New Albanian Air Code Adopted to Reflect EU and ICAO Requirements

The Albanian Parliament recently enacted a new Air Code effective as of 22 August 2020 (Law 96/2020, Official Gazette no. 146, dated 7 August 2020). The new Air Code repeals the previous 2008 Air Code and secondary legislation except for the part that does not contradict the new Code and up until new secondary legislation is approved (expected within one year and a half).

Keeping up to date with international commitments

The new Air Code improves and updates the air transport legislation following Albania’s commitments to approximate the legislation with the acquis communautaire as per the Stabilization and Association Agreement and Annex 1 of the Multilateral Agreement for the Establishment of the European Common Aviation Area (ECAA). Specifically, the Air Code approximates to a considerable extent the EU regulations recently adopted in the fields of civil aviation security, operation of air services in the Community, performance and sustainability of the European aviation system, investigation and prevention of accidents and incidents in civil aviation and establishment of a European Union Aviation Safety Agency. Full approximation with the EU acquis is expected upon enactment of secondary legislation by the relevant authorities (Council of Ministers and responsible Ministers).

The new Air Code provides for the first-time rules on the flexible use of air space, a key requirement of the ECAA Multilateral Agreement and Eurocontrol in the context of the Single European Sky. It also specifies the responsibilities of the Minister of Transport and Minister of Defense in the context of flexible use of the air space (civil and military).

The Code also introduces certain amendments to the previous one, aiming to fill the legal gaps identified by the International Civil Aviation Organization (ICAO) and the European Union Aviation Safety Agency. It reflects binding provisions of the Chicago Convention on matters of personnel licensing, rules of the air, meteorological service for international air navigation, aeronautical charts, units of measurement to be used in air and ground operations, operation of aircraft, aircraft nationality and registration marks, airworthiness of aircraft, facilitation, aeronautical telecommunications, air trafficservices, search and rescue, aircraft accident and incident investigation, aerodromes, aeronautical information services, environmental protection, security - safeguarding international civil aviation against acts of unlawful interference, the safe transport of dangerous goods by air and safety management.
Improved regulation of key aspects and clearer allocation of state functions

As opposed to the old one, the new Air Code brings about more definitions of the key concepts of the industry, thereby simplifying the understanding of the legal document.

The Code also envisages distinct tasks for the Albanian Civil Aviation Authority enabling it to better carry out its supervisory civil aviation competences. It further clearly regulates the safety requirements in the civil aviation industry, including the role of different state authorities, and formalizes the cooperation between domestic and foreign institutions in terms of safe and efficient air space management.

With regard to operating license requirements for air carriers, the new Air Code aims to align its provisions with those of EC Regulation 1008/2008 of 24 September 2008 as amended (which repealed the Council Regulation 2407/92 of 23 July 1992 relied upon by the previous Air Code). In terms of ownership and control, an undertaking (air carrier) shall be granted an operating license by the competent licensing authority (Albanian Civil Aviation Authority) provided that (a) it is owned by more than 50% and effectively controlled by the state of Albania and/or nationals of Albania, except as provided for in an agreement with a third country to which Albania is a party or (b) it is owned by more than 50% and effectively controlled by one or more states party to the ECAA Multilateral Agreement or citizens thereof, except as provided for in an agreement with a third country (out of the ECAA) to which Albania or the European Community is a party. In this way, Albania continues to participate in the liberalization of the EU’s aviation market, while also allowing for a relaxation of ownership and control requirements, where Albania or the EU has agreed so with a third country.

Pursuant to Albania’s undertakings under the ECAA Multilateral Agreement, the Air Code further grants unlimited traffic rights to ECAA air carriers, bypassing any obligation for them to obtain a local authorization from the Albanian Civil Aviation Authority except for informing it in written on the planned flight. At the same time, the Albanian air space is open for operation to those air carriers that have not been prohibited by the European Commission to do so in the ECAA.

The Code allows for the recognition of foreign licenses and certifications of air carriers and other stakeholders in the aviation industry provided that these are based on requirements and criteria that are equal or higher than the standards imposed by the air transport legislation in Albania. This entitlement is subject to the applicable international agreements for the reciprocal recognition of foreign licenses or to the relevant local rules approved by the Minister of Transport.

Air navigation fares and rates are also regulated significantly, including their constituents, their calculation from air navigation service providers and their coverage by the users of such services.

The new Air Code has also aligned with the acquis the provisions on accidents and incidents investigation. It regulates to a certain degree the investigation process and envisages the foundational standards of security for protecting civil aviation from illegal intrusion.

Passenger rights are also defined more clearly, particularly in terms of information, assistance and compensation.
rights arising due to change or cancellation of planned flights.

Finally, the Air Code introduces a more detailed list of administrative violations by individuals or companies involved in the aviation industry and changes the values of fines to a cap of ALL 200,000 for individual wrongdoers and ALL 2,000,000 for companies. Suspension and revocation of licenses and other approvals remain the key measure in case of serious misconduct.

Overall, the new Air Code offers an improved version of the previous Code bringing more clarity on terms and functions of the various public and private stakeholders. It is also adjusted to reflect the language and requirements of Albania’s key international commitments under the ECAA Multilateral Agreement (including the most recent EU *acquis* on civil aviation) and the Chicago Convention.

KALO & ASSOCIATES offers specialized legal advice on a broad range of civil aviation matters such as air traffic management, open sky agreements, concessions and PPPs for airport operations, air carrier licensing, aircraft leasing, aircraft registration, aircraft title insurance, secured transactions, etc. Our client portfolio includes names of key industry players such as SITA, IATA, Lockheed Martin, Turkish Airlines, Air Albania, Volito, Avolon, etc.

Please contact our lawyers from the Regulatory & Projects Department for further information or assistance on the above and related issues.