



ICAO

Doc 10059

Manual on the implementation of Article 83 *bis* of the Convention on International Civil Aviation

First Edition, 2017



Approved by and published under the authority of the Secretary General

INTERNATIONAL CIVIL AVIATION ORGANIZATION



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FOREWORD

The past three decades have seen air operators increasingly use foreign registered aircraft for various reasons. Aircraft are being leased, chartered, interchanged or otherwise operated outside the State of Registry, sometimes for long periods of time. Such arrangements play a significant role in the provision of international air services and are legitimate from a regulatory perspective. Nevertheless, they result in numerous aircraft of all types being subject globally to split oversight responsibility. The separation of the State of Registry and the State of the Operator (or the State of the principal location of a general aviation operator) can present problems from a safety viewpoint unless oversight responsibilities between the two States are clearly delineated. The optimum and correct use of Article 83 *bis* assists in countering such potential safety risks.

While leasing, charter, interchange or other similar arrangements continue to grow, relatively few bilateral agreements implementing Article 83 *bis* have been notified to ICAO (as of 31 December 2016, 412 agreements had been registered). Additionally, information from the ICAO Universal Safety Oversight Audit Programme (USOAP) has shown that many agreements entered into under Article 83 *bis* do not meet the requirements of that Article and that the majority of States party to Article 83 *bis* have not modified their national rules to account for the transfer of duties and responsibilities as envisaged by Article 83 *bis*.

To provide assistance to Contracting States wishing to apply Article 83 *bis*, detailed guidance material was issued by the ICAO Secretariat in 2003 through Circular 295 — *Guidance on the implementation of Article 83 bis of the Convention on International Civil Aviation*. That guidance material has been further reviewed and enhanced in light of the application of Article 83 *bis* since 2003, with the substantive assistance of a dedicated ICAO Task Force, and is now offered in this manual. The manual provides guidance on the proper implementation of Article 83 *bis*, for use by Contracting States, with the aim of greater usage of Article 83 *bis* agreements and a more uniform application of the Article.

Additional guidance on the applications of Article 83 *bis* for licensing, surveillance and certification purposes can be found in the *Manual of Procedures for Establishment and Management of a State's Personnel Licensing System* (Doc 9379) and the *Manual of Procedures for Operations Inspection, Certification and Continued Surveillance* (Doc 8335).

Finally, the *Manual on the Regulation of International Air Transport* (Doc 9626) and the *Policy and Guidance Material on the Economic Regulation of International Air Transport* (Doc 9587) provide related guidance.

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Chapter 1

DEFINITIONS, ABBREVIATIONS AND OVERVIEW OF KEY TERMS

1.1 DEFINITIONS

Note.— Most of the terms below are definitions or descriptions found in Annexes to the Convention on International Civil Aviation, ICAO manuals or other guidance material.

Air operator certificate (AOC). A certificate authorizing an operator to carry out specified commercial air transport operations.

Airworthy. The status of an aircraft, engine, propeller or part when it conforms to its approved design and is in a condition for safe operation.

Cabin crew member. A crew member who performs, in the interest of safety of passengers, duties assigned by the operator or the pilot-in-command of the aircraft, but who shall not act as a flight crew member.

Certify as airworthy (to). To certify that an aircraft or parts thereof comply with current airworthiness requirements after maintenance has been performed on the aircraft or parts thereof.

Charter. A contractual arrangement between an air carrier and an entity hiring or leasing its aircraft.

Commercial air transport operation. An aircraft operation involving the transport of passengers, cargo or mail for remuneration or hire.

Damp lease. An arrangement where the aircraft is leased with partial crew.

Dry lease. An arrangement where the aircraft is leased without crew.

Flight crew member. A licensed crew member charged with duties essential to the operation of an aircraft during a flight duty period.

General aviation operation. An aircraft operation other than a commercial air transport operation or an aerial work operation.

Interchange. An aircraft interchange or interchange flight is a regularly scheduled, single-plane through service linking a route of one air operator at the interchange point to a route of a second air operator, with the same aircraft being crewed by and under the operational control of the respective authorized air operator on each route.

Lease. Aircraft leasing is the rental, rather than purchase, of aircraft by an air carrier (i.e. commercial air transport operator) or a non-airline entity.

Maintenance. The performance of tasks required to ensure the continuing airworthiness of an aircraft, including any one or combination of overhaul, inspection, replacement, defect rectification, and the embodiment of a modification or repair.

Operating base. The location from which operational control is exercised.

Note.— An operating base is normally the location where personnel involved in the operation of the aeroplane work and the records associated with the operation are located. An operating base has a degree of permanency beyond that of a regular point of call.

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.

Operator. A person, organization or enterprise engaged in or offering to engage in an aircraft operation.

Rendering (a licence) valid. The action taken by a Contracting State, as an alternative to issuing its own licence, in accepting a licence issued by any other Contracting State as the equivalent of its own licence.

Rendering (a Certificate of Airworthiness) valid. The action taken by a Contracting State, as an alternative to issuing its own certificate of airworthiness, in accepting a certificate of airworthiness issued by any other Contracting State as the equivalent of its own certificate of airworthiness.

State of Design. The State having jurisdiction over the organization responsible for the type design.

State of Manufacture. The State having jurisdiction over the organization responsible for the final assembly of the aircraft.

State of Registry. The State on whose register the aircraft is entered.

State of the Operator. The State in which the operator's principal place of business is located or, if there is no such place of business, the operator's permanent residence.

Note.— The definition of "State of the Operator" in the Annexes applies only to commercial air transport operators.

State of the principal location of a general aviation operator. The State in which the operator of a general aviation aircraft has its principal place of business or, if there is no such place of business, its permanent residence.

Note.— The definition of "State of the principal location of a general aviation operator" applies only for the purposes of this manual. Some options for determination of the principal location of a general aviation operator are described in 1.3.7.5.

Wet lease. An arrangement where the aircraft is leased with crew.

1.2 ABBREVIATIONS

AOC	Air operator certificate
CMA	Continuous monitoring approach
DAGMAR	Database of Aeronautical Agreements and Arrangements
ECAC	European Civil Aviation Conference
EDTO	Extended diversion time operations
ELT	Emergency locator transmitter
IDISR	Safety ramp inspection data exchange programme
ITU	International Telecommunication Union
MCM	Maintenance control manual
MEL	Minimum equipment list
PLG	Principal location of a general aviation operator
RVSM	Reduced vertical separation minimum
SoO	State of the Operator
SoR	State of Registry
USOAP	Universal Safety Oversight Audit Programme

1.3 OVERVIEW OF KEY TERMS

1.3.1 Private arrangements

1.3.1.1 Article 83 *bis* makes provision for the transfer to the State of the Operator or the State of the Principal Location of a General aviation operator (PLG) of certain functions and duties for which the State of Registry is responsible under the Convention on International Civil Aviation (Chicago, 1944, the “*Convention*”). Once the transfer is made, responsibility in respect of these functions and duties passes from the State of Registry to the State of the Operator/PLG. One major factor that impacts on which functions and duties are transferred is the type of contractual arrangement entered into by the operator.

1.3.1.2 Article 83 *bis* lists the types of contractual arrangements to which the provision applies as “the lease, charter or interchange of the aircraft or any similar arrangement”. These arrangements, which are of a private law nature, are not defined further in Article 83 *bis*. The same is true for the concept of “principal place of business”.

1.3.2 Lease

1.3.2.1 Notion

- The term “lease” has so far not been formally defined by ICAO, essentially because national laws governing such contracts vary and the negotiating process results in individual variations in the terms and conditions of aircraft leases, since leases are usually tailor-made to specific situations.
- For the purposes of the 1997 European Civil Aviation Conference (ECAC) Recommendation on Leasing of Aircraft (Recommendation ECAC/21-1), a lease was understood to be a contractual arrangement whereby a properly certified air operator gains commercial control of an entire aircraft without transfer of ownership.
- The *Manual on the Regulation of International Air Transport* (Doc 9626) describes “aircraft leasing” as the rental, rather than purchase, of aircraft by an aircraft operator from another operator or a non-air operator entity.

In essence, an aircraft lease is a contractual arrangement in which an aircraft operator (the lessee) rents an aircraft from either another operator or a financial institution (the lessor). The term “lessor” means the party from which the aircraft is leased; the term “lessee” means the party to which the aircraft is leased. For example, if air operator A leases an aircraft to air operator B, air operator A is the lessor and air operator B is the lessee.

1.3.2.2 Purposes

- An aircraft lease is normally done for one of two main reasons: to finance the ultimate acquisition of the aircraft with reduced upfront capital requirements or to provide a temporary increase in capacity. Hence, two categories of aircraft leases can be distinguished, characterized by their purpose: financial (sometimes referred to as “capital”) leases and operating (sometimes referred to as “true”) leases.
- A financial or capital lease is a long-term arrangement in which an operator (the lessee) ultimately acquires the aircraft through a form of financing in which a loan is structured as a lease so the financing institution (the lessor) can retain title to the aircraft to secure the lessee’s payment and other obligations under the arrangement. The registration of the aircraft may be made either by the financial institution as lessor or by the operator as lessee. Air operators use financial or capital leases to avoid the substantial upfront capital outlays/debt typically required in purchasing aircraft directly from the manufacturer or to optimize taxation or other costs. For example, an air operator may sell all or part of its fleet to a bank or other financial institution and then lease the aircraft back, with title reverting to the lessee upon satisfactory completion of the lease term. Financial leases are long-term arrangements which give the outward appearance of ownership, e.g., the aircraft bear the air operator’s name/logo.
- An operating or true lease results from operational rather than financial requirements, usually the need of the operator for additional aircraft for a substantially shorter period than their remaining useful lives (generally a certain number of years, but sometimes merely to meet seasonal or other short-term needs). In this case the operator leases an aircraft from another operator (or a lease company) which retains title and economic ownership during the lease term and regains possession at the end of the lease term.

1.3.2.3 Types

For regulatory purposes, the two basic types of aircraft leases are dry leases and wet leases:

- A dry lease involves the lease of an aircraft, without crew, insurance, ground staff, supporting equipment, maintenance, etc. The aircraft is operated by the lessee aircraft operator as if it were its own aircraft. A dry lease is normally entered into for a long period, and the lessee operates the aircraft under its own air operator certificate (AOC) in the case of commercial air operations, or in general aviation operations.
- A wet lease is the lease of an aircraft with complete crew, maintenance and insurance to another operator. A wet lease therefore involves two operators, the lessor air operator under whose AOC the aircraft usually operates and the lessee air operator. A wet lease is usually of shorter duration than a dry lease.

1.3.2.4 There are variations that can be encountered in aircraft lease arrangements, but they can be associated with the two basic types described in 1.3.2.3. For example:

- In a damp lease, the lessor provides the aircraft with partial crew (e.g. flight crew), and the lessee provides the rest of the crew (e.g. cabin crew). If the flight crew accompanies the aircraft, the lease will be a wet lease; if the flight crew is not provided, the lease will be a dry lease.
- A sub-lease refers to the lease of an already leased aircraft to a third party.

1.3.3 Charter

1.3.3.1 To **charter** an aircraft, the entire capacity is hired or purchased privately by one or more entities, which may re-sell it to the public. (This occurs most frequently in non-scheduled passenger air operations which is why they are popularly known as “charter flights”.) The situation in which the charterer is another air operator which has its own AOC and charters the entire capacity of the aircraft, usually on short notice, is termed a **sub-charter**.

1.3.3.2 In essence, a charter bears similar characteristics to a lease. A charter is the hire, purchase or lease of the entire capacity of an aircraft for a fixed price from an operator for a specific flight or series of flights or for a particular period. A charter is usually for a short duration, e.g. a day or a week, and normally bears the characteristics of a wet lease.

1.3.4 Interchange

1.3.4.1 An interchange provides passengers with the benefit of a single-plane service on what is essentially an interline operation. Interchange is normally described as a very rapid dry lease or succession thereof.

1.3.4.2 Aircraft interchange is increasingly used by operators as a way to improve efficiency and to be able to achieve better utilization of aircraft or compensate for a temporary lack of availability of their fleet. Currently, several States in the Latin American region are applying an arrangement to permit the interchange of aircraft. Such interchange arrangements allow different operators to use the same aircraft for their respective flights. For example, an aircraft can perform its first flight of the day from State A to State B operated by airline A, then continue from State B to State C operated by airline B, and eventually return to State A with the flight being operated by airline A. For each route leg, the aircraft is operated under the AOC of the respective airline. Accordingly, save when the operator uses its own aircraft, interchange of aircraft bears the characteristics of a dry lease since the consecutive flights are conducted under the AOC of the respective operators, which provide the corresponding crews.

1.3.5 Similar arrangements

Generally, whatever the private arrangement chosen by parties concerned in case of hire of an aircraft, the main difference in terms of safety oversight is whether it includes crew or not, i.e. all arrangements eventually fall under the category of either dry or wet lease.

1.3.6 Arrangements in general aviation

1.3.6.1 For general aviation, the State of Registry is normally the State where the owner/operator has its principal place of business or its permanent residence, which explains why Annex 6 — *Operation of Aircraft, Part II — International General Aviation — Aeroplanes*, to the Convention so far has not addressed the concept of “State of the Operator” as opposed to State of Registry.

1.3.6.2 Nevertheless, the State where the operator establishes its principal place of business or its permanent residence may differ from the State of Registry, be it because the owner/operator will move its business to another State for a significant period of time, in which case the operating base is tantamount to the principal place of business, or, when another (foreign) operator leases the aircraft.

1.3.6.3 In such situations, practice has shown that the State of Registry may face practical difficulties in overseeing the aircraft and applying its own regulations to the aircraft. These difficulties are compounded since the normal cooperation and coordination that would be used with commercial air operators are not available.

1.3.7 Principal place of business — Commercial air transport vs. general aviation

1.3.7.1 Commercial air transport encompasses both scheduled and non-scheduled airline operations that involve operating aircraft to transport passengers, cargo or mail for remuneration or hire. General aviation includes all civil aviation operations other than commercial air transport or aerial work operations. General aviation aircraft range from gliders and powered parachutes, helicopters, ... to corporate business jets or even large transport category aircraft.

1.3.7.2 Both commercial air transport and general aviation operations may be carried out on an international basis. General aviation operations do not require the issuance of an AOC as required by Annex 6, Part I — *International Commercial Air Transport — Aeroplanes* and Part III — *International Operations — Helicopters* for international commercial operations.

1.3.7.3 The notion of the operator's **principal place of business** has not been defined so far in ICAO documents, although it is referred to in Article 83 *bis* as well as in the definition of the "State of the Operator" for commercial air transport operations. The facts of each case should be assessed and the importance of the various places of business of an operator compared in order that the main one can be selected. Domestic jurisprudence or case law may also offer definitions and criteria assisting in the determination of an air operator's principal place of business. As a matter of example, a United States District Court assessed in 1963 that an air operator's place of business was basically corresponding to its **centre of corporate activities** and provided related guidelines or determining factors (cf. *Wood vs. United Airlines Inc.*, 8 Aviation Cases 17500).

1.3.7.4 Evidence of principal place of business in this context may be predicated upon the following indicators in relation to the air operator:

- established and incorporated in the territory of the State in accordance with relevant national laws and regulations;
- has a substantial amount of its operations and capital investment in physical facilities in the territory of the State;
- pays income tax, registers and bases aircraft there; and
- employs a significant number of nationals or residents in managerial, technical and operational positions.

1.3.7.5 Depending on the circumstances, different methods may be applied to identify the State to which responsibilities can be transferred under an Article 83 *bis* agreement for general aviation and referred to in the framework of this manual as the State of the principal location of a general aviation operator (State of the PLG), even if not yet formally defined in other ICAO material. If it is a corporate aircraft, the place of incorporation of the business will be normally considered the State of the PLG. In certain instances, the State where the aircraft is based, i.e. the operating base, may also be the place where the operator's principal place of business or permanent residence is located, and is to be regarded as the State of the PLG. This will depend on the circumstances of each case.

Chapter 2

RATIONALE OF ARTICLE 83 *bis*

2.1 BACKGROUND

2.1.1 The concept of aircraft registration, as expressed in the Convention, implies responsibility by the State of Registry for the ability of aircraft to operate safely. Each Contracting State must ensure that every aircraft listed on its register complies with the laws and regulations that apply to the flight of aircraft, regardless of where an aircraft may be operated. Any violation of these "rules of the air" will be a matter for prosecution (Article 12). More particularly, in the case of aircraft engaged in international air navigation, the State of Registry is responsible for the certification of the aircraft's airworthiness (Article 31), radio licensing (Article 30) and crew licensing (Article 32 a)). The necessary certificates and licences must be issued in accordance with the requirements established in the Annexes to the Convention (e.g. Annex 1 — *Personnel Licensing* for crew licences and Annex 8 — *Airworthiness of Aircraft* for the airworthiness of aircraft), unless the State concerned has officially notified ICAO that it is unable to implement any of the specific standards contained in the relevant Annexes in accordance with Article 38 of the Convention.

2.1.2 The operation of aircraft engaged in international navigation is governed by requirements specified in Annex 6 to the Convention.

2.1.3 For commercial air transport operations, the responsibility for ensuring compliance with these requirements rests with the State of the Operator, which is the State in which the operator's principal place of business is located. As a result of a positive assessment of the ability of an airline to operate its aircraft safely, the State of the Operator issues an air operator certificate (AOC), a prerequisite for engaging in international commercial air transport operations. The AOC was introduced in Annex 6 in 1990, and so represents an evolution of the requirements governing international commercial air transport that is not mentioned in the Convention.

2.1.4 For general aviation operations, the owner/operator of an aircraft may have its principal place of business or its permanent residence in a State other than the State of Registry where its operating base may be located for a period of time.

2.2 SAFETY ASPECTS OF ECONOMIC LIBERALIZATION

2.2.1 When the lease, charter or interchange of an aircraft leads to the State of Registry being different from the State of the Operator/PLG, oversight responsibilities become split between the two States. While the respective responsibilities are clearly spelled out in the Convention and its Annexes, the actual situation may be complex and will lead to fragmentation of responsibilities and hence potential risks to the safety oversight of an aircraft.

2.2.2 A State may experience difficulty in regulating and enforcing the requirements relating to air safety when an aircraft entered on its register is based in another country. Often, as a result of commercial agreements such as the lease, charter or interchange of aircraft used in international operations, the State of Registry is at risk to lose control over safety compliance and be unable to adequately exercise its functions and duties. In terms of the aircraft itself, a major difficulty for the State of Registry when an aircraft is based outside its jurisdiction is to ensure compliance with airworthiness requirements and, accordingly, be able to ensure the validity of or renew the aircraft's certificate of

airworthiness when required. As for the crew, dry leases raise the problem of validation of foreign licences by the State of Registry.

2.2.3 An effective solution to these safety-related difficulties is for a transfer of certain oversight responsibilities to be made from the State of Registry to the State of the Operator/PLG. In this way the fragmentation of responsibilities is avoided, or at a minimum reduced, and the State having the closest ties with the operator will carry out the safety oversight of the aircraft and its operation instead of the remote State of Registry. This can be accomplished through an Article 83 *bis* agreement which will serve to identify, for each area of responsibility, whether it is for the State of Registry or for the State of the Operator/PLG to ensure compliance with the related requirements.

2.2.4 Where a State cannot transfer some or all oversight responsibilities, it must mitigate risks associated with the fragmentation of responsibilities and the fact that aircraft of the State of Registry may be operated some distance from the State of Registry. Mitigations could include: basing inspectors in or close to the State of the Operator/PLG; ensuring that resources are available for the additional costs of travel to more distant locations for inspections; and establishing effective lines of communication and exchange of data with the air operator and the civil aviation authority (CAA) of the State of the Operator/PLG. For more options, see 2.6.

2.3 MAIN FEATURES

2.3.1 In 1980, in response to concerns about the safety implications associated with a growing trend in aircraft leasing, charter activity and the movement of operational bases across national boundaries, the international aviation community developed Article 83 *bis* of the Convention (where “*bis*” means that this provision was inserted into the Convention after Article 83). This first substantive amendment to the Convention was unanimously approved by the 23rd Session of the ICAO Assembly on 6 October 1980. Since 20 June 1997, the corresponding *Protocol Relating to an Amendment to the Convention on International Civil Aviation* (Doc 9318), and hence Article 83 *bis* itself, has been in force with respect to the States which have ratified it.

2.3.2 As stated in the Protocol, this amendment to the Convention reflects the general desire of Contracting States to make provision for the transfer to the State of the Operator/PLG of certain functions and duties normally incumbent on the State of Registry, in the case of lease, charter or interchange of an aircraft or any similar arrangement. The ICAO Legal Committee, which prepared the draft Protocol (at its 23rd Session, held in Montréal, from 8 to 27 February 1978), considered it imperative to retain some reference in Article 83 *bis* to the legal basis of the commercial transactions between operators giving rise to the problems addressed by this provision. Nevertheless, Article 83 *bis* defines neither lease, nor charter or interchange. These terms refer to private legal arrangements while the purpose of Article 83 *bis* is to offer a solution under public international law that aims at facilitating the safety oversight conducted by States, taking into account the need of airlines or owners for flexible commercial arrangements in the use of their aircraft.

2.3.3 Article 83 *bis* is an umbrella provision, the ratification of which does not entail the automatic transfer of functions and duties from the State of Registry to the State of the Operator/PLG; instead it requires that such transfer be expressly arranged through an agreement between the States concerned. It also establishes the limits of the responsibilities which are transferable: any agreement of this kind can cover only the functions and duties attached to Articles 12, 30, 31 and 32 a) of the Convention, which address rules of the air, radio licensing, certificates of airworthiness, and personnel licences, respectively, and these may be totally or partially transferred. This means that Article 83 *bis* is a discretionary and flexible vehicle available to those States that ratify it, but unless functions and duties are clearly identified and reassigned by a transfer agreement, they continue to rest with the State of Registry. In other words, the transfer to the State of the Operator/PLG in this framework must be specific and express, otherwise the State of Registry remains responsible for the oversight of those functions and duties. The wording of Article 83 *bis* further indicates that the aircraft subject to any transfer of responsibilities must also be clearly identified.

2.3.4 Paragraph c) of Article 83 *bis* also confirms that States concerned should not be prevented from entering into such type of agreements with respect to aircraft operated under arrangements in pools, joint air transport operating organizations or international operating agencies (Article 77 of the Convention). Consequently, Article 83 *bis* does not prevent multilateral agreements from governing the transfer of such functions and duties. However this renders the Article 83 *bis* agreement more complex and is rarely, if ever, used. Therefore, arrangements in pools, joint air transport operating organizations or international operating agencies are not further covered in this manual.

2.4 REGISTRATION AND PUBLICATION OF ARTICLE 83 *bis* AGREEMENTS

2.4.1 According to Article 83 *bis* b) the transfer of functions and duties does not have effect in respect of other Contracting States party to Article 83 *bis* unless they have been informed of the transfer. Two avenues exist to inform Contracting States of such a transfer according to Article 83 *bis*. First, the agreement may be registered with the Council of ICAO and subsequently published by ICAO (see details in Chapter 6). Second, one of the parties to the agreement may give direct notification to the other Contracting States concerned.

2.4.2 While this direct communication may be relevant in certain circumstances (for instance, in the case of short-term arrangements), the obligation to register Article 83 *bis* agreements with ICAO nevertheless remains pursuant to Article 83 of the Convention.

2.4.3 States party to the Protocol regarding Article 83 *bis* will be legally bound by Article 83 *bis* agreements entered into by other States to the extent that they were duly informed of the transfer through one of these two avenues.

2.5 TRANSFER OF RESPONSIBILITY VS. DELEGATION OF AUTHORITY

2.5.1 The Convention does not prevent the State of Registry from delegating to another State the authority to exercise certain functions with respect to its oversight responsibilities on its behalf. In such a situation, the functions are carried out by the other State, for example the State of the Operator, in accordance with the laws and regulations of the State of Registry. Through such a bilateral agreement, which is not binding on other States that are party to Article 83 *bis*, the ultimate responsibility with respect to the functions remains with the State of Registry and is governed by its laws and regulations.

2.5.2 Delegation of authority is to be distinguished from the transfer of responsibility resulting from an Article 83 *bis* agreement. Where a transfer of functions and duties has been properly effected by means of such an agreement and other States party to Article 83 *bis* were duly informed, the functions and duties transferred are not only carried out by the State of the Operator/PLG but the responsibility for the functions and duties also passes to that State. As a result, the State of Registry is relieved of those responsibilities, and the transferred duties and functions are governed by the laws and regulations of the State of the Operator/PLG.

2.5.3 In summary, if duties and functions normally attached to the State of Registry are transferred pursuant to Article 83 *bis*, the State of the Operator/PLG will be internationally responsible and liable for them and will implement them in accordance with its own laws and regulations. In contrast, in the case of the bilateral delegation of duties and functions, which is not binding on other States party to Article 83 *bis*, the State of Registry remains ultimately responsible with respect to those functions and duties in accordance with its own laws and regulations.

2.6 OPTIONS OUTSIDE ARTICLE 83 bis

2.6.1 The 23rd Session of the ICAO Assembly recognized in Resolution A23-13 adopted in 1980 that the State of Registry may be unable to fulfil its responsibilities adequately in instances where aircraft are leased, chartered or interchanged — in particular without crew — by a commercial air transport operator of another State. (This applies equally to general aviation aircraft when their operator is based in another State.) Pending entry into force of Article 83 bis, the ICAO Assembly urged that in such situations the State of Registry delegate those functions that can more adequately be discharged by the State of the Operator/PLG, even if such bilateral delegation would not be recognized by third parties and would be governed by the laws and regulations of the State of Registry.

2.6.2 A note in Annexes 6 and 8, reproduced below, expands on this option, with a similar note appearing in Annex 1:

“Although the Convention on International Civil Aviation allocates to the State of Registry certain functions which that State is entitled to discharge, or obligated to discharge, as the case may be, the Assembly recognized, in Resolution A23-13, that the State of Registry may be unable to fulfil its responsibilities adequately in instances where aircraft are leased, chartered or interchanged — in particular without crew — by an operator of another State and that the Convention may not adequately specify the rights and obligations of the State of an operator in such instances until such time as Article 83 bis of the Convention enters into force. Accordingly, the Council urged that if, in the above-mentioned instances, the State of Registry finds itself unable to discharge adequately the functions allocated to it by the Convention, it delegate to the State of the Operator, subject to acceptance by the latter State, those functions of the State of Registry that can more adequately be discharged by the State of the Operator. It was understood that pending entry into force of Article 83 bis of the Convention the foregoing action would only be a matter of practical convenience and would not affect either the provisions of the Chicago Convention prescribing the duties of the State of Registry or any third State. However, as Article 83 bis of the Convention entered into force on 20 June 1997, such transfer agreements will have effect in respect of Contracting States which have ratified the related Protocol (Doc 9318) upon fulfilment of the conditions established in Article 83 bis.”

2.6.3 Although entering into Article 83 bis agreements may provide the best solution in safety terms, the option of mere bilateral delegation of oversight functions by the State of Registry to the State of the Operator/PLG remains possible for those States that have not ratified the Article 83 bis Protocol, or for those that have but are not currently in a position to implement Article 83 bis agreements in their jurisdiction, or if delegation, including through a Regional Safety Oversight Organization, would offer more added value in operations and safety oversight than a transfer of oversight functions under Article 83 bis.

2.6.4 Another option that would alleviate the safety issues when the State of Registry is different from the State of the Operator/PLG would be to de-register the aircraft and enter it on the registry of that State. This process normally depends on the regulations governing ownership and registration in both States and on the terms of the lease, charter, interchange or similar arrangement allowing for such a change of registry. Once completed, the new State of Registry would assume the safety oversight responsibilities of the aircraft. It should be recalled in this context that, pursuant to Article 18 of the Convention, an aircraft cannot be registered in more than one State, i.e., if already registered the aircraft must be de-registered before it can be registered in another State.

2.7 STATE OF THE OPERATOR'S FUNCTIONS ARE NOT TRANSFERABLE UNDER ARTICLE 83 *bis*

2.7.1 A review of agreements registered at ICAO has surprisingly revealed that several agreements allegedly signed under Article 83 *bis* do not provide for the transfer of duties from the State of Registry under Articles 12, 30, 31 and 32 a) of the Convention, but specify issues relating to surveillance activities of commercial air transport operations. However, such surveillance activities are not subject to transfers under Article 83 *bis* to the State of the Operator, being in any case already under the responsibility of the State of the Operator as per Annex 6.

2.7.2 Moreover, Article 83 *bis* exclusively addresses transfers from the State of Registry to the State of the Operator/PLG. It does not address any transfers from the State of the Operator/PLG to another State. On the other hand, should the State of the Operator/PLG experience difficulties in exercising its surveillance functions under Annex 6 due to remote operations of its operator in another State during a certain period of time, a delegation of authority for such functions may be arranged with the latter State. In this case not falling within the ambit of Article 83 *bis*, the delegation will have a purely bilateral effect, as the State of the Operator/PLG will remain responsible under international law vis-à-vis third parties for its obligations under Annex 6.

Chapter 3

APPROPRIATE USE OF ARTICLE 83 *bis*

3.1 TWO POTENTIAL SITUATIONS: DRY OR WET LEASE

3.1.1 Article 83 *bis* is applicable to aircraft operated pursuant to an arrangement for the lease, charter or interchange of aircraft or a similar arrangement. Basically, one of two situations arises from a safety oversight viewpoint: the aircraft is either dry leased or wet leased.

3.1.2 In the case of a dry lease, where the operations are to take place in a State other than the State of Registry, the relevant functions and duties stemming from the Convention are as follows:

- a) airworthiness: the State of Registry (usually the State of the lessor) is the issuing authority for the certificate of airworthiness, with the cooperation of the State of the Operator/PLG, and is responsible for the surveillance of the continuing airworthiness of the aircraft;
- b) crew licensing: the State of Registry is responsible for the issuance/validation of crew licences;
- c) technical operations: for commercial air transport operations, dry leased aircraft operated under the AOC of the lessee are under the safety oversight responsibility of the State of the Operator (issuer of the AOC). For general aviation, the PLG may happen to be located in a State other than the State of Registry but the State of Registry remains fully responsible for the safety oversight, since Part II and Part III, Section III of Annex 6 do not contain requirements specific to the State of the PLG.

3.1.3 In the case of a wet lease, the following consequences arise with respect to the relevant functions and duties arising under the Convention:

- a) airworthiness: the State of Registry is the issuing authority for the certificate of airworthiness and is responsible for the surveillance of the continuing airworthiness of the aircraft;
- b) crew licensing: the State of Registry is responsible for the issuance/validation of crew licences;
- c) technical operations: aircraft under a wet lease usually remain operated under the AOC of the lessor. The lessor is the actual operator and the lessee is the contracting operator. In some instances, which are rare due to safety concerns, a wet leased aircraft may be operated under the AOC of the lessee with the result that the State of the lessee will be the State of the Operator. The latter (rare) situation may also occur in general aviation operations, where the State of the lessee may be different from the State of Registry and is known as the State of the PLG. In this case, as mentioned above, the State of Registry remains responsible for the safety oversight of technical operations as per Part II of Annex 6.

3.1.4 Accordingly, with respect to State responsibilities in operations involving wet leases, the major difference from the dry lease position is that the wet leased aircraft is generally operated by the lessor, not the lessee. One State is therefore normally both the State of Registry and the State of the Operator/PLG.

3.1.5 As the State of Registry and the State of the Operator/PLG will generally be the same State for a wet leased aircraft, Article 83 *bis* is not pertinent for wet leases. In the rare circumstances where a wet leased aircraft is

operated under the AOC of the lessee and the State of the Operator is different from the State of Registry, Article 83 *bis* might in theory be considered for the transfer of responsibilities to the extent that the wet lease is of a long duration. However, from a safety perspective, this is certainly not to be recommended: in the rare event that there is a determination that the lessee would be the operator of a wet leased aircraft under a wet lease arrangement, the responsible authority will need to determine whether the lessee can effectively maintain operational control of the aircraft; in such cases, the training and supervision of the flight crew, including how they are to be integrated into the lessee's operations, are critical considerations.

3.1.6 The main requirement for transfer of oversight responsibilities is the operation of an aircraft registered in one State by an operator from another State. Additionally, Article 83 *bis* is not designed to cater for arrangements that are of a very short-term nature and thus is not pertinent or recommended for wet lease operations. Given these factors, Article 83 *bis* is better suited and should therefore be generally used for long-term, dry lease situations.

3.1.7 *The relevance to Article 83 bis of financial leases – Protection of assets*

Aircraft subject to financial leases may be registered in the State in which they are operated. However, financiers may require, for reasons of securitization, that the registration be in a different State than the State of the Operator/PLG, e.g., in the State where the financial institution is established, which is then the State of Registry. In such cases, it may be considered that the safe operation of the aircraft and protection of the asset value of the aircraft require an Article 83 *bis* transfer of responsibilities to the State of the Operator/PLG.

3.2 RESPONSIBILITIES THAT FLOW FROM THE TRANSFER OF FUNCTIONS AND DUTIES

3.2.1 This section provides general guidance on which legal/technical aspects of the Annexes to the Convention can be transferred in whole or in part from the State of Registry to the State of the Operator/PLG, first with reference to the provisions of the Convention (Articles 12, 30, 31, 32 a)), followed by a description of the relationship between the above-mentioned Articles and the relevant Annexes with reference to specific paragraphs. All this is further detailed in Appendix A and illustrated in Figure 5-1.

3.2.2 Where a State of Registry has established that its functions and duties may be adequately discharged by the State of the Operator/PLG, the State of Registry may transfer some or all of them through an Article 83 *bis* agreement. The functions and duties that may be transferred are related to the following provisions of the Convention:

3.2.2.1 **Article 12 – Rules of the Air:** The responsibilities flowing from this Article are: ensuring that the aircraft complies with the rules and regulations relating to the flight and manoeuvre of aircraft in force wherever such aircraft may be; and the prosecution of all persons violating such rules and regulations (the State of the Operator/PLG shall have established this principle under national law).

3.2.2.2 **Article 30 a) – Aircraft radio equipment:** The responsibility that may be transferred under this Article is the issuing of a licence to install and operate radio transmitting apparatus.

3.2.2.3 **Articles 30 b) and 32 a) – Licences of personnel:** The responsibilities flowing from these Articles are the issuing or rendering valid of licences and certificates of competency for pilots and other operating flight crew members, including for operating the radio transmitting apparatus, of aircraft engaged in international navigation.

3.2.2.4 **Article 31 – Certificates of Airworthiness:** The responsibilities flowing from this Article are the issuing or rendering valid of certificates of airworthiness as well as the surveillance of the continuing airworthiness of the aircraft.

3.2.3 The relationship between the above-mentioned Articles and the relevant Annexes with reference to specific paragraphs is as follows:

3.2.3.1 **Annex 2 (flowing from Article 12 of the Convention) – Rules of the Air:** The ICAO Council, in adopting Annex 2 in April 1948, resolved that “rules of the air” as referred to in Article 12 only apply to Annex 2. Paragraph 2.1.1 of Annex 2 provides that the rules apply to an aircraft bearing the registration and nationality marks of a Contracting State, wherever it may be. Paragraph 2.3.1 of Annex 2 provides that the pilot-in-command of an aircraft shall be responsible for the operation of the aircraft in accordance with the rules of the air. The requirements in Annex 2 apply to all aircraft and so cover those engaged in commercial air transport operation and general aviation.

3.2.3.2 **Annexes 1 and 6 (flowing from Articles 30 b) and 32 a)) – Personnel licensing:**

- Chapters 1, 2, 3 and 6 of Annex 1 set out the functions and duties with respect to licences for pilots and other flight crew members engaged in both commercial air transport and general aviation.
- Part I and Part III, Section II of Annex 6 include provisions on the licensing functions and duties for radio operators engaged in commercial air transport. Part II and Part III, Section III of Annex 6 include additional licensing requirements for flight crews of aeroplanes and helicopters engaged in general aviation.

These provisions of Annexes 1 and 6 encompass the personnel licensing functions and duties that may be transferred for commercial air transport and general aviation.

3.2.3.3 **Annexes 6 and 8 (flowing from Article 31) – Airworthiness of aircraft:**

- Chapters 3 and 4 of Part II of Annex 8 set out the functions and duties with respect to the issuance and continued validity of a certificate of airworthiness. These requirements are for all aircraft and so include those engaged in commercial air transport and general aviation.
- Part I and Part III, Section II of Annex 6 include provisions on the functions and duties related to aircraft performance and limitations; aircraft instruments, equipment and flight manual; aircraft maintenance; and noise certification, for aircraft engaged in commercial air transport. Part II and Part III, Section III of Annex 6 include provisions covering the requirements in the same areas for aircraft engaged in general aviation. These provisions of Annexes 6 and 8 encompass the functions and duties for aircraft airworthiness that may be transferred for commercial air transport and general aviation.

3.3 USAGE OF ARTICLE 83 *bis* TO PROVIDE EFFECTIVE SAFETY OVERSIGHT AND WHERE ALTERNATIVE MEANS WOULD BE MORE APPROPRIATE

3.3.1 *Management of safety oversight requirements*

3.3.1.1 A number of safety oversight requirements must be carefully managed by operators and by the State of Registry in absence of an Article 83 *bis* agreement, as described in this section.

3.3.1.2 When an aircraft registered in one State is operated from another State (State of the Operator/PLG), the operator must carefully consider the following:

- all the flight crew licences of the crew members, issued or rendered valid by the State of Registry must be kept valid, including the medical assessments, and renewed as necessary;
- all the approved training programmes and approved training organizations providing that training for licensing purposes must be approved by the State of Registry;
- similarly, all flight simulation training devices used for crew training must be qualified and approved for the training tasks by the State of Registry;
- the certificate of airworthiness must be issued and renewed as necessary by the State of Registry and maintained valid, with all continuing airworthiness activities, including information transfer, approval of maintenance organizations, modifications and repairs, approved or accepted or prescribed by the State of Registry as applicable;
- for general aviation operations, the authorization to conduct specific operations, such as reduced vertical separation minimum (RVSM), the use of head-up display, synthetic vision systems, etc., must be approved by the State of Registry; and
- after modification of the radio apparatus equipage, a new radio station licence will often be required.

3.3.1.3 Similarly, the State of Registry will face a significant burden in exercising appropriate oversight of the aircraft operation: all the items in the foregoing paragraph involve the State of Registry, which in addition is responsible for the surveillance of the operator, the prosecution of non-compliance with regulations and the coordination of safety and security oversight with the State of the Operator/PLG. The burden generally increases as the distance between the two States increases.

3.3.2 *Potential safety benefits of an Article 83 bis agreement*

3.3.2.1 Depending on the functions and duties transferred by the State of Registry to the State of the Operator/PLG, a benefit is derived from the coordination between the two States, with a mutual assessment of each State's safety oversight capabilities resulting in a defined transfer of responsibilities. This transfer should enhance the safety oversight of the aircraft operations as the transferred functions and duties are conducted by the State in which the operator is located.

3.3.2.2 A transfer of licensing responsibilities provides safety and efficiency advantages for an operator with multiple aircraft registered in more than one State, as it allows the flight crew members to be licensed according to the same licensing requirements and usually to be able to fly all the aircraft of the operator's fleet (subject to being qualified on type), thereby providing for harmonized qualifications and training.

3.3.2.3 A transfer of continuing airworthiness responsibilities improves the maintenance structure and management of the operator, reducing the complexities resulting from different maintenance requirements and approvals or acceptance.

3.3.2.4 A transfer of Article 12 responsibilities facilitates the enforcement by the State in which the AOC holder or the PLG is located of compliance with rules and regulations during operations.

3.3.3 *Greater suitability of dry leases:* Practice shows that most aircraft operating within the scope envisaged by Article 83 *bis* are on a dry lease arrangement (often with extensions), with the aircraft operated under the AOC of the lessee in the case of commercial air transport operations.

3.3.4 In the case of a wet lease where the aircraft is exceptionally operated under the AOC of the lessee (which is not recommended for safety reasons), a transfer of certain responsibilities under Article 83 *bis* might be considered but this would be extremely rare.

3.3.5 *Medium-term dry leases are more appropriate:* For any short-term lease arrangement, say with a duration of 12 months or less, it is not recommended that the responsibilities be transferred. (As alternative means, while the State of Registry should retain its responsibilities during such short periods of time it is recalled that the Convention does not prevent a State from delegating to another State the authority to exercise certain functions with respect to its oversight responsibilities on its behalf, on a purely bilateral basis – see Chapter 2, 2.5 and 2.6). Similarly, for any lease, charter or similar arrangement for a long duration (e.g. three years or more), a transfer of responsibilities may be prevented if the national regulations of a State require that an owner or operator of aircraft deregister the aircraft from the register of the State of Registry and register it in the State of the Operator/PLG for such long-term lease. Consequently, where the dry lease is for a duration of about 12 months renewable, Article 83 *bis* is recommended for more effective safety oversight.

3.3.6 *Article 83 bis is not appropriate for interchanges which are short-term (successive) dry-lease operations under the AOC of the respective operators, which use their own crew:* Interchange operations, even if established for the long term, imply that the aircraft switches from the lessor to the lessee and back on a daily or almost daily basis. When the State of Registry differs from the State of the Operator, and indeed when States of the Operator change, with very short intervals, an Article 83 *bis* agreement is neither practical nor of any added value and even inconsistent. From an airworthiness viewpoint, the State of Registry will remain close to the operation of the aircraft; and from a personnel licensing viewpoint, the State of the Operator party to an Article 83 *bis* agreement would not always correspond to the State of the Operator for the aircraft operations as authority for the AOC under which the flight is conducted. Therefore, it is not appropriate to use an Article 83 *bis* agreement to transfer responsibilities in situations of interchange. Annex 1 provides for the automatic validation of licences by a group of States having common licensing regulations and party to a formal agreement registered with ICAO. This may be used to facilitate personnel licensing issues in interchange operations.

Chapter 4

PREPARATION FOR NEGOTIATION OF AN ARTICLE 83 *bis* AGREEMENT

4.1 AGREEMENT SCOPE

4.1.1 Agreements produced under Article 83 *bis* are only applicable to arrangements where there is a requirement for the transfer of responsibility of all or part of Articles 12, 30, 31 and 32 a) of the Convention from the State of Registry to the State of the Operator/PLG.

4.1.2 Responsibility may be transferred for aircraft involved in commercial operations and non-commercial operations (i.e. normally general aviation). The issuance of an AOC, as required by Annex 6 for international commercial operations, is not an absolute precondition for an agreement.

4.1.3 The responsibilities and associated duties and functions to be transferred must be recorded in the agreement. All duties and functions not mentioned specifically in the agreement are deemed to remain with the State of Registry.

4.1.4 An agreement can be initiated by either the State of Registry or the State of the Operator or, for general aviation, by the State of the PLG.

4.2 LEGISLATION

Before entering into an agreement, States should ensure that their national legislation enables them, as a State of Registry, to divest themselves of the functions and duties which are the object of an agreement, and, as a State of the Operator/PLG, that their national legislation could be applied to foreign-registered aircraft subject to a transfer agreement.

4.3 ASSESSMENT

4.3.1 States should enter into an agreement only if the State of the Operator/PLG concerned is capable of adequately performing the duties and functions that are envisaged for transfer. The State of Registry should undertake an assessment of the State of the Operator/PLG to ensure that it has the regulations, competence, experience and resources to undertake the duties and functions for the type, size and number of aircraft and scope of operation covered by the agreement. Similarly, the State of the Operator/PLG should undertake an assessment of the State of Registry to ensure that it has the regulations, competence, experience and resources to undertake the duties and functions not being transferred under the agreement and is able to oversee the transferred duties and functions until the agreement is signed and registered with ICAO.

4.3.2 The assessment should ensure that the State of the Operator/PLG has robust procedures in place to support the necessary reporting to the State of Registry to meet all the responsibilities identified in the agreement. Guidance on the scope of the assessment is given in Appendix B.

4.4 AGREEMENT CONTENT

4.4.1 Details of the type, size and number of aircraft that are to be subject to the agreement should be clearly identified. The nationality and registration marks and serial number of individual aircraft must be part of the agreement registered with ICAO in accordance with the procedure given in Chapter 6 and must also be recorded in the one-page summary of the agreement (the Agreement Summary – see paragraph 4.8 and Chapter 5).

4.4.2 The agreement should include the State of Registry's right to conduct inspections or audits of the State of the Operator/PLG, as deemed necessary, to ensure that the State of the Operator/PLG is fulfilling its safety oversight obligations as transferred under the agreement. The State of Registry should also be permitted access to the State of the Operator/PLG's basic safety documentation regarding the operator(s) concerned.

4.4.3 The agreement must comprehensively record which responsibilities, duties and functions are transferred and describe the arrangements for regular meetings between the State of Registry and the State of the Operator/PLG to ensure effective liaison and communication of safety information, particularly where duties and functions in Annexes 6 and 8 are closely aligned. An example of such a record is given in Appendix C. Further guidance on the scope of the liaison between the State of Registry and the State of the Operator/PLG is given in Chapter 7.

4.4.4 Guidance on the transfer of airworthiness-related duties and functions may be found in the *Airworthiness Manual* (Doc 9760). Authorities of the States concerned should give special consideration to the objectives of continuing airworthiness and to the transfer of information as required in Annex 6, Part I, Chapter 8, 8.3 to 8.8 and in Annex 8, Part II, Chapter 4. Additional guidance regarding operational surveillance may be found in the *Manual of Procedures for Operations Inspection, Certification and Continued Surveillance* (Doc 8335).

4.4.5 For the duration of the agreement, the State of the Operator should inform the State of Registry prior to an aircraft becoming the subject of a sub-lease, i.e. wet-lease operations conducted under its AOC, if there is any intent to delegate the authority for some oversight functions to a third State as State of the sub-lessee. The (bilateral) delegation of authority for the functions and duties by the State of the Operator to a third State is to be subject to the express permission of the State of Registry.

4.4.6 The agreement should specify the airworthiness basis on which the aircraft will return to the full responsibility of the State of Registry on termination of the agreement (see Chapter 10).

4.4.7 All agreements should be reviewed periodically and updated as necessary.

4.5 AUTHORITY TO ENTER INTO AGREEMENTS

4.5.1 The level of authority for signing Article 83 *bis* agreements should be equivalent to that required for administrative agreements between aeronautical authorities. Accordingly, the authority for signing such agreements on behalf of the State should be at the level of Director General of the respective civil aviation authorities.

4.5.2 Given the need of the aviation industry for swift implementation of Article 83 *bis* agreements and also considering the administrative nature of such agreements, lengthy processes for endorsement of individual agreements by national parliaments should be avoided. This could be achieved through appropriate legislation providing full authority to the Director General of the civil aviation authority to sign Article 83 *bis* agreements on behalf of the State, without requiring any further parliamentary vetting process.

4.6 AGREEMENT REGISTRATION

The agreement must be registered with the Council of ICAO in accordance with Article 83 of the Convention and the *Rules for Registration with ICAO of Aeronautical Agreements and Arrangements* (Doc 6685). (See Chapter 6.)

4.7 AGREEMENT STATUS

4.7.1 Any agreement between States will be binding upon all other States that have ratified Article 83 *bis*, on condition that it has been:

- a) registered with the Council of ICAO and made public in accordance with Article 83 of the Convention, or
- b) directly notified to any third State concerned, normally by the State of the Operator/PLG, pending registration and being made public in accordance with Article 83 of the Convention.

With these conditions met, the State of Registry shall be relieved of responsibility (and, where applicable, of liability) in respect of the functions and duties duly transferred to the State of the Operator/PLG, and the latter shall comply with them in accordance with its own laws and regulations.

4.7.2 In case the aircraft is to enter the airspace of Contracting States which have not ratified Article 83 *bis*, or which are party to it but have not been duly advised about a transfer agreement in accordance with this provision, the operator of the aircraft needs to be aware that those States are not bound to recognize the transfer of functions. (See Chapter 9 for the actions required in these circumstances.)

4.7.3 States which have ratified Article 83 *bis* should ensure that:

- a) their national legislation recognizes the validity of certificates of airworthiness, as well as of radio licences and crew licences, issued or rendered valid by the State of the Operator/PLG in accordance with Article 83 *bis*; and
- b) the potential existence of transfer agreements relating to aircraft operating to/from their territory is understood by their national authorities involved in inspection. Adequate procedures need to be developed by States and implemented for that purpose.

4.8 DOCUMENTS CARRIED ON AIRCRAFT

For the purpose of identifying the States responsible for safety oversight on the occasion of any verification process such as ramp inspections, a certified true copy of the Agreement Summary should be carried on board all aircraft operating under the agreement at all times while it is in force. (An Annex 6 requirement in this regard is proposed for applicability in November 2020.) A template for the Agreement Summary appears in Chapter 5.

4.9 COORDINATION AND SAFETY OVERSIGHT RESPONSIBILITIES OF THE TWO STATES

Chapter 7 sets out guidance on the coordination between the State of Registry and the State of the Operator/PLG. It also describes the safety oversight responsibilities of the two States.

Chapter 5

CONTENT OF AN ARTICLE 83 *bis* AGREEMENT

5.1 MAIN ELEMENTS OF AN ARTICLE 83 *bis* AGREEMENT

5.1.1 Article 83 *bis* of the Convention provides for the transfer of certain functions and duties when an aircraft is operated pursuant to an agreement for the lease, charter or interchange of the aircraft or any similar arrangement. An Article 83 *bis* agreement is an agreement by which the State of Registry transfers, in respect of such aircraft, all or part of its functions and duties as State of Registry under Articles 12, 30, 31 and 32 a) of the Convention to the State of the Operator/PLG.

5.1.2 An Article 83 *bis* agreement should identify the following main elements:

- a) State of Registry [and focal point];
- b) State of the Operator/PLG [and focal point];
- c) Duration of the agreement, including date of entry into force and expiry date or related conditions, if applicable;
- d) A description of which functions and duties under Articles 12, 30, 31 and 32 a) of the Convention are transferred, and the duration of such transfer;
- e) Operator. Should the operator be a natural person, he/she should be identified by name and permanent residence. Should the operator be a legal person (company, corporation, etc.), it should be identified by name, principal place of business or permanent residence;
- f) Aircraft affected by the agreement. Each aircraft under the agreement should be identified by its nationality and registration marks, make, model and series, and serial number; and
- g) Provisions for the termination of lease or other arrangement.

5.1.3 To facilitate the drafting and reading of an Article 83 *bis* agreement, the parties could use as an aid the template for the one-page Agreement Summary of the Article 83 *bis* agreement set out in 5.6.

5.2 DEFINITIONS OF THE FUNCTIONS AND DUTIES COVERED IN THE AGREEMENT

5.2.1 Article 83 *bis* of the Convention leaves at the discretion of the parties to an Article 83 *bis* agreement which functions and duties are transferred by the Agreement, as long as these functions and duties are derived from the following articles of the Convention:

- a) Article 12: *Rules of the Air*;
- b) Article 30: *Aircraft Radio Equipment*;
- c) Article 31: *Certificates of Airworthiness*; and
- d) Article 32 a): *Licences of personnel*.

5.2.2 When considering and drafting an Article 83 *bis* agreement, it is essential to clearly specify the functions and duties being transferred. The functions and duties related to these articles are mostly covered in more detail in the Standards and Recommended Practices annexed to the Convention. The flow chart in Figure 5-1 illustrates the link between the Articles designated in Article 83 *bis* and the different Annexes and their Parts, Sections, Chapters and paragraphs.

5.2.3 Further explanations regarding the provisions of the Convention and its Annexes that can be transferred under an Article 83 *bis* agreement are contained in Appendix A.

5.3 PACKAGES FOR TRANSFERS UNDER ARTICLE 83 *bis* — COMBINATIONS OF RESPONSIBILITIES

5.3.1 The reasons for concluding an Article 83 *bis* agreement may vary significantly. When considering which functions and duties (as specified in 5.2) are to be transferred to the State of the Operator/PLG and which are to be retained by the State of Registry, it is important to recognize the circumstances of the arrangement (lease, etc.), and the needs and objectives of both parties, in order to achieve the result that is best suited in a particular case. Influencing factors include the duration of the arrangement, the geographical distance from the State of Registry to the area where the aircraft is going to be operated, the capacity and capability of the aviation authorities of the parties, the views of the financial stakeholders, and the policy applied in the States concerned.

5.3.2 It is also important to consider the effects of the termination of the agreement. Once the agreement is terminated, all functions and duties transferred are restored to the State of Registry. If there has been an extensive transfer of functions and duties to the State of the Operator/PLG, the State of Registry may wish to perform additional inspections before the aircraft is “reinstated”, as the operation of the aircraft has been at least partly beyond its control.

5.3.3 The following are examples of categories of responsibilities that may be transferred according to the particular circumstances:

a) *Personnel Licensing*

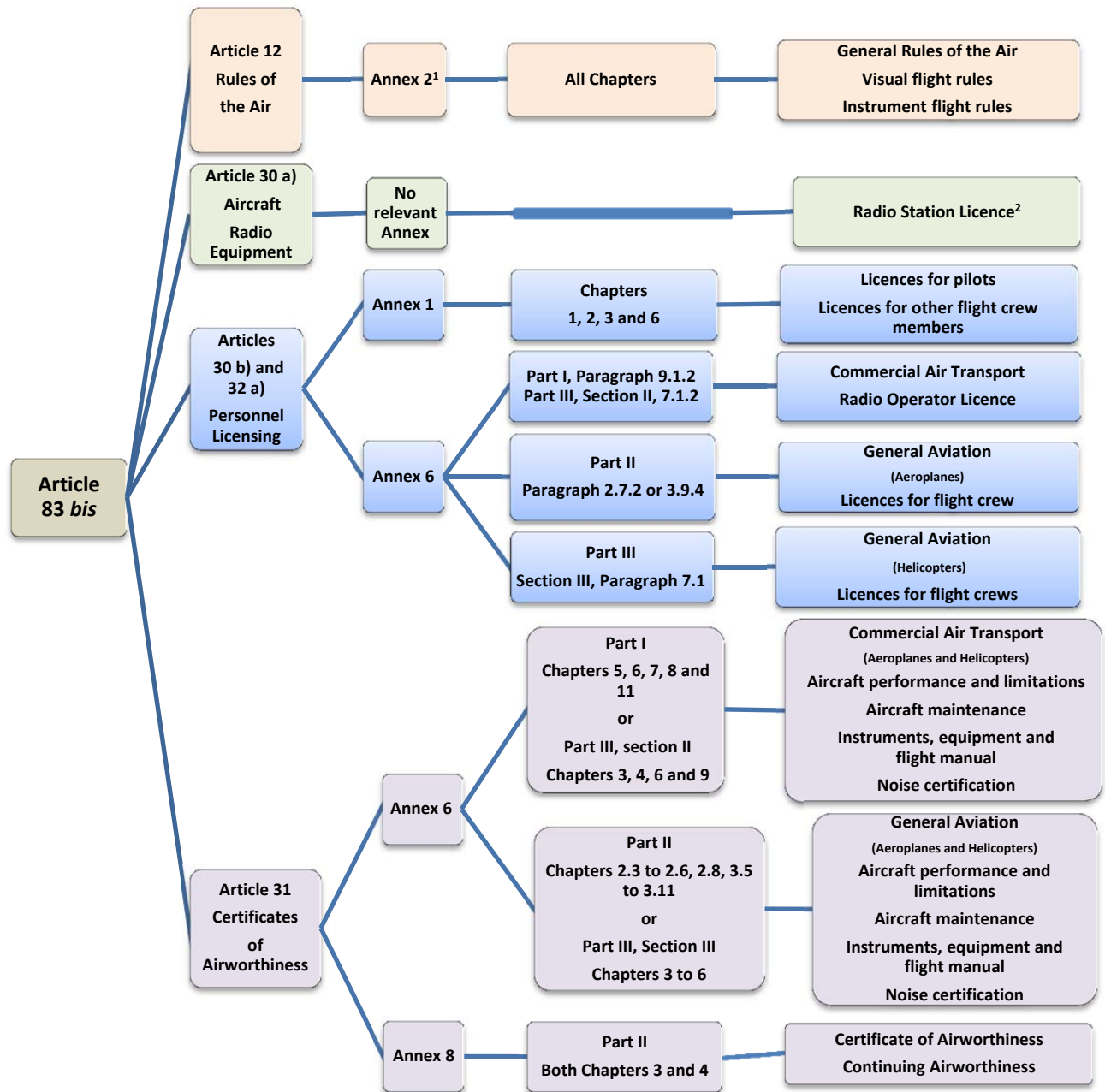
The personnel licensing responsibilities set out in Chapters 1, 2, 3 and 6 of Annex 1 cannot be split between the State of Registry and the State of the Operator/PLG. They form a package of responsibilities covering the licences for pilots and other crew members for which one of those two States must be responsible as a whole.

b) *Rules of the Air*

The rules of the air set out in the chapters, appendices and attachments of Annex 2 cannot be split between the State of Registry and the State of the Operator/PLG. They form a package of responsibilities covering the rules of the air for which one of those two States must be responsible as a whole, including undertaking to ensure the prosecution of all persons violating the regulations applicable.

c) *Airworthiness of Aircraft*

The responsibilities with respect to airworthiness of aircraft cover a range of different areas set out in the relevant parts of Annexes 6 and 8. If the State of the Operator/PLG is unable to take on all of the airworthiness responsibilities or if the State of Registry so decides, a partial transfer of those responsibilities is an option. Such transfer will result in a split of the responsibilities in this area with some responsibilities remaining with the State of Registry. In such situations it is important that the split be clearly set out in the Article 83 *bis* agreement.



¹ See also the Notes in Annex 6, Part I, 3.1.3; Part II, 3.3.1.3; and Part III, Section II, 1.1.4; and Note 1 in Part III, Section III, 1.1.1.

² Issued by the appropriate national authority in accordance with ITU radio regulations.

Figure 5-1. Articles and Annexes of the Convention under which responsibilities may be transferred in whole or in part from the State of Registry to the State of the Operator/PLG

These responsibilities can be split into three areas:

- i) Annex 8, Part II, Chapter 3: Issue or render valid a certificate of airworthiness.
- ii) Annex 8, Part II, Chapter 4: Exchange of continuing airworthiness information.
- iii) Annex 6, Part I, Chapter 8 and paragraph 6.13: Continuing airworthiness (associated functions required to maintain the certificate of airworthiness valid) and noise certification document.

5.3.4 Examples of transferable airworthiness responsibility packages

5.3.4.1 Where the responsibilities with respect to issuing or rendering valid the certificate of airworthiness and the continuing airworthiness of the aircraft are not transferred to the State of the Operator/PLG, the State of Registry will remain responsible for ensuring compliance with Annex 8, Part II, Chapters 3 and 4, and Chapter 8 and paragraph 6.13 of Annex 6, Part I. It may however transfer the responsibility to approve a maintenance organization under Annex 6, Part I, 8.7.

5.3.4.2 Where the responsibilities with respect to issuance or rendering valid the certificate of airworthiness are transferred to the State of the Operator/PLG, that State shall assume the responsibilities of Annex 8, Part II, Chapter 3. Nevertheless the allocation of Annex 8, Part II, Chapter 4 responsibilities should be negotiated between States to ensure the most suitable transfer. The differences in national regulations regarding the issuance of a certificate of airworthiness and type certification need to be carefully considered, including the possible complexities when returning the responsibilities to the State of Registry at the end of the agreement. In the case of transfer of certificate of airworthiness responsibilities, it is recommended that the continuing airworthiness responsibilities of Annex 6 also be transferred.

5.3.4.3 A balanced approach to the sharing of airworthiness responsibilities is the transfer of some of the continuing airworthiness responsibilities of Chapter 8 of Annex 6, while Annex 8 remains with the State of Registry. The modifications and repair responsibilities described in Chapter 8 of Annex 6 will remain with the State of Registry as the airworthiness certification standards apply also to modifications and repairs. Nevertheless the allocation of Annex 8, Part II, Chapter 4 responsibilities should be negotiated between the States to identify the most suitable elements to transfer. Examples of responsibilities of Annex 6, Chapter 8, that could be transferred are:

- a) maintenance control manual acceptance;
- b) maintenance programme approval; and
- c) maintenance organization approval*.

5.3.4.4 The agreement in these cases may contain information regarding the actions to be taken against the aircraft at the termination of the Article 83 *bis* agreement (see Chapter 10). For example:

- a) issuance of a certificate of airworthiness by the State of Registry, which can be a complex endeavour; and
- b) approval of a new maintenance programme with proper bridging between the maintenance programme approved by the State of the Operator/PLG before termination and the maintenance programme approved by the State of Registry after termination.

* Transferred to Annex 8, Part II, Chapter 6 after 5 November 2020.

5.4 TRUE COPY OF THE AGREEMENT SUMMARY TO BE CARRIED ON BOARD THE AIRCRAFT

5.4.1 According to paragraph b) of Article 83 *bis*, the transfer of functions and duties shall not have effect in respect of other Contracting States before either the agreement between States in which it has been embodied has been registered with the Council of ICAO and made public by it, or the existence and scope of the agreement have been directly communicated by a State party to the agreement to the authorities of the other Contracting State or States concerned. The one-page Agreement Summary will assist the State of Registry and the State of the Operator/PLG concerned to clarify and confirm their agreement on which functions and duties are transferred.

5.4.2 In practice, to ensure smooth and safe operations with aircraft subject to an Article 83 *bis* agreement, a proposed amendment to Annex 6, Part I, Chapter 6 is being introduced (with a similar proposal for Annex 6, Parts II and III). This will entail a requirement for a certified true copy of a one-page summary (in English, or with an English translation) of the Article 83 *bis* agreement (Agreement Summary) to be carried on board the aircraft at all times while the agreement is in force. The one-page Agreement Summary will assist inspectors in identifying which ICAO Annexes are affected by the transfer to the State of the Operator/PLG of responsibility in respect of certain functions and duties.

Note.— Inspectors conducting ramp inspection of aircraft operating under an Article 83 bis agreement must have access to a certified true copy of the Agreement Summary, in either electronic or hard copy format.

5.4.3 The template to be used for the one-page Article 83 *bis* Agreement Summary appears in 5.6.

5.5 CODING OF EMERGENCY LOCATOR TRANSMITTERS (ELT) UNDER AN ARTICLE 83 *bis* AGREEMENT

5.5.1 Annex 6, Parts I, II and III outline the requirement for aircraft to be equipped with ELTs. Annex 6 requires ELTs to operate in accordance with the relevant provisions of Annex 10 – *Aeronautical Telecommunications*, Volume III – *Communications Systems*.

5.5.2 Annex 10, Volume III, Part II, Chapter 5 requires States to establish, and update whenever necessary, an ELT register. The information regarding the ELT is to be immediately available to search and rescue authorities. The register information shall include among other things the name, address and emergency telephone number of the owner and operator. It shall also include other emergency contacts to whom the owner or the operator is known. A country code, which indicates the State where additional information is available on the aircraft on which the ELT is carried, shall be contained in bits 27 through 36 which designate a three-digit decimal country code number expressed in binary notation.

5.5.3 The State of Registry and the State of the Operator/PLG will be different when an Article 83 *bis* agreement is considered. If the aircraft will be operated under the Article 83 *bis* agreement for an extended period of time, the country code of the State of the Operator/PLG should be utilized to code the ELTs. This is especially important where the State of Registry and the State of the Operator/PLG are located some distance apart or where there may be communication difficulties between the search and rescue authorities and the operator.

5.6 ARTICLE 83 bis AGREEMENT SUMMARY TEMPLATE

AGREEMENT SUMMARY		
Title of the Agreement:		
State of Registry:		Focal point:
State of the Operator/State of the principal location of a general aviation operator (PLG):		Focal point:
Date of signature ¹ :	By State of Registry:	
	By State of the Operator/PLG:	
Duration ¹ :	Start Date:	End Date:
Languages of the Agreement:		
ICAO Registration No.:		
Umbrella Agreement (if any) with ICAO Registration number:		

Chicago Convention	ICAO Annexes affected by the transfer to the State of the Operator/PLG of responsibility in respect of certain functions and duties		
Article 12: Rules of the Air	Annex 2, all chapters	Yes	
		No	
Article 30 a): Aircraft radio equipment	Radio Station Licence	Yes	
		No	
Articles 30 b) and 32 a): Personnel Licensing	Annex 1, Chapters 1, 2, 3 and 6 and Annex 6 Part I, Radio Operator or Part III, Section II, Composition of the flight crew (radio operator) and/or Part II, Qualifications and/or Flight crew member licensing or Part III, Section III, Qualifications	Yes	
		No	
Article 31: Certificates of Airworthiness	Annex 6, Part I or Part III, Section II	Yes	
		No	
	Annex 6, Part II or Part III, Section III	Yes	
		No	
	Annex 8, Part II, Chapters 3 and 4	Yes	
		No	

Aircraft affected by the transfer of responsibilities to the State of the Operator/PLG					
Aircraft make, model, series	Nationality and registration marks	Serial No.	AOC # (Commercial Aviation)	Lease/Charter/Interchange From date ¹	Lease/Charter/Interchange To date ¹

¹ (dd/mm/yyyy).² Square brackets indicate information that needs to be provided.

Chapter 6

RULES OF REGISTRATION FOR AN ARTICLE 83 *bis* AGREEMENT

6.1 OBLIGATION TO REGISTER ARTICLE 83 *bis* AGREEMENTS

Article 83 of the Convention, as referred to in Article 83 *bis* b), requires the registration of all new aeronautical agreements and arrangements with the ICAO Council. Notwithstanding the possible direct notification mentioned in 6.2, this obligation encompasses Article 83 *bis* agreements.

6.2 NOTIFICATION TO THIRD PARTIES

6.2.1 According to Article 83 *bis* b) the transfer of functions and duties does not have effect in respect of other Contracting States unless they have been informed of the transfer. Two options exist in this respect. These are either publication of the agreement by the Council of ICAO following its registration (as set out in 6.1), or direct notification to the other Contracting States concerned by a party to the agreement.

6.2.2 While this direct communication may be relevant in certain circumstances (for instance, in the case of short-term arrangements), the obligation to register Article 83 *bis* agreements with ICAO nevertheless remains.

6.3 RULES FOR REGISTRATION

6.3.1 The *Rules for Registration with ICAO of Aeronautical Agreements and Arrangements* (Doc 6685) (the Rules) apply to the registration of Article 83 *bis* agreements.

6.3.2 In line with Article 6 (1) of the Rules, each Contracting State is responsible for the registration of an Article 83 *bis* agreement to which it is a party. Registration may, therefore, be effected by either the State of Registry or the State of the Operator/PLG. As the State of Registry will be relieved of responsibilities with respect to the functions and duties transferred under an Article 83 *bis* agreement, it has an interest in ensuring that the agreement is registered with ICAO. As a result, the State of Registry should consider taking the initiative in registering an Article 83 *bis* agreement.

6.3.3 Once a Contracting State is notified by ICAO of the registration of an Article 83 *bis* agreement to which it is a party, it is relieved of the obligation of registration (Article 6 (2)).

6.3.4 The key requirements of the Rules (Articles 4, 5 and 8) are that:

- a) agreements are registered as soon as possible after execution of the agreement and, in any event, forthwith upon its coming into force (Article 4);
- b) any modification in the parties, terms or scope of a registered agreement shall be registered in the same way as the original agreement (Article 5);

- c) registration is effected by transmitting to the Secretary General of ICAO a certified true copy of the agreement as issued by the appropriate authority of the registering party (Article 8 (1));
- d) the certified true copy of the original shall be in the language or languages in which the agreement was concluded. If the original is not in one of the working languages of ICAO (English, Arabic, Chinese, French, Russian, Spanish) it shall be accompanied by a translation into one of those languages (Article 8 (2)); and
- e) the date of the coming into force of the agreement shall be communicated at the same time as registration or as soon as possible thereafter, if it is not evident from the terms of the agreement (Article 8 (3)).

6.3.5 Certification of the Article 83 bis agreement

The certification statement submitted at the time of registration of the agreement needs to attest that the copy is a true and complete copy of the original, be signed and display an official stamp or seal. The certification statement must be permanently affixed to the agreement by placing it on the first page of the document itself or on each page of the document or by attaching it to the entirety of the agreement.

6.3.6 Model Certification Statement

CERTIFICATION

I hereby certify that the attached is a true and complete copy of
the [title of the agreement], signed at [place] on [date].

Done at [place], on [date].

[Signed by the appropriate authority according
to the laws of the certifying State]

[official stamp/seal]

6.3.7 One-page summary of the Article 83 bis agreement – the Agreement Summary

Although not a requirement of the current Rules, for the purpose of assisting in the registration of agreements, the State submitting an Article 83 *bis* agreement to ICAO for registration and publication (see 6.3.2) should complete and submit a one-page summary of the agreement (the Agreement Summary). For this purpose a template for the Agreement Summary is contained in Chapter 5. The Agreement Summary should be attached to the Article 83 *bis* agreement registered with ICAO.

6.3.8 The date of receipt of the agreement by ICAO is deemed to be the date of registration (Article 9 (1) of the Rules). A written confirmation of registration, indicating the registration number, is communicated to both parties to the agreement (Article 10).

6.4 DATABASE OF AGREEMENTS

6.4.1 The Database of Aeronautical Agreements and Arrangements (DAGMAR) is available to the public on the ICAO website, through the page of the Legal Affairs and External Relations Bureau. It includes the details, along with copies of Article 83 *bis* agreements registered with ICAO. The information provided includes the title of the agreement, its signatories, the place and date of signature, the date of entry into force, the duration of the agreement (if known), and details of the aircraft affected by the agreement.

6.4.2 DAGMAR includes a record of all registered agreements, including those no longer in force, and so provides information not only on current agreements but also a historical record of all such agreements. The history of an aircraft which has been the subject of an agreement can, as long as the agreement has been registered, be traced.

6.4.3 For the future, the ICAO Council agreed to eventually amend the Rules so as to provide for possible registration of agreements through an interactive web-based system using a user-friendly electronic platform, to allow for swift registration and publication of such agreements, which will be particularly beneficial for Article 83 *bis* agreements.

Chapter 7

SAFETY OVERSIGHT RESPONSIBILITIES

7.1 OVERVIEW

7.1.1 As set out in Chapter 4, the State of the Operator/PLG, which accepts the transfer of duties and functions from another State to perform the safety oversight of aircraft that are registered in that State, must be aware of the responsibilities that it is accepting and ascertain that it has the necessary capability to fulfill them. Equally, where the State of Registry retains some functions and responsibilities it must have the capability and resources for conducting the safety oversight for those areas that are not transferred to the State of the Operator/PLG.

7.1.2 The purpose of this chapter is to provide guidance to the State of Registry and the State of the Operator/PLG regarding their respective safety oversight responsibilities.

7.2 COORDINATION BETWEEN THE STATE OF THE OPERATOR/PLG AND THE STATE OF REGISTRY

7.2.1 Once an Article 83 *bis* agreement has been signed, the State of the Operator/PLG and the State of Registry will have to exchange information in order to have a well-coordinated transfer of functions and duties.

7.2.2 In this regard, both States must designate a focal point to ensure effective communication and liaison to manage the process of transferring responsibility.

7.2.3 It is of paramount importance that the terms of the Article 83 *bis* agreement are thoroughly understood by both States in order to prevent misunderstandings and to make sure that everything that needs to be considered in the safety oversight programme of both States is taken into account.

7.2.4 When functions and duties are transferred from the State of Registry to the State of the Operator/PLG, none of them should be delegated and carried out under the authority of a third State without the express agreement of the State of Registry.

7.3 SAFETY OVERSIGHT RESPONSIBILITIES OF THE STATE OF THE OPERATOR/PLG

7.3.1 When an Article 83 *bis* agreement is signed, the State of the Operator/PLG accepts the transfer of certain responsibilities and, therefore, must be prepared to exercise the oversight functions of the aircraft included in the said agreement.

7.3.2 The State of the Operator/PLG must consider at least the following:

a) *Training of inspectors*

The State of the Operator/PLG must ensure its inspectors who will carry out oversight activities for the concerned aircraft have the competencies necessary to verify that the operator complies with all operational and airworthiness requirements in the areas transferred. It must also ensure that the inspectors are trained on the arrangements under the Article 83 *bis* agreement. The training topics to be covered should include:

- i) Article 83 *bis* rationale;
- ii) implications of a complete or a partial transfer of functions and duties from the State of Registry to the State of the Operator/PLG;
- iii) agreements signed by the State;
- iv) aircraft subject to the Article 83 *bis* agreement;
- v) duties and functions transferred from the State of Registry;
- vi) duration of the agreement;
- vii) functions and duties that inspectors must perform;
- viii) matters that must be reported to the focal point;
- ix) information that has to be shared with the State of Registry; and
- x) the language to be used in communications.

b) *Inspection guides*

The State of the Operator/PLG must develop inspection guides to inspect aircraft subject to an Article 83 *bis* agreement, tailored to the functions and duties transferred from the State of Registry.

c) *Responsibilities regarding airworthiness according to the functions and duties transferred from the State of Registry*

- i) The State of the Operator/PLG must ensure that the operator complies with mandatory continuing airworthiness information transmitted by the State of Design or relayed by the State of Registry;
- ii) In case of an important continuing airworthiness safety finding, the State of the Operator/PLG must inform the State of Design for evaluation and resolution, if it is mandatory, as well as make aware the State of Registry;
- iii) If the State of the Operator/PLG receives information of airworthiness findings detected during aircraft inspections by a third State regarding an aircraft subject to an Article 83 *bis* agreement, it must make the State of Registry aware of this information;
- iv) For commercial air transport operations, the State of the Operator must accept and verify that the maintenance control manual (MCM) of the operator for the continuing airworthiness management of the leased aircraft includes all the duties and functions transferred from the State of Registry under an Article 83 *bis* agreement and that appropriate procedures are incorporated in the MCM, if applicable;

- v) For general aviation aeroplane operations, and if applicable, the MCM of the operator for the continuing airworthiness management of the aircraft should respect industry codes of practice or the guidance material of the State responsible for continuing airworthiness (State of Registry or the State of the PLG), and include the items listed in Chapter 3.11 of Annex 6, Part II;
 - vi) The State of the Operator/PLG is not obliged to verify that the MCM of the operator includes the functions and duties that were not transferred from the State of Registry;
 - vii) In the case where the aircraft subject to an Article 83 *bis* agreement is a type/variant of aircraft not currently operating in the State of the Operator/PLG, the procedures for introducing a new type of aircraft should be followed. In this regard, the State of the Operator/PLG must assess the competency of the operator to operate the aircraft type; and
 - viii) Where the aircraft type/variant is new to the State of the Operator/PLG, the State of Registry, when asked to do so, should, if it has the capabilities, consider providing training for the inspectors of the State of the Operator/PLG.
- d) *Assistance to a commercial operator or a general aviation owner/operator*
- i) The State of the Operator/PLG must confirm to the owner/operator that an Article 83 *bis* agreement has been signed between the State of Registry and the State of the Operator/PLG, and clarify the responsibilities that have been transferred and what that means to the owner/operator.
 - ii) The owner/operator must know which State will oversee the aircraft's maintenance and records, issue crew licences, certificates of airworthiness, etc.
 - iii) The State of the Operator/PLG has to make clear to the owner/operator the limitations to the Article 83 *bis* agreement, if any exist. For example, if the operator serves or overflies any States which have not ratified Article 83 *bis*, the operator needs to consider whether those States accept the transfer of responsibilities under Article 83 *bis*, require special authorization, require notification, etc., (see details in Chapter 9) and whether it needs to amend its flight preparation procedures accordingly.
- e) *Other obligations*
- i) Inform the owner/operator if there are any legal impacts or limitations in leasing out the aircraft to another operator in the same State of the Operator/PLG or in another State.

7.4 SAFETY OVERSIGHT RESPONSIBILITIES OF THE STATE OF REGISTRY

7.4.1 The State of Registry making the transfer should monitor the State of the Operator/PLG status on the ICAO USOAP Continuous Monitoring Approach (CMA) online database, in order to be alerted to any change in the level of compliance with ICAO Standards or if any important safety concern has arisen that should trigger the revision of an Article 83 *bis* agreement, based on the risk assessment of the State of the Operator/PLG. Other monitoring methods may include regular review meetings, joint audits of processes involved in the agreement, safety data sharing, audit sharing and permit-to-fly processes.

7.4.2 The responsibilities of the State of Registry are as follows:

a) *Responsibilities regarding airworthiness*

- i) The State of Registry must maintain a continuous safety oversight of those matters not transferred to the State of the Operator/PLG;
- ii) The State of Registry must ensure that the State of the Operator/PLG and the operator receive all applicable mandatory continuing airworthiness information;
- iii) The State of Registry should inform the State of Design or the State of Manufacture regarding the airworthiness duties and functions transferred under an Article 83 *bis* agreement; and
- iv) In the case that the State of Registry is informed about findings detected during aircraft inspections by a third State, regarding an aircraft subject to an Article 83 *bis* agreement, it must forward this information to the State of the Operator/PLG. It must also inform that State of any findings detected in its surveillance activities regarding those aircraft for which responsibilities have been transferred to the State of the Operator/PLG under an Article 83 *bis* agreement.

b) *Assistance to the operator/owner or lessor*

- i) The State of Registry must:
 - inform the lessor that an Article 83 *bis* agreement has been signed between the State of Registry and the State of the Operator/PLG;
 - detail the responsibilities that have been transferred; and
 - clarify if there are any specific limitations regarding the lessor leasing out the aircraft to another operator; and
- ii) The State of Registry must also advise the lessor about the documentation and verification that will be required when the aircraft is returned on termination of the Article 83 *bis* agreement to the lessor or original operator.

c) *Training of inspectors*

The State of Registry must train its inspectors to understand the implications of an Article 83 *bis* transfer of responsibilities.

Topics to be covered should include:

- i) Article 83 *bis* rationale;
- ii) implications of a complete or a partial transfer of functions and duties from the State of Registry to the State of the Operator/PLG;
- iii) agreements signed by the State;
- iv) aircraft subject to an Article 83 *bis* agreement;
- v) duties and functions transferred to the State of the Operator/PLG;

- vi) duration of the agreement;
 - vii) if not all responsibilities are transferred, the functions and duties that inspectors will have to perform;
 - viii) matters that must be reported to the focal point;
 - ix) information that has to be shared with the State of the Operator/PLG; and
 - x) the language to be used in communications.
-

Chapter 8

SURVEILLANCE BY OTHER STATES — RAMP INSPECTIONS

8.1 OVERVIEW

8.1.1 This chapter covers the procedures that must be followed by a third State (different from the State of Registry or the State of the Operator/PLG), when performing a ramp inspection on an aircraft subject to an Article 83 *bis* agreement.

8.1.2 The safety oversight of foreign operators is a State responsibility that is expressed in two ICAO Assembly Resolutions, which are contained hereunder in 8.3 and 8.4.

8.1.3 Furthermore, Annex 6, Parts I and III, stipulate that States shall establish a programme with procedures for the surveillance of operations in their territory by a foreign commercial air transport operator and for taking appropriate action when necessary to preserve safety.

8.2 APPLICATION OF ARTICLE 33 OF THE CONVENTION

8.2.1 Under Article 33 of the Convention, Contracting States must recognize the validity of each other's certificate of airworthiness and crew licences, provided the conditions of issuance meet the minimum requirements established by the Standards governing personnel licensing (Annex 1) and airworthiness of aircraft (Annex 8). Article 33, it should be emphasized, refers to certificates and licences "issued or rendered valid by the Contracting State in which the aircraft is registered".

8.2.2 The entry into force of Article 83 *bis* required a new reading of Article 33: if the authority to issue these certificates and licences has been formally transferred to the State of the Operator/PLG, Contracting States party to Article 83 *bis* will be obliged to recognize the validity of the certificates and licences if they have been officially informed of the transfer (on the proviso that the State of the Operator/PLG has issued them or rendered them valid while fully meeting the requirements of Annexes 1 and 8). Accordingly, States party to Article 83 *bis* should ensure that their rules and policies allow for the recognition of certificates of airworthiness and crew licences issued by the State of the Operator/PLG in this situation, in replacement of those issued by the State of Registry.

8.3 ASSEMBLY RESOLUTION A36-6: STATE RECOGNITION OF THE AIR OPERATOR CERTIFICATE OF FOREIGN OPERATORS AND SURVEILLANCE OF THEIR OPERATIONS

Whereas the Convention and its Annexes provide the legal and operational framework for Contracting States to build a civil aviation safety system based on mutual trust and recognition, requiring that all Contracting States fulfil their obligations in implementing the Standards and Recommended Practices as far as practicable and in adequately performing safety oversight;

Whereas Article 37 of the Convention requires each Contracting State to collaborate in securing the highest practicable degree of uniformity in regulations and practices in all matters in which such uniformity will facilitate and improve air navigation;

Recalling that recognition as valid of certificates and licences of other Contracting States is governed by Article 33 of the Convention and applicable Standards;

Recalling that ultimate responsibility for safety oversight rests with Contracting States, who shall continuously review their respective safety oversight capabilities;

Whereas the primary objective of the Organization continues to be that of ensuring the safety of international civil aviation worldwide;

Recalling Assembly Resolution A35-7, which, inter alia, urged Contracting States to share critical safety information and reminded them of the need for surveillance of all aircraft operations;

Recalling the Directors General of Civil Aviation Conference on a Global Strategy for Aviation Safety in 2006, that called upon States to base the recognition as valid of certificates and licences of other States exclusively on safety considerations and not for the purpose of gaining economic advantage; and recommended, inter alia, that:

- a) ICAO should develop guidelines and procedures to assist States in securing the highest practicable degree of uniformity in the recognition of certificates and licences as valid and in the surveillance of foreign aircraft operations in their territory;
- b) States should establish operating rules, in accordance with the Convention and on a non-discriminatory basis, governing the admission and surveillance of foreign air operators within their territories;
- c) States should include a safety clause in their bilateral air service agreements based on the model safety clause developed by ICAO.

Whereas the Convention establishes the basic principles to be followed by governments to ensure that international air transport services may be developed in an orderly and harmonious manner and it is therefore one of the purposes of ICAO to support principles and arrangements in order that international air transport services may be established on the basis of equality of opportunity, sound and economic operation, mutual respect of the rights of States and taking into account the general interest;

Recognizing that the non-harmonization of operational requirements and measures governing admission of air operators from other States may have a detrimental impact on the safety, efficiency and regularity of their operations; and

Recognizing that the uncoordinated development of national policies and programmes for the surveillance of air operators from other States could hinder the role of international civil aviation in socio-economic development;

The Assembly:

1. *Reminds* Contracting States of the need for exercising safety oversight of their operators in full compliance with applicable SARPs, as well as assuring themselves that foreign operators flying in their territory receive adequate oversight from their own State and taking appropriate action when necessary to preserve safety;
2. *Urges* all Contracting States to establish requirements and procedures for the authorization and surveillance of operations by an operator certificated by another Contracting State, and to take appropriate action when necessary to preserve safety;

3. *Urges* all Contracting States to insert into their bilateral agreements on air services a clause on aviation safety, taking into account the model clause attached to the Resolution adopted by the Council on 13 June 2001;
4. *Urges* Contracting States to recognize as valid the Air Operator Certificate (AOC) issued by other Contracting States for the purpose of flight over their territories, including landings and take-offs, provided that the requirements under which the certificate was issued are equal to or above the minimum applicable Standards specified in Annex 6, Parts I and III, Section II;
5. *Urges* the Secretary General to continue to develop guidelines and procedures to verify the conditions for recognition as valid of certificates and licences, in keeping with Article 33 of the Convention and applicable Standards;
6. *Urges* Contracting States to establish operating rules governing the admission of foreign air operators within their territories, in accordance with the Convention and on a non-discriminatory basis, and in harmonisation with ICAO Standards, guidelines and procedures, having due regard to the need to minimize the cost and burden to the Contracting States and to the operator;
7. *Urges* Contracting States to refrain from unilateral implementation of specific operational requirements and measures governing admission of operators from other Contracting States which would adversely affect the orderly development of international civil aviation.

**8.4 ASSEMBLY RESOLUTION A37-5:
THE UNIVERSAL SAFETY OVERSIGHT AUDIT PROGRAMME (USOAP)
CONTINUOUS MONITORING APPROACH**

Whereas the primary objective of the Organization continues to be that of ensuring the safety of international civil aviation worldwide;

...

Recognizing that transparency and sharing of safety information is one of the fundamental tenets of a safe air transportation system; and

...

The Assembly:

...

12. *Urges* all Contracting States to share with other Contracting States critical safety information which may have an impact on the safety of international air navigation and to facilitate access to all relevant safety information;

13. *Encourages* Contracting States to make full use of available safety information when performing their safety oversight functions, including during inspections as provided for in Article 16 of the Convention;

14. *Reminds* Contracting States of the need for surveillance of all aircraft operations, including foreign aircraft within their territory and to take appropriate action when necessary to preserve safety;

...

8.5 RESPONSIBILITIES OF OTHER STATES

8.5.1 Once a State is a party to the Protocol regarding Article 83 *bis* of the Convention, or has informed that it will recognize Article 83 *bis* agreements signed by third countries, it must modify its national rules to account for the transfer of duties and responsibilities as envisaged by Article 83 *bis* and prepare its inspectors to perform ramp inspections on an aircraft subject to an Article 83 *bis* agreement.

8.5.2 In this sense, inspectors have to be trained so they can understand the implications of such agreements and what they have to expect, especially with regard to the documents and authorizations that crews and aircraft must carry.

8.6 TRAINING OF INSPECTORS

8.6.1 In order to prepare inspectors for this task, the State must train its inspectors in at least the following topics:

- a) Article 83 *bis* rationale;
- b) implications of a complete or a partial transfer of functions and duties from the State of Registry to the State of the Operator/PLG in each of the Articles 12, 30, 31 and 32 a) of the Convention on International Civil Aviation and the corresponding functions and responsibilities described in the Annexes to the Convention that can be transferred (see Figure 5-1 and Appendix A);
- c) duties that inspectors will have to perform;
- d) correct interpretation of the Article 83 *bis* Agreement Summary which should be carried on board the aircraft; and
- e) in case of findings, who needs to be notified (State of the Operator/PLG, State of Registry, operator, pilot-in-command, etc.) depending on the findings and the transferred functions and duties.

8.6.2 The Agreement Summary should allow the inspectors to determine:

- a) under which AOC the aircraft is operating for a commercial air transport operation;
- b) which State is responsible for issuing or validating the licences of the flight crew, certificate of airworthiness, radio station licence, noise certificate, etc., and for the continuing airworthiness of the aircraft; and
- c) which State is responsible for ensuring and enforcing the flight crew's compliance with applicable regulations stemming from the rules of the air in Annex 2.

8.7 OTHER CONSIDERATIONS

8.7.1 It will be necessary to introduce into the existing databases of regional ramp inspections, such as the ICAO IDISR, whether the aircraft inspected is subject to an Article 83 *bis* agreement.

8.7.2 Therefore, it will be advisable that inspectors for those programmes be trained in Article 83 *bis* agreements.

8.8 PROCEDURES FOR RAMP INSPECTORS

These procedures are explained in the *Manual of Procedures for Operations Inspection, Certification and Continued Surveillance* (Doc 8335).

8.9 GUIDANCE FOR INSPECTORS OF STATES NOT PARTY TO ARTICLE 83 *bis*

8.9.1 Inspectors of States not party to the Protocol regarding Article 83 *bis* should be trained to understand and properly apply the specific policy of the State regarding operations by any foreign aircraft under an Article 83 *bis* agreement within its territory (see Chapter 9).

8.9.2 The training should cover the topics listed in 8.6.

Chapter 9

STATES NOT PARTY TO ARTICLE 83 *bis* — IMPLICATIONS

9.1 BACKGROUND

9.1.1 The Protocol relating to Article 83 *bis* entered into force on 20 June 1997 and, as of 1 June 2017, it had been ratified by 173 States, i.e., 18 ICAO Contracting States had not yet ratified it. The current list of State Parties as well as a list of State non-Parties by Air Navigation Region can be accessed on the ICAO website, through the Treaty Collection page of the Legal Affairs and External Relations Bureau at: <https://www.icao.int/secretariat/legal/Pages/TreatyCollection.aspx> .

9.1.2 It is important to note that since Article 83 *bis* is a facilitative umbrella provision, the ratification of its Protocol would not obligate States concerned to enter into Article 83 *bis* agreements, but would facilitate the operation into their airspace of aircraft subject to such agreements signed between other parties. In particular, consequential amendments to national legislation would allow recognition of the validity of crew and radio licences as well as certificates of airworthiness issued by the State of the Operator/PLG, following the transfer of related functions and duties from the State of Registry. The ICAO Council, during its 207th Session, reviewed a report of the 36th Session of the Legal Committee and, on the item “Safety aspects of economic liberalization and Article 83 *bis*”, endorsed a series of recommendations, including that, pursuant to Assembly Resolution A23-3, all Contracting States not party to the Protocol be urged again to ratify it as soon as possible and complete necessary changes to their national law, with a view to maximizing the efficiency of operations of aircraft subject to Article 83 *bis*.

9.1.3 Pending such ratification and related changes to national legislation, States concerned were also urged by the Council as well as through a letter signed by the Secretary General not to prevent the operations in their airspace of aircraft subject to an Article 83 *bis* agreement between other States.

9.1.4 The States not party to Article 83 *bis* were further requested to provide the ICAO Secretariat with relevant information on policies and practices regarding acceptability of crew and radio licences as well as certificates of airworthiness issued by a (foreign) State of the Operator/PLG as per an Article 83 *bis* agreement signed with a (foreign) State of Registry. This is intended to provide Contracting States and operators with the necessary information for the purposes of overflight of non-party States until they ratify the Protocol relating to Article 83 *bis*.

9.2 ACTIONS REQUIRED OF AN OPERATOR FOR FLIGHT PLANNING AND IN CASE OF OVERFLIGHT OF A STATE, INCLUDING DURING DIVERSIONS, THAT IS NOT A PARTY TO ARTICLE 83 *bis*

9.2.1 States which are not party to Article 83 *bis* of the Convention are not bound to recognize the transfer of functions and duties under an Article 83 *bis* agreement.

9.2.2 The operator of an aircraft operating under an Article 83 *bis* agreement should ensure that the aircraft does not intrude into the territory of a State not party to Article 83 *bis* unless 9.2.3 or 9.2.4 or 9.2.5 of this chapter are complied with.

9.2.3 In case of entering the airspace of such States for the purpose of an overflight or landing, the operator may be required to notify the information required by the competent authority of that State to obtain authorization for the flight or series of flights. If required, such notification should be submitted before the intended date of operation allowing the competent authority to take an informed decision, if appropriate. For this purpose, the information provided in the notification could include for those aircraft not registered in the State of the Operator/PLG:

- 1) a reference to the lease arrangement for each aircraft so operated; or
- 2) if applicable, reference to the ICAO registration number(s) of the agreement pursuant to Article 83 *bis* that covers the aircraft and a copy of the Agreement Summary.

9.2.4 If agreement for the overflight is denied on the basis that the transfer of functions and duties is not recognized, the certificates and licences on board the aircraft which were issued by the State of the Operator by virtue of an Article 83 *bis* agreement should be issued or rendered valid by the State of Registry prior to the overflight taking place.

9.2.5 If the State overflown has communicated to ICAO that it accepts the transfer of responsibilities under Article 83 *bis* (see aforementioned information in 9.1.4), the operator can conduct the flight without further action or in accordance with any special conditions as per the related policy of the State of overflight.

9.3 SURVEILLANCE ACTIONS RECOMMENDED FOR A STATE THAT IS NOT PARTY TO ARTICLE 83 *bis*

9.3.1 If a State is not party to Article 83 *bis*, it needs to develop a documented policy for the surveillance of aircraft operating under an Article 83 *bis* agreement over its territory. The policy should include:

- a) how the State considers operations of such aircraft, and what potential additional requirements would be needed before the operations could be conducted: for example, provision of the Agreement Summary; or a requirement for the certificates and licences to be issued or rendered valid by the State of Registry; or simply the acceptance of the transfer of functions and duties under the Article 83 *bis* agreement; and
- b) the inspector training described in 8.6 so as to ensure that the policy is applied consistently.

9.3.2 The policy should be public and communicated to ICAO (input to be provided at LEB@icao.int). Information so provided is available in a dedicated repository which can be accessed on the ICAO website, through the [Treaty Collection](#) page of the Legal Affairs and External Relations Bureau.

9.3.3 As mentioned in 9.1.2, all Contracting States not party to the Protocol regarding Article 83 *bis* are urged to ratify it as soon as possible and complete the necessary changes to their national law.

Chapter 10

RESPONSIBILITIES ON THE TERMINATION OR AMENDMENT OF AN ARTICLE 83 *bis* AGREEMENT

10.1 INTRODUCTION

10.1.1 Article 83 *bis* agreements will generally be terminated in accordance with the termination clause of the agreement. In the case of leased aircraft, agreements will terminate on the expiration of the lease that is the basis for the agreement. Agreements may also terminate earlier due to the early termination of the lease (because of action by one of the parties to the lease), a mutual decision by the State of Registry and the State of the Operator/PLG to terminate the agreement earlier than contemplated, or — rarely — as a result of unilateral action by one of those States. For general aviation, when the permanent residence or principal place of business of the operator is outside the State of Registry, similar situations may occur, including: mutual decision by the State of Registry and the State of the PLG; unilateral action by one of them (rare); or relocation of the permanent residence or principal place of business of the operator to another State.

10.1.2 The parties to the agreement may also add aircraft to coverage and remove them from coverage of the agreement as aircraft are moved into or out of the State of the Operator/PLG by their owner or operator or taken off the registry of the State of Registry. If all the aircraft are taken off the coverage of the agreement, the parties may terminate it, or they may keep it in force as an umbrella agreement in anticipation of adding other aircraft to coverage.

10.1.3 In either case, the most important consideration is the notification, through ICAO, to third parties that an aircraft is no longer governed by an Article 83 *bis* agreement, and thus that the State of Registry is once again responsible for its safety oversight. The notice should include “de-activation” (indication it is no longer in force) in the ICAO publication and/or direct notification to any States that had previously been directly notified of the aircraft’s coverage by an agreement.

10.2 DISPUTE RESOLUTION AND TERMINATION CLAUSES

10.2.1 A dispute resolution clause will typically provide only for consultation between the parties (agreements will usually call for regular consultations while the agreement is in effect). A model clause could be as follows: “Any disagreement concerning the interpretation or application of this Agreement shall be resolved by consultation between the parties and shall not be referred to any international tribunal, arbitration, or third-party settlement”.

10.2.2 A termination clause will typically provide for termination on a fixed date, the date of termination of the underlying lease or other transfer. The clause will also provide for notification to ICAO and to third-party States. An agreement covering only general aviation aircraft may not have a fixed termination date, but only provide for termination (or suspension) if the last aircraft is removed from coverage or if the parties otherwise agree. A model termination and notification requirements clause could be as follows:

“This agreement shall for individual aircraft come to an end at the termination of the respective aircraft leasing arrangements under which they are operated [or on the date of termination of the agreement]. The Agreement shall also terminate XX days after written notice of the termination of this Agreement by either of the two parties. This Agreement as

well as any amendments to it shall be registered with ICAO by the [Representative of the State of Registry/ Representative of the State of the Operator/PLG] in accordance with Article 83 of the Convention on International Civil Aviation and in accordance with the *Rules for Registration with ICAO of Aeronautical Agreements and Arrangements* (Doc 6685). If necessary, the obligation to notify third States about the conclusion and termination of this Agreement pursuant to Article 83 *bis* of the Convention shall be entrusted to the [Representative of the State of the Operator/PLG].”

10.2.3 The provisions for early termination may be more detailed. If the Article 83 *bis* agreement terminates early as the result of early termination of the underlying arrangement, it will be straightforward and involve essentially the same steps as a normal termination. If, however, the State parties terminate the Article 83 *bis* agreement for some other reason than the early termination of the leasing or other transfer arrangement, it will have practical consequences for the operator or operators. Early termination will change the safety oversight regime for the aircraft and may result in disruption to operations and unanticipated expense.

10.3 PRACTICAL CONSEQUENCES OF TERMINATING ARTICLE 83 *bis* AGREEMENTS

10.3.1 Termination of the agreement or removal of an aircraft from an Article 83 *bis* agreement will have a number of practical consequences. The consequences will vary depending on the original extent of the transfer from the State of Registry to the State of the Operator/PLG. The aircraft operator, owner and/or the leasing company, as applicable, should be made aware of these consequences to avoid confusion and to ensure that the responsibilities for the safety oversight of the aircraft will be transferred back to the State of Registry in an effective manner.

10.3.2 Some of the consequences are:

10.3.2.1 Where the State of Registry has transferred the functions and duties including oversight and control of Annex 1 – *Personnel Licensing*. Once the aircraft is removed from the Article 83 *bis* agreement, the flight crew members will be required to carry a licence issued or rendered valid by the State of Registry.

10.3.2.2 Where the State of Registry has transferred the functions and duties related to Annex 2 – *Rules of the Air*. The applicable rules and regulations to the flight and manoeuvre of aircraft and their enforcement will now revert to the State of Registry. There will be minimal impact here as the rules of the air are in most States closely aligned with Annex 2.

10.3.2.3 Where the State of Registry has transferred airworthiness functions and duties related to Annex 8 – *Airworthiness of Aircraft* and Annex 6, *Operation of Aircraft*, there will be significant impact as the State of the Operator/PLG would have been responsible for the continuing airworthiness of the aircraft in accordance with its requirements. In this case it is recommended that the State of Registry conduct a detailed assessment of the airworthiness of the aircraft in accordance with the procedures normally followed before an aircraft is issued with an initial certificate of airworthiness.

10.3.2.4 It should also be noted that while not considered part of an Article 83 *bis* agreement, for commercial air transport operations, the State of the Operator would be responsible for the issuance of operations specifications (operational approvals) for the aircraft (for reduced vertical separation minimum, performance-based navigation, low visibility operations, etc.) as required, in accordance with Annex 6 – *Operation of Aircraft*, Part I – *International Commercial Air Transport – Aeroplanes* or Part III, *International Operations – Helicopters*. Once the aircraft is no longer operated under the air operator certificate (AOC), these approvals would no longer be valid. The aircraft may likely be operated (for demonstration, ferry flights, etc.) as a general aviation aircraft by the owner until it is again leased or sold. For a general aviation aircraft these approvals would now need to be provided by the State of Registry in accordance with Annex 6, Parts II or III.

10.4 NECESSARY PROVISIONS

10.4.1 The termination clause should set out the responsibilities of the State of the Operator/PLG and the State of Registry with respect to the following:

- notification to ICAO of the termination of the Article 83 *bis* agreement, for “de-activation” of the related entry in the ICAO registration and publication system;
- direct notification of termination to States that were directly notified of the existence of the Article 83 *bis* agreement;
- notification to the owner or operators, in the case where an Article 83 *bis* agreement was terminated for reasons other than the termination of the underlying lease or other arrangement; and
- responsibilities of the parties for any foreseeable practical consequences.

10.4.2 The termination clause should make reference to the dispute mechanism clause.

Appendix A

EXPLANATIONS REGARDING THE PROVISIONS OF THE CONVENTION ON INTERNATIONAL CIVIL AVIATION THAT CAN BE TRANSFERRED UNDER AN ARTICLE 83 *bis* AGREEMENT AND THEIR CORRESPONDING ANNEX PROVISIONS

1. FUNCTIONS AND DUTIES RELATED TO ARTICLE 12

1.1 When looking at the text of Article 12 of the Convention, it may not be evident whether it covers only Standards included in Annex 2 to the Convention (*Rules of the Air*) or whether it also covers Standards included in Annex 6 to the Convention (*Operation of Aircraft*). This question was, however, addressed by the ICAO Council, when it resolved, in adopting Annex 2 in April 1948 that the Annex constitutes rules relating to the flight and manoeuvre of aircraft within the meaning of Article 12.

1.2 As defined in Annex 2, “appropriate authority” regarding flight other than over the high seas is the relevant authority of the State having sovereignty over the territory being overflown (Article 11 of the Convention refers). As per Article 12, the State of Registry normally has to ensure that, wherever they may be, its aircraft shall comply with the rules and regulations relating to the flight and manoeuvre of aircraft there in force, unless this is transferred to the State of the Operator/PLG under Article 83 *bis* as regards specific aircraft.

1.3 Regarding flight over the high seas, the appropriate authority is the relevant authority of the State of Registry. In this latter regard and in view of Article 83 *bis*, the rules of the air as codified in Annex 2 of the Convention are an entity, and it would be difficult to divide the tasks and functions related to them between the State of Registry and the State of the Operator/PLG. If the rules of the air of the State of the Operator/PLG are to be applied on the aircraft covered by the Article 83 *bis* agreement, this must be explicitly indicated in the agreement, otherwise the aircraft are to be operated according to the rules of the air of the State of Registry.

1.4 It is recalled that under Article 12 of the Convention, each Contracting State, i.e. including the State having authority for the rules of the air under an Article 83 *bis* agreement, is responsible for ensuring the prosecution of all persons violating the applicable regulations.

2. FUNCTIONS AND DUTIES RELATED TO ARTICLE 30

2.1 From the point of view of an Article 83 *bis* agreement, the two paragraphs of Article 30 are to be looked at separately. Paragraph a) of Article 30 deals with the right of an aircraft to carry and operate radio transmitting apparatus in or over the territory of other Contracting States. Paragraph b) of Article 30 requires a licence for each member of the flight crew authorized to use the radio transmitting apparatus on board.

2.2 The issuing of a radio station licence to install a radio transmitting apparatus in an aircraft is not dealt with further in the Annexes to the Convention. Instead, such licensing (the Radio Station Licence) is subject to International Telecommunication Union (ITU) radio regulations. According to Article 30 a), a Radio Station Licence shall be issued by appropriate authorities of the State in which the aircraft has been registered. This task can be transferred in an Article 83 *bis* agreement to the State of the Operator/PLG. Unless such transfer has been made, the Radio Station

Licence remains to be issued by the State of Registry. This may not be a concern as the licence can be valid for a long period. However, any modification to the radio transmitting equipment of the aircraft (e.g. adding a satellite communication transmitter or an Automatic Dependent Surveillance equipment) would potentially require a new licence.

2.3 The Radio Operator Licence (or flight radiotelephone operator licence of Annex 1 – *Personnel Licensing*, 3.4) is specifically mentioned in Part I, paragraph 9.1.2 of Annex 6 (*Operations of Aircraft – International Commercial Air Transport – Aeroplanes*) and in Part III, *International Operations – Helicopters*, Section II, paragraph 7.1.2 for commercial air transport helicopter operations. It is also covered as an appropriate qualification in Part II, paragraphs 2.7.2 and 3.9.4 for *International General Aviation – Aeroplanes*. A Radio Operator Licence has to be issued or rendered valid by the State of Registry. However, this function and duty can be transferred to the State of the Operator. Unless such a transfer has been made, the issuing of a Radio Operator Licence to all the flight crew remains the responsibility of the State of Registry. It is recommended that if the functions and duties under Article 32 a) are transferred by the Article 83 bis agreement (see 3), the functions and duties under Article 30 b) should also be transferred.

3. FUNCTIONS AND DUTIES RELATED TO ARTICLE 32 a)

3.1 According to Article 32 a), the pilot and the other members of the operating crew of every aircraft engaged in international navigation shall be provided with certificates of competency and licences issued or rendered valid by the State in which the aircraft is registered. The authority to act as a flight crew member is further confirmed in paragraph 1.2.1 of Annex 1 (*Personnel Licensing*): *A person shall not act as a flight crew member of an aircraft unless a valid licence is held showing compliance with the specifications of this Annex and appropriate to the duties to be performed by that person. The Licence shall have been issued by the State of Registry of that aircraft or by any other Contracting State and rendered valid by the State of Registry of that aircraft.* Unless the issuance or validation of the flight crew licences has been transferred to the State of the Operator/PLG in the Article 83 bis agreement, it remains the responsibility of the State of Registry.

3.2 Parts II and III of Annex 6 also contain provisions on the functions and duties of the State of Registry with respect to the licensing of the flight crew, which can be transferred to the State of the Operator under an Article 83 bis agreement.

4. FUNCTIONS AND DUTIES RELATED TO ARTICLE 31

Article 31 of the Convention deals with the certificates of airworthiness of an aircraft: *Every aircraft engaged in international navigation shall be provided with a certificate of airworthiness issued or rendered valid by the State in which it is registered.* This requirement is further defined in both Annex 6 and Annex 8 to the Convention.

5. FUNCTIONS AND DUTIES RELATED TO ARTICLE 31 IN ANNEX 6

5.1 In addition to continuing airworthiness requirements, Annex 6 contains Standards for aeroplane performance operating limitations, for aeroplane instruments, equipment and flight documents, for flight crew and for manuals, log and records.

5.2 According to paragraph 5.1.1 of Annex 6, Part I, Chapter 5, *Aeroplanes shall be operated in accordance with a comprehensive and detailed code of performance established by the State of Registry in compliance with the applicable Standards* of the Chapter in question. According to paragraph 6.1.1 of Annex 6, Part I, Chapter 6, in addition to the minimum equipment necessary for the issuance of a certificate of airworthiness, the instruments, equipment and

flight documents prescribed in detail in the said chapter, shall be installed or carried, as appropriate, in aeroplanes according to the aeroplane used and to the circumstances under which the flight is to be conducted. The prescribed instruments and equipment, including their installation, shall be approved or accepted by the State of Registry. Maintenance requirements either acceptable or approved by the State of Registry are contained in Chapter 8 of Annex 6, Part I. According to paragraph 11.1 of Annex 6, Part I, Chapter 11, the flight manual shall be updated by implementing changes made mandatory by the State of Registry.

5.3 Corresponding provisions for aeroplanes in general aviation can be found in Annex 6, Part II, Chapter 2.3 (Aeroplane Performance Operating Limitations), 2.3.1.2 (Placards, listings, instrument markings), Chapter 2.4 (Aeroplane Instruments, Equipment and Flight Documents and their use), including 2.4.9 (compliance with noise certification Standards in Annex 16, Vol I), Chapter 2.5 (Aeroplane Communication, Navigation and Surveillance Equipment and related operational authorization or oversight), Chapter 2.6 (Aeroplane Maintenance), Chapter 2.8 (Manuals, Logs and Records); and for Large and Turbojet Aeroplanes, Chapter 3.5 (Aeroplane Performance Operating Limitations), Chapter 3.6 (Aeroplane Instruments, Equipment and Flight Documents), Chapter 3.7 (Aeroplane Communication, Navigation and Surveillance Equipment: electronic navigation data management), Chapter 3.8 (Aeroplane Maintenance) and Chapter 3.11 (Manuals, Logs and Records).

5.4 Corresponding provisions for helicopters in international operations can be found in Annex 6, Part III, more specifically in Section II, Chapter 3 (Helicopter Performance Operating Limitations), Chapter 4 (Helicopter Instruments, Equipment and Flight Documents), 4.1 (General) 4.11 (noise certification) and 4.14 (Microphones), Chapter 6 (Helicopter Maintenance), 6.1 (Operator's Maintenance Responsibilities), 6.2 (Operator's Maintenance Control Manual), 6.3 (Maintenance Programme), 6.5 (Continuing Airworthiness Information), 6.6 (Modifications and Repairs), Chapter 9 (Manuals, Logs and Records), 9.1 (Flight Manual) and 9.2 (Operator's Maintenance Control Manual) for commercial air transport operations, and Section III, Chapter 3 (Helicopter Performance Operating Limitations), 3.1 and 3.2, Chapter 4 (Helicopter Instruments, Equipment and Flight Documents) 4.1 (All Helicopters on All Flights), 4.6 (noise certification), Chapter 5 (Helicopter Communication, Navigation and Surveillance Equipment and related operational authorizations), Chapter 6 (Helicopter Maintenance), 6.1 (Maintenance Responsibilities), 6.3 (Continuing Airworthiness Information), 6.4 (Modification and Repairs) and 6.5 (Maintenance Release) for general aviation.

5.5 An Article 83 *bis* agreement should clearly indicate which, if any, of these tasks and functions are transferred to the State of the Operator/PLG, otherwise they will remain under the responsibility of the State of Registry.

6. FUNCTIONS AND DUTIES RELATED TO ARTICLE 31 IN ANNEX 8

6.1 Annex 8 – *Airworthiness of Aircraft* contains many provisions on functions and duties of the State of Registry. For the purpose of an Article 83 *bis* agreement, it is necessary to indicate which functions and duties, if any, related to the certificate of airworthiness, are transferred.

6.2 Issuance and continued validity of a certificate of airworthiness is dealt with in Part II, Chapter 3, Section 3.2 of Annex 8. In the same chapter, Section 3.6 deals with damage to aircraft. Chapter 4 of the same Part II contains provisions on continuing airworthiness of aircraft. Paragraph 4.2.3 provides for the functions and duties of the State of Registry in respect of continuing airworthiness.

Appendix B

ARTICLE 83 *bis* AGREEMENT

ASSESSMENT BY THE STATE OF REGISTRY OF THE STATE OF THE OPERATOR/PLG

1. SCOPE

The civil aviation authority of a State of Registry wishing to transfer responsibility to another State must be satisfied that the State of the Operator/PLG's civil aviation authority has a civil aviation safety oversight system capable of discharging the regulatory responsibilities that are to be transferred for the duration of the agreement.

2. INITIAL EVALUATION

2.1 The civil aviation authority of the State of Registry should undertake an assessment of the State of the Operator/PLG's civil aviation authority. The initial evaluation should examine:

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- Recent ICAO USOAP audit findings including:
 - The compliance of the State's legislation and regulations with the Convention and its Annexes
 - State safety policy that might affect the agreement
 - Any shortfalls in compliance with ICAO Annexes affiliated with the transfer or any differences filed with ICAO that may affect the agreement
 - The civil aviation authority's ability to comply with regulatory requirements under the agreement
 - The civil aviation authority's experience and resources within personnel licensing, airworthiness and flight operations aspects
 - The civil aviation authority's ability to enforce the rules of the air
 - Adequacy of the civil aviation authority's facilities and resources
-

2.2 The State of Registry may also determine that a low effective implementation of the ICAO Standards identified by the ICAO USOAP audit of a State, is a basis for not entering into an Article 83 *bis* agreement with that State.

2.3 The evaluation could further use assessments made by other States, such as the International Aviation Safety Assessment (IASA) Programme of the United States Federal Aviation Administration or similar European Union programmes such as the Safety Assessment of Foreign Aircraft (SAFA).

3. DETAILED EVALUATION

Once it is evident to the civil aviation authority transferring responsibility that the State of the Operator/PLG's civil aviation authority is capable of performing the duties and functions and can effectively discharge the transferred responsibilities within the scope and timeframe of the agreement, a more detailed evaluation should focus on:

-
- Adequacy of the State of the Operator/PLG's published set of requirements and procedures associated with Article 83 bis.
 - State of Registry and State of the Operator/PLG responsibilities, duties and functions associated with areas of Annex 6 and Annex 8 overlap; e.g. technical log, minimum equipment list (MEL), special operations approvals, occurrence reporting or approval of maintenance organizations.
 - Concurrence on acceptable arrangements for the notification and transfer of data between the State of Registry and the State of the Operator/PLG.

Note.— It is important that the arrangements between the State of Registry and the State of the Operator/PLG allow for mutual access to audit findings and reports where both the State of Registry and the State of the Operator/PLG responsibilities overlap such as mandatory occurrence reports, occurrence reporting, extended diversion time operations (EDTO) and reduced vertical separation minimum (RVSM).

- Identification of primary points of contact in the key areas of transfer, and availability of contact.
 - Feasibility of effective technical liaison for the duration of the agreement.
 - Conditions and limitations to ensure control of risk management, such as a limitation on the size of an operator's fleet managed under an Article 83 bis agreement, or a process to address any safety concerns within an operator's organization.
 - Possibility of establishing regular minuted meetings between the State of Registry and State of the Operator/PLG, to ensure that the agreement is reviewed and amended to remain fit for purpose.
 - Possibility of establishing a procedure for access to pertinent safety information.
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4. CONTINUING AIRWORTHINESS

The effectiveness of the continuing airworthiness control system of the operator(s) associated with the Article 83 bis agreement should be determined. If necessary, external reliable sources may assist for this assessment, such as results from the International Air Transport Association Operational Safety Audit (IOSA).

Appendix C

EXAMPLE¹ OF RECORD OF STATE OF REGISTRY AND STATE OF THE OPERATOR DUTIES AND FUNCTIONS FOR A COMMERCIAL AIR TRANSPORT OPERATION

ICAO Annex Reference	Subject	Primary responsibility (SoR or SoO)	State of Registry (SoR) duties and functions	State of the Operator (SoO) duties and functions	Liaison scope	Liaison frequency
Annex 6, Part I, Attachment D para. 2.4	Special operations approvals	SoO	Evaluate aircraft equipment suitability, reliability and maintenance and inform SoO.	Evaluate operational procedures, qualifications and training and issue special operations approvals following verification with SoR that applicable airworthiness certification standards have been incorporated.	Coordinated evaluation between SoR airworthiness inspectors/SoO flight operations inspectors.	To be agreed between the two States.
Annex 6, Part I, para. 6.1.1	Equipment and configuration	SoO	Ensure instruments and equipment are approved, or accepted and configured to Annex 6 requirements.	Prescribe instruments and equipment to be fitted under national regulations and verify installation meets SoR certification requirements.	Liaison between SoR airworthiness inspectors/SoO flight operations inspectors.	To be agreed between the two States.
Annex 6, Part I, para. 4.7.2.6	Extended diversion time operations (EDTO) maintenance	SoR	Issue airworthiness certification of EDTO. Approve the EDTO maintenance programme requirements.	Issue operational approval of EDTO. Inform SoR of propulsion system reliability.	Liaison between SoR airworthiness inspectors/SoO flight operations inspectors.	To be agreed between the two States. To include a review of the maintenance programme and reliability reports.

¹ This is just one example, valid for a commercial air transport operation, as the required record is dependent on the functions and duties being transferred under the Article 83 *bis* agreement.

ICAO Annex Reference	Subject	Primary responsibility (SoR or SoO)	State of Registry (SoR) duties and functions	State of the Operator (SoO) duties and functions	Liaison scope	Liaison frequency
Annex 6, Part I, para. 6.1.3	Minimum equipment list (MEL)	SoO	<p>Ensure the SoO complies with the certification and maintenance requirements.</p> <p>Review the maintenance procedures against the type certificate holder's master minimum equipment list (MMEL) prior to approval.</p>	<p>Approve the MEL and ensure the operational requirements do not adversely affect the SoR airworthiness requirements.</p> <p>Review the operational procedures against the type certificate holder's MMEL prior to approval.</p>	Liaison between SoR airworthiness inspectors/SoO flight operations inspectors.	To be agreed between the two States.
Annex 6, Part I, para. 8.6	Design modification and repairs	SoR	Evaluate and accept design modifications and repairs, coordinate with SoO and ensure all substantiating repair and design modification data is retained.	Ensure all repairs comply with SoR airworthiness requirements and verify operator compliance with flight manual supplements/MEL amendments.	Liaison between SoR airworthiness inspectors/SoO flight operations inspectors.	<p>To be agreed between the two States.</p> <p>To include changes that have an effect on the MEL, flight manual, operations manual, etc.</p>
Annex 8, Part II, para. 1.2.1	Aircraft certification standards	SoR	Ensure the SoO is aware of the certification basis.	During operational oversight ensure the certification basis has been taken into account.	Liaison between SoR airworthiness inspectors/SoO flight operations inspectors.	
Annex 8, Part II, para. 3.4 (and Annex 6, Part I, para. 5.2.3)	Aircraft limitations and performance	SoR	Ensure the aircraft is provided with a flight manual, placards or other documents stating the approved limitations within which the aircraft is considered airworthy.	Ensure the aircraft is operated in compliance with the terms of its certificate of airworthiness and within the approved operating limitations contained in its flight manual.	Liaison between SoR airworthiness inspectors/SoO flight operations inspectors.	<p>To be agreed between the two States.</p> <p>To include changes to limitations through design changes, mandatory directives, service bulletins, etc.</p>

ICAO Annex Reference	Subject	Primary responsibility (SoR or SoO)	State of Registry (SoR) duties and functions	State of the Operator (SoO) duties and functions	Liaison scope	Liaison frequency
Annex 8, Part II, paras 3.2.1 and 3.2.3	Issue and renewal of certificate of airworthiness	SoR	Issue and renew the certificate of airworthiness on the basis of satisfactory evidence of compliance with the applicable SoR accepted Type Certificate Data Sheet.	Verify the certificate of airworthiness is valid and remains in force.	N/A	To be agreed between the two States.
Annex 8, Part II, para. 3.6	Damage to aircraft	SoR	Assess damage, evaluate airworthiness and prohibit further flight if necessary. Consider flight limitations of SoO. Prescribe flight conditions and issue permits to fly. Ensure the aircraft is returned to operational condition.	Immediately notify the SoR when an aircraft has sustained damage in the SoO (otherwise the State where the damage is detected would notify the SoR). Inform SoR of any flight limitations.	Liaison between SoR airworthiness inspectors/SoO flight operations inspectors.	To be agreed between the two States and after damage, on issue of flight conditions, permits to fly, repair approvals, maintenance actions and release to service.
Annex 8 Part II, para. 4.2.4	Communication and reporting	SoR	Evaluate airworthiness and maintenance reports. Liaison with the type certificate holder. Receipt of closing actions from SoO.	Provide safety-related reports to the SoR.	Liaison between SoR airworthiness inspectors/SoO flight operations inspectors.	To be agreed between the two States. To include review of occurrence reports.