

RESOLUTION No. 692 OF SEPTEMBER 21st, 2022

This Resolution establishes rules for the operation of international air transport services by foreign airlines and conditions for codeshare operations for Brazilian and foreign airlines.

THE BOARD OF DIRECTORS OF THE NATIONAL CIVIL AVIATION AGENCY - ANAC, in the exercise of the competency granted by article 11, item V, Law No. 11,182 of September 27th, 2005, in view of the provisions of article. 8, items VII, XIV and XLVI of the aforementioned Law and articles 203 and 205 of Law No. 7,565 of December 19th, 1986, and considering process No. 00058.042175/2019-47 which was resolved and approved during the 16th Deliberative Meeting, held on September 20th, 2022,

DECIDES TO:

Article 1. Under the terms of this Resolution, regulate the access to the market of foreign airlines that intend to operate scheduled or non-scheduled international air transport services originating in or destined to Brazil; the authorization for exceptional operations between points in the national territory; and the conditions for codeshare operations for Brazilian and foreign airlines.

Article 2. Access by foreign airlines to the international air transport market with services originating in or destined to Brazil depends on authorization to operate air transport services.

CHAPTER I

AUTHORIZATION TO OPERATE SCHEDULED AIR TRANSPORT SERVICE

Article 3. Foreign airlines that intend to operate scheduled international air transport services originating in or destined to Brazil shall submit the following documents to ANAC:

- I - copy of the filing with the registry of commerce;
- II - foreign airline registration form;
- III - Air Operator Certificate - AOC; and
- IV - other documents proving compliance with operational requirements established by ANAC.

Sole paragraph. Scheduled operations are subject to bilateral understandings between Brazil and the foreign country or to multilateral understandings signed by both countries.

CHAPTER II

AUTHORIZATION TO OPERATE NON-SCHEDULED AIR TRANSPORT SERVICE

Article 4. Foreign airlines that intend to operate non-scheduled international air transport services originating in or destined to Brazil shall submit the following documents to ANAC:

- I - foreign airline registration form;

II - Air Operator Certificate - AOC; and

III - other documents proving compliance with operational requirements established by ANAC.

Sole paragraph. Foreign airlines are exempt from the authorization stated in the head provision if they operate non-scheduled flights with airplanes with a maximum certificated passenger seating configuration of 19 passengers and a maximum payload capacity of 3,400 kilograms (7,500 pounds), or helicopters, except as provided for in article 7 of this Resolution.

Article 5. Foreign airlines authorized to operate scheduled international air transport services are exempt from authorization to operate non-scheduled international air transport services.

Article 6. In addition to the authorization provided for in article 4 of this Resolution, foreign airlines that intend to operate non-scheduled international air transport services in Brazil shall obtain approval from the intended flight program when operations involve:

I - traffic rights as from the Fifth Freedom of the Air, this Freedom included, when the state of origin of the airline and Brazil do not have bilateral or multilateral international understandings about the subject, or, if there are such understandings, they establish a capacity limit; or

II - other traffic rights beyond those included in international bilateral or multilateral understandings applicable to scheduled operations.

§ 1. Approval of operations included in item II of the head provision shall observe the principle of reciprocity whenever possible.

§ 2. ANAC may restrict the operation of non-scheduled international air transport services when the size and nature of operations may potentially impact capacity and frequency limits defined in bilateral or multilateral international understandings.

Article 7. The airline shall obtain authorization to operate scheduled international air transport services if it intends to operate high number of frequencies or on regular basis, according to parameters defined in ordinance published by the Department of Air Services - SAS.

Article 8. The operation of non-scheduled air services by authorized foreign airlines between points in the national territory may be exceptionally authorized provided that public interest is proved, when:

I - there are no national airlines certified to provide the service, or, if there are such, they do not have the necessary equipment or conditions to perform the service; or

II - the service is intended to supply abnormal situations in the provision of air transport services during emergencies.

Sole paragraph. Among other conditions, the act that authorizes the execution of services mentioned in the head provision shall specify the authorization period, the maximum number of operations and the location to be served.

CHAPTER III

AIRLINE REGISTRATION, SUSPENSION AND REVOCATION OF AUTHORIZATION

Article 9. Foreign airlines authorized to operate scheduled international air services in Brazil shall permanently maintain a legal representative in the country, in accordance with specific pertinent legislation.

§ 1. The airline is responsible for keeping registration data up to date with ANAC.

§ 2. Changes of legal representatives of subsidiaries, branches, agencies or institutions of foreign airlines authorized to operate international air transport services in Brazil shall be communicated to ANAC before the expiry date of the representation. Changes shall be informed regardless of their causes, except for reasons of force majeure, as established by ANAC.

Article 10. Authorization to operate international air services in Brazil may be suspended:

I - in the absence of a legal representative for a period exceeding 30 days;

II - in case of noncompliance with the frequency or regularity limits provided for in article 7 of this Resolution for airlines authorized to operate non-scheduled air transport services;

III - in cases provided for in the Brazilian Civil Aviation Regulation - RBAC No. 129; and

IV - in cases provided for in other regulations published by ANAC.

Article 11. Authorization to operate international scheduled air transport services in Brazil may be revoked:

I - if the foreign airline registration with the registry of commerce is terminated or invalidated according to the law;

II - if services are suspended for a period exceeding six months, except in cases of force majeure; and

III - in cases provided for in other regulations published by ANAC.

CHAPTER IV CONDITIONS FOR CODESHARE OPERATIONS

Article 12. For the purposes of this Resolution, a codeshare is a commercial cooperation agreement in which an airline allows another airline to use its designator code on a flight of the first airline, or in which two airlines share the same code on a flight.

Article 13. Code sharing in international air transport shall comply with bilateral or multilateral international understandings and route schedules applicable to the respective operations.

§ 1. The identification code of a foreign airline may be used on a domestic flight operated by a national airline even if locations connected are not included in the route schedule, provided that the flight is part of an international air transport service.

§ 2. Codeshare operation does not allow a foreign airline to exclusively commercialize local traffic in the Brazilian territory.

CHAPTER V ADMINISTRATIVE MEASURES

Article 14. In case of noncompliance with the provisions of this Resolution, preventive administrative measures may be applied to agents who declare themselves responsible for the occurrence and work cooperatively, presenting, among others, the following cooperative behaviors, as appropriate:

I - cease noncompliance;

II - share information on the identification of the root cause of the occurrence with the inspection team;

III - propose feasible and effective corrective action; and

IV - be loyal and act with good faith in relations with the Administration.

Article 15. Noncompliance with the provisions of this Resolution may lead to the application of fines ranging from BRL 4,000.00 (four thousand Brazilian Reais) to BRL 250,000.00 (two hundred and fifty thousand Brazilian Reais) in the following situations:

I - regulated party presents uncooperative attitude. Conducts contrary to hypotheses listed in article 14 of this Resolution are considered uncooperative attitudes; or

II - reiterated noncompliance with provisions of this Resolution.

§ 1. In order to determine the base value for the fine, the following conditions may be considered:

I - size and characteristics of the agent;

II - negligence, practices or circumstances that violate the commitment to loyalty and good faith; and

III - the number of occurrences.

§ 2. Once the base value for the fine is determined, aggravating and mitigating circumstances provided for in Resolution No. 472, of June 6, 2018, or normative act that replaces such Resolution, shall apply.

§ 3. The final value for the fine shall not exceed the limits established in the head provision, after considering circumstances indicated in § 2 of article 15 of this Resolution.

Article 16. In the application of administrative measures due to noncompliance with the provisions of this Resolution, procedures provided for in articles 28, 36, § 3, 37-A and 37-B of Resolution No. 472, 2018, shall not apply.

Article 17. Based on reasoned decision, ANAC may choose not to apply administrative measures in case of noncompliance with provisions of this Resolution if noncompliance is normalized before being identified by the inspection team, and provided that normalization:

I - is voluntary; and

II - is different from the hypothesis described in item III of article 14 of this Resolution.

CHAPTER VI GENERAL PROVISIONS

Article 18. Rules referring to flight registration provided for in Resolution No. 440, of August 9, 2017, or normative act that replaces such Resolution, and safety requirements established by competent Departments apply to airlines authorized to operate scheduled or non-scheduled air transport services in the country.

Article 19. Procedures, deadlines, forms, technical documents, ways of complying with technical-operational requirements needed for the issuance of authorization to operate, conditions to start service commercialization and definitions for the application of parameters to determine fine value herein described will be established by Ordinance published by competent Departments.

Article 20. Resolution No. 400, of December 13, 2016, published in the Federal Gazette of December 14, 2016, Section 1, page 104, which provides for General Conditions for Air Transport, has been amended as follows:

“Article 5.

.....

V - indication of airlines responsible for the transportation, in cases of full or partial codeshare operations.

..... (New Wording)

Article 21. Ordinance No. 70/DGAC, of February 11, 1999, published in the Federal Gazette of February 19, 1999, Section 1, page 16, is hereby revoked.

Article 22. This Resolution takes effect on October 3rd, 2022.

JULIANO ALCÂNTARA NOMAN
Director-President