L.N. 78 of 2004

CIVIL AVIATION ACT
(CAP. 232)

Civil Aviation (Air Transport Licensing) Regulations, 2004

IN exercise of the powers conferred by article 3 of the Civil Aviation Act, the Minister responsible for Transport and Communications has made the following regulations:-

Citation and commencement.

1. (1) The title of these regulations is the Civil Aviation (Air Transport Licensing) Regulations, 2004.

(2) These regulations shall come into force on such date or dates as the Minister responsible for Transport and Communications may, by notice in the Gazette, appoint.

Interpretation.

2. In these regulations, unless the context otherwise requires -

"Agreement" means an agreement between groups of States to which Malta is a party, reciprocally granting to citizens of such States or their dependants the right to enter, remain and reside in and leave the country of such States, to move freely within such States for such period as may be established in the agreement and to work or establish, provide or receive services therein; and "Agreement State" shall be construed accordingly;

"air transport undertaking" means a person whose business includes the carriage by air of passengers or cargo for hire or reward;

"business plan" means a detailed description of the air transport undertaking's intended commercial activities for the period in question, in particular in relation to the market development and investment to be carried out, including the financial and economic implications of these activities;

"Council Regulation EEC 2407/92" means the Regulation promulgated by the Council of the European Communities on 23 July 1992;

"Director" means the Director of Civil Aviation and, to the extent of the authority given, any person so authorised in that behalf by the Director;

"management account" means a detailed statement of income and costs for the period in question including a breakdown between air-transport related and other activities as well as between pecuniary

and non-pecuniary elements.

Conditions for the issue of an air service licence.

3. (1) An applicant air transport undertaking to which an air service licence is to be granted for the first time must be able to demonstrate to the reasonable satisfaction of the Director that:

(a) it can meet at any time its actual and potential obligations, established under realistic assumptions, for a period of twenty-four months from the start of operations; and

(b) it can meet its fixed and operational costs incurred for operations according to its business plan and established under realistic assumptions, for a period of three months from the start of operations, without taking into account any income from its operations.

(2) For the purpose of subregulation (1), an applicant shall submit a business plan for, at least, the first two years of operation. The business plan shall also detail the applicant's financial links with any other commercial activities in which the applicant is engaged either directly or through related undertakings. The applicant shall also provide all relevant information, in particular the data in Part A of the Schedule to these regulations.

Notification of plans of operation, changes of ownership, etc.

4. (1) An air transport undertaking shall notify the Director in advance of its plans for operating a new scheduled service or non-scheduled service, to a continental or world region not previously served, changes in the type or number of aircraft used or a substantial change in the scale of its activities. It shall also notify in advance any international mergers or acquisitions and shall notify the Director within fourteen days of any change in ownership of any single shareholding which represents 10% or more of the total shareholding of the air transport undertaking or of its parent or ultimate holding company. The submission of a twelve-month business plan two months in advance of the period to which it refers shall constitute sufficient notice under this subregulation for the purposes of change to current operations and, or circumstances which are included in that business plan.

(2) If the Director deems the changes notified under subregulation (1) to have a significant bearing on the finances of the air transport undertaking, he shall require the submission of a revised business plan incorporating the changes in question and covering at least, a period of twelve months from its date of implementation, as well as all the relevant information, including the data referred to in Part B of the Schedule to these regulations, to assess whether the air transport undertaking can meet its existing and potential obligations

during that period of twelve months. The Director shall take a decision on the revised business plan not later than three months after all the necessary information has been submitted to him.

(3) The Director may, at any time and in any event whenever there are clear indications that financial problems exist with an air transport undertaking licensed by him, assess its financial performance and may suspend or revoke the licence if he is no longer satisfied that the air transport undertaking can meet its actual and potential obligations for a twelve-month period. The Director may also grant a temporary licence pending financial reorganisation of the air transport undertaking, provided safety is not at risk.

Provision of audited accounts.

5. An air transport undertaking shall provide to the Director annually without undue delay the audited accounts relating to the previous financial year. At any time upon request of the Director an air transport undertaking shall provide the information relevant for the purposes of regulation 4(3), and, in particular, the data referred to in Part C of the Schedule to these regulations.

Licensing of certain aircraft.

6. The provisions of regulations 3, 4(1) and (2), and 5 shall not apply to air transport undertakings exclusively engaged in operations with aircraft of less than 10 tonnes mtow (maximum take-off weight) and, or less than 20 seats. Such air transport undertakings shall at all times be able to demonstrate that their net capital is as specified in Council Regualtion EEC 2407/92 or to provide, when required by the Director, the information relevant for the purposes of regulation 4(3). The Director may nevertheless apply regulations 3, 4(1) and (2), and 5 to air transport undertakings licensed by him that operate scheduled services or whose annual turnover exceeds the amount established by Council Regulation EEC 2407/92.

Insurance cover.

7. An air transport undertaking shall be insured to cover liability in case of accidents, in particular in respect of passengers, luggage, cargo, mail and third parties.

Ownership, lease and registration of aircraft.

8. (1) The Director shall not refuse an application for the grant of an air service license by reason of the applicant not holding ownership of aircraft provided however that he has one or more aircraft at his disposal through ownership or any form of lease agreement.

(2) An aircraft used by an air transport undertaking to which an air service licence is granted shall be registered at the option of the Director, either in Malta or in an Agreement State, except when the aircraft is the subject of a short-term lease agreement to meet temporary needs or otherwise in exceptional circumstances.

Approval of air service licence.

9. The Director may require that the air transport undertaking re-submits its air service licence for approval when -

(a) an air transport undertaking has ceased operations for six months or has not started operations for six months after the grant of an air service licence;

(b) a change in one or more elements affecting the legal situation of the undertaking and, in particular, in case of mergers or take-over:

Provided that the air transport undertaking may, in such case as is referred to in this paragraph (b), continue its operation unless the Director considers that it should cease operation because safety is at risk, notifying the air transport undertaking with his reasons for doing so.

SCHEDULE

(Regulations 3, 4 and 5)

Information for use in association with regulations 3, 4 and 5
on financial fitness of air carriers.

A. *Information to be provided by a first-time applicant from a financial fitness point of view.*

1. The most recent internal management accounts and, if available, audited accounts for the previous financial year.

2. A projected balance sheet, including profit and loss account, for the following two years.

3. The basis for projected expenditure and income figures on such items as fuel, fares and rates, salaries, maintenance, depreciation, exchange rate fluctuations, airport charges, insurance, etc. Traffic/revenue forecasts.

4. Details of the start-up costs incurred in the period from submission of application to commencement of operations and an explanation of how it is proposed to finance these costs.

5. Details of existing and projected sources of finance.

6. Details of shareholders, including nationality and type of shares to be held, and the Articles of Association. If part of a group of undertakings, information on the relationship between them.

7. Projected cash flow statements and liquidity plans for the first two years of operation.

8. Details of the financing of aircraft purchase/leasing including, in the case of leasing, the terms and conditions of contract.

B. *Information to be provided for assessment of the continuing financial fitness of existing licence holders planning a change in their structures or in their activities with a significant bearing on their finances.*

1. If necessary, the most recent internal management balance sheet and audited accounts for the previous financial year.

2. Precise details of all proposed changes, eg., change of type of service, proposed take-over or merger, modifications in share capital, changes in shareholders, etc.

3. A projected balance sheet, with a profit and loss account, for the current

financial year, including all proposed changes in structure or activities with a significant bearing on finances.

4. Past and projected expenditure and income figures on such items as fuel, fares an rates, salaries, maintenance, depreciation, exchange rate fluctuations, airport charges, insurance, etc. Traffic/revenue forecasts.

5. Cash flow statements and liquidity plans for the following year, including all proposed changes in structure or activities with a significant bearing on finances.

6. Details of the financing of aircraft purchase/leasing including, in the case of leasing, the terms and conditions of contract.

C. *Information to be provided for assessment of the continuing financial fitness of existing licence holders.*

1. Audited accounts not later than six months after the end of the relevant period and, if necessary, the most recent internal management balance sheet.

2. A projected balance sheet, including profit and loss account, for the forthcoming year.

3. Past and projected expenditure and income figures on such items as fuel, fares and rates, salaries, maintenance, depreciation, exchange rate fluctuations, airport charges, insurance, etc. Traffic/revenue forecasts.

4. Cash-flow statements and liquidity plans for the following year.