

Brazil's New Drone Regulation Favors Investment

In marked growth for close to two years now, the drone market still lacks specific regulation in Brazil. This being said, proposed rules are available for public consultation and input on the National Civil Aviation Agency (ANAC) website until October 3rd of this year and it is expected that by the end of 2015 the agency will have special regulation in place to govern the use of this new technology.

Non-recreational use drones, or Unmanned Aircraft (“VANTS - *Veículos Aéreos Não Tripulados*”) as they are formally identified in Brazil, are responsible for the global expansion of the aerospace industry, with investment in this technology forecast to increase from the current US\$ 2.7 billion annually to approximately US\$ 8.3 billion over the next few years. The regulation expected to be adopted shall promote legal certainty regarding civilian use of this technology and open the playing field for new possibilities.

Drone use in Brazil is incentivized by the approaching 2016 Olympics. The event shall demand diverse services that may be offered by these flying machines.

VANTS can be divided in two categories: (i) Autonomous Aircraft, not allowing for remote pilot intervention, a category strictly prohibited under Brazilian law; and (ii) Remotely Piloted Aircraft (RPA), unmanned but piloted remotely (via computer or remote control, for instance).

The new rules shall apply to experimental, commercial or corporate RPA use. Experimental use is essentially nonprofit. Commercial use involves service provision to third parties. Corporate use is the use of drones by a company or institution without experimental or direct commercial purpose.

ANAC's proposed regulation imposes RPA use restriction, with greater restrictions for heavier drones. According to the proposed classification, Class 1 includes RPAs with a Maximum Takeoff Weight (PMD) greater than 150 kg; Class 2 includes RPAs with a PMD greater than 25 kg and less than or equal to 150 kg; and Class 3 includes RPAs with a PMD less than or equal to 25 kg.

The most significant advantages are granted to the Class 3 RPAs operating up to 400 feet in the air. These RPAs will not require an ANAC license, Brazilian Aeronautical Registry (RAB) filing or previous flight log entry. Nor will the Special Airworthiness Certificate (for for-profit flights) or the Experimental Flight Authorization Certificate (CAVE, for nonprofit flights) be required.

These are important advantages, considering the trend to minimize devices, with drones becoming lighter and lighter and fitting evermore into Class 3.

Other points in the proposed regulation are noteworthy to mention: (i) the prohibiting of takeoff or landing at public airfields, unless duly authorized by ANAC; (ii) minimum distance between VANTS and people not involved in or not consenting to their operation should be greater than 30 horizontal meters, unless exception is granted; (iii) all VANT use must be insured to cover damage to third parties, except in case of public security and/or civil defense agency use.

These rules will probably coexist with airspace use restrictions for drones already in effect via Department of Airspace Control (DECEA) Circular AIC N. 21 of September 23, 2010. The most important of the restrictions are that: (i) flights cannot take place over cities, villages, inhabited places or groups of people out in the open; and that (ii) flights can only occur in segregated airspace and not in airspace shared with manned aircraft.

São Paulo

Av. Brig. Faria Lima, 2601
12th floor - 01452-924
São Paulo, SP - Brazil
Phone. +55 11 3555 5000

Rio de Janeiro

Praia de Botafogo, 440
15th floor - 22250-908
Rio de Janeiro, RJ - Brazil
Phone. + 55 21 3503 2000

Brasília

SBN Q 1, Bl B, n. 14, Ed. CNC
2th floor - 70714-900
Brasília, DF - Brazil
Phone. + 55 61 2109 6070

contato@levysalomao.com.br

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Failure to comply with the rules, when adopted, will result in the application of penalties under the Brazilian Aeronautical Code (such as fines), and possibly be construed as criminal misdemeanor (under Articles 33 and 35 of Decree Law N. 3,688, of October 3, 1941): the practice of aviation without proper licensing and outside of permitted air zone flight.

Eduardo Salomão Neto
esalomao@levysalomao.com.br

Fabio Kupfermann Rodarte
frodarte@levysalomao.com.br

São Paulo

Av. Brig. Faria Lima, 2601
12th floor - 01452-924
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