

**FAA Updates International Aviation Safety Assessment Program Policy (October 2022)**

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In a recent policy statement, the Federal Aviation Administration (FAA) announced important changes to the International Aviation Safety Assessment (IASA) program and provided additional insight into the program's workings.<sup>1</sup> According to the FAA, "The IASA program is the means by which the FAA determines whether another country's oversight of its air carriers that operate, or seek to operate, into the U.S., or code-share with a U.S. air carrier, complies with safety standards established by the International Civil Aviation Organization (ICAO)."<sup>2</sup> Broadly speaking, under IASA, the FAA assigns the civil aviation authority (CAA) of countries a rating of Category 1 (does comply with ICAO Standards) or 2 (does not comply with ICAO standards).<sup>3</sup>

Carriers from a country downgraded to Category 2 face serious operating restrictions. Their service levels for U.S. operations are frozen in place, with no expansions permitted; new entrants seeking to serve the U.S. for the first time are forbidden from doing so (although they may operate to the U.S. using wet leased aircraft from an operator in a Category 1 country); and U.S. carriers must cease displaying their codes on the flights of their foreign partners from the country (although foreign partners may continue to display their codes on U.S. carrier flights).

In contrast to the European Union (EU), the IASA program does not seek to ban individual carriers. The EU approach is to publish an Air



The firm's practice encompasses virtually every aspect of aviation law, including advising domestic and foreign airlines on compliance with FAA's regulations and policies concerning operations and safety matters. For further information regarding the matters discussed in this article, please contact either of the following attorneys:

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Safety List (ASL) comprised of two annexes.<sup>4</sup> Annex A carriers are banned from operating, while Annex B carriers are restricted from operating under certain conditions. The EU ASL also includes carriers that do not operate to the EU, for purposes of informing the public about safety concerns. In some cases, the EU will ban all carriers from a country if that country's CAA does not comply with ICAO standards.

Major elements of the FAA's policy statement are as follows:

## **IASA Category Clarifications**

According to the FAA, the description of IASA ratings required clarification to eliminate confusion about what the ratings actually addressed, which is the FAA's assessments of CAA oversight of services to and from the United States and to codeshare operations involving U.S. carriers marketing on foreign carrier flights. The FAA's assessments do not consider domestic flight oversight by a foreign CAA or operations to third countries.

## **IASA List Inactivity Changes**

Formerly, the FAA's policy was that after four years of inactivity a country would be removed from the IASA list.<sup>5</sup> Inactivity criteria include a lack of air carriers from the country that provide service to the U.S.; no carrier from the country provides codeshare services with a U.S. carrier; and the CAA does not "interact significantly" with the FAA. The FAA has reduced the four-year inactivity period to two years on the grounds that IASA information is unreliable after two years (i.e., it does not meet the need for "timeliness and accuracy").

## **Risk Analysis for IASA Reassessment**

The policy statement explains the risk analysis the FAA utilizes when determining whether a Category 1 country is ripe for reassessment. They are in five categories: (i) DOT economic authority (traffic rights), codesharing, and DOT administrative emphasis items and initiatives; (ii) governance and safety culture (including contracting of safety oversight, wet leasing to carriers of other nations, unresolved/unaddressed safety items identified by the CAA, and complaints received by the FAA); (iii) IASA information, including how much time has passed since the last assessment; (iv) ICAO requirements and reports, including negative ICAO Universal Safety Oversight Audit Program findings indicating noncompliance

## **Informal Engagement with CAAs**

The FAA explains that it is introducing a new, discretionary process to discuss concerns identified through its risk analysis with CAAs before any formal IASA action is taken. Only if the FAA's concerns have not been met will the agency initiate formal IASA action. The FAA will retain its ability to take immediate action if the circumstances warrant it.

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## New Risk Mitigation Measures

The FAA announced that it will limit foreign operations and the display of U.S. carrier codes on foreign operators when the FAA has identified safety oversight concerns and notified a CAA of such concerns (i.e., rather than waiting for a formal Category 2 assessment). The FAA will also cease reciprocal acceptance of approvals or certifications under existing Bilateral Aviation Safety Agreement (BASA) implementation procedures (IP) for which the CAA may be responsible for issuing.

## Other Recent IASA Developments

Mexico was downgraded to Category 2 on May 25, 2021, with serious impacts on transborder operations.<sup>6</sup> In addition, earlier this year Mexico failed a technical review and will thus remain in Category 2 for some time as the FAA identified new deficiencies during its review.<sup>7</sup>

Wizz Air's January 2022 application for DOT economic authority was dismissed by DOT in July because "the FAA has advised us that it cannot make a determination at this time as to whether the safety oversight of Wizz Air Hungary is sufficient to support the award of economic authority to the applicant."<sup>8</sup> Hungary does not have an IASA rating.

Malaysia – in Category 2 since November of 2019, was elevated to Category 1 on October 3, 2022.<sup>9</sup>

## Key Takeaways

The United States is looked to as a leader in aviation safety and the IASA program is a key element of FAA oversight of international aviation operations involving the U.S. The FAA's policy indicates a more aggressive approach and seems to indicate more frequent contact with CAAs. However, the FAA must ensure that it devotes the necessary resources to ensuring that timely oversight and inspections occur. Without such resources, other countries (especially those with open skies agreements with the U.S.) will effectively be denied the opportunity to serve the U.S., arguably creating an unfair advantage for U.S. carriers and violating the spirit, if not the letter, of bilateral air service agreements.

Carriers concerned about the consequences of a Category 2 rating are well advised to plan for and discuss with counsel alternative methods of serving the U.S. market.

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<sup>1</sup> Policy Statement, Changes to the International Aviation Safety Assessment (IASA) Program, 87 Fed. Reg. 58725 (Sept. 28, 2022).

<sup>2</sup> Id. More specifically, the FAA assesses a country's compliance with eight elements of critical aviation safety oversight as set forth in ICAO Document 9734, Safety Oversight Manual. They are: (i) primary aviation legislation; (ii) specific operating regulations; (iii) state civil aviation system and safety oversight functions; (iv) technical personnel qualification and training; (v) technical guidance, tools and the provision of safety critical information; (vi) licensing, certification, authorization, and approval obligations; (vii) surveillance obligations; and (viii) resolution of safety concerns. See <https://www.faa.gov/about/initiatives/iasa>.

<sup>3</sup> Countries may also have no rating whatsoever, indicating that there is no air service between that country and the United States, or that several years have passed without improvement.

<sup>4</sup> [https://transport.ec.europa.eu/transport-themes/eu-air-safety-list\\_en](https://transport.ec.europa.eu/transport-themes/eu-air-safety-list_en)

<sup>5</sup> <https://www.faa.gov/initiatives/iasa/iasa-program-results>

<sup>6</sup> <https://www.faa.gov/newsroom/federal-aviation-administration-announces-results-mexicos-safety-assessment>

<sup>7</sup> <https://simpleflying.com/mexico-fails-technical-review-faa-category-2/>

<sup>8</sup> Order 2022-7-16 (July 20, 2022) at 2.

<sup>9</sup> <https://www.faa.gov/newsroom/faq-upgrades-malaysias-safety-assessment-rating>