

## **POLICY STATEMENT 40 | THE USE OF ARTICLE 83 BIS AGREEMENTS IN THE OVERSEAS TERRITORIES**

**UNCONTROLLED DOCUMENT WHEN PRINTED**

**Effective date of Implementation:** 16 July 2018

**Related Documents:** ICAO Doc 10059, Manual on the implementation of Article 83*bis* of the Convention on International Civil Aviation.

### **Rationale:**

In certain Overseas Territories (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 ICAO Member 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 Member States which are geographically remote from the OTs in which they are registered. It was for just such a situation that ICAO developed Article 83*bis* of the Chicago Convention.

Article 83*bis* was introduced to facilitate and support the international leasing of aircraft by allowing the State of Registry to transfer certain functions and duties to the State of Operator of the aircraft, subject to an appropriate agreement. The articles of the Convention that can be included in any transfer are Article 12 (Rules of the Air), Article 30 (Radio Licensing), Article 31 (Certificate of Airworthiness) and Article 32a (Flight Crew Licences).

In light of the geographical difficulties for oversight of aircraft based in another State, OTs have used Article 83*bis* agreements to transfer various elements of the responsibilities for the oversight of aircraft to the States where the aircraft are based.

Any agreements for the transfer of regulatory responsibilities under Article 83*bis* must be registered 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.

### **Policy Statement:**

1. ASSI and OTAAs shall apply the intent of the guidance of ICAO Doc 10059 as amplified by the following policy and Procedure 17. Agreements may only be entered into with ICAO Member 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 case basis; however, due to resource limitations, it is unlikely that ASSI will seek to enter into any Article 83*bis* Agreements.
3. In order to enter into an Article 83*bis* Agreement transferring regulatory responsibilities in either direction (i.e. to or from the OTAA) the Territory concerned will need to apply for an Entrustment (permission to sign an international agreement) from the Foreign and Commonwealth Office (FCO). A separate entrustment is required from the FCO for each

- agreement. ASSI will seek advice from the FCO and the Department for Transport (DfT) on whether there are any UK, OT and/or other State political sanctions and policy that may preclude or materially affect the issue of an Entrustment prior to the OTAA undertaking any significant work in assessing the foreign NAA.
4. For transfers of OTAA responsibilities to another Member 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 assessment of the foreign NAA. A report of the assessment should be submitted to ASSI who will then use the evidence included in the report to support a recommendation to the FCO for the issue of the Entrustment.
  5. 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.
  6. Continued airworthiness management arrangements for an aircraft which is the subject of an agreement transferring responsibilities to the State of the Operator shall be equivalent to those required by OTAR Part 39.
  7. Agreements shall be signed at OTAA Director General 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. In cases where the OTAA has not previously entered into an agreement with the foreign 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 foreign NAAs with which it is familiar. An Article 83bis 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 achieved.
  8. While an agreement is in force, additional aircraft may be added to the agreement without further consultation with either the FCO, the DfT or ASSI subject to any conditions to the Entrustment. 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 83bis arrangements.
  9. OTAAs will provide a quarterly report to ASSI on number of aircraft, types or aircraft and air operators added or removed from the register.
  10. 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.
  11. The OTAA concerned shall submit the agreement to the Office of the UK Representative to ICAO for official registration with, and publication by, ICAO.