



# Air Transport

in 34 jurisdictions worldwide

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# Costa Rica

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## General

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

Civil Aviation in Costa Rica is governed by the Civil Aviation Act No. 5,150 (14 May 1973), its amendments and regulations covering both commercial and technical issues. International treaties such as the Chicago Convention on International Civil Aviation (1944), the Warsaw Convention, and the Hague and Guatemala Protocols are also applicable, among other international agreements signed and ratified by Costa Rica.

In addition, bilateral air transport agreements and memorandums of understanding (MOU) set out the rules for granting traffic rights to other states. Where a bilateral agreement or MOU is absent, concessions are based on reciprocity.

The executive branch of the government, through the Civil Aviation Authority (DGAC) and its technical council (CTAC), oversee aviation in Costa Rica. Both the DGAC and the CTAC are subsidiaries of the Ministry of Public Works and Transportation (article 2 of the Civil Aviation Act).

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## Regulation of aviation operations

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

The Civil Aviation Act sets out general safety rules. These are complemented by specific standards known as Air Regulations (RAC) enacted by the DGAC. They are the ICAO standards and followed by the FAA and other foreign bodies.

RAC 119 establishes that air carriers with operations in Costa Rica have to obtain an air operator certificate to guarantee their compliance with safety standards. Operators shall inform the DGAC on safety issues such as maintenance plans, weight and balance procedures, security and inspection procedures, aircraft maintenance, alterations, and similar issues.

RAC 17 contains most of the security measures and specifications, such as airport security, security personnel, contingency plans, security procedures and requirements for all given aspects of aircraft and airports.

Other regulations apply to crew and maintenance safety, such as RAC 145 and RAC 18. RAC 139 has safety regulations for air traffic control and all other airport requirements.

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

There is no distinction as to the safety regulations applicable to private air operations. Article 34 of the Civil Aviation Act only differentiates between state-owned aircraft and civil or commercial aircraft. State-owned equipment is equipment used for police patrolling and customs duties; all others are considered civil or commercial aircraft. Whether aircraft are for public, private or non-lucrative use, they

have to meet the same safety and other requirements provided by the DGAC. An exception is when national security is at stake and state-owned aircraft may depart from the regulations by informing the relevant authorities.

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

Access to the market for the provision of air transport services is regulated. To access the market, air carriers have to obtain an operating licence called a certificate of exploitation (COE). The CTAC is entitled to reject an operating licence application on the ground that the route on which it is intended to operate is sufficiently served by existing carriers and accordingly competition in such market would only be detrimental.

Air transport services are also regulated by the air regulations with specific requirements to obtain licences to operate.

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

Applicants for operating licences have to prove financial fitness to satisfy the requirements of the DGAC.

In terms of ownership regarding control of air carriers, the situation has recently changed in Costa Rica. A decision of the Constitutional Court (dated 1 August 2007) ruled out two existing statutory provisions (article 156, paragraph 3 and article 179 of the Civil Aviation Act), as well as article 5 of the Regulations concerning operating licences. Those rules prohibited foreigners from integrating the board of directors and decision-making bodies of local companies engaged in the provision of air transport services, as well as from owning more than 49 per cent of the capital stock of such local companies.

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

Both domestic and international carriers have to apply for a COE.

Traffic rights for international operations are usually granted according to bilateral air transport agreements or MOUs signed by Costa Rica with other states. In the absence of such international provision, operating licences are granted on the basis of reciprocity, and on a case-by-case analysis.

To obtain a COE, applicants have to file a petition meeting the following requirements:

- name and nationality of the applicant, articles of incorporation and bylaws;
- financial fitness;
- service and routes to be operated;
- equipment and technical personnel;
- rates and itineraries;

- primary and secondary airports;
- proof of contracts with vendors of air navigation services and telecommunications;
- air operator certification; and
- airworthiness certificates, manuals, personnel licences, insurance certificates, security, safety and other technical requirements.

If the applicant is a foreign company, it shall also demonstrate that:

- it has authorisation from its government to carry out the intended international operation;
- its government is willing to grant reciprocal rights to Costa Rican carriers; and
- it submits to Costa Rican laws and the jurisdiction of its courts and waives the right of diplomatic protection in case of damage or loss caused to passengers, cargo, mail or any other party.

Before determination, the CTAC must call a public hearing to consider the allegations of other operators that may be affected if a concession is granted to the applicant.

It is the CTAC's prerogative to determine whether or not the intended routes are in the public interest. It also retains the right to revoke any licence granted if the operator fails to comply with technical or commercial requirements attached to the COE.

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

The procedures for granting a COE include attending a public hearing to consider allegations of other operators that may be affected if the concession was granted to the applicant. The arguments of contesting operators are resolved at the end of the procedure. A final determination will either grant or deny the traffic rights or grant restricted traffic rights.

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

Costa Rica does not have a declared policy on airline access and competition. In the past, there used to be a very protective practice restricting the traffic rights and routes granted. In the last decade this has been substituted by a more liberal practice of signing open skies agreements with other states, as well as the granting of traffic rights on the basis of reciprocity.

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

There are no specific rules to ensure the provision of air transportation services to remote destinations. The Civil Aviation Act demands that air operators comply with the standards of continuity, efficiency and equality when providing the public service of air transportation.

**10** Are charter services specially regulated?

Charter operations can be authorised under an existing operating licence or on a case-by-case basis. The petitioner has to satisfy the requirements of airworthiness, aircraft registration and insurance certification, type of service (passenger, cargo or both), proof of ground handling assistance, route and personnel licences, among others. Petitions for a particular charter operation should be made at least 48 hours in advance.

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

Air fares for both passengers and cargo must be approved by the CTAC. In most cases, the criteria to approve an airfare are

established by the corresponding air transport agreement signed with a particular state. The CTAC only intervenes to prevent unreasonable and discriminatory high or restrictive prices, or predatory pricing.

Article 164 of the Civil Aviation Act also provides that, in authorising an airfare, the CTAC shall take into account the following:

- public interest and warranty of an efficient, adequate and safe service;
- the advantages and conditions of a low-cost service;
- the overall effects of the operation on traffic volume;
- the type and quality of service provided;
- the profit margin that the company is entitled to considering that an efficient management is in place; and
- economic differences between international companies providing the service – the CTAC can approve airfares on the same route with a difference of up to 20 per cent from one operator to another.

All changes in airfares must obtain the CTAC's approval before they come into effect.

### Aircraft

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

Only Costa Rican citizens and Costa Rican companies are entitled to register an aircraft destined for public or commercial service with the Costa Rican Aircraft Register. Aircraft used for private operations can be registered by foreigners provided they have the corresponding resident status granted by the Immigration Authority. Aircraft registered locally obtain Costa Rican nationality, and any other nationality or registration number of any other country is immediately cancelled. The owner of an aircraft listed on the Costa Rican Register cannot lease, sell or in any way transfer the aircraft for its use abroad unless it has been previously authorised by the DGAC. When filing for such authorisation, the applicant must indicate the purpose of the transfer and destination of the aircraft.

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

According to article 31 of the Civil Aviation Act, the Costa Rican Aircraft Register shall hold records of all liens and encumbrances over aircraft registered in Costa Rica. Those charges are communicated to and registered with the National Register as well. Therefore, a party to a transaction involving an aircraft registered in Costa Rica must verify the records of both the Aircraft Register and the National Register to obtain full information on ownership and any interests over such aircraft. Cancellation of aircraft registration may only be made if the aircraft is free and clear of liens and encumbrances.

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

There is no administrative right to detain aircraft in respect of unpaid airport or air navigation charges. If there is any unpaid debt, the creditor must obtain a judicial seizing order to prevent the departure of the aircraft.

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

There are specific rules regulating aircraft maintenance set out in RAC 43. These include reconstructions, alterations, records, inspections and tests. Maintenance personnel and mechanics also have to comply with licensing requirements.

**Airports****16** Who owns the airports?

All airports are the property of the state. Individuals can own landing fields for private use only and with several limitations. The state has the right to transfer the administration of an airport to private operators via concessions. These are accompanied by several restrictions and limitations to guarantee the state's control over the facilities.

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

The CTAC and the DGAC are in charge of licensing and certifying all airports. Regulations for building and operating public or privately owned airports are contained in RAC 139. These regulations differ depending on how the airport is classified. Runways at privately owned airports cannot exceed 1,000m in length and state-owned aircraft must be allowed to use them.

International airports have to meet international standards and may only be declared as international by the executive branch. Before an airport is licensed, the general director of civil aviation will determine if the company or person applying for the licence is competent and experienced enough to run the airport. He or she will verify that there is an airport operating manual. Further, he or she will verify that the procedures, equipment and services comply with international standards.

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

There is no system for the economic regulation of airports. At the moment, Costa Rica's main international airport is operated under an invested management contract. The concession implies that the private company runs the airport's normal operations and receives a portion of all income. Its property remains within the state, which receives the remaining share of income. A state regulator and the Civil Aviation Council are in charge of establishing the fees for services provided at the airport.

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

All aircraft entering any airport in Costa Rica must comply with security requirements established by law and by RAC 17. Also, all airports must have a security protocol that follows the guidelines stipulated by the DGAC.

**20** How are slots allocated at congested airports?

Slots are allocated by the airport operator and the DGAC. Priority is given to airlines with an operating licence under a first come first served basis, then to passenger charter flights, followed by cargo operations and finally, all other forms of operations. The DGAC is currently working on proposed slot regulations that are expected to be implemented by the end of 2008.

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

Companies providing ground handling services have to obtain an operating licence or COE. They must also obtain full safety and security certification and follow the technical standards of the RACs.

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

Air traffic controllers are appointed by the DGAC and are regarded as government employees. They must be licensed by the DGAC according to the requirements of Air Regulation RAC-LPTA (Licences for Technical Aeronautical Personnel). The control services are provided by the state and are regulated.

**Liability and accidents****23** Are there any special rules in respect of death of, or injury to, passengers or loss or damage to baggage or cargo in respect of domestic carriage?

When death or injury to passengers or damage to baggage or cargo occurs on a domestic flight, the Civil Aviation Act has regulations to deal with liability and compensation. In these cases, the operator is liable for 250 minimum monthly wages plus any other compensation granted by court after legal proceedings have been followed.

Where the accident is caused by negligence, the operator shall be responsible for compensation in excess of 250 minimum salaries. Operators and owners are required to have corresponding insurance policies. No contractual provision may disclaim the operators' liability in any case. The limitation period for the claim is one year.

Operators' liability for damage to cargo or luggage is limited to three minimum monthly wages per kilogram. The amount is reduced to two minimum monthly wages for hand luggage. The limitation period in which to claim is three days for damaged luggage, seven days for damaged cargo and 30 days for lost luggage or cargo.

In the event of damage or loss occurring in international flights, liability is regulated by the international treaties on civil aviation, which Costa Rica has ratified.

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

The operator of any civil aircraft flying over Costa Rican territory is liable for any damage caused to people or their property on the surface. The heir to the deceased and the person who suffers bodily or property damage is entitled to compensation from the operator, if they can prove that the damage was caused by a flying aircraft or an object which fell from the aircraft.

The operator will not be liable if damage is the result of armed conflict or civil disturbances. To ensure compensation to third parties, all domestic and foreign aircraft must have insurance to cover civil liability.

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

According to the Civil Aviation Act and RAC 13, the Unit for Prevention and Investigation of Accidents and Incidents has state jurisdiction to investigate all accidents and incidents within Costa Rica, including airspace and waters.

This unit works in conjunction with the search and rescue units. Whenever an accident occurs, the licences of the pilots involved are temporarily suspended. To revoke the suspension, the pilots must be medically examined. These suspensions apply only to flights within Costa Rican airspace. Once the investigation has concluded, a probable cause will be decided and recommendations will be made for the prevention of future events.

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

It is mandatory for anyone who has knowledge of an accident or incident to communicate it to the nearest authorities in Costa Rica, who must then inform the DGAC.

Owners, pilots and operators must report any incident within 10 days and submit a written report detailing the circumstances of the accident. In accordance with civil aviation treaties, when an aircraft is foreign, the DGAC has to contact the proper authorities of the country in which the aircraft is registered, as well as the country of manufacture, and invite them to participate in the investigation. When the aircraft is over 12,500lbs, the International Civil Aviation Organisation will be contacted and informed via an accident detail report (ADREP).

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**Competition law**

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

There are no sector-specific competition law rules applying to the aviation sector. It is therefore ruled by the general provisions set out by the Act for Promotion of Competition and Consumer Protection No. 7,472 of 20 December 1994 (the Competition Act). However, article 9 of the Competition Act exempts the application of competition regulations to undertakings providing a public service by virtue of a concession granted by the state. Accordingly, companies providing domestic and international air transportation would fall within this exemption since, under the wording of article 101 of the Civil Aviation Act, such activities are considered a public service.

The competition agency in Costa Rica (COPROCOM) has narrowed the interpretation of article 9 and has ruled that the exemption does not apply to commercial relations between competing airlines or those airlines and other undertakings (ie, vendors, travel agencies). According to COPROCOM, the exemption is limited to those issues related to how the airlines provide the public service of transportation according to the concession they have been granted.

Based on this reasoning, COPROCOM has conducted several investigations against airlines operating in Costa Rica on issues such as code sharing and the commissions paid by airlines to travel agents for the sale of tickets.

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

There is no sector-specific regulator. COPROCOM oversees the application of competition rules to the aviation industry.

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

According to article 14 of the Competition Act, the relevant market is established by the combination of the product and geographic markets. To determine those markets, the competition agency must determine whether the product or service can be substituted (substitutability test) by a similar product or service; the costs relating to that substitution; geographic alternative sources of supply for consumers; and entry barriers.

Where the competition agency has conducted competition assessments in the aviation sector, it has defined the relevant market considering the specific competition issue at stake.

For example, in an investigation on code sharing agreements, COPROCOM defined the relevant market as the particular route between San José (Costa Rica) and Miami (United States).

In other cases, where the investigation dealt with the commissions paid by the airlines to travel agencies for the sale of tickets, COPROCOM considered that the relevant market was that for the services of commercialisation of tickets for the air transportation of passengers. In other words, the relevant market was that of the sale of tickets to passengers in which travel agents competed with the direct sales made by the airlines and the sales made by other vendors such as electronic booking machines.

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

The Competition Act prohibits two sets of anti-competitive practices: horizontal and vertical agreements.

Horizontal agreements are those contracts or combinations between competing undertakings with the purpose or effect of fixing prices, allocating markets, engaging in bid rigging or restricting output. Vertical agreements between undertakings that do not

compete with each other have as their object or effect the prevention or restriction of competition by means of market allocation, tying, covenants not to compete, predatory pricing and refusal to deal, among others.

Horizontal practices, without exemption, are void and illegal *per se* regardless of their competitive impact, whereas the illegality of a vertical agreement depends on its impact on competition.

In assessing the competitive impact of a vertical agreement, the competition agency must consider:

- what the relevant market is;
- whether or not the alleged practice took place in the relevant market as previously defined;
- the market power of the undertakings involved; and
- the actual effects on competition, that is, if the alleged practice prevented access to, or excluded other undertakings from, the relevant market, or provided the undertakings with exclusive advantages that in the absence of the agreement they would not have been able to obtain.

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

The Competition Act establishes the following remedies to correct anti-competitive behaviour, which are the only ones the authority is able to apply:

- orders to cease the anti-competitive practice;
- partial or total divestment; and
- payment of fines ranging from one to 680 times the minimum monthly wage in effect at the time of infringement, according to the chart of minimum wages set out by the Ministry of Labour – this is the remedy most commonly imposed.

Where the infringement has caused serious damage to competition, the fines can be increased to 10 per cent of the sales of the undertaking for the previous year, or 10 per cent of the value of its assets.

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**Financial support and state aid**

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

There is no state aid to the aviation sector and because of that, there are no sector-specific rules regulating direct or indirect financial support to any kind of aviation companies by the government, government-controlled agencies or companies. There are tax cuts which are granted to the importation of aircraft to be used in tourism activities.

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

Not applicable.

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

Not applicable.

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

No.

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

Not applicable.

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

The state shall follow a judicial procedure, so a judge declares the unlawfulness and invalidity of the benefit granted, and orders the particular company to return the benefit received.

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#### Miscellaneous

**38** Is there any aviation-specific passenger protection legislation?

Costa Rica lacks aviation-specific passenger protection legislation in respect to denied boarding, package holidays, bankruptcy protection, disabled passengers and computer reservation system distribution.

The general standards for consumer protection, contained in the Act for Promotion of Competition and Consumer Protection No. 7,472 of 20 December 1994, apply to contracts between airlines and passengers, provided the issue is not ruled by specific regulations or international treaties subscribed to by Costa Rica.

Liability of carriers is regulated by the international treaties that Costa Rica has ratified.

The Civil Aviation Act states that in the event of delays, the carrier's liability is limited to 50 per cent of the airfare paid. Where damage has been caused as a result of the delay, a claim should be filed within eight days following the date on which it occurred.

**39** Are there mandatory insurance requirements to operate aircraft?

Insurance is mandatory. No carrier will be allowed to operate an aircraft in Costa Rica unless it has the requisite insurance policies.

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

Aviation security is regulated by the Civil Aviation Act and by RAC 02 (Air Rules) and RAC 17 (Security of Civil Aviation). Any company applying for an operating licence has to meet the security requirements imposed by the Civil Aviation Authority.

**41** What serious crimes exist with regard to aviation?

The Criminal Code sets out specific crimes with regard to aviation. Article 251 provides penalties for anyone who by any means endangers the safety of an aircraft. Article 254 sets out the punishment for disaster caused by the negligence of an individual. Those who disrupt the regular provision of the air transport service shall also be subject to imprisonment according to article 256 of the Criminal Code.

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