

New ministerial order on issuance and maintenance of air operators' licences

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The issuance, maintenance, suspension and cancellation of air operators' licences is governed at the EU level by EU Regulation 1008/2008 on common rules for the operation of air services in the European Union. Detailed domestic provisions were included in the previous Ministerial Order of 12 March 1998, which was amended over time to take into account new EU provisions as they were published.

The Spanish government recently decided that it was time to update its internal regulations in that regard to bring them into line with current trends and issued Order TMA/105/2020 of 31 January 2020, which came into force on 13 February 2020. The new order does not introduce substantial changes to the existing legal framework, which is governed by EU Regulation 1008/2008, but contains some novelties which merit highlighting.

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Following recent trends, Order TMA/105/2020 establishes that all communications between interested parties and the State Agency for Air Safety (AESA) must be conducted electronically. In some cases (eg, when submitting an operators' financial statements) the order regulates the specific digital format that must be used.

To facilitate communication between AESA and interested parties, Order TMA/105/2020 sets out the following forms that parties must use:

- Annex I – an application form to request an air operators' licence; and
- Annex II – an application form to regulate the applicant's use of information among the various Spanish administrative bodies.

Order TMA/105/2020 draws on AESA's past experience in dealing with air operators in financial trouble and contemplates provisions that aim to provide clarity on AESA's authorities in such situations. AESA may now suspend or revoke a licence, but is also authorised to grant temporary licences for as long as no safety concerns exist. The aim is to allow operators to submit a realistic feasibility plan to overcome any financial difficulties and thereby allow for the continuity of operations.

The order also covers the registration of aircraft. Under the new regime, airlines with a Spanish licence must register their aircraft in Spain; no foreign registrations are allowed. To avoid causing unnecessary damage to Spanish airlines whose aircraft are presently registered in other EU member states, the order contains a grandfathering clause whereby such registrations can remain in place until the relevant titles expire (ie, lease agreements and financial leases). Once the relevant expiry dates arrive, airlines will have to register aircraft in Spain if they wish to continue using them. This provision is likely to have an impact on certain airlines, whose fleets are partially registered outside Spain.

Finally, Order TMA/105/2020 includes a number of provisions relating to the dry and wet leasing of aircraft. Such provisions (which are in line with EU Regulation 965/2012 and set out technical requirements and administrative procedures relating to air operations) were until recently included in Circular 3/2006 of the Directorate General of Civil Aviation, which has now been derogated. However, the legal regime of such leases has not been changed substantially.

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