (DAR) and procedures (DAP), 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 the compliance of the norms and regulations contained in the convention, including its Annexes and the ICAO recommendations.

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

The Chilean Aeronautical Code distinguishes commercial and non-commercial air operations. Non-commercial air operations are non-profit flight activities such as instruction, recreation or sport, and do not include any remunerated aerial work or transportation services.

Only exceptionally may the Civil Aeronautical Board (JAC) authorise non-commercial aviation services to perform paid aerial work and transport activities when commercial transport is unable to provide them, and provided they are not for profit.

Even though the Chilean Aeronautical Code differentiates between commercial and non-commercial transport, when it comes to safety regulations both 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 review and update 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 DGAC.

Market access

4 | How is access to the market for the provision of air transport services regulated?

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.

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 requiring to commence cabotage operations in equal conditions to national carriers.

Ownership and control

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

There are no specific financial fitness requirements or nationality restrictions regarding ownership and the control of air carriers.

However, the DGAC requires national and foreign air carriers to provide financial information in the context of the application of air operator's certificates or recognition of a foreign air operator's certificate for approving agreements on monthly payment of airport and air operation-related rates and taxes charged by the DGAC to air carriers. The DGAC also requires air carriers to provide a guarantee for entering into such monthly payment arrangements.

In addition, the JAC requires and supervises compliance with the insurance requirements that are mandatory for all air carriers operating to, from and within Chile.

Licensing

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

According to Decree Law No. 2,564 the 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.

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

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.

Exceptionally, Chilean Decree Law No. 2,564 provides that if, owing to the conditions of an air services agreement or owing to reciprocity conditions, there were route frequency limitations so that there are fewer available frequencies on a particular route than interested national

carriers to operate them, the assignment of restricted frequencies to national carriers will be performed through a public tender administered by the JAC, and will be assigned to the highest bidder for a five-year term. However, if at the public tender only one national air carrier communicates its interest in a certain restricted air frequency, no bid will be required and the air frequency will be assigned to the interested national air carrier.

Competition policy

8 | Is there a declared policy on airline access or competition? What is it?

The JAC, in line with Decree Law No. 2,564, favours the availability of air transport services of a high quality, efficient nature and available at the lowest cost possible, since air transport is recognised as fundamental for the development of the country.

In addition, the Chilean Constitution promotes minimal state intervention, as well as freedom of economic initiative.

Requirements for foreign carriers

9 | What requirements must a foreign air carrier satisfy to operate in your country?

The DGAC, through the aeronautical regulation DAN 129, regulates the requirements for international commercial operations of foreign air carriers to and from the 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 air operator certificate (AOC) and operation specifications through a detailed and complete procedure brought before the DGAC, which includes:

- 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, prepare airport security programme and contingency plan for the operations in Chile, among other requirements.

The 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 provided that 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.

Public service obligations

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

Chile does not have specific rules in place to ensure aviation services to be offered to remote destinations, although there are certain tax benefits for air carriers that operate to and from certain remote areas.

Charter services

11 | How are charter services specifically regulated?

Non-regular international commercial operations of a foreign carrier will require a somewhat simple and speedy authorisation procedure before the DGAC, as long as the foreign air carrier has the required traffic rights and will operate no more than 18 non-regular operations to and from Chile in a calendar year.

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

- obtain from the JAC the approval of the required insurance;
- submit the overflight and landing electronic form to the DGAC enclosing copy of certain documents; and
- comply with certain requirements related to the documentation required on board aircraft, and aircraft and equipment conditions check.

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

Regulation of airfares

12 | How are airfares regulated?

Chile does not have regulations regarding airfares, hence air carriers are free to determine their own airfares, as long as they register them with the JAC.

Exceptionally, Decree Law No. 2,564 states that, in routes in which by provision of another state there is no free airfare determination, the JAC will be allowed to set the fares, being able for this purpose to carry out negotiations with the aeronautical authority of that state. In the case of violation of the fares set by the JAC, the JAC may suspend one or more flights from the corresponding services.

Drones

13 | How is the operation of unmanned aircraft systems (drones) regulated?

Remotely piloted aircraft (RPA) are regulated by aeronautical regulations (DAN) issued by the DGAC, the following being the most relevant regulations:

- DAN 61: pilot licences and ratings;
- DAN 91: air rules;
- DAN 119: requirements to obtain an AOC; and
- DAN 151: RPA operations in matters of public interest, carried out over populated areas.

The main regulation for RPA operations can be found in aeronautical regulation DAN 151. DAN 151 establishes the requirement with which any natural or legal person who wishes to operate an RPA for matters of public interest carried out over populated areas must comply for the DGAC to authorise such operation (eg, the registration of the RPA, an RPA pilot credential, insurance policy or a liability assumption notarial statement). DAN 151 also establishes conditions for RPA operations, maximum altitude, conditions for visual and beyond visual line of sight operations, restricted areas of operation, and other limitations.

All operations that are not regulated by DAN 151 will be governed by DAN 91. Under DAN 91, RPAs that meet certain requirements are allowed to operate without requiring authorisation from the DGAC. Nevertheless, the person who operates it must respond to any damage to a third party caused during the operation of the RPA.

The infringement of provisions established by DAN 151 or DAN 91 may cause the suspension or cancellation of the relevant DGAC authorisations and, in general, the commencement of an infringement procedure before the DGAC, notwithstanding the jurisdiction of the general courts of justice.

Finally, any domestic or foreign operator wishing to engage in RPA commercial operations must first obtain an AOC in accordance with the provisions of DAN 119.

AIRCRAFT

Aircraft register

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

The Chilean Aeronautical Code states that aircrafts owned by Chilean natural or legal persons and communities may be registered in the National Aircraft Registry. Nevertheless, the aeronautical authority may allow the registration of aircraft owned by foreign natural or legal persons, provided that they have permanent employment, profession or industry in Chile, or if the foreign aircraft is operated under any title by a Chilean air navigation company. Likewise, a foreign aircraft conveyed to an acquirer who meet at least one of the above conditions although the owner has reserved ownership until the full payment of the price or the fulfilment of certain conditions may be registered in the National Aircraft Registry.

Mortgage register

15 | Is there a register of aircraft mortgages or charges? How does it function?

The Chilean Aeronautical Code states that mortgages, prohibitions and privileged credits over an aircraft, shall be registered at the mortgages and prohibitions registry under the General Directorate of Civil Aeronautics (DGAC). The 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.

Mortgages will have preference over all other credits on the aircraft, except legal costs of the judicial auction of the aircraft, salvage expenses and remunerations, and extraordinary expenses indispensable for the conservation of the aircraft. Mortgages will outrank each other according to their enrolment date, and for those on the same date, according to their order of registration.

Detention

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

Failure to comply with the payment of airport or navigation charges will allow the DGAC to detain aircraft until the payment is completed, notwithstanding the general judicial or extrajudicial enforcement procedures.

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

Maintenance

17 | Do specific rules regulate the maintenance of aircraft? What are they?

Aircraft maintenance is regulated in aeronautical regulations and rules (DAN and DAR) issued by the DGAC and updated from time to time, such as but not limited to the DAN 43 and DAR 43 related to maintenance, and the DAN 145, which regulates the aeronautical Maintenance Centres.

AIRPORTS

Ownership

18 | Who owns the airports?

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

Public aerodromes are owned by the state of Chile and are subject to the 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.

Licensing

19 | What system is there for the licensing of airports?

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.

Economic regulation

20 | Is there a system of economic regulation of airports? How does it function?

The DGAC, through aeronautical rule DAR 50, establishes the charges applicable to air services operators with respect to lading operations, parking, lighting services, Instrument Landing System services, navigation aids and protection services, and radiocommunications, among other charges, and also sets out certain general conditions applicable to DGAC airport concession or lease contracts.

Access

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

No, there are no laws restricting or qualifying access to airports.

However, the DGAC, through authorisation of itineraries and air traffic control tower – as well as informed through notices to air crew

– may restrict, limit, condition access to airports owing to emergencies or generally applicable conditions.

Slot allocation

22 | How are slots allocated at congested airports?

There is no generally applicable airport slot procedure at congested airports in Chile.

Ground handling

23 | Are there any laws or rules specifically relating to ground handling? What are they?

There are no specific laws or rules relating to ground handling, therefore, general competition laws will apply, such as Decree Law No. 211.

Air traffic control

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

Air traffic control services are exclusively provided by the DGAC, and regulated under the aeronautical regulations DAN 11 regarding air traffic services, and DAN 65 regarding licence and ratings for non-flight crews personnel, which comply with the general international standards and recommendations of international aviation organisations and institutions.

LIABILITY AND ACCIDENTS

Passengers, baggage and cargo

25 | What rules apply in respect of death of, or injury to, passengers or loss or damage to baggage or cargo in respect of domestic carriage?

Compensation is regulated in the Chilean Aeronautical Code, where the air carrier is responsible to indemnify for death or injury to passengers while they are on board the aircraft, or during boarding or disembarking operations with a maximum of 4,000 Chilean Units of Account (UF), unless the damage is caused by a passenger's existing health condition; the passenger causes or negligently contributes to causing the damage; or if the damage is a consequence of a crime committed by a third party who is not a crew member or dependent of the air carrier.

In the case of baggage loss, delay in transportation or damage, the passenger will be compensated the equivalent of 40 UF, and regarding cargo, the compensation will have a legal maximum of 1 UF per kilogram, unless the damage, loss or delay is owing to an inherent defect or quality of the cargo; the cargo was defectively packed; or owing to an act of authority related to the entry, transit or exit of the cargo.

Notwithstanding the above, the passenger or consignor with an air carrier may agree that, by paying an additional fee, the air carrier responds with higher compensation to cover the actual value of the baggage or cargo, as declared by the passenger or consignor.

Surface damage

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

According to the Chilean Aeronautical Code, the air carrier is responsible to indemnify 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, or the damage is caused by an act of sabotage or by the illicit seizure of the aircraft.

The limits on the amount of the compensation the air carrier is responsible for will be determined by the weight of the aircraft, where up to 30,000kg the compensation is equivalent to 5 UF per kilogram; over 30,000 and up to 80,000kg the compensation is equivalent to 3.75 UF per kilogram; and, over 80,000kg the compensation is equivalent to 2.5 UF per kilogram.

Accident investigation

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

Air accident investigation procedures are regulated in the Chilean Aeronautical Code and the aeronautical regulation DAN 13 issued by the General Directorate of Civil Aeronautics (DGAC), which comply with the general international standards and recommendations.

The DGAC is responsible for the administrative air accident investigation that take place either in the Chilean territory or suffered by Chilean air carriers in foreign waters or territories, and its purpose is to determine the cause of the accident; take measures to avoid future accidents; and to apply administrative sanctions, notwithstanding the jurisdiction of the Chilean Courts of Justice.

Accident reporting

28 | Is there a mandatory accident and incident reporting system? How does it operate?

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 is 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.

COMPETITION LAW

Specific regulation

29 | Do sector-specific or general competition rules apply to aviation?

There are no sector-specific competition rules related to aviation. Hence, the general antitrust regulation apply. Decree Law No. 211 is the main law that regulates the defence of free competition and antitrust in Chile, which also applies to the air transport industry.

Regulator

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

There is no aviation sector-specific competition regulator. Competition rules are applied by the general competition authority, the Free Competition Defence Tribunal (TDLC).

Market definition

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

The competition authorities have reviewed the 'relevant market' for the purpose of competition assessment in the aviation sector in certain recent cases, such as:

- joint business agreements (JBAs) between:
 - Latam Airlines Group and American Airlines, Inc Agencia Chile; and

- Latam Airlines Group, Iberia and British Airways of May 2019; and
- the merger of LAN Airlines SA and TAM Linhas Aéreas SA of September 2011.

In reviewing these cases, the competition authorities consider 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.

Code-sharing and joint ventures

32 | How have the competition authorities regulated code-sharing and air-carrier joint ventures?

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. JBAs entered into by and between Latam Airlines Group and American Airlines, and Latam Airlines Group and Iberia and British Airways were reviewed in May 2019 and approved by the TDLC subject to certain conditions, but were 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.

Assessing competitive effect

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

The main standards for assessing the competitive effect of a transaction in Chile are the relevant market, the concentration and dominant position, existence of entry barriers, risks and predatory prices, and market efficiencies.

Remedies

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

Among the mitigation measures imposed by competition authorities in Chile are, for example:

- self-regulation of fares programmes;
- code-sharing restrictions;
- global alliance participation restrictions;
- slot exchanges;
- granting access to frequent flyer programmes or interline agreements;
- renouncing certain air traffic rights frequencies;
- capacity and supply restrictions;
- certain fares regulations on specific routes; and
- the hiring of an independent consultant to supervise mitigation measures.

FINANCIAL SUPPORT AND STATE AID

Rules and principles

35 | 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? Is state aid regulated generally?

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.

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

Not applicable.

Exemptions

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

Not applicable.

Clearance of state aid

38 | Must clearance from the competition authorities be obtained before state aid may be granted? What are the main procedural steps for doing so?

Not applicable.

Recovery of unlawful state aid

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

Not applicable.

CONSUMER PROTECTION

Passengers

40 | What rules regulate denied boarding, cancellation or (tarmac) delay?

The rules regulating denied boarding and cancellation are found in 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 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 set forth in the Chilean Aeronautical Code according to the distance of the flight. The passenger who accepts this compensation subsequently shall not be able to exercise actions against the carrier for refusing to board. However, if the passenger is embarked on the next flight that the carrier has available, and the difference between the departure time in relation to the expected one for the flight initially reserved is less than three hours, compensation shall not proceed.
- If the passenger decides to persist in the transportation contract, the carrier shall be obliged to provide welfare benefits such as communications and necessary foods and refreshments until boarding in the other flight, depending on the time difference in the expected departure time for the initially reserved flight. Additionally, lodging for passengers with return flight and for passengers with outbound flight whose boarding have been denied if certain requirements are met.

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 in 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 indicated for the boarding denial paragraph above, 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, and certain conditions are met; 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 in 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.

Package holidays

41 | What rules apply to the sale of package holiday products?

There are no specific rules regulating the sale of package holiday products; therefore, general regulations on consumer protection apply, under Law No. 19,496.

The supplier that acts as intermediary in the provision of a service shall respond directly to consumers in the case of a breach of contract, provided, however, that the intermediary shall have the right to claim for reimbursement against the actual supplier or any responsible third parties.

Other consumer legislation

42 | Is there any other aviation-specific consumer legislation?

The National Defense Ministry, through Supreme Decree No. 369, sets out the regulations for air transportation of disabled, reduced mobility, dying or unconscious passengers. This aviation-specific regulation establishes the technical, administrative and safety requirements for the access, universal design and support or assistance to disabled passengers.

INSURANCE AND SECURITY

Insurance for operators

43 | What mandatory insurance requirements apply to the operation of aircraft?

The Civil Aeronautical Board (JAC), through Resolution No. 604, establishes the insurance requirements for commercial aviation. According to this resolution, national and international air carriers must have an insurance policy that covers damage to passengers, crew members and other occupants who are on board the aircraft (2,000 Chilean Units of Account (UF) per person) and third parties (2.5 UF for each kilogram of the aircraft's weight).

Aviation security

44 | What legal requirements are there with regard to aviation security?

The General Directorate of Civil Aeronautics (DGAC) develops and supervises that Chile follows the international regulations and recommendations given by the International Civil Aviation Organization with regard to aviation security. The DGAC through the National Civil Aviation Safety Program (PNSAC), in accordance with international standards, establishes security measures and requirements to prevent acts of unlawful interference in the Chilean territory.

Additionally, the DGAC through aeronautical regulation DAN 119 regarding the requirements to obtain an air operator certificate (AOC) for national carriers and the DAN 129 for the recognition of a foreign

AOC of a foreign air carrier, require carriers to elaborate and implement an airport security programme and contingency plan as set out in the PNSAC.

Other relevant security aeronautical regulations are DAN 17 on security and civil aviation protection against unlawful interference, and DAN 17 05 on the transport of high-value cargo in airports.

Serious crimes

45 | What serious crimes exist with regard to aviation?

Crimes with regard to aviation are regulated in the Chilean Aeronautical Code, which refers to crimes against civil aviation safety and security, such as but not limited to:

- operating an aircraft without a valid airworthiness certificate;
- operating in an aircraft as a crew member without or with an expired licence;
- operating or performing aeronautical duties under the influence of alcohol or drugs;
- the pilot in command who does not provide or provides false information to air traffic controllers;
- who, without violence or threats of violence or intimidation, endangers an aircraft in flight or service, or take actions that may endanger or threaten to endanger the life, physical integrity or health of passengers or crew members;
- carrying or transporting dangerous goods without complying with the local regulations;
- flying below the minimal height established by the local authority; and
- the pilot in command of an international flight that unreasonably deviates from the established air routes to enter or leave the country, or does not use airports.

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- Chilean borders are closed, although this measure does not apply to the strictly necessary personnel or crew of air cargo operations who are expressly exempted, among other limited exceptions.
- The use of face masks became mandatory for all people using public or private paid transport, applicable to passengers and the personnel of operators. This measure shall have an indefinite duration for as long as required, considering the pandemic conditions.

These temporary and extraordinary measures may be modified, removed or renewed, as the Chilean Health Authority may deem convenient, according to the development and evolution of the covid-19 outbreak.

UPDATE AND TRENDS

Emerging trends

46 | Are there any emerging trends or hot topics in air transport regulation in your jurisdiction?

There is a bill currently in the National Congress, the Pro-Consumer Agenda, Bulletin No. 12409-03, the discussion of which is moving forward promoted by the current Chilean government to establish additional measures to promote the protection of consumer rights and incorporate changes to various regulations of different sectors, including the aviation sector.

Another Congress bill relevant to the aviation sector is Bulletin No. 9509-15, 9980-03, 12285-15, 12773-19 and 12825-15, which seeks to regulate the right to voluntarily and without charge transfer air tickets, subject to certain limits. This bill also proposes to establish a right to cancel the air ticket within 24 hours after booking the ticket, under certain conditions.

Coronavirus

47 | What emergency legislation, relief programmes and other initiatives specific to your practice area has your state implemented to address the pandemic? Have any existing government programmes, laws or regulations been amended to address these concerns? What best practices are advisable for clients?

The Chilean government has not provided specific aviation sector relief programmes or financial aid. However, the following measures have been taken to control the covid-19 outbreak in Chile, which have a direct impact on the aviation sector.

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