



Obtaining Flight Permits For Business Aviation in Russia

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A draft Decree of the Russian Government provides that flight permits to fly business aircraft to Russia will be issued within two hours from the time of submission of a flight plan to Rosaviatsia (the Federal Air Transport Agency of the Ministry of Transportation). Also of note, the draft Decree clarifies that a foreign air carrier may pick up passengers within Russia, and fly them to another city in Russia as part of an international flight to a foreign country.

The draft Decree, in the form it was last released for comments in October 2010, does not legitimize any aspects of the existing "gray aviation industry" in Russia in which one-time permits issued by Rosaviatsia have been issued for domestic flights of foreign-registered aircraft. Accordingly, the Russian Customs Service may still object to the use of foreign-registered aircraft on domestic charter flights and, on occasion, impound foreign-registered aircraft used on domestic charter flights. No specific amendments to the Russian Customs Code appear to be under consideration that would remove this potential issue for foreign-registered aircraft flown in Russia. To the contrary, under the draft Decree, Rosaviatsia is to inform the Russian Customs Service about flight permits that it has issued.

1. How to Obtain a Flight Permit

Foreign-registered aircraft must obtain a permit to fly into Russian airspace. See Sections 1.3 of the Rules of the General Provisions (Gen) 1.2-10 of the Aeronautical Information Publication Russia and CIS (the "AIP") which you may find, in Russian and in English, at this website: <http://www.aeronavt.com/AIP/gen/gen1/gen1-2.pdf>

In order to obtain a permit for a non-scheduled flight, the operator of the flight, or its trip support company, must file an application with the Russian Joint Air Traffic Control System Authority. The application form is called Application Form "N" and contains eleven sections that are to be filled providing information about the aircraft, crew and passengers. See Sections 3.5 of the AIP and see Form "N" reprinted at the website referenced above.

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Under existing rules, a request for a single non-scheduled non-commercial flight into Russia, or multiple (up to four) flights into Russia, must be submitted not later than three business days prior to the single, or first flight. See Sections 3.3 and 3.4 of the AIP. A request for a permit for more than four flights must be submitted not later than fourteen days prior to the first flight. See Section 3.3 of the AIP. As noted above, under Section 3 of the draft Decree, flight permits are to be issued within two hours of submission of a request for approval of a flight plan, which is a very important improvement over the existing rules.

2. How to Change a Flight Permit

Once a flight permit has been issued, the itinerary for that planned flight may only be changed on the basis of a further permit from the Russian Joint Air Traffic Control System. See clause 2 Article 70 of Russian Air Code.

In practice, staff members of Rosaviatsia advise that changes to a flight plan may be issued in one day, though the rules provide for a longer period of time for a change to be made. Formally, Government Decree No. 1084 provides that up to 15 days may be required to change a flight plan. As noted above, a new flight permit may be obtained in three days, and this appears, consequently, to have become the normal period of time for changes to be made to flight plans, with the possibility of having this done in one day. It will be necessary to explain to a staff member in the Russian Joint Air Traffic Control System the reason a change to a flight permit is requested.

The draft Decree, in its June version, did not address the question of the timeframe for changes to flight plans to be processed. One may suppose that, if a new flight permit is supposed to be available within two hours, then the time period for issuance of changes to issued flight permits may also be substantially reduced to a matter of hours, as interested persons could instead apply for a new flight permit.

3. Domestic Flights of Foreign-Registered Aircraft That Are Not Prohibited Cabotage Flights?

One area in which questions arise is whether a flight within Russia of charter customers may be considered to be a prohibited "cabotage" flight. Paragraph 5 of Article 63 of the Air Code of the Russian Federation provides that foreign aviation enterprises are not entitled to take on board in the territory of the Russian Federation any passengers, baggage or cargo for air carriage in Russia unless otherwise provided in an agreement of the government of the Russian Federation, or a one-time permit is issued by an authorized agency of the Russian government.

Section 3.15 of the AIP provides: "A permit... for any non-scheduled flights involved in the transportation of commercial payload formed on the territory of the Russian Federation shall not be issued to foreign air carriers, unless otherwise provided in multi-lateral agreements with foreign governments."

Article 7 of the Convention on International Civil Aviation (the "Chicago Convention"), which sets out the rules for registration of aircraft and the flight of aircraft between and within separate countries, provides that "[e]ach contracting State [Russia] shall have the right to refuse a permit to the aircraft of other contracting States to take on in its territory passengers, mail and cargo carried for remuneration or hire and destined for another point within its territory."

Having these definitions of "cabotage" flights in mind, it is apparent also that not all the domestic flights in Russia of a foreign-registered aircraft would be considered to be illegal cabotage. If passengers are not originally taken onboard in Russia, are not picked up in Russia, but passengers

arrive and continue on the same foreign-registered aircraft as part of an international round-trip, then the domestic legs of such an international round-trip flight would not be a "cabotage" flight.

For example, a Swiss-based and registered business jet that is operated by a Swiss operator may be chartered by a Swiss corporation and flown with passengers (employees of this corporation) from Switzerland to Russia, and complete a domestic flight (e.g. Moscow- St. Petersburg) and then be flown back to Switzerland with the same passengers on board. The Swiss corporation may pay the operator for this flight including for the inner-Russian leg. This scenario does not involve a prohibited "cabotage" flight, assuming that only the passengers traveling from Switzerland will be dropped off and picked up (e.g. on the next day) at the airports in Russia (e.g. St. Petersburg, Moscow) and no additional passengers will be picked up at the Russian airports.

The reason why this flight of passengers on a foreign-registered aircraft between Moscow and St. Petersburg would be permitted is that the leg between Moscow and St. Petersburg would be considered to be part of the roundtrip flight of the aircraft from Switzerland to Russia and back to Switzerland. The passengers would not be originally taken onboard in Russia, and would not be picked up in Russia, but would arrive and continue on the same aircraft as part of their international round-trip.

A permit for the proposed flight between Moscow and St. Petersburg would be issued since the passengers onboard arrived on the aircraft, and were not first taken onboard in Russia. The charter flight and its passengers originated in Switzerland and not in Russia. A one-time permit for a domestic flight would be issued pursuant to Order No. 69 of the Federal Air Navigation Service since the regulator takes the view that a charter flight that originated outside Russia, even one containing an internal leg, is not a prohibited commercial flight, if no new passengers are taken onboard in Russia. This analysis is unchanged if one of the passengers remains in Moscow or St. Petersburg.

The form of "Transportation Declaration" appended to Order No. 916 which is required to be submitted to Russian customs when an aircraft lands at a Russian airport only asks, in Block 7, for the number of passengers onboard the aircraft, and it does not ask for their names. There is no space even to write in the name of the passengers. In practice, a Russian customs official could know the same persons are on the flight from Moscow to St. Petersburg as arrived on the aircraft when it landed in Moscow on a flight from Switzerland by comparing the passenger manifest created at the gate where passengers board the second flight with passport control records of who arrived on the international leg of the flight.

The form of Application for a Flight Permit ("Application for a Non-Scheduled (single) flight operation in the airspace of the Russian Federation") that would be submitted to apply for a roundtrip to and from Russia (See the reference above) provides, in Box 8, for the number and nationality of passengers to be listed, but not their names. The Application for a Flight Permit also provides, in Box 9, for information about the landings to be made and the points and estimated time of entry/exit into/out of the airspace of the Russian Federation. Bearing this in mind, in the example above of the Swiss registered aircraft being flown to Russia, the application for the proposed flight to Russia and back to Switzerland should also provide for the domestic flight between Moscow and St. Petersburg. Finally, the return flight from St. Petersburg to Switzerland is not a domestic flight involving the transport of passengers first taken onboard in Russia, and therefore will not be considered to be a "cabotage" flight.

4. How to Obtain a One-Time Permit for a Domestic Cabotage Flight

A one-time permit currently may be obtained from Rosaviatsia for a domestic flight of a foreign-registered aircraft pursuant to Prikaz No. 69, dated July 20, 2007.

It should be borne in mind though, that significant legal risks may still exist even if such a one-time permit has been obtained. If there is an accident, the insurance company involved that insures the aircraft will likely not pay a claim if it can establish the flight was a cabotage flight, notwithstanding that a one-time permit may have been issued for that flight. There is case that went through several appeals in Moscow in which the courts held that an insurance company did not have to pay a claim with regard to an aircraft that crashed on approach to Domodedova since there were passengers onboard and the flight was held to be a "cabotage" flight, and, therefore, a violation of the terms of the liability insurance.

A second area of legal risk, even if a one-time permit from Rosaviatsia is in hand, is with the Russian Customs Service that may block a domestic flight of a foreign-registered aircraft for a commercial purpose if that aircraft is found to be used for commercial purposes in Russia without being customs-cleared. The Russian Customs Service may impound an aircraft and essentially hold it to ransom until significant sums have been paid.

Officials from the Ministry of Transportation have announced that it is high priority in the Russian government to create the right tax and customs law circumstances so that many of the approximately 425 foreign-registered, Russian-owned business aircraft will be brought to Russia. The government sees bringing Russian-owned aircraft to Russia as a way to create employment and investment in this sector.

The draft Decree would amend Section 120(e) of the Federal Rules for the Use of the Air Space of the Russian Federation that came into effect in March 2010 to provide as follows:

120. A permit for use of the airspace of the Russian Federation for an international flight by Russian and foreign users shall be issued on the basis of:

e) the submitted flight plan...of the civil aircraft.

In the event a non-scheduled flight is conducted for the purpose of commercial air carriage of passengers, baggage, cargo and mail by a foreign aviation company, or by an international operating agency or a foreign individual entrepreneur to the territory of the Russian Federation, within the territory of the Russian Federation and/or from the territory of the Russian Federation, in the flight plan for the aircraft there shall be included the number of the one-time permit for taking onboard the aircraft on the territory of the Russian Federation passengers, baggage, cargo and mail for air carriage for a fee to the territory of a foreign country, or their carriage to the territory of the Russian Federation from the territory of a foreign country, issued in accordance with the provisions of Part 5 of Article 63 of the Air Code of the Russian Federation.

The October, and apparently final version of the draft Decree is more clear than prior drafts that a domestic flight with paying passengers must be part of an international flight of a foreign aircraft. Accordingly, the October version of the draft Decree does not permit domestic cabotage flights by foreign-registered aircraft that are not part of an international flight as earlier version of the draft Decree appeared to be intended to do.

To the contrary, it is now clear that the draft Decree does require that a domestic charter flight with passengers on a foreign-registered aircraft must be a leg of an international flight.

5. Russian Customs Law on Domestic Flights of Foreign-Registered Aircraft

In practice, the Russian Customs Service does not challenge an internal flight of a foreign-registered aircraft if only the same passengers are onboard who entered the country on this aircraft and this is a single internal leg as part of an international round-trip flight.

The question that the Russian Customs Service asks is not whether a flight is a cabotage flight, but whether the aircraft is being used in internal carriage. The Russian Customs Code provides, in Section 271(3), that "the temporary importation of means of transportation into the customs territory of the Russian Federation, with complete exemption from payment of customs duties and taxes is permitted if the following conditions are fulfilled:... (3) if the means of transportation are not used in the customs territory of the Russian Federation in internal carriage..."

The Russian Customs Service has two internal positions that are not stated in published regulations, but which are in effect, in practice. One position is that an aircraft may be in Russia for up to 14 days before it will be considered to have been imported and will be subject to payment of temporary import duties. A second position is the one referred to above that a single internal flight will be permitted as part of an international roundtrip of the same passengers, and this will not be considered to be a use of the aircraft in internal carriage.

Persons who arrive in Russia on the aircraft should be listed as being onboard on the customs declaration, the Transportation Declaration appended to Order No. 916 of the State Customs Committee of the Russian Federation, dated August 21, 2003. In practice, in some cases, a customs declaration will be filed when a flight arrives in Russia indicating that there is one passenger onboard (who may be a stewardess) and three other unnamed persons. It is in this type of circumstances, we understand anecdotally that some persons persuade customs officials not to examine exactly who is onboard a particular domestic flight, thereby creating circumstance in which different passengers may be flown from Moscow to St. Petersburg and the customs records alone will not give rise to any questions.

Russia has now joined a Customs Union together with Belarus and Kazakhstan, and there are comparable provisions in the Customs Code of the Customs Union that exempt business aircraft flown into Russia from customs liability in certain circumstances.. The Customs Code of the Customs Union provides that the temporary importation of means of transportation into the customs territory of the Customs Union is exempt from payment of customs duties and taxes is if the following conditions are satisfied: (1) the aircraft is registered in a foreign state with a foreign owner, (2) the aircraft is used for an international flight on the territory of the Customs Union. See Clause 1 Article 342 of the Customs Code Of the Customs Union.

As noted above, the draft Decree, in the form it existed in June 2010, did not address what the position of the Russian Customs Service may be regarding a charter flight within Russia of a foreign-registered aircraft.

6. Potential Penalties for Violating a Flight Plan

Once a flight plan has been issued it is highly recommended to abide it and not to fail to fulfill it. If you decide to change your plan when it is too late you may face an administrative liability if your actions do not constitute a criminal act.

With regard to potential liability if the terms of a flight plan are violated, please note that there is a new draft Russian federal law proposed by the Russian Parliament. It was published on the official web site of ministry of transportation. If the draft law comes in effect, then there will be more severe

penalties and punishment for "use the airspace of the Russian Federation without a permit" or to fly off course, if a change of direction may have caused a fatal accident. A violation may entail a fine of up to 400,000 rubles, a penalty up to 18 months of the salary of the violator, or imprisonment for up to two years. There may also be monetary penalties imposed on legal entities in an amount ranging from 250,000 rubles to 300,000 rubles (approximately \$10,000), and/or there may be a refusal to issue new flight permits to the violating company for a period of 90 days. See Clause 2 Article 11.4 of the Russian Code of Administrative Violations.