



WORKING PAPER

WORLDWIDE AIR TRANSPORT CONFERENCE (ATCONF)

SIXTH MEETING

Montréal, 18 to 22 March 2013

Agenda Item 1: Global overview of trends and developments

Agenda Item 1.1: Industry and regulatory developments

**THE DUAL OVERSIGHT MODEL FOR THE INTERCHANGE OF AIRCRAFT FROM
DIFFERENT STATES**

(Presented by 22 Member States², Members of the Latin American Civil
Aviation Commission (LACAC))

EXECUTIVE SUMMARY

This working paper provides an alternative model to Article 83bis of the Convention on International Civil Aviation, in order to allow for the Interchange of Aircraft between companies from different States. This model has become an important tool for the Latin American Civil Aviation Commission Member States yet there is no reference to a precedent on this from Civil Aviation's governing body.

Action: The Conference is invited to:

- a) consider the information and the background presented in this working paper;
- b) endorse the conclusions presented in paragraph 3; and
- c) adopt the recommendations in paragraph 4.

References: ATConf/6 reference material is available at www.icao.int/meetings/atconf6.

1. INTRODUCTION

1.1 An analysis of the States' air policy was carried out in compliance with the Latin American Civil Aviation Commission (LACAC) Strategic Plan, and it was concluded that there is a tendency to include standards, criteria and/or procedures in the policy related to collaboration agreements, with some countries showing a higher degree of openness to these agreements, while others apply them in a more restrictive manner.

¹ Spanish version provided by the Latin American Civil Aviation Commission (LACAC).

² Argentina, Aruba, Belize, Bolivia, Brazil, Chile, Colombia, Costa Rica, Cuba, Dominican Republic, Ecuador, El Salvador, Guatemala, Honduras, Jamaica, Mexico, Nicaragua, Panama, Paraguay, Peru, Uruguay and Venezuela.

1.2 As of the nineties, it became more obvious in Latin America that air traffic rights were opening up, in keeping with international trends, and models were being used that were more compatible with global alliances between operators. Within this context of more liberal air markets, code-sharing agreements became absolutely essential for operators in search of competitiveness.

1.3 The practice of aircraft leasing has been on the rise. The use of leased aircraft in a liberalized regulatory context has meant that aircraft leasing facilitates the entry of new air carriers into the market and/or allows for maximum utilization of aircraft.

1.4 In general, States have a model clause available for code-sharing agreements or are guided by the suggestions in ICAO's Template Air Services Agreement (TASA) model. However, when it comes to interchange of aircraft, it can be seen that most States do not have any model clause available or they have not applied this form.

1.5 It has been concluded that even if there are specific provisions or regulatory texts that provide a framework for this subject in all of the States, and even if they have administrative criteria for handling this, various States still do not permit the interchange of aircraft because of the difficulties involved in applying the transfer of responsibilities, based on Article 83bis of the Convention on International Civil Aviation (the Chicago Convention).

1.6 The Chicago Convention clearly sets out the responsibilities incumbent upon the State of Registry and the State of the Operator in terms of safety. However, it is more difficult to apply this when it comes to interchange of aircraft between distinct operators from different States and for very short periods of time.

1.7 Considering that interchange of aircraft is a necessary arrangement for operators in order to improve efficiency and above all, to be able to achieve better utilization of aircraft or compensate for a temporary lack of availability of their fleet, an alternative model to 83bis was developed. This model maintains the responsibilities of the State of the Operator and the State of Registry, thereby ensuring safety, without generating higher costs for operators, by permitting hourly interchange of aircraft.

1.8 There are currently various States in the region that are applying this agreement with other States in the Region (Brazil, Chile, Colombia, Ecuador and Peru), in order to permit the interchange of aircraft, and it is entitled "Memorandum of Agreement of Cooperation between aeronautical authorities for dual safety oversight with regard to interchange of aircraft contracts". It may be concluded that implementation and application of these agreements have been successful, given that 25.000 aircraft interchange processes have materialized per year, without any safety disadvantages.

2. DESCRIPTION OF THE MODEL

2.1 The Agreement is founded on and driven forward by the desire of aeronautical authorities to undertake measures that foster, facilitate and simplify aircraft and companies' operations as well as the performance of aeronautical staff from one State in the airspace of the other State and vice versa, with a view to developing the activities and aeronautical relations between both countries. There is also a need to coordinate the effective control and supervision which falls to each authority in their corresponding areas of jurisdiction over the operation of aircraft from airlines authorized by their respective Governments, for the international air transportation of passengers, cargo and /or mail.

2.2 It is considered to be of mutual interest to facilitate technical and operational cooperation between the airlines of both Parties, since this allows them to achieve greater efficiencies by optimizing

utilization of their aircraft. That is why the basic principles necessary for the execution of aircraft interchange contracts have been included in this instrument, within a framework that ensures that the State of Registry and the State of the Operator fulfil their responsibilities.

2.3 As it is in the interests of both parties to strengthen safety through continuous monitoring, the aeronautical authority of one State recognizes the value of participation from the other State's authority and accepts inspection measures and permanent supervision of aircraft registered in its State which may be done by the other State on its territory and in its airspace, without prejudice to the responsibilities incumbent upon it as the State of Registry, in particular with regard to Annexes 1, 6 and 8 of the Chicago Convention.

2.4 The Agreement is broad in scope and covers aircraft registered in its States that are included in the Operational Specifications, as well as the granting and validation of licences and aeronautical staff clearance on a reciprocal basis. The Agreement also covers all measures that permit these instruments to remain in force, in accordance with the regulations and legislation of both States.

2.5 In summary form, the responsibilities to be fulfilled by each State participating in the agreement include, inter alia, the following:

a) Aeronautical Authority of the State of Registry:

- 1) grant and/or validate licences and clearance of aeronautical staff as requested, in compliance with its internal legislation, in order to fulfil its functions for aircraft with its Registration;
- 2) maintain full control at all times over everything related to the airworthiness of the aircraft with its Registration used by airlines authorized by the other State, when interchange lease contracts (lease for hours) are concluded;
- 3) accept all the supervision measures that the Aeronautical Authority of the other State wishes to undertake, even although this implies double supervision, that are related to the airworthiness of aircraft with its Registration, when they are operated by airlines from the other State; and
- 4) fulfil all of the responsibilities of the State of the Operator for airlines from its State, irrespective of the aircraft's registration.

b) Aeronautical Authority of the State of the Operator:

- 1) grant and/or validate licences and clearance of aeronautical staff as requested, in compliance with its internal legislation;
- 2) undertake the inspection measures and permanent supervision of the aircraft registered in the other State when they are operated by airlines from its State;
- 3) perform the inspections, which it deems necessary, to verify that the conditions under which the airworthiness certificate was granted are being permanently maintained;
- 4) ensure that the operator includes his maintenance responsibilities in the General Maintenance Manual (MGM);

- 5) ensure that the responsibilities under the Maintenance Programme and development of the procedures appear in the MGM;
- 6) carry out the inspection of the maintenance registers in accordance with the Continuous Monitoring Plan;
- 7) verify that the operator is doing the airworthiness analysis and submitting the reports to the State of Registry;
- 8) verify that the procedures for the application of aircraft modifications or repairs appear in the Operator's MGM and is permanently applied;
- 9) verify that the line maintenance arrangements constitute the main basis for maintenance and are applied correctly, in accordance with the procedures that appear in the MGM; and
- 10) fulfil all of the responsibilities of the State of the Operator for its State's airlines, irrespective of the registration of the aircraft.

3. CONCLUSIONS

3.1 This model maintains the responsibilities of the State of Registry and the State of the Operator unchanged, in accordance with the provisions of the Chicago Convention.

3.2 This model considers the importance of cooperation between States to improve the supervision of aircraft registered in one State, when they are operated by airlines from another State, thereby ensuring safety during these aircraft interchange processes.

3.3 This model does not generate higher costs for operators, since it permits efficient use of their aircraft, and it also allows them to compensate for a temporary lack of aircraft in their own fleet so that they can honour their business commitments.

4. RECOMMENDATION

4.1 ICAO should consider the information and background presented in this paper, in order to analyse the advantages of promoting this alternative model for the interchange of aircraft between airlines from different States.

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