

# **AIR CARRIER REGULATION: The US, EU, UK and Canadian Examples**



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*“If it moves, tax it. If it keeps moving, regulate it. If it stops moving, subsidize it.”*

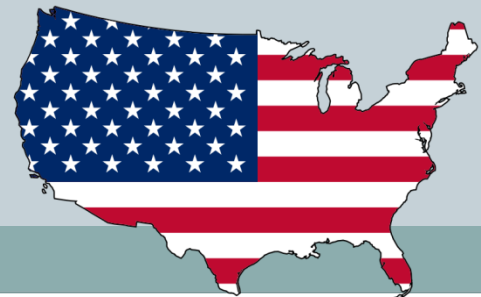
President Ronald Reagan



# US Airline Legislation



- The Kelly Act (Contract Air Mail Act of 1925) gave the Postmaster General authority to award contracts for the carriage of mail to private carriers.
- The Air Commerce Act of 1926 authorized the Secretary of Commerce to regulate the design of aircraft and materials used in their construction, as well as the safety and maintenance of airways, airports and air navigation facilities.
- The Civil Aeronautics Act of 1938 created the Civil Aeronautics Board [CAB] to manage competition between airlines, vesting in it jurisdiction over safety and economic (pricing, entry and antitrust) regulation.
- The Federal Aviation Act of 1958, which gave safety jurisdiction to the then Federal Aviation Administration, Which became a part of the U.S. Department of Transportation [DOT] when it was established as a cabinet-level agency in 1966.



# Economic Regulation 1938-1978



- Inaugurated with the Civil Aeronautics Act of 1938
- Created a five-member Civil Aeronautics Board
- ENTRY – existing routes were “grandfathered”; applications for new routes required proof of consistency with the “public convenience and necessity”; carriers must prove they are “fit, willing and able”
- RATES – proposed by carriers in filed tariffs; reviewed by the CAB which determined whether the proposed rates were “just and reasonable” and “nondiscriminatory”
- AGREEMENTS – carriers could seek antitrust immunity for intercarrier agreements; CAB could approve if consistent with the “public interest”
- CAPACITY & FREQUENCY - unregulated





# US Deregulation



- Economic regulation over pricing and entry was largely abolished by three pieces of legislation:
- the Air Cargo Deregulation Act of 1977,
- the Airline Deregulation Act of 1978 [ADA], and
- the International Air Transportation Competition Act of 1979.
- The Civil Aeronautics Board was terminated by the CAB Sunset Act of 1984, with its remaining authority transferred to the DOT.
- Today, the principal statute is still referred to as the *Federal Aviation Act of 1958*, as amended.
- Generally speaking, domestically where a carrier flies and what it charges is now deregulated.



# Other Relevant US Laws

- Airport and Airway Development Act of 1970, along with its attendant Airport and Airway Revenue Act of the same year (that established the Airport and Airway Trust Fund).
- The Aviation Trust Fund was then perpetuated by the Trust Fund Code of 1981.
- The Railway Labor Act of 1926 governs labor relations in commercial aviation as well as the railroads.
- More generic statutes that influence commercial aviation include:
  1. Antitrust laws (e.g., the Sherman and Clayton Acts),
  2. Environmental laws (e.g., the National Environmental Policy Act),
  3. Employment laws,
  4. Civil rights and disabilities laws, and
  5. the Bankruptcy Code.



# Certificates of Public Convenience and Necessity



- Applicants seeking air carrier operating authority to provide interstate scheduled transportation of persons, property or mail as a common carrier must secure a Certificate of Public Convenience & Necessity [PC&N].
- Certificates may authorize scheduled or charter service.
- If carriers exclusively operate aircraft smaller than 60 seats or less than 18,000 pounds, they may instead secure authority as a Part 298 air taxi operator or commuter air carrier, with lesser regulatory requirements.
- The larger, so-called “Section 401” carriers must prove that they are “fit, willing, and able” to provide the proposed operations and to comply with the federal rules and regulations.
- The carrier must also be certified by the FAA to conduct operations (under Part 121 of the Federal Aviation Regulations [FARs], which assesses the carrier’s safety and operational ability).
- Before operations, it must obtain adequate liability insurance.
- A transfer of operating authority requires DOT approval.

# Fitness



- In determining whether a new applicant is fit, the DOT assesses whether the applicant has:
- (1) **MANAGERIAL FITNESS:** Does the management team, as a whole, have the background, managerial and operational ability to conduct the specific type of operations proposed?
- (2) **FINANCIAL FITNESS:** The applicant must provide a forecast balance sheet and profit/loss statement. The revenue forecast should identify the proposed markets, number of flights, number and type of aircraft, seating capacity, fares to be charged, block hours flown, and the form and source of capital. Does the operating and financial plan provide sufficient financial resources available to commence operations without undue risk?
- (3) **COMPLIANCE DISPOSITION:** Do the owners and managers have a history of safety violations or consumer deception that would pose a risk to the public? Will the applicant comply with its statutory and regulatory obligations under the law?







# New Entrants



- The applicant must prove it has sufficient cash, lines of credit and/or bank loans to cover all pre-operating costs plus three months of operating expenses, assuming no revenue.
- Conditions may be imposed to limit the duration of authority and restrict the number, type or size of aircraft operated, or the type of service provided.
- The applicant may not advertise, list schedules or accept reservations until the DOT issues its final decision on the application.
- After final decision and before certificate issuance, any advertisement or schedule must prominently state “This service is subject to receipt of government operating authority.”
- If the new entrant later wishes to expand its operations, it must notify DOT and establish its fitness to do so.

# FAA Certification



The FAA must also issue an Air Carrier Certificate and Operations Specification. The process has four phases:

1. Application
2. Design Assessment: The FAA reviews how well the applicant designs, documents and audits its safety-critical processes.
3. Performance Assessment: The FAA observes and monitors the applicant's operating systems to confirm it produces the intended results.
4. Administrative Functions: The FAA issues an Air Carrier or Operating Certificate and Operations Specifications when the applicant has completed all requirements.



# Insurance



US Certificated Air Carriers and Foreign Air Carriers Operating Large Aircraft must carry:

- Combined bodily injury (excluding passengers other than cargo attendants) and Property Damage Liability: \$300,000 per person; \$20 million per occurrence
- Passenger Bodily Injury: \$300,000 per person; \$300,000 x 75% of total number of passenger seats on aircraft.
- Air Taxi Operators: Passenger bodily injury \$75,000 per person; \$75,000 x 75% of seats in aircraft.



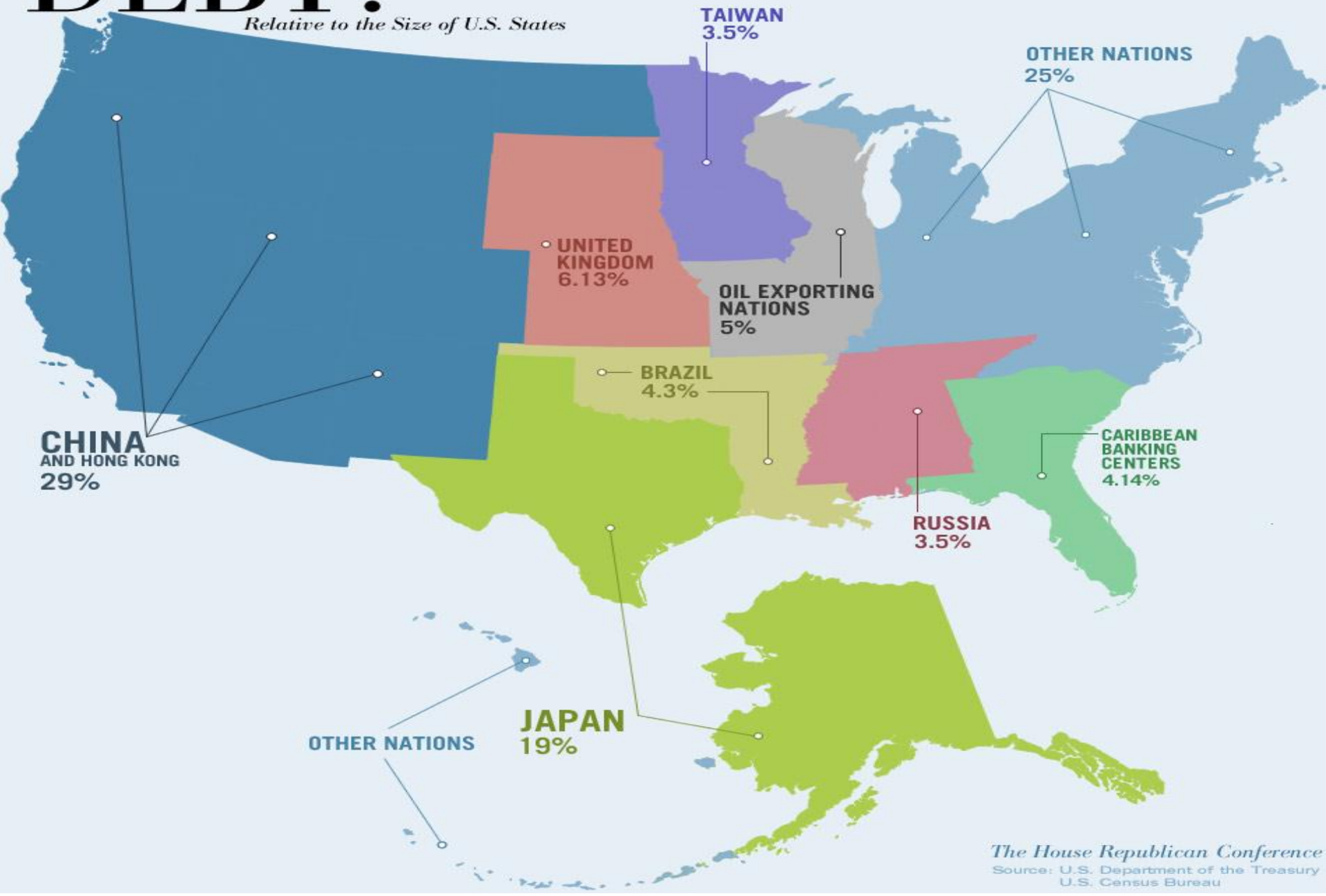
# FOREIGN OWNERSHIP RESTRICTIONS



- Cabotage is restricted to US airlines.
- The Federal Aviation Act requires that an applicant for an air carrier certificate of public convenience and necessity be a citizen of the United States—that the President and two-thirds of the Board of Directors and other managing officers be U.S. citizens, and that at least 75% of the voting stock be owned or controlled by U.S. citizens.
- A U.S.-flag carrier also must be “controlled” by U.S. citizens, although in the late 1980s the DOT ruled that U.S. citizens need control no more than 51% of non-voting equity to remain in compliance if the foreign interests were nationals of countries that signed an “open skies” bilateral, and were passive and diffuse.

# who owns our DEBT?

*Relative to the Size of U.S. States*

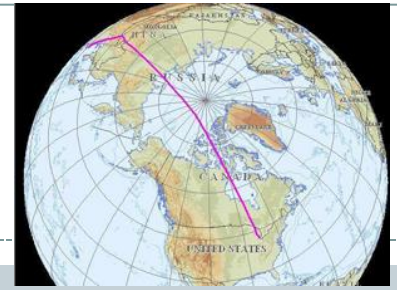


*The House Republican Conference*

Source: U.S. Department of the Treasury  
U.S. Census Bureau



# International Routes



- By 2012, the U.S. had concluded bilateral air transport agreements with more than 100 nations in “open skies” bilaterals, allowing foreign carriers to serve international routes to any points in the United States, and allowing U.S. carriers to serve international routes to any points in the foreign nation.
- Where bilateral agreements are more restrictive, routes are issued by DOT in competitive proceedings in conformance with foreign policy and national defense considerations. Among the “public convenience and necessity” carrier selection criteria employed by DOT have been
  - market structure (the degree of competition in the market),
  - route integration (the network strength of the applicant),
  - fare and service proposals,
  - incumbency, and
  - the ability of the applicant to enter the market quickly. Most international route certificates are issued for a term of five years, at the end of which they are almost always renewed

# FOREIGN-FLAG AIR CARRIER PERMITS



In order to receive a permit, an applicant must demonstrate:

1. it is “fit, willing, and able” to perform the proposed service,
2. that it has been designated by the government of its registry to serve the route in question under an applicable bilateral air transport agreement (or in the absence of bilateral rights, on the basis of comity and reciprocity), and
3. that issuance of the permit would be in the “public interest”.



# CONSUMER PROTECTION



- 14 C.F.R. Parts:
- 250, “Oversales;”
- 252, “Smoking aboard aircraft;”
- 253, “Notice of terms of contract of carriage;”
- 374, “Implementation of the Consumer Credit Protection Act with respect to air carriers and foreign air carriers;”
- 379, “Nondiscrimination in federally assisted programs of the Board—Effectuation of Title VI of the Civil Rights Act of 1964;” and
- 382, “Nondiscrimination on the basis of handicap.”
- 254, “Domestic baggage liability;”
- 205, “Aircraft Accident Liability Insurance.”

# Other aviation laws

## ***SMOKING***

- Smoking has been banned on all U.S. domestic and international flights. Federal law imposes a \$2,000 maximum penalty for tampering with a lavatory smoke alarm.



# Other aviation laws

## ***GAMBLING***

- Gambling aboard U.S. or foreign air carriers serving the United States is prohibited by statute.





# FALSE AND MISLEADING ADVERTISING



- DOT enforcement practices allow advertising of one-way fares conditioned on round-trip purchase, so long as seats at such prices are available in reasonable quantity, and the round-trip condition is prominently (i.e., the text print must be large enough to alert a reader of the actual fare), and proximately (i.e., the text must be located close to the fare) disclosed with the fare.
- The DOT Office of Aviation Enforcement and Proceedings also allows carriers to list government-imposed or government-approved passenger charges (e.g., customs, immigration, agricultural inspection, ticket surcharges, international departure taxes, security, and passenger facility charges) separate from the advertised price so long as the ad clearly reveals the nature and amount of the charges.
- The regulations also require that any advertising of on-time performance be accurate, be based on recently published data, indicate the basis of the calculation, the time period involved, the carriers with which the advertiser is comparing itself, and the geographical scope of the data reported.
- The position of the DOT's Enforcement Office is that "large type, prominent on-time performance claims must in and of themselves be accurate, without resort to fine print, non-proximate disclaimers or disclosures."

# AIRLINE REPORTING REQUIREMENTS



- *On-time performance*—To dissuade airlines from publishing unrealistically short schedules, the DOT in 1987 promulgated on-time performance reporting requirements. DOT regularly makes certain reported data public in its Air Travel Consumer Report, reporting for example, carrier on-time arrivals and departures. Flights are considered reportably “late” by DOT only if they are delayed by more than 15 minutes, and the cause of delay is attributable to other than a mechanical or weather problem.
- *Baggage handling performance*—Airlines also are required to report the total number of mishandled baggage reports filed with the carrier on a monthly basis.
- *Overbooking and denied boarding*—Airlines must report the number of passengers “bumped” from flights on a quarterly basis.

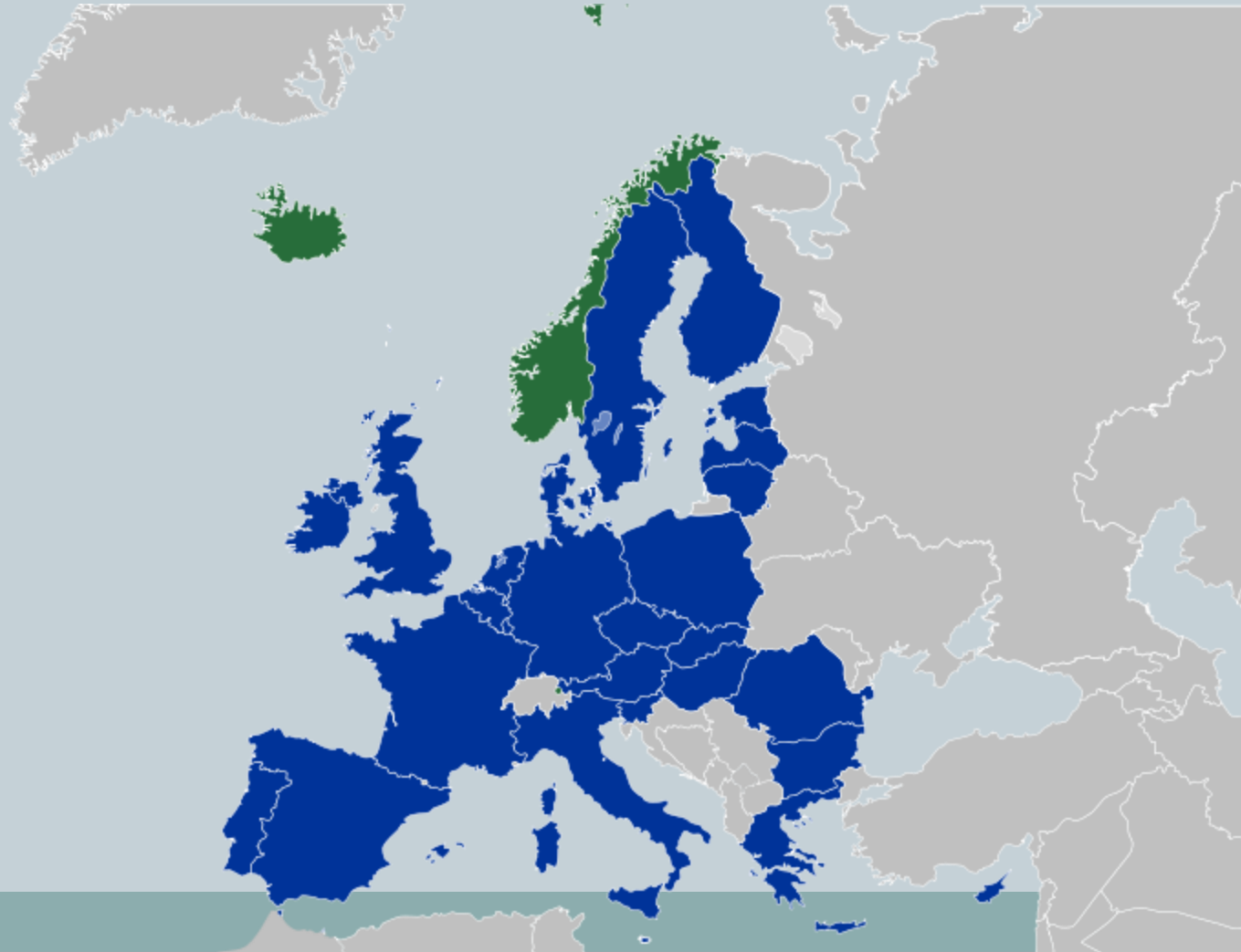
# EU Liberalization



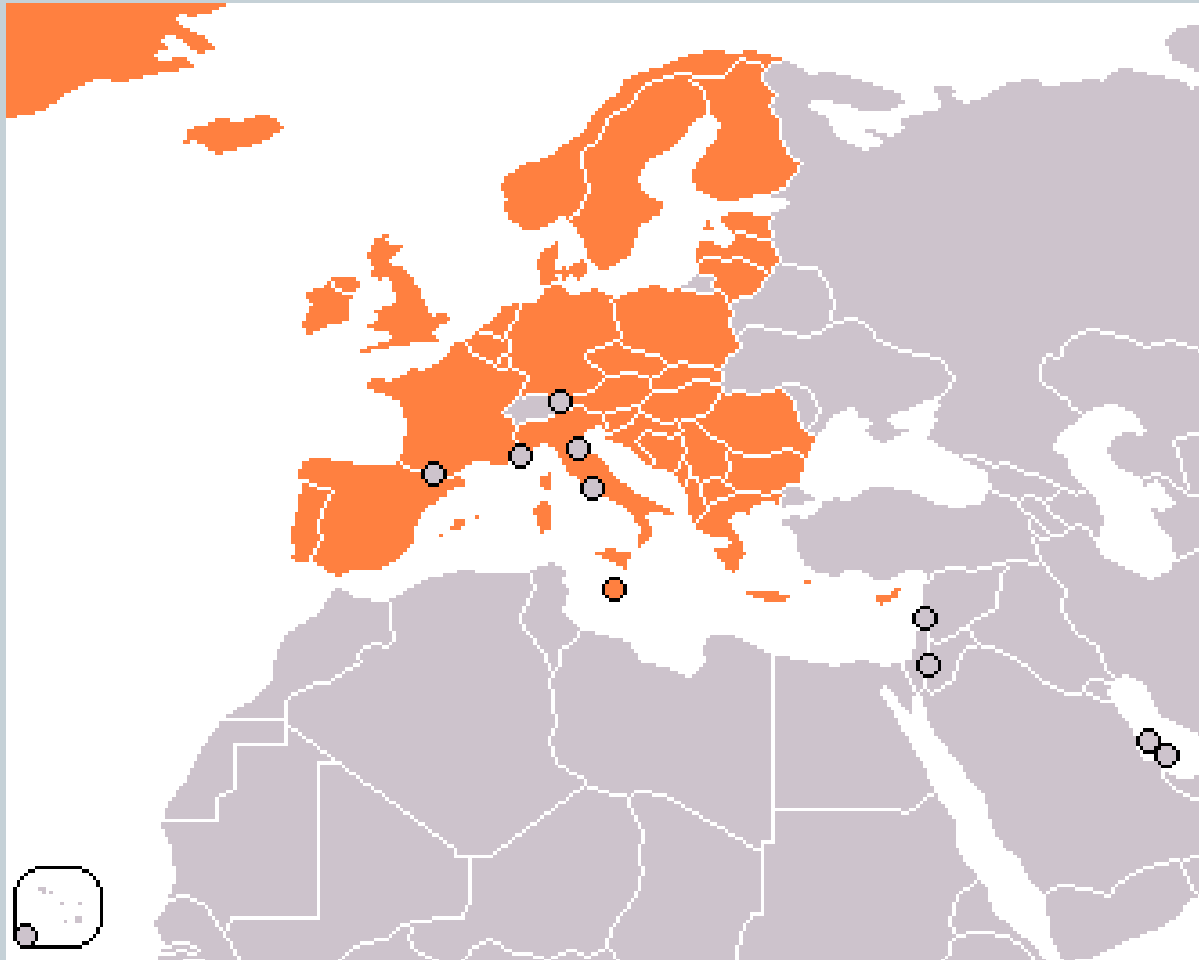
- First Package 1988
- Second Package 1990
- Third Package 1993



# The European Economic Area



# European Common Aviation Area





# EU Regulation



The European Union (EU) air transport regulation, effective Nov. 1, 2008, establishes common rules for air transport services in the 27 member States of the European Community and amends the "third air package," of air transport liberalization. The Third Package opened all city-pair markets to entry by all "community carriers", even cabotage markets.

These are the basic provisions of the EU regulation:

## ENTRY

- "Community air carriers shall be entitled to operate intra-community air services."
- An air carrier must hold an Air Operator Certificate (AOC) issued by a member State certifying the technical capacity of the carrier to safely provide air services. It also must hold an operating license conferring the right to provide commercial air services. The issuing State may not discriminate against carriers from other Member States.
- A member state must suspend or revoke the operating license if the carrier:
  - No longer fulfills the requirements of the EU regulation.
  - Cannot meet its actual and potential obligations for a 12-month period; however, pending a financial reorganization, and provided that safety is not at risk, the authority may grant a temporary license, not exceeding 12 months.
- The carrier's principal place of business must be located in the licensing State.
- The carrier must have majority ownership, and be "effectively controlled" by Member States and/or nationals of Member States.
- State Aid is prohibited.
- New applicants must prove that they can meet "at any time" their "actual and potential obligations" from three months from commencement of operations assuming no revenue.

# EU Regulations



## PUBLIC SERVICE OBLIGATIONS

- The regulation recognizes the need to maintain the possibility to recourse to a public service obligation (PSO) when the economic development of a remote region or an island depends on it.
- After a call for tender, the maximum concession period if the route is restricted to a single operator is increased from three to four years (and five years for ultra-peripheral regions).

## CODE SHARING

- Restrictions in bilateral air service agreements between Member States have been abolished with respect to intra-Community air services and code-sharing.



# EU Regulations



## PRICING

- The regulation requires non-discriminatory and transparent pricing of air services, prohibiting discrimination on the basis of the place of residence or the nationality of the customer or the place of establishment of the travel agent.
- The final price must include all applicable fares, charges, taxes and fees. Additional charges may not be imposed upon passengers without their express consent ('opt-in').



# UK Requirements



## OPERATING LICENSE

Generally, any UK-based company or person operating an aircraft and carrying passengers or cargo for remuneration needs an Operating Licence granted by the CAA, irrespective of the registration of the aircraft (though normally, airlines licensed by the CAA are required to use UK-registered aircraft).

## TYPES OF OPERATING LICENSES

The CAA grants two types of Operating Licences, Type A and Type B, the former being for larger operators and the latter for minor operators (flying aircraft having fewer than 20 seats).

## ROUTE LICENSES

For flights within the EU and EEA, an operator holding an Operating Licence does not need any additional licence or permit, either from the CAA or from any other EU State. For flights by UK-registered aircraft outside the EU, air operators may also need one or more Route Licenses.

## BILATERAL RESTRICTIONS

On certain routes between the UK and States outside the single European aviation market, the Air Services Agreement between the UK and a foreign State may limit the traffic rights available in terms of the number of carriers that each side can designate, the routes those carriers operate, and the frequency or capacity they can offer.

# UK Requirements



## CRITERIA FOR THE GRANT AND RETENTION OF AIR TRANSPORT LICENCES

### Financial Resources & Fitness

- The UK Civil Aeronautics Authority [CAA] must refuse any air transport license [ATL] unless it is satisfied that the applicant's financial resources and arrangements are adequate in relation to his existing and proposed business. Before granting an ATL, the CAA must be convinced that the applicant is fit.

### Liability

- License issuance is conditioned upon the carrier's agreement to enter into a special contract with each passenger to the effect that their per passenger liability shall not be less than 100,000 Special Drawing Rights, exclusive of costs.

### Nationality

- The CAA must be satisfied before granting an ATL that the applicant is controlled by United Kingdom nationals, and to refer an application to the Secretary of State if it is not satisfied. However, this requirement has been superseded by EU law, requiring that each State not discriminate against other State carriers, so long as at least 51% of the carrier's equity is held by EU citizens. Article 4.2 of the Council Licensing Regulation requires that holders of Operating Licences are majority owned and effectively controlled by EEA States or nationals of EEA States.

### Air Operator's Certificate

- The CAA's normal practice is not to grant an ATL unless the applicant holds an Air Operator's Certificate [AOC], and to suspend a licence if the licence holder ceases to hold an AOC.
- Sections 65(2)(b), 65(2)(a), 65(3) of the Act.



# Oh, Canada



## **DOMESTIC AND INTERNATIONAL LICENCES AND REDUCTION IN DOMESTIC SERVICES**

**[SOR/96-335, s. 5]**

### **Domestic Licensing**

- 10.** (1) An applicant for a domestic licence, or for an amendment to or a renewal of such a licence, shall submit to the Agency documentary evidence to establish that the applicant
- (a) is a Canadian or is exempted from that requirement under section 62 of the Act;
  - (b) holds a Canadian aviation document that is valid in respect of the air service to be provided under the licence;
  - (c) has the liability insurance coverage required by section 7 in respect of the air service to be provided under the licence and has complied with section 8; and
  - (d) where the applicant is required to meet the financial requirements set out in section 8.1, meets those requirements.
- (2) Every holder of a domestic licence shall, within 30 days after each anniversary date of the licence, file with the Agency a declaration in the form set out in Schedule II.

# Oh, Canada



## International Licensing

- 15.** (1) An applicant for a scheduled international licence, or for an amendment to or a renewal of such a licence, shall submit to the Agency documentary evidence to establish that the applicant
- (a) is eligible to hold a scheduled international licence;
  - (b) holds a Canadian aviation document that is valid in respect of the air service to be provided under the licence;
  - (c) has the **liability insurance** coverage required by section 7 in respect of the air service to be provided under the licence and has complied with section 8; and
  - (d) where the applicant is required to meet the **financial requirements** set out in section 8.1, meets those requirements.
- (2) An applicant for a non-scheduled international licence, or for an amendment to or a renewal of such a licence, shall submit to the Agency documentary evidence that
- (a) meets the requirements of paragraphs (1)(b) to (d); and
  - (b) establishes that
    - (i) the applicant is a Canadian, or
    - (ii) where the applicant is a non-Canadian, the applicant holds a document issued by the government of the applicant's state or an agent thereof, in respect of the air service to be provided, that is equivalent to the non-scheduled international licence for which the application is being made.
- (3) Every holder of a scheduled international or a non-scheduled international licence shall, within 30 days after each anniversary date of the licence, file with the Agency a declaration in the form set out in Schedule II.

# Canadian New Applicant Financial Requirements



(2) Subject to subsection (3), an applicant shall

- (a) in respect of the air service specified in the application, provide the Agency with a current written statement of the **start-up costs** that the applicant has incurred in the preceding 12 months, with written estimates of start-up costs that the applicant expects to incur and with written estimates of operating and overhead costs for a **90-day period of operation** of the air service, and establish that
  - (i) in respect of the start-up costs, the statement is complete and accurate and the estimates are reasonable,
  - (ii) in respect of the operating and overhead costs, the estimates are reasonable and are based on utilization of the aircraft solely on the specified air service under conditions of optimum demand, which utilization shall be no less than that which is necessary for the air service to be profitable,
  - (iii) subject to subparagraph (b)(i), the applicant has acquired or can acquire funds in an amount at least equal to the total costs included in the statement and in the estimates,
  - (iv) the funds are not encumbered and are comprised of liquid assets that have been acquired or that can be acquired by way of a line of credit issued by a financial institution or by way of a similar financial instrument,
  - (v) the terms and conditions under which those funds have been acquired or can be acquired are such that the funds are available and will remain available to finance the air service,
  - (vi) subject to paragraph (b), where the applicant is a corporation, **at least 50%** of the funds required by subparagraph (iii) have been acquired by way of **capital stock** that has been issued and paid for and **that cannot be redeemed for a period of at least one year** after the date of the issuance or reinstatement of the licence, and
  - (vii) subject to paragraph (b), where the applicant is a proprietorship or partnership, at least 50% of the funds required by subparagraph (iii) have been acquired by way of the proprietor's or partners' capital that has been injected into the proprietorship or partnership and that cannot be withdrawn for a period of at least one year after the date of the issuance or reinstatement of the licence;

# Canadian Insurance Requirements



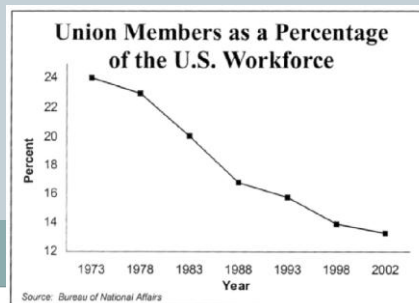
7. (1) No air carrier shall operate a domestic service or an international service unless, for every accident or incident related to the operation of that service, it has
- (a) **liability insurance** covering risks of injury to or death of passengers in an amount that is **not less than the amount determined by multiplying \$300,000 by the number of passenger seats** on board the aircraft engaged in the service; and
  - (b) insurance covering risks of public liability in an amount that is not less than
    - (i) **\$1,000,000**, where the MCTOW of the aircraft engaged in the service **is not greater than 7,500 pounds**,
    - (ii) **\$2,000,000**, where the MCTOW of the aircraft engaged in the service is **greater than 7,500 pounds but not greater than 18,000 pounds**, and
    - (iii) where the MCTOW of the **aircraft engaged in the service is greater than 18,000 pounds**, **\$2,000,000 plus an amount determined by multiplying \$150 by the number of pounds by which the MCTOW of the aircraft exceeds 18,000 pounds**.
- (2) The insurance coverage required by paragraph (1)(a) need not extend to any passenger who is an employee of an air carrier if workers' compensation legislation governing a claim for damages against that air carrier by the employee is applicable.
- (3) No air carrier shall take out liability insurance to comply with subsection (1) that contains an **exclusion or waiver provision** reducing insurance coverage for any accident or incident below the applicable minima determined pursuant to that subsection, unless that provision
- (a) consists of standard exclusion clauses adopted by the international aviation insurance industry dealing with
    - (i) war, hijacking and other perils,
    - (ii) noise and pollution and other perils, or
    - (iii) aviation radioactive contamination;



# LABOR REGULATION



- U.S. airlines are subject to the Railway Labor Act [RLA], administered by the three-member National Mediation Board [NMB].
- The NMB supervises the election of, and certifies the exclusive bargaining representative for, the employees; it also oversees the collective bargaining process.
- A union desiring to gain recognition as the bargaining representative submit an application to investigate a dispute (Form NMB-3) accompanied by authorization cards signed by at least 35% of the craft or class employees.
- Disputes under the RLA fall into one of three major categories: representation disputes, major disputes, and minor disputes.



# Three Types of Disputes



- **Representation disputes** involve the selection of the employee's representatives for purposes of collective bargaining.
- **Major disputes** involve formation or modification of collective bargaining agreements [CBA] (e.g., wages, work rules, working conditions). These disputes are designed to be resolved through collective bargaining between the labor unions and management. The statute mandates a meet-and-confer process, with good faith negotiations, mediation, nonmandatory arbitration, and if all else fails, intervention by a Presidential Emergency Board. Until these procedures are exhausted, neither party may upset the *status quo* by engaging in self-help.
- **Minor Disputes:** While major disputes seek to create contractual rights, minor disputes seek to enforce them. Minor disputes are grievances arising from interpretation and application of existing CBA provisions. The distinguishing feature of minor disputes is that they may be conclusively resolved via application and interpretation of the CBA.



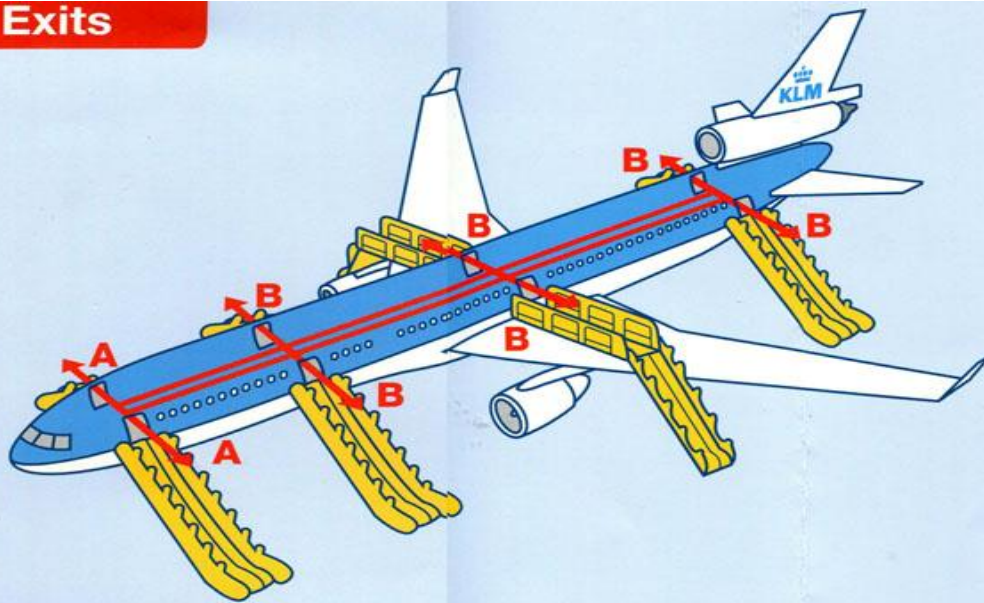
# SAFETY REGULATION



- The Federal Aviation Administration licenses and regulates airline flight operations personnel, including flight crews, maintenance personnel and dispatchers, and exercises plenary jurisdiction over airline safety, training and maintenance procedures, technical flight standards, communications and ground equipment.
- The FAA has broad jurisdiction over aircraft certification and registration.
- The FAA has implemented a number of requirements on aircraft manufacture and airline maintenance programs, including inspection and maintenance of aging aircraft, and corrosion control.
- Airlines must have and maintain FAA certificates of airworthiness for all of their aircraft.
- An airline's flight personnel, flight and emergency procedure, aircraft and maintenance facilities are subject to periodic inspection and tests by the FAA.
- The FAA also holds broad jurisdiction over navigation and air traffic control, including collision avoidance and wind shear detection.



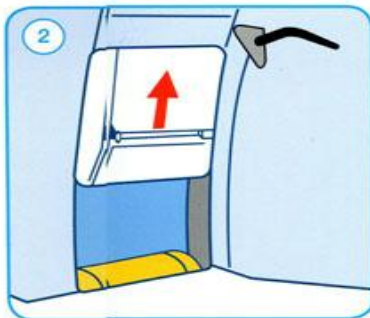
# Exits



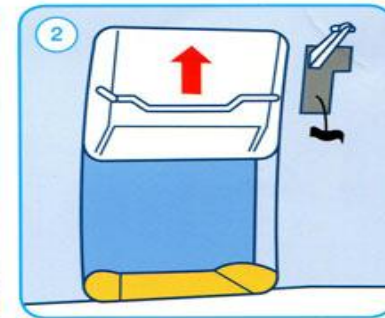
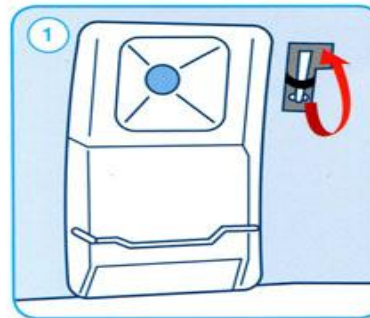
No luggage  
Leave everything



## Exit A



## Exit B



Please do not remove from aircraft

# SECURITY REGULATION



- *The Antihijacking Act of 1974* implemented the Hague Convention of 1970; it imposed **penalties for carrying weapons or explosives** aboard aircraft, and a penalty of 20 years imprisonment or death if a passenger is killed during a hijacking; it authorized the President to suspend the landing rights of any nation that harbors hijackers;
- *The Air Transportation Security Act of 1974* authorized the **screening of passengers and baggage** for weapons;
- *The Aircraft Sabotage Act of 1984*, implemented the Montreal Convention of 1971; it imposed **penalties** of up to \$100,000 or 20 years imprisonment, or both, **for hijacking, damage, destruction or disabling an aircraft or air navigation facility**;
- *The International Security and Development Act of 1985* authorized **expenditures for enhancing security at foreign airports**;
- *The Foreign Security Airport Act of 1985* required the U.S. DOT Secretary to **assess security at foreign airports**, and notify the public or suspend service if a foreign airport fails to correct a security breach; it also required that foreign airlines serving the United States adopt and implement security procedures prescribed by the U.S. government;
- *The Aviation Security Improvement Act of 1990* mandated **background checks for airline and airport employees**, and imposed additional training, educational and employment standards upon them; it also required **deployment of bomb-detection technology for baggage**;
- *The Federal Aviation Administration Reauthorization Act of 1996* required **passenger profiling, explosive detection technology, procedures for passenger/bag matching, and certification for screening companies**;
- *The Omnibus Consolidated Appropriations Act of 1997* authorized the purchase of **advanced screening equipment for baggage**;
- *The Aviation Security Improvement Act of 2000* required **fingerprinting and background checks of airport and airline security personnel** at Category X airports;
- *The Aviation and Transportation Security Act of 2001* **federalized the airport screening function**, establishing the new Transportation Security Administration [TSA] under the DOT to regulate security in all modes of transportation; it also **enhanced baggage screening procedures, and imposed more stringent personnel qualifications on security employees**; and
- *The Homeland Security Act of 2002* consolidates 22 agencies, including the TSA, into a new cabinet-level **Department of Homeland Security**. The agency was given jurisdiction, *inter alia*, over transportation security, customs, immigration and agricultural inspections.





welcome to the institute of

# AIR & SPACE LAW

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