

## Revision of the Third Air Package

| <b>Council Regulation (EEC)<br/>No 2407/92 (current<br/>legislation in place)</b> | <b>Revisions under the new<br/>Regulation</b>  |
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| <b>Recitals to note</b>   |  |
| Not applicable  | Recital 5 states that, ‘To ensure consistent monitoring of the compliance with the requirements of the operating licences of all Community air carriers, licensing authorities should carry out regular assessments of the air carriers’ financial situation. Therefore, the latter should provide sufficient information on their financial situation, especially in the first two years of their existence as these are particularly critical for the survival of an air carrier on the market. In order to avoid a distortion of competition arising from the different application of the rules at national level, it is necessary to reinforce the financial oversight of all Community air carriers by Member States.’ |
| Not applicable  | Recital 6 provides that, ‘To reduce risks to passengers, Community air carriers failing to fulfill the requirements for maintaining a valid operating licence should not be allowed to continue operations. In such cases, the competent licensing authority should revoke or suspend the operating licence.’  |
| Not applicable  | Recital 8 states that, ‘In order to avoid excessive recourse to lease agreements of aircraft registered in third countries, especially wet lease, these possibilities should only be allowed in exceptional circumstances, such as lack of adequate aircraft on the Community market, and they should be strictly limited in time and fulfill safety standards equivalent to the safety rules of Community and national legislation.’  |
| <b>Definitions</b>  |  |
| Not defined under the current Regulation  | “ <b>competent licensing authority</b> ” means an authority of a Member State entitled to grant, refuse, revoke or suspend an operating licence in accordance with Chapter II (The Commission for Aviation Regulation will continue to be the competent licensing authority under the new Regulation for licensing of air carriers).   |

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| Not defined under the current Regulation   | “ <b>dry lease agreement</b> ” means an agreement between undertakings pursuant to which the aircraft is operated under the AOC of the lessee  |
| Not defined under the current Regulation   | “ <b>wet lease agreement</b> ” means an agreement between air carriers pursuant to which the aircraft is operated under the AOC of the lessor  |
| Not defined under the current Regulation   | “ <b>principal place of business</b> ” means the head office or registered office of a Community air carrier in the Member State within which the principal financial functions and operational control, including continued airworthiness management, of the Community air carrier are exercised.   |
| <b>Conditions for granting an operating licence</b>  |  |
| Article 8 (1) provides that ownership of aircraft shall not be a condition for granting or maintaining an operating licence but a Member State shall require, in relation to air carriers licensed by it, that they have one or more aircraft at their disposal, through ownership or any form of lease agreement. | Article 4 sets out the conditions for granting an operating licence. Article 4(c) provides that an undertaking is required to have one or more aircraft at its disposal through ownership or <b>dry</b> lease agreement.   |
| <b>Financial conditions for granting/maintaining an operating licence*</b>   |  |
| Applicants are required under Article 5 (2) to submit a Business Plan for, at least, the first <b>two</b> years of operation.  | Applicants are required under Article 5 (2) to submit a Business Plan for, at least, the first <b>three</b> years of operation.  |
| Under Article 5 (7) (a), air carriers exclusively engaged in operations with aircraft of less than 10 tonnes MTOW (maximum take off weight) and/or less than 20 seats (i.e. Category B operators) must be able to demonstrate that their net capital is at least <b>€80,000 at all times</b> .                     | Under Article 5 (3), an undertaking applying for an operating licence intended to cover operations with aircraft of less than 10 tonnes MTOM (maximum take off mass) and/or less than 20 seats (i.e. Category B operators). Such undertakings shall demonstrate that their net capital is at least <b>€100,000</b> . In addition, under Article 8 (8) regarding the ongoing validity of an operating licence, air carriers engaged in these operations are required to be able to demonstrate <b>at all times</b> that they meet the net capital requirements of <b>€100,000</b> . |

\*Note that not all financial conditions apply to Category B air carriers who need only demonstrate that their net capital is at least €100,000 or to provide information that proves that, in the opinion of the licensing authority, no financial problems exist. However, this exception to the rule may not apply if the Category B air carrier intends to operate scheduled air services or whose turnover exceeds €3 million per year.

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| <p>Under Article 5 (6) an air carrier is required to provide to its licensing authority every financial year <b>without undue delay</b> the audited accounts relating to the previous financial year. (Annex C to the Regulation on information to be provided for assessment of the continuing financial fitness of existing licence holders requires audited accounts to be supplied not later than six months after the end of the relevant financial period).</p> | <p>Article 8 (4) requires that an air carrier provides to the competent licensing authority its audited accounts <b>no later than six months</b> following the last day of the respective financial year, unless otherwise provided for in national law. In addition, during the <b>first two years of operation</b>, the licensing authority can request the air carrier to make available the data referred to in point 3 of Annex I.</p>       |
| <p><b>Ongoing validity of an operating licence – General</b></p>  |   |
| <p>Under Article 11 (1) an operating licence is valid as long as the air carrier meets the obligations of the Regulation. However, a Member State may make provision for review one year after a new operating licence has been granted and every five years thereafter.</p>  | <p>Under Article 8 (2), the competent licensing authority is required to closely monitor compliance with the requirements and in any case review compliance with these requirements in the following cases:</p> <ul style="list-style-type: none"> <li>a) two years after a new operating licence has been granted,</li> <li>b) when a potential problem has been suspected, or</li> <li>c) at the request of the European Commission.</li> </ul> |
| <p>Article 11 (2) provides that when an air carrier has ceased operations for six months or has not started operations for six months after the granting of an operating licence, the Member State responsible shall decide whether the operating licence shall be re-submitted for approval.</p>   | <p>Under Article 8 (3), the current provisions remain with the inclusion of the following situations which may also trigger a revision of the operating licence- i.e. when an air carrier intends to operate aircraft over the size threshold applicable to Category B operations or when the financial conditions of a Category B operator change.</p>   |

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| <b>Suspension and revocation of an operating licence</b>  |  |
| <p>Under Article 5 (5), whenever there are clear indications that financial problems exist with an air carrier, licensing authorities may assess its financial performance and suspend or revoke the licence if they are no longer satisfied that the air carrier can meet its actual and potential obligations for a 12-month period. Licensing authorities can grant a temporary licence pending financial reorganization provided safety is not at risk.</p> | <p>This provision is similar in the new Regulation and now appears under Article 9 (1). However, it now states that the competent licensing authority may grant a temporary licence <b>not exceeding 12 months</b> pending financial reorganization of an air carrier provided safety is not at risk, that this temporary licence reflects when appropriate any changes to the AOC and that there is a realistic prospect of a satisfactory financial reconstruction within that time period.</p>  |
| <p>Article 12 provides that an air carrier against which insolvency or similar proceedings are opened shall not be permitted by a Member State to retain its operating licence if that competent body in that Member State is convinced that there is no realistic prospect of a satisfactory financial reconstruction within a reasonable time.</p>  | <p>This is now dealt with under Article 9 (2) of the new Regulation which provides that whenever there are clear indications that financial problems exist or when insolvency or similar proceedings are opened against an air carrier licensed by it, the competent licensing authority shall without delay make an in depth assessment of the financial situation and on the basis of its findings review the status of the operating licence in compliance with this Article within a time period of three months.</p> <p>The competent licensing authority shall inform the European Commission of its decisions, relating to the status of the operating licence.</p> |
| <p>No corresponding provision under Council Regulation No 2407/92.</p>  | <p>Under Article 9 (3), when audited accounts have not been communicated within the deadline indicated in Article 8 (4), the competent licensing authority shall, without undue delay, request the Community air carrier to communicate these audited accounts. If the audited accounts are not communicated within <b>one month</b>, the operating licence may be revoked or suspended.</p>   |
| <p>No corresponding provision under Council Regulation No 2407/92.</p>  | <p>Article 9 (4) provides that the competent licensing authority shall suspend or revoke the operating licence if the air carrier knowingly or recklessly furnishes the competent licensing authority with information which is false in a material particular.</p>  |

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| <b>Insurance</b>   |  |
| <p>Article 7 states that an air carrier shall be insured to cover liability in case of accidents, in particular in respect of passengers, luggage, cargo, mail and third parties.</p>  | <p>Article 11 on Insurance under the new Regulation states that notwithstanding Regulation (EC) No 785/2004*, an air carrier shall be insured to cover liability in case of accidents with respect to <b>mail</b>.</p> <p>*Regulation No 785/2004 now sets out the minimum insurance cover required by air carriers in respect of liability for passengers, baggage, cargo and third parties.</p>  |
| <b>Leasing</b>   |  |
| <p>Under Article 10 (2) a Member State shall not approve agreements leasing aircraft with crew to an air carrier to which it has granted an operating licence unless safety standards equivalent to those imposed under Article 9 are met.</p> | <p>Article 13 (1) further provides that air carriers may <b>freely operate wet-leased aircraft registered <u>within the Community</u></b> except where this would lead to endangering safety provided that they continue at all times to operate at least one aircraft under their own AOC. The European Commission shall ensure that the implementation of such a provision is reasonable and proportionate and based on safety considerations. In other words, while air carriers wet leasing aircraft must still obtain the necessary safety approval, there is no restriction on the number of wet leased aircraft an air carrier can operate provided they continue to operate at least one aircraft under their own AOC and the wet leased aircraft are registered within the Community.</p> |

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| <p>Article 8 (3) provides that in the case of short-term lease agreements to meet temporary needs of the air carrier or otherwise in exceptional circumstances, a Member State may grant waivers to the requirements of paragraph 2 (a).</p> <p>Article 2 (a) refers to the fact that aircraft used by an air carrier shall be registered in the Member State where the air carrier is licensed or within the Community.</p> <p>Therefore, an Irish airline wishing to wet lease aircraft from outside the EU must apply to the Commission for a waiver under Article 8 (3) of the Regulation.</p> | <p>Article 13 (3) provides that prior approval is required when an air carrier wet leases in an aircraft registered outside the EU. The approval can be granted if the following conditions are met:</p> <p>1) the air carrier demonstrates to the satisfaction of the licensing authority that <b>safety standards are equivalent</b> and,</p> <p>2) demonstrates that the leasing is necessary to satisfy either of the three following needs:</p> <ul style="list-style-type: none"> <li>• <b>Exceptional needs</b>, for a period up to 7 months that may be renewed once for a further period of up to 7 months,</li> <li>• <b>Seasonal capacity needs</b> not reasonable to cover with Community registered aircraft, in which case the approval may be renewed or</li> <li>• <b>Operational difficulties</b> not possible or reasonable to cover with Community registered aircraft, in which case the approval shall be of limited duration strictly necessary for overcoming the difficulties.</li> </ul> |
| <p>No corresponding provision under Council Regulation No 2407/92.</p>   | <p>Under Article 13 (4) the wet leasing of non-EU registered aircraft may be refused if the relevant third country does not grant reciprocal rights. The reciprocity may exist at Community or Member State level. Reciprocal wet leasing rights should be provided by the third country at least to the same level as the one provided within the Community. The competent authority shall inform the Member States concerned about an approval it has granted for wet leasing aircraft registered in a third country.</p>   |

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| <b>Right to be heard</b>  |   |
| No corresponding provision under Council Regulation No 2407/92.                   | Article 14 provides that the competent licensing authority shall ensure that, when adopting a decision to suspend or revoke the operating licence of a Community air carrier, the Community air carrier concerned is given the opportunity of being heard, taking into account the need, in some cases, for an urgency procedure. |

Commission for Aviation Regulation  
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