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Avoid the Flight Department Company Trap

Charging passengers (or their company) for flights requires a Part 135 certificate.

Obtaining authorization from the FAA to conduct flights for compensation and reward, even if all passengers are employees of a particular company, is sophisticated and time-consuming, notes attorney Troy Rolf.



DON'T GET STUNG FROM LACK OF PLANNING

Most corporations pay particular attention to protecting shareholders and principals from risk. Thus it is understandable that Directors and corporate officers might assume that establishing a separate company to own and operate a business aircraft for the transportation of employees would be advisable. The flight department would operate independently, thereby isolating the corporation from litigation. Beware: such a scenario is loaded with landmines.

Most flight departments function as integral parts of the corporation they serve, operating as a service within the corporate structure. The Federal Aviation Administration allows such operations under the provisions of FAR Part 91, which essentially prohibits any form of compensation or reward accruing to the operator for the services rendered. The flight department must be a business unit within the structure of the corporation or private enterprise to be authorized for operations under FAR Part 91, and all costs for such transportation must be borne by the corporation (although there can exist means for allocating documented costs to specific users within the corporation).

Thus the next question is why not obtain the necessary approvals to fly for hire? The concept of establishing a flight department as a standalone company that provides transportation services to a corporation (i.e., the Flight Department company) is tempting. Before embarking on that route, however, consider what is required to receive approval from the federal government for providing transportation services for compensation and reward.



"An operator must obtain two forms of certification to be a legal provider of air transportation for hire and reward."

FAR PART 135

Although provisions within FAR Part 91 allow reimbursement from unrelated third parties for certain expenses including fuel usage, the outright charge for transportation such as a charter fee or a ticket price is prohibited. An operator must obtain two forms of certification to be a legal provider of air transportation for hire and reward. One authorization—known as Economic Authority—is granted by the Department of Transportation (DOT) and is relatively easy to obtain. The other—known as Safety Authority—is issued by the Federal Aviation Administration, and it is a multi-task and time intensive process.

Obtaining Economic Authority is a fairly simple process for applicants who intend to conduct on-demand charter operations using small aircraft, which in the parlance of the DOT means any aircraft with 60 or fewer passenger seats. (Note: the DOT and the FAA use different definitions of what size of air-

craft is deemed "small".) Therefore, most flight departments would be exempt from the vigorous DOT regulatory process that governs air carriers using large aircraft. The applicant simply pays a nominal fee and files with the DOT an OST Form 4507 Air Taxi Operator and Commuter Air Carrier Registration.

Safety Authority, which involves the following five phases of application, is issued by the FAA. The successful completion of these steps is required to be authorized to operate under FAR Part 135.

1. Pre-Application Phase:

The Pre-Application Phase begins with a meeting with the local FAA Flight Standards District Office (FSDO) to discuss the types of operations to be conducted by the applicant, and to review the application process itself. The applicant must also submit an FAA Form 8400-6 Pre-Application Statement of Intent (PASI) to the FSDO. The PASI is a fairly simple document containing only basic, general information about the applicant's anticipated operations. Following the meeting, the FSDO will assign a Certification Project Manager (CPM) to work with the applicant throughout the certification process.

2. Formal Application Phase:

The Formal Application Phase begins with the submission of a Formal Application Letter. The FSDO will require that the Formal Application Letter contain a variety of attachments, which may include, without limitation:

- A Schedule of Events Attachment listing all the events, items, activities and programs that must be inspected by the FAA before certification;
- A Management Qualification Resume Attachment listing the qualifications of the person who will exercise operational and maintenance/inspection control of the applicant's operations and aircraft;
- Documents of Purchase, Leases, Contracts, and/or Letters of Intent Attachments establishing that the applicant has obtained, or is in the process of obtaining, all aircraft, facilities and services necessary to conduct the intended flight operations;
- An Initial Compliance Statement Attachment listing all regulations under Part 135 applicable to the applicant's proposed operations, and how each regulation will be satisfied;
- A Company General Manuals Attachment containing instructions and information necessary to permit operations and maintenance personal to perform their duties with a high degree of safety; and
- An Initial Company Training Curriculum Attachment containing training curricula for the applicant flight crew members.

Thus it can be seen that preparation of the Formal Application Letter and associated attachments is a very detailed and time-consuming process. Submission of the Formal Application Letter to the

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FAA should be at least 90 days prior to the anticipated commencement of revenue operations.

After the FAA has conducted a preliminary review of the Formal Application Letter and found it reasonably complete, the applicant and the Certification Project Manager (CPM) will schedule a Formal Application Meeting at which the Formal Application Letter will be discussed and any omissions, deficiencies or open issues be resolved.

The discussions during this meeting will focus on the ability of the applicant and the FSDO to meet the schedule set forth in the Schedule of Events Attachment and on the subsequent phases of the certification process. Within a few days after the Formal Application Meeting, the CPM should formally accept the Formal Application Letter. If not accepted, the FAA should provide a written explanation of the reasons why it was not accepted.

MORE REQUIRED:

3. Document Compliance Phase: During this phase the Certification Project Manager will conduct a thorough review of all documents submitted to the FAA and will work with the applicant to correct any deficiencies.

4. Demonstration and Inspection Phase: This Phase will likely begin prior to completion of the Document Compliance Phase as these aspects of the vetting process generally tend to overlap. The applicant will be required to demonstrate its ability to comply with the applicable regulations and to conduct operations in a safe and efficient manner.

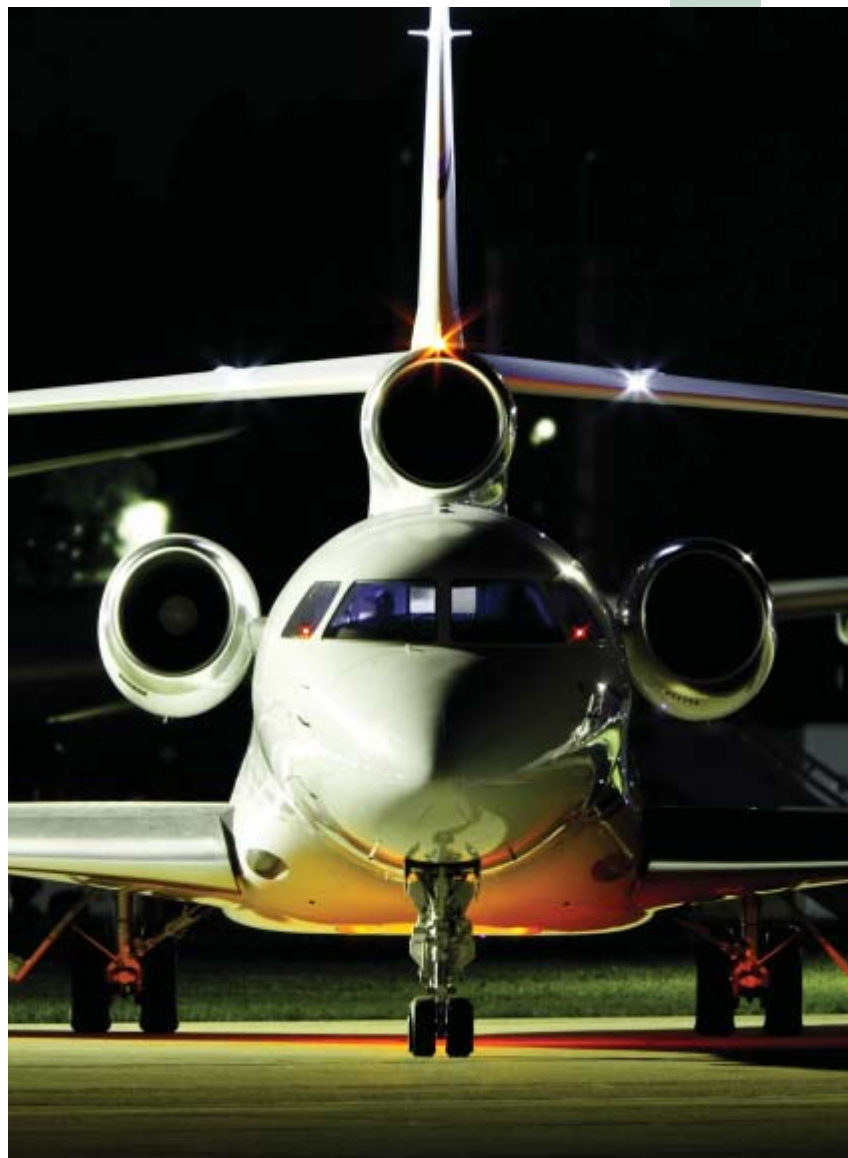
The applicant will be required to operate as an on-demand charter air carrier for some period of time, which will include a number of actual flights, albeit without revenue passengers. The amount of time and number of flights will be dictated at least in part by the level of experience of the applicant's personnel. The costs associated with operating these non-revenue flights can be significant.

5. Certification Phase: During the Certification Phase, the CPM will prepare and finalize the applicant's Air Carrier Certificate and Operations Specifications.

DELIBERATE AND POTENTIALLY COSTLY PROCESS

The entire process to obtain an FAA Part 135 certification typically takes at least six months to complete, although a year or longer is not uncommon. Timing also depends upon current workload of the FAA's local Flight Standards District Office (FSDO).

Furthermore, the FSDO will likely require that the bulk of the work be completed personally by the person or persons who will actually manage the applicant's day-to-day flight operations and aircraft. This requirement emphasizes a key purpose of the certification process, which is to assure the FAA that such person or persons has/have the requisite knowledge of the applicant's operations and the applicable regulations, documents, manu-



als, etc., to ensure that the applicant's flight operations are conducted in a safe and efficient manner.

As a result of this requirement, an applicant cannot simply hire an attorney or a consultant to obtain a certificate on behalf of the applicant. An experienced aviation attorney may, however, assist in the endeavor and expedite the process by guiding an applicant through the process and providing assistance with document preparation.

This review provides only an introduction to the process of obtaining Economic and Safety Authority to operate under Part 135. A company considering the formation of flight department that can fly for compensation and reward must appreciate the magnitude of the task.

Do you have any questions or opinions on the above topic? Get them answered/published in AvBuyer Magazine. Email feedback to: Jack@avbuyer.com

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