Leasing and Article 83 \textit{bis}

Yuanzheng Wang

Air Transport Officer

Air Transport Bureau, ICAO
Study on the Safety and Security Implications of Economic Liberalization

Conducted by ICAO Secretariat, in 2005
Purpose of Study

Identifying problems

- How safety/security regulation may be affected?
- Any gaps in existing ICAO provisions?

Fixing the problems

- Action by ICAO
- Action by States
Findings of Study: Part I

- Liberalization not at issue
- Implications on S/S regulations

Growth in activity → Increase pressure
Complex arrangements → Complicate oversight
Going multinational →

Clear need for coherent policy
What are the problem situations?

Concerns: aircraft, air operator, personnel

Type 1: Single State involved

- Having an impact but clear re State’s responsibility

Type 2: Multiple States involved

- Complicate accountability and raise questions re State’s responsibility
Type 2: Case Study

Split responsibility

Traditionally

Change

State A

SR, SO, OPTR
Pilots

State B

SO

State C

OPTR

State D

Pilots

Air Transport Bureau
Type 2: Case Study

A moving target: Leasing

Who is responsible for What? How is oversight handled?
Type 2: Case Study

Complex arrangement: Codesharing/Franchising/Leasing

State A
SO Franchisee

State D
SR

State B
FLT: AA, BB, CC

State C

State E
Repair & Maintenance

State F
Franchisor

State G
Pilots

Who is responsible for What?
Type 2: Case Study

Cross border mergers

Which is the SO?

Should there be regional AOC?
Findings of Study: Part 2

Can existing ICAO provisions address the changes?

(mainly in areas of technical regulation and safety oversight)
Evolution of normative safety

The initial concept (1944 → 1970’s)
Evolution of normative safety

➢ Today’s concept

Regulator(s)

Licence

AOC

Flight crew

Training

Operator

Maintenance

C of A

State of the operator and/or State of Registry

Aircraft

ANB
Respective responsibilities

State of Registry

State of operator

Issues AOC

- adequate organization
- method of control and supervision of flight operations,
- ground handling arrangement
- training programme
- maintenance arrangements

Flight Crew licence

Certificate of Airworthiness

Article 83 bis
Shared responsibilities

Flight crew

- Licence validity and extension of privileges (e.g. type rating) are under the responsibility of the State of registry

- An operator shall establish and maintain a ground and flight training programme, approved by the State of the Operator, which ensures that all flight crew members are adequately trained to perform their assigned duties (Annex 6, part I, Para 9.3.1)

- Annex 1 Note 1. to paragraph 1.2.5.1.1 — The maintenance of competency of flight crew members, engaged in commercial air transport operations, may be satisfactorily established by demonstration of skill during proficiency flight checks completed in accordance with Annex 6.
Shared responsibilities

- Maintenance
  - The maintenance arrangement of the operator shall be acceptable to the *State of the Operator* (Annex 6, Part I, Para. 4.2.1.3)
  - The maintenance programme shall be approved by the *State of Registry* (Annex 6, Part I, Para. 8.3.1)
  - The Maintenance Control Manual shall be acceptable by the *State of Registry* (Annex 6, Part I, Para. 8.2.1) and shall include material required by the *State of Registry* and *State of Operator* (Annex 6, Part I, Para. 8.2.4)
Shared responsibilities

- Flight Operations
  - Are generally under the oversight of the State of the Operator but the State of Registry has responsibility for:
    - Code of performance (A6,PI, 5.1.1)
    - Flight Manual – Performance data (A6,PI, 11.1 – A8, 2.2.1.1)
  - MEL is approved by the State of the Operator but shall comply with airworthiness requirements established by the State of Registry – (A6,PI, 6.1.2)
Lease and code sharing

- **Code sharing and Franchising**
  - The aircraft is operated under the AOC of the operator that is actually operating the flight (A6,P1,Chap. 2 and 4.2.1)

- **Dry lease and Wet lease**
  - The aircraft is operated under the operator’s AOC
  - In the case of wet lease from an AOC holder, the operator may be the lessor or the lessee depending on the lease
Conclusions: the way forward

Compliance with ICAO SARPS is essential.

- Accident reports and Data from SOA Audit indicate that lack of compliance is the most important issue;

The current system clearly allocates responsibilities but creates a fragmentation of responsibility in some circumstances (State of registration vs. State of operator)
Conclusions: the way forward

Fragmentation of responsibilities is not a problem where handled properly but complicates the accountability for safety oversight.

Article 83 bis provides a solution when the State of the Operator and the States of Registry are willing to enter in such agreement.
Conclusions: the way forward

State capability to identify the State of the operator would be facilitated by the carriage of a true copy of the AOC (now made mandatory in Annex 6);

Additional guidance material of the relation between state of Registry, State of the Operator and operator would be useful (Doc 8335, Cir. 295, etc…).
Leasing and Article 83 bis

(Part 2)
Different responsibilities

• Leases Within the same State
  – All responsibilities with one State

• Between entities from different States
  – Each State retains some responsibilities
State responsibilities

• For leases agreed between two entities within the same State
  – The State of Registry and the State of the operator is the same

• For leases agreed between two entities, each from a different State
  – The State of the operator is different from the State of Registry
Convention and Annexes

• State of Registry responsibilities
  – Certificate of Registration
  – Certificate of Airworthiness
  – Flight crew licenses

• State of the operator responsibilities
  – Air Operator certification (AOC)
  – Surveillance
4.2.1.1 An operator shall not engage in commercial air transport operations unless in possession of a valid air operator certificate or equivalent document issued by the State of the Operator.
Wet lease & AOC

- An aircraft can be operated only under **ONE** AOC
- In any case there can be only **ONE** State of Registry and only;
- And only **ONE** State of the Operator
Article 83 bis

• The agreement:
  – identifies the lessor and the lessee;
  – the aircraft;
  – the nature and scope of the responsibilities transferred;

• IT MUST BE REGISTERED WITH ICAO

• A copy of the agreement should preferably be on board each aircraft leased and operated pursuant to 83 bis
Article 83 bis

• How are States informed?
  – “List of Agreements and Arrangements Concerning International Civil Aviation Registered with ICAO”
    • Published on the WEB:
    • http://www.icao.int/icao/en/leb/
    • Select aeronautical agreements, all signatories and (subject) 83 bis
Article 83 bis

- How are States informed?
  - (In the case of short term agreements)
  - Once the agreement is registered with ICAO
  - All States to be affected by the agreement can be informed directly by the States party to the agreement.
Key elements

• Regulations
• Implementation
  – Scrutiny
  – Authorizations
  – Monitoring
    • Safety oversight
    • Follow-up
Questions to consider

• Regulation?
• Implementation?
• Responsibilities?
• Procedures?
• Oversight capability?
Practical implementation problems

- When need an A83 bis agreement?
- How to deal with short term leasing arrangements?
- Who can sign such agreement?
- Who should register the agreement, SR or SO?
ICAO’s current work on Article 83 bis

• Task force to review situation
• To identify issues & determine what further work/guidance need to be developed
  – Update/revise guidance?
  – Develop additional guidance?
  – TF to meet and produce recommendations
  – TF to report back to governing bodies
THANK YOU