

# **Manual of Aircraft Leasing**

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# Manual of Aircraft Leasing

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## Foreword

Operation of leased aircraft from one contracting State to another is inevitable in international air transport operations in modern days. Aircraft leasing can be arranged in many ways which can result in varied and complex safety situations particularly if aircraft registered in another contracting State is to be operated in Nepal by a Nepalese operator or vice versa.

Article 83 bis to the Convention on International Civil Aviation provides the legal basis to transfer to the State of Operator to all or part of the State of Registry's functions and duties pertaining to the Article 12, 30, 31 and 32a) of the Convention. Nepal has ratified the Article 83 bis in 9 June 1997 and the provision in this regard was made in Civil Aviation Regulation, 2058.

Rule 9 (4) of the Civil Aviation Regulation, 2058 (2<sup>nd</sup> Amendment, 2070) empowers the Director General of Civil Aviation Authority of Nepal (CAAN) to conclude an agreement between the CAAN and the State of Registry or State of Operator for the transfer or acceptance of functions and duties under Article 83 *bis* of Chicago Convention .

While operating aircraft on lease basis, coordination is required between the organization providing the aircraft and the operator as well as the regulatory authorities of concerned States. It is important that the inspectors involved in the assessment of aircraft that is to be added in the AOC under lease arrangement ensure that all safety responsibilities are understood.

This manual contains the policy and guidance regarding the management of aircraft lease to ensure the regulatory obligations and the operational safety is upheld all the times.

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Ratish Chandra Lal Suman  
Director General  
Civil Aviation Authority of Nepal

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## RECORD OF REVISIONS

Flight Safety Standard Department of CAAN is responsible to ensure that this manual is updated as required and to maintain the contents of the manual current at all times. Amendments to this manual are promulgated by means of revisions issued whenever necessary to cover corrections and to add or modify the contents. Any Revisions to the manual shall be shown with a vertical bar on the right side of the revised data. The page number and the revision number of the effected page must be changed accordingly. The list of effective pages and history of revisions page must be amended accordingly.

All revisions to this manual shall have the approval of the approving authority of this manual prior to publishing of the revisions.

REVISION NUMBER	DATE ENTERED	ENTERED BY

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## **CHAPTER 1 – GENERAL**

- 1.1 Rule 9 of the Civil Aviation Regulation, 2058(2<sup>nd</sup> amendment) stipulates that while leasing an aircraft to and from a foreign State the Director General of CAAN may conclude an agreement between CAAN and the State of Registry or the State of the Operator for the acceptance or transfer of functions and duties under Article 83 bis of the Convention.
- 1.2 The guidelines applies to parties involved in operational leasing arrangements, including Air Operator Certificate (AOC) Holders and any foreign party leasing 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 under this framework.
- 1.3 A Nepalese AOC holder planning to lease and operate aircraft registered in a foreign State must have at least one aircraft on its AOC which is registered in Nepal.
- 1.4 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 of the State of Registry and the State of the Operator are described in Chapter 5 to provide an idea of the regulatory compliance that the lessor and lessee can expect.
- 1.5 When the leasing arrangement involves safety oversight by foreign Authority(s), the leasing arrangement should include information on compliance with relevant regulations of both CAAN and the foreign Authority(s), without which, would effectively preclude the lease from taking place.

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## CHAPTER 2 – DEFINITIONS

- 2.1 *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.
- 2.2 *Lessor:* The party furnishing the aircraft under a lease.
- 2.3 *Lessee:* The party using the aircraft under the provisions of a lease. The lessee operator of the aircraft must hold the necessary economic and operating authority for the aircraft and must exercise operational control over the aircraft. Accordingly, the lessee must provide the necessary flight and cabin crewmembers, ground personnel, dispatchers and ground facilities to operate the aircraft.
- 2.4 *Dry Lease:* A lease arrangement whereby a lessor provides an aircraft without crew to the lessee.
- 2.5 *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 arrangement.
- 2.6 *Damp Lease:* A lease arrangement whereby a lessor provides an aircraft with partial crew to the lessee.
- 2.7 *State of Registry:* The State on whose register the aircraft is entered.
- 2.8 *State of the Operator:* 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.
- 2.9 *Operator:* A person, organisation or enterprise having an Air Operator Certificate (AOC) engaged in aircraft operations to carry out specific commercial air transport operations.
- 2.10 *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.
- 2.11 *Operational Leases:* Refer to leasing arrangements described in Chapter 6.

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## CHAPTER 3 – ARTICLE 83 *BIS* TO THE CHICAGO CONVENTION – TRANSFER OF STATE OF REGISTRY RESPONSIBILITIES

- 3.1. Article 83 *bis* 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 recognised by all other States which have ratified Article 83 *bis*. 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 licences respectively.
- **Article 12- Rules of the air.**  
*Article 12 makes States responsible for ensuring that every aircraft carrying its nationality mark, wherever such aircraft may be, shall comply with rules and regulations relating to the flight and manoeuvre of aircraft.*
  - **Article 17, 18, 19 and 20- Nationality of Aircraft.**  
*These articles provide that every aircraft have the nationality of the State in which they are registered; that an aircraft cannot be registered in more than one State, but its registration may be changed from one State to another; and that every aircraft engaged in International air Navigation shall bear its appropriate nationality and registration marks.*
  - **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.**  
*Every aircraft engaged in International navigation must be provided with a Certificate of Airworthiness issued or rendered valid by the State of Registry.*
  - **Article 32- Licenses of Personnel.**  
*The pilot and crew of the aircraft engaged in international navigation must be provided with certificates of competency issued and rendered valid by the State of Registry. States can refuse to recognize, for the purpose of flight above their territory, certificates of competency and licenses granted to any of its nationals by another contracting State.*
- 3.2. The above issues are interrelated responsibilities for the safe operation and airworthiness of an aircraft.

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## CHAPTER 4 – COMPONENTS OF AN ARTICLE 83 *BIS* AGREEMENT

- 4.1 When an aircraft leasing arrangement is being considered possibly utilizing Article 83 *bis* provisions, the viability and practicality of such an agreement must be considered and negotiated between:
- an aircraft's Certificate of Registration holder/ Registered Operator;
  - the foreign operator intending to operate the aircraft overseas;
  - the regulatory authority on whose Register the aircraft is recorded (State of Registry); and
  - the foreign regulatory authority under whose jurisdiction the aircraft will be operated (State of the Operator).
- 4.2 Once it has been established that an Article 83 *bis* agreement is the best solution for maintaining effective airworthiness control and regulatory oversight of a particular aircraft that is subject to an international leasing arrangement, there are four mandatory components that must be addressed before an Article 83 *bis* agreement can come into force. These are:
- 4.2.1. **A *Formal Agreement*** between the two Contracting States, specifying who will be responsible for what. This agreement will be signed by the Director of Civil Aviation [however described] for the foreign regulatory authority; and, for Nepal, the CAAN.
- 4.2.2. **An *exchange of letters*** of undertakings between the two Contracting States:
- One letter from the State of Registry for the aircraft being transferred, requesting that the State in which the aircraft will be operated will undertake some specified regulatory oversight responsibilities. This will be signed by the Deputy Director General (Aviation Safety Regulations Directorate).
  - One letter from the State in which the aircraft will be operated (State of the Operator) confirming to the State of Registry that it will indeed undertake the regulatory oversight responsibilities requested and agreed upon. This will be signed by the Deputy Director General (Aviation Safety Regulations Directorate).
- 4.2.3. **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 [however described] for the foreign authority and for CAAN Nepal, the Director General.
- 4.2.4. **An *Agreement regarding the airworthiness responsibilities*** of each Contracting State, concerning the particular transferred aircraft. This will be signed by the Deputy Director General (Aviation Safety Regulations Directorate).
- 4.3. Sample Agreements to be signed are at Appendix C.
- 4.4. Once all parts of the agreement have been signed by the various parties, CAAN, if it is the **State of Registry**, must **register the Article 83 *bis* Agreement with ICAO**. If the



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foreign Contracting State is the State of Registry and CAAN the State of the Operator, the foreign CAA must register the agreement with ICAO.

- 4.5. Generally, Nepal will only enter into an Article 83 *bis* agreement for an Nepalese Registered aircraft to be operated by a foreign operator on a foreign AOC if:
- a. it is practical to do so;
  - b. If there are no differences registered with ICAO by Nepal 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;
  - c. the Nepalese Registered aircraft will be based overseas for long duration and where it is impractical or not cost-effective for CAAN inspectors to conduct appropriate regulatory oversight;
  - d. CAAN has sufficient confidence in the foreign operator's competence to safely operate and maintain the aircraft; and
  - e. CAAN has sufficient confidence that the foreign regulatory authority under whose jurisdiction the aircraft will be operated is technically capable of undertaking the regulatory oversight work required and also has adequate resources to meet the obligations imposed by the Article 83 *bis* agreement.
- 4.6. Similarly, CAAN will only enter into an Article 83 *bis* agreement for a foreign registered aircraft to be operated within Nepal under an AOC if:
- a. It is practical to do so;
  - b. 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.
  - c. CAAN has confidence in the foreign regulatory authority, on whose Register the aircraft is recorded, to meet all of the obligations and requirements to be undertaken as specified in the Article 83 *bis* agreement;
  - d. CAAN has sufficient confidence in the operator's competence to safely operate and maintain the foreign registered aircraft; and
  - e. CAAN has sufficient technical personnel available to undertake the regulatory oversight and reporting commitments specified in the Article 83 *bis* agreement.

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## CHAPTER 5 – RESPONSIBILITIES OF THE STATE OF REGISTRY AND STATE OF THE OPERATOR

- 5.1 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.
- 5.3 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 organisation 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 (CoA) 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 organisation 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.
  - j) Ensuring that mandatory continuing airworthiness information from the State of Design is assessed and appropriate action is taken in a timely manner.
- 5.4 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.

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- 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.

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## CHAPTER 6 – TYPES OF OPERATIONAL LEASING

### ARRANGEMENTS

- 6.1 The types of operational leases are described in the following paragraphs. Parties involved in a leasing arrangement should note the responsibilities of each party with respect to the airworthiness and operation of the leased aircraft.
- 6.1.1 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.
- a) Wet or damp Lease(out) of registered aircraft to a foreign operator (**“Wet Lease Out”**)  
Regulatory requirements related to registered aircraft will apply. The Nepalese 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.
  - b) Wet or damp lease(in) a foreign registered aircraft by a 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 qualification and operational control of crew provided by the lessee should be addressed and aligned with the lessor's operations policies.
  - c) Wet or damp lease of Nepalese registered aircraft between AOC holders (**“Intra State Wet Lease”**)  
Regulatory requirements related to Nepalese 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.
- 6.1.2 In a **dry lease arrangement**, the lessee usually assumes operational control of the aircraft. The aircraft is operated under the lessee's air operator certificate. Compliance to other relevant regulatory requirements would depend on the civil aviation authority of the State where the aircraft is registered.
- a) Dry lease(out) of Nepalese registered aircraft to a foreign operator without change of aircraft registration (**“Dry Lease Out”**)  
Regulatory requirements related to 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.
  - b) Dry lease(in) of foreign registered aircraft by AOC holder without change of aircraft registration (**“Dry Lease-In”**)

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

## **6.2 AIRCRAFT REGISTERED WITH THE AUTHORITY OF THE LESSEE**

6.2.1 Parties to a dry lease agreement may register the aircraft with the 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.

a) Dry lease-(out) of Nepalese registered aircraft to a foreign operator with change of aircraft registration Regulatory requirements related to registered aircraft will not be applicable when the aircraft is de-registered from the registry. The leased aircraft may be re-registered back onto the registry at the end of the lease provided it meets all applicable CAAN requirements at the time of re-registration.

b) Dry lease-(in) of foreign registered aircraft by CAAN AOC Holder with change of aircraft registration.

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

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## CHAPTER 7 - CAAN' LEASING POLICY

- 7.1 To provide clarity on the safety responsibilities expected from the lessee and lessor, CAAN expects, at the minimum, the following obligations from the lessee and lessor in accordance with the respective types of leasing arrangements as shown in Table 1 below.

**Table 1: Obligations expected from Lessee and Lessor in Operational Leases**

Scenario	Obligations
All Leases	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 CAAN inspectors to conduct necessary inspections.
Wet Leases	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 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 CAAN1.
Dry Leases	a. For Dry Lease Out arrangements, the lessee must maintain the subject aircraft to requirements. b. For Dry Lease In arrangements, the lessee must ensure that the aircraft equipment relating to flight operations meets requirements.

Note 1: *In all other types of leasing arrangements, AOC holders shall report to CAAN all reportable occurrences involving the leased aircraft.*

- 7.2 CAAN may, on a case by case basis, prescribe additional requirements relating to the lease arrangement.
- 7.3 In order to maintain effective safety oversight, DGCA will set limits to the duration of operational leases. The limit to the duration of a lease, in accordance to the type of operational lease, is stipulated in Table 2.
- 7.4 Nepalese AOC holders that need to lease an aircraft for a period longer than the stipulated period in Table 2 will need to provide justifications to CAAN for the requested extended lease duration.

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**Table 2: Durations for Operational Leases**

<b>Scenario</b>	<b>Duration</b>
Wet Lease In	6 months, subject to a one time extension of an additional 6 months.
Dry Lease In	12 months.
Wet Lease Out	12 months.
Dry Lease Out	12 months, subject to a one time extension of an additional 12 months.
Intra State Wet Lease	12 months, subject to a one time extension of an additional 12 months.

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## CHAPTER 8 – LEASING PROCEDURE

### 8.1 General

8.1.1 Application for approvals of lease arrangements should be submitted in writing 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 arrangement, CAAN may require more information in order to determine that all airworthiness and operational issues are addressed. 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:
  - 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.

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

### 8.2 Foreign registered aircraft leased to Operators:

8.2.1 The applicant, i.e. the Nepalese AOC holder, shall submit to CAAN (Flight Safety Standard Department) a completed three (3) sets of Aircraft Leasing Form (LF-1), a copy



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of the lease agreement, and other documentation that confirms compliance with CAR Rule 9 at least 45 days prior to the proposed commencement of operations. A signed copy of the lease must be submitted to the CANN within seven days of the permission being issued by CAAN.

8.2.2 The applicant for a leasing permission must provide evidence about the leasing operation that may be:

- a) Specified within the lease;
- b) Supplied through other documentation; or
- c) Established through a review by CAAN of the proposed leasing operation.

8.2.3 FSSD on receipt of the application (LF-1) shall:

- a) Ensure that the LF-1 has been duly completed and signed in ink.
- b) Will check the Nepalese Operator's leasing file to ensure that the air operator has at least one aircraft on its AOC which is registered in Nepal.
- c) Will distribute the LF-1, a copy of the lease and other documentation received to the following directorates:
  - Airworthiness Inspection Division
  - Flight Standards and Licensing Division/Flight Operations Section
- d) The LF-1 has a signature coordination block on the bottom. On receipt of signed LF-1 forms from appropriate divisions, FSSD will process the file for issuance of the leasing permission. The duration of the lease shall be as per the duration given in Chapter 7 Table 2.
- e) The aircraft will be removed from AOC of the Air Operator.

## 8.2.4 Consent of Foreign Civil Aviation Authority

The consent of the applicable foreign civil aviation authority is required before a leasing permission can be issued. This consent should be in writing.

## 8.2.5 Aircraft Eligibility Requirements

To be eligible for permission, an aircraft must be:

- In the CAAN type-acceptance list;
- registered in the foreign State;
- have a valid Certificate of Airworthiness; and
- will not be made the subject of another lease during the term of the lease authorized by CAAN for that aircraft;
- less than 15 years of age for pressurized aircraft and less than 20 years of age for non pressurized aircraft;

*Note: In addition, the aircraft should not have completed more than 75 percent of its design economic life or 45,000 pressurization cycles.*

- Free from accident; and
  - have its maintenance programme approved from the foreign regulatory authority.
- In addition to the above requirements, guidance given in Appendix A may be followed.

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## 8.2.6 Maintenance Records Inspection

Prior to operation in Nepal, the aircraft and its maintenance records must be inspected by CAAN inspectors to ensure that the aircraft has been maintained to a standard equivalent to that contained in NCARs.

## 8.2.7 Foreign Inspection Program

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 Nepalese airworthiness requirements.

## 8.2.8 Long Term Airworthiness Requirements

Certain airworthiness requirements have long term implementation times that are subject to additional compliance action. These include, but are not limited to, Airworthiness Directives (ADs) that address corrosion prevention and control programs. Aircraft that are subject to these 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.

## 8.2.9 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.

## 8.3 Nepalese registered aircraft leased to foreign operator:

8.3.1 The applicant, i.e. the Nepalese registered owner, shall submit to CAAN Flight Safety Standards Department (FSSD) a completed three (3) sets of Aircraft Leasing Form (LF-2), a copy of the lease agreement, and other documentation that confirms compliance with CAR Rule 9 at least 45 days prior to the proposed commencement of operations. A signed copy of the lease must be submitted to the CAAN within seven days of the permission being issued by CAAN.

8.3.2 The applicant for a leasing permission must provide evidence about the leasing operation that may be:

- a) Specified within the lease;
- b) Supplied through other documentation; or
- c) Established through a review by CAAN of the proposed leasing operation.

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8.3.3 Flight Safety Standards Department (FSSD) on receipt of the application (LF-2) shall:

- a) Ensure that the LF-2 has been duly completed and signed in ink.
- b) Will check the organization leasing file to that the Nepalese air operator has not leased to a foreign air operator a number of aircraft that exceeds 25 per cent of the total number of Nepalese aircraft registered to that Nepalese air operator, rounded to the next highest whole number.
- c) Will distribute the LF-2, a copy of the lease and other documentation received to the following divisions:
  - Airworthiness Inspection Division
  - Flight Standards and Licensing Division/Flight Operations Section (FOS)
- d) The LF-2 has a signature coordination block on the bottom. On receipt of signed LF-2 forms from appropriate divisions Flight Safety Standards Department (FSSD) will process the file for issuance of the leasing permission. The duration of the lease shall be as per the duration given in Chapter 7 Table 2.
- e) The aircraft will be added on the AOC of the Air Operator.

## 8.3.4 Consent of Foreign Civil Aviation Authority

The consent of the applicable foreign civil aviation authority is required before a leasing permission can be issued. This consent should be in writing.

## 8.3.5 Airworthiness Eligibility Requirements

The following clarifies the requirements of the regulations and standards and is necessary to ensure the safe operation of an registered aircraft by a foreign air operator:

- a) Where the aircraft is to be maintained by or under the authority of the foreign air operator, 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. This approval will ensure that an evaluation of the maintenance organization has been carried out by the foreign civil aviation regulatory authority; and
- b) CAAN inspectors must assess the foreign air operator's ability to maintain the aircraft to Nepalese 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 requirements in all respects; and
  - v. reviewing foreign maintenance rules to determine that they are acceptable and do not conflict with maintenance rules.

## 8.3.6 Responsibility for Airworthiness Surveillance

In case there is no transfer of responsibilities under Article 83bis, the responsibility for airworthiness surveillance will remain with CAAN where the aircraft is normally based. A surveillance schedule for the leasing operation will be developed based on a risk assessment of the safety of the operation.

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## 8.3.6 Long Term Airworthiness Requirements

Certain airworthiness requirements have long term implementation times that are subject to additional compliance action. These include, but are not limited to, Airworthiness Directives (ADs) that address corrosion prevention and control programs. Aircraft that are subject to these 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.

## 8.4 Leasing aircraft from one operator to another operator

8.4.1 The applicant, i.e. the registered owner, shall submit to CAAN Flight Safety Standards Department (FSSD) a completed three (3) sets of Aircraft Leasing Form (LF-3), a copy of the lease agreement, and other documentation that confirms compliance with CAR Rule 9 at least 45 days prior to the proposed commencement of operations. A signed copy of the lease must be submitted to the CAAN within seven days of the permission being issued by CAAN.

8.4.2 The applicant for a leasing permission must provide evidence about the leasing operation that may be:

- a) Specified within the lease;
- b) Supplied through other documentation; or
- c) Established through a review by CAAN of the proposed leasing operation.

8.4.3 Flight Safety Standards Department (FSSD) on receipt of the application (LF-3) shall:

- a) Ensure that the LF-3 has been duly completed and signed in ink.
- b) Will check the organization leasing file to ensure that no Nepalese air operator shall lease its aircraft to another Nepalese air operator so as disrupt its own schedule.
- c) Will distribute the LF-3, a copy of the lease and other documentation received to the following directorates:
  - Airworthiness Inspection Division
  - Flight Standards and Licensing Division/Flight Operations Section
- d) The LF-3 has a signature coordination block on the bottom. On receipt of signed LF-3 forms from appropriate directorates, Air Transport Directorate will process the file for issuance of the leasing permission. The duration of the lease shall be as per the duration given in Chapter 7 Table 2.
- e) The aircraft will be removed from the AOC of the lessor and entered in the AOC of the lessee.

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8.4.4 The above-noted directorates will review the LF-3, other relevant documentation, and conduct any inspection(s) necessary to determine compliance with CAR Rule 9 as follows:

Provide evidence establishing that throughout the term of the lease, the aircraft:

- will be in the legal custody and control of the lessee; and
- will not be made the subject of another lease during the term of the lease permission for that aircraft.
- Evidence establishing that the lessor and the lessee each hold a Nepalese Air Operator certificate.
- Evidence establishing that the lessee is responsible for the maintenance of the aircraft in accordance with the applicable standards of airworthiness and the maintenance control system and the maintenance programme approved by CAAN, and in accordance with any requirements set out in the permission issued.
- Evidence establishing that the aircraft crew members are in the employ of the lessee.
- The LF-3 will be sent back to Flight Safety Standards Department (FSSD) after review and sign-off (with any additional conditions of issue, as required).

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## LF-1 – Foreign Registered aircraft leased to an Nepalese Air Operator Aircraft

Leasing Form (LF-1)																													
APPLICATION FOR AUTHORISING A LEASING OPERATION INVOLVING A FOREIGN AIR OPERATOR (LESSOR) TO AN NEPALESE AIR OPERATOR (LESSEE)																													
<i>To be completed by the Nepalese Air Operator</i>																													
<b>A. Identification of the aircraft and ownership</b>																													
Aircraft Manufacturer:				Model Designation:																									
Serial No.:				Nationality and Registration Mark:				Maximum Take-off Weight																					
Name and address of registered owner of aircraft:				Certificate of Airworthiness No. and Validity:				Maintenance Programme approval:																					
<b>B. Lessor/ Lessee</b>																													
Name and Address of the Foreign Air Operator (Lessor):				Telephone:				Fax:																					
				Air Operator Permit No. and Validity:																									
Name and Address of the Nepalese Air Operator(Lessee):				Telephone:				Fax:																					
				Air Operator Certificate No. and Validity:																									
<b>C. Maintenance</b>																													
Name and address of person/ company who will maintain the aircraft						Telephone:		Location of aircraft main maintenance base:																					
						Fax:																							
What maintenance certification authority does the foreign air operator have for this type of aircraft?						Indicate the Maintenance organization approval (if applicable)																							
<b>D. Type of Lease: (Lease-in - Wet, Damp, Dry)</b>						<b>E. Whether the aircraft's registration will change during the lease YES/ NO</b>																							
<b>F. Lease Agreement</b>						<b>G. Authorisation Dates requested – Date</b>																							
Commencement Date:			Termination Date:			Commencement Date:			Termination Date:																				
DD	MM	YYYY	DD	MM	YYYY	DD	MM	YYYY	DD	MM	YYYY																		
<b>H. Certification of Applicant – Attestation</b>																													
<b>I certify that:</b> 1. The responsibility for legal custody and control of the aircraft is clearly vested in the lessee during the term of the lease 2. All of the information and statements contained in this application are true and complete to the best of my knowledge and belief  <div style="display: flex; justify-content: space-between; margin-top: 20px;"> <div style="width: 45%;">             _____              Name and signature of person authorised to sign on behalf of the Air Operator Lessor           </div> <div style="width: 45%; text-align: center;">             _____              Date              (DD-MM-YYYY)           </div> </div>																													
<b>FOR CAAN USE ONLY</b>																													
Lessee File Number:						Leasing File Number:																							
Application routing for coordination						signature						additional conditions attached																	
																		1. FSLD/FOS						<input type="checkbox"/>					
																		2. AWID						<input type="checkbox"/>					

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## LF-2 – Nepalese Registered aircraft leased to a Foreign Air Operator

Leasing Form (LF-2)											
APPLICATION FOR AUTHORISING A LEASING OPERATION INVOLVING A FOREIGN OPERATOR (LESSEE) AND A NEPALESE AIR OPERATOR (LESSOR)											
<i>To be completed by the Nepalese Air Operator</i>											
<b>A. Identification of the aircraft and ownership</b>											
Aircraft Manufacturer:				Model Designation:							
Serial No.:				Nationality and Registration Mark:				Maximum Take-off Weight			
Name and address of registered owner of aircraft:				Certificate of Airworthiness No. and Validity:				Maintenance Programme approval:			
<b>B. Lessor/ Lessee</b>											
Name and Address of the Foreign Air Operator (Lessor):				Telephone:				Fax:			
				Air Operator Permit No. and Validity:							
Name and Address of the Nepalese Air Operator(Lessee):				Telephone:				Fax:			
				Air Operator Certificate No. and Validity:							
<b>C. Operations – Utilization</b>											
Aircraft will be based at-						Intended use of aircraft-					
List of countries in or over which the aircraft will operate-											
1. _____ 2. _____ 3. _____ 4. _____											
5. _____ 6. _____ 7. _____ 8. _____											
<b>D. Maintenance</b>											
Name and address of person/ company who will maintain the aircraft						Telephone:		Location of aircraft main maintenance base:			
						Fax:					
What maintenance certification authority does the foreign air operator have for this type of aircraft?						Indicate the Maintenance organization approval (if applicable)					
<b>E. Type of Lease: (Lease-in - Wet, Damp, Dry)</b>						<b>F. Whether the aircraft's registration will change during the lease YES/ NO</b>					
<b>G. Lease Agreement</b>						<b>H. Authorisation Dates requested – Date</b>					
Commencement Date:			Termination Date:			Commencement Date:			Termination Date:		
DD	MM	YYYY	DD	MM	YYYY	DD	MM	YYYY	DD	MM	YYYY
<b>I. Certification of Applicant – Attestation</b>											
<b>I certify that:</b>											
1. The lessee will operate the aircraft in a commercial air service, duly authorized by the State of the lessee											
2. The foreign lessee is authorized to operator a commercial air service with the type of aircraft that is subject of the lease											
3. The responsibility for legal custody and control of the aircraft is clearly vested in the lessee during the term of the lease											
4. All of the information and statements contained in this application are true and complete to the best of my knowledge and belief											
Name and signature of person authorised to sign on behalf of the Air Operator Lessor						Date (DD-MM-YYYY)					
<b>FOR CAAN USE ONLY</b>											
Lessor File Number:						Leasing File Number:					
Application routing for coordination						signature			additional conditions attached		
1. FSLD/FOS						_____			<input type="checkbox"/>		
2. AWID						_____			<input type="checkbox"/>		

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## LF-3 – Leasing aircraft from one Nepalese operator to another Nepalese operator

Leasing Form (LF-3)											
APPLICATION FOR AUTHORISING A LEASING OPERATION INVOLVING A NEPALESE OPERATOR (LESSEE) AND A NEPALESE AIR OPERATOR (LESSOR)											
<i>To be completed by the Nepalese Air Operator</i>											
<b>A. Identification of the aircraft and ownership</b>											
Aircraft Manufacturer:				Model Designation:							
Serial No.:				Nationality and Registration Mark:				Maximum Take-off Weight			
Name and address of registered owner of aircraft:				Certificate of Airworthiness No. and Validity:				Maintenance Programme approval:			
<b>B. Lessor/ Lessee</b>											
Name and Address of the Foreign Air Operator (Lessor):				Telephone:				Fax:			
				Air Operator Permit No. and Validity:							
Name and Address of the Nepalese Air Operator(Lessee):				Telephone:				Fax:			
				Air Operator Certificate No. and Validity:							
<b>C. Operations – Utilization</b>											
Aircraft will be based at-						Intended use of aircraft-					
<b>D. Maintenance</b>											
Name and address of person/ company who will maintain the aircraft						Telephone:		Location of aircraft main maintenance base:			
						Fax:					
AMO no and validity:						Maintenance program approval:					
<b>E. Type of Lease: (Lease-in - Wet, Damp, Dry)</b>						<b>F. Whether the aircraft's registration will change during the lease YES/ NO</b>					
<b>G. Lease Agreement</b>						<b>H. Authorisation Dates requested – Date</b>					
Commencement Date:			Termination Date:			Commencement Date:			Termination Date:		
DD	MM	YYYY	DD	MM	YYYY	DD	MM	YYYY	DD	MM	YYYY
<b>I. Certification of Applicant – Attestation</b>											
<b>I certify that:</b>											
1. The responsibility for legal custody and control of the aircraft is clearly vested in the lessee during the term of the lease											
2. All of the information and statements contained in this application are true and complete to the best of my knowledge and belief											
Name and signature of person authorised to sign on behalf of the Air Operator Lessor						Date (DD-MM-YYYY)					
<b>FOR CAAN USE ONLY</b>											
Lessor File Number:						Leasing File Number:					
Application routing for coordination						signature			additional conditions attached		
1. FSLD/FOS						_____			<input type="checkbox"/>		
2. AWID						_____			<input type="checkbox"/>		



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## Appendix A - Guidance for Airworthiness assessment

The Airworthiness inspector/officer must assess the lease 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.

Areas to be addressed for completion of airworthiness assessment:

- 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

*Note: This must include training of personnel in the differences between the leased aircraft and the normal fleet aircraft and informing them of any special or particular arrangements that have been made under contract to cover maintenance during the period of the lease.*

- How will they certify for the completed maintenance work - What system of maintenance, and system of certification will be used
- 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 airports without maintenance support
- How will the application for Airworthiness Directives (AD) Exclusion, System of Maintenance variations, Permissible Unserviceability 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 organisation 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 organisation's Maintenance Control Manual
- Who will manage the reliability program
- Who will attend reliability meetings and who will decide what action should be taken on adverse trends
- How will maintenance communication be maintained between the Lessor and Lessee and who will be responsible to ensure this has been maintained

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- What considerations and arrangements have been made to assess the existing maintenance programme, as this programme may be based upon a different flight profile and usage than one flown by the second operator
- What considerations 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 AOC air operator significant maintenance aspects can be overlooked. If the lessee (the Operator the AOC) wishes to use the:

- Lessor's MCM
- SOM
- Operator MEL or
- Maintenance Release then:

CAAN 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 an Nepalese AOC holder
- 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*

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

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 CAAN approval?
- Is aircraft maintenance permitted to be carried out by overseas maintenance organisations?
- How will lease termination be handled with respect to aircraft continuing airworthiness?

*Note: For Maintenance performed by foreign Maintenance Repair Organisations approved under NCAR/NCAR 145 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.*

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## Appendix B - Guidance for Operational Control assessment

Prior to adding a leased aircraft to an AOC, CAAN must assess the arrangements for operational control of the aircraft. ICAO defines operational control as, *“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”*.

A wet lease is the provision of an aircraft with a crew. The Lessor and the Lessee will often be operating companies, and it is often difficult to determine the identity of the company or individual who is exercising “operational control” over the aircraft, in order to make a determination as to who should be the AOC holder. In most cases it will be the wet lessor who manages the aircraft, who owns the aircraft and controls through employees the operating systems, and maintains and offers the services of the aircraft to others.

The “operator” is considered the person or company who exercises authority and responsibility for operational functions such as assigning crew members for particular flights, directly paying crew members for their services, and initiating and terminating flights.

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## Appendix C – Article 83bis Component Checklists

These checklist tables are intended as memory triggers only. For the understanding and enactment of Article 83 *bis* agreements, the full text in the following pages must be followed in order to successfully implement an agreement.

**Table 1(a) – Foreign Contracting State Making Request to Nepal for an Article 83 bis Agreement**

<b>Request for ICAO Article 83 <i>bis</i> Agreement from Foreign Contracting State</b>	<b>Details of Request</b>	<b>Comment - Notes</b>
Foreign Contracting State/State of Registry:		
Content of Article 83 <i>bis</i> request:		
Aircraft Type, Model & Serial Number:		
Aircraft Registration:		
Name of the Foreign Aircraft Operator on whose AOC the aircraft currently is listed:		
Which AOC holder is the intended Operator of the Foreign registered aircraft?		
Does the requested agreement relate to an aircraft that is to be employed in International Commercial Air Transport Operations?		
Period over which the Article 83 <i>bis</i> agreement will exist:		

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**Table 1(b) - Components of an agreement for a Foreign Contracting State Making Request to Nepal for an Article 83 bis Agreement**

<b>COMPONENTS OF AN ARTICLE 83bis AGREEMENT – Foreign Request to Nepal</b>	<b>Action Details</b>	<b>Comments – Notes</b>
<b>Component 1:</b> (Formal request from Foreign Contracting State requesting Agreement with Nepal).	Formal agreement between the Foreign Contracting State and Nepal.	Request signed by Director of Civil Aviation – Foreign Contracting State. Response signed by CAAN.
<b>Component 2:</b> (Formal letters from Foreign Contracting State providing details of aircraft/operation and letter from Nepal accepting Agreement).	Exchange of letters between Foreign State of Registry and Nepal.	Letters signed by Dy. Director General (Aviation Safety Regulation Directorate) and Head of Aircraft Maintenance in Foreign Contracting State Authority.
<b>Component 3:</b> (Agreement between State of Registry and Nepal concerning Delegation of Authority for Functions identified in Convention).	Delegation of Authority Agreements.	Agreements signed by Director of Civil Aviation – Foreign Contracting State. Response signed by CAAN.
<b>Component 4:</b> (Agreement between State of Registry and Nepal on Airworthiness Control and Oversight).	Airworthiness Responsibilities Agreement.	Agreements signed by Dy. Director General (Aviation Safety Regulations Directorate) & Head of Aircraft Maintenance/Operations in Foreign Contracting State Authority.
<b>Component 5:</b> (Foreign State of Registry Responsibility).	Registering an Article 83 bis Agreement with ICAO.	Formal notification to ICAO should be made by the Director of Civil Aviation – Foreign Contracting State.

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**Table 2(a) – Nepal Making Application to a Foreign Contracting State for an Article 83 bis Agreement**

<b>Nepal Request for ICAO Article 83 <i>bis</i> Agreement to a Foreign Contracting State</b>	<b>Details of Request</b>	<b>Comment - Notes</b>
Foreign Contracting State/State of the Operator:		
Aircraft Type, Model & Serial Number:		
Aircraft Registration:	9N-Nepalese	
Aircraft Operator on whose AOC the aircraft is currently listed:		
Which foreign AOC holder located overseas is the intended Operator of the registered aircraft?		
Does the requested agreement relate to an aircraft that is to be employed in International Commercial air Transport Operations?		
Period over which the Article 83 <i>bis</i> agreement will exist:		

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**Table 2(b) - Components of an agreement for Nepal Making Application to a Foreign Contracting State for an Article 83 bis Agreement**

<b>COMPONENTS OF AN ARTICLE 83 <i>bis</i> AGREEMENT – Request to Foreign Contracting State</b>	<b>Action Details</b>	<b>Comments - Notes</b>
<b>Component 1:</b> (Formal request made by Nepal to a Foreign Contracting State requesting Agreement).	Formal agreement between the Foreign Contracting State and Nepal.	Request signed by CAAN. Response signed by Director of Civil Aviation – Foreign Contracting State.
<b>Component 2:</b> (Formal letters from Nepal providing details of aircraft/operation and letter from Foreign Contracting State accepting Agreement).	Exchange of letters between Nepal and Foreign State of the Operator.	Letters signed by Dy. Director General (Aviation Safety Regulation Directorate) & Head of Aircraft Maintenance in Foreign Contract State Authority.
<b>Component 3:</b> (Agreement between State of the Operator and Nepal concerning Delegation of Authority for Functions identified in Convention).	Delegation of Authority Agreements.	Agreements signed by CAAN & Response signed by Director of Civil Aviation – Foreign Contracting State.
<b>Component 4:</b> (Agreement between State of Registry and Nepal on Airworthiness Control and Oversight).	Airworthiness Responsibilities Agreement.	Agreements signed by Dy. Director General (Aviation Safety Regulations Directorate ) & Head of Aircraft Maintenance/Operations in Foreign Contract State Authority.
<b>Component 5:</b> (Foreign State of Registry Responsibility).	Registering an Article 83 <i>bis</i> Agreement with ICAO.	Formal notification to ICAO should be made by the Director General of Civil Aviation Authority, Nepal.

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## Five components for Implementing an Article 83 *bis* Agreement

### **COMPONENT 1**

#### ***Formal Agreements between Contracting States under the Provisions of Article 83 bis***

Aircraft leases which have some of the regulatory oversight responsibilities transferred from a State of Registry to a State of the Operator under an Article 83 *bis* will, depending upon the type of operation, require formal International Commercial Air Transport Operations Agreement.

The Agreement will contain many references to ICAO Annexes and documents. Details of these references are listed at the end of this Part under the heading: *ICAO Document References Quoted in the Three Agreements*.

#### ***Important Note Concerning the Agreements and Sample Letters***

The sample Agreement and letters produced below are written in the context of an registered aircraft being transferred to a foreign operator. This would require Nepal to initiate and set in train the correspondence for the Article 83 *bis* agreement and would mean that Nepal is the State of Registry and the foreign regulatory authority is the State of the Operator.

Should an Article 83 *bis* agreement be requested by a foreign authority for a foreign aircraft to be placed on an AOC, then Nepal would be the State of the Operator and the foreign regulatory authority would be the State of Registry. In this case, the foreign regulatory authority would initiate the Agreement and the other related documentation. Whichever Contracting State is the State of Registry or the State of the Operator, the documentation must follow the standard ICAO model presented below.

The Agreement and associated letters shown below are examples only. They provide a guide to the format, protocol and the detail of information expected by ICAO in this type of agreement. It is anticipated that there may be some variations from the examples provided and these will depend upon the aircraft type, system of maintenance requirements, operating conditions and location as well as any other arrangements that relate to the satisfactory oversight of an aircraft. It will also be observed that many of the terms and descriptions used in the various documents do not align with terms and descriptions. The ICAO terminology has been left in place within the documentation in order for it to remain as close to the ICAO originals as is possible. (Exact definitions of ICAO terminology that is not apparent to readers may be found in the definitions' sections of the various ICAO Annexes).

When undertaking the negotiation of an Article 83 *bis* Agreement, inspectors will need to re-write certain of the sample paragraphs or change terms and descriptions to align them with legislation as appropriate. In doing this, it must be remembered that by the very nature of an Article 83 *bis* agreement, each and every one will be different.

Under this ICAO provision, the content and requirements specified in an Agreement should follow the ICAO basic layout format, but the individual State regulatory authority undertakings will be entirely the responsibility of the two authorities.



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## **SAMPLE ARTICLE 83 BIS AGREEMENT**

### **International Air Transport Operations Agreement**

*Note: Please see the References Section at the end of this document for details of ICAO Annex references contained in this sample Agreement.*

This is the sample model of a formal agreement which will be signed by the Director General of Civil Aviation of the Foreign Authority of the Contracting State and by the Director General of CAAN for Nepal. This model closely follows the ICAO Guidelines.

## **AGREEMENT BETWEEN NEPAL AND [foreign State] CONCERNING TRANSFER OF REGULATORY OVERSIGHT FUNCTIONS AND DUTIES**

### **International Commercial Air Transport Operations**

Whereas the protocol relating to Article 83 *bis* of the *Convention on Civil Aviation* (Chicago 1944) (hereinafter referred to as “the Convention”), to which Nepal and [foreign State] are parties, entered into force on .....

Whereas Article 83 *bis*, with a view to enhanced safety, provides for the possibility of transferring to the State of the Operator all or part of the State of Registry’s functions and duties pertaining to Articles 12, 30, 31 and 32a of the Convention;

Whereas in line with ICAO Doc 9642, Part VIII, Chapter 1, and in light of ICAO Doc 8335, Chapter 10, it is necessary to establish precisely the international obligations and responsibilities of Nepal, as the State of Registry of the aircraft, and [foreign State], as the State of the operator of the aircraft, in accordance with the convention;

Whereas with reference to the relevant Annexes to the Convention, this Agreement organises the transfer from Nepal to [foreign State] of functions and duties normally carried out by the State of registry, as set out in Articles III and IV below;

The CAAN and the Civil Aviation Authority of [foreign State] hereinafter referred to as the “Parties”;

Declaring their mutual commitment to the safety and efficiency of international aviation;  
Recognising that both States have mutual interest in ensuring the flight safety of aircraft engaged in international air navigation for aircraft operating on the Nepalese Register of Aircraft and Flight Crew under an Air Operator Certificate (AOC) is issued by [foreign State];

Desiring to ensure the continued safety of the aircraft operating on the Register under a transfer agreement;  
Have agreed as follows:

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## **Article I**

The Agencies responsible for implementing this Agreement shall be the Director General of CAAN for Nepal and the [foreign CAA] for the [foreign State].

## **Article II**

This agreement has been developed based on Articles 33 and 83*bis* of the Convention. This Agreement pertains to the transfer of certain functions and duties contained in the International Civil Aviation Organization (ICAO) Annexes set out below between Nepal and [foreign State] and is limited to aircraft on the Register operated by [foreign State] air operators as specified by type, registration mark and serial number in the attached Schedule 1. In line with Chapter 10 of Doc 8335 and Part VIII, Chapter 1 of Doc 9642 issued by ICAO, it is necessary to establish the international obligations and functions and duties, according to the Convention, of Nepal (State of Registry) and [foreign State] (State of the Operator) in accordance with Article 83 *bis*, the State of Registry may, by agreement with the State of the Operator, transfer to all or part of its functions and duties as the State of Registry. The State of Registry shall relieve the responsibility in respect of the functions and duties transferred.

## **Article III**

In the case of Nepal and [foreign State], Nepal transfers to [foreign State] the following functions and duties, including oversight and control of relevant items contained in respective Annexes to the Convention:

Annex 1 – *Personnel Licensing*, for licences issued or rendered valid by the State of the Operator, Annex 1, 1.2.2.

Annex 2 – *Rules of the Air*, enforcement of compliance with the applicable rules and regulations relating to the flight manoeuvre of aircraft.

Annex 6 – *Operation of Aircraft*, Part I – *International Commercial Air Transport – Aeroplanes*. Functions and duties that are normally incumbent on the State of Registry. Functions and duties that are normally incumbent on the State of the Operator need to be transferred. Where functions and duties in Annex 6 Part 1 (particularly Chapters 5, 6 and 8) may conflict with the functions and duties in Annex 8 – *Airworthiness of Aircraft*, allocation of specific functions and duties is defined in the attached Schedule 2.

DGCA will retain responsibility under the Convention for the regulatory oversight and control of the following ICAO Annex:

Annex 8 – *Airworthiness of Aircraft*.

## **Article IV**

Responsibility for notifying directly other States of the existence and contents of this Agreement pursuant to Article 83 *bis* (b) rests with the State of the Operator. This Agreement, as well as any amendment to it, shall be registered with ICAO by the State

of Registry or the State of the Operator in accordance with the *Rules for Registration with ICAO of Aeronautical Agreements and Arrangements* (ICAO Doc 6685).

## **Article V**

The [CAA of foreign State] shall ensure that a certified copy of this Agreement in English and in [language of foreign State] is placed on board each aircraft to which this Agreement applies. The [CAA of foreign State] shall also ensure that a certified true copy of the relevant Air Operator

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Certificate issued, in which the aircraft concerned will be duly listed and properly identified, is carried on board each aircraft.

## ***Article VI***

Under this agreement, the only responsibility related to airworthiness transferred to [foreign State] is the approval of line stations used by the Operator located away from the Operator's main base. This is accepted by [foreign State].

## ***Article VII***

The airworthiness procedures that are followed will be contained in the Operator's Maintenance Control Manual (MCM). Schedule 2 to this Agreement describes the functions and duties of the Parties related to airworthiness.

## ***Article VIII***

Meetings between CAAN and [CAA foreign State] and other interested parties, upon request, will occur at six-month intervals [or within a shorter period if appropriate] initially to discuss both operations and airworthiness matters resulting from inspections that have been conducted by the respective inspectors. These meetings will take place in Nepal, the State of the Operator or on middle ground for the purpose of resolving any discrepancies found as a result of the inspections and in order to ensure that all parties are fully informed about the Operator's operation. The following subjects will be among those reviewed during these meetings:

- Flight operations;
- Continuing airworthiness and aircraft maintenance;
- Any other significant matter arising from inspections; and
- Operator's procedures, if applicable.

Notwithstanding these matters, CAAN retains the right to conduct inspections or audits, as it deems necessary, in order to verify that [foreign State] is fulfilling its safety oversight obligations as transferred from Nepal. CAAN will be permitted access to [CAA of foreign State] documentation concerning the Operator. Such inspections will occur only after reasonable notice is given to [foreign State].

## ***Article IX***

During the execution of this Agreement, and prior to any aircraft being made the object of a sub-lease, the [CAA of the foreign State], remaining the State of the Operator shall inform CAAN of this intent. None of the functions and duties transferred from Nepal to [foreign State] may be carried out under the authority of a third State without express written agreement of Nepal.

## ***Article X***

Any disagreement concerning the interpretation or application of this Agreement shall be resolved by consultation between Parties and shall not be referred to any international tribunal, arbitration or third-party settlement.

## ***Article XI***

This Agreement may be amended by written agreement of the Parties.

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## ***Article XII***

This Agreement, which supersedes all previous Agreements between Parties on this matter, shall enter into force upon signature of both Parties and shall remain in force until terminated.

In witness whereof, the undersigned Directors General of CAAN and [CAA of foreign State] have signed this present Agreement.

***Signed***

**[Director General of Civil Aviation – CAA of foreign State]**

**Date: *day/month/year***

***Signed***

**Director General of Civil Aviation Authority of Nepal**

**Date: *day/month/year***

**Attachments:**

- Schedule 1 – Aircraft Affected by this Agreement.
- Schedule 2 – Responsibilities of Nepal and [foreign State] related to Airworthiness.

This Agreement is made in two copies, in English and in [language of foreign State], and both are in force.

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## Schedule 1 - AIRCRAFT AFFECTED BY THIS AGREEMENT

Operator [.....]	Aircraft [.....]	Type Registration [.....]	Serial Number [.....]
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## Schedule 2 - RESPONSIBILITIES OF NEPAL AND [FOREIGN STATE] RELATED TO AIRWORTHINESS

*Note: Specific details are required to be entered in both of the 'Responsibilities' tables below. The content will depend upon the terms of the agreement, the aircraft and any other relevant factors pertaining to each agreement.*

ICAO Reference	Subject	Responsibilities of Nepal, the State of Registry	Responsibilities of [foreign State] the State of the Operator
Annex 8, Part II, Chapter 4; Doc 9642, Part II, Chapter 1; Doc 9389, Chapter 1, 1.1.4 & Chapter 6, 6.1.2.	Continuing airworthiness of aircraft	Develop or adopt requirements to ensure the continuing airworthiness of the aircraft during its service life. This requirement also covers the maintenance requirements of Annex 6.	
Annex 8, Part II, Chapter 4, 4.2.3, 4.2.4, 4.2.5; Doc 9642, Part VI, Chapter 1.	Communication with the State of Design	Communicate with the State of Design.	
Annex 8, Part II, Chapter 5; Doc 9642, Part IV, Chapter 3.	Validity of the CofA	Issue and re-issue of CofA	
Annex 8, Part II, Chapter 6, 6.2.	Damage to Aircraft	Determine the condition of airworthiness of aircraft.	
Annex 6, Part I, Chapter 5, 5.2.3 & 5.2.4.	Operation of Aircraft in compliance with the terms of the C of A		Assume responsibility of State of registry as defined in 5.2.4.
Annex 6, Part I, Chapter 8, 8.1.	Operator's maintenance responsibilities		Ensure that the responsibilities are contained in the Operator's MCM.
Annex 6, Part I,	Operator's		Ensure that

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Chapter 8, 8.2.	MCM		guidance contained in an MCM is acceptable to Nepal.
Annex 6, Part I, Chapter 8, 8.3.	Maintenance programme	Approval of Operator's maintenance programme	Ensure that maintenance programme responsibilities and development procedures are contained in the MCM.
Annex 6, Part I, Chapter 8, 8.4.	Maintenance records	Inspect maintenance records and documents every six months.	Inspect in accordance with the requirements of the AOC.
Annex 6, Part I, Chapter 8, 8.5.	Continuing airworthiness information	Ensure that all Nepalese airworthiness requirements are understood by the operator.	Ensure that airworthiness reports are provided to Nepal.
Annex 6, Part I, Chapter 8, 8.6: Doc 9642, Part Viii, Appendix A, 3.7.	Modifications and repair	Ensure that modifications or repairs are approved by the State of design/Manufacture and issue approval.	Ensure that procedures are contained in the Operator's MCM.
Annex 6, Part I, Chapter 8, 8.7.	Approved maintenance organisation	Approval of the Operator's base maintenance organisation and procedures for Chapter 8, 8.7.	Approval of the Operator's line maintenance arrangements away from main base. Ensure that procedures are contained in the Operator's MCM.

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## **Recommended ICAO Reference Material for Assisting with the Development of Article 83 bis Agreements**

The following list of ICAO references provide guidance in general terms on the various processes and support material required to establish regulatory control of aircraft which are the subject of an Article 83 *bis* agreement.

- ICAO Cir 295-LE/2 *Guidance on the Implementation of Article 83 bis of the Convention on International Civil Aviation.*
- ICAO Doc 6685-C/767 *Rules for Registration with ICAO of Aeronautical Agreements and Arrangements.*
- ICAO Doc 7300/9 *Convention on International Civil Aviation.*
- Doc 9642-AN/941 *Continuing Airworthiness Manual.*
- Doc 8335-AN/879 *Manual of Procedures for Operations Inspection, Certification and Continued Surveillance.*
- Annex 1 – *Personnel Licensing*
- Annex 6 – *Operation of Aircraft – Parts I, II & III.*
- Annex 8 – *Airworthiness of Aircraft*