



UNITED STATES OF AMERICA
DEPARTMENT OF TRANSPORTATION
OFFICE OF THE SECRETARY
WASHINGTON, D.C.

Issued by the Department of Transportation
on the 12th day of May, 2022

Served: May 12, 2022

Application of

PHENIX JET CAYMAN SEZC

for an exemption under 49 U.S.C. §40109 and a foreign
air carrier permit under 49 U.S.C. §41301

Docket DOT-OST-2022-0036

ORDER GRANTING EXEMPTION AND TO SHOW CAUSE

Summary

By this order we (1) grant the application of the referenced foreign air carrier for an exemption under 49 U.S.C. §40109, subject to conditions;¹ and (2) tentatively find that it is in the public interest to grant the applicant a foreign air carrier permit attached as Appendix B to this order.

Background

On August 23, 2005, the Department issued a Notice, in Docket DOT-OST-2005-22228, announcing several steps designed to streamline our regulatory procedures for licensing U.S. and foreign air carriers. Among other things, the Notice stated that:

Assuming, based on the record and on the public interest/public convenience and necessity elements germane to our licensing decisions, that we were in a position to act favorably, we would proceed to issue a single order (1) granting the exemption request for whatever duration we would normally have imposed, or until certificate/permit authority becomes effective, whichever is shorter, and (2) tentatively deciding (*i.e.*, show-cause) to award a corresponding certificate (or permit), again for the standard duration we would normally have imposed (such as, in the case of certificates, five years for limited-entry markets, indefinite for open-entry markets, and in the case of

¹ The conditions are attached as Appendix A.

permits, five years for comity and reciprocity regimes, indefinite for agreement regimes).

Our action in this Order serves to implement these streamlined regulatory procedures for the application involved in this proceeding.

Application

By application filed March 22, 2022, (as supplemented), Phenix Jet Cayman SEZC (Phenix Jet Cayman), a foreign air carrier of the United Kingdom, requests an exemption under 49 U.S.C. §40109 and a foreign air carrier permit under 49 U.S.C. §41301, to engage in the following operations:

- a. Foreign charter air transportation of persons, property, and mail from points behind the United Kingdom via the United Kingdom and intermediate points to any point or points in the United States and beyond;
- b. Other charters pursuant to the prior approval requirements set forth in part 212 of the Department's economic regulations.

The applicant provided evidentiary materials required by 14 CFR Part 211 of our regulations to support its requests for authority.

No answers were filed to the application.

Decision

We have decided, under assigned authority and consistent with our August 23, 2005 Notice referenced above, to grant the applicant's request for exemption authority, subject to conditions, and tentatively to grant, subject to show-cause procedures, its request for a foreign air carrier permit, also subject to conditions.

Specifically, we will grant Phenix Jet Cayman exemption authority for the services set forth in ordering paragraph 1 below. We will also tentatively grant Phenix Jet Cayman a foreign air carrier permit for these services.

With respect to the applicant's request for exemption authority, we find that grant of this authority is consistent with the public interest, and that the applicant has demonstrated, based on the record, that it is financially and operationally qualified to perform the services authorized.²

However, due to the involvement of non-UK citizens in the ownership and control of Phenix Jet Cayman, the record in this case does not permit us to make definitive findings that the carrier is substantially owned and effectively controlled by citizens of its homeland. The applicant

² The applicant has requested confidential treatment of its financial submissions under the provisions of 14 CFR §302.12. Good cause having been shown, we will grant this request.

acknowledges this factor in outlining its ownership and control structure in its application as described below and requests a waiver of the Department's homeland ownership and control requirement.

With regard to the ownership of the applicant, the record indicates that 57% of its shares of capital stock are owned by Sojitz Corporation, an entity that is publicly held, owned, and controlled by Japanese citizens.³ The record further indicates that remaining 43% of Phenix Jet Cayman's shares are held by two U.S. citizens: Andrew Svoboda (25%) and Paul Schembari (18%). As to the management and control of the applicant, the record indicates that its key personnel consist of two U.S. citizens, one German citizen, one Chinese citizen, and one UK citizen.

In spite of the fact that we are unable to find that Phenix Jet Cayman is substantially owned and effectively controlled by citizens of its homeland, we find it appropriate in the circumstances presented to waive our ownership and control requirements, as there is no evidence on the record which suggests that the ownership and control of the applicant would be inimical to U.S. aviation policy or interests.

The authority sought by the applicant is encompassed by the 2020 U.S.-UK Air Transport Agreement. We also note that the applicant is properly licensed by its homeland to perform the proposed services. In addition, the Federal Aviation Administration advised us that it knows of no reason why we should act unfavorably on the applicant's request. We have verified the applicant's compliance with 14 CFR Parts 203 (Warsaw liability waiver), and 205 (insurance requirements).

In view of the above, we find that grant of the requested exemption authority, as conditioned, for a two-year term, or until the requested permit authority becomes effective, whichever occurs earlier, is warranted.

Tentative Findings and Conclusions—Foreign Air Carrier Permit Application

We tentatively find and conclude that the public interest warrants granting the applicant a foreign air carrier permit, in the form attached as Appendix B and subject to the conditions attached.⁴ In particular, we tentatively find and conclude that the factors which support our grant of exemption authority to the applicant also warrant granting the applicant the foreign air carrier permit it seeks.

In view of the foregoing and all facts of record, we tentatively find and conclude that:

³ The applicant informally provided the Department with additional information regarding the ownership structure of the Sojitz Corporation.

⁴ The applicant's request for a foreign air carrier permit was summarized in the Department's published weekly list of applications filed. This notice described the authority sought and gave interested persons an opportunity to submit evidence and objections to the award of this foreign air carrier permit authority. As noted above, no answers to the application were filed.

1. It is in the public interest to issue the applicant a foreign air carrier permit in the form attached;
2. The applicant is fit, willing and able properly to perform the foreign air transportation described in the attached permit and to conform to the provisions of Title 49 of the U.S. Code, and to our rules, regulations, and requirements;
3. A waiver of our ownership and control policy is warranted in the circumstances presented;
4. The public interest requires that the exercise of the privileges granted by the permit should be subject to the terms, conditions, and limitations contained in the attached permit, and to such other reasonable terms, conditions, and limitations required by the public interest as we may prescribe;
5. The issuance of this foreign air carrier permit will not constitute a major regulatory action under the Energy Policy and Conservation Act of 1975, as defined in 14 CFR §313.4(a)(1) of our regulations;⁵
6. The public interest does not require an oral evidentiary hearing on the application; and
7. Our action with respect to this foreign air carrier permit should, unless disapproved by the President of the United States under §41307 of Title 49 of the U.S. Code, become effective on the 61st day after its submission for §41307 review, or upon the date of receipt of advice from the President or his designee under Executive Order 12597 and implementing regulations that he or she does not intend to disapprove this portion of the Department's decision under that section, whichever occurs earlier.

In view of the above, and acting under authority assigned by the Department in its regulations, 14 CFR Part 385, we find that (1) our actions are consistent with Department policy; and (2) with respect to the exemption authority we are conferring on the applicant, the applicant is qualified to perform those operations; and that grant of the exemption authority is consistent with the public interest and would not constitute a major regulatory action under the Energy Policy and Conservation Act of 1975.

ACCORDINGLY,

1. We grant the request of Phenix Jet Cayman SEZC for an exemption under 49 U.S.C. §40109 to engage in:
 - a. Foreign charter air transportation of persons, property, and mail from points behind the United Kingdom via the United Kingdom and intermediate points to any point or points in the United States and beyond; and

⁵ This finding is based on the fact that the grant of this permit will not result in a near-term net annual change in aircraft fuel consumption of 10 million gallons or more.

- b. Other charters pursuant to the prior approval requirements set forth in part 212 of the Department's economic regulations.
2. The exercise of the privileges granted above is subject to compliance by Phenix Jet Cayman SEZC with the conditions listed in Appendix A;
3. Our action granting the exemption authority described herein is effective immediately, for a period of two years from the issue date of this order, or until the attached permit becomes effective, whichever is earlier;
4. We grant the request of Phenix Jet Cayman SEZC for confidential treatment of its financial submissions, consistent with the provisions of 14 CFR §302.12;
5. We may amend, modify, or revoke the exemption authority set forth herein at our discretion at any time and without hearing;
6. To the extent not acted upon above, we dismiss all requests for exemption authority in Docket DOT-OST-2022-0036;
7. With respect to the applicant's request for a foreign air carrier permit in this proceeding, we direct all interested persons to show cause why our tentative decision on that application, set forth above, should not be made final;
8. Any interested person objecting to the issuance of an order making final our tentative findings and conclusions with respect to the applicant's request for a foreign air carrier permit shall, no later than twenty-one (21) calendar days after the date of service of this order, file with the Department and serve on the parties to this proceeding, a statement of objections specifying the part or parts of the tentative findings and conclusions objected to, together with a summary of testimony, statistical data, and concrete evidence to be relied upon in support of the objections; if objections are filed, answers to objections are due no later than seven (7) calendar days thereafter;
9. If timely and properly supported objections are filed, we will give further consideration to the matters and issues raised by the objections before we take further action;
10. In the event no objections are filed, all further procedural steps shall be deemed waived, and the Department will enter an order which will (subject to Presidential review under §41307 of Title 49 of the U.S. Code) make final our tentative findings and conclusions set forth in this order; and
11. We will serve a copy of this order on Phenix Jet Cayman SEZC; the Embassy of the United Kingdom in Washington, D.C.; the Department of State; and the Federal Aviation Administration.

Persons entitled to petition the Department for review of this order under the Department's regulations, 14 CFR §385.30, may file their petitions within seven (7) days after the date of

issuance of this order. Our action with respect to the applicant's request for exemption authority under 49 U.S.C. §40109 is effective immediately, and the filing of a petition for review will not alter such effectiveness.

By:

BENJAMIN J. TAYLOR
Director
Office of International Aviation

(SEAL)

Appendices

An electronic version of this document is available on the World Wide Web at:
<http://www.regulations.gov>

In the conduct of the operations authorized, the foreign carrier applicant shall:

- (1) Not conduct any operations unless it holds a currently effective authorization from its homeland for such operations, and it has filed a copy of such authorization with the Department;
- (2) Comply with all applicable requirements of the Federal Aviation Administration, the Transportation Security Administration, and with all applicable U.S. Government requirements concerning security, including, but not limited to, 14 CFR Parts 129, 91, and 36 and 49 CFR Part 1546 or 1550, as applicable. To assure compliance with all applicable U.S. Government requirements concerning security, the holder shall, before commencing any new service (including charter flights) from a foreign airport that would be the holder's last point of departure for the United States, contact its International Industry Representative (IIR) (formerly referred to as International Principal Security Inspector) to advise the IIR of its plans and to find out whether the Transportation Security Administration has determined that security is adequate to allow such airport(s) to be served;
- (3) Comply with the requirements for minimum insurance coverage contained in 14 CFR Part 205, and, prior to the commencement of any operations under this authority, file evidence of such coverage, in the form of a completed OST Form 6411, with the Federal Aviation Administration's Program Management Branch (AFS-260), Flight Standards Service (any changes to, or termination of, insurance also shall be filed with that office);
- (4) Not operate aircraft under this authority unless it complies with operational safety requirements at least equivalent to Annex 6 of the Chicago Convention;
- (5) Conform to the airworthiness and airman competency requirements of its Government for international air services;
- (6) Except as specifically exempted or otherwise provided for in a Department Order, comply with the requirements of 14 CFR Part 203, concerning waiver of Warsaw Convention liability limits and defenses;
- (7) Agree that operations under this authority constitute a waiver of sovereign immunity, for the purposes of 28 U.S.C. 1605(a), but only with respect to those actions or proceedings instituted against it in any court or other tribunal in the United States that are: (a) based on its operations in international air transportation that, according to the contract of carriage, include a point in the United States as a point of origin, point of destination, or agreed stopping place, or for which the contract of carriage was purchased in the United States; or (b) based on a claim under any international agreement or treaty cognizable in any court or other tribunal of the United States. In this condition, the term "international air transportation" means "international transportation" as defined by the Warsaw Convention, except that all States shall be considered to be High Contracting Parties for the purpose of this definition;
- (8) Except as specifically authorized by the Department, originate or terminate all flights to/from the United States in its homeland;
- (9) Comply with the requirements of 14 CFR Part 217, concerning the reporting of scheduled, nonscheduled, and charter data;
- (10) If charter operations are authorized, except as otherwise provided in the applicable aviation agreement, comply with the Department's rules governing charters (including 14 CFR Parts 212 and 380);
- (11) Comply with such other reasonable terms, conditions, and limitations required by the public interest as may be prescribed by the Department, with all applicable orders or regulations of other U.S. agencies and courts, and with all applicable laws of the United States; and
- (12) Be subject to all applicable provisions of any treaty, convention or agreement affecting international air transportation now in effect, or that may become effective during the period this exemption remains in effect, to which the United States and the holder's homeland are or shall become parties.

This authority shall not be effective during any period when the holder is not in compliance with the conditions imposed above. Moreover, this authority cannot be sold or otherwise transferred without explicit Department approval under Title 49 of the U.S. Code.



UNITED STATES OF AMERICA
DEPARTMENT OF TRANSPORTATION
OFFICE OF THE SECRETARY
WASHINGTON, D.C.

PERMIT TO FOREIGN AIR CARRIER

PHENIX JET CAYMAN SEZC

A Foreign Air Carrier of the United Kingdom

is authorized, subject to the following provisions, the provisions of Title 49 of the U.S. Code, and the orders, rules, and regulations of the Department of Transportation, to engage in:

Foreign charter air transportation of persons, property, and mail from points behind the United Kingdom via the United Kingdom and intermediate points to any point or points in the United States and beyond.

The holder shall also be authorized to engage in other charter trips in foreign air transportation, subject to the terms, conditions, and limitations of the Department's regulations governing charters.

This permit and the exercise of the privileges granted in it shall be subject to the terms, conditions and limitations in both the order issuing this permit and the attachment to this order, and to all applicable provisions of any treaty, convention or agreement affecting international air transportation now in effect, or that may become effective during the period this permit remains in effect, to which the United States and the holder's homeland are or shall become parties.

This permit shall be effective on Month XX, 2022. Unless otherwise terminated at an earlier date pursuant to the terms of any applicable treaty, convention or agreement, this permit shall terminate (1) upon the dissolution or liquidation of the holder to whom it was issued; (2) upon the effective date of any treaty, convention, or agreement or amendment, which shall have the effect of eliminating the bilateral right for the service authorized by this permit from the service which may be operated by airlines designated by the Government of the United Kingdom (or, if the right is partially eliminated, then the authority of this permit shall terminate in like part); (3) upon the effective date of any permit granted by the Department to any other carrier designated by the Government of the United Kingdom in lieu of the holder; or (4) upon the termination or expiration of the applicable air services agreement between the United States and the United Kingdom. However, clause (4) of this paragraph shall not apply if prior to such termination or expiration, the foreign air transportation authorized herein becomes the subject of another treaty, convention or agreement to which the United States and the United Kingdom become parties.

The Department of Transportation has executed this permit and affixed its seal on
Month XX, 2022.

By:

BENJAMIN J. TAYLOR
Director
Office of International Aviation

(SEAL)

Foreign Air Carrier Permit Conditions

In the conduct of the operations authorized, the foreign carrier applicant shall:

- (1) Not conduct any operations unless it holds a currently effective authorization from its homeland for such operations, and it has filed a copy of such authorization with the Department;
- (2) Comply with all applicable requirements of the Federal Aviation Administration, the Transportation Security Administration, and with all applicable U.S. Government requirements concerning security, including, but not limited to, 14 CFR Parts 129, 91, and 36 and 49 CFR Part 1546 or 1550, as applicable. To assure compliance with all applicable U.S. Government requirements concerning security, the holder shall, before commencing any new service (including charter flights) from a foreign airport that would be the holder's last point of departure for the United States, contact its International Industry Representative (IIR) (formerly referred to as International Principal Security Inspector) to advise the IIR of its plans and to find out whether the Transportation Security Administration has determined that security is adequate to allow such airport(s) to be served;
- (3) Comply with the requirements for minimum insurance coverage contained in 14 CFR Part 205, and, prior to the commencement of any operations under this authority, file evidence of such coverage, in the form of a completed OST Form 6411, with the Federal Aviation Administration's Program Management Branch (AFS-260), Flight Standards Service (any changes to, or termination of, insurance also shall be filed with that office);
- (4) Not operate aircraft under this authority unless it complies with operational safety requirements at least equivalent to Annex 6 of the Chicago Convention;
- (5) Conform to the airworthiness and airman competency requirements of its Government for international air services;
- (6) Except as specifically exempted or otherwise provided for in a Department Order, comply with the requirements of 14 CFR Part 203, concerning waiver of Warsaw Convention liability limits and defenses;
- (7) Agree that operations under this authority constitute a waiver of sovereign immunity, for the purposes of 28 U.S.C. 1605(a), but only with respect to those actions or proceedings instituted against it in any court or other tribunal in the United States that are: (a) based on its operations in international air transportation that, according to the contract of carriage, include a point in the United States as a point of origin, point of destination, or agreed stopping place, or for which the contract of carriage was purchased in the United States; or (b) based on a claim under any international agreement or treaty cognizable in any court or other tribunal of the United States. In this condition, the term "international air transportation" means "international transportation" as defined by the Warsaw Convention, except that all States shall be considered to be High Contracting Parties for the purpose of this definition;
- (8) Except as specifically authorized by the Department, originate or terminate all flights to/from the United States in its homeland;
- (9) Comply with the requirements of 14 CFR Part 217, concerning the reporting of scheduled, nonscheduled, and charter data;
- (10) If charter operations are authorized, except as otherwise provided in the applicable aviation agreement, comply with the Department's rules governing charters (including 14 CFR Parts 212 and 380); and
- (11) Comply with such other reasonable terms, conditions, and limitations required by the public interest as may be prescribed by the Department, with all applicable orders or regulations of other U.S. agencies and courts, and with all applicable laws of the United States.

This authority shall not be effective during any period when the holder is not in compliance with the conditions imposed above. Moreover, this authority cannot be sold or otherwise transferred without explicit Department approval under Title 49 of the U.S. Code.