



WORKING PAPER

THIRTEENTH AIR NAVIGATION CONFERENCE

Montréal, Canada, 9 to 19 October 2018

COMMITTEE B

**Agenda Item 7: Operational safety risks
7.3: Other implementation issues**

**CHALLENGES AND PERSPECTIVES OF AIRCRAFT INTERCHANGE
BETWEEN AIRLINES**

(Presented by Brazil)

EXECUTIVE SUMMARY

This working paper provides an alternative model to Article 83 bis of the Convention on International Civil Aviation (Doc 7300) in order to allow airlines from different States to carry out aircraft interchange operations in which both civil aviation authorities, from the States of primary and secondary operators¹, have similar responsibilities.

Action: The Conference is invited to:

- a) Consider the information and the background presented in this working paper;
- b) Endorse the conclusions presented in the third section;
- c) Adopt the recommendations set out in the fourth section .

1. INTRODUCTION

1.1 In 1980 the International Civil Aviation Organization amended the Convention on International Civil Aviation (Doc 7300) including Article 83 bis. The primary concern was to improve regulation and enhance safety oversight capabilities in cases of international leasing, chartering or interchange of aircraft, while recognizing that the State of Registry, once distant from the aircraft, may not be able to fulfill all of its responsibilities as defined in the Convention and its Annexes².

1.2 Many years have passed since then, and dozens of bilateral agreements between Contracting States have been signed invoking Article 83 bis of the Convention, which allows the transfer of responsibilities from the State of Registry to the State of the Operator. By assuming the functions of the State of Registry, the State of the Operator, which has closer ties with the aircraft operator, will have the necessary authority to carry out the aircraft safety oversight duties. This subject was particularly suited to countries that are well known for being great aircraft "registrars" without necessarily having a large operating fleet in their territory.

1.3 In the case of South America, Article 83 bis was little used in bilateral agreements, although the use of aircraft with foreign registration is a recurring reality in some countries of the continent. Colombia, Chile, Peru and Brazil are some examples of States that have already signed agreements to facilitate the interchange, but opted not to transfer responsibilities.

¹ "Secondary Operator" is the one who operates the aircraft by means of an interchange contract, differing from the term "Primary Operator", which means the one who operates the aircraft because it owns it or have set a contract with the owner.

² Manual of Procedures for Operations Inspection, Certification and Continued Surveillance, Document 8335 – ICAO, 5th Edition, 2010, page V-1-4.

1.4 In this context, a working paper introducing the dual oversight model for bilateral agreements was presented by members of the Latin American Civil Aviation Commission (LACAC) in 2013 at the Worldwide Air Transport Conference (ATConf)³. This model is widely used in South America to enable interchange operations and keeps the typical functions and duties of State of Registry and State of Operator, but adds to the State of the Secondary Operator the prerogative of surveilling and inspecting the aircrafts, without any impairment of the State of Registry actions.

1.5 As a defense to the dual oversight model LACAC members exposed the difficulty of applying Article 83 bis to interchange situations where operational exchanges occur in a short period of time, so that transfer of responsibilities efforts do not revert to safety-related benefits.

1.6 Brazil has signed two dual oversight agreements for aircraft interchange in the last decade and the experience achieved from the practice has allowed to identify gaps and inconsistencies of this model, although it has reinforced the impracticability of the Article 83 bis to interchange operations carried out by South American commercial operators.

1.7 Differently from the Article 83 bis, which has been used as an alternative to traditional leasing, the new dual oversight model that will be presented in this working paper focuses on the safety of interchange operations in which two companies operate a single aircraft for similar periods of time, with the goal of increasing efficiency by means of a better use of the fleet.

2. DISCUSSION

The new dual oversight model

2.1 The interchange operations in South America are mainly demanded as an efficient alternative to the high operating costs of aviation, due to the aircraft usage optimization, ensuring adequacy of the offer to the air services market seasonality and granting flexibility to deal with situations of contingency.

2.2 Over the last two years, relevant moves in the continent's civil aviation market, such as the formation of large holding companies, alliances and joint ventures, have led to a significant increase in demand for agreement between South American States to make feasible the aircraft interchange between airlines.

2.3 Unlike most of the ICAO 83 bis agreements registered in the last twenty years, Latin American dual oversight agreements legally support operations between two airlines that are willing to exchange the operational control over the same aircraft in a maximum period of thirty days. The approvals made by Brazil so far allow the operational control exchange within a few days. While the 83 bis agreements⁴ seem to support the State of Registry, since the aircraft will be operated in another territory during the entire period of a lease, here we have aircraft that are generally leased, imported and nationalized, which are operated for similar lengths of time by two distinct airlines from two distinct States.

2.4 It would not make sense to opt for the transfer of responsibilities in arrangements such as the one described, when the civil aviation authorities involved will have to act very similarly, considering the time of operation of each operator. In this case, the concern is with the State of the Secondary Operator (Secondary Operator CAA) who, lacking the responsibilities normally held in his territory as the authority of the State of Registry, must perform a subsidiary role on foreign aircraft as well as be attentive to the compliance with its operational requirements.

2.5 In this regard, the *Airworthiness Manual* (Doc 9760), Part IV, Chapter 6 – *Leasing Arrangements*, provides crucial aspects of operations under interchange aircraft contracts, which reflect the most critical issues seen in the implementation of the dual oversight agreements. It details the continuing airworthiness functions that will apply to interchange agreements (validated type design certificate, maintenance, mandatory continuing airworthiness information (MCAI) and distribution of this information) and points out possible problems in the division of responsibilities between the State of Registry and the State of Operator.

³ The dual oversight model for the interchange of aircraft from different States – ATConf/6-WP/57, Montreal, 2013.

⁴ Seventy-six 83 bis agreements registered on the ICAO website were analyzed. Only two of them were related to leasing contracts whose duration was less than six months. These leasing contracts had a predominant duration of six or twelve months.

2.6 While several airworthiness-related functions remain with the State of Registry, there are some operational requirements in the regulations (under which secondary operators are certified) that are intrinsically related to the airworthiness and design requirements. Brazilian experience showed that requirements related to minimum equipment list (MEL), flight data recorder (FDR), placards, and medical and survival kits are often different in the States’ regulations. Furthermore, airworthiness directives (ADs) issued by the State of the Secondary Operator authority should be applicable to all aircraft operated by the same air carrier, regardless of which is the State of Registry.

2.7 These differences, although small if observed in the regulatory framework of most countries (which are already widely harmonized), eventually incur costs related to alterations and modifications to the operator that wants to operate interchanged aircraft. Nevertheless, it would be unjustifiable to require a national operator to apply an AD to one aircraft and not to require the application of this same AD to another aircraft of the same fleet, because they are registered in different States. This situation would become even more serious if compliance incurred in costs that would only be applied to a few operators, certainly raising fair competition concerns.

2.8 Thus, based on the growing number of requests for interchange operations, the Brazilian civil aviation authority decided to review the dual oversight model. The central idea of the revised model is to keep the responsibilities of State of Registry and State of Operator as defined in the Convention, along the dual oversight, but additionally assign the secondary operator compliance with all possible operational requirements of the State of Secondary Operator, including those related to the type design. Similarly, the secondary operator should comply with the ADs issued by the State of the Secondary Operator and with applicable maintenance tasks, when these relate to the operational experience and local specificities (such as climate). All these understandings must be officially agreed between the CAA involved.

2.9 The secondary operator must revise all its operation manuals, in order to consider the interchange operation and the operational control exchange procedures. Maintenance manuals may be revised if requested by the State of the Secondary Operator, but they keep being approved by the State of Registry. Likewise, the MEL must always meet the actual operator authorizations and its revisions must be approved by the State of the Primary Operator, which is normally the State of Registry.

2.10 The chart below summarizes the main differences between the 83 bis and dual oversight agreements:

	83 Bis Model	Dual Oversight Model	Revised Dual Oversight Model
Parts of the Agreement	1. State of Registry; 2. State of Operator.	1. State of Registry/State of the Primary Operator; 2. State of the Secondary Operator.	1. State of Registry/State of the Primary Operator; 2. State of the Secondary Operator.
Responsibilities of State of Registry and State of Operator	1. Transfer of responsibilities from the State of Registry to the State of Operator.	1. No transfer of responsibilities from the State of Registry to the State of Operator; 2. The State of the Secondary Operator may carry out aircraft inspections (oversight duty).	1. No transfer of responsibilities from the State of Registry to the State of Operator. 2. The State of the Secondary Operator may carry out aircraft inspections (oversight duty). 3. Airworthiness-related operational requirements of the State of the Secondary Operator must be complied with whenever they are necessary to establish an equivalent level of safety comparing to other aircraft of the secondary operator’s fleet. 4. The State of the secondary operator must require additional actions from its operators whenever the CAA finds that sharing manuals, equipment and documentation may jeopardize operational safety.

2.11 It is important to note that airlines requesting interchange operations frequently share the same system or very similar systems related to maintenance, reliability and safety management. That is a helpful feature on the implementation of the dual oversight model and it happens because the operators are often part of the same group. This makes it easier to attain airworthiness functions such as the transfer of information of aircraft faults, malfunctions, defects, and other occurrences to the State of Registry and/or State of Design. In addition, it is important to highlight that an agreement based on the dual oversight model can only be effective after comparing the civil aviation systems of the States involved.

3. CONCLUSION

3.1 In view of all the above, it can be concluded that the dual oversight model is offered as the best alternative to enable the non-exclusive use of aircraft by operators from different States, considering the characteristics of the South American airlines (and also the sufficient harmonization of the regulations, the geographical proximity and the cooperative relationship of the continent's civil aviation authorities).

3.2 Notwithstanding the concern with the air safety when it comes to aircraft that are operated outside the State of Registry's territory, which led the Convention to allow the transfer of responsibilities via Article 83 bis, Brazil understands that the implementation of this type of agreement would not increase the safety level of the interchange operations in South America, under the conditions and specific characteristics presented. The dual oversight model with the proposed improvements allows the efficient use of an aircraft by operators from different States at the same time it averts that significant differences in the interchanged aircraft load operators unequally or call into question the sovereign States' own safety definitions.

4. ACTION BY STATES

4.1 States are invited to:

- a) Take into consideration the information and background presented in order to analyze the advantages of promoting the Dual Oversight model for the interchange of aircraft between airlines from different States.
- b) Recognize the benefits of the Dual Oversight model and recommend ICAO to take into account the model in the revisions of technical guidance material related to interchange arrangements.

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