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Client Alert

FAA Emphasizes Part 135 Operational Control Requirements

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Agency Takes Enforcement Action Against AMI Jet Charter, Inc.

In October, the Federal Aviation Administration (FAA) issued an emergency order revoking the air carrier certificate of one of the nation's largest on-demand air taxi operators, AMI Jet Charter, Inc. (AMIJC), alleging that it failed to exercise operational control over its flights and citing an immediate risk to aviation safety. The revocation followed a seven-month investigation of operational control at AMIJC and came one week after the agency suspended AMIJC's certificate, also on an emergency basis.

The FAA's suspension and revocation orders immediately shut down AMIJC's flight operations. While AMIJC initially challenged the immediacy of the emergency suspension, the air carrier did not challenge the merits of the revocation order within the required 10-day deadline for appeal. Furthermore, a competitor will reportedly acquire an aircraft management and chartering business affiliated with AMIJC, suggesting the troubled air carrier has no plans to resume operations.

Meanwhile, the revocation has significant implications for the corporate aircraft charter industry. Additional operations could be disrupted as the FAA clamps down on questionable business arrangements between aircraft owners, charterers and air carriers. Indeed, with nearly 80 aircraft on AMIJC's Operations Specification (OpSpecs), the revocation caused owners to scramble in search of alternate Part 135 operators.

In its revocation order, the FAA cited specific arrangements with aircraft owners and an air charter broker, TAG Aviation, as compromising the integrity of AMIJC's operational control system. The agency also alleged AMIJC failed to timely produce flight and crew records, and allowed itself to fall impermissibly under the control of TAG Aviation, a Swiss corporation. Under the Transportation Code, domestic air carriers must at all times remain under the actual control of U.S. citizens.

FAA's enforcement action against AMIJC follows two important developments: First, in December 2006 the FAA announced revisions to OpSpecs for all Part 135 operators to prevent certain impermissible business arrangements involving operational control, and issued revised safety inspector guidance setting forth several factors inspectors should look to when determining whether an air carrier retains operational control.

Second, the FAA increased its scrutiny of the corporate jet charter industry following a February 2005 accident in which a Challenger 600 overran a runway at Teterboro Airport. The Teterboro accident investigation revealed that a non-certified entity, Platinum Jet Management, exercised operational control over a Part 135 air carrier, Darby Aviation (d/b/a Alphajet), since Platinum not only owned the aircraft, but hired and paid the pilots, entered contracts with charterers and handled maintenance arrangements. In its accident report, the NTSB wrote that such arrangements "resulted in an environment conducive to the development of systemic patterns of flight crew performance deficiencies."

Commercial carriers including AMIJC—often referred to as Part 135 operators given the applicable safety rules set forth at 14 CFR 135—are required to exercise exclusive operational control under the Federal Aviation Regulations (FAR), which means they must retain ultimate authority for initiating, conducting and terminating flights. An air carrier may not delegate its operational duties, responsibilities or authority to an individual or entity, that is not a certificate holder.

Although aircraft owners commonly and permissibly place their aircraft on the OpSpecs of Part 135 operators and air charter brokers may arrange air transportation for charterers, neither aircraft owners nor charter brokers may control, direct or otherwise exercise authority over FAR Part 135 flights without holding an air carrier certificate.

The AMIJC revocation underscores the importance of devising and maintaining an operational control system that strictly adheres to FAR and FAA guidance. All aspects of flight planning, crew training, and arrangements with air charter brokers and aircraft owners must be evaluated to minimize the risk of enforcement resulting from FAA ramp inspections and surveillance of Part 135 operations. Aircraft owners and lessees should be equally vigilant when placing aircraft on the OpSpecs of Part 135 operators and should consult with aviation regulatory counsel to review air charter arrangements.

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