

# Democratic Socialist Republic of Sri Lanka



## Civil Aviation Authority of Sri Lanka

### Implementing Standards

(Issued under Sec. 120, Civil Aviation Act No. 14 of 2010)

### **Title: Requirements and guidelines for lease and charter operations of aircraft engaged in Commercial Air Transport Operations**

**Reference No. :** IS-6-(I)-3

**SLCAIS:** IS 091

**Date:** 18<sup>th</sup> April 2018

Pursuant to Section 120 of the Civil Aviation Act No.14 of 2010 which is hereinafter referred to as the Civil Aviation (CA) Act, Director General of Civil Aviation shall have the power to issue, whenever he considers it necessary or appropriate to do so, such Implementing Standards for the purpose of giving effect to any provision in the CA Act, Regulations or Rules made thereunder including the Articles of the Convention on International Civil Aviation specified in the Schedule to the CA Act.

Accordingly, I, being the Director General of Civil Aviation do hereby issue the Implementing Standards on **Requirements and guidelines for lease and charter operations of aircraft engaged in Commercial Air Transport Operations** as mentioned in the Attachment hereto (Ref: IS-6-(i)-3) which set out the intended meaning of the terms used in Annex 6 and all other documents relating to aircraft operations.

This implementing Standard shall be applicable to holders of Air Operator Certificate, Foreign Air Operator Certificate and any applicant seeking on Air Operator Certificate or Foreign Air Operator Certificate issued by Director General of Civil Aviation.

This document supersedes ASN 119 and shall be treated as null and void.

Attention is also drawn to Section 103 of the Act, which states inter alia that failure to comply with Implementing Standard is an offence.

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Enclosure: Attachment No. IS-6-(i)-3-Att-01

## Implementing Standards

### **Title: Requirements and guidelines for lease and charter operations of aircraft engaged in Commercial Air Transport Operations**

#### **GENERAL:**

- I. Requirements contained in this document are based on amendments up to 42 of the 10<sup>th</sup> Edition of “ICAO Annex 6 – Part (I) – Chapter 3 – General” Note 1, Note 2 and any other definitions used by Civil Aviation Authority of Sri Lanka.
- II. The requirements contained in this document are applicable to person/organizations holding an air operator certificate issued by Director-General of Civil Aviation, Sri Lanka for commercial air transportation and prospective applicants for Air Operator Certificate for Commercial Air Transportation.
- III. Holders of Air Operator Certificate issued by the DGCA for commercial air transportation shall comply with the requirements published in this document and are hereby instructed to forward to the DGCA a “Declaration of Conformance” which indicates the degree of compliance with each item detailed in the document.
- IV. This Document supersedes the ASN 119 and shall be treated as null and void.
- V. This document may be amended from time to time and the amendments will be reflected with the vertical line on the right side of the text.

#### **1. Introduction**

- 1.1.1 The purpose of this document on lease and charter, and other aspects of cooperation between operators, is to enlighten the CAA staff and local aircraft operators on a number of legal and practical operational problems which have to be considered carefully in the certification of an operator who intends utilizing leased aircraft or when an operator, in possession of an AOC, proposes to act as a lessor or lessee or otherwise cooperate with another operator.
- 1.1.2 The leasing practices are economically driven and advantageous to operators from commercial point of view. However, the CAA Staff must ensure that adequate measures are in place to safeguard safety concerns whilst economic expectations of the operator is facilitated.
- 1.1.3 In recent years the practice of leasing aircraft has come into wide usage. Many leases involve aircraft, owned by individuals or companies that are registered in one State and leased to operators from another State. The term “lessor” means the party from which the aircraft is leased and the term “lessee” means the party to which the aircraft is leased.
- 1.1.4 **A dry lease** is understood to be the lease of an aircraft where the aircraft is operated under the AOC of the lessee. It is normally a lease of an aircraft without crew, operated under the commercial control of the lessee and using the lessee’s airline designator code and traffic rights.
- 1.1.5 **A damp lease** is generally understood to be a wet lease of an aircraft where the aircraft is operated under the AOC of the lessor, with the flight crew and possibly part of the cabin crew being provided by the lessor. Part or all of the cabin crew is provided by the lessee. In such

case, the State of the Operator should ensure that both the flight and cabin crew are trained to use common communications and emergency procedures and that the cabin crew receives appropriate training.

- 1.1.6 A **wet lease** is generally understood to be a lease of an aircraft where the aircraft is operated under the AOC of the lessor. It is normally a lease of an aircraft with crew, operated under the commercial control of the lessee and using the lessee's airline designator code and traffic rights.
- 1.1.7 There are a number of different types of lease, which may be short term or long term. All the various aspects need to be addressed by the CAA Staff, prior to granting requisite approval. Lease arrangements may also be known as short term wet lease, charter, or sub-charter.
- 1.1.8 Other aspects of cooperation between operators, either nationally or internationally, are code sharing, franchising or interchange and these arrangements shall be carefully scrutinized by the CAA Staff, prior to granting requisite approvals.
- 1.1.9 Unless suitable arrangements are made between the States involved, a lease may create complex legal, safety, enforcement and practical problems for either the State of Registry of the aircraft or the State of the Operator, or both of these States. These problems arise because of possible uncertainty concerning which party is responsible for the safe operation and for the airworthiness of the aircraft and uncertainty concerning the regulations of which State are applicable.
- 1.1.10 The CAA staff must seek to resolve such uncertainties before a lease takes effect. The determination of responsibilities is factual issues that depend upon the terms of the lease or other agreements.
- 1.1.11 Determining which party to a lease is responsible for the operational control and airworthiness will in turn clarify the regulations of which State will apply, and what oversight responsibilities a particular State has, for the operation of a leased aircraft. In some instances, the oversight responsibilities of the State of Registry and the State of the Operator may overlap.
- 1.1.12 Problems associated with leasing have become more widespread because a considerable number of lessors have entered the leasing market. These include: a) companies formed for the specific purpose of purchasing and leasing aircraft; b) commercial banks and other financial institutions; c) aircraft manufacturers; and d) airline companies.
- 1.1.13 Some leases run for a long term while others are for short periods to cover temporary requirements.
- 1.1.14 In addition to the problems presented to CAA, questions also arise concerning what steps can be taken to protect the financial interests and the assets of the lessor. This relates primarily to whether the laws and regulations of the State of Registry and its surveillance capabilities are adequate to cover the interests of the lessor in situations where the lessee, the operator of the aircraft, is from another State. Where the State of Registry and the State of the Operator are adequately carrying out their responsibilities for safety oversight, these actions should tend to protect the lessor's interests in a leased aircraft.
- 1.1.15 The national regulations charge the DGCA, with the responsibility for ensuring that every aircraft on its registry complies with the detailed technical and safety regulations promulgated by Sri Lanka, wherever such aircraft may be operated. These responsibilities include ensuring

that every aircraft on their registry, including those leased to an operator conducting flights under the authority of another State, is operated in compliance with the regulations of Sri Lanka. These responsibilities in turn create serious surveillance and enforcement problems for Sri Lanka because these leased aircraft are frequently operated in distant areas where CAA personnel would find it difficult to conduct safety inspections. Compliance with the pertinent safety standards and regulations of Sri Lanka may therefore diminish. Violations of regulations may occur by design or from ignorance and be unknown to the CAA – Sri Lanka. As a result, it is unlikely that enforcement action would be taken with respect to such leased aircraft.

## **1.2 Background Information**

- 1.2.1 Problems inherent in aircraft leasing were not anticipated when the Convention on International Civil Aviation was formulated. It was assumed that operators would normally own the aircraft they operated and that the nationality of an aircraft would normally be that of the operator i.e. that the State of Registry and the State of the Operator would be one and the same. As a result, the Convention specifies in a number of respects that the fundamental responsibility for an aircraft lies with the State of Registry. The various responsibilities of the State of Registry are further expanded in the Annexes to the Convention.
- 1.2.2 Various ICAO Assembly sessions recognized that a State of Registry may be unable to fulfil its responsibilities adequately when aircraft are leased or chartered, particularly without crew, by an operator from another State. A note was therefore added to Annex 6, Chapter 3, and to ten other Annexes, suggesting that the State of Registry delegate to the State of the Operator, subject to the acceptance by the latter State, those functions of the State of Registry that can more adequately be discharged by the State of the Operator.
- 1.2.3 It was recognized, however, that such a delegation would only be a matter of practical arrangement by which the State of Registry would discharge certain functions, which had been allocated by the Convention, through an agent, which in this case is the State of the Operator. Hence, the means suggested by these notes does not totally relieve the State of Registry from its obligations under the Convention. This note, which had been added to Chapter 3 by Amendment 10 to Annex 6 in 1950, was revised and expanded, by Amendment 6 to Annex 6, Part I, in 1973, as Note 1, to Chapter 3. The similar notes in the other Annexes were also amended at that time.
- 1.2.4 Nevertheless, where aircraft were leased to operators in certain States willing to accept the responsibility, this arrangement provided for a partially acceptable interim solution because the State of Registry could delegate some of its responsibilities under the Convention to the State of the Operator. Such an arrangement, however, did not in all cases absolve the State of Registry from its responsibilities under its own national regulations for aircraft on its registry.
- 1.2.5 The problem was more acute when an aircraft registered in one State was leased, under a dry lease, to an operator in another State, where that State was unwilling, or unable, to accept delegation of responsibility from the State of Registry.
- 1.2.6 Additionally, the leasing problems become even more severe where the safety standards of the State concerned may not be acceptable to the State of Registry, or to the lessor, or where the State of the Operator does not have the capability of properly administering, and enforcing, existing safety regulations. Under such circumstances the potential lessor may be reluctant to lease an aircraft to an operator from the other State or, if a lease was executed, the State of Registry could be considered negligent if it consented to delegating its responsibilities to such a State.

- 1.2.7 ICAO became increasingly aware of the foregoing problems and recognized the general desire of Contracting States for a provision that would permit the transfer of certain responsibilities from the State of Registry to the State of the Operator in case of a lease, charter or interchange of an aircraft.
- 1.2.8 It was decided at the 23rd Assembly Session that it was necessary to amend the Convention in order to relieve the State of Registry of its responsibility with respect to Articles 12, 30, 31, 32 (a) to the Convention and thereby to more effectively deal with this matter.
- 1.2.9 The following amendment was approved by the 23rd Assembly in 1980:

**“Article 83 bis**

**Transfer of certain functions and duties**

1. “Notwithstanding the provisions of Articles 12, 30, 31, and 32(a), when an aircraft registered in a Contracting State is operated pursuant to an agreement for the lease, charter or interchange of the aircraft or any similar arrangement by an operator who has his principal place of business or, if he has no such place of business, his permanent residence in another Contracting State, the State of Registry may, by agreement with such other State, transfer to it all or part of its functions and duties as State of Registry in respect of that aircraft under Articles 12, 30, 31 and 32(a). The State of Registry shall be relieved of responsibility in respect of the functions and duties transferred.
2. The transfer shall not have effect in respect of other Contracting States before either the agreement between States in which it is embodied has been registered with the Council and made public pursuant to Article 83 or the existence and scope of the agreement have been directly communicated to the authorities of the other Contracting State or States concerned by a State party to the agreement.
3. The provisions of paragraphs (a) and (b) above shall also be applicable to cases covered by Article 77.”

- 1.2.10 The protocol relating to the amendment of the Convention was signed in Montreal, 6 October 1980. This amendment came into force upon ratification by 98 Contracting States on 20 June 1997. Sri Lanka ratified this protocol on 27 December 2000.
- 1.2.11 The primary purpose of the transfer of certain functions under an Article 83 bis agreement should be to enhance safety oversight capabilities by delegating responsibility for oversight to the State of the Operator, recognizing that this State is in a better position to carry out these responsibilities.

**1.3 Local Legislative Provisions**

- 1.3.1 An aircraft which is registered in a State party to the Convention other than Sri Lanka, may be operated in Sri Lanka under an agreement for the lease, charter or interchange of the aircraft or any other similar arrangement, provided that an agreement has been reached with regard to the transfer of functions and duties relating to safety over-sight and its operations, between the aeronautical authority of the State with which such aircraft is registered and the Director-General, pursuant to Article 83 bis of the Convention, and the application of the

provisions of this Act or any regulations or rules made thereunder, shall be to the extent specified in such agreement.

- 1.3.2 The Director-General may, where he considers it feasible and subject to the approval of the Authority, agree with the aviation authorities of any other State party to the Convention, for the transfer of the functions and duties of the State with which such aircraft is registered relating to safety oversight of an aircraft registered in Sri Lanka, which is to be operated by an operator of another State, pursuant to an agreement for the lease, charter or interchange of the aircraft or any other similar arrangement, and the nature and scope of the duties and functions so transferred to that State, shall be to the extent mentioned in such agreement.
- 1.3.3 The Director-General may, for a period not more than three months and subject to such conditions as may be prescribed, waive the requirement under subsection (1) in respect of an operator who already holds a valid Air Operator Certificate, provided that the proposed arrangement in the opinion of the Director-General, meets the requirements in respect of safety.

#### **1.4 Additional Considerations and other Requirements**

- 1.4.1 However, before agreeing to transfer any functions, the CAA-Sri Lanka should determine that the State of the Operator is fully capable of carrying out the functions to be transferred in accordance with the Convention and ICAO SARPs. This determination can be accomplished by various means, including a safety oversight audit conducted by the Sri Lanka or through review of reports of safety oversight audits conducted, either by ICAO under the Universal Safety Oversight Audit Programme (USOAP), or by another Contracting State.
- 1.4.2 There may be circumstances where Sri Lanka is unable to reach agreement on the delegation and acceptance of responsibilities as provided for in Article 83 bis or where delegation is not an alternative that is acceptable. In such circumstances the CAA Sri Lanka would retain responsibility for maintaining proper surveillance of aircraft on its registry when operated under lease arrangements under the authority of another State.
- 1.4.3 The Note 1, to Annex 6, Part I, Chapter 3 was further revised by Amendment 16 to Annex 6, Part I in 1983, when reference to Article 83 bis was introduced to indicate the means by which States could proceed pending the entry into force of Article 83 bis. This note was again revised in 1998, by Amendment 23 to Annex 6, Part I, to indicate that Article 83 bis had entered into force 20 June 1997.
- 1.4.4 The CAA Staff should carefully evaluate whether the State with which a lease agreement is proposed to be entered, has ratified the Article 83bis to the Convention on International Civil Aviation for this purpose, before granting approval. CAA Staff may visit [http://www.icao.int/icao/en/leb/statusForms/composite\\_table.pdf](http://www.icao.int/icao/en/leb/statusForms/composite_table.pdf).
- 1.4.5 A model agreement has been developed by ICAO on the basis of agreements registered with ICAO and taking into account other related information. This model agreement is provided in the Appendix-A. It should be noted that the agreement is an example of only one of the numerous possibilities for which CAA-Sri Lanka can opt, since Article 83 bis provides that all or part of the referenced functions and duties of the State of Registry may be subject to such a transfer to the State of the Operator.
- 1.4.6 In addition to the agreement aforementioned, the CAA Sri Lanka shall also enter into a Memorandum of Understanding for the delegation of safety oversight functions in respect of

aircraft subjected to the lease. For this purpose the CAA staff may be guided by the Model Delegation of responsibilities in Appendix – B.

- 1.4.7 Agreements or arrangements for the transfer of responsibilities under the terms of Article 83 bis are required to be registered with ICAO.
- 1.4.8 Where delegation of responsibility is not a viable solution, the CAA-Sri Lanka may have to consider the following alternatives:
- a) cancellation of registration of the aircraft when it is dry leased to operators from States that are unwilling to accept delegated responsibility or whose safety programmes are not considered adequate for acceptance of delegated responsibility;
  - b) When aircraft on its registry is dry leased to operators from other States, it must be operated in accordance with the regulations of the State of the Operator; or
  - c) Endeavor to obtain additional technical staffing and funding to maintain acceptable surveillance over the operation of aircraft on its registry that are leased to operators from other States.
- 1.4.9 CAA-Sri Lanka may restrict dry leasing by local operators, of aircraft which are registered in other States, from sources in other States, to types of aircraft that are currently on the Civil Aircraft Register of Sri Lanka.
- 1.4.10 CAA-Sri Lanka may restrict wet leasing by their operators from sources in other States, of aircraft which are registered in other States, to types of aircraft that are within the current capability of the lessee to properly handle and dispatch.
- a) Aircraft under dry leasing or wet leasing, shall be in Maintenance Steering Group (MSG 03) for large aircraft. (MTOW 75700kg).
- 1.4.11 This general summary concerning leased aircraft is intended primarily to acquaint CAA-Inspectors and operators with problems that may arise where an operator, using leased aircraft registered in another State, may have to comply with a confusing combination of:
- a) Regulations of the State of Registry;
  - b) Regulations of the State of the Operator; and
  - c) The operating regulations and rules of a third State over whose territory operations may be conducted.
- 1.4.12 In case the aircraft which is leased, is to enter the airspace of Contracting States which have not ratified and become parties to Article 83 bis, or which have not duly been advised about a transfer agreement in accordance with this Provision, the certificates and licences on board the aircraft should be issued or rendered valid by the State of Registry remain fully responsible in regard to Article 30, 31 and 32 (a) of the Convention despite the transfer agreement with the State of the Operator.
- 1.4.13 For the purpose of identifying the States responsible for safety oversight on the occasion of any verification process such as ramp inspection, a certified true copy of the transfer agreement should be carried on board the aircraft at all times while the transfer agreement is in force. It is also necessary that a certified true copy of the AOC under which the aircraft is operated, and in which it should listed, to be carried on board.

1.4.14 For any foreign aircraft operated by an airline of another State under a lease/ interchange arrangement, the operating carrier shall submit a certified copy to the CAASL of the lease/ interchange agreement which has been signed between the relevant State of the Operator and State of Registry under Article 83bis, unless such agreement has already been registered with the ICAO Council pursuant to Article 83bis.

## **2 Dry lease**

### **2.1 General**

2.1.1 Under most dry lease agreements the lessee, who provides the crew, is the responsible party who must exercise operational control over the aircraft with all the attendant responsibilities.

2.1.2 If the lessee does not have operational control of the leased aircraft under the lease agreement, the CAA Staff must carefully evaluate the arrangements to ensure that the operation can be conducted with an adequate level of safety in accordance with the applicable regulations.

2.1.3 When an applicant for an AOC, or an existing operator, wishes to use dry leased aircraft, the applicant or operator should provide the DGCA with the following information:

- a) the aircraft type and serial number;
- b) the name and address of the registered owner;
- c) State of Registry, nationality and registration marks;
- d) Certificate of airworthiness and statement from the registered owner that the aircraft fully complies with the airworthiness requirements of the State of Registry;
- e) name, address and signature of lessee or person responsible for operational control of the aircraft under the lease agreement, including a statement that such individual and the parties to the lease agreement fully understand their respective responsibilities under the applicable regulations;
- f) copy of the lease agreement or description of lease provisions;
- g) duration of the lease; and
- h) Areas of operation.

**2.2** After careful review within the authority and liaison as necessary with other competent authorities, the DGCA will make the determination as to which party to the lease agreement is in fact responsible for the conduct of the operation. In making this determination, the DGCA will consider the responsibilities of the parties under the lease agreement for:

- a) flight crew member certification and training;
- b) cabin crew member training;
- c) airworthiness of the aircraft and the performance of maintenance;
- d) operational control, including dispatch and flight following;
- e) scheduling of flight crew and cabin crew members; and
- f) Signing the maintenance release.



- 2.2.1 If the lease arrangement is determined to be a dry lease, where the lessor and the lessee have their principal place of business or, if there is no such place of business, their permanent residence in Sri Lanka, and that the lease agreement involves aircraft that possess valid certificates of registration and certificates of airworthiness issued by Sri Lanka, the problems of compliance with the safety regulations can be readily managed and proper surveillance provided for the operation of the aircraft.
- 2.2.2 If the dry lease arrangement is acceptable to the CAA, operations specifications should be developed and issued to the lessee containing at least the following data:
- a) names of the parties to the lease agreement and the duration thereof;
  - b) nationality and registration marks of each aircraft involved in the agreement;
  - c) type of aircraft to be used;
  - d) areas of operation; and
  - e) Regulations applicable to the operation.
- 2.2.3 In cases where the dry lease involves an aircraft of a nationality different from the Sri Lanka, the regulatory and compliance problems become more acute. As with other applications for the use of dry leased aircraft, the operator, who is the lessee, shall provide the DGCA with the information required by 2.1.3.
- 2.2.4 When Sri Lanka, being the State of Registry cannot carry out its oversight functions in accordance with the Convention and it cannot reach a satisfactory agreement with the State of the Operator on the transfer of its oversight functions pursuant to Article 83 bis, the use of aircraft under dry lease arrangements should be discouraged.
- 2.2.5 Should the parties to the proposed dry lease agreement wish to pursue the matter, the lessor, or the lessee, may endeavor to enter the aircraft, which is the subject of the proposed lease, on the registry of the State of the Operator of the lessee. This change of registration of the leased aircraft would help to ensure that an adequate level of safety oversight is being applied to the operation of the leased aircraft.
- 2.2.6 If the aircraft owned by individuals or companies of a nationality different from Sri Lanka to be placed on the Civil Aircraft Registry of Sri Lanka, the following requirements should be fulfilled.
- a) the aircraft should be subject to the airworthiness certification, maintenance and inspection procedures of Sri Lanka;
  - b) the responsibility or custody of the aircraft and control of all operations be vested in the lessee;
  - c) the responsibility for the airworthiness and maintenance of the aircraft be vested in the lessee;
  - d) the duration of the lease be clearly established; and
  - e) the registration of the aircraft be valid so long as the lease is in force and,
  - f) the aircraft is operated in accordance with the regulations of Sri Lanka, the terms or conditions specified in the operator's AOC, the associated operations specifications and the operations and maintenance control manuals.

- 2.2.7 Where a dry lease has been agreed but no delegation of responsibility has been agreed to between Sri Lanka and the State concerned and regardless of the registration of the dry leased aircraft, the lessee should ensure that:
- a) the flight crew hold current valid and appropriate certificates or licences issued or validated by the State of Registry;
  - b) the aircraft will be maintained in accordance with the airworthiness requirements of the State of Registry; and
  - c) the aircraft will be operated in compliance with the applicable regulations of the State of Registry and the State of the Operator, the operator's AOC, the associated operations specifications and the operations and maintenance control manuals.
- 2.2.8 Several practical problems confront a local operator who arranges a dry lease for an aircraft registered in another State. In order to satisfy the requirements of Article 32 (a) of the Convention, the operator must use flight crew and maintenance personnel who possess current and valid certificates or licences issued by the State of Registry. This may be accomplished by employing persons who already possess such certificates or licences. Alternatively, if this is not feasible or desirable, the operator must arrange for personnel already employed to take the necessary written and flight tests or practical examinations in order to obtain appropriate certificates or licences from the State of Registry. This may involve sending flight crew and maintenance personnel to the State of Registry for the requisite written examinations. Upon successful completion of these tests, arrangements must be made for these individuals to take the required flight tests or practical examinations leading to appropriate certification or licensing by the State of Registry of the leased aircraft. In this context the operator may have to pre-position personnel with the aircraft to be leased, in the State of Registry and make appropriate arrangements for the conduct of written and practical tests and the issue of certificates and licences.
- 2.2.9 Perhaps the least costly method of overcoming the problem mentioned above is to arrange for the State of Registry to validate licences or certificates issued by Sri Lanka or by another State, to the operator's personnel. Such validations would be subject to requirements established by the State of Registry.
- 2.2.10 Another low cost option would be to have the State of Registry send an inspector to Sri Lanka, where the personnel and aircraft are located, to administer the required testing and certification for the operator's personnel. However, if such an arrangement is acceptable to the competent authority of the State of Registry, it may require reimbursement of the costs involved in providing such certification services.
- 2.2.11 Once the necessary certification, licensing, or validation of certificates and licences, has been accomplished, the question arises concerning whether the State of Registry or the State of the Operator is responsible for ensuring that these individuals satisfy recent experience requirements and maintain their licence qualifications required under the regulations of the State of Registry.
- 2.2.12 The question of compliance with the airworthiness requirements of the State of Registry is another serious problem inherent in a dry lease arrangement.
- 2.2.13 The CAA Staff must carefully evaluate all aspects of a dry lease arrangement before authorizing the use of such aircraft by a local operator. Once authorized, it is especially important for the CAA-Sri Lanka to carefully monitor the operations and maintenance of the leased aircraft. Should the CAA-Sri Lanka have reason to believe that an operator is not

complying with the regulations of the State of Registry, the competent authority of the State of Registry should be advised and a request made that the matter be investigated.

2.2.14 If CAA-Sri Lanka has accepted a delegation of responsibility from the State of Registry, the CAA Sri Lanka must ensure that the operator is complying fully with its regulations with respect to the dry leased aircraft.

### **3 Wet lease**

#### **3.1 General**

3.1.1 In wet leases the lessor normally exercises operational control of the aircraft. A wet lease situation therefore means that an aircraft will be operated under an AOC issued by the State of the lessor. In this case the State of the Operator may also be the State of Registry of the leased aircraft.

3.1.2 The terms of a wet lease agreement are important, since they may obscure the true relationship between, and the obligations of, the parties to the agreement.

3.1.3 Additional information may be needed by the CAA- Sri Lanka to determine the exact situation. The actual lease arrangements and other relevant information must be examined by the DGCA who are responsible for monitoring the operation of the wet leased aircraft. The final determination of responsibility for the exercise of operational control will depend upon a careful examination of all the factors in the particular situation.

3.1.4 Where both parties to a wet lease agreement hold AOCs, serious factual questions arise concerning which party, the lessor or the lessee, is actually responsible for the operation and compliance with the applicable safety regulations. The DGCA, if the lessor and lessee are from different States, must resolve such questions before operations involving use of the wet leased aircraft can be commenced.

3.1.5 Normally the decision as to whether the lessor or the lessee is responsible for the safety of the operation must be made by the DGCA or a designated representative assigned to supervise the operations conducted by the lessee.

3.1.6 Consultation and co-ordination with counterparts from the State of the Operator of the lessor of the aircraft, who are assigned to work with the lessor, are most important in this decision process. The decision must be made whether the aircraft should be operated under the lessor's AOC and associated operations specifications, or whether it should be operated under the authority of the lessee.

3.1.7 The usual determination is that if a party, the lessor, leases an aircraft to another and also provides the flight crew, maintenance and fuel for the aircraft, the lessor of the aircraft is regarded as the operator.

3.1.8 If the lessor makes a charge for the use of the aircraft and related service, the operation of the aircraft will be subject to the applicable regulations of the State of the Operator of the lessor.

3.1.9 Operational control of the aircraft may be the responsibility of the lessor even though the lease may be characterized in terms similar to those of a dry lease, expressly stating that services such as flight following, communications, weather information, etc. are to be performed by the lessee. In some instances, it is therefore necessary to examine the manner

in which the operations are to be conducted, to determine which party to a lease will actually have operational control and hence responsibility and accountability for safety.

- 3.1.10 In the rare event that there is a determination that the lessee will be the operator of a wet leased aircraft under a wet lease agreement, the responsible authority must determine whether the lessee can effectively maintain operational control of the aircraft. In such cases, the training and supervision of the flight crew, including how they are to be integrated into the lessee's operations, become critical considerations. If it is apparent that the lessee will not be able to maintain effective operational control under the terms of the agreement, the DGCA must require that those terms be modified prior to granting approval for the proposed wet lease.
- 3.1.11 Additional complications may arise when an aircraft, dry leased to an operator, is registered in a State (State of Registry) different from the State (State of the Operator) responsible for the operator currently using that aircraft under the dry lease, and this operator is proposing to further lease the aircraft, as a wet lease, to another operator, possibly in a third State. In such cases there may be an agreement under Article 83 bis between the State of Registry of the aircraft and the State of the Operator or, the State of Registry may seek such an agreement because of a proposed wet lease to an operator from a third State. For example, an authority may conclude that although it can effectively carry out the State of Registry responsibilities when the aircraft is dry leased to an operator in another State, it cannot effectively execute those same responsibilities when that operator decides to wet lease the aircraft to a lessee in a third State.
- 3.1.12 Practical safety problems develop in wet lease operations when the lessor provides only the flight crew while the lessee provides the cabin crew. In such cases, the cabin crew members, employed by the lessee, will not be familiar with the aircraft, associated emergency equipment and the emergency procedures used by the flight crew. In these circumstances the lessee's cabin crew members will need to receive additional training, under the approved training programme of the lessor, with respect to their emergency duties on the particular aircraft. In addition, they may have no knowledge of the requirements of the lessor's State of the Operator with respect to flight and duty time limitations and the provision of rest periods, and to the performance of their duties and responsibilities aboard the wet leased aircraft. These aspects must also be taken into account.
- 3.1.13 In some instances the registered owner of an aircraft involved in a wet lease does not possess an AOC or may not have experience or knowledge regarding aircraft operations. Difficult questions arise when such an owner wishes to lease aircraft to an operator of another State who has been granted an AOC by that State to operate wet leased aircraft. In such cases the same questions and problems regarding operator and State responsibility, as referred to earlier in Part V, need to be addressed and resolved.

## **3.2 Short term wet lease, charter or sub-charter**

- 3.2.1 Some wet leasing operations, charters or sub-charters, are organized for short terms at very short notice, for example, where an operator wishes to replace an unserviceable aircraft on a particular service and is forced to contract with another operator for that service to be operated.
- 3.2.2 DGCA should be consulted for operators to be provided with lists of approved lessors and lessees to facilitate such short term leases or charters.

3.2.3 In order to facilitate operations and such leases, information on the need for this type of arrangement and the possible lessors, would be sought by DGCA from its operators such that appropriate arrangements could be put in place to enable approval for an actual short term wet lease or charter to be given very quickly.

3.2.4 In the case of short term wet lease, charter or sub-charter, the lessor will retain all responsibilities and operational control.

#### **4 Code share arrangements**

4.1 Code sharing is a marketing arrangement under which an airline places its designator code on a flight operated by another airline, and sells and issues tickets for that flight. Operators throughout the world continue to form code share alliances to strengthen or expand their market presence or competitive ability such arrangements shall be approved by the DGCA if one or more parties of the arrangement are local operators.

4.2 In deciding whether to authorize a code share arrangement, DGCA may consider whether the arrangement is in the public interest. Where the code share will involve an operator from another State, such public interest determinations should include consideration of whether the operations of that operator meet an acceptable level of safety. In making these safety determinations, the responsible authority should consider whether or not that operator will conduct operations in accordance with standards that meet or exceed minimum international standards.

4.3 In considering the safety of a proposed code share involving an operator from another State, the DGCA may consider requiring an audit of the standards maintained by that operator in conducting its operations. Such a system of code share audits should establish criteria for determining satisfactory audit results. The initial audit would be followed by periodic audits for the duration of the code share arrangement. Should an audit reveal that an operator was failing to maintain a satisfactory standard of safety, the responsible authority should withhold or withdraw its approval of the code share.

4.4 A code share audit of the standards maintained by an operator from another State may, at the discretion of the DGCA , be performed by a third party provider, using one of the internationally recognized evaluation systems, which are designed to assess the operational, management and control systems of the operator.

4.5 DGCA may consider requiring an operator to monitor a code share partner from another State on an ongoing basis. Such monitoring of a code share partner should include the following factors:

- a) accident/incident rates;
- b) the carrier's financial condition, ownership and economic condition;
- c) the carrier's management, operating history, current organization, sophistication, and stability (including any turnover of key personnel, strikes, etc.);
- d) age of equipment, equipment on order, and equipment being returned;
- e) operational capabilities (e.g. international service as compared to only domestic service) and established infrastructure (e.g. approved maintenance and repair facilities, flight simulation training devices, etc.); and

- f) the interface and cooperation between code share partners, including familiarity with personnel, sharing of data through meetings, conferences, etc.

## **5 Franchising**

- 5.1** The Manual on the Regulation of International Air Transport (Doc 9626) describes the concept and provides examples of franchise agreements. Airline franchising is a commercial arrangement that involves a franchiser carrier granting a franchise or right to use various of its corporate identity elements (such as its flight designator code, livery and marketing symbols) to a franchisee carrier to market or deliver the latter's air service products, typically subject to standards and controls intended to maintain the quality desired by the franchiser. Generally, this increasingly common practice consists of a large airline franchising part of its short and medium haul network to smaller, more cost-efficient carriers.
- 5.2** Franchising arrangements are independent of, but may coexist with, a code-sharing arrangement.
- 5.3** Under Annex 6 provisions, an air operator is responsible for conducting the commercial operations in accordance with the air operator certificate issued by the State of the Operator. Therefore, franchising flights are conducted under the responsibility of the operator that is actually operating the flight no matter what the aircraft livery or flight number might be. The oversight of such operation is normally conducted by the State of the Operator. However, if the operator uses aircraft registered in a State other than that of the operator, oversight may be required by the State of Registry if an agreement such as Article 83 bis or a bilateral agreement is not in place between the States concerned.
- 5.4** A franchising arrangement allows a franchisee airline to use the name or assume the public face of a franchisor airline of another or the same State. While such alliances can serve to "multi nationalize" the economic identity of an operation, they can also add complexity to the exercise of safety oversight by States. Hence if a Sri Lanka registered operator intends engaging in such operations, approval of the DGCA should be obtained after satisfying him in regard to oversight responsibilities for aircraft operations, including those under various commercial cooperative arrangements such as franchising.

## **6 Interchange**

- 6.1** The Manual on the Regulation of International Air Transport (Doc 9626) defines the concept of interchange as follows: an aircraft interchange or interchange flight is a regularly scheduled, single-plane through service linking a route of one air carrier at the interchange point to a route of a second air carrier, with the same aircraft being crewed by and under the operational control of the respective authorized carrier on each route.
- 6.2** An interchange provides passengers with the benefit of a single-plane service on what is essentially an interline operation and may provide additional benefits to the carriers involved in terms of better aircraft utilization.
- 6.3** Interchange operations may involve operators from two States of the Operator, neither of which may be the State of Registry of the aircraft involved. It is therefore necessary to obtain the approval of the DGCA for such operation having made it clear to him about the intended operations and associated responsibilities. Whilst in the case of interchange there can be no confusion over which operator operational control, other aspects has are similar to those encountered when aircraft are leased under a dry lease.

## Appendix – A

### MODEL AGREEMENT BETWEEN STATES

#### DELEGATION AGREEMENT BETWEEN [STATE X] AND [STATE Y] ON THE IMPLEMENTATION OF ARTICLE 83 bis OF THE CONVENTION ON INTERNATIONAL CIVIL AVIATION

WHEREAS the Protocol relating to Article 83 bis of the Convention on International Civil Aviation (Chicago, 1944) (hereinafter referred to as "the Convention"), to which [State X] and [State Y] are parties, entered into force on 20 June 1997.

WHEREAS Article 83 bis, with a view to enhanced safety, provides for the possibility of transferring to the State of the Operator all or part of the State of Registry's functions and duties pertaining to Articles 12, 30, 31 and 32 a) of the Convention;

WHEREAS, in line with ICAO Doc 9642, Part VIII, Chapter 1, and in light of ICAO Doc 8335, Chapter 10, it is necessary to precisely establish the international obligations and responsibilities of [State X] (State of Registry) and [State Y] (State of the Operator) in accordance with the Convention;

WHEREAS with reference to the relevant Annexes to the Convention, this Agreement organizes the transfer from [State X] to [State Y] of responsibilities normally carried out by the State of Registry, as set out in paragraph 3 below;

The Civil Aviation Authority of [State X] - [CAA X] [address]

And

The Civil Aviation Authority of [State Y] - [CAA Y] [address]

Hereinafter referred to as "the Parties" have agreed, as follows, on behalf of their respective Governments, based on Articles 33 and 83 bis of the Convention:

#### General

1. In pursuance of the Convention and [law of State X], [State X] shall be relieved of responsibility in respect of the functions and duties transferred to [State Y] upon due publication or notification of this Agreement as determined in paragraph b) of Article 83 bis.
2. The scope of this Agreement shall be limited to aircraft on the register of civil aircraft of [State X] and operated under leasing arrangement by [operator 1] and [operator 2], whose principal place of business is in [State Y].

#### Definitions

**Lessor.** Registered owner or operator of the aircraft.

**Lessee.** Operator under the AOC by which the leased aircraft is operated.

The list of aircraft concerned, identified by type, registration number and serial number, is reproduced in Schedule 1 attached, which also indicates the expiry date of each listed aircraft leasing arrangement.

### **Transferred responsibilities**

3. Under this Agreement, the Parties agree that [State X] transfer to [State Y] the following responsibilities, including oversight and control of relevant items contained in the respective Annexes to the Convention:

Annex 1 - Personnel licensing, issuance or validation of licences issued or rendered valid by [CAA Y].

Annex 2 - Rules of the Air, enforcement of compliance with applicable rules and regulations relating to the flight and maneuver of aircraft.

Annex 6 - Operation of Aircraft (Part I - International Commercial Air Transport - Aeroplanes) all responsibilities which are normally incumbent upon the State of Registry. Where responsibilities in Annex 6, Part I, may conflict with responsibilities in Annex 8 - Airworthiness of Aircraft, allocation of specific responsibilities are defined in the attached Appendix No. 01.

Annex 8 - Under this Agreement, while the lessor Authority ([State XD]) will retain responsibility under the Convention for the regulatory oversight and control of the aircraft registered on its register in accordance with Annex 8 - Airworthiness of Aircraft, the responsibility for the maintenance surveillance of leased aircraft, operated under the AOC of the lessee, is hereby transferred to the lessee Authority ([State YD]), including responsibilities in accordance with Annex 8, Part II, 3.4, Aircraft limitations and information, 3.5, Temporary loss of airworthiness, and Chapter 4, Continuing Airworthiness of Aircraft. (Appendix No. 01) hereunder describes the responsibilities of the Parties regarding the continuing airworthiness of aircraft.

### **Notification**

4. Responsibility for notifying directly any States concerned of the existence and contents of this Agreement pursuant to Article 83 bis rests with the State of the Operator, [State Y]. This Agreement, as well as any amendments to it, will also be registered with ICAO by [CAA X] or [CAA Y] as required by Article 83 of the Convention and in accordance with the Rules for Registration with ICAO of Aeronautical Agreements and Arrangements (ICAO Doc 6685).
5. A certified true copy of this Agreement shall be placed on board each aircraft to which this Agreement applies. A certified true copy of the AOC issued to [operator 1] and [operator 2] by [CAA Y] in which the aircraft concerned will be duly listed and properly identified, will be carried on board each aircraft.

### **Coordination**

6. Meetings between [CAA Y] and [CAA X] will be arranged, as necessary, to discuss both operational and airworthiness matters resulting from inspections that have been conducted by the respective inspectors. These meetings may take place at the respective authorities' offices. The following subjects may be reviewed during these meetings:
- Flight operations
  - Continuing airworthiness surveillance and aircraft maintenance
  - Operator's control manual procedure, as applicable
  - Any other significant matters arising from inspections.



**Final**

7. This Agreement will enter into force on its date of signature and end at the culmination of the respective aircraft leasing arrangements under which they are operated. The Parties shall agree in writing to any modification of this Agreement.

This Agreement is accepted and signed by:

Director [CAA X]  
Y]

Director [CAA

**Attachments:** Schedule 1 - Delegated Aircraft Affected by this Agreement

Appendix No. 01- Responsibilities of [State X] and [State Y] Regarding Airworthiness

### Schedule 1

#### AIRCRAFT AFFECTED BY THIS AGREEMENT

Operator	Aircraft Type	Registration Mark	Serial Number
[...]	[...]	[...]	[...]

### Appendix No. 01

#### RESPONSIBILITIES OF [STATE X] AND [STATE Y] REGARDING AIRWORTHINESS

##### I - PURPOSE

The purpose of this appendix is to provide detailed working arrangements between [CAA X] and [CAA Y] to allow them to discharge their responsibilities for the continuing airworthiness of dry-leased aircraft while being operated in commercial air transportation by [State Y] operators.

##### II - IMPLEMENTATION

For implementation, the points of contact of the authorities are the following for all questions regarding airworthiness, major changes and matters of principle:

[CAA X address and numbers] [CAA Y address and numbers]

As far as the current activities to be performed in accordance with these procedures are concerned,

[CAA X] inspectors in charge of a specific [State X] registered aircraft will coordinate their specific intervention and the necessary exchange of information related to the present procedures.

##### III - TYPE DESIGN DEFINITION

The aircraft must conform to the type design approved or otherwise accepted by the State of Registry Authority.

The State of the Operator Authority will be responsible for supervising continuous compliance with this requirement after delivery for the period the aircraft is being operated by the national operator under [State X] registration marks.

#### **IV - CHANGES TO THE TYPE DESIGN**

The express permission of the aircraft's registered owner is required prior to the incorporation of any modification.

1. Changes generated by the organization responsible for the type design and approved by the State of Design Authority.

Changes generated by the organization responsible for the type design (typically in the form of aircraft manufacturer's service bulletins) and approved by the State of Design Authority are approved for incorporation in the series of aircraft to which the modification relates provided that no deviation from the modification is made.

2. Other changes.

Changes to the type design are classified as major or minor by the State of Design Authority and/or by the State of Registry Authority and approved in accordance with the following procedure.

Changes to aircraft shall be approved by the State of Registry Authority for [State X] registered aircraft. Approval requirements procedures are specified in [State X] aeronautical notice [reference].

3. Embodiment of approved changes.

Embodiment on aircraft of the design changes approved in accordance with the above procedure will be performed by an appropriately approved/accepted maintenance organization. Maintenance work shall be carried out and released by personnel licensed or qualified in accordance with [CAA Y] requirements.

#### **V - FLIGHT MANUAL**

The aircraft must be operated within the limitations described in the flight manual approved by the State of Registry Authority but may include amendments approved by the State of the Operator Authority subject to their acceptance by the State of Registry Authority.

#### **VI - CONTINUING AIRWORTHINESS**

In accordance with ICAO Annex 8, the State of Registry Authority shall adopt, or assess and take appropriate actions against, the mandatory airworthiness information issued by the State of Design Authority. The State of Registry Authority may also issue and make mandatory other airworthiness actions in respect of leased aircraft in addition to those mentioned earlier.

In application of the principles stated above, leased aircraft must comply with State of Registry's airworthiness directives (ADs) or other State of Registry mandatory airworthiness actions or information. The State of the Operator Authority shall ensure that the lessee is in receipt, in accordance with the system established by the State of Registry Authority, of all the applicable ADs or other mandatory airworthiness actions issued by the State of Registry

Authority. For [State X] registered aircraft in particular, all ADs issued by the State of Design applicable to the specific aircraft, products, parts and appliances thereof shall apply.

The State of the Operator Authority will be responsible to ensure that all applicable ADs and other mandatory airworthiness actions issued by the State of Registry Authority are properly applied to leased aircraft.

Derogations of the State of Registry Authority ADs or other mandatory airworthiness actions, if requested, will be coordinated between [CAA X] and [CAA Y] on a case-by-case basis.

The State of the Operator shall ensure that in-service events on the aircraft are reported by the lessee operator to its Authority in accordance with the national occurrence reporting-system requirements.

The State of the Operator Authority will be responsible for defining to the operator the type of service information to be reported to the State of Registry Authority. (ICAO Annex 6, Part I, 8.5.1, and Annex 8, Part II, 4.2.8, refer.) The document ([CAA X] - Aeronautical Notice [reference] (latest issue)) describes the type of in-service information to be reported.

The State of the Operator Authority will ensure that a copy of reports on significant events that affect or could affect the continuing airworthiness of leased aircraft or invalidate their C of A is also forwarded by the lessee operator to the State of Registry Authority in order to allow proper corrective action. In such cases, the State of Registry Authority will accept that, in accordance with ICAO Annex 8, 6.2.1, the State of the Operator Authority is entitled to prevent the aircraft from resuming flight subject to the State of the Operator Authority advising the State of Registry Authority that they have taken suitable action.

The State of the Operator Authority shall ensure that the lessee operator transmits information on significant events affecting continuing airworthiness of leased aircraft to the organization responsible for the type design (ICAO Annex 6, Part I, 8.5.1, and Annex 8, Part II, 4.2.5, refer).

The State of the Operator Authority and the State of Registry Authority will ensure the mutual exchange of information on any result arising from the investigation phases of significant in-service events in respect of leased aircraft.

The State of the Operator Authority will ensure that the operator obtains and assesses airworthiness information and recommendations available from the type design organizations and implements the resulting actions considered necessary by the State of the Operator Authority and the State of Registry Authority (ICAO Annex 6, Part I, 8.5.2, refers).

The State of the Operator Authority will ensure that the operator monitors and assesses maintenance and operational experience with respect to continuing airworthiness, flight safety and accident prevention (ICAO Annex 6, Part I, 3.6 and 8.5.1 refer). Relevant procedures shall be specified in the operator's maintenance manual exposition (MME) or maintenance control manual (MCM).

## **VII - REPAIRS**

Application of repairs on aircraft will be made under the surveillance and responsibility of the State of the Operator Authority according to its usual procedures. All major repairs, unless contained in the SRM, shall be approved by the State of Design Authority and the State of Registry Authority. Any damage resulting from a major incident should be notified to the State of Registry Authority prior to the commencement of any repair.

## **VIII - MAINTENANCE**

The State of the Operator Authority shall ensure that the operator's MME or equivalent manual (e.g. MCM) and aircraft maintenance programme comply with the State of Registry and State of the Operator requirements as specified in this appendix. The State of the Operator Authority shall approve the MME or MCM and any revision thereof and ensure that the relevant copies are sent to the State of Registry Authority.

Leased aircraft, its engines and equipment will be maintained in accordance with the State of Registry Authority's approved maintenance programme, with the approval of the State of the Operator Authority. Any permanent variation (e.g. interval escalation, changes to content and classification of, or deletion of maintenance tasks) to the aircraft maintenance programme shall be approved by the State of Registry Authority with the agreement of the State of the Operator Authority. The maintenance programme will be based on the Maintenance Review Board (MRB) report, manufacturer recommendations (e.g. maintenance planning document) or internationally recognized standards, etc. Where a reliability programme forms part of, or is a condition within, the approved maintenance schedule approved by the State of Registry and the State of the Operator Authority, the State of the Operator Authority will ensure that the reliability programme complies with national procedures and will monitor the effectiveness of such a programme.

The lessee operator shall provide a copy of the aircraft reliability report to the State of Registry Authority.

Maintenance and airworthiness records will be kept by the aircraft operator (lessee) in accordance with procedures approved by the State of the Operator Authority. The records will be transferred by the lessee to the lessor at the end of the leasing period.

## **IX - RECORDS**

The State of Registry Authority shall ensure that maintenance and in-service records and documentation relevant to the leased aircraft, as stated in ICAO Annex 6, Parts I and III, accompany or be made available to the lessee at the time of aircraft delivery.

The State of the Operator Authority will ensure that the operator is responsible for maintaining aircraft records and for transferring them to the lessor when the aircraft is leased back.

The records will include:

- a) Total time in service for the aircraft and life-limited components;
- b) Current compliance with all mandatory continuing airworthiness information;
- c) Details of modifications and repairs;
- d) Time in service since last overhaul and/or last inspection of the aircraft, instruments, equipment and components;
- e) Current aircraft inspection status; and
- f) Details on maintenance activities performed.

(ICAO Annex 6, Part I, 8.4, and Part III, 6.8; Annex 8, Part II, 4.2; and ICAO Doc 9642 - Continuing Airworthiness Manual, Part VIII, Appendix A, Section 3, refer.)

The State of the Operator Authority shall ensure that the lessee operator shall make these records available for the lessor and the State of Registry Authority at the end of the leasing period and for each aircraft C of A renewal.

Authorities will ensure that at the time of aircraft transfer presentation of these records is arranged looking at the indications and bearing in mind the principles laid down in ICAO Doc 9642 - Continuing Airworthiness Manual, Part VIII, Appendix A.

Issue, validation and renewal of the aircraft C of A by the State of Registry Authority shall be considered an endorsement of the status of the aircraft documentation and its associated maintenance records.

In the course of activities leading to the approval of the lease agreement and preceding aircraft delivery to the lessee, the [CAA X] and [CAA Y] inspectors in charge, with the assistance of the lessor and lessee, will coordinate to guarantee that the maintenance records and documentation used for the issuance, validation and renewal of the aircraft C of A by the State of Registry are those provided to the lessee for ensuring the continuing airworthiness of the aircraft during the lease period.

## **X - FLIGHT OPERATIONS AND AUTHORIZATION**

The State of the Operator Authority shall be responsible for the authorization of all operations in respect of a leased aircraft to be conducted in accordance with the State of Registry's approved aircraft flight manual and the State of the Operator Authority's approved operations manual.

The minimum equipment list (MEL) for each leased aircraft in accordance with which aircraft operations may be allowed shall be approved by the State of the Operator Authority and shall not be less restrictive than the relevant master minimum equipment list (MMEL) approved by the State of Design Authority.

A copy of the Operator's MEL, including the amendment service, shall be provided by the aircraft operator to the State of Registry Authority.

## **XI - SURVEILLANCE AND INSPECTION**

During the terms of a lease, the State of the Operator Authority shall accomplish surveillance activities and inspections in respect of leased aircraft and the lessee operator in accordance with its current procedures in order to verify that aircraft operations are conducted in accordance with the applicable standards of airworthiness, operating requirements and the terms and conditions specified in the present appendix. Each Authority shall notify the other Authority of any finding or act that affects the validity status of any certificate or documentation issued in respect of the leased aircraft or the terms and conditions of the lease authorization or the lessee operator.

## **XII - CERTIFICATE OF AIRWORTHINESS (C of A) RENEWAL**

The C of A will be renewed by the State of Registry Authority on the basis that the aircraft has been properly maintained and is in condition for safe operation. To this end, the State of

the Operator Authority shall ensure that the maintenance records be available at any time to the State of Registry Authority.

### **XIII - COOPERATION**

Each Authority shall ensure that the other Authority is kept informed of all applicable standards of airworthiness, operating requirements, design-related operational requirements and associated requirements of its State and will consult the other Authority on any proposed changes thereto to the extent that they may affect the implementation of this appendix. Each Authority shall render such assistance as may reasonably be required by the other Authority in carrying out inspections, investigations and other functions in respect of the leased aircraft.

For [CAA Y]

For [CAA X]

**Appendix -B****MODEL DELEGATION OF RESPONSIBILITIES****AGREEMENT BETWEEN [STATE X] AND [STATE Y] CONCERNING THE TRANSFER OF REGULATORY OVERSIGHT FUNCTIONS AND DUTIES**

WHEREAS the Protocol relating to Article 83 bis of the Convention on International Civil Aviation (Chicago, 1944) (hereinafter referred to as "the Convention"), to which [State X] and [State Y] are parties, entered into force on 20 June 1997;

WHEREAS Article 83 bis, with a view to enhanced safety, provides for the possibility of transferring to the State of the Operator all or part of the State of Registry's functions and duties pertaining to Articles 12, 30, 31 and 32 a) of the Convention;

WHEREAS, in line with ICAO Doc 9642, Part VIII, Chapter 1, and in light of ICAO Doc 8335, Chapter 10, it is necessary to establish precisely the international obligations and responsibilities of [State X] (State of Registry) and [State Y] (State of the Operator) in accordance with the Convention;

WHEREAS, with reference to the relevant Annexes to the Convention, this Agreement organizes the transfer from [State X] to [State Y] of functions and duties normally carried out by the State of Registry, as set out in Articles III and VI below;

The Government of [State X] and the Government of [State Y], hereinafter referred to as the "Parties";

Declaring their mutual commitment to the safety and efficiency of international aviation;

Recognizing that both Governments have a mutual interest in ensuring the flight safety of aircraft engaged in international air navigation for aircraft operating on the [State X] Register of Aircraft and Flight Crew under an Air Operator Certificate (AOC) issued by [State Y];

Desiring to ensure the continued safety of aircraft operating on the [State X] register under a transfer agreement;

Have agreed as follows:

**ARTICLE I**

The Agencies responsible for implementing this Agreement shall be [CAA X] for the Government of [State X] and [CAA Y] for the Government of [State Y].

**ARTICLE II**

This Agreement has been developed based on Articles 33 and 83 bis of the Convention. This Agreement pertains to the transfer of certain functions and duties contained in the International Civil Aviation Organization (ICAO) Annexes set out below between [CAA X] and [CAA Y] and is limited to aircraft on the [State X] register operated by [State Y] air operators as specified by type, registration mark and serial number in the attached Schedule 1. In line with Chapter 10 of Doc 8335 and Part VIII, Chapter 1 of Doc 9642 issued by ICAO, it is necessary to establish the international obligations and functions and duties, according to the Convention, of [State X] (State of Registry) and [State Y] (State of the Operator). In accordance with Article 83 bis, the State of Registry may, by agreement with the State of the Operator, transfer to it all or part of its functions and duties as the State of

Registry. The State of Registry shall be relieved of responsibility in respect of the functions and duties transferred.

### **ARTICLE III**

In the case of [State X] and [State Y], [State X] transfers to [State Y] the following functions and duties, including oversight and control of relevant items contained in the respective Annexes to the Convention:

Annex 1 - Personnel licensing, for licences issued or rendered valid by the State of the Operator, Annex 1, 1.2.2.

Annex 2 - Rules of the Air, enforcement of compliance with applicable rules and regulations relating to the flight and maneuver of aircraft.

Annex 6 - Operation of Aircraft, Part I - International Commercial Air Transport - Aeroplanes. Functions and duties that are normally incumbent on the State of Registry. Functions and duties that are normally incumbent on the State of the Operator need not be transferred. Where functions and duties in Annex 6 Part I (particularly Chapters 5, 6 and 8) may conflict with the functions and duties in Annex 8 - Airworthiness of Aircraft, allocation of specific functions and duties is defined in the attached Schedule 2.

[CAA X] will retain responsibility under the Convention for the regulatory oversight and control of the following ICAO Annex:

Annex 8 - Airworthiness of Aircraft.

### **ARTICLE IV**

Responsibility for notifying directly other States of the existence and contents of this Agreement pursuant to Article 83 bis b) rests with the State of the Operator. This Agreement, as well as any amendments to it, shall be registered with ICAO by the State of Registry or the State of the Operator in accordance with the Rules for Registration with ICAO of Aeronautical Agreements and Arrangements (ICAO Doc 6685).

### **ARTICLE V**

[CAA Y] shall ensure that a certified true copy of this Agreement in English and in [language] is placed on board each aircraft to which this Agreement applies. [CAA Y] shall also ensure that a certified true copy of the relevant AOCs issued, in which the aircraft concerned will be duly listed and properly identified, is carried on board each aircraft.

### **ARTICLE VI**

Under this Agreement, the only responsibility related to airworthiness transferred to [State Y] is the approval of line stations used by the Operator located away from the Operator's main base. This is accepted by [State Y].

### **ARTICLE VII**

The airworthiness procedures that are followed will be contained in the Operator's Maintenance Control Manual (MCM). Schedule 2 to this Agreement describes the functions and duties of the Parties related to airworthiness.



## ARTICLE VIII

Meetings between [CAA X] and [CAA Y] and other interested parties, upon request, will occur at six month intervals initially to discuss both operations and airworthiness matters resulting from inspections that have been conducted by the respective inspectors. These meetings will take place in [State X], the State of the Operator or on middle ground for the purpose of resolving any discrepancies found as a result of the inspections and in order to ensure that all parties are fully informed about the Operator's operations. The following subjects will be among those reviewed during these meetings:

- flight operations;
- continuing airworthiness and aircraft maintenance;
- any other significant matters arising from inspections; and
- operator's procedures, if applicable.

Notwithstanding these meetings, [CAA X] retains the right to conduct inspections or audits, as it deems necessary, in order to verify that [State Y] is fulfilling its safety oversight obligations as transferred from [State X]. [CAA X] will be permitted access to [CAA Y] documentation concerning the Operator. Such inspections will occur only after reasonable notice is given to [State Y].

## ARTICLE IX

During the execution of this Agreement, and prior to any aircraft subject to it being made the object of a sublease, [State Y], remaining the State of the Operator, shall inform [State X]. None of the functions and duties transferred from [State X] to [State Y] may be carried out under the authority of a third State without the express written agreement of [State X].

## ARTICLE X

Any disagreement concerning the interpretation or application of this Agreement shall be resolved by consultation between the Parties and shall not be referred to any international tribunal, arbitration or third-party settlement.

## ARTICLE XI

This Agreement may be amended by written agreement of the Parties.

## ARTICLE XII

This Agreement, which supersedes all previous Agreements between the Parties on this matter, shall enter into force upon signature of both Parties and shall remain in force until terminated.

In witness whereof, the undersigned Directors of [CAA X and CAA Y] have signed this present Agreement.

For the Government of State Y  
[DGCA CAA Y]

For the Government of State X  
[DGCA CAA X]

**Attachments:** Schedule 1 - Aircraft Affected by this Agreement  
Schedule 2 - Responsibilities of [State X] and [State Y] Related to Airworthiness

This Agreement is made in two copies, in English and in [language], and both are in force.

**Schedule 1****AIRCRAFT AFFECTED BY THIS AGREEMENT**

Operator	Aircraft Type	Registration Mark	Serial Number
[...]	[...]	[...]	[...]

**Schedule 2****RESPONSIBILITIES OF [STATE X] AND [STATE Y] RELATED TO AIRWORTHINESS**

ICAO Reference	Subject	Responsibilities of the State of Registry ([State X])	Responsibilities of the State of Operator ([State Y])
Annex 8, Part II, Chapter 4; Doc 9642, Part II, Chapter 1; Doc 9389, Chapter 1, 1.1.4, and Chapter 6, 6.1.2	Continuing airworthiness of aircraft	Develop or adopt requirements to ensure the continuing airworthiness of the aircraft during its service life. This requirement also covers the maintenance requirements of Annex 6 mentioned below.	
Annex 8, Part II, Chapter 4, 4.2.3, 4.2.4, 4.2.5; Doc 9642, Part VI, Chapter 1	Communication with the State of Design	Communicate with the State of Design	
Annex 8, Part II, Chapter 5; Doc 9642, Part IV, Chapter 3	Validity of the C of A	Issue and reissue the C of A	
Annex 8, Part II, Chapter 6, 6.2	Damage to Aircraft	Determine the condition of airworthiness of the aircraft	
Annex 6, Part I, Chapter 5, 5.2.3 and 5.2.4	Operation of aircraft in compliance with the terms of its C of A		Assume responsibility of State of Registry as defined in 5.2.4.
Annex 6, Part I, Chapter 8, 8.1	Operator's maintenance responsibilities		Ensure that the responsibilities are contained in the operator's MCM
Annex 6, Part I, Chapter 8, 8.2	Operator's MCM		Ensure that guidance is contained in an MCM acceptable to [State X]
Annex 6, Part I, Chapter 8, 8.3	Maintenance Programme	Approval of the Operator's	Ensure that maintenance

		maintenance programme.	programme responsibilities and development procedures are contained in the MCM
Annex 6, Part I, Chapter 8, 8.4	Maintenance Records	Inspect maintenance records and documents every six months.	Inspect in accordance with the requirements of the AOC.
Annex 6, Part I, Chapter 8, 8.5	Continuing airworthiness information	Ensure that all [State X] airworthiness requirements are understood by the operator.	Ensure that airworthiness reports are provided to [State X]
Annex 6, Part I, Chapter 8, 8.6; Doc 9642, Part VIII, Appendix A, 3.7	Modification and repairs	Ensure these are approved by the State of Design/Manufacture and issue approval	Ensure that procedures are contained in the Operator's MCM.
Annex 6, Part I, Chapter 8, 8.7;	Approved maintenance organization	Approval of the Operator's base maintenance organization and procedures for Chapter 8, 8.7	Approval of the Operator's line maintenance arrangements away from main base. Ensure that procedures are contained in the Operator's MCM.