



**DIRECTORS GENERAL OF CIVIL AVIATION CONFERENCE
ON A GLOBAL STRATEGY FOR AVIATION SAFETY**

Montréal, 20 to 22 March 2006

**Agenda Item 3: Beyond the current framework
3.1: Safety framework for the 21st Century**

**FRAGMENTATION OF STATES' SAFETY OVERSIGHT
RESPONSIBILITIES**

(Presented by the Seychelles)

SUMMARY

This paper is presented to the Directors General of Civil Aviation Conference on A Global Strategy for Aviation Safety regarding safety aspects associated with the increase in aircraft leases and other commercial arrangements. It discusses various lease and commercial arrangement types as well as their implications to safety. It proposes a new definition of the State of Operator as well as suggests possible ways forward to ensure that an adequate safety oversight framework exists to cope with the increased economic liberalization.

1. INTRODUCTION

1.1 Working paper 10 highlights safety aspects associated with the increased economic liberalization through cross-border leasing as a form of commercial arrangement and practice. The sheer number of types and complexity of current lease arrangements renders the intent of the current definition and application of State of the Operator impractical. If not managed properly this may lead to fragmentation in safety oversight obligations and responsibilities. Of equal importance are oversight responsibilities in other forms of commercial arrangement such as code sharing interchanging and franchising which are fast gaining popularity.

2. DISCUSSION

2.1 Leasing arrangements

2.1.1 *International Civil Aviation Vocabulary, Volumes I & II* (ICAO Doc 9713) defines leasing as an aircraft used under contractual arrangements to increase an air carrier fleet capacity. In general it refers to the operation of an aircraft by parties other than the owners.

2.1.2 In addition to the conventional *wet lease* (lease with crew) and *dry lease* (lease without crew) there are two other variations that have to be considered. There is an increase in utilization of *damp leases* (lease with flight crew but without cabin crew) as a variation of a wet lease. The practical safety concerns in this regard are well identified in the *Manual of Procedures for Operations Inspection, Certification and Continued Surveillance* (ICAO Doc 8335) in that the cabin crew may not be familiar with the aircraft and associated equipment or satisfactory training with respect to their emergency duties. Other complications that may arise include regulation of flight time limitations and associated rostering control to the satisfaction of the State of Registry and/or State of the Operator.

2.1.3 As a variation to a dry lease there is also the increase use of sub-leases where the lease of an already dry leased aircraft is made to yet another third party. In many cases this is further complicated by the second lease organization registering the aircraft away from the principle place of business.

2.2 Other commercial arrangements

2.2.1 There are other forms of commercial arrangements fast gaining popularity that adds to the fragmentation and reduced transparency of safety oversight responsibilities. *Code sharing* refers to an arrangement between two airlines in which they both sell seats on a flight using their own flight numbers. *Interchanges* refers to situations where one aircraft used on a scheduled flight that links to a route of another carrier at the interchange point to a route of second carrier using the same aircraft crewed under the operation of the respective authorized carrier on each route. *Franchising (co-branding)* refers to a more long-term agreements on the use of the same identity such as colours and logos by different operators.

2.3 State of the Operator and its implications

2.3.1 ICAO Annex 6 — *Operation of Aircraft* and the *Manual of Procedures for Operations Inspection, Certification and Continued Surveillance* (Doc 8335) currently define the *State of the Operator* as the State in which the operator's principle place of business is located; or if there is no such place, the operator's permanent residence. Under this definition, the model safety oversight framework is regarded in its most simplistic form where the State of the Operator is actually also the State of Registry (the State on whose register the aircraft is entered). As can be seen above, this cannot be applied today in light of the sheer complexities of leasing and other commercial arrangements.

2.3.2 This can result in complex and varied regulatory situations requiring highly coordinated actions by the various States to ensure that the safety oversight obligations and responsibilities in its entirety are adequately met. This fragmented approach to oversight may result in dilution of equivalent levels of safety oversight and a lack of transparency. For these reasons, many States do not accept various lease types or commercial arrangements on behalf of their operator or operating on behalf of other airlines operating into their State.

2.3.3 Leases and/or commercial arrangements that have the potential to place the State of the Operator in a place other than the State of Registry may also lead to a situation where the State of Registry may well lose adequate control and supervision resulting in the inability to fulfil its functions. It also provides for situations where States unintentionally become responsible for operational oversight only by virtue of companies setting up their principal place of business in the State. Furthermore, some applications such as temporary wet lease of foreign operators (wet lease-in) and code sharing have the potential to transfer safety oversight deficiencies from one State to another if due diligence is not exercised by a State. At present there are no specific requirements or guidance promulgated by ICAO on such applications where jurisdiction is lost to ensure an equivalent level of safety. Some States as a matter of national air transport policy have addressed this issue.

2.4 Possible ways forward

2.4.1 By virtue of economic liberalization and to meet the operational demands (wet lease-in and wet lease-out) it is clear that aircraft leasing and commercial arrangements will continue to be part of the aviation industry. As a result, closer examination of current traditional definitions and frameworks has to be undertaken with a view to providing adequate structures to encompass such practices.

2.4.2 Generally it is understood that the State of the Operator is the State responsible for operational safety oversight through the issuance and continued validity of the Air Operator Certificate. Ideally a State of Registry should not register aircraft to be used in commercial air transport without clearly ascertaining from the onset who will be the State of the Operator. The principal places of business in the majority of cases is irrelevant in the case of wet leases as companies may be set up in one country and provide long-term wet leases to national carriers based entirely in multiple other States. It is therefore recommended that the definition of the State of the Operator be redefined as follows:

State of the Operator. The State of Registry or another State mutually agreed, responsible for operational oversight (certification and continued surveillance) through the issuance and continued validity of the Air Operator Certificate.

2.4.3 The above definition by default requires the State of Registry to consider State of the Operator obligations from the onset and where it may involve another State, this would require agreement. It also focuses on the true intent and obligations of the State of the Operator as opposed to the current definition.

2.4.4 On the issue of wet lease-in of foreign aircraft, in view of the lack of jurisdiction of the lessee's State, it is recommended that proposals be submitted to Council requiring all States to have adequate measures to ensure that operators that are being leased meet safety standards equal or better than the lessee's State. The United Kingdom Civil Aviation Administration (CAA) Official Record Series 4 Aircraft leasing across national borders document may be used as a model where this responsibility is shared both by the operator that intends to wet lease-in an aircraft and the regulatory authority. This is achieved by audits and research carried out by both parties to ensure that equivalent safety standards exist. It is further recommended that ICAO promulgates as a matter of urgency a manual dedicated to the management of safety oversight and effect of various leasing and commercial arrangements.

2.4.5 The initiation of IATA's Operational Safety Audit (IOSA) should provide adequate framework to ensure standardised safety compliance in the area of code sharing.

3. CONCLUSION

3.1 The aim of this paper is to examine the effects of some aircraft leasing and other commercial practices that have the potential to lead to a fragmented and non-transparent approach to safety oversight. A new definition of *State of the Operator* is proposed for consideration that may encompass the continued need for such leases and arrangement as well as focussing on the true intent of the State. Recommendations are made in regards to promulgation of requirements that ensure, in cases of wet leased-in aircraft, equivalent safety standards are achieved.

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