



WORKING PAPER

ASSEMBLY — 39TH SESSION

TECHNICAL COMMISSION

Agenda Item 35: Aviation safety and air navigation standardization

SAFETY OVERSIGHT RESPONSIBILITIES IN THE CROSS-BORDER TRANSFER OF AIRCRAFT

(Presented by the United States)

EXECUTIVE SUMMARY

The nature of aircraft leasing has evolved in terms of the types of aircraft and operations being conducted and the parties to the lease, wet or dry. Current leasing arrangements often encompass highly sophisticated aircraft with extensive international operations, including trans-national operations and diverse ownership composition of both the lessee and lessor.

Action: The Assembly is invited to:

- a) recognize that the rapid evolution of global aircraft leasing operations increases the complexity of safety oversight obligations by all participants;
- b) affirm the responsibilities of all parties, ICAO Member States, and the aviation industry in the need for safe operations of leased aircraft, both wet and dry, in keeping with established international requirements;
- c) support actions by the ICAO Secretariat to form a working group comprised of participants from a representative sample of regulatory authorities and the aircraft leasing industry, with requisite technical and/or legal expertise in at least one of the following disciplines: airworthiness, operational, and personnel licensing;
- d) the working group should address and provide recommendations on the following:
 - 1) identify ICAO obligations and requirements for both regulatory authorities and the aviation industry;
 - 2) identify issues, both near and longer-term, diminishing the effectiveness and efficiency of safety oversight of aircraft leasing arrangements;
 - 3) propose industry best practices and possible mitigation strategies for such issues in compliance with the Convention;
 - 4) enhance and develop, together with its safety partners, tools and mechanisms that facilitate the cross-border process; and
 - 5) develop an enhanced information system relating to the cross-border process which integrates and further develops current initiatives.

<i>Strategic Objectives:</i>	This working paper relates to the Safety Strategic Objective.
<i>Financial implications:</i>	This working paper has no significant financial implications.
<i>References:</i>	Annex 6 — <i>Operation of Aircraft</i> Doc 8335, <i>Manual of Procedures for Operations Inspection, Certification and Continued Surveillance</i> Doc 7300, <i>Convention on International Civil Aviation</i> .

1. INTRODUCTION

1.1 The nature of aircraft leasing has evolved in terms of the types of aircraft and operations being conducted and the parties to the lease, wet or dry. Current leasing arrangements often encompass highly sophisticated aircraft with extensive international operations, including trans-national operations and diverse ownership composition of both the Lessee (the party to which the aircraft is leased) and Lessor (the party from which the aircraft is leased).

1.2 Such operations can result in operations and business arrangements that stretch the ability of State regulators to provide effective safety oversight and can promote regulatory overlap or duplication that can lead to actual loss of asset value. This paper will touch on the obligations under the *Convention on International Civil Aviation* (Doc 7300) (hereinafter referred to as the Chicago Convention) and ICAO Standards of all parties to ensure safety and provide effective oversight of safety measures.

1.3 This paper proposes the Assembly support actions by the ICAO Secretariat to form a working group of legal and technical experts to identify basic safety obligations defined by ICAO related to aircraft leasing, the issues affecting leased aircraft, and proposed actions to promote the effective safety oversight of leased aircraft (wet and dry leased) to ensure both continued safety and the ability of those aircraft to be transferred to other entities at the expiration of any current leasing agreements.

2. DISCUSSION

2.1 The Chicago Convention and relevant Standards and Recommended Practices (SARPs) define the overall responsibilities for the safe operation and effective oversight of that operation for leased aircraft (wet¹ or dry²).

2.2 State of Registry — The State on whose register the aircraft is entered, that is, the nationality of the aircraft. The Convention imposes obligations on the State of Registry that directly relate to the safety of the aviation system as a whole. The Convention permits States to join together to constitute joint air transport operating organizations or international operating agencies and to pool their air services. States operating aircraft under these arrangements are jointly bound to assume the obligations attached to the State of Registry.

2.3 State of Operator — The State in which the operator's principal place of business is located or, if there is no such place of business, the operator's permanent residence. The State of the Operator is responsible for issuing the Air Operator Certificate, or equivalent document, for commercial aircraft operations, as detailed in Annex 6 — *Operation of Aircraft*. This responsibility entails the control and supervision of the aircraft operation-related activities of all aircraft operators in the State. The State of the Operator has other responsibilities under the Convention.

2.4 Aircraft Leasing — Arrangements of various kinds for the transfer of control of an aircraft short of outright purchase. Unless suitable arrangements are made between the States involved, a lease may create complex legal, safety, enforcement, and practical problems for either the State of Registry of the aircraft or the State of the Operator, or both of these States. These problems arise because

¹ Wet lease: the lease of an aircraft where the aircraft is operated under the AOC of the lessor. It is normally a lease of an aircraft with crew, operated under the commercial control of the lessee and using the lessee's airline designator code and traffic rights. (*Manual of Procedures for Operations Inspection, Certification and Continued Surveillance* (ICAO Doc 8335, paragraph 1.4))

² Dry lease: the lease of an aircraft where the aircraft is operated under the AOC of the lessee. It is normally a lease of an aircraft without crew, operated under the custody and the operational and commercial control of the lessee, and using the lessee's airline designator code and traffic rights. (ICAO Doc 8335, paragraph 1.3)

of possible uncertainty concerning which party is responsible for the safe operation and airworthiness of the aircraft, and uncertainty concerning the regulations of which State are applicable. The determination of responsibilities is a factual issue that depends upon the terms of the lease or other agreements. Determining which party to a lease is responsible for the operational control and airworthiness will in turn clarify which State has oversight responsibilities for the operation of a leased aircraft. In some instances, the oversight responsibilities of the State of Registry and the State of the Operator may appear to overlap. The bottom line for any given leasing arrangement is that it must be clear for any given operation which State is responsible for safety oversight.

2.5 Aircraft Lessee — The party to which the aircraft is leased. The aircraft lease should specify the terms and conditions for the utilization of the subject aircraft that the lessee must meet regarding business considerations, regulatory obligations, aircraft operations/maintenance activities, including other items such as the terms and conditions for the return of the aircraft at the termination of the lease. The agreement should also refer to any special arrangements, industry best practices, or authorizations that would be required between the leasing parties and the associated regulatory authorities to provide adequate oversight, continued conformity, and maintenance of the commercial value of the leased asset.

2.6 Aircraft Lessor — The party from which the aircraft is leased. The aircraft lease should specify the terms and conditions for the utilization of the subject aircraft the Lessor requires regarding business considerations, regulatory obligations, operations/maintenance activities, including other items such as the terms and conditions for the return of the aircraft at the termination of the lease. The agreement should also refer to any special arrangements, industry best practices or authorizations that would be required between the leasing parties and the associated regulatory authorities to provide adequate oversight, continued conformity, and maintenance of the commercial value of the leased asset.

2.7 Article 83 bis of the Chicago Convention — An amendment that provides for the voluntary transfer of the State of Registry's safety oversight obligations to the State of the Operator for specifically enumerated aircraft that are leased or otherwise transferred abroad. The principal advantage of an Article 83 bis transfer is that third States must recognize it. Article 83 bis introduced the concept of State of the Operator into the Convention for the first time. Article 83 bis is not well understood and not widely used, but it is another tool for dealing with the safety issues surrounding leased aircraft. ICAO is implementing the work of an ICAO legal and technical work group in revising Article 83 bis guidance and updating and reforming the process for registering aeronautical agreements.

3. CONCLUSION

3.1 The cross-border transfer of commercial aircraft is sure to increase in both absolute numbers and as a percentage of all aircraft engaged in international aviation for the foreseeable future. The arrangements for cross-border transfers are also sure to increase in complexity to reflect the financial and operational needs of lenders and operators.

3.2 ICAO, Member States and the industry must work in close cooperation to ensure that regulatory measures keep pace with developments, not just to promote efficiency and economy, but also to ensure that aviation keeps and improves its remarkable and enviable safety record.