

## Policy Statement Number: 40

**Subject:** The use of Article 83 *bis* agreements in the Overseas Territories

**Effective date of Implementation:** 23 January 2009

**ASSI File Reference:** UK/X/J/86/02 – Policy Statements

**Related Documents:** ICAO Circular 295  
PacMan Part 3, Procedure 17  
OTAR Part 39

### Rationale:

In certain OTs, financial and legal stability has led to a great demand for the registration of Commercial Air Transport (CAT) aircraft within their jurisdictions. These aircraft are then commonly leased to operators in other states in which the lessors do not wish to allow their aircraft to be registered.

It is often difficult for OTs to fulfil their State of Registry obligations in respect of these aircraft when they are operating in States which are geographically remote from the Territories in which they are registered. It was for just such a situation that ICAO developed Article 83 *bis* of the Chicago Convention.

The Article was introduced to facilitate the international charter and leasing of aircraft and allows the State of Registry to transfer all or part of its functions and duties to the State of Operator of the aircraft (with the latter's agreement). The articles of the Convention that can be included in any transfer are 12 (Rules of the Air), 30 (radio transmitting licence), 31 (Certificate of Airworthiness) and 32a (Flight Crew Licences). In light of the previously referred to geographical difficulties for oversight of aircraft on offshore registers, Territories have used Art 83 *bis* agreements to transfer various elements of the responsibilities for the oversight of aircraft contained in Annex 6, Part I (and elements of licensing) to the States where the aircraft are based. Article 83 *bis* agreements may be used for the transfer of responsibilities for both CAT and private aircraft.

Any agreements for the transfer of regulatory responsibilities under Article 83 *bis* must be deposited with ICAO in order for the agreement to come into effect and to ensure that all member States have access to information on which regulatory authority is responsible for the oversight of which aircraft.

Given the major increase in the offshore registers, and the increasing safety focus on 'registers of convenience', it is important that a policy is adopted within the Territories which demonstrates the probity of the OT registers and positively differentiates them from 'registers of convenience'. The following policy, based on ICAO Circular 295, therefore applies.

### Policy Statement:

1. ASSI and OTAAs shall apply the principles of ICAO Circular 295, as amended, and amplified by the following policy and PacMan Procedure 17. Agreements may only be entered into with States that have ratified Article 83 *bis*.
2. Before entering into an Article 83 *bis* agreement, it is essential that due consideration is given to the resources and experience available within the OTAA to fulfil the obligations of any such agreement. Where ASSI is the Designated Regulator, each situation potentially requiring an Article 83 *bis* agreement will be considered on its own merits on

a case by base basis; however, due to resource limitations, it is unlikely that ASSI will seek to enter into any Article 83 *bis* agreements.

3. For transfers of OTAA responsibilities to another State, the OTAA must satisfy itself that the State of the Operator is suitably resourced and capable of discharging the regulatory responsibilities which are to be transferred. This shall require the OTAA to undertake an equivalent safety regulatory audit or investigation of the CAA concerned, details of which are contained in PacMan Part 3 Procedure 17. The report of this audit/investigation will be provided to ASSI so that it may provide suitable advice to the FCO regarding the entrustment referred to in paragraph 5.
4. For transfer of responsibilities from a foreign State of Registry to an OTAA, the OTAA shall ensure that it has sufficient resources and technical expertise to undertake the role, taking account of the aircraft types and numbers to be transferred, before agreeing the transfer of responsibility. A report detailing how the transferred responsibilities will be discharged shall be submitted to ASSI to enable the provision of relevant advice to FCO regarding the entrustment referred to in paragraph 5.
5. In order to enter into an Article 83 *bis* agreement transferring regulatory responsibilities in either direction (ie to or from the OTAA), the OT concerned will apply for an 'entrustment' (permission to sign an international agreement) from the FCO. A separate entrustment is required from the FCO for each agreement. ASSI will provide advice to FCO on the suitability of the proposed arrangements prior to the issue of an entrustment; this advice will be based upon information and reports provided by the OTAA from its investigations referred to in paragraphs 3 and 4.
6. Continued airworthiness management of the aircraft which are the subject of the agreement shall be in accordance with OTAR Part 39.
7. Agreements shall be signed at OTAA DCA level and shall not exceed the term of the lease agreement(s) for the aircraft to which it refers. Where this is impractical due to the differing lease dates for aircraft subject to the same agreement, the agreement should be subject to formal review as detailed in PacMan Part 3, Procedure 17. In cases where the OTAA has not previously entered into an agreement with the NAA, this review should be conducted not more than 12 months after the agreement begins and thereafter at up to the 3 yearly intervals which apply to agreements with NAAs with which it is familiar. An Agreement may be renewed on expiry, subject to a review of the agreement over the preceding period, where the OTAA has a record that acceptable standards were previously achieved. A report as required by Procedure 17 must be submitted to ASSI to permit the extension of the original entrustment. While an agreement is in force, additional aircraft may be added to the agreement without further consultation with either FCO or ASSI. However in accepting further aircraft, OTAAs shall consider the implications of such additional aircraft on workload and its ability to discharge its obligations under the Article 83 *bis* arrangements.
8. The transfer agreement shall require that a certified true copy of the agreement is carried on board aircraft subject to the agreement at all times.
9. The OTAA concerned shall submit the agreement to the Office of the UK Representative to ICAO for official registration with, and publication by, ICAO. If preferred, the OTAA may delegate this responsibility to ASSI. The OTAA, in conjunction with the State of the Operator, should also consider whether other States should be informed directly, where they may have a particular interest in the arrangements. This may be the case, for example, where an aircraft subject to such a transfer agreement is routinely operated into another State.