

United Kingdom Overseas Territories Aviation Circular

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Aircraft Leasing

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GENERAL

Overseas Territories Aviation Circulars are issued to provide advice, guidance and information on standards, practices and procedures necessary to support Overseas Territory Aviation Requirements. They are not in themselves law but may amplify a provision of the Air Navigation (Overseas Territories) Order or provide practical guidance on meeting a requirement contained in the Overseas Territories Aviation Requirements.

PURPOSE

This Overseas Territories Aviation Circular provides guidance on the implications of leasing by Territory operators of foreign-registered aircraft for Commercial Air Transport or aerial work operations and of operations by Territory AOC holders on behalf of a foreign operator.

RELATED REQUIREMENTS

This Circular relates to OTAR Parts 39, 61, 119, 121, and 135.

CHANGE INFORMATION

Third Issue: Para 1.1 – amended name of Foreign and Commonwealth Office (FCO) to its new name of Foreign, Commonwealth & Development Office (FCDO).

Para 2.8 – Update of reference to Air Navigation (OT) (Environmental Standards) Order to ‘as amended’.

Para 1.2 includes clarification on ICAO Article 83bis agreements. Para 1.5 paragraph numbering added. Section 2 includes new para 2.1 regarding acceptable time limits for leases and further clarification on Dry Leases.

Retitling of section 6 to “Airworthiness considerations”.

Addition of new paragraph 6.5 dealing with leasing of engines, propellers, APUs and components.

ENQUIRIES

Enquiries regarding the content of this Circular should be addressed to Air Safety Support International at the address on the ASSI website www.airsafety.aero or to the appropriate Overseas Territory Aviation Authority (OTAA).

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1. Introduction

- 1.1 The legal and administrative procedures associated with an operator leasing an aircraft registered in a state other than the state where the operator is based can, dependent on the circumstances, involve the Foreign, Commonwealth & Development Office (FCDO), the Department for Transport (DfT), the OTAA, the National Aviation Authority (NAA) of the State of Registry and the Operator.
- 1.2 Contracting states undertake to regulate civil aviation in their country. The state of registry sets criteria compliance, for example, with design standards, airworthiness and crew licensing requirements; other matters are also covered. States license and supervise certificated carriers (e.g. AOC holders) with a view to setting standards designed to achieve a certain level of safety. When an aircraft's state of registry is unable to discharge the obligations allocated to it by the ICAO Convention, particularly when an aircraft is operated by an operator in a different state, the situation can be resolved by the regulatory authorities of the two states agreeing to a transfer of certain responsibilities. It was for just such a situation that ICAO developed Article 83*bis* of the Chicago Convention. A working agreement, whereby the state of registry agrees to transfer all or some of its responsibilities for the aircraft for a set period. For more information on 83*bis* Agreements, see ASSI Policy No. 40.. Any agreements for the transfer of regulatory responsibilities under Article 83*bis* must be registered with ICAO 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.
- 1.3 Most states place some restrictions on the use of foreign registered aircraft, for the purpose of carriage of passengers and cargo or aerial work, for valuable consideration within their boundaries. In this respect the Governor possesses certain powers, set out in the AN (OT)O under Article 135 and Article 137, to issue permits for the use of foreign registered aircraft, whether by foreign operators or Territory operators. In practice the procedures, in respect of Territory operators particularly, are administered by the OTAA/ASSI and, where applicable, the body responsible for Air Transport Licensing in the Territory.
- 1.4 Dependent upon the circumstances, the operator will need to obtain waivers, approvals, permissions, licences and exemptions, as appropriate, from the regulator before a leased aircraft can be legally operated for the purposes of commercial air transport (CAT) or for aerial work. The documents granted vary according to the nationality of the operator and the state of registry of the aircraft, and the four types of lease are covered in detail later. Complex arrangements may be required before an aircraft leased across a national boundary can be operated. An operator who intends to become either a lessee or a lessor should give the OTAA/ASSI as much notice as possible, so that arrangements can be made before the planned start of the lease. Experience has shown that it is impossible to predict how long the process will take, but at least a month should be allowed. In the case where a foreign-registered aircraft is to be dry leased the process may take much longer.
- 1.5 For the purpose of this Circular the definitions of types of lease are:
 - (a) A '**Dry lease agreement**' means an agreement between undertakings pursuant to which the aircraft is operated under the air operator certificate (AOC) of the lessee and using the lessee's airline designator code and traffic rights or, in the case of commercial operations other than CAT, under the responsibility of the lessee.

- (b) A **'Wet (or ACMI¹) lease agreement'** means an agreement under which the lessor provides an aircraft, one or more complete crews (including engineers), all maintenance for the aircraft and insurance (both hull and third-party liability):
- (i) in the case of CAT operations, between air carriers pursuant to which the aircraft is operated under the AOC of the lessor but under the commercial control of the lessee and using the lessee's airline designator code and traffic rights; or
 - (ii) in the case of commercial operations other than CAT, between operators pursuant to which the aircraft is operated under the responsibility of the lessor;
- (c) **Damp lease** is similar to an ACMI lease but usually without the inclusion of cabin crew.

2. Dry lease – foreign-registered aircraft to be operated by a Territory operator for CAT or aerial work

- 2.1 The acceptable time limit for dry lease periods is normally 6 months, with extensions to 12 months permitted in exceptional circumstances.
- 2.2 If the operator holds an Air Operator Certificate (AOC) issued under Article 64 of the AN(OT)O or an Air Transport or Operating Licence issued by the Air Transport Licensing Authority of the Territory, and the leased aircraft is to be used for CAT, a Waiver may be needed from the Territory Government or its Air Transport Licensing Authority as well as a permit from the Governor (or person authorised by the Governor). The aircraft will also need to be added to the Territory AOC holder's Operations Specification. In addition, there may also be requirements from the State of Registry's NAA – such as being added to a FAA Part 129 Operations Specifications.
- 2.3 It is usual for the OTAA only to approve the dry lease of a foreign registered aircraft where it is of a type that has already been operated within the region, and is of a type for which a Type Acceptance Certificate has been issued under Article 6 of the AN(OT)O.
- 2.4 The AOC holder must inform the FOI and applications should be made in writing to the OTAA which, where applicable, will consult or inform the local Air Transport Licensing Authority.
- 2.5 The following information must be given to the OTAA:
- (a) Types of aircraft, series, registration and state of registration;
 - (b) Routes to be flown;
 - (c) The period of the lease and whether it is proposed to put the aircraft on the Territory register in the future;
 - (d) The design standard of the aircraft;

¹ Aircraft, Crew, Maintenance and Insurance.

- (e) The proposed arrangements for maintenance of the aircraft. Advice can be sought initially from the Airworthiness Surveyor;
 - (f) Items of equipment not fitted or not in compliance with Territory requirements should be identified and exemptions applied for;
 - (g) The name of the individual who will act as co-coordinator for the Territory Operator; and
 - (h) The name of the department, or a contact, in the foreign NAA dealing with the lease (if any).
- 2.6 Where the foreign registered aircraft is not identical to others of the type already being operated by the operator, the operator must include in its Operations Manual details of any special operating procedures; for example, performance data. Crews may require appropriate training and, when the aircraft is not of a type already operated by the operator, a variation to its AOC will be required.
- 2.7 When the OTAA is satisfied with all the arrangements for the lease, including the transfer (if any) of any ICAO Annex 6 responsibilities, the operator will be directed, under AN(OT)O Article 144, to apply the relevant parts of the AN(OT)O to the foreign registered aircraft. The effect of this is to treat the aircraft as though it were on the Territory register.
- 2.8 Neither the direction under Article 144, nor the transfer of ICAO responsibilities between states, apply to flight crew licences. Crews must hold appropriate licences issued or validated by the state of registry. It is the operator's responsibility to obtain these licences or validations from the NAA of the state of registry of the aircraft.
- 2.9 Operators are reminded of noise regulations (contained in the Air Navigation (OT) (Environmental Standards) Order, as amended), which restrict the use of non-noise compliant aircraft and are advised to check that the aircraft satisfies current regulations before entering into any binding agreement.

3. Wet lease – foreign-registered aircraft operated by foreign operator on behalf of Territory operator for CAT or aerial work

- 3.1 If the operator holds an Air Transport or Operating Licence, issued by the Air Transport Licensing Authority of the Territory, and the leased aircraft is to be used for CAT, a Waiver may be needed from the Air Transport Licensing Authority or the OT Government. It will also be necessary to obtain a permit from the DfT or Governor under the provisions of article 135 of the AN(OT)O for CAT and from the OTAA/ASSI under article 137 of the AN(OT)O in respect of aerial work. The leased aircraft would only be permitted to operate into Territories for which the operator holds an Air Transport or Operating Licence, otherwise no CAT flights would be permitted.
- 3.2 Applications should be made in writing to the OTAA.
- 3.3. In general terms it is anticipated that a proposal to wet lease foreign registered aircraft will only include those aircraft that are within the current capability of the lessee to properly handle and dispatch.

- 3.4 The OTAA will not approve an agreement for a wet lease to a lessee who holds an AOC granted by the OTAA unless safety standards equivalent to those required of the lessee under his AOC are met. Paragraphs 3.5 to 3.8 below indicate how the OTAA will determine the equivalence of safety standards.
- 3.5 Where the OTAA already has sufficient information about the lessor and the level of supervision exercised by the lessor's regulatory authority to know that equivalent standards are met, it will be able to grant approval. Where any safety standards are not met, it will refuse to grant an approval without additional work to ensure that acceptable standards are met.
- 3.6 Where the OTAA's knowledge of the lessor and /or the lessor's regulatory authority is incomplete, the OTAA will, before granting an approval, carry out an audit to assure itself that equivalent safety standards are met by the lessor. This may incur substantial costs for which the lessee may be charged and there is no guarantee that approval will be granted. There may be circumstances where the OTAA will have some limited knowledge of the lessor and his regulatory authority. In such cases it may be possible to consider granting an interim (say 10 weeks) approval thereby allowing the lease to commence before the audit is carried out. Any extension beyond the 10 weeks requires the OTAA to be satisfied that equivalent safety standards are being met. If the level of supervision by the lessor's regulator is deemed inadequate, then the interim approval will be revoked. Where the OTAA has no knowledge of the lessor and his regulatory authority, or where the OTAA has knowledge that suggests that equivalent safety standards would not be met, an interim approval will not be granted.
- 3.7 Once an Audit has been satisfactorily completed, the OTAA will issue an approval. This approval will be valid for a maximum of one year from the commencement of the lease. Should there subsequently be an application to extend the lease approval period, the OTAA will give due consideration to this, but may require that the lessor to be re-audited, at the lessee's expense, to verify that equivalent safety standards are being maintained.
- 3.8 Where an applicant wishes to wet lease an aircraft for a period of 10 weeks or less, the OTAA may grant an approval without an audit for the duration of the lease, provided it is satisfied that the safety standards of the lessor are comparable to those set by the AN(OT)O and OTARs. This provision will facilitate the one-off short-term lease but it cannot be used by one applicant, or a series of applicants, for a series of short leases. In this respect, the 10-week period starts from the first day of the initial approval and ends on the seventieth day thereafter.

4. Territory-registered aircraft operated by a Territory AOC holder on behalf of a foreign operator

The operator must inform the OTAA of such leases if the operation is within the currently authorized AOC region. Matters such as variations to the AOC region or the use of the foreign operator's cabin staff will need to be dealt with.

5. Ferry flights

An AOC holder is advised to notify the OTAA well in advance when it is planned to ferry an aircraft as legal and operational procedures may require resolution.

6. Airworthiness considerations

- 6.1 In the case of a Wet lease-in, the lessee Operator shall ensure that:
- (a) continuing airworthiness oversight and maintenance arrangements for the aircraft are in place and acceptable to the AOC of the third country Operator and the State of Registry;
 - (b) the safety standards of a third country Operator with regard to continuing airworthiness and air operations are equivalent to the applicable requirements established by the AN(OT)O and OTARs;
 - (c) the aircraft of a third country operator has a standard C of A issued in accordance with ICAO Annex 8;
 - (d) the aircraft is equipped and or modified for the lessee Operators AOC in accordance with OTAR 91/121/125/135 Subpart F.
- 6.2 In the case of a Dry lease-in, the lessee Operator shall ensure that:
- (a) The lessee Operator is responsible for the airworthiness of the aircraft and it shall ensure that it is not operated unless the aircraft has a type acceptance certificate issued by the OTAA;
 - (b) the aircraft is in an airworthy condition;
 - (c) the aircraft holds a valid certificate of airworthiness issued in accordance with ICAO Annex 8;
 - (d) the maintenance of the aircraft is performed in accordance with a maintenance programme which shall comply with the requirements of the State of Registry and the applicable requirements of ICAO Annex 6;
 - (e) any defect or damage affecting the safe operation of the aircraft is rectified to a standard acceptable to the State of Registry;
 - (f) the aircraft complies with any applicable:
 - (i) airworthiness directive or continued airworthiness requirement issued or adopted by the State of Registry; and
 - (ii) mandatory safety information issued by the OTAA, including airworthiness directives;
 - (g) a release to service is issued to the aircraft after maintenance by qualified organisations in compliance with the State of Registry requirements. The signed release to service shall contain, in particular, the basic details of the maintenance carried out;
 - (h) the aircraft is inspected, through a pre-flight inspection, before each flight;
 - (i) all modifications and repairs comply with the airworthiness requirements established by the State of Registry;

- (j) the following aircraft records are available until the information contained has been superseded by new information equivalent in scope and detail but not less than 24 months:
 - (i) the total time in service (hours, cycles and calendar time, as appropriate) of the aircraft and all life-limited components; and
 - (ii) current status of compliance with Para 6.2(f) requirements;
 - (iii) current status of compliance with the maintenance programme;
 - (iv) current status of modifications and repairs together with appropriate details and substantiating data to demonstrate that they comply with the requirements established by the State of Registry.

6.3 The tasks specified in 6.2 shall be monitored by the lessee Operator's continuing airworthiness management organisation. For this purpose, the organisation shall comply with the requirements of OTAR 39 Subpart E.

6.4 The continuing airworthiness management organisation referred to in 6.3 shall ensure that the maintenance and release of the aircraft are performed by a maintenance organisation meeting the requirements of the State of Registry.

6.5 In the case of the leasing of engines, propellers, APUs and components, the owner/operator should ensure there are procedures in their MCM to include maintenance records, updating the maintenance records, and arrangements to transfer back the maintenance records to the lessor.

The records may include but are not limited to:

- (a) Logbooks.
- (b) Airworthiness directive (AD) Compliance Status Summary.
- (c) Service bulletin embodiment records.
- (d) Life limited parts and hard time component status.