

BRIEFING

AN ICAO DOWNGRADE: IMPLICATIONS AND ISSUES
FOR THAI AVIATION
MARCH 2015

- THE THAI DEPARTMENT OF CIVIL AVIATION MAY BE DOWNGRADED AS A RESULT OF A RECENT SAFETY AUDIT CONDUCTED BY THE INTERNATIONAL CIVIL AVIATION ORGANISATION.
- THIS DOWNGRADE WILL HAVE REPERCUSSIONS FOR THE GRADING OF THAI CARRIERS ACROSS THE INTERNATIONAL AVIATION COMMUNITY.
- AIRLINES, BANKS AND LESSORS WILL NEED TO CONSIDER HOW BEST TO PROTECT THEIR COMMERCIAL INTERESTS AND MANAGE THEIR EXPOSURE TO A POTENTIAL DOWNGRADE.



“THERE ARE CONCERNS THAT ICAO WILL DOWNGRADE THAILAND FROM CATEGORY 1 TO CATEGORY 2 AS A RESULT OF THE AUDIT.”

The International Civil Aviation Organization (“ICAO”) has conducted an audit of the Thai Department of Civil Aviation (“DCA”) as part of its Universal Safety Oversight Audit Programme (“USOAP”). This Programme is intended to ensure a consistent global standard for aviation safety and the civil aviation authorities of ICAO member states are subject to regular audits under the USOAP by ICAO.

The audit covers a broad range of areas relevant to aviation safety and airline operations but is intended to assess the performance and expertise of the civil aviation authority and not of individual airlines. Some of the key areas considered are personnel licensing and training, airworthiness assessment and certification, accident investigation and airline operations oversight and licensing.

There are concerns that ICAO will downgrade Thailand from Category 1 to Category 2 as a result of the audit. Much speculation revolves around the shortage of inspectors and the procedures for granting Air Operator Licences and Certificates (AOL/AOC) and airworthiness and the conflict in allowing the DCA to license airlines and operate airports. It is premature to comment on these issues. It is important to bear in mind that the purpose of the audit is to identify areas where the civil aviation authority of an ICAO member state does not meet international standards. This is particularly important and increasingly critical

given the recent dramatic growth in airlines and fleets and the ever increasing numbers of people flying between cities, between countries and between regions.

What can ICAO do with the findings of the audit?

ICAO has no powers to enforce any recommendations arising from an audit and the audit findings have no force of law. ICAO cannot force the DCA or Thai government to take any steps to address deficiencies identified in the audit. The intention is for the relevant civil aviation authority to take the necessary steps to address any deficiencies.

What are the consequences of a downgrade?

Thai carriers and AOL/AOC holders licensed by the DCA and operating under its supervision would technically not be affected by any ICAO downgrade. There are, however, several potential consequences which could have a significant impact on the operations of Thai carriers and Thai AOL/AOC holders.

FAA IASA Review – what is involved?

For Thai carriers operating or intending to operate services between Thailand, the US or those Thai carriers which code share with US carriers, the FAA conducts International Aviation Safety Assessments (“IASA”). This is to ensure that foreign carriers serving the US or serving as the operating carrier in a code share with a US carrier meet the ICAO standards. As Thai Airways serves the US, with flights between Bangkok and Los Angeles, the FAA can conduct an IASA audit of the DCA.

Although there is no formal link between the outcome of an ICAO USOAP audit and an FAA IASA audit, traditionally an ICAO downgrade has resulted in an FAA audit. A relevant example is the 2012 IATA downgrade of the Indian DGCA to Category 2, which was followed by an FAA IASA audit in 2013 and a corresponding FAA downgrade of the Indian DGCA to Category 2 in early 2014.

Impact of a downgrade by the FAA

Although an ICAO downgrade may not directly affect Thai carriers, an FAA downgrade to Category 2 would have an immediate and direct impact on Thai carriers serving the US and those serving as the operating carrier in a code share with a US carrier. A downgrade to Category 2 would have the following effects:

- No new routes between Thailand and the US could be operated by existing Thai carriers;
- No Thai carrier would be granted rights to begin services between Thailand and the US;
- Thai carriers would not be permitted to use newer or different aircraft on routes between Thailand and US, potentially placing them at a cost and operation disadvantage to competitors who are able to introduce newer aircraft with enhanced features and comfort and improved fuel efficiency;
- Code share operations where a Thai carrier is the operating carrier in a code share with a US carrier would be suspended;
- Thai registered aircraft would face additional inspection and safety checks at US airports.

“...THE FAA IS ARGUABLY ONE OF THE MOST PROMINENT CIVIL AVIATION AUTHORITIES IN THE WORLD AND MANY OF ITS COUNTERPARTS ACROSS THE WORLD WILL HAVE NO ALTERNATIVE BUT TO CONSIDER THE OUTCOME OF THE ICAO AND FAA AUDITS.”

Although the direct impact of an FAA downgrade may appear to be limited to only those airlines serving the US, the FAA is arguably one of the most prominent

civil aviation authorities in the world and many of its counterparts will have no alternative but to consider the outcome of the ICAO and FAA audits and assess if and potentially how this might affect services to their countries and territories by Thai carriers.

EU Blacklist

Unlike ICAO and the FAA, the EU assesses the safety and performance of individual carriers. As with the FAA IASA audit, an EU assessment is not directly linked to an IATA USOAP audit or an FAA IASA audit. A key criterion for an EU assessment is whether the civil aviation authorities can properly implement and enforce safety standards and an expressly stated requirement for assessment is a focus on ICAO USOAP audits and corrective action plans.

In the face of a downgrade by both ICAO and the FAA, it is difficult to see the EU not taking steps to assess individual Thai carriers, particularly those providing services between Thailand and the EU and those in code share arrangements with EU carriers. The EU blacklisted Philippine carriers following the downgrading of the Philippine CAA by both ICAO and the FAA.

Impact of an EU blacklist

The direct impact is that Thai carriers will not be permitted to operate services between Thailand and EU airports. However, blacklisting individual carriers may have an impact beyond air services between Thailand and the EU. Even if no other civil aviation authorities take steps to blacklist Thai carriers, the resulting negative publicity and public concerns and speculation about safety standards may result in some airlines reducing or ending their commercial relationships with Thai carriers. This is particularly where foreign carriers code share with Thai carriers and the Thai carrier is the operating carrier and where a Thai airline is part of a regional or global alliance.

Broader consequences?

In an age of global airline alliances and networks which integrate the services of multiple carriers, each member airline plays a significant and critical role in the alliance and its network. A downgrading of Thailand and blacklisting of Thai carriers would be the first time this will have affected a major aviation and alliance hub in South East Asia and may have global repercussions. It remains to be seen how any of the three global aviation alliances would react to such a downgrading. It is likely that the other member airlines will offer assistance to ensure that all corrective actions are taken as quickly as possible. Although each member of an alliance plays a critical role, it is important to consider traffic and passenger flows when considering how an alliance would respond to a downgrading and/or blacklisting.

A further consideration is the impact of potentially higher operating costs on Thai carriers. A downgrade may result in higher insurance premiums and Thai carriers may find it more difficult to acquire and lease aircraft given the potential operating restrictions. If the impact is limited to the US and EU, the majority of Thai operators should be able to continue to operate as they currently do.

Airlines – what should you do?

- Check code share flights to see if these would be affected.
- Review your route and aircraft scheduling plans to identify affected destinations and routes.

“IN AN AGE OF GLOBAL AIRLINE ALLIANCES AND NETWORKS WHICH INTEGRATE THE SERVICES OF MULTIPLE CARRIERS, EACH MEMBER AIRLINE PLAYS A SIGNIFICANT AND CRITICAL ROLE IN THE ALLIANCE AND ITS NETWORK.”

- Prepare for additional safety checks and inspections at foreign airports, including the impact on turnaround times and connections.
- For US routes, consider how to address the limitation on aircraft used, particularly in the case of an AOG situation or other technical problem.
- Consider wet leasing aircraft for affected and important routes.
- Notify your lessors of the position.
- Check your leases for any requirement as to the licensing and registration authority and whether this is impacted by the downgrading.

Banks and lessors – what should you do?

- Consider the impact on the permitted uses of an aircraft, including permitted sub-lessees.
- Consider the impact on maintenance and safety oversight requirements.

CONTACTS

Should you like to discuss any of the matters raised in this Briefing, please speak with one of the authors below or your regular contact at Watson Farley & Williams.

ALAN POLIVNICK

Partner
Bangkok

+66 2 665 7805
apolivnick@wfw.com

SUPATTANA SUTHAPORN

Associate
Bangkok

+66 2 665 7822
ssuthaporn@wfw.com

RHIAN WOODEND

Trainee
Bangkok/London

+66 2 665 7830
rwoodend@wfw.com

All references to 'Watson Farley & Williams' and 'the firm' in this publication mean Watson Farley & Williams LLP and/or its affiliated undertakings. Any reference to a 'partner' means a member of Watson Farley & Williams LLP, or a member or partner in an affiliated undertaking, or an employee or consultant with equivalent standing and qualification. The transactions and matters referred to in this publication represent the experience of our lawyers. This publication is produced by Watson Farley & Williams. It provides a summary of the legal issues, but is not intended to give specific legal advice. The situation described may not apply to your circumstances. If you require advice or have question or comments on its subject, please speak to your usual contact at Watson Farley & Williams. This publication constitutes attorney advertising.

100-000-2544 LON KW KW 06/03//2015 © Watson Farley & Williams 2015

wfw.com