

## CHAPTER 44

# AIRCRAFT LEASE ARRANGEMENTS

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### 1.0 INTRODUCTION

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All leasing agreements and arrangements involving transportation of passengers and property for hire must be submitted to the Authority for approval or acceptance prior to executing and implementing these arrangements, in accordance with Parts 9.2.3.2, 9.2.3.3 and 9.2.3.4 of the Nigeria Civil Aviation Regulations and Advisory Circulars: NCAA-AC-OPS028, NCAA-AC-OPS029 and NCAA-AC-OPS045. Operators are expected to anticipate their possible leasing arrangements and obtain prior authorization as far in advance of a proposed implementation date as possible.

Whatever the leasing arrangement may be in place, the Authority shall have free and uninterrupted access to the aircraft at any place and time.

#### 1.1 PURPOSE

This Chapter provides general guidance to individuals, organizations and other entities regarding the policies that are applicable to aircraft leasing arrangements that may be acceptable to the Authority.

### 2.0 APPLICABILITY

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This guidance is applicable to both Nigeria and foreign AOC holders involved in the leasing of aircraft in support of Nigeria AOC holders.

### 3.0 REFERENCES

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1. Parts 9.2.3.2, 9.2.3.3 and 9.2.3.4 of the Nigeria Civil Aviation Regulations
2. NCAA-AC-OPS028
3. NCAA-AC-OPS029
4. NCAA AC-OPS045
5. Checklist CL O-OPS047
6. ICAO Annex 6
7. ICAO Annex 8
8. ICAO Doc 8335
9. ICAO Doc 9734
10. ICAO Doc 9760
11. ICAO Circular 295

### 4.0 DEFINITIONS AND ACRONYMS

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4.1 The following definitions are used in this Chapter:

1. **Air Operator Certificate:** A certificate issued under Part 9 of the Nigeria Civil Aviation Regulations authorising an air operator to carry out commercial air transport operations.
2. **Lease:** Any agreement by a person (the lessor) to provide an aircraft to another person (the lessee) who will use the aircraft for compensation or hire purposes. A lease is not an agreement for the sale of an aircraft or a contract of conditional sale.
3. **Dry lease:** Any agreement in which a lessor such as an air operator, bank, or leasing company:

- (a) Leases an aircraft without any crewmembers to an air operator (the lessee); and;
  - (b) Which the lessee is clearly authorized to integrate into its operations; and,
  - (c) Where the lessee is expected to assume all key AOC-related responsibilities for operational and maintenance arrangements.
4. **Wet lease:** Any agreement in which an air operator (the lessee) leases an aircraft from a Nigeria AOC holder, foreign air operator, or other entity (the lessor) where the lessor:
- (a) Provides the aircraft;
  - (b) Provides all of the required qualified crew members;
  - (c) Operates the aircraft; and,
  - (d) Retains all key AOC-related responsibilities.
5. **Damp lease:** Any agreement in which an air operator (the lessee) leases an aircraft from a Nigeria AOC holder, foreign air operator, or other entity (the lessor) where the lessor:
- (a) Provides the aircraft;
  - (b) One or more of the required crew members; and
  - (c) Operates the aircraft;
  - (d) But does not discharge one or more of the key AOC-related responsibilities.
6. **Charter:** Any arrangement in which an individual, operator or organization, having passengers or cargo:
- (a) Engages a properly authorized AOC holder to provide all necessary services to transport these from one location to another;
  - (b) Does not operate the aircraft; and
  - (c) Does not assume any AOC-related Responsibilities
7. **Interchange agreement:** Any agreement in which the operational control of an aircraft is transferred by legal agreement:
- (a) From one AOC holder to another AOC holder;
  - (b) For repetitive short periods of time;
  - (c) In which the latter AOC holder assumes all key AOC-related responsibilities, except for performance and recording of maintenance.
8. **Operational control:** Means the exercise of authority over the initiation, continuation, diversion or termination of a flight in the interest of safety of the aircraft and the regularity and efficiency of the flight.
9. **Maintenance:** Means tasks required to ensure the continued airworthiness of an aircraft or aircraft component including any one or combination of overhaul, repair, inspection, replacement, modification and defect rectification.
10. **Maintenance Control Manual:** A document that describes an air operator's procedures necessary to ensure that all scheduled and unscheduled maintenance is performed on the operator's aircraft on time and in a controlled and satisfactory manner.
11. **Operator:** Means the holder of an Air Operator Certificate (also called "air operator")
12. **State of Operator:** Means the State in which the Operator's principal place of business is located, or if there is no such place, the Operator's permanent residence.
13. **State of Registry** means the State on whose register the aircraft is entered.



4.2 The following acronyms are used in this Chapter:

1. **AOC:** Air Operator Certificate
2. **CAA:** Civil Aviation Authority
3. **NCAA:** Civil Aviation Authority of Nigeria
4. **CARs:** (Nigeria) Civil Aviation Regulations
5. **FSG:** Flight Standards Group (of the NCAA)
6. **MCM:** Maintenance Control Manual
7. **MEL:** Minimum Equipment List

## 5.0 KEY AOC-RELATED RESPONSIBILITIES

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For the purposes of aircraft leasing arrangements, the key AOC-related responsibilities that must be verified based on based on Section C of the Checklist CL O-OPS047 are:

- (1) Operational control to make the final decisions related to route of flight, actual departure times and need for and implementation of necessary diversions and those functions associated with flight locating, flight following and/or flight watch.
- (2) Flight preparation requirements, including flight planning; operational flight plan and minimum fuel loading, calculations of mass and balance and performance; provision of adequate flight documentation.
- (3) Maintenance control, including planning, deferring and performing of maintenance and Aircraft specific MEL availability.
- (4) Crew scheduling, including responsibility for crew duty, flight and rest periods.
- (5) Crew qualification, including responsibility for training, proficiency and currency requirements. Pilot-in-command area, route and aerodrome qualifications.
- (6) Ground handling responsibilities, ensuring the proper loading, fuelling and servicing of the aircraft.
- (7) The method for establishing minimum flight altitudes and method of determining aerodrome operating minima.
- (8) Special operations including EDTO procedures and authorisations, Performance based navigation, RVSM operations, etc.
- (9) Procedures for electronic navigation data management.
- (10) Training in the transport of dangerous goods.
- (11) Use of flight simulation training devices.

## 6.0 DRY LEASING OF FOREIGN REGISTERED AIRCRAFT

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6.1 An AOC holder may dry lease an aircraft for the purpose of commercial air transportation from any AOC holder of a State which is signatory to the Chicago Convention provided that the following conditions are met:

- (1) The aircraft carries an appropriate airworthiness certificate issued, in accordance with ICAO Annex 8, by the State of Registry and meets the registration and identification requirements of that country.

- (2) The aircraft is of a type design which complies with all of the requirements that would be applicable to that aircraft were it registered in Nigeria, including the requirements which shall be met for issuance of a Nigeria Certificate of Airworthiness (including type design conformity, condition for safe operation, and the noise, fuel venting, and engine emission requirements).
  - (3) The aircraft is maintained according to an approved maintenance programme.
  - (4) The aircraft is operated by Nigeria-licensed air crew with additional license authorization / validation by the State of Registry, employed by the AOC holder.
- 6.2 There should be in existence a current agreement between the NCAA and the State of Registry that while the aircraft is operated by the Nigeria AOC holder, the Nigeria Civil Aviation Authority (Air Operator Certification and Administration) Regulations shall apply.
- 6.3 There should also be a current agreement between the Authority and the State of Registry that while the aircraft is operated by the AOC holder, the airworthiness regulations of the State of Registry shall apply. Alternatively, if the State of Registry agrees to transfer some or all of the responsibility for airworthiness to NCAA under Article 83bis of the Chicago Convention, the Nigeria Civil Aviation Authority (Airworthiness) Regulations shall apply to the extent agreed upon by the Authority and the State of Registry.
- 6.4 Each AOC holder shall provide the Authority with a copy of the dry lease agreement to be executed.
- 6.5 Operational control of any dry leased aircraft rests with the AOC holder operating that aircraft.
- 6.6 The Authority will list the dry leased aircraft on the lessee AOC holder's operations specifications.
- 6.7 AOC holder engaged in dry leasing aircraft shall make the dry lease agreement explicit concerning the maintenance programme and MEL to be followed during the term of the dry lease.

## 7.0 AIRCRAFT INTERCHANGE

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- 7.1 Before operating under an interchange agreement, each AOC holder shall show that:
- (1) The procedures for the interchange operation conform with safe operating practices;
  - (2) Required crew members and flight operations officers meet approved training requirements for the aircraft and equipment to be used and are familiar with the communications and dispatch procedures to be used;
  - (3) Maintenance personnel meet training requirements for the aircraft and equipment, and are familiar with the maintenance procedures to be used;
  - (4) Flight Crew members and flight operations officers meet appropriate route and airport qualifications;
  - (5) The aircraft to be operated are essentially similar to the aircraft of the AOC holder with whom the interchange is effected; and
  - (6) The arrangement of flight instruments and controls that are critical to safety are essentially similar, unless the Authority determines that the AOC holder has adequate training programmes to ensure that any potentially hazardous dissimilarities are safely overcome by flight crew familiarisation.
- 7.2 Each AOC holder conducting an interchange agreement shall include the pertinent provisions and procedures of the agreement in its manuals.
- 7.3 The AOC holder shall amend their operations specifications to reflect an interchange agreement.



7.4 The AOC holder shall comply with the applicable regulations of the State of Registry of an aircraft involved in an interchange agreement while it has operational control of that aircraft.

## 8.0 WET LEASING

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8.1 Each AOC holder shall provide the Authority with a copy of the wet lease agreement to be executed.

8.2 The Authority will determine which party to a wet lease agreement has operational control considering the extent and control of certain operational functions such as:

- (1) Initiating and terminating flights.
- (2) Maintenance and servicing of aircraft.
- (3) Scheduling crewmembers.
- (4) Paying crew members.
- (5) Training crew members.

8.3 Each AOC holder engaged in a wet leasing arrangement shall amend its operations specifications to contain the following information:

- (1) The names of the parties to the agreement and the duration of the agreement.
- (2) The make, model, and series of each aircraft involved in the agreement.
- (3) The kind of operation.
- (4) The expiration date of the lease agreement.
- (5) A statement specifying the party deemed to have operational control.
- (6) Any other item, condition, or limitation the Authority determines necessary.

## 9.0 GUIDANCE REGARDING ALL LEASING ARRANGEMENTS

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9.1 **PROJECT COORDINATION:** Most of these leasing arrangements projects involve both the assigned operations and airworthiness inspectors. As in all requests for an authorization from the NCAA, one person will be the Project Manager to ensure that the project is completed in a quality and timely manner. The Project Team shall be selected from among the Inspectors in the Flight Standards Group (FSG) of NCAA.

- a) The Project shall be coordinated between the Directorate of Operations, Licensing and Training Standards (DOLTS) and the Directorate of Airworthiness Standards (DAWS).
- b) The Project Coordinator for all operational areas of the Project will be the assigned Flight Operations Inspector (FOI) who shall also be the Project Manager.
- c) The assigned Airworthiness Inspector will be the Project Coordinator for all airworthiness areas of the Project.
- d) Proper coordination with the Licensing Department must be done on crew licensing for proper authorizations and validations.
- e) Proper coordination among Operations, Airworthiness and Legal Departments must be done. All Lease agreements must be reviewed and accepted by the Legal Department.

## 9.2 PRE-SUBMISSION WITH PARTIES

- (A) Operators are encouraged to discuss their proposed arrangements as early in the leasing process as possible.

- (B) These discussions will ensure that the operator is fully aware of both the operations and airworthiness submission requirements and timelines associated with the acceptance of the aircraft leasing arrangements.
- (C) These discussions will include a full briefing of the involved operators that includes the:
1. Provision of the applicable Guidance Materials;
  2. Review of the definitions that are applicable to leasing and interchange;
  3. Amplification of the key AOC-related functions that apply to aircraft leasing;
  4. Required contents of the leasing agreement;
  5. Required supporting documents that must be submitted;
  6. General flow of events that will occur during the process; and
  7. The approximate timelines for completion of the process.

### 9.3 TIMELINES BEFORE APPROVAL DECISION IS MADE

- 9.3.1 Short-term “charters” between two Nigeria AOC holders with compatible operations approvals will generally be processed within a minimum of two (2) working days.
- 9.3.2 Wet leasing between two Nigeria AOC holders with compatible operational approvals will also be processed within a minimum of five (5) working days.
- 9.3.3 Wet leasing a foreign AOC holder to perform flights on behalf of a Nigeria AOC holder may have some issues that will require a protracted approval process. At least ten (10) working days for those foreign AOC holders with prior approval to operate to/from Nigeria and have compatible operational authorizations with the Nigeria AOC holder. At least thirty (30) working days for those foreign AOC holders without prior approval to operation to/from Nigeria. At least one of the discussions before the submission of the leasing “package,” must be a formal meeting attended by the assigned operations and Airworthiness Inspectors.
- 9.3.4 Dry-leasing of a Nigeria-registered aircraft of the same make, model and series may require:
- I. At least ten (10) working days for aircraft with a maximum takeoff weight of less than 5700 kg
  - II. At least twenty-five (25) working days for aircraft with a maximum takeoff weight of more than 5700 kg
- 9.3.5 Dry-leasing of a Nigeria-registered aircraft of a different make and model by a Nigeria AOC holder may require a formal certification project, with timelines:
- I. At least twenty (20) working days for aircraft with a maximum takeoff weight of less than 5700 kg
  - II. At least thirty-five (35) working days for aircraft with a maximum takeoff weight of more than 5700 kg
- 9.3.6 Dry-leasing of a foreign-registered aircraft by a Nigeria AOC holder can require:
- I. At least thirty (30) working days for aircraft of the same make, model and series.
  - II. At least forty-five (45) working days for aircraft of make, model and series that has not previously been operated by the Nigeria operator.



9.3.7 Damp Leasing: Same timelines for wet leasing in paragraph 9.3.2 and 9.3.3 shall apply.

#### 9.4 INITIAL APPLICATION REVIEW

- 9.4.1 As soon as possible after the formal submission of the leasing arrangements application documents, the assigned NCAA inspectors will conduct an initial review of the submission to ensure all required documents have been submitted and are complete for document conformance processing, based on Section A of the Checklist CL O-OPS047.
- 9.4.2 The assigned inspectors may choose to have a meeting with the applicant at the time of formal submission.
- I. This is advantageous in situations where the numbers of application documents are expected to be few, and the package can be accepted or rejected with minimal review requirements.
  - II. This practice is not advantageous when a larger number of application documents are expected, such as in wet-leasing with a foreign AOC holder or dry-leasing of a foreign-registered aircraft. In these cases, a separate initial application review meeting should be held with only NCAA personnel.

#### 9.5 DOCUMENT CONFORMANCE EVALUATION

- 9.5.1 The content of the lease agreement shall be evaluated based on Section B of the Checklist CL O-OPS047. Evaluation of an aircraft leasing agreement to determine which party has operational control is a critical function assigned to an operations inspector.
- 9.5.2 Nigeria regulations provide that the NCAA shall determine that a person has operational control if that person exercises authority and responsibility for a specified number of operational functions, such as:
- I. Assigning crewmembers for particular flights,
  - II. Directly paying crewmembers for services, and,
  - III. Initiating, diverting and terminating flights.

These particular projects will require prior coordination and written agreements to ensure that both governments are clear as to the safety oversight roles and responsibilities. Foreign operators must receive economic authority from the NCAA before conducting third, fourth or fifth freedom commercial air transport flights to or from Nigeria aerodromes. In cases where doubt or controversy exists, the NCAA shall also consider each of the key AOC related responsibilities to ensure there is no confusion by either party or the NCAA.

- 9.5.3 The NCAA determination of whether the lessor or lessee has operational control will be made by the assigned operations inspector. Such determination will be based on a careful review of the lease agreement, and any other circumstances regarding the actual operation.
- 9.5.4 The NCAA has taken the position (concerning the safety regulations) that if a person leases an aircraft to another person and also provides the flight-crew, fuel, and maintenance, the lessor of the aircraft is the operator. This is in concert with positions taken by both European aviation authorities and the United States.

#### 9.6 INSPECTION AND DEMONSTRATION

9.6.1 Wet / Damp Leases Between Nigeria AOC Holders

- (A) There is no requirement for an inspection or demonstration prior to authorizing the aircraft leasing arrangements.



- (B) The assigned inspectors conduct inspections of either the first flight or early in the first week of such operations to ensure that all elements of the agreement relative to the key AOC-related responsibilities are being implemented properly.

#### 9.6.2 Wet / Damp Leases with Foreign AOC Holders

- (A) Normally, an inspection visit is planned and conducted at the foreign AOC holder's primary facilities, including operational and maintenance control organizations, aircraft maintenance records and flight crew to ensure that the AOC holder is at least in compliance with ICAO Annex 6 and their CAA is providing safety oversight.
- (B) The assigned inspectors will conduct this orientation visit as soon as a determination has been made that the leasing arrangements are going to be acceptable.
- (C) The full compliments of Inspectors (FOI, AWI, GOI & CSI) shall constitute the team to conduct the inspection. The composition may vary depending on the type of operations to be conducted. For example, a Cargo operation will not require a CSI.

#### 9.6.2 Dry Leases with Nigeria Registered Aircraft

- (A) No additional inspection will be required if the aircraft is the same make, model and series as aircraft currently operated by the lessee and there are no appreciable differences.
- (B) Where appreciable differences exist, the assigned operations inspector will plan and conduct inspections of training-in-progress and the use of the documentation.
- (C) Full formal certification will be required if the aircraft is a make and model not previously operated by the AOC holder.

#### 9.6.3 Dry Leases of Foreign Registered Aircraft

- (A) Adequate time will be required to make determination of the acceptability of the maintenance arrangements and formalize the arrangements with the lessor's CAA
- (B) When the maintenance arrangements are determined to be acceptable and an official agreement is reached with the lessor's CAA, the guidance included in paragraph 6.3 of this Chapter will apply.

### 9.7 TRAINING REQUIREMENTS

Training evaluation shall be done based on Section D of the Checklist CL O-OPS047. For all lease arrangements, the following training must be ensured towards the proper execution of the lease agreement:

1. Flight crew training
2. Cabin crew training
3. Route familiarisation
4. Maintenance training

The peculiarities of the entire operations and special operations aspects must be addressed in the training.



## 10.0 APPLICATION FOR APPROVAL OF LEASE ARRANGEMENTS

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### 10.1 All Applications

- (A) The following documents must be provided with all applications involving aircraft lease or interchange:
1. A complete copy of the aircraft lease agreement; and
  2. An operator analysis showing how this leasing arrangement conforms with the Regulations.
- (B) Operators are encouraged to use the Checklist CL O-OPS047 when preparing the application submission package.

10.2 Wet Lease Applications Between Nigeria AOC Holders: The requirements of paragraph 10.1 apply to applications involving wet leasing between Nigeria AOC holders.

### 10.3 Wet Lease Applications with Foreign AOC Holders

- (A) In addition to the requirements of paragraph 10.1, the following documents must be provided with applications involving wet leasing with foreign AOC holders:
1. A complete copy of the foreign operator's AOC and master operations specifications;
  2. A copy of the foreign operator's Aircraft Display operations specifications for the aircraft type to be operated;
  3. A copy of the Nigeria economic authorization for commercial air transport flights to and from Nigeria;
  4. Copies of the foreign crew member's licenses and other required documents;
  5. A copy of the foreign crew members training and qualification records to show that they are qualified and current;
  6. Copies of each required aircraft document (Certificate of Registration, Certificate of Airworthiness, Noise Certificate, Radio License and Certificate of Insurance) for each aircraft the foreign operators will use for this lease;
- (B) The wet lease arrangements will not be approved for foreign AOC holders that have not yet been granted economic authority by NCAA.

### 10.4 Dry Lease Applications (Nigeria Registered Aircraft)

- (A) In addition to the requirements of paragraph 10.1, the following documents must be provided with applications involving dry leasing of Nigeria registered aircraft:
1. An operator-generated copy of the conformity documents for the aircraft involved;
  2. An operator-generated assessment of aircraft differences (variances) from the current fleet;
  3. A copy of the Maintenance Program (and any necessary bridging information) applicable to the aircraft to be used;

4. A copy of the approved MEL to be used.

(B) Where the aircraft is not a make and model currently operated by the AOC holder, a full formal certification process will be initiated.

(C) The official copy of the aircraft maintenance records must be available at the AOC holder's facilities for review before operations may begin.

#### 10.5 Dry Lease Applications (Foreign Registered Aircraft)

(A) In addition to the requirements of paragraph 10.1, the following documents must be provided with applications involving dry leasing of foreign-registered aircraft:

1. Copies of the validated licenses and other required documents issued by the State to the Nigeria crew members to be used;
2. A copy of the approved Minimum Equipment List to be used;
3. A copy of the approved Maintenance Program (and bridging documents) for the aircraft to be used;
4. A copy of the applicable Maintenance Control Manual for the aircraft to be used;
5. A operator-generated copy of the conformity documents for the aircraft involved;
6. An operator-generated assessment of aircraft differences (variances) from the current fleet;

(B) This situation will require an official agreement between governments of the two States:

1. Outlining each CAA's responsibilities with respect to State of the Registry and State of the Operator ICAO obligations; and
2. Providing the NCAA worldwide access for inspection to the aircraft and crews involved.

#### 10.6 Damp Lease Applications

(A) Damp Lease Applications Between Nigeria AOC Holders: The requirements of paragraph 10.1 apply to applications involving damp leasing between Nigeria AOC holders.

(B) In addition to the requirements of paragraph 10.1, the documents listed in 10.3 (A) must be provided with applications involving damp leasing with foreign AOC holders:

(C) The damp lease arrangements will not be approved for foreign AOC holders that have not yet been granted economic authority by NCAA.

#### **NOTES:**

- a) Where the aircraft is not a make and model currently operated by the AOC holder, a full formal certification process will be initiated.
- b) The official copy of the aircraft maintenance records must be available at the AOC holder's facilities for review before operations may begin.

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## 11.0 CONTENTS OF LEASING ARRANGEMENTS

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- (A) The following elements will be a part of all leasing agreements submitted for NCAA evaluation:
1. The official names of the parties;
  2. The official addresses of the parties;
  3. The duration of the agreement, with specific start and expiration dates;
  4. The make, model, series and registration numbers of each aircraft involved in the agreement;
  5. An explanation of the type of operations that will be conducted by the lessee;
  6. The interchange points (interchange agreements only);
  7. The specifications regarding which party has responsibility and authority for operational control, including the final decisions for initiating, terminating or diverting a flight;
  8. The specifications regarding which party has the responsibility and authority for provision of aeronautical data, weather and flight planning and operational flight plan for the operation of the aircraft;
  9. The specifications regarding which party has the responsibility and authority for provision of aircraft loading, computation of mass and balance and performance associated with each flight of the aircraft;
  10. The specifications regarding which party has responsibility and authority for crew scheduling including assignment to duty and compliance with duty, flight and rest period requirements;
  11. The specifications regarding which party has responsibility and authority for ensuring that crew training, proficiency and line checks, and currency requirements are met;
  12. The specifications regarding which party has responsibility and authority for maintenance control of the aircraft involved;
  13. The specifications regarding which party has responsibility and authority for planning, arranging, performing and deferring maintenance for the aircraft;
  14. The specifications regarding which party has responsibility and authority for maintaining the official maintenance records for the aircraft involved;
- (B) The NCAA may specify additional elements for specific leasing agreements depending on the extenuating circumstances.

## 12.0 ADDITIONAL INSTRUCTIONS: DRY LEASE AGREEMENTS

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### 12.1 General Guidance

- (A) From any operational standpoint, dry lease of an aircraft by a Nigeria AOC holder does not normally present a significant problem. Operational control of any dry leased aircraft rests with the operator lessee.
- (B) In most dry lease agreements, the lessor is either a bank, a leasing company, or a holding company which has no operational expertise hence Operators are encouraged to use the Checklist CL O-OPS047 when preparing aircraft lease agreement. These aforementioned lessors do not have the infrastructure nor the desire to assume responsibility and liability for controlling daily operations of the leased aircraft.
- (C) The air operator or other type of operator leasing the aircraft applies for an amendment of its operations specifications to list the leased aircraft. If an aircraft is dry leased from another operator, the lease agreement must be explicit concerning the maintenance program and Minimum Equipment List to be followed during the term of the dry lease.

### 12.2 Minimum Requirements

- (A) An AOC holder may be approved by the NCAA to dry lease an aircraft for the purpose of commercial air transportation provided that the following minimum conditions are met:
  - 1. The AOC holder provides the Authority with a copy of the dry lease agreement to be executed;
  - 2. The AOC holder has operational control of the aircraft during the period of the lease;
  - 3. Dispatch and/or flight watch functions are performed by the AOC holder;
  - 4. The flight and cabin crewmembers are trained, qualified and scheduled by the AOC holder; and
  - 5. The maintenance arrangements are acceptable to the Authority.
- (B) At a minimum, the dry lease agreement shall be explicit concerning the:
  - 1. Entity that has operational control, with the authority for initiating and terminating flights;
  - 2. Responsibility for crew training, qualification and scheduling;
  - 3. Maintenance and servicing of aircraft, including the Maintenance Program that will be used;
  - 4. Minimum Equipment List that will be used;

### 12.3 Dry Leasing of Foreign Registered Aircraft

- (A) An AOC holder may be approved by the Authority to dry lease a foreign registered aircraft for commercial air transport in accordance with the regulatory requirements.
- (B) To be eligible for dry lease the foreign registered aircraft shall:



1. Have an appropriate airworthiness certificate issued, in accordance with ICAO Annex 8, by the country of registration and meets the registration and identification requirements of that country.
  2. Be of a type design which complies with all of the requirements that would be applicable to that aircraft were it registered in Nigeria, including the requirements which shall be met for issuance of a Nigeria airworthiness certificate (including type design conformity, condition for safe operation, and the noise, fuel venting, and engine emission requirements).
  3. Be maintained according to a maintenance program approved by the State of Registry and acceptable to the Authority.
  4. Be operated by qualified crew members employed by the AOC holder.
- (D) The Authority has determined the extent of the State of Registry's arrangements for continuing airworthiness and find that these arrangements are adequate for the type of operation;
- (E) The Authority will have free and uninterrupted access, both in Nigeria and at any international location, to the:
1. Aircraft on the ramp and during flight time,
  2. Maintenance and operations facilities,
  3. Maintenance and operations personnel,
  4. Training facilities and simulators used
- (F) The aircraft must be operated in accordance with the regulations applicable to Nigeria AOC holders, and
- (G) The maintenance arrangements must result in the aircraft always being in compliance with the State of Registry requirements and the maintenance requirements applicable to Nigeria AOC holders.

### **13.0 ADDITIONAL INSTRUCTIONS: WET LEASE AGREEMENTS**

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#### 13.1 General Guidance

- (A) The term "wet lease" is a leasing agreement whereby an AOC holder agrees to provide an aircraft and required crewmembers to another air operator. The words "AOC holder" refers to a Nigeria person authorized to operate aircraft in commercial air transport.
- (B) Nigeria regulations require that no Nigeria AOC holder may allow others to conduct wet-lease operations on its behalf unless the Authority is advised and has found the arrangements to be acceptable and approved the conduct of the operation.

#### 13.2 Processing Wet Lease Agreements

- (A) This agreement should be immediately reviewed by the assigned operations and maintenance inspectors to assure that it is complete and sent to Legal Department for review and acceptance.
- (B) The wet lease agreement shall be explicit concerning the:
1. Entity that has operational control, with the authority for initiating and terminating flights;

2. Responsibility for crew training, qualification and scheduling;
  3. Maintenance and servicing of aircraft, including the Maintenance program that will be used;
  4. Minimum Equipment List that will be used;
- (C) Following this review, the principal inspectors should make a written operational assessment of whether the lessor or the lessee will have operational control under the terms of the lease.
- (D) When a determination of operational control is made, NCAA will advise the AOC holder without delay.
- (E) The lessor may be asked to submit any clarifying or supplemental information regarding the lease needed for making proper determination of operational control.

### 13.3 Additional Instructions: Damp Lease Agreements

- (A) The term "damp lease" is a leasing agreement whereby an AOC holder agrees to provide an aircraft and usually at least one crewmember to another air operator.
- (B) The only apparent damp lease arrangements will be the use of Nigeria cabin crew members on a foreign AOC holder. But even in that case, the foreign AOC holder must train and qualify the cabin crew in accordance with their procedure manuals and competency requirements. This action would make the cabin crew an integral part of the foreign AOC holder's crews and would not really be a "damp" situation.

## 14.0 ADDITIONAL INSTRUCTIONS: INTERCHANGE AGREEMENTS

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### 14.1 General

- (A) An interchange agreement is a subset of a dry lease agreement. An interchange agreement permits an air carrier to dry lease aircraft to another air carrier for short periods of time.
- (B) The aircraft may be listed on the operations specifications of both common carriage operators at the same time. The registration markings of each aircraft must be listed on the operations specifications of each AOC holder.
- (C) Nigeria Regulations require that each AOC holder to obtain prior approval from the Authority before it conducts any operation using any aircraft.

### 14.2 Approval Procedures

- (A) Matters which are commonplace in the normal operations of air carrier frequently present major problems in an aircraft interchange. Therefore, special emphasis must be given to the review, approval, and monitoring of this type of operation.
- (B) The following direction and guidance are relevant when an application is received for an aircraft interchange:
1. Each air carrier party to an interchange agreement will submit an application for amendment of its operations specifications to the NCAA. Each air carrier will submit a copy of the interchange agreement or a written memorandum of its terms as part of the application.
  2. Assigned inspectors will review the application and conduct the necessary evaluations and/or inspections to assure compliance with the CARs. Damp lease arrangements are generally

discouraged due to the confusion associated with the key AOC responsibilities. This decision must be recorded in writing and maintained in the NCAA files.

- The results of these reviews and inspections by the NCAA will be communicated to parties to the interchange agreement.
  - Close coordination between the concerned principal operations, maintenance, and avionics inspectors must be maintained.
3. Important details may be overlooked unless interchange operations are closely monitored.
- For example, life rafts and emergency radios have been found improperly stowed during overwater flights on aircraft which have no provisions for their stowage.
  - In another example, an emergency radio was found unsecured on the flight deck where it could have created a hazardous condition in turbulent weather.
  - Equipment variances such as this and nonstandard cockpit arrangements of switches, instruments, and controls can be potentially dangerous unless effective training or corrective changes are accomplished before operation and are closely monitored thereafter.

## 15.0 FINAL CERTIFICATION ACTIONS

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- 15.1 After determining that the leasing arrangements and all submitted Documentations are satisfactory, the NCAA shall amend Appendix A (3) and Appendix A (16) of the Operations Specifications of that AOC holder. The amendment to the operations specifications shall contain the following information:
- (a) The names of the parties to the agreement and the duration of the agreement.
  - (b) The make, model, and series of each aircraft involved in the agreement.
  - (c) The kind of operation.
  - (d) The expiration date of the lease agreement.
  - (e) A statement specifying the party deemed to have operational control.
  - (f) Any other item, condition, or limitation the NCAA determines necessary.
- 15.2 For aircraft interchange arrangement, the amendment to operations specifications shall as follows:
- (A) When all items have been found satisfactory, the operations specifications of both the primary and interchange operators shall be amended by the issue of Appendix A (3) and Appendix A (16) to each operator. The primary operator is the air operator who would normally operate the aircraft if the interchange agreement were not in effect. The interchange operator is the other party to the interchange agreement. The names of each party will be entered in the appropriate column of Appendix A (3) of each operator's operations specifications.
  - (B) The aircraft make, model, and series will be entered in the appropriate column of Appendix A (3) and Appendix A (16) of the operations specifications. In addition, the registration markings of each aircraft to be used in the interchange agreement must be identified in Appendix A (16) of the primary and interchange operators' operations specifications. For most interchange agreements, the registration



markings of the aircraft to be interchanged will have previously been entered in Appendix A (3) of the primary operator's operations specifications.

- (C) The interchange points shall be entered in the appropriate column of Appendix A (3) of the primary and interchange operators' operations specifications. The transfer of flight crews and operational control responsibility shall take place only at the airports specified in the interchange points' column of Appendix A (3) of each operations specification.
- (D) Additional conditions, limitations, and safety related requirements will be included in Appendix A (3) of the primary and interchange operators' operations specifications as authorized by Regulation 2.3.3 of Part 9 of the Nigeria Civil Aviation Regulations.

## **16.0 AIRCRAFT LEASING – AIRTCLE 83bis**

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### **16.1 Purpose**

This section provides information and guidance for applying for, evaluating and approving Article 83bis requirements. It is applicable in cases where the AOC holder leases a foreign registered aircraft or where a Nigerian registered aircraft is leased to another Contracting State. It should be used along with Advisory Circular NCAA-AC-OPS045.

### **16.2 Background**

- 16.2.1 When an aircraft registered in a contracting State is operated under an agreement of lease, charter, or interchange of the aircraft or any similar arrangement by a foreign operator, the State of Registry may, by agreement with the State of the Operator, transfer all or part of its safety oversight functions as the State of registry to the State of the Operator in respect of that aircraft.
- 16.2.2 In the case of Nigerian operators, Regulation 9.2.3.2 of the Nigeria Civil Aviation Regulations permits an AOC holder to dry-lease a foreign registered aircraft for commercial air transport under Article 83bis of the Chicago Convention. In that case, there should be an agreement between the Authority and the State of Registry specifying airworthiness responsibility to be transferred to the Authority. Under Article 8bis, Nigeria Civil Aviation (Airworthiness) Regulations will apply to the extent agreed upon by the Authority and the State of Registry.
- 16.2.3 Such transfer of airworthiness functions and duties may include:
  - (a) The rules and regulations that govern the carrying and use of radio transmitting apparatus aboard an aircraft.
  - (b) Issuing and rendering valid an aircraft Certificate of Airworthiness.
- 16.2.4 The transfer of functions does not have effect until the transfer Agreement has been registered with the ICAO Council and has been made public and its scope directly communicated to the Authorities of the other Contracting States.
- 16.2.5 Under a wet and/or dry Lease Agreement the State of operation should have operational control over the aircraft in question.

### **16.3 Guidance**

- 16.3.1 An operator intending to lease a foreign registered aircraft or to lease out a *State* registered aircraft to another Contracting State should notify the Authority at least thirty days (30) before the commencement of the lease.
- 16.3.2 It is required to notify the Authority how the aircraft safety oversight, certificate of airworthiness and operating crew licenses shall be managed when the State of registry cannot easily access the aircraft in question to ensure continued compliance with the approval terms and crew licenses validity requirements.
- 16.3.3 If there is need for the State of Registry to transfer all or part of its functions and duties in respect of that aircraft, the two State Authorities must sign an Agreement of transfer of duties and safety oversight responsibility as required by Regulations 9.2.3.2, 9.2.3.3, 9.2.3.4 and corresponding IS of Nigerian Civil Aviation Regulations, and Article 83*bis* of ICAO Convention on International Civil Aviation.
- 16.3.4 The Article 83*bis* Agreement should clearly indicate what duties and functions are being transferred by the State of Registry (and accepted by the State of operation) to the foreign Contracting State. It should also permit the State of Registry unrestricted access to the aircraft at any place and time.
- 16.3.5 It is the responsibility of the State of Registry transferring its safety oversight duties and responsibilities to ensure that the other Contracting State has the capacity, capability and competence to undertake the functions being transferred.
- 16.3.6 The State of operation should not accept oversight duties and functions under the Article 83*bis* Agreement of an aircraft for which it does not have the capacity, capability and competence to oversight.
- 16.4 Article 83*bis* Application and Approval Procedure**
- 16.4.1 A holder of an AOC issued by the Authority who wishes to lease or lease out an aircraft under an Agreement that shall necessitate the transfer or acceptance of safety oversight responsibilities to or from another Contracting State in accordance with the provisions of Article 83*bis* shall submit an application to the Authority indicating the likelihood of transferring oversight duties and responsibilities to the Authority in the State of operation.
- 16.4.2 The operator is required in addition to submit the contact address, Fax Number, Email or any other formal contact of the State of the Operator's CAA.
- 16.4.3 The application shall be evaluated to determine which safety oversight duties may be transferred or accepted as the case may be.
- 16.4.4 In case of leasing out a State registered aircraft, the Authority shall evaluate the lease and State of operation's capacity, capability and competence to undertake the effective safety oversight of the aircraft in question.
- 16.4.5 In case of accepting the safety oversight responsibilities, the Authority shall evaluate the leasee and its capacity, capability and competence to undertake the effective safety oversight of the aircraft in question.
- 16.4.6 In either case, an 83*bis* Agreement clearly indicating the transferred (and accepted) duties and responsibilities shall be drawn and signed by the two State Authorities after a satisfactory and successful arrangement evaluation.
- 16.4.7 The signed 83*bis* Agreement shall be communicated to the ICAO Council for information, registration, publicising and communicating to the Authorities of the other contracting States.



- 16.4.8 The AOC holder applying for the implementation of Article 83*bis* shall facilitate the Authority in the administering of the Article 83*bis* arrangement.
- 17.4.8 A copy of the signed Article 83*bis* Agreement, communication to and from the ICAO Council and all documentation generated in the approval process and records of the Agreement on surveillance shall be kept by the Authority.

## APPENDIX A

### BACKGROUND NOTES ON AIRCRAFT LEASES AND LEASING ARRANGEMENTS

#### 1. TYPES OF OPERATIONAL LEASING ARRANGEMENTS

- 1.1 This section describes the types of operational leases. Parties involved in a leasing arrangement should note the responsibilities of each party with respect to the airworthiness and operation of the leased aircraft.
- 1.2 In a wet or damp lease arrangement, the lessor assumes operational control of the aircraft operations. Aircraft operations must be in compliance with the requirements in the lessor's air operator certificate for the duration of the lease.
- 1.2.1 Wet or damp Lease-out of Nigeria-registered aircraft to a foreign operator ("Wet Lease-Out") Regulatory requirements related to Nigeria-registered aircraft will apply. The Nigeria operator will be responsible for the operational control of the aircraft for the duration of the lease. In the case of a damp lease, the qualification and operational control of crew provided by the lessee should be addressed and aligned with the lessor's operations policies.
- 1.2.2 Wet or damp lease-in a foreign-registered aircraft by a Nigeria operator ("Wet Lease-In") Regulatory requirements related to the foreign Authority where the aircraft is registered will apply. The lessor will be responsible for the operational control of the aircraft for the duration of the lease. In the case of a damp lease, the qualification and operational control of crew provided by the lessee should be addressed and aligned with the lessor's operations policies.
- 1.2.3 Wet or damp lease of Nigeria-registered aircraft between Nigeria operators ("Intra State Wet Lease") Regulatory requirements related to Nigeria-registered aircraft applies. The lessor will continue to be responsible for the operational control of the aircraft for the duration of the lease. In the case of a damp lease, the qualification and operational control of crew provided by the lessee should be addressed and aligned with the lessor's operations policies.
- 1.3 In a dry lease arrangement, the lessee usually assumes operational control of the aircraft. The aircraft is operated under the lessee's air operator certificate. Compliance to other relevant regulatory requirements would depend on the Civil Aviation Authority of the State where the aircraft is registered.
- 1.3.1 Dry lease-out of Nigeria-registered aircraft to a foreign operator without change of aircraft registration ("Dry Lease-Out") Regulatory requirements related to Nigeria-registered aircraft will apply. The lessee will be responsible for the operational control of the aircraft under its AOC for the duration of the lease.
- 1.3.2 Dry lease-in of foreign-registered aircraft by Nigeria operator without change of aircraft registration ("Dry Lease-In") The foreign regulatory requirements related to the foreign-registered aircraft will apply. The Nigeria operator will be responsible for the operational control of the aircraft for the duration of the lease.

#### 2. AIRCRAFT REGISTERED WITH THE AUTHORITY OF THE LESSEE

- 2.1 Parties to a dry lease agreement may register the aircraft with the regulating authority of the lessee. This change of registration of the leased aircraft will result in the lessee being solely responsible for the operational control and the airworthiness of the aircraft.
- 2.1.1 Dry lease-out of Nigeria-registered aircraft to a foreign operator with change of aircraft registration Regulatory requirements related to Nigeria-registered aircraft will not be applicable when the aircraft is de-registered from the Nigeria registry. The leased aircraft may be re-registered back onto the Nigeria registry at the end of the lease provided it meets all applicable Nigeria requirements at the time of re-registration.

- 2.1.2 Dry lease-in of foreign-registered aircraft by a Nigeria operator with change of aircraft registration. This is similar to registering an aircraft by a Nigeria operator. The Nigeria operator will comply with all regulatory requirements related to a Nigeria-registered aircraft and be responsible for the operational control of the aircraft for the duration of the lease.

### 3. RESPONSIBILITIES OF THE STATE OF REGISTRY AND STATE OF THE OPERATOR

3.1 An operator intending to engage in leasing arrangement should familiarize himself with the responsibilities of the State of Registry and the State of the Operator, in the event that the aircraft is registered in a State different from the State responsible for oversight of its operations. It is important that the responsibilities of the lessor and lessee to be explicitly specified in the lease agreement between the lessor and lessee, to provide for proper airworthiness and operational oversight and control of the aircraft to be leased.

3.2 The State of Registry is the State on whose register the aircraft is entered. The State of Registry is responsible for the safety oversight and airworthiness standards for aircraft on its register, including those aircraft that are leased. The person or organisation to which the aircraft is registered must ensure that the aircraft complies with all applicable requirements of the State of Registry. The responsibilities of the State of Registry include:

- (a) notifying the State of Design that it has entered such an aircraft type on its register.
- (b) ensuring that the aircraft airworthiness standards of the State of Registry are maintained.
- (c) issuing and validating the airworthiness certificate for aircraft (CoA) on its register.
- (d) overseeing the continuing airworthiness of the aircraft according to the standards of the State of Registry, regardless of where it is operated in the world.
- (e) ensuring that personnel performing maintenance work on the aircraft meets the experience, knowledge and skill requirements in accordance with the requirements of the State of Registry.
- (f) ensuring that flight crew operating the aircraft meets the experience, knowledge and skill requirements to safely operate the aircraft in accordance with the requirements of the State of Registry.
- (g) ensuring that operational personnel related with the aircraft operation continue to meet the standards required by the State of Registry.
- (h) ensuring timely and appropriate actions are in place to correct all deficiencies highlighted by the flight crew on the maintenance of the aircraft and its operation.
- (i) informing the organization responsible for the type design on the faults, malfunctions, defects and other occurrences that cause or might cause adverse effects on the continuing airworthiness of the aircraft.
- (j) ensuring that mandatory continuing airworthiness information from the State of Design is assessed and appropriate action is taken in a timely manner.

3.3 The State of the Operator is the State where the principal place of business of the operator is located, or if no such business exists, the permanent residence of the operator. The operator of the aircraft must make sure that the operations of the aircraft meet the requirements of the State of the Operator. The responsibilities of the State of the Operator include ensuring that its operators are able to:

- (a) demonstrate safe and efficient operations prior to the initiation of any flight operations.

- (b) conduct operations with respect to the original certification criteria or operational specifications on a continuing basis.
- (c) take timely and necessary actions to resolve safety issues that are found with respect to the maintenance of aircraft, flight operations and other air operator responsibilities, including the actions of the operator's personnel.

#### 4 AIRWORTHINESS CONSIDERATIONS

4.1 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 NCAA;
- (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 NCAA Regulations;

4.2 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 NCAA;
- (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:
- (g) airworthiness directive or continued airworthiness requirement issued or adopted by the State of Registry; and
- (h) mandatory safety information issued by the OTAA, including airworthiness directives;
- (i) 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;
- (j) the aircraft is inspected, through a pre-flight inspection, before each flight;
- (k) all modifications and repairs comply with the airworthiness requirements established by the State of Registry;
- (l) 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.
- 4.3 The tasks specified in 4.2 shall be monitored by the lessee Operator's continuing airworthiness management organisation. For this purpose, the organisation shall comply with the requirements of NCAA.
- 4.4 The continuing airworthiness management organisation referred to in 4.3 shall ensure that the maintenance and release of the aircraft are performed by a maintenance organisation meeting the requirements of the State of Registry.
- 4.5 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.