

**DEPARTMENT OF TRANSPORT
DEPARTEMENT VAN VERVOER**

No. R. 49

26 January 2007

AVIATION ACT, 1962 (ACT NO 74 OF 1962)**PROPOSED AMENDMENT TO THE CIVIL AVIATION
REGULATIONS, 1997**

Under regulation 11.03.2 (1)(a) of the Civil Aviation Regulations, the Chairperson of the Civil Aviation Regulations Committee, hereby publishes comment the proposed amendments to the Civil Aviation Regulations, 1997, as set out in the schedules. Any comments or representations on the proposed amendments should be lodged in writing with the Chairperson of the Regulations Committee, for attention Mr Jabulani Mashinini or Mr. Herman Wildenboer, Private Bag X73, Halfway House, 1685. Fax number: (011) 545-1452, and e-mail-addresses: mashinini@caa.co.za or wildenboerh@caa.co.za, before or on 26 February 2007.

PROPOSER

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Explanation of Interest of the Proposer

The proposer administers the Aviation Act, 1962, (Act No 74 of 1962) and Regulations and Technical Standards issued in terms thereof

**1.0 PROPOSAL FOR THE INSERTION OF PART 48
INTO THE REGULATIONS****1.1 Proposed insertion of the following Part after Part 47 of the
Regulations:****“PART 48****LEASING OF AIRCRAFT****List of Regulations**

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SUBPART 48.01 GENERAL

Application

- 48.01.1** (1) This Part shall apply to all aircraft lease agreements involving South African and foreign registered aircraft and South African air services operators.
- (2) The provisions of this Part shall apply *mutatis mutandis* in respect of any lease agreement whereby either the lessor or the lessee is a South African entity but not an air service operator.
- (3) The provisions of this Part shall apply *mutatis mutandis* in respect of any sub-lease agreement.

Definitions

48.01.2 For the purposes of this Part –

“**air carrier**” means a commercial air transport operator providing either a scheduled or a non-scheduled air service;

“**airline**” means a commercial air transport operator providing a scheduled air service;

“air service operator” means a commercial air transport operator providing either a scheduled, a non-scheduled or a general air service;

“commercial air transport operator” has the same meaning as air service operator;

“Contracting State” means a State who is a signatory to the Convention on International Civil Aviation of 1944 (signed at Chicago on the 7th December, 1944), and **“non-Contracting State”** means any other State ;

“damp lease” means an operating lease in terms of which the aircraft is leased with a partial crew;

“dry lease” means an operating lease in terms of which the aircraft is leased without crew;

“financial or capital lease” means a long-term arrangement in terms of which the aircraft is leased from a bank or other financial institution (lessor), whereby the aircraft gives the outward appearance of ownership by the operator (lessee), and is usually registered in the State of the operator;

“in flight” shall have the same meaning as “flight time”;

“interchange” in reference to ‘aircraft interchange’ or ‘interchange flight’ means a regularly scheduled, single-aircraft through-service, linking a route of one airline at the interchange point to a route of a second airline, with the same aircraft being crewed by and under the operational control of the respective authorised carrier on each route;

“lease” when used in reference to an aircraft means a contractual arrangement whereby a properly licensed air service operator gains commercial control of an entire aircraft without transfer of ownership, and which may be in the form of any of the following:

- (a) financial / capital lease
- (b) operating lease:
 - (i) dry lease
 - (ii) damp lease
 - (iii) wet lease
 - (iv) sub-charter

as defined;

“lessee” with reference to an aircraft lease means the party to which the aircraft is leased;

“lessor” with reference to an aircraft lease means the party from which the aircraft is leased:

“operating lease” means an arrangement in terms of which an air service operator (lessee) obtains the use of an aircraft owned or operated by another party (lessor) for a defined period;

“operational control” means the exercising of authority over the initiation, continuation, diversion, or termination of a flight in the interest of the safety of the aircraft and the regularity and efficiency of the flight;

“operator” means a person, organisation or enterprise engaged in, or offering to engage in, an aircraft operation and may be referred to as airline, air carrier, air service operator, or commercial air transport operator, as defined;

“principle place of business” in relation to an operator means the centre of corporate activities of the legal entity;

“sub-charter” means a lease by an air service operator on short notice and for a period not exceeding five consecutive days; it may involve a dry, damp, or wet lease, and the lessor needs to be an air service operator in his or her own right.

“sub-lease” when used in reference to an aircraft means the lease of a leased aircraft to or by a third party;

“wet lease” means an operating lease in terms of which the aircraft is leased with crew, and the lessor remains responsible for the aircraft’s maintenance, operational control (as defined), and hull, third-party and passenger and cargo liability insurance, and may or may not include arrangements in respect of fuel. When the lessee intends to provide part of the prescribed flight or cabin crew, the wet lease is often referred to as a damp lease (as defined).

Deemed provision

48.01.3 For the purposes of Part 121, Part 127 and Part 135 of these Regulations, any aircraft registered in another State and operated in terms of a lease agreement by the holder of an operating certificate issued in the Republic, shall be deemed to be a South African registered aircraft.

SUBPART 48.02 FINANCIAL OR CAPITAL LEASES

Filing of lease agreement

48.02.1 (1) Any South African operator who enters into a financial or capital lease agreement in respect of an aircraft (the lessee) shall –

- (a) provide the Commissioner with a certified copy thereof; and
 - (b) shall adhere to the provisions of Convention on the International Recognition of Rights in Aircraft Act of 1993 (Act 59/1993), if applicable.
- (2) Any aircraft, acquired on a financial or capital lease, to be used for the provision of an air service, shall –

- (a) be deemed to be on a dry lease, and the provisions of regulation 48.03.1 shall apply *mutatis mutandis*; and
- (b) be put on the South African Civil Aircraft Register, if not already so registered, in accordance with the provisions of Part 47.

SUBPART 48.03 OPERATING LEASES

Dry lease-in

48.03.1 (1) An operator who intends to dry lease-in an aircraft for the purpose of providing an air service therewith (the lessee), shall obtain the prior permission of the Commissioner by providing him or her with the following information:

- (a) the aircraft type and serial number;
 - (b) the name and address of the registered owner;
 - (c) the name and address of the lessor, if different from the registered owner;
 - (d) the name, address and signature of lessee or person responsible for operational control of the aircraft under the lease agreement, including a statement that such individual and the parties to the lease agreement fully understand their respective responsibilities under the applicable regulations;
 - (e) a certified copy of the lease agreement;
 - (f) the duration of lease;
 - (g) the area of intended operation;
 - (h) the regulations applicable to the operation; and
 - (i) if the aircraft concerned is not a South African registered aircraft:
 - (i) State of Registry and registration marks;
 - (ii) certified copy of the certificate of airworthiness and a statement from the registered owner or the lessor that the aircraft fully complies with the airworthiness requirements of the State of Registry;
 - (iii) proposed arrangements in respect of flight and cabin crew training and certification; continued airworthiness of the aircraft and the performance of maintenance; and the signing of the release to service.
- (2) The oversight responsibilities in respect of the matters, referred to in sub-paragraph (iii) of paragraph (1)(i), may in terms of Article 83^{bis} of the Convention and by mutual agreement in writing be transferred in part or in full from the appropriate authority of the State of Registry to the Commissioner. The provisions of Subpart 48.06 shall apply to such transfer.

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- (3) Subject to such conditions as he or she may determine, the Commissioner shall grant approval for the lease agreement if the aircraft to be leased-in –
- (a) is type-certificated in accordance with the requirements prescribed in Part 21, or issued in terms of Part 24 with an Authority to Fly in a commercial air transport operation;
 - (b) will be maintained in accordance with an approved maintenance schedule;
 - (c) will be operated under the operating certificate held by the lessee; and
 - (d) if a foreign-registered aircraft, either –
 - (i) transfer of responsibilities, as contemplated in sub-regulation (2), has been effected; or
 - (ii) the Commissioner is satisfied that the appropriate authority of the State of Registry is in a position to carry out its oversight responsibilities effectively.
- (4) When neither of the conditions, contemplated in paragraph (d) of sub-regulation (3), are met, the aircraft to be dry leased-in shall be required to be registered in the Republic as prescribed in Part 47 of these Regulations, and –
- (a) the aircraft shall be subject to the airworthiness certification, maintenance, and inspection procedures prescribed by the Regulations in respect of South African registered aircraft;
 - (b) the responsibility or custody of the aircraft and control of all operations shall be vested in the lessee operator;
 - (c) the responsibility for the airworthiness and maintenance of the aircraft shall be vested in the lessee operator; and
 - (d) the registration of the aircraft shall be valid only for the duration of the lease agreement, and for as long as the aircraft is operated in accordance with the Regulations, the terms or conditions specified in the lessee operator's operating certificate, the related operations specifications, and the lessee operator's operations and maintenance control manuals.
- (5) The conditions of approval, referred to in sub-regulation (3), shall be made part of the lease agreement between the lessor and the lessee, and in particular shall specify the responsibilities of the parties involved in respect of –
- (a) airworthiness of the aircraft and performance of maintenance;

- (b) signing the maintenance release
 - (c) flight and cabin crew member certification;
 - (d) crew member training, competency and currency;
 - (e) scheduling of crew members;
 - (f) dispatch or flight-following; and
 - (g) insurance arrangements.
- (6) **An** approved dry lease agreement between South African operators shall include the arrangements concerning the party's respective responsibilities in respect of the airworthiness of the aircraft.

Dry lease-out

- 48.03.02** (1) **An** owner or operator of a South African registered aircraft (the lessor) may dry lease-out the aircraft to any other South African entity (the lessee), subject to the provisions of sub-regulation (2).
- (2) The provisions, referred to in sub-regulation (1), include confirmation in the lease agreement –
- (a) concerning the parties' respective responsibilities in respect of the continued airworthiness of the aircraft; and
 - (b) in the case of the lessee being an operator, as defined, that the aircraft will be operated in terms of the operating certificate held by the lessee.
- (3) **An** operator of a South African registered aircraft (the lessor) may dry lease-out the aircraft to any entity in a Contracting State (the lessee).
- (4) Upon request of the lessor, the Commissioner may remove the aircraft from the operating certificate held by such operator.
- (5) The removal, contemplated in sub-regulation (4), in respect of an aircraft to be dry leased-out to an entity in a Contracting State shall be conditional on –
- (a) the appropriate authority of the State of the Operator to whom such aircraft is dry leased has accepted, in writing, responsibility for surveillance of the maintenance and operation of such aircraft in accordance with the provisions of Article 83^{bis} of the Convention; and
 - (b) such aircraft being maintained according to an approved maintenance schedule.

- (6) When a South African registered aircraft is dry leased-out to an entity in a State that is not a Contracting State, the Commissioner may refuse to transfer responsibility for surveillance of the maintenance and operation of the aircraft to the relevant authority of that State, in which case the lessor operator shall be liable for any costs incurred by the Civil Aviation Authority in carrying out its oversight function in respect of the aircraft. The lessor operator shall be liable also for any such costs in respect of an aircraft for which no transfer of duties, as contemplated in paragraph (a) of sub-regulation (5), has been agreed upon.
- (7) The provisions of sub-regulations (5) and (6) shall apply *mutatis mutandis* in respect of a dry leased-out aircraft remaining on the operating certificate of the lessor.

Wet lease-in

48.03.3 (1) A South African operator who intends to wet lease-in an aircraft for the purpose of providing an air service therewith (the lessee), shall –

- (a) be the holder of an appropriate operating certificate applicable to the category and type of aircraft, as defined in the *Air Services Licensing Act, 1990* (Act No 115 of 1990) and the *International Air Services Licensing Act, 1993* (Act No 60 of 1993); and
- (b) obtain the prior permission of the Commissioner by providing him or her with the following information:
- (i) the aircraft type and serial number;
 - (ii) the name and address of the registered owner;
 - (iii) the name and address of the lessor, if not also the Registered owner;
 - (iv) the name, address and signature of lessee or person responsible for operational control of the aircraft under the lease agreement, including a statement that such individual and the parties to the lease agreement fully understand their respective responsibilities under the applicable regulations;
 - (v) a certified copy of the lease agreement;
 - (vi) the duration of lease;
 - (vii) the area of intended operation;
 - (viii) the regulations applicable to the operation; and
 - (ix) if the aircraft concerned is not a South African registered aircraft:
 - (aa) State of Registry and registration marks;
 - (bb) certified copy of the certificate of airworthiness and a statement from the registered owner or lessor that the aircraft fully complies with the

- airworthiness requirements of the State of Registry;
- (cc) proposed arrangements in respect of the operating certificate in terms of which the aircraft will be operated.
- (2) The duration of the lease agreement concerned, in respect of foreign-registered aircraft, shall be limited to a maximum period of six consecutive calendar months in any 12-months period calculated from the commencement date of the lease, unless such lease is in terms of the provisions of Article 83^{bis} of the Convention.
- (3) The approval referred to in paragraph (b) of sub-regulation (1) shall, subject to such conditions as the Commissioner may determine, be granted if such aircraft –
- (a) is wet leased-in from an operator (the lessor) who is the holder of an operating certificate or similar document issued by an appropriate authority;
 - (b) has been type-certificated by an appropriate authority;
 - (c) holds a valid certificate of airworthiness or similar document issued by an appropriate authority;
 - (d) is maintained and operated in accordance with safety standards at least equivalent to the safety standards referred to in these Regulations in respect of aircraft operated in a commercial air transport operation; and
 - (e) will be operated in terms of the operating certificate or similar document held by the lessor: Provided that, if the operator concerned is a foreign operator, the appropriate authority of the State of the Operator and the Commissioner may by written agreement and in terms of Article 83^{bis} agree that the aircraft shall be operated in terms of the operating certificate of the South African lessee, and that certain specified oversight responsibilities be transferred from that authority to the Commissioner.
- (4) The lessee shall –
- (a) satisfy the Commissioner that the safety standards of the lessor are not less than the applicable safety standards referred to in these Regulations; and
 - (b) ensure that any law applicable to the aircraft to be wet leased-in, and the maintenance or operation thereof, is complied with.

- (5) The total number of wet leased-in aircraft, either foreign or South African registered, shall not constitute more than half the number of aircraft listed on the operating certificate of the operator referred to in sub-regulation (1)(the lessee).
- (6) The conditions of approval referred to in paragraph (b) of sub-regulation (1) shall be part of the lease agreement between the lessor and the lessee.
- (7) Certified copies of the lease agreement, referred to in sub-regulation (6), shall be filed with the South African Department of Transport and the South African Civil Aviation Authority.

Wet leased-in aircraft may not be interchanged between air services provided by the lessee operator and connecting air services provided by the lessor operator, unless specifically provided for in a bilateral or multilateral agreement between the States of the Operators and, if any, third-party States.

- (8) Should any agreement, contemplated in the proviso to paragraph (e) of sub-regulation(3), have been reached between the appropriate authority of the State of the Operator and the Commissioner, such agreement shall be formally registered with the Council of ICAO and, if applicable, the Commissioner shall notify the appropriate authority of any third State affected.

Wet lease-out

- 48.03.4** (1) The operator of a South African registered aircraft who intends to wet lease-out the aircraft to any operator, other than an operator of a contracting State, shall remain the operator of the aircraft in terms of his or her operating certificate, and responsibility for surveillance of the maintenance and operation of such aircraft shall not be transferred to the appropriate authority of the State of the Operator to which such aircraft is wet leased-out. The provisions of regulation 48.03.2(6) in respect of the cost of oversight by the South African Civil Aviation Authority shall apply *mutatis mutandis*.
- (2) Subject to the provisions of sub-regulation(3), the operator of a South African registered aircraft may wet lease-out the aircraft to any entity in a Contracting State. In such case, and on request of such operator, the Commissioner may remove the aircraft from the operating certificate held by such lessor operator: Provided that –
 - (a) the appropriate authority of the State of the Operator to whom such aircraft is wet leased has accepted, in writing, responsibility for surveillance of the maintenance and operation of such aircraft, as provided for in Article 83bis of the Convention; and
 - (b) such aircraft is maintained according to an approved maintenance schedule.

- (3) A wet leased-out South African registered aircraft may be used by the lessee operator, if not a South African licensed operator, in commercial air transport operations to and from the Republic only in terms of a foreign operator's permit.
- (4) A South African operator, intending to wet lease-out an aircraft to another South African operator shall obtain prior approval from the Commissioner for the lease, and the conditions of approval shall be part of the lease agreement between the operators. Notwithstanding the foregoing, the Commissioner may provide any South African operator with a list of South African operators from whom aircraft may be wet leased-in by such operator without prior approval.
- (5) A South African operator who agrees to wet lease-out an aircraft to another South African operator, shall remain the operator of the aircraft and shall retain the functions and responsibilities prescribed in his or her operating certificate.
- (6) Notwithstanding the provisions of sub-regulation (5), the lessee operator, who in terms of the Air Services Licensing Act of 1990 or International Air Services Act of 1993 (as the case may be) is required to be actively and effectively in control of the air service, shall ensure that the lessor operator adheres to the conditions of the latter's operating certificate and its operating specifications, which conditions shall not be in conflict or less than the conditions of the lessee operator's operating certificate.
- (7) The terms of an approved wet lease agreement between South African operators shall include –
 - (a) the arrangement concerning the operating certificate under which the flights with the leased aircraft shall be operated; and
 - (b) any deviation from the operating certificate under which the flights with the leased aircraft shall be operated.

Damp lease

48.03.5 When an aircraft is wet leased with only a partial crew (whether flight or cabin crew) the provisions of regulations **48.03.3** and **48.03.4** shall apply *mutatis mutandis* in respect of the crew provided as part of the lease, while regulations **48.03.1** and **48.03.2** shall apply *mutatis mutandis* in respect of the crew provided by the lessee.

SUBPART 48.04 SUB-CHARTERS

Sub-charters

- 48.04.1** (1) In exceptional circumstances, as contemplated in Document SA-CATS-LEAS, an operator may sub-charter an aircraft with or without flight crew: Provided that –
- (a) the sub-charter period does not exceed five consecutive days; and
 - (b) the Commissioner within 24 hours is informed of such sub-charter by the sub-charterer.
- (2) The provisions of regulations 48.03.1 and 48.03.3 shall apply *mutatis mutandis* to any sub-charter referred to in this regulation.

SUBPART 48.05 INSURANCES

Insurance

- 48.05.1** Any reference to insurance in this Part shall mean a reference to the prescribed compulsory insurances in terms of the the **Air Services Licensing Act, 1990** (Act No 115 of 1990) and the **International Air Services Licensing Act, 1993** (Act No **60** of 1993);

SUBPART 48.06 TRANSFER OF RESPONSIBILITIES BETWEEN APPROPRIATE STATE AUTHORITIES

Chicago Convention

- 48.06.1** (1) Article 83 of the Convention provides for the making of arrangements by any Contracting State not inconsistent with the provisions of the Convention, which arrangements shall be registered with the Council and made public by the latter.
- (2) Article 83^{bis} of the Convention provides for the transfer of certain functions and duties between the State of Registry of an aircraft and the State of a lessee in the case of dry or wet leased aircraft, where such functions and duties can more adequately be discharged by the State of the Operator.
- (3) The functions and duties, referred to in sub-regulation (2) are the functions and duties allocated by the Convention to the State of Registry in respect of –
- (a) Article 12 of the Convention: “Rules of the *Air*”, including the prosecution of all persons violating the rules and regulations relating to the flight and manoeuvre of aircraft in force in a particular Contracting State;

- (b) Article **30** of the Convention: “Aircraft radio equipment”, including the installation and operation of radio transmitting apparatus in aircraft operated in the air space of a Contracting State;
 - (c) Article **31** of the Convention: “Certificates of airworthiness”, the issuing or rendering valid thereof by the State of Registry; and
 - (d) Article **32** of the Convention: “Licences of personnel”, the issuing or rendering valid thereof by the State of Registry.
- (4) The transfer of any function or duty, contemplated in sub-regulations (2) and (3), shall not have effect in respect of any other Contracting State before either –
- (a) the agreement between the States in which it is embodied has been registered with the Council and made public pursuant to Article **83** of the Convention; or
 - (b) the existence and scope of the agreement have been directly communicated the appropriate authorities of the other Contracting State or States concerned by a State party to the agreement.
- (5) Pursuant to Article **83** of the Convention, the ‘Rules for Registration with ICAO of Aeronautical Agreements and Arrangements’ (Doc **6685**) apply to any agreement or arrangement relating to international civil aviation.
- (6) The Commissioner may implement Article **83^{bis}** through administrative agreements or arrangements between the South African Civil Aviation Authority and the appropriate authority of the other State that is party to the agreement or arrangement.
- (7) Whenever the Commissioner enters into an agreement or arrangement, contemplated in sub-regulation(6), or whenever such an agreement or arrangement ceases to be in force, he or she shall publish in the Government Gazette as soon as practical a notice setting out the details of the agreement or arrangement, or of the cessation thereof, as applicable.
- (8) Without limiting sub-regulation(7), the notice referred therein shall set out:
- (a) the Contracting State that is the other party to the agreement or arrangement;
 - (b) the date of commencement or cessation of the agreement or arrangement or any amendment thereto, as applicable;

- (c) the aircraft to which the agreement, arrangement, amendment or cessation relates;
- (d) the functions of the State of Registry in respect of the aircraft that under the agreement or arrangement are transferred to the State of Operator; and
- (e) the provisions of the Regulations that are stated in the agreement, arrangement or amendment, related to the duties or functions.

Such notice shall be evidence of the matters stated therein.

Personnel Licensing

- 48.06.2** (1) A South African air services operator who dry leases-in a foreign aircraft shall satisfy the Commissioner that –
- (a) the flight and cabin crew to be designated for duty on the aircraft already possess valid licences or approvals issued by the State of Registry, or that arrangements have been made for such personnel to obtain the necessary licences or approvals; and
 - (b) he or she shall ensure that all the regulations of the State of Registry in respect of personnel licensing and the allocation, training and checking of flight and cabin crew be adhered to.
- (2) Should the Commissioner have reason to believe that the lessee operator is not complying with the appropriate regulations of the State of Registry, contemplated in paragraph (b) of sub-regulation (1), the appropriate authority of that State shall be advised and a request made that the matter be investigated.
- (3) In terms of an agreement between the appropriate authority of the State of Registry and the Commissioner, as contemplated in regulation 48.06.01, the Commissioner may take responsibility for oversight of the matters contemplated in paragraph (b) of sub-regulation (1).
- (4) In respect of an aircraft, dry leased out to a foreign operator, the Commissioner may, on conditions prescribed by him or her –
- (a) issue validations to the lessee operator's flight and cabin crew members, designated for duty on the leased aircraft; and
 - (b) in terms of Article 83^{bis} of the Convention enter into an agreement with the appropriate authority of the State of the Operator to transfer all or some of his or her functions and duties as State of Registry in respect of personnel licensing to the State of the Operator.

- (5) The validation, contemplated in paragraph (a) of sub-regulation(4), may be issued in the format prescribed in Document SA-CAT-LEAS.

Airworthiness

- 48.06.3 (1)** A South African air services operator who dry leases-in a foreign aircraft shall satisfy the Commissioner that –
- (a) the aircraft maintenance organisation responsible for the continued airworthiness of the aircraft, already possess valid licences or approvals issued by the State of Registry, or that arrangements have been made for such organisation to obtain the necessary licences or approvals; and
 - (b) the organisation, contemplated in paragraph (a), shall carry out its maintenance functions in accordance with all the applicable regulations of the State of Registry.
- (2) Should the Commissioner have reason to believe that the lessee operator is not complying with the applicable regulations of the State of Registry, contemplated in paragraph (b) of sub-regulation(1), the appropriate authority of that State shall be advised and a request made that the matter be investigated.
- (3) In terms of an agreement between the appropriate authority of the State of Registry and the Commissioner, as contemplated in regulation 48.06.01, the Commissioner may take responsibility for oversight of the matters contemplated in paragraph (b) of sub-regulation (1).
- (4) In respect of an aircraft, dry leased out to a foreign operator, the Commissioner may, on conditions prescribed by him or her –
- (a) approve a foreign-based aircraft maintenance organisation to carry out all or part of the maintenance on the aircraft in accordance with the aircraft's approved maintenance schedule; and
 - (b) in terms of Article 83^{bis} of the Convention enter into an agreement with the appropriate authority of the State of the Operator to transfer all or some of his or her functions and duties as State of Registry in respect of prescribed equipment and airworthiness to the State of the Operator; or alternatively
 - (c) remove the aircraft from the South African Civil Aircraft Register for the duration of the dry lease-out, facilitating its registration in the State of the Operator.

Recognition

- 48.06.4 (1)** Contracting States that have ratified Article 83^{bis} of the Convention are bound to recognise the State of the Operator as substituting for the State of Registry, within the limits established by the transfer arrangements, provided –

- (a) the agreement has been duly registered with ICAO according to Article 83 of the Convention; or
- (b) affected third-party States have been informed directly by at least one of the States party to the agreement.

Conversely, States that are not parties to Article 83^{bis}, or States that are parties to it but which have not been duly informed about such an agreement, are not bound to recognise the transfer of functions and duties.

Note: ICAO formally informs all Contracting States through publication in its quarterly 'List of Agreements and Arrangements Concerning International Civil Aviation Registered with ICAO', also accessible under 'Legal' at ICAO web site at www.icao.int.

- (2) If the authority to issue or render valid crew licences and certificates of airworthiness has been transferred pursuant to Article 83^{bis} of the Convention from the State of Registry to the State of the Operator, Contracting States that have ratified Article 83^{bis} are obliged to recognise the validity of the licences and certificates if they have been officially informed of the transfer, provided that these have been issued or rendered valid by the appropriate authority of the State of the Operator, fully meeting the requirements of Annexes 1 and 8 to the Convention.

Transfer of responsibilities

- 48.06.5** (1) All or part of the functions and duties pertaining to Articles 12, 30, 31 and 32(a) of the Convention may be transferred from the State of Registry to the State of the Operator. The functions and duties to be transferred must be mentioned specifically in the transfer agreement as, in the absence of such mention, they are deemed to remain with the State of Registry. A listing of responsibilities regarding airworthiness that may or may not be transferred between States is contained in Document SA-CATS-LEAS.
- (2) The State of Registry shall be relieved of responsibility and, where applicable, of liability in respect of the functions and duties duly transferred to the State of the Operator, and the latter shall comply with them in accordance with its own laws and regulations.
 - (3) Pursuant to Articles 83 and 83^{bis} of the Convention, the Commissioner may enter into an agreement or arrangement with the appropriate authority of another State to transfer certain or all of the functions and duties of the South African Civil Aviation Authority in respect of a particular aircraft on the South African Civil Aircraft Register to such authority. Any applicable regulation in force at the time shall be deemed to have been amended accordingly.

- (4) Similarly to the provisions of sub-regulation (3), the Commissioner may accept certain or all of the functions and duties of the appropriate authority of a State of Registry in respect of an aircraft on that State's aircraft register and, to the extent applicable in terms of the relevant transfer agreement or arrangement, for the purpose of the Regulations such aircraft shall be deemed to be a South African aircraft.
- (5) The Commissioner shall establish procedures to ensure that prescribed information is transmitted promptly to the relevant other authority, and that information received concerning the existence of transfer agreements relating to aircraft operating to or from the Republic's territory is promptly relayed to any South African authority involved in inspection.
- (6) For the purpose of identifying individual States' responsibility for safety oversight on the occasion of any verification process, such as ramp inspections, a certified true copy of the transfer agreement and of the operating certificate under which the aircraft is operated and in which it is listed shall be carried on board the aircraft at all times while the transfer agreement is in force.
- (7) Document SA-CATS-LEAS contains examples of suitable transfer agreements."

1.2 MOTIVATION

In light of the fact that Article 83 bis is part of South African law, being included in the Convention on International Civil Aviation, 1944 ("the Chicago Convention"), it is necessary to regulate the transfer of certain functions and duties pertaining to airworthiness and personnel licensing as contemplated in the said Article in the said Regulations. The draft Part contains specific provisions in respect of the transfer of the rights and duties identified in four Articles of the Chicago Convention. Furthermore provision is also being made for damp leases. The existing provisions relating to dry leases and wet leases have also been refined and amplified.

1.3 CURRENT PROVISIONS

The current provisions relating to wet and dry leases are contained in Subparts 1 of Parts 121, 127 and 135. The relevant portion of Subpart 1 of Part 121 are set out below.

"Dry lease-in of large commercial air transport aeroplane

- 121.01.5 (1) An operator who intends to dry lease-in a large foreign registered aeroplane for commercial air transport purposes, shall –
- (a) ensure that such aeroplane can be operated and is operated in accordance with the requirements prescribed in this Part;

- (b) obtain prior approval ~~from~~ the Commissioner to operate such aeroplane.
- (2) The approval referred to in sub-regulation(1)(b) shall, subject to such conditions as the Commissioner may determine, be granted if such aeroplane is –
- (a) type certificated in accordance with the requirements prescribed in Part 21;
 - (b) maintained in accordance with an aeroplane maintenance schedule referred to in Regulation 121.09.2;
 - (c) operated under the operating certificate held by the operator referred to in subregulation (1).
- (3) The conditions of approval referred to in subregulation (2) shall be part of the lease agreement between the operator referred to in subregulation (1) and the operator from which the large foreign registered aeroplane is leased.

Wet lease-in of large commercial air transport aeroplane

- 121.01.6 (1) **An** operator who intends to wet lease-in a large foreign registered aeroplane for commercial air transport purposes, shall, subject to such conditions as the Commissioner may determine, obtain prior approval ~~from~~ the Commissioner to operate such aeroplane.
- (2) The duration **of** the lease agreement concerned shall be limited to a maximum period of six calendar months in one year.
- (3) The approval referred to in subregulation (1) shall, subject to such conditions as the Commissioner may determine, be granted if such aeroplane –
- (a) is wet-leased-in ~~from~~ an operator who is the holder of an operating certificate or similar document issued by an appropriate authority;
 - (b) has been type certificated by the appropriate authority;
 - (c) holds a valid certificate of airworthiness or **similar** document issued by such appropriate authority;
 - (d) is maintained and operated in accordance with safety standards at least equivalent to the safety standards referred to in this **Part**; and
 - (e) will be operated in terms of the operating certificate or similar document held by the operator referred to in paragraph (a).
- (4) The operator referred to in subregulation (1) shall –

- (a) satisfy the Commissioner that the safety standards of the lessor are not less than the safety standards referred to in this Part;
 - (b) ensure that any law applicable to the aeroplane to be wet leased-in, the maintenance or operation thereof, is complied with.
- (5) The total number of wet-leased-in aeroplanes shall be such that an operator referred to in subregulation (1) will not be predominantly dependent on foreign registered aeroplanes.
- (6) The conditions of approval referred to in subregulation (1) shall be part of the lease agreement between the operator referred to in subregulation (1) and the operator from which the large foreign registered aeroplane is leased.

Dry lease-out of large commercial air transport aeroplane

- 121.01.7 (1) Subject to the provisions of subregulation (2), the operator of a large South African registered aeroplane may dry lease-out the aeroplane to any operator in a contracting State.
- (2) On request of the operator of a large South African registered aeroplane, the Commissioner may exempt such operator from the applicable provisions of this part and remove the aeroplane from the operating certificate held by such operator: Provided that –
- (a) the appropriate authority of the State of the Operator to whom such aeroplane is dry leased has accepted, in writing, responsibility for surveillance of the maintenance and operation of such aeroplane; and
 - (b) such aeroplane is maintained according to an approved maintenance programme.

Wet lease-out of large commercial air transport aeroplane

121.01.8 The operator of a large South African registered aeroplane who intends to wet lease-out the aeroplane to any operator, other than an operator of a contracting State, shall remain the operator of the aeroplane for the purposes of subpart 6, and responsibility for surveillance of the maintenance and operation of such aeroplane shall not be transferred to the appropriate authority of the State of the Operator to which such aeroplane is wet leased-out.

Leasing of large commercial air transport aeroplane between two South African operators

121.01.9 (1) A South African operator who intends to lease out an aeroplane

and complete flight crew to another South African operator, shall remain the operator of the aeroplane and shall retain the functions and responsibilities prescribed in subpart 6.

- (2) A South African operator, intending to utilise an aeroplane leased from, **or** to lease it to, another South African operator shall obtain prior approval from the Commissioner for the operation, and the conditions of approval shall be part of the lease agreement between the operators.
- (3) The terms of an approved lease agreement, other than an agreement in terms **of** which an aeroplane together with aeroplane flight crew is leased, and where no transfer **of** functions and responsibilities is intended, shall include –
 - (a) the arrangement concerning the operating certificate under which the flights with the leased aeroplane shall be operated; and
 - (b) any deviation from the operating certificate under **which** the flights with the leased aeroplane shall be operated.

Subchartering

- 121.01.10(1) In the exceptional circumstances as prescribed in Document SA-CATS-OPS **121**, an operator may subcharter a large aeroplane and flight crew from any operator who holds a valid operating certificate for the aeroplane, issued by an appropriate authority: Provided that –
- (a) the subcharter period does not exceed five consecutive days; and
 - (b) the operator of the aeroplane so subchartered, informs the Commissioner, within **24** hours, of such subcharter.
- (2) The provisions of Regulations 121.01.5(1)(a) and **(2)**, 121.01.6(3) and **(4)(b)** and **121.01.9(1)** and **(3)** shall apply mutatis mutandis to any subcharter referred to in this regulation.”
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