



Lakshmikumaran
& Sridharan
attorneys

An ISO 9001:2008 and ISO 27001:2005 certified law firm

30
years



Aviation/ Aerospace Roundup

APRIL
2016

I. REGULATIONS CHECK

Leasing the “big bird” – Regulatory guidelines

INTRODUCTION



Aircrafts have the nationality of the State in which they are registered and this puts onus on the State of Registry to ensure that the aircraft on its civil register follow its laws and regulations even if it is operated outside its territory. With increasing instances of aircraft leasing and aircrafts frequently transcending national boundaries, it became pertinent to regulate this aspect and, therefore, the Chicago Convention on International Civil Aviation (“Chicago Convention”) was amended to incorporate Article 83 *bis*. Article 83 bis to the Chicago Convention provides for the transfer of certain safety oversight responsibilities (*under air, radio licensing, certificates of airworthiness, and personnel licences*) from the State of Registry to the State of the Operator, which are recognised by all States which have ratified Article 83 *bis*. India has ratified Article 83 *bis* and amended the relevant provisions of the Aircraft Rules, 1937.

TYPES OF OPERATIONAL LEASING ARRANGEMENTS

As defined in CAP 3200 dated August 2013, “Dry Lease” is a lease arrangement whereby a lessor provides an aircraft without crew to the lessee and “Wet Lease” is 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 arrangement. A “Damp Lease” is a lease arrangement whereby a lessor provides an aircraft with partial crew to the lessee. The following tables provide details regarding these leases –

A. Wet or damp lease arrangement

WET LEASE OUT	WET LEASE IN	INTRA STATE WET LEASE
Meaning		
Indian registered aircraft to a foreign operator	Foreign registered aircraft by an Indian AOP holder	Indian registered aircraft between Indian AOP holders
Applicable regulatory requirements		
Indian	Foreign	Indian
Operational control of the aircraft		
Indian AOP holder will be responsible for the duration of the lease	Lessor will be responsible for the duration of the lease	Lessor will be responsible for the duration of the lease
Air operator certificates		
Both lessor and lessee for the duration of the lease	Both lessor and lessee for the duration of the lease	Both lessor and lessee for the duration of the lease

WET LEASE OUT	WET LEASE IN	INTRA STATE WET LEASE
In case of damp lease		
The qualification and operational control of crew provided by the lessee should be addressed and aligned with the lessor's operations policies	The qualification and operational control of crew provided by the lessee should be addressed and aligned with the lessor's operations policies	The qualification and operational control of crew provided by the lessee should be addressed and aligned with the lessor's operations policies
Reportable occurrences and incidents		
Lessee to report to DGCA	Lessee to report to DGCA	Lessee to report to DGCA

B. Dry Lease Arrangement

DRY LEASE OUT		DRY LEASE IN	
Meaning			
Indian registered aircraft to a foreign operator without change of aircraft registration	Indian registered aircraft to a foreign operator with change of aircraft registration	Foreign registered aircraft by an Indian AOP holder without change of aircraft registration	Foreign registered aircraft by Indian AOP holder with change of aircraft registration
Applicable regulatory requirements			
Indian	Foreign	Foreign	Indian
Operational control			
Lessee responsible for the duration of the lease	Lessee responsible for the duration of the lease	Indian AOP holder responsible for the duration of the lease	Lessee responsible for the duration of the lease
Aircraft equipment(s) Requirements			
Indian	Foreign	Indian	Indian
Air operator certificates			
Lessee for the duration of lease	Lessee for the duration of lease	Lessee for the duration of lease	Lessee for the duration of lease



LEASING PROCEDURE

CAR Section 3 Series C Part I that was revised in November 2009 stipulates that no Indian operator shall take any aircraft on lease or give any aircraft on lease to a foreign operator without permission from the Director General of Civil Aviation ("**DGCA**"), who may take a decision regarding the need to conclude an agreement between Government of India and the State of Registry or the State of the Operator under Article 83 *bis* of the Convention. CAP 3200 dated August 2013 stipulates similar conditions.


The guidelines applies to parties involved in operational leasing arrangements, including Indian Air Operator Permit (**AOP**) Holders and any foreign party leasing Indian registered 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. An Indian AOP holder planning to lease and operate aircraft registered in a foreign State must have at least one aircraft on its AOP which is registered in India.

In order to lease or get an aircraft on lease, the parties need to submit an application before DGCA for approval of lease arrangement with following details to determine whether proper operational control and continuing airworthiness oversight for the aircraft are in place for the duration of the lease:

- a. Parties involved along with make/model/serial number of the aircraft;
- b. In the case of a lease-in arrangement:
 - 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; and
 - iv. Proof of the maintenance programme approval from the foreign authority;
- c. Type of lease (lease-in/out, wet, damp, dry) and duration;
- d. Whether the aircraft's registration will change during the lease;
- e. Copy of lease agreement or description thereof which 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;
- f. Changes to the operations specifications for AOP holders and area of operations.

The process and requirements for the different kinds of leases are provided below –

Foreign registered aircraft leased to Indian operators	Indian registered aircraft leased to foreign operator	Leasing aircraft from one Indian operator to another Indian
Submission of application		
<ul style="list-style-type: none"> i. Indian AOP holder shall submit to DGCA (ATC) ii. 3 sets Aircraft Leasing Form (LF-1), a copy of the lease agreement and other documentation that confirms compliance with CAR Section 3 Series C Part I at least 45 days prior to the proposed commencement of operations iii. A signed copy of the lease must be submitted to the DGCA within 7 days of the permission being issued by DGCA 	<ul style="list-style-type: none"> i. Indian registered owner shall submit to DGCA (ATC) ii. Same as #(ii) of the second column except for Aircraft Leasing Form (LF-2) iii. Same as #(iii) of the second column iv. To provide evidence about the leasing operation as specified in lease, supplied through other documents, or established through DGCA review 	<ul style="list-style-type: none"> i. Indian registered owner shall submit to DGCA (ATC) ii. Same as #(ii) of the second column except for Aircraft Leasing Form (LF-3) iii. Same as #(iii) of the second column iv. Same as #(iv) of the third column
Scrutiny of application		
<p>ATC to ensure that form is duly completed & signed in ink, Indian air operator has at least one aircraft on its AOP which is registered in India, share the documents with Airworthiness & Flight Standards Directorate. Upon receipt of forms from the above directorates, ATC will process the file for issuance of the leasing permission and remove the aircraft from AOP of the Air Operator</p>	<p>ATC to ensure that form is duly completed & signed in ink, the Indian air operator has not leased to a foreign air operator a number of aircraft that exceeds 25% of the total number of Indian aircraft registered to that Indian air operator, share the documents with Airworthiness & Flight Standards Directorate. Upon receipt of forms from the above directorates, ATC will process the file for issuance of the leasing permission and add the aircraft on the AOP of the Air Operator</p>	<p>ATC to ensure that form is duly completed & signed in ink, no Indian air operator shall lease its aircraft to another Indian air operator so as disrupt its own schedule, share the documents with Airworthiness & Flight Standards Directorate. Upon receipt of forms from the above directorates, ATC will process the file for issuance of the leasing permission and the aircraft will be removed from the AOP of the lessor and entered in the AOP of the lessee. The directorates can conduct inspection(s) necessary to determine compliance with CAR Section 3 Series C Part I and may after review and sign-off (<i>with any additional conditions of issue, as required</i>)</p>
Approval from foreign authority		
<p>Written consent of the applicable foreign civil aviation authority is required before a leasing permission can be issued</p>	<ul style="list-style-type: none"> i. Same as the second column 	<p>NA</p>

Foreign registered aircraft leased to Indian operators	Indian registered aircraft leased to foreign operator	Leasing aircraft from one Indian operator to another Indian
Aircraft Eligibility Requirements 		
<p>i. Aircraft must be in the DGCA type-acceptance list registered in the foreign State, have a valid Certificate of Airworthiness and should have less than 15 years of age for passenger transportation and less than 25 years of age for cargo operations. The aircraft should not have completed more than 75% of its design economic life or 45,000 pressurization cycles free from accident and have its maintenance programme approved from the foreign regulatory authority</p>		
Maintenance Records Inspection		
<p>Prior to operation in India, the aircraft and its maintenance records must be inspected by DGCA inspectors to ensure that the aircraft has been maintained to a standard equivalent to that contained in CARs</p>		
Foreign Inspection Program		
<p>If the inspection program to be used is one that is required by the foreign air operator's regulatory authority, it must be evaluated and where necessary, supplemented by additional tasks to meet Indian airworthiness requirements</p>		
Long Term Airworthiness Requirements		
<p>Aircraft that are subject to the Airworthiness Directives (ADs) must be inspected and maintenance records reviewed to determine compliance with the provisions of the ADs, paying particular attention to the following: (a) corrosion and structural related service bulletins; (b) structural modifications and repairs, including major and multiple site damage repairs and damage tolerant repair; (c) application of Supplemental Structural Inspection Programs (SSIPs); (d) fatigue quality of multiple repairs; and (e) major repair documentation, such as drawings, procedures and related technical data</p>	<p>The organization that will perform and certify the work must have a valid maintenance approval or equivalent document, for the aircraft type that is the subject of the leasing operation, issued by the airworthiness authority of the country of the lessee. DGCA inspectors must assess the foreign air operator's ability to maintain the aircraft to Indian airworthiness standards by: (i) inspecting the proposed maintenance facility, if required; (ii) reviewing the qualifications of personnel who are assigned maintenance; (iii) supervision and certification responsibilities; (iv) ensuring that the operator is aware of and can comply with Indian requirements in all respects; and (v) reviewing foreign maintenance rules to determine that they are acceptable and do not conflict with Indian maintenance rules</p>	

Foreign registered aircraft leased to Indian operators	Indian registered aircraft leased to foreign operator	Leasing aircraft from one Indian operator to another Indian
Responsibility for Airworthiness Surveillance		
-	DGCA unless there is a change under Article 83bis and based on a surveillance schedule	-
Modifications and Repairs – Review and Acceptance		
A review of modifications and repairs on foreign aircraft shall be made. Following the review of embodied modifications and repairs, the acceptance should be recorded by attaching the list of the accepted modifications and repairs (including all supporting documentation) to the leasing file		

COMPONENTS OF AN ARTICLE 83 *BIS* AGREEMENT

The viability and practicality of aircraft leasing agreement must be considered and negotiated between the Registered Operator of the aircraft, the foreign operator intending to operate the aircraft overseas, State of Registry and State of the Operator. There are four mandatory components that must be addressed before an Article 83 *bis* agreement can come into force. These are:

- i. **A Formal Agreement** between the two Contracting States, specifying who will be responsible for what; signed by the Director of Civil Aviation for the foreign regulatory authority and DGCA.
- ii. **An exchange of letters** of undertakings between the two Contracting States. Letter signed by the equivalent of the Joint Director General (Flight Standards Directorate) from the State of Registry requesting that the State of Operator to undertake some specified regulatory oversight responsibilities. Letter signed by the Head of the Maintenance Department or, in the case of India, the Joint Director General (Airworthiness Directorate) from the State of Operator confirming to the State of Registry that it will indeed undertake the regulatory oversight responsibilities requested and agreed upon.
- iii. **A Delegations Agreement** between the two Contracting States specifying in detail the transfer and on-going arrangements including the delegation of functions and responsibilities from one party to the other. This agreement will be signed by the Director of Civil Aviation for the foreign authority and DGCA.
- iv. **An Agreement regarding the airworthiness responsibilities** of each Contracting State, concerning the particular transferred aircraft. This Agreement should be signed by the Head of Airworthiness for the foreign authority and, for DGCA India, the Joint Director General (Airworthiness).

Once all parts of the agreement have been signed by various parties, DGCA India, if it is the State of Registry, must register the Article 83 *bis* Agreement with ICAO. If the foreign Contracting State is the State of Registry and DGCA India, the State of the Operator, the foreign CAA must register the agreement with ICAO.

Generally, India enters into an Article 83 *bis* agreement in these two categories if the conditions mentioned in the table below are met –

For an Indian Registered aircraft to be operated by a foreign operator on a foreign AOC	For a foreign registered aircraft to be operated within India under an Indian AOP
It is practical to do so	It is practical to do so
If there are no differences registered with ICAO by India as the State of Registration against the Standards and Recommended Practices published in the Annexes which would directly affect the regulatory oversight of the aircraft by the foreign State of the Operator	If there are no differences registered with ICAO by the foreign State of Registration against the Standards and Recommended Practices published in the Annexes which would directly affect the regulatory oversight of the aircraft
The Indian Registered aircraft will be based overseas for long duration and where it is impractical or not cost-effective for DGCA India inspectors to conduct appropriate regulatory oversight	DGCA India has confidence in the foreign regulatory authority, on whose Register the aircraft is recorded, to meet all of the obligations and requirements as specified in the Article 83 <i>bis</i> agreement
DGCA India has sufficient confidence in the foreign operator's competence to safely operate and maintain the aircraft	DGCA India has sufficient confidence in the Indian operator's competence to safely operate and maintain the foreign registered aircraft
DGCA India has sufficient confidence that the State of Operator is technically capable of undertaking regulatory oversight work required & adequate resources to meet the obligations of Article 83 <i>bis</i> agreement	DGCA India has sufficient technical personnel available to undertake the regulatory oversight and reporting commitments specified in the Article 83 <i>bis</i> agreement

Currently, airlines are increasingly turning to operating leases wherein a leasing company bears the risk of any slump in their second-hand value. Companies do not find merit in spending cash to "own" fleet and instead prefer to take them on rent. The smaller airlines can take planes on leases and if they do not see profits or incentives in running the show, they can end their license. It would not hurt them much. The recent trend in aviation sector is ensuring the profitability but gradually making the business short-term. Though for bigger companies owning their fleet is crucial for the longevity and credibility but the leasing model has the potential to become the most viable business option in the times to come, and then longevity and credibility will be dependent not on the basis of ownership of aircraft but on the consistency of service that it can provide.

II. LATEST NOTIFICATIONS/CIRCULARS

1. Draft **CAR Section 2 Airworthiness Series "O" Part VI Issue II dated April 2016** has been released on the Manufacture, Registration and Operation of Powered Hang Gliders. It lays down the process for securing manufacturing license, registration, permit to fly, maintenance & security requirements. For the purpose of this CAR, a powered hang glider is a vehicle that is used or intended to be used for manual operation in the air by a single occupant/ double occupant, is used or intended to be used for recreation, sport, or any other purpose approved by DGCA in writing, has the maximum AUV less than 275 kgs for a single seater, has the maximum AUV less than 375 kgs for a double seater, is not capable of more than 70 knots calibrated air speed at full power in level flight, and has a power-off stall speed which does not exceed 30 knots calibrated air speed.
2. DGCA issued **CABIN SAFETY CIRCULAR NO 01 OF 2016 dated 14th March 2016** "**Guidelines for Preparation of Cabin Crew SEP manual**" applicable to Scheduled, Non Scheduled and other operators who carry Cabin Crew on board aircraft. The purpose of this CSC, which is effective since April 1, 2016, is to provide guidelines for formulating programmes for safety and emergency procedures. The broad details of the training programme is provided in CAR Section 7 Series M Part I. The detailed syllabus for safety and emergency procedures and cabin will be covered in the SEP manual. (SEP manual is a part of the Operations Manual). It is crucial to note here that in accordance to Rule 38 (B) of the Aircraft Rules, 1937, no aircraft registered in India can be operated for public transport of passengers unless the minimum number of cabin crew are on board the aircraft for the purpose of performing such duties as may be assigned in the interest of safety of passengers, by the operator or the Pilot-in-command of the aircraft. Rule 38 (B) (5) stipulates that each cabin crew shall successfully undergo the training programmes duly approved by the DGCA.
3. DGCA issued **CIVIL AVIATION REQUIREMENTS SECTION 1 – GENERAL SERIES A PART I ISSUE III, UNDATED & EFFECTIVE: FORTHWITH on "Civil Aviation Requirements and its compliance"**.

This CAR details the issue and revision of "Civil Aviation Requirements" in accordance with rule 133A of The Aircraft Rules, 1937 and compliance requirement and applies to any person or organisation seeking a licence or certificate or authorisation or approval in accordance with the provisions of the Indian Aircraft Rules, 1937 and to the holders of any licence or certificate or authorisation or approval in accordance with the provisions of the Indian Aircraft Rules, 1937.

Section 4 of the Aircraft Act, 1934 enables the Central Government to make rules to implement the Chicago Convention relating to International Civil Aviation signed at Chicago on the 7th day of December, 1944 including any Annex thereto relating to international standards and recommended practices as amended from time to time. Section 5A of the said Act empowers the DGCA to issue directions for securing the safety of aircraft operations. Rule 29C of the Aircraft Rules 1937 enables DGCA to lay down standards and procedures not inconsistent with the Aircraft Act, 1934 and the rules made thereunder to adhere to the Convention and any Annex thereto referred to above. Rule 133A of the Aircraft Rules, 1937, provides for the DGCA to issue CARs not inconsistent with the Aircraft Act, 1934 and the rules made thereunder.

By this latest CAR, the CARs are promulgated on civil aviation related subjects as detailed here under and they shall be issued bearing different "series" identified by alphabetical letters, namely Series A, B, C etc. and under the same Series, various "Parts" or independent CAR bearing numeric numbers are issued. Details of CARs and subjects they deal with shall be published on DGCA website <http://dgca.gov.in/> or <http://egca.gov.in> –

- Section 1 – General
- Section 2 – Airworthiness
- Section 3 – Air Transport
- Section 4 – Aerodrome Standards and Licensing
- Section 5 – Air Safety
- Section 6 – Design standards and Type Certification
- Section 7 – Flight Crew Standards, Training and Licensing
- Section 8 – Aircraft Operations
- Section 9 – Air Space and Air Traffic Management
- Section 10 – Aviation Environment Protection
- Section 11 – Safe Transport of Dangerous Goods by Air

Author

Neeraj Dubey
Joint Partner
Bangalore office



**Lakshmikumaran
& Sridharan**
attorneys

NEW DELHI

5 Link Road, Jangpura Extension,
New Delhi 110014

B-6/10, Safdarjung Enclave
New Delhi - 110 029
Phone : +91-11-4129 9811
E-mail : lsdel@lakshmisri.com

MUMBAI

2nd Floor, CNERGY IT Park,
Old Standard Mill,
Appa Saheb Marathe Marg,
Prabhadevi,
Mumbai - 400 025
Phone : +91-22-2439 2500
E-mail : lsbom@lakshmisri.com

CHENNAI

2, Wallace Garden, 2nd Street
Chennai - 600 006
Phone : +91-44-2833 4700
E-mail : lsmds@lakshmisri.com

BENGALURU

World Trade Center,
No. 404-406, 4th Floor, South Wing,
Brigade Gateway Campus,
No. 26/1 Dr. Rajkumar Road,
Malleswaram West,
Bengaluru - 560 055
Phone : +91-80-49331800
E-mail : lsblr@lakshmisri.com

HYDERABAD

'Hastigiri', 5-9-163, Chapel Road
Opp. Methodist Church, Nampally
Hyderabad - 500 001
Phone : +91-40-2323 4924
E-mail : lshyd@lakshmisri.com

GENEVA

Lakshmikumaran & Sridharan SARL
Avenue Giuseppe-Motta 35-37
1202 Geneva
Phone: +41 22 919 04 30
Fax : +41 22 919 04 31
E-mail : lsgeneva@lakshmisri.com

AHMEDABAD

B-334, SAKAR-VII,
Nehru Bridge Corner, Ashram Road,
Ahmedabad - 380 009
Phone : +91-79-4001 4500
E-mail : lsahd@lakshmisri.com

PUNE

607-609, Nucleus
1 Church Road, Camp
Pune - 411 001
Phone : +91-20-66801900
E-mail : lspune@lakshmisri.com

KOLKATA

2nd Floor, Kanak Building
41, Chowringhee Road
Kolkata - 700071
Phone : +91-33-40055570
E-mail : lskolkata@lakshmisri.com

CHANDIGARH

SCO No. 59, 1st Floor,
Sector 26, Madhya Marg,
Chandigarh - 160 026
Phone : +91-172-4921700
E-mail : lschd@lakshmisri.com

GURGAON

OS2 & OS3, 5th floor,
Corporate Office Tower,
AMBIENCE Island, Sector 25-A,
Gurgaon- 122001
Phone : +91-0124-477 1300
E-mail : lsgurgaon@lakshmisri.com

LONDON

Lakshmikumaran & Sridharan
Attorneys (U.K) LLP
Octagon Point, St. Paul's,
London EC2V 6AA
Tel : +44 20 38232166
E-mail : ls london@lakshmisri.com



Disclaimer: L&S Aviation/Aerospace Roundup is meant for informational purpose only and does not purport to be advice or opinion, legal or otherwise, whatsoever. The information provided is not intended to create an attorney-client relationship and not for advertising or soliciting. Lakshmikumaran & Sridharan does not intend to advertise its services or solicit work through this update. Lakshmikumaran & Sridharan or its associates are not responsible for any error or omission in this newsletter or for any action taken based on its contents. Unsolicited mails or information sent to Lakshmikumaran & Sridharan will not be treated as confidential and do not create attorney-client relationship with Lakshmikumaran & Sridharan.

If you wish to unsubscribe, please send an e-mail to lsblr@lakshmisri.com
Visit us at www.lakshmisri.com

© 2016 Lakshmikumaran & Sridharan. All rights reserved.