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AIC
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LEASE, CHARTER AND INTERCHANGE OF AIRCRAFT UNDER ARTICLE 83 *bis*

(Section 62, Civil Aviation Act, 2011)

Purpose

The purpose of this AIC is to provide policy guidelines regarding the transfer of duties and functions from the State of Registry to the State of the Operator in order to ensure better regulation and oversight over air safety in the case of international lease, charter or interchange of aircraft.

Policy Statement

The Authority is legally obliged and committed to implement national standards and procedures for the consistent application of international standards and will apply its Policy in implementing the provisions of Article 83 *bis*.

Applicability

This Circular is applicable when an Air Operator Certificate (AOC) holder leases a foreign registered aircraft or when a Botswana registered aircraft is leased to another Contracting State.

Related Documents

- Botswana Civil Aviation Act, 2011 – Section 62
- Civil Aviation (Air Operator Certification & Administration) Regulations 2013, Reg. 29
- ICAO Circular 295 – Guidance on the Implementation of Article 83 *bis* of the Convention on International Civil Aviation.
- Flight Operations Inspectors Manual – Volume 2, Chapter 6, Paragraph 6.1.4

Background

In accordance with Section 62 of the Botswana Civil Aviation Act, 2011, the Authority may enter into an agreement on behalf of Botswana with another state relating to the transfer of functions and duties of a State of Registry in respect of an aircraft operated pursuant to an agreement for the lease, charter or interchange of the aircraft or similar arrangement. In this regard, the Minister may, on the recommendation of the Authority, make regulations relating to the operation of aircraft pursuant to an agreement for the transfer of functions and duties of a state of registry under Article 83 *bis* of the Chicago Convention.

The transfer of oversight functions and duties may include:

Article 12 - Rules of the Air.

The Article makes States to be responsible for ensuring that every aircraft carrying its nationality mark, wherever such aircraft may be, shall comply with the State's rules and regulations relating to the flight and manoeuvre of aircraft.

Article 30 - Aircraft Radio Equipment.

Aircraft radios must be licensed by the State of Registry if they are to be carried in or over the territory of other Contracting States. The use of radio apparatus must be in accordance with the regulations of the State flown over. Radios can only be used by members of the flight crew licensed for that purpose by the State of Registry.

Article 31 - Certificates of airworthiness.

This Article requires every aircraft engaged in international navigation to be provided with a certificate of airworthiness issued or rendered valid by the State in which it is registered.

Article 32a - Licences of Personnel.

The pilot and crew of aircraft engaged in international navigation must be provided with certificates of competency issued or rendered valid by the State of Registry. States can refuse to recognize, for the purpose of flight above their territory, certificates of competency and licences granted to any of its nationals by another Contracting State.

Implementation

All or part of the duties and functions pertaining to Articles 12, 30, 31 and 32(a) of the Convention on International Civil Aviation may be transferred from the State of Registry to the State of the Operator. In order to effect the transfer, the parties must enter into transfer agreements, which must state specifically the duties and functions to be transferred. The State of Registry shall be relieved of responsibility in respect of the functions and duties transferred. Those duties and functions not specifically mentioned in the transfer agreement shall be deemed to remain with the State of Registry. The transfer agreement shall be recognized by all other contracting states which have ratified it.

The procedure for Article 83 *bis* application and approval requires the holder of an Air Operators Certificate wishing to lease or lease out an aircraft necessitating the transfer or acceptance of safety oversight responsibilities to or from another contracting state to submit an application to the authority indicating the likelihood of transferring oversight duties and responsibilities to the authority in the state of operation. The aircraft concerned should be clearly identified in the agreement by including reference to the aircraft type, registration and serial numbers.

The Authority will evaluate the state of operation's capacity, capability and competence to undertake the effective safety oversight functions of the aircraft in question. Upon successful completion of the evaluation process, an Article 83 *bis* agreement will be drawn up and signed by the two state authorities. The signed agreement shall be communicated to the ICAO council for publication or to other contracting states which may be affected by the transfer. The state of registry should however be permitted unrestricted access to the aircraft at any place and time although it has been relieved of responsibility in respect of functions and duties transferred.

These document when signed will form part of the operator's operations specifications and shall be carried on board the aircraft at all times.

This AIC is effective from 26/08/2015