



ICLG

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Aviation Law 2017

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Ukraine

Andrei Liakhov



Sayenko Kharenko

Vasyl Liutyi



1 General

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

The air transportation sector in Ukraine is subject to an extensive and detailed regulatory regime based on the international conventions duly ratified by the Ukrainian Parliament (*Verhovna Rada*).

The principal regulatory instruments are:

- (a) Convention on International Civil Aviation (the “**Chicago Convention**”) together with 18 Annexes thereto;
- (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) Law of Ukraine “On Transport”, 1994 (as amended);
- (k) Law of Ukraine “On Transit of Cargo”, 1999 (as amended) (the “**Cargo Transit Law**”);
- (l) Law of Ukraine “On Liability of Air Carriers in International Carriage of Passengers”, 2002 (as amended) (the “**Air Carriers Liability Law**”);
- (m) Law of Ukraine “On State Programme of Civil Aviation Air Safety”, 2003 (as amended) (the “**State Programme of Air Safety**”);
- (n) Law of Ukraine “On Licensing Types of Business Activities”, 2015 (as amended) (the “**Licensing Law**”);
- (o) Rules of Procedure for Granting and Revocation of Authority to Provide Air Services, 2014 (as amended) (the “**Air Services Rules**”);
- (p) Rules of Aircraft Certification, 2014;
- (q) Rules of Civil Aircraft Registration in Ukraine, 2012;

- (r) Rules of Carriage of Passengers and Baggage by Air, 2012 (the “**Passenger and Baggage Carriage Rules**”);
- (s) Rules of Carriage of Cargo by Air, 2006 (as amended) (the “**Cargo Carriage Rules**”);
- (t) Rules of Civil Aircraft Operators Certification, 2010 (as amended) (the “**Civil Aircraft Operators Certification Rules**”);
- (u) Air Operators Certification Rules, 2005 (as amended);
- (v) Rules of Certification of Aviation Personnel in Ukraine, 1998 (as amended); and
- (w) Procedure for and Rules of Mandatory Aviation Insurance of Civil Aviation, 2002 (as amended).

There are two principal aviation regulatory bodies in Ukraine:

- (a) the Ministry of Infrastructure of Ukraine (the “**Ministry of Infrastructure**”) – the main governing body responsible for promotion and implementation of state aviation sector policies; and
- (b) the State Aviation Service of Ukraine (the “**State Aviation Service**”) – the principal regulator and supervisor which directly controls all aspects of the air transportation sector in Ukraine by, in particular, approving the specific aviation by-laws, issuing operating licences and air operator certificates to air carriers, and controlling air carriers’ compliance with the rules of air operations.

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

Air carriers may carry passengers and/or cargo only on the basis of an operating licence issued by the State Aviation Service for an unlimited period. The procedure for the issue of the operating licence is currently governed by the Licensing Law and may be summarised as follows:

- (a) filing of an application for grant of an operating licence together with supporting documents of the applicant, including its constitutional documents confirming that at least 50 per cent of the share capital of the applicant is held by a Ukrainian body corporate or individual;
- (b) the State Aviation Service has 10 business days to consider such application together with all the supporting documents;
- (c) a decision on a licensing application must be notified to the applicant within three business days of issue; and
- (d) within 10 days of the receipt of the notification from the State Aviation Service, the air carrier must pay the fee for the licence in the amount of one minimum salary (UAH 1,450 (approx. EUR 50)) and file the confirmation of such payment with the State Aviation Service.

The new draft Licensing Terms for Carriage of Passengers, Hazardous Cargo and Hazardous Waste by Air have been prepared by the State Aviation Service in accordance with the Licensing Law. It is expected that the Licensing Terms may be adopted by the end of 2016.

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

An extensive body of laws and regulations governs air safety in Ukraine. The principal pieces of Ukrainian legislation on air safety consist of the Air Code, the State Programme of Air Safety, the Air Carriers Liability Law, the Cargo Transit Law, and the Decree of the President of Ukraine “On Emergency Measures Regarding Promotion of Air Safety in Ukraine”. In addition, Annex 17 to the Chicago Convention, and the 1963 Tokyo Convention, 1970 Hague Convention, 1971 Montreal Convention and 1988 Montreal Protocol are all directly applicable in Ukraine as well.

General responsibility for ensuring compliance with air safety rules and regulations lies with the State Aviation Service. In 2012 the Cabinet of Ministers of Ukraine established the Interagency Commission on Air Safety of Civil Aviation, an advisory body the main function of which is to coordinate the work of various executive bodies related to civil aviation safety.

On 20 July 2015, the National Security and Defence Council of Ukraine adopted the Decision “On Measures for Protection of National Interests in Aviation” which, *inter alia*, provides for preparation of a draft law on the new state programme of air safety in civil aviation. The respective draft law was prepared by the Cabinet of Ministers of Ukraine but it has not been submitted to the Ukrainian Parliament yet.

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

The Ukrainian air safety legislation does not establish sectoral differences for different types of transportation by air. However, there are specific rules for carriage of military and hazardous cargo.

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

Not entirely. A general legal framework sets out uniform regulation for commercial and cargo air charters. However, some instruments, in particular the Cargo Transit Law and the Cargo Carriage Rules, set out specific requirements for carriage of cargo by air.

1.6 As regards international air carriers operating in your jurisdiction, 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 must have a licence and a certificate granted by the relevant government body of their state. Scheduled air services are provided by international air carriers in accordance with the International Civil Aviation Organization (“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.

Ukraine is not a party to the majority of international instruments in relation to the sixth freedom of the air. All routes are granted by the State Aviation Service on a reciprocal basis. It is the preferred practice of the State Aviation Service to incorporate into bilateral air service agreements provisions about codes of sharing and/or pooling provisions which are aimed at ensuring that Ukraine’s airlines have a share of revenues on these routes.

On 4 April 2016, the State Aviation Service adopted a regulation which abolished a number of controversial provisions of the Air Services Rules that had restricted the Ukrainian air services market for international airlines. In particular, an international airline willing to allocate either a scheduled or charter international air route is no longer required to carry out scheduled air transportation within Ukraine for at least 12 months and comply with the applicable maximum flight frequency for scheduled international flights from/to Ukraine.

1.7 Are airports state or privately owned?

Pursuant to the Air Code, airports may be both state and privately owned. 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 your jurisdiction?

Ukrainian 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?

Investigation of air accidents in Ukraine is regulated by Annex 13 to the Chicago Convention, the Air Code, 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 principal regulatory authorities in this area are the State Aviation Service, which 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, which conducts technical investigation of air accidents and incidents that occur involving civil aircraft in Ukraine.

1.10 Have there been any recent cases of note or other notable developments in your jurisdiction involving air operators and/or airports?

The USA-Ukraine Open Skies Agreement came into effect in 2016, introducing the fifth freedom of the air into national legislation. According to the Agreement, there is no limitation on the flights which the parties may carry out.

Following the annexation of Crimea by the Russian Federation and the imposition of international and internal Russia-related sanctions, Ukraine banned Russian airlines from flying to and from Ukraine as part of the state sanction policy. Since September 2015, there has not been a direct air communication between the two states. Transit flights and flights operated by Russian airlines with their

final destination in Crimea have been restricted as well. Certain Russian airlines have been fined an aggregate amount of approx. USD 27.9 million for breaching these restrictions.

Ukraine has postponed an ICAO aviation sector audit planned for 2016. It is expected that ICAO will carry out required procedures at the beginning of 2017.

In July 2016, the Ukrainian Parliament adopted the Law of Ukraine “On Creation of Conditions for International Cooperation of Entities of Aircraft Production”. The Law allows Ukrainian aircraft production enterprises to expand cooperation with foreign investors and is aimed at the creation of favourable conditions for the development of the national aircraft production industry and the attraction of new technologies and investments to the projects of Ukrainian enterprises.

The State Aviation Service has adopted Regulation No. 222, which liberalises access to the domestic market for international airlines by abolishing a number of controversial legislative provisions.

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 has been 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.

2.4 Is your jurisdiction 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 your jurisdiction?

International conventions ratified by the Parliament of Ukraine constitute a part of Ukrainian legislation and 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 its 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 filing a claim. In the case that the lessee refuses to return the aircraft, the lessor may apply to court. If this right is not provided in the lease agreement, the lessor may terminate the lease agreement before the expiry of its term and repossess the aircraft only with the lessee’s consent or upon the decision of a court.

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

Ukraine, being a signatory to the 2001 Cape Town Convention, made a declaration under Article 54(2) thereof, allowing the repossessing creditor or lessor to proceed against an aircraft or its engine 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 your country regarding the courts in which civil and criminal cases are brought?

Aviation disputes are generally considered by commercial and administrative courts and, more rarely, by courts of general jurisdiction which consider civil and criminal cases. The particular type of court jurisdiction depends on the subject matter of, and party to, the dispute. For example, administrative courts consider disputes to which any state authority is a party. Commercial courts usually consider cases involving business entities in connection with the breach of contractual provisions, compensation of damage or debt recovery, etc. Courts of general jurisdiction consider cases to which individuals are parties and which relate to damage to passengers' baggage, its delay or loss, etc.

3.4 What service requirements apply for the service of court proceedings, and do these differ for domestic airlines/parties and non-domestic airlines/parties?

Requirements for the service of court proceedings vary depending on the jurisdiction of courts (i.e. administrative, commercial courts or courts of general jurisdiction).

In general, the parties in legal proceeding shall be notified as to the particular date and place of the court session by summons. For instance, under the Civil Procedure Code of Ukraine, a summons shall be sent to a disputing party not later than three days before a court session by registered mail or via courier to the address of the relevant party. There are also certain additional options for the sending of a summons in cases where a party to a dispute does not provide the court with its address, or does not reside at the provided address.

Generally, the rules for service of court proceedings to non-domestic parties/airlines are set by the relevant bilateral and multilateral international treaties of Ukraine.

3.5 What type of remedies are available from the courts or arbitral tribunals in your jurisdiction, 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; and
- (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.

3.6 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 court procedure rules define several stages for appeal against a court decision, in particular: appeal; cassation; and, in

exceptional cases, revision of a court decision by the Supreme Court of Ukraine. In addition, a court decision may be reconsidered by the same court on the basis of 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 your jurisdiction approach and regulate joint ventures between airline competitors?

There are no specific laws that regulate joint ventures between competing airlines.

Pursuant to the Ukrainian antitrust legislation, establishment of joint ventures may be defined as either a concentration or concerted practices.

Establishment of joint venture is deemed to be a concentration if its establishment does not entail coordination of behaviour between joint venture partners, or between the joint venture itself and the joint venture partners. Due to this concept, a joint venture can conduct business activity independently for a long period of time.

Establishment of joint venture is deemed to be concerted practices if such establishment results in coordination of behaviour between the joint venture partners, or between the joint venture itself and the joint venture partners.

Both approaches require the prior clearance of the Antimonopoly Committee of Ukraine (the "AMC"), if the financial thresholds stipulated by the effective competition laws are met by the parties.

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

Pursuant to the Ukrainian antitrust legislation, "relevant market" is a product market with certain product and geographical boundaries, which is affected or may be affected by a concentration.

Geographical boundaries of the market mean the territory of trade relationships arising around certain products, within which, under normal conditions, the consumers can easily meet their demand for a certain product, and which normally coincide with the territory of the state, region, district, city, or parts thereof.

Product market boundaries mean a product and/or an assembly of similar, homogeneous objects of economic exchange, within the boundaries of which the consumer can, under normal conditions, transfer between the consumption of certain objects of economic exchange to the consumption of other such objects.

In its practice, the AMC defines the airline services market as individual routes between cities, including international routes.

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

In the case that an agreement is qualified as potentially anti-competitive, it requires prior clearance of the AMC.

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

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

In accordance with the effective Ukrainian antitrust legislation, mergers and acquisitions relate to concentrations and accordingly require clearance by the AMC.

Merger approvals are required whenever an economic concentration is consummated, provided that the parties exceed the relevant financial thresholds. In particular, for the purposes of the Ukrainian merger control rules, a concentration is deemed to occur, *inter alia*, in cases of:

- (a) mergers between undertakings (i.e. when two or more independent undertakings amalgamate into a new undertaking and cease to exist as separate legal entities);
- (b) absorption of one undertaking by another (with one retaining its legal identity and the other ceasing to exist as a legal entity);
- (c) acquisition of control directly or through other persons or entities by one or more undertakings over one or more undertakings, including by way of:
 - direct or indirect acquisition (gaining control over or acquiring a lease) of assets that amount to a going concern or a structural subdivision of an undertaking;
 - appointment to the post of a chair or deputy chair in the supervisory council, the executive (management) board or any other supervising or executive body of an individual who already occupies one or more such positions in another undertaking; or
 - composition of the supervisory council, the executive (management) board, or any other supervising or executive body of an undertaking, in such a manner as to enable the same individuals to represent more than 50 per cent of the members of such bodies in two or more undertakings;
- (d) establishment by two or more undertakings of a joint venture, which in turn is intended to perform on a continuing basis all the functions of an autonomous economic entity; and
- (e) direct or indirect acquisition of assets or participation interests (including shares) in an undertaking that allows the acquirer to reach or exceed 25 or 50 per cent of votes in the target undertaking's highest management body.

The establishment of joint ventures may be considered as either a concentration or concerted practices (as described under question 4.1 above).

4.5 Details of the procedure, including time frames for clearance and any costs of notifications.

The effective Ukrainian merger control regulations provide two options for review of concentration notifications: fast-track and regular procedures.

According to the fast-track review procedure, the AMC reviews a merger filing and grants approval for concentration within 25 calendar days in either of the following cases:

- only one party is active in Ukraine; or
- combined market share of the parties does not exceed 15 per cent on an overlapping Ukrainian market or 20 per cent on a vertically related Ukrainian market.

Should the parties not meet the requirements for the fast-track review procedure, the application for the approval of a concentration is supposed to be considered by AMC within the regular procedure, i.e. within 45 calendar days starting from the date of its submission.

The application for the approval of concerted practices is considered by the AMC within three months and 15 days starting from the date of its submission.

During the first 15 calendar days following the filing – the so-called “waiting period” – the AMC conducts an initial review of completeness of the applications and may return them without review due to their incompleteness. Within the subsequent period, the AMC analyses the submitted information *per se* and decides whether to grant the approval.

The filing fee for a concentration is UAH 20,400 (approx. EUR 730), while the filing fee for concerted practices is UAH 10,200 (approx. EUR 365).

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 per cent. 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 per cent 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 510 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?

There are no state subsidies available.

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 Passenger and Baggage 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 Passenger and Baggage Carriage Rules, the Law of Ukraine “On Personal Data Protection”, 2010 (as amended) (the “Data Protection Law”) sets 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 Passenger and Baggage Carriage Rules nor the Data Protection Law impose 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 have recourse to certain remedies, such as filing a claim before the court or applying to a designated authority (the Commissioner of the Parliament 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 56) and UAH 34,000 (approx. EUR 1,130) for such a 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 need only meet the criterion of novelty. The terms of patent validity depend on the registered object. The principle of universal novelty is applied in Ukraine when registering patentable objects.

The rights holder enjoys an intellectual property right in copyright objects from the moment of its creation/assignment and no formal registration of rights and/or intellectual property right assignment transaction is required in Ukraine. Published and unpublished works enjoy legal protection. The copyright is valid for the whole life of the author and 70 years after his/her death.

Valuable information may be protected as a commercial secret, which is a kind of confidential information. Ukrainian law defines a commercial secret as information, which is secret in the sense that it is not, as a body or in the precise configuration and assembly of its components, generally known among or readily accessible to persons within the circles that normally deal with the kind of information in question, as well as having commercial value because it is secret and has been subject to reasonable steps under the

circumstances, by the person lawfully in control of the information, to keep it secret. A person may decide at his/her discretion, which information should be treated as commercial secret, provided that all requirements described in definition above are complied with. Commercial secrets are protected for an indefinite time as long as the above-mentioned requirements are met.

To secure rights in certain IP objects, the rights holder may register them with the Customs Register of Intellectual Property Objects. The information is recorded in the aforementioned register upon filing an application together with the documents, which confirms 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 Passenger and Baggage Carriage Rules and the Air Code, which comply with standards incorporated in EC Regulation No. 261/2004 and EC Regulation No. 1107/2006.

The carrier may 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 Passenger and Baggage Carriage Rules also set out circumstances under 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"), leaving 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 per cent when a passenger rejects reasonable rerouting 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 a carrier shall provide to passengers:

- (a) meals and refreshments in reasonable relation to the waiting time;
- (b) accommodation (in case the delay requires a stay of 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 five 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 300) and UAH 17,000 (approx. EUR 600). 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 of Certification of Airports, 2006 (as amended). An aerodrome, attached to the airport, is subject to certification and registration with the State Register of Civil Aerodromes as well. The procedure for obtaining the certificate and registration is set out in the Rules of Registration of Civil Aerodromes, 2005 (as amended), 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, crew, baggage, cargo and post;
- c) to maintain in operational conditions aerodromes and necessary constructions, facilities and personnel devices (such 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 ensure the efficient provision of services to airport visitors, etc.

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 (GDSs) operate in your jurisdiction?

The following GDSs operate in Ukraine: Amadeus, Sabre Travel Network and Traveport.

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

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.

5 In Future

5.1 In your opinion, which pending legislative or regulatory changes (if any) or potential developments affecting the aviation industry more generally in your jurisdiction are likely to feature or be worthy of attention in the next two years or so?

In 2015, the Ministry of Infrastructure adopted the Strategic Plan for Development of Air Transport by 2020. It is expected that by 2020 the regulatory authorities of Ukraine will improve the air transport infrastructure of Ukraine, introduce tariff regulation in relation to air navigation services and airport charges, and create conditions for the promotion of competition in the aviation market. In that regard the State Aviation Service has already initiated work on the simplification of different aspects of aviation regulation of Ukraine (in particular, the Draft Aviation Rules on Access to the Ground Handling Services Market has been prepared by the State Aviation Service and is currently pending its final approval).

It is expected that the legislation of Ukraine in the fields of certification of aerodromes/airports and airworthiness will be harmonised with the relevant EU norms and standards.

Experts also expect the signing of the EU-Ukraine Common Aviation Area Agreement in the near future. The main obstacle for signing of the Agreement by EU Member States is the dispute between the United Kingdom and Spain on Gibraltar.

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