

LEASING OF AIRCRAFT

1. General

- 1.1 This notice provides guidance to demonstrate compliance with, and information related to, the requirements on airworthiness aspects regarding aircraft leasing.
- 1.2 The guideline applies to parties involved in operational leasing arrangements, including Myanmar Air Operator Certificate (AOC) holders and any foreign air operator leasing aircraft. Financial or capital leases (such as sale and lease back arrangements between an operator and financial institutions) are not considered operational leases and are not addressed.

2. Applicability

- 2.1 This notice is applicable to the operator holding an AOC under Chapter XII of Myanmar Aircraft Rules, Rule 156.
- 2.2 This notice is applicable only to operational lease arrangement as described in Para 7 of this notice. This notice is not applicable to financial and capital lease arrangements.

3. Definitions

- 3.1 **Lease:** An agreement by a person (the lessor) to furnish an aircraft to another person (the lessee) to be used for compensation or hire purposes for a specified period or a defined number of flights. A lease can also be understood to be a contractual arrangement whereby a properly licensed air operator gains commercial control of an entire aircraft without transfer of ownership.
- 3.2 **Lessor:** The term lessor means the party from which the aircraft is leased.
- 3.3 **Lessee:** The term lessee means the party to which the aircraft is leased.
- 3.4 **Dry Lease:** A lease arrangement whereby a lessor provides an aircraft without crew to the lessee.
- 3.5 **Wet Lease:** A lease arrangement whereby a lessor provides an aircraft with entire crew to the lessee for a specified period or a defined number of flights. A wet lease does not include a code sharing nor charter arrangement.
- 3.6 **Damp Lease:** A lease arrangement whereby a lessor provides an aircraft with partial crew to the lessee.
- 3.7 **State of Registry:** The State on whose register the aircraft is entered.
- 3.8 **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.
- 3.9 **Operator:** A person, organization or enterprise engaged in or offering to engage in an aircraft operation.

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- 3.10 **Operational Control:** The exercise 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.
- 3.11 **Operating Lease:** An operating lease is designed to meet an air operator's need for additional aircraft, often on a seasonal or short-term basis.

4. Compliance with Regulatory Requirements

- 4.1 In a lease arrangement, the leased aircraft may be registered in a State which is different from the State which issues the Air Operator Certificate. It is therefore essential, for both commercial and regulatory reasons, that the lessor and lessee are familiar with the requirements of the State of Registry and the State of the Operator. Typical obligations expected by the State of Registry and the State of the Operator are described in Para 6.
- 4.2 When the leasing arrangement involves safety oversight by foreign authority, the leasing arrangement should include information on compliance with relevant regulations of both Myanmar DCA and the foreign authority.

5. Article 83bis to the Chicago Convention – Transfer of State of Registry Responsibilities

- 5.1 Article 83bis to the Chicago Convention provides for the transfer of certain safety oversight responsibilities from the State of Registry to the State of the Operator. Such a transfer will be recognized by all other States which have ratified Article 83bis. The transfer of responsibility may involve functions and duties under Article 12, 30, 31 or 32(a) of the Chicago Convention, which address rules of the air, radio licensing, certificates of airworthiness, and personnel licenses respectively.
- 5.2 Where the lease arrangement involves more than one authority, the State of Registry may, if it is unable to discharge all or part of its responsibilities as a State of Registry, transfer part or all of these responsibilities to another State. This transfer is subject to the mutual agreement of the other State (usually the State of the Operator). The instrument used to effect the transfer is an Article 83bis agreement between the two States.
- 5.3 Myanmar DCA generally does not transfer its safety oversight responsibilities to other Authorities. However, Myanmar DCA may accept the transfer of State of Registry responsibilities from another authority, if it deems it necessary to maintain effective oversight of the aircraft. Myanmar DCA will inform the affected Myanmar operator when Myanmar DCA has entered into an Article 83bis agreement with the foreign authority.

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6. Responsibilities of the State of Registry and State of the Operator

- 6.1. Operators intending to engage in leasing arrangement should familiarize themselves with the responsibilities of the State of Registry and the State of the Operator, in the event that the aircraft is registered in a State different from the State responsible for oversight of its operations. It is important that the responsibilities of the lessor and lessee to be explicitly specified in the lease agreement between the lessor and lessee, to provide for proper airworthiness and operational oversight and control of the aircraft to be leased.
- 6.2. The State of Registry is the State on whose register the aircraft is entered. The State of Registry is responsible for the safety oversight and airworthiness standards for aircraft on its register, including those aircraft that are leased. The person or organization to which the aircraft is registered must ensure that the aircraft comply with all applicable requirements of the State of Registry.

The responsibilities of the State of Registry include:

- (a) notifying the State of Design that it has entered such an aircraft type on its register.
- (b) ensuring that the aircraft airworthiness standards of the State of Registry are maintained.
- (c) issuing and validating the airworthiness certificate for aircraft (C of A) on its register.
- (d) overseeing the continuing airworthiness of the aircraft according to the standards of the State of Registry, regardless of where it is operated in the world.
- (e) ensuring that personnel performing maintenance work on the aircraft meets the experience, knowledge and skill requirements in accordance with the requirements of the State of Registry.
- (f) ensuring that flight crew operating the aircraft meets the experience, knowledge and skill requirements to safely operate the aircraft in accordance with the requirements of the State of Registry.
- (g) ensuring that operational personnel related with the aircraft operation continues to meet the standards required by the State of Registry.
- (h) ensuring timely and appropriate actions are in place to correct all deficiencies highlighted by the flight crew on the maintenance of the aircraft and its operation.
- (i) informing the organization responsible for the type design on the faults, malfunctions, defects and other occurrences that cause or might cause adverse effects on the continuing airworthiness of the aircraft.

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- (j) ensuring that mandatory continuing airworthiness information from the State of Design is assessed and appropriate action is taken in a timely manner.
- 6.3. The State of the Operator is the State where the principal place of business of the operator is located, or if no such business exists, the permanent residence of the operator. The operator of the aircraft must make sure that the operations of the aircraft meet the requirements of the State of the Operator. The responsibilities of the State of the Operator include ensuring that its operators are able to:
- (a) demonstrate safe and efficient operations prior to the initiation of any flight operations.
 - (b) conduct operations with respect to the original certification criteria or operational specifications on a continuing basis.
 - (c) take timely and necessary actions to resolve safety issues that are found with respect to the maintenance of aircraft, flight operations and other air operator responsibilities, including the actions of the operator's personnel.

7. Types of Operational Leasing Arrangements

7.1 This paragraph describes the types of operational leases. All parties who are part of the leasing arrangement should note the responsibilities of each party with respect to airworthiness and operational control of the aircraft. All such arrangements will be backed by regulatory bodies of the two parties either in the form of an Agreement under 83bis or any other understanding.

7.2 Wet or Damp Lease Arrangement

7.2.1 In a wet or damp lease arrangement, the lessor assumes operational control of the aircraft operations. Aircraft operations must be in compliance with the requirements in the lessor's air operator certificate for the duration of the lease.

7.2.2 Wet or damp Lease (out) of Myanmar registered aircraft to a foreign operator ("Wet Lease Out")

Regulatory requirements related to Myanmar registered aircraft will apply. The Myanmar AOC holder will be responsible for the operational control of the aircraft for the duration of the lease. In the case of a damp lease, the qualification and operational control of crew provided by the lessee should be addressed and aligned with the lessor's operations policies.

7.2.3 Wet or damp lease (in) of a foreign registered aircraft by a Myanmar AOC holder ("Wet Lease In")

Regulatory requirements related to the foreign Authority where the aircraft is registered will apply. The lessor will be responsible for the operational control of the aircraft for the duration of the lease. In the case of a damp lease, the

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qualification and operational control of crew provided by the lessee should be addressed and aligned with the lessor's operations policies.

7.2.4 Wet or damp lease of Myanmar registered aircraft between Myanmar AOC holders ("Intra State Wet Lease")

Regulatory requirements related to Myanmar registered aircraft applies. The lessor will continue to be responsible for the operational control of the aircraft for the duration of the lease. In the case of a damp lease, the qualification and operational control of crew provided by the lessee should be addressed and aligned with the lessor's operations policies.

7.3 Dry Lease Arrangement

7.3.1 In a dry lease arrangement, the lessee usually assumes operational control of the aircraft. The aircraft is operated under the lessee's AOC. Compliance to other relevant regulatory requirements would depend on the civil aviation authority of the State where the aircraft is registered.

7.3.2 Dry lease (out) of Myanmar registered aircraft to a foreign operator without change of aircraft registration ("Dry Lease Out")

Regulatory requirements related to Myanmar registered aircraft will apply. The lessee will be responsible for the operational control of the aircraft under its AOC for the duration of the lease.

7.3.3 Dry lease (in) of foreign registered aircraft by Myanmar AOC holder without change of aircraft registration ("Dry Lease-In")

The foreign regulatory requirements related to the foreign registered aircraft will apply. The Myanmar AOC holder will be responsible for the operational control of the aircraft for the duration of the lease.

7.3.4 Parties to a dry lease agreement may register the aircraft with the regulating authority of the lessee. This change of registration of the leased aircraft will result in the lessee being solely responsible for the operational control and the airworthiness of the aircraft.

7.3.5 Dry lease (out) of Myanmar registered aircraft to a foreign operator with change of aircraft registration

Regulatory requirements related to Myanmar-registered aircraft will not be applicable when the aircraft is de-registered from the Myanmar registry. The leased aircraft may be re-registered back onto the Myanmar registry at the end of the lease provided it meets all applicable Myanmar requirements at the time of registration.

7.3.6 Dry lease (in) of foreign-registered aircraft by a Myanmar operator with change of aircraft registration

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This is similar to registering an aircraft by a Myanmar operator. The Myanmar operator will comply with all regulatory requirements related to a Myanmar-registered aircraft and be responsible for the operational control of the aircraft for the duration of the lease.

7.3.7 Dry lease of Myanmar registered aircraft between Myanmar AOC holders (“Intra- State Dry Lease”)

Regulatory requirements related to Myanmar registered aircraft applies. The lessee will be responsible for the operational control of the aircraft under its AOC for the duration of the lease.

8. Leasing Procedures

8.1 Dry Leasing of foreign registered aircraft and wet leasing shall be in accordance with the applicable provisions as described in MCAR Part 1, 1.2.3.2, 1.2.3.3 and 1.2.3.4.

8.2 In addition, to be eligible for permission, an aircraft:

- (a) shall be in the Myanmar DCA Type Acceptance List (in the case of dry leasing)
- (b) shall be registered in the foreign state
- (c) shall have a valid certificate of airworthiness
- (d) will not be made the subject of another lease during the term of the leased authorized by DCA for that aircraft
- (e) must less than 15 years of age and the aircraft shall not have completed more than 50% of its manufacturer’s approved life in terms of flight cycles (except for cargo aircraft)
- (f) shall be free from accident
- (g) shall have its maintenance programme approved by the State of Registry
- (h) shall have continuing airworthiness control systems approved or accepted by the State of Registry as prescribed in Appendix I of this notice.

9. Application for Approval

9.1 Application for approvals of lease arrangements shall be submitted in writing to DCA, Flight Standards Division and copy to Airworthiness Division, together with detailed descriptions of the party(s) responsible for the operational control and continuing airworthiness for the aircraft in the lease arrangement. Depending on the complexities of the lease arrangements, DCA may require more information in order to determine that all airworthiness and operational issues are addressed.

9.2 The minimum information required is as follows:

- (a) Parties involved in the lease arrangement
- (b) Make, model the serial number of the aircraft involved in the lease arrangement
- (c) In the case of a lease-in arrangement:

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- (i) the State of Registry and registration marks
- (ii) name and address of the registered owner of the aircraft
- (iii) a copy of the Certificate of Airworthiness
- (iv) proof of the maintenance programme approval from the foreign Authority
- (d) Type of lease (lease-in/out, wet, damp, dry)
- (e) Duration of the lease arrangement
- (f) Whether the aircraft's registration will change during the lease
- (g) Copy of the lease agreement or description of the lease provisions. The lease agreement or description of the provisions should include information on:
 - (i) Arrangements for the continuing airworthiness of the aircraft during the lease period. This would include, but is not limited to, pre- and post- lease airworthiness standards, availability of up-to date maintenance approved data, acceptable qualifications and training of certifying staff, reporting of defects and incidents that may affect the airworthiness of the aircraft and handling of mandatory airworthiness information.
- (h) Changes to the operations specifications for AOC holders, as applicable, as a result of the lease agreement
- (i) Area of operations for the aircraft including where it will be based

Note: In the event of a temporary change of operator, such as during a dry lease, the aircraft records must be made available to the new operator.

- (ii) Arrangements to address any operational matters during the lease period. This would include but not limited to acceptable qualifications and training of operational personnel like pilots and cabin crew, details of how operational deficiencies will be addressed, reporting of incidents, etc.

The above information is necessary for DCA to determine whether proper operational control and continuing airworthiness oversight for the aircraft are in place for the duration of the lease.

9.3 The AOC holder should establish clear safety responsibilities between themselves in their lease arrangements. At the minimum, the lessee and the lessor shall have obligations in accordance with the respective types of leasing arrangements as shown below:

Scenario	Obligations
All Leases	<ul style="list-style-type: none">(a) The applicant will need to demonstrate the need to enter into aircraft operational leasing arrangements.(b) The applicant will need to ensure that provisions are made in the leasing arrangement to enable DCA inspectors to conduct necessary inspections.

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	<p>(c) Lessees will need to carry the following documents in the aircraft at all times for the duration of the lease:</p> <ul style="list-style-type: none"> (i) a certified true copy of the lease agreement between the lessor and lessee. (ii) a certified true copy of the AOC and its corresponding operation specifications. (iii) a certified true copy of the Article 83bis agreement, if applicable (iv) flight crew licenses issued or validated by the State of Registry
Wet Lease	<ul style="list-style-type: none"> (a) The lessee and lessor must hold valid air operator certificates throughout the duration of the lease. (b) The lessor should retain operational control of the aircraft. (c) For wet leasing arrangements among Myanmar air operators, the lessee must ensure that the lessor maintains the aircraft as per the lessor’s approved maintenance program. (d) For wet-lease in arrangements, the lessee must ensure that reportable occurrences and incidents affecting the leased aircraft are reported to DCA.
Dry Lease (without change of aircraft registration)	<ul style="list-style-type: none"> (a) For Dry Lease Out arrangements, the lessee must maintain the subject aircraft in accordance with Myanmar Civil Aviation Requirements. (b) For Dry Lease In arrangements, the lessee must ensure that the aircraft equipment relating to flight operations meets Myanmar Civil Aviation Requirements.

Note: In all other types of leasing arrangements, Myanmar AOC holders shall report to DCA all reportable occurrences involving the leased aircraft.

9.4 Approval of the lease arrangement is dependent on applicant’s demonstration of the following:

- (a) all the necessary changes arising from the lease arrangement are identified; and
- (b) all parties involved in the lease arrangement have sufficient knowledge and adequate resources to fulfill their roles and responsibilities with regard to the continuing airworthiness and operational control of the aircraft for the duration of the lease.

9.5 Where appropriate, the attachments to the AOC (Maintenance of Leased Aircraft and Aircraft Leasing Operations) will be amended to reflect the approval of the lease arrangement.

AIRWORTHINESS ASSESSMENT

The following shall be assessed by the Airworthiness Division to ensure that it allows the aircraft to be maintained to a satisfactory standard. The registered operator is responsible for the maintenance and continuing airworthiness of the aircraft that is the lessee will become fully responsible for maintenance control and continuing airworthiness.

Details of the airworthiness assessment shall include considering:

- Who will be responsible for maintenance, maintenance control and aircraft records (Log books)?
- Where will maintenance work be undertaken and are the facilities adequate and approved under a Certificate of Approval?
- For maintenance personnel engaged to work on the aircraft:
 - What training will they receive and by who?
 - How will they certify for the completion of maintenance work?
 - What system of maintenance and system of certification will be used?
- If applicable, what MEL will be used?
- If applicable has RVSM, RNP and EDTO requirements been addressed?
- How will defects be managed and rectified including those occurring at ports without maintenance support?
- How will the application for Airworthiness Directives (AD) Exclusion, System of Maintenance variations, Permissible Un-serviceability approvals and Special Flight Permits be managed and by whom?
- What maintenance documentation including approved data manuals will be made available for use by the organization and who will provide them and ensure currency including the AFM?
- Who will assess and control ADs and Service bulletins?
- Who will control the Weight and Balance currency and ensure the loading system is approved?
- How will parts provisioning be managed and by whom?
- Is the leased aircraft subject to an aging aircraft maintenance programme or corrosion control programme? Where is this documented?
- Has the leased aircraft been included in the lessee organization's Maintenance Control Manual?
- Who will manage the reliability programme?

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- Who will attend reliability meetings and who will decide what action should be taken on adverse trends?
- How will maintenance communications be maintained between the Lessor and Lessee and who will be responsible to ensure this has been maintained?
- What considerations and arrangements have been made to assess the existing maintenance programme, as this programmed may be based upon a different flight profile and usage than one flown by the second operator?
- What consideration have been made for extended life limited components and maintenance interval extensions which may not apply to an operator with a different operational and flight profile or operating environment?

When leasing aircraft from another Myanmar Operator significant maintenance aspects can be overlooked.

If the lessee (the Operator) wishes to use the lessor's Maintenance Control Manual (CAME), System of Maintenance (SOM), Operator MEL or Maintenance Release then DCA approval for those documents must be given to the Lessee AOC holder (the Operator).

This means that the lessee's MCM will reflect:

- The aircraft registration
- The relevant sections of the Lessor's MCM, only if the lessor is Myanmar Operator
- The Lessor's Approved maintenance programme for the aircraft
- The Lessor's Operator MEL approved for use by the lessee
- The approved Lessor's Maintenance release which has been approved for use by the lessee's AOC operation
- The approved Reliability Program, if applicable for the aircraft type
- EDTO maintenance requirements if applicable
- RVSM and RNP maintenance requirements if applicable

Note: This information could be included in the lease agreement which forms an annex to the operators MCM(CAME)

If this is not the case, a copy of the lease agreement relating to aircraft maintenance requirements must be mentioned in the MCM (CAME).

Verify any special airworthiness matters that are subject to the lease conditions:

- Are deviations from the manufacturer Maintenance Review Board (MRB) maintenance requirements permitted as a result of a reliability program determination or operational requirement which needs DCA approval?
- Is aircraft maintenance permitted to be carried out by overseas maintenance organizations?

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- How will lease termination be handled with respect to aircraft Continuing Airworthiness?

Note: For Maintenance performed by foreign Maintenance Organizations and its certification. The lease agreement should limit this maintenance to one off occurrences only which shall not to be used as a permanent maintenance arrangement for scheduled maintenance.