



ICLG

The International Comparative Legal Guide to:

Aviation Law 2015

3rd Edition

A practical cross-border insight into aviation law

Ukraine

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1 General

1.1 Please list and briefly describe the principal legislation and regulatory bodies which apply to and/or regulate aviation in Ukraine.

Aviation in Ukraine is governed by a large number of acts, including international treaties, Ukrainian laws and by-laws regulating different areas of the Ukrainian aviation sector. In accordance with the Constitution of Ukraine, international treaties duly ratified by the Ukrainian Parliament form part of Ukrainian legislation.

The principal legislation includes:

- a) Convention on International Civil Aviation (the “**Chicago Convention**”) together with its 18 Annexes;
- b) International Convention Relating to Cooperation for the Safety of Air Navigation, 1960;
- c) Convention on Offences and Certain Other Acts Committed On Board Aircraft (the “**1963 Tokyo Convention**”);
- d) Convention for the Suppression of Unlawful Seizure of Aircraft (the “**1970 Hague Convention**”);
- e) Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation (the “**1971 Montreal Convention**”);
- f) Protocol for the Suppression of Unlawful Acts of Violence at Airports serving International Civil Aviation (the “**1988 Montreal Protocol**”);
- g) Convention for the Unification of Certain Rules for International Carriage by Air (the “**1999 Montreal Convention**”);
- h) Convention on International Interests in Mobile Equipment and the Aircraft Equipment Protocol (the “**2001 Cape Town Convention**”);
- i) Air Code of Ukraine, 2011 (as amended) (the “**Air Code**”);
- j) the Law of Ukraine “On Transport”, 1994 (as amended);
- k) the Law of Ukraine “On State Programme of Civil Aviation Air Safety”, 2003 (as amended) (the “**State Programme of Air Safety**”);
- l) Rules of Civil Aircraft Registration in Ukraine, 2012;
- m) Rules of Carriage of Passengers and Cargo by Air, 2012;
- n) Licensing Terms for Providing Passengers and Cargo Air Services, 2001;
- o) Rules of Civil Aircraft Operators Certification, 2005 (as amended);
- p) Rules of Certification of Aviation Personnel in Ukraine, 1998 (as amended); and
- q) Procedure for and Rules of Mandatory Aviation Insurance of Civil Aviation, 2002.

The principal aviation regulatory bodies in Ukraine are:

- a) the Ministry of Infrastructure of Ukraine (the “**Ministry of Infrastructure**”) – the main governing body responsible for promotion and implementation of the state aviation policy and control of Ukrainian airspace; and
- b) the State Aviation Service of Ukraine (the “**State Aviation Service**”) – the principal executive aviation body which directly controls and supervises aviation in Ukraine by, in particular, approving the specific aviation by-laws, issuing operating licences to aviation carriers, and controlling aviation carriers’ compliance with statutory licence provisions.

Apart from the above governmental aviation regulatory bodies, aviation in Ukraine is also governed by the Interstate Aviation Committee (the “**IAC**”) as a permanent executive body authorised to coordinate and control the use and management of civil aviation in the Commonwealth of Independent States (CIS) in accordance with the Civil Aviation and Airspace Use Agreement dated 25 December 1991, to which Ukraine is a party.

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

Carriage of passengers and/or cargo may be undertaken by an air carrier on the basis of an operating licence only. The operating licence is issued by the State Aviation Service for an unlimited period to air carriers at least 50 per cent of the share capital of which is held by Ukrainian legal entities or natural persons. The procedure for the issuing of an operating licence is as follows:

- a) lodging by the air carrier of an application together with a certified copy of the Air Operator Certificate with the State Aviation Service (additional relevant information: the Air Operator Certificate is issued by the State Aviation Service and confirms the Air Operator’s compliance with the requirements of Ukrainian aviation law and the recommendations of the International Civil Aviation Organization (the “**ICAO**”). The Air Operator Certificate is issued on the basis of the respective application (supported by a number of documents confirming the Air Operator’s ability to carry out respective flights);
- b) the State Aviation Service must take a decision whether to grant the licence within 10 business days on receipt of the documents referred to in paragraph (a) above;
- c) within 3 business days of the date of the decision, the same must be notified by the State Air Service to the air carrier;
- d) within 30 days of the receipt of the notification, the air carrier must pay the fee for the issuance of the licence in the amount of one minimum salary (UAH 1,218 (approx. EUR 70)) and file the confirmation of such payment with the State Aviation Service; and

- e) within 3 business days of receipt of the confirmation of payment (usually a copy of an MT103 or SWIFT advice) the State Aviation Service must issue the operator's certificate.

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

Air safety in Ukraine is governed by an extensive body of laws and regulations. The principal pieces of Ukrainian legislation on air safety consist of: the Air Code; the State Programme of Air Safety; the Laws of Ukraine "On carriage of cargo by Air", 1999 (as amended) (the "Cargo Carriage Law") and "On liability of air carriers in international carriage of passengers", 2002 (as amended); the Decree of the President of Ukraine "On emergency measures with regard to promotion of aviation safety in Ukraine", 1998; Government Regulation "On Provisional Control Rules regarding promotion of civil aviation air safety", 1995 (as amended); "Sectoral flight safety programme for the years 2014-2016" adopted by the Ministry of Infrastructure in 2014.

The Chicago Convention and Annex 17 thereto, the 1963 Tokyo Convention, the 1970 Hague Convention, the 1971 Montreal Convention and the 1988 Montreal Protocol, being a part of Ukrainian legislation, regulate air safety in Ukraine as well.

The supervision and administration of air safety in Ukraine is performed by the State Aviation Service. In addition, in 2012 the Cabinet of Ministers of Ukraine created the Interagency Commission on Air Safety of Civil Aviation, an advisory body the main function of which is to coordinate executive authorities on the promotion of civil aviation safety.

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

There is no sectoral difference in the regulation of air safety. However, Ukrainian aviation legislation provides specific rules for the carriage of military and hazardous cargo.

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

Not entirely. There is a general legal framework which sets out uniform regulation for commercial and cargo air charters.

However, some enactments, in particular the Cargo Carriage Law and the Rules of Carriage of Cargo by Air, 2006 (as amended) set out specific requirements for carriage of cargo by air.

The Joint Aviation Requirement for the operation of commercial air transport (aeroplanes) and the Rules of certification of civil aircraft operators performing commercial carriage as required by OPS 1 provide separate regulation and requirements for commercial air charters.

1.6 As regards international air carriers operating in Ukraine, 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.

The Air Code provides that international air carriers operating in Ukraine should have a licence and a certificate granted by the relevant government body. Scheduled air services are provided by international air carriers in accordance with the ICAO Rules,

Standards and Recommendations, the international treaties to which Ukraine is a party, the aviation regulations of Ukraine and agreements between the aviation authorities. However, charter air services are carried out by international air carriers in accordance with the aviation regulations of Ukraine only.

The operating licence granting the right to perform flights to/from inside Ukraine is granted to international air carriers by the State Aviation Service.

The State Aviation Service is currently considering the draft Aviation Rules of Ukraine "On Procedure of granting and revocation of authority to provide air service" (the "Draft Aviation Rules") which, in case of adoption, will trigger new developments in the Ukrainian aviation sector. In particular, the Draft Aviation Rules envisage that only carriers which are owned (with over 50% of the share capital) or which are actually controlled (ultimate beneficial ownership) by the Ukrainian state and/or the citizens of Ukraine, have the right to operate international scheduled and/or charter air lines.

In addition, the Draft Aviation Rules stipulate that the authority to provide air service in order to perform scheduled international air transportation to and from Ukraine will be granted only if an air carrier performs scheduled air transportation within Ukraine for at least 12 months. However, this provision will become effective within a year of the date on which the Draft Aviation Rules come into force.

1.7 Are airports state or privately owned?

According to the Air Code, airports may be both state and privately owned. However, as a matter of practice, most Ukrainian airports are state or municipally owned.

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

The airports may determine the charges for ground handling operations. The charges for take-off and landing of aircraft, passenger handling and air safety support are determined by the by-laws of the Ministry of Infrastructure.

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?

The investigation of air accidents in Ukraine is regulated by:

- the Air Code;
- Annex No. 13 to the Chicago Convention;
- the State Programme of Air Safety;
- the Regulation on Investigation of Aviation Accidents and Incidents, 2010; and
- the Rules of Investigation of Aviation Accidents and Incidents with Civil Aircraft in Ukraine, 2005 (as amended).

The regulatory authorities in this area are:

- the State Aviation Service (supervises and controls the air safety and air navigation service in Ukraine); and
- the National Bureau of Investigation of Aviation Incidents and Accidents with Civil Aircraft (performs the technical investigation of aviation accidents and incidents that occurred involving civil aircraft in Ukraine).

In addition, the IAC may perform air accident investigation in accordance with the Civil Aviation and Airspace Use Agreement.

Its activity related to accident investigation is fully compliant with recommended international practice (Annex No. 13 to the Chicago Convention for accident investigation).

1.10 Have there been any recent cases of note in Ukraine involving air operators and/or airports?

Following the annexation of Crimea by the Russian Federation in March 2014, which was not recognised by Ukraine, the State Aviation Service and state company UkrAeroRukh limited the air space of Crimea. Similar prohibitions were introduced by the European Organisation for the Safety of Air Navigation (Eurocontrol) and ICAO.

It was reported that the State Aviation Service has fined 27 Russian airlines for the total amount of about UAH 300 million (approx. EUR 16.5 million) for violation of the rules and procedures for the use of Ukrainian airspace by flying to and from Crimea.

On 17 July 2014 a Malaysia Airlines jet carrying 298 people on a flight from Amsterdam to Kuala Lumpur was shot down in the rebel-held territory of eastern Ukraine.

2 Aircraft Trading, Finance and Leasing

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

Registration of an aircraft with the State Register of Civil Aircraft of Ukraine does not constitute proof of ownership. Such registration means that the aircraft is under Ukrainian jurisdiction and the State Aviation Service is entitled to control its flights and operation. Proof of ownership in the aircraft consists of a sale and purchase agreement or another document on the basis of which the aircraft was acquired.

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

There is no special register of aircraft mortgages and charges in Ukraine, therefore encumbrances over the aircraft are registered with the State Register of Encumbrances over Movable Property. This Register is up to date, maintained by the Ministry of Justice of Ukraine and information contained therein has a probative value of the encumbrance over a certain object of movable property. Encumbrances over the aircraft should be registered with the State Register of Encumbrances over Movable Property based on the encumbrancer's application on the day of its submission, provided that the nominal fee in the amount of UAH 34 (approx. EUR 2) has been paid.

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

The Rules of Civil Aircraft Registration provide that an aircraft may be registered in the State Register of Civil Aircraft of Ukraine only if it is (i) owned by a legal entity incorporated in Ukraine or a natural person resident in Ukraine, or (ii) rented or leased by a Ukrainian operator from the non-resident owner.

Due to the volatile economic environment in Ukraine, the National Bank of Ukraine has imposed several currency restrictions of which

a lessor or a financier needs to be aware, should it decide to transfer funds from Ukraine under a cross-border lease agreement.

Needless to say, Ukrainian lessees can only lease and operate aircraft which have a valid airworthiness certificate recognised in Ukraine. Currently the type of certification standard recognised in Ukraine is JAR-21 and its EU equivalent. The AII-21 IAC certification standards dated 2013 are being phased out together with the older Soviet-built aircraft, although the Ukrainian-designed AN-140/148 family of regional jets have been issued an IAC-type certificate to allow it to be operated everywhere in the CIS.

2.4 Is Ukraine a signatory to the main international Conventions (Montreal, Geneva and Cape Town)?

Ukraine has ratified the 1999 Montreal Convention (effective as of 6 May 2009) and the 2001 Cape Town Convention (effective as of 1 November 2012). The Geneva Convention on the International Recognition of Rights in Aircraft has not been ratified by Ukraine.

2.5 How are the Conventions applied in Ukraine?

International conventions ratified by the Ukrainian Parliament constitute a part of Ukrainian legislation. They are applied in the ordinary course by Ukrainian courts. ICAO Standards also form part of Ukrainian legislation as these are an integral part of the Chicago Convention.

3 Litigation and Dispute Resolution

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

In general the right of detention may be used by creditors under the Civil Code of Ukraine as a measure to enforce debtors' obligations. In particular, a creditor who legitimately possesses an item (e.g. an aircraft or its spare parts) to be transferred to a debtor, is entitled to detain such item, should the debtor fail to perform its obligations in time or to indemnify the creditor against any losses related to such item, until the debtor properly performs its obligations.

Such right may be granted to a creditor in accordance with a contract or directly under the law. However, the right of detention may be used by a creditor providing that the following terms are observed: (i) the item is owned by the debtor or person other than the creditor; (ii) the creditor legitimately possesses the item; and (iii) the debtor has breached its obligations to the creditor.

Moreover, the Air Code and other statutory instruments regulating civil aviation stipulate that the respective Ukrainian authority is empowered to take measures for the recovery of debts for air navigation services, including detention of the debtor's aircraft as well as suspension of their operation.

3.2 Is there a regime of self-help available to a lessor or a financier of aircraft if it needs to reacquire possession of the aircraft or enforce any of its rights under the lease/finance agreement?

In terms of Ukrainian laws the opportunity of an aircraft lessor to repossess its aircraft depends on the terms of the lease.

In particular, the lease agreement may set out a lessor's right to terminate the agreement beforehand should a lessee breach its obligations under this agreement. In this case the lessor may

demand that the lessee return the aircraft without commencing a lawsuit. In case the lessee refuses to return the aircraft, the lessor may apply to court.

If the abovementioned right is not provided in the lease agreement, the lessor may terminate the lease agreement beforehand and return the aircraft only with the lessee's consent or in accordance with a court decision.

An aircraft financier could protect its rights under a finance agreement by entering into a mortgage agreement which provides provisions regarding the satisfaction of the creditor's claims.

Ukraine, being a signatory to 2001 Cape Town Convention, made a declaration under Article 54(2) thereof, allowing the repossessing creditor or lessor to proceed against an aircraft without the permission of a court.

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 Ukraine regarding the courts in which civil and criminal cases are brought?

Aviation disputes are considered by commercial courts as well as by courts of general jurisdiction. If a state authority is a party to such a dispute, the case may be considered by administrative courts.

3.4 What type of remedies are available from the courts or arbitral tribunals in Ukraine, both on an i) interim and a ii) final basis?

The particular type of interim and final remedies depends on the following:

- a) the nature of the dispute;
- b) the parties in the dispute;
- c) the type of judicial procedure;
- d) the legal relationships involved;
- e) the rights violated, etc.

For example, the Civil Code of Ukraine envisages the following remedies: recognition of the claimant's right; termination of an action which violates the claimant's right; compensation of losses; and other means for compensation of material damage, etc. In addition, the parties may agree in a contract any specific forms of remedy.

3.5 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?

Ukrainian law of procedure defines two stages for appeal against a court decision: appeal; and cassation. In addition, there are certain grounds for revision of a court decision by the Supreme Court of Ukraine. The court decision may be reconsidered due to newly discovered circumstances.

Ukraine is a party to the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards, 1958.

4 Commercial and Regulatory

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

There is no specific law that regulates joint ventures between airline competitors.

According to the general Ukrainian antitrust legislation, the establishment of a joint venture may be qualified either as a concentration or concerted practices and may require prior clearance by the Antimonopoly Committee of Ukraine (the "AMC").

The establishment of a joint venture is deemed to constitute a concentration if its establishment does not entail coordination of competitive behaviour between the undertakings which established the joint venture (parents) or between the joint venture and its parent companies (a concept which is similar to the "full function joint venture" concept in the EU). Due to this concept, a joint venture could conduct business activity independently for a long period of time.

The establishment of a joint venture is deemed to constitute concerted practices if such an establishment has an objective or results in coordination of competitive behaviour of the joint venture's parent companies or a joint venture on the one hand, and its parents on the other, and may potentially prevent, eliminate, or restrict competition.

4.2 How do the competition authorities in Ukraine determine the "relevant market" for the purposes of mergers and acquisitions?

Opposite to EU regulation, the Ukrainian merger clearance regulations do not provide the definition of the relevant market. At the same time, the regulation on control over concerted practices stipulates a definition of "affected market", which to a certain extent corresponds to the "relevant market" definition. The affected market means the relevant product market and its neighbouring markets on which the concerted practices or their consequences take place or may take place. Similarly, the affected market with respect to concentrations may be defined as an affected market where concerted practices take place.

In practical terms, the AMC defines the airline services market as separate routes between cities, including international routes.

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

Indeed; Ukrainian legislation provides a procedure for obtaining the approval of a concentration or concerted practices.

In case the parties to the transaction agreement exceed the financial or market share thresholds, the proposed transaction requires prior clearance by the AMC.

If concentration is prohibited by the AMC, the Cabinet of Ministers of Ukraine may authorise concentration, if a positive effect produced by the concentration on the public interest outweighs any negative consequences of the restriction of competition.

4.4 How does Ukraine approach mergers, acquisition mergers and full function joint ventures?

In accordance with Ukrainian competition legislation, mergers, acquisition mergers and the establishment of full function joint ventures are defined as concentrations.

According to the competition laws, a concentration requires the prior approval of the AMC if all of the following thresholds are exceeded by the parties to the concentration for the last financial year:

- a) the aggregate worldwide asset value or sales turnover for all parties to the concentration, including related entities, exceeds EUR 12 million;

- b) the aggregate worldwide asset value or sales turnover for each of at least two of the parties to the concentration, including related entities, exceeds EUR 1 million; and
- c) the asset value or sales turnover in Ukraine of at least one party to the concentration, including related entities, exceeds EUR 1 million.

In addition, according to the competition laws, a concentration requires the AMC's prior approval irrespective of the value of assets or sales turnover of the parties to the concentration, if the market share of any party or the combined market share of all parties to the concentration, including related entities, on any product market in Ukraine exceeds 35%, and the concentration takes place on this or a neighbouring product market.

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

Pursuant to the applicable laws:

- a) the application for the approval of concentration is supposed to be reviewed by the AMC within 45 days of the date of its submission,
- b) the application for the approval of concerted practices is supposed to be reviewed by the AMC within 3 months and 15 days of its submission.

During the first 15 days after the filing – a so-called “waiting period” – the AMC conducts an initial review of completeness of the applications and may return them without review as incomplete. During the subsequent period (Phase I review – 30 days for concentration and 3 months for concerted practices), the AMC analyses submitted information *per se* and decides whether to grant or deny the approval or initiate an in-depth investigation (Phase II review). The Phase II review may last up to 3 months, and this period can be suspended until the AMC receives any subsequently requested information. The authority tends to open this second review stage if it discovers any grounds on which the concentration can be prohibited or needs to engage in complicated research.

The filing fee for a concentration is UAH 5,100 (approx. EUR 280).

The filing fee for concerted practices is UAH 2,550 (approx. EUR 140).

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 several initiatives currently provided for by Ukrainian law.

In accordance with Order No. 433 of the Ministry of Transport and Communication (currently the Ministry of Infrastructure) dated 14 April 2008, an airport's administration may by its own decision reduce airport fees and charges due, by as much as 80%. Such reduction shall give an impetus to exploit new routes. However, such reduction should not violate anti-competition rules.

The Tax Code of Ukraine imposes 0% VAT on international air carriage of passengers, baggage and cargo.

Resolution No. 944 of the Cabinet of Ministers of Ukraine dated 30 October 2013 sets out a governmental programme of airport development in 2013-2023 (the “**Programme**”). The Programme states that major airports should remain state-owned and that an immediate reconstruction of certain facilities is required. It is planned to engage UAH 15.3 billion (approx. EUR 837 million)

in investments into the development of airport infrastructure and facilities under state guarantee.

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

No, they are not.

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?

The Rules on carriage of passengers and baggage by air adopted by the Ministry of Infrastructure in 2012 (the “**Carriage Rules**”) stipulate that airlines should keep the data they hold on passengers confidential. However, passengers are deemed to authorise carriers to submit such data to (i) governmental authorities, (ii) officials and agents of the carrier, (iii) other carriers, or (iv) providers of additional services.

Apart from provisions of the Carriage Rules, the Law of Ukraine “On Personal Data Protection”, 2010 (as amended) (the “**Data Protection Law**”) set out the following rights of persons providing their personal data:

- a) to know the place of personal data storage and its designation;
- b) to request information of third parties to whom such data was provided and the purposes of such provision;
- c) to revoke consent to retention or usage of personal data; and
- d) to use remedies and apply to the respective authorities in case of a breach of his/her personal data protection regime, etc.

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?

Neither the Carriage Rules, nor the Data Protection Law imposes direct obligations on carriers in case of loss of data. However, carriers are obliged to prevent such loss by establishing personal data protection systems.

In case of violation of passengers' personal data regime by courier, passengers may recourse to certain remedies, such as filing a claim before the court or applying to a designated authority (the Commissioner of the Verkhovna Rada of Ukraine on Human Rights (the “**Commissioner**”).

The Commissioner's powers and authorities include, among others, rights to:

- a) conduct scheduled or unscheduled inspections of personal data holders, with unrestricted access to data storage facilities;
- b) request and have access to any information and/or documents of data holders in order to control the proper level of data protection; and
- c) issue obligatory instructions regarding the removal of inconsistencies and breaches of the data protection regime, etc.

A breach of the personal data protection regime by the carrier may lead to administrative responsibility if it resulted in illegal access by third parties to such information or other violation of the data-provider's rights. Section 18839 of the Code of Administrative Breaches prescribes a fine of between UAH 1,700 (approx. EUR 100) and UAH 34,000 (approx. EUR 1,900) for such breach.

A passenger may also use a civil litigation procedure in order to pursue compensation for damages.

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?

Trademarks are subject to registration with the Ukrainian Patent and Trademark Office, which is authorised to issue a certificate confirming rights to the trademark (the “Certificate”). The Certificate is valid for 10 years and may be renewed for the same period. Being a party to the Madrid system, Ukraine protects international trademark registrations designated to its territory.

Patents are granted for inventions, utility models and designs. To meet patent eligibility requirements the inventions and utility models should be new, non-obvious and industrially applicable. The designs should meet only the criterion of novelty. The terms of patent validity depend on the registered object. The principle of universal novelty is applied in Ukraine while registering patentable objects.

Objects of copyright law are protected by virtue of their creation without registration. A creation is considered to be an object of copyright without the execution of any formalities in this regard and regardless of their completion, purpose or value, as well as means and form of presence. Published and unpublished works enjoy legal protection.

To secure rights to IP objects, the rights-holder may register them with the Customs Register of Intellectual Property Objects. The information is inserted in the aforementioned register upon the filing of an application together with the documents which confirm the rights to such object.

4.11 Is there any legislation governing the denial of boarding rights?

Denial of boarding rights by carriers is regulated by the Carriage Rules and the Air Code, which comply with standards incorporated in EC Regulation No. 261/2004 EC and Regulation No. 1107/2006.

It is stipulated that the carrier is entitled to deny boarding when: (i) it is necessary in order to comply with regulatory provisions of the country of departure; or (ii) such denial is requested by the relevant Ukrainian governmental authorities. The Carriage Rules also set out circumstances in which a carrier may deny boarding rights at its discretion; namely, if a passenger:

- a) refuses to go through a security check;
- b) has not paid, or has paid only part of, the ticket price or other charges due;
- c) does not provide the required documents;
- d) behaves aggressively towards other passengers or members of the aircraft crew; or
- e) is intoxicated by alcohol or narcotics.

The list of circumstances includes rather vague wording (e.g. “passengers may pose a danger to other passengers (baggage, cargo) or aircraft”); this leaves a certain level of discretion to air operators.

In case of denial of boarding under circumstances (a) and (b) above, the carrier is obliged to reimburse the full value of the ticket, or propose reasonable re-routing under comparable transport conditions. This rule also applies to other cases of boarding denial, when such denial is due to the fault of the carrier (e.g. overbooking).

Moreover, in accordance with the Air Code, the carrier should also provide compensation in the range of EUR 250 to EUR 600 (the amount depends on the length of the flight). Such compensation may be decreased by 50% when a passenger rejects reasonable re-

routing proposals. In all other cases of denial, depending on the circumstances of such denial, the carrier may be entitled to claim costs and any damages caused by the actions of the passenger, deducting them from the ticket price.

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

In accordance with the Air Code, in case of late arrival the carrier shall provide to the passengers:

- a) meals and refreshments in reasonable relation to the waiting time;
- b) accommodation (in case the delay requires stay for one or more nights);
- c) transport between the airport and place of accommodation; and
- d) two telephone calls, telex or fax messages, or e-mails, free of charge.

If the delay exceeds 5 hours, the carrier should propose to the passengers a ticket price reimbursement or re-routing.

According to the Air Code, breaches of passenger carriage rules and failure to provide the requisite level of treatment are sanctioned with a fine of between UAH 8,500 (approx. EUR 470) and UAH 17,000 (approx. EUR 930). Persons authorised by the State Aviation Service and chief airport officers are entitled to file protocols fixing such breaches. During 15 days following the filing of a protocol, the State Aviation Service will consider it and impose the fine, to be discharged within a term of 15 days.

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

Airport operators shall obtain a certificate in accordance with the Rules on Certification of Airports. An aerodrome, attached to the airport, shall also be certified and registered with the State Register of Civil Aerodromes. The procedure for obtaining the certificate and registration is set out in the Rules on Registration of Civil Aerodromes, which also set out applicable technical standards and requirements.

In accordance with the Air Code, airport operators have the following obligations:

- a) to ensure the orderly arrival and departure of aircraft;
- b) to provide for on-land handling of aircraft, passengers, crews, baggage, cargo and post;
- c) to maintain in operational conditions aerodromes and necessary constructions, facilities and personnel devices (in conditions corresponding to the relevant technical requirements);
- d) to provide for border, customs, sanitary and other types of controls (for international airports);
- e) to secure an efficient client-administration communication system;
- f) to provide meteorological information to aircraft; and
- g) to secure the efficient provision of services to airport visitors, etc.

Airport operators may engage other aviation service providers (e.g. emergency search and rescue, fire-fighting, provision of meteorological data, etc.). In engaging such providers, airport operators shall comply with anti-competition rules. The same is applicable for granting access to airport facilities for air carriers (see question 4.6. for relevant exceptions).

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

The relationship between the airport operator and the passenger falls under the scope of the Law of Ukraine “On the Protection of Consumers’ Rights”, 1991 (as amended).

4.15 What global distribution suppliers (GDS) operate in Ukraine?

The following GDSs are operating in Ukraine: Amadeus; Sabre Travel Network; and Travelport.

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

There are no ownership requirements pertaining to GDSs operating in Ukraine.

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

The applicable laws remain silent on this matter.

Acknowledgments

The author would like to thank: Dmitry Taranyk, Counsel at Sayenko Kharenko, focusing on antitrust and competition (email: DTaranyk@sk.ua); Sergiy Smirnov, Senior Associate at Sayenko Kharenko, experienced in representing companies from Ukraine’s aviation sector in complex court disputes (email: SSmirnov@sk.ua); and Vasyl Liutyi, Associate at Sayenko Kharenko, specialising in corporate law, M&A and corporate finance (email: VLiutyi@sk.ua), for their assistance in preparing this chapter.



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Andrei Liakhov is a partner at Sayenko Kharenko. Dr. Liakhov has over 20 years of professional experience with leading international law firms, companies and government institutions in the United Kingdom, the Russian Federation, Lithuania, Canada, and Ukraine.

Dr. Liakhov advises extensively on the most sophisticated cross-border corporate transactions and has expert knowledge in the fields of aviation, natural resources and mining.

Mr. Liakhov advised on a number of cross-border transactions in the aviation sector, including: on Ukrainian competition law issues related to the acquisition of the world’s leading companies in the aviation sector; on the financing of the construction and commissioning of a new international airport; on aircraft sales and leasing arrangements; and on corporate restructuring and fleet upgrades for the leading airlines in the CIS.

Andrei was also consulted by a leading EU developer in relation to a construction project for Kiev city airport, and by groups of European investors on the acquisition and development of airport cities and suburban (regional) trade centres in Ukraine.

Andrei earned a PGL degree from the College of Law of England and Wales, is an Honorary Doctor of Law of Karlov University in Prague, and gained a Doctor of Law degree from the Academy of Sciences of the USSR and a Doctor of Law degree from the Academy of Sciences of Lithuania.

SAYENKO KHARENKO

Sayenko Kharenko enjoys a global reputation as a leading Ukrainian transactional and dispute resolution law firm.

Sayenko Kharenko has a highly specialised aviation team boasting years of experience in advising on aviation law matters involving Ukraine and the CIS countries.

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