

A stylized paper airplane icon in shades of blue is positioned above a dashed grey line that represents a flight path, curving upwards and then downwards.

**CIVIL AVIATION DIRECTIVE - 6014**

# **AIRCRAFT LEASING**

**CIVIL AVIATION AUTHORITY OF MALAYSIA**

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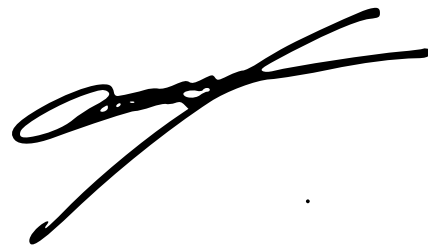
## Introduction

In exercise of the powers conferred by Section 24O of the Civil Aviation Act 1969 [Act 3], the Chief Executive Officer makes this Civil Aviation Directive 6014 – Aircraft Leasing (“CAD 6014 – LEASE”), pursuant to Regulation 115 (1) and (2) and Regulation 116 (1), (2) and (3) of the Malaysian Civil Aviation Regulation 2016 (MCAR 2016).

This Civil Aviation Directive 6014 – Aircraft Leasing (“CAD 6014 – LEASE”) is published by the Chief Executive Officer under Section 24O of the Civil Aviation Act 1969 [Act 3] and comes into operation on 1<sup>st</sup> April 2021.

### Non-compliance with this CAD

Any person who contravenes any provision in this CAD commits an offence and shall on conviction be liable to the punishments under Section 24O (2) of the Civil Aviation Act 1969 [Act 3] and/or under Malaysia Civil Aviation Regulation 2016.



**(Captain Chester Voo Chee Soon)**  
Chief Executive Officer  
Civil Aviation Authority of Malaysia

## Civil Aviation Directive components and Editorial practices

This Civil Aviation Directive is made up of the following components and are defined as follows:

**Standards:** Usually preceded by words such as “*shall*” or “*must*”, are any specification for physical characteristics, configuration, performance, personnel or procedure, where uniform application is necessary for the safety or regularity of air navigation and to which Operators must conform. In the event of impossibility of compliance, notification to the CAAM is compulsory.

**Recommended Practices:** Usually preceded by the words such as “*should*” or “*may*”, are any specification for physical characteristics, configuration, performance, personnel or procedure, where the uniform application is desirable in the interest of safety, regularity or efficiency of air navigation, and to which Operators will endeavour to conform.

**Appendices:** Material grouped separately for convenience but forms part of the Standards and Recommended Practices stipulated by the CAAM.

**Definitions:** Terms used in the Standards and Recommended Practices which are not self-explanatory in that they do not have accepted dictionary meanings. A definition does not have an independent status but is an essential part of each Standard and Recommended Practice in which the term is used, since a change in the meaning of the term would affect the specification.

**Tables and Figures:** These add to or illustrate a Standard or Recommended Practice and which are referred to therein, form part of the associated Standard or Recommended Practice and have the same status.

**Notes:** Included in the text, where appropriate, Notes give factual information or references bearing on the Standards or Recommended Practices in question but not constituting part of the Standards or Recommended Practices;

**Attachments:** Material supplementary to the Standards and Recommended Practices or included as a guide to their application.

It is to be noted that some Standards in this Civil Aviation Directive incorporates, by reference, other specifications having the status of Recommended Practices. In such cases, the text of the Recommended Practice becomes part of the Standard.

The units of measurement used in this document are in accordance with the International System of Units (SI) as specified in CAD 5. Where CAD 5 permits the use of non-SI alternative units, these are shown in parentheses following the basic units. Where two sets of units are quoted it must not be assumed that the pairs of values are equal and interchangeable. It may, however, be inferred that an equivalent level of safety is achieved when either set of units is used exclusively.

Any reference to a portion of this document, which is identified by a number and/or title, includes all subdivisions of that portion.

Throughout this Civil Aviation Directive, the use of the male gender should be understood to include male and female persons.





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## **1 General**

### **1.1 Citation**

1.1.1 These Directives are the Civil Aviation Directive 6014 – Aircraft Leasing (CAD 6014 LEASE), Issue 01/Revision 00, and comes into operation on 1<sup>st</sup> April 2021.

1.1.2 This CAD 6014 LEASE– Aeroplane, Issue 01/Revision 00 will remain current until withdrawn or superseded.

### **1.2 Applicability / Purpose**

1.2.1 This CAD applies to all Malaysian operators intending to commence leasing operations.

1.2.2 The purpose of this CAD is to provide clear and definitive provisions to Malaysian operators when intending to act as a lessor or lessee, when cooperating with another operator, whether local or foreign.

1.2.3 Entering into a lease agreement between operators without conducting proper due diligence may result in the operators being forced to deal with a number of legal and practical operational problems after the implementation of the lease.

1.2.4 Moreover, although this practice is economically advantageous for the operators, the CAAM is ultimately responsible for ensuring that safety takes precedence over any economic benefit presented by the operator.

### **1.3 Background**

1.3.1 The practice of leasing aircraft with or without crew has come into wide usage. Many of these leases involve aircraft owned by individuals or companies and registered in one State and leased to operators of another State.

1.3.2 Unless suitable arrangements are made between the concerned States, a lease may create complex legal, safety, enforcement and practical problems for both the State of Registry and/or the State of the Operator.

1.3.3 This is because of possible uncertainties that may arise concerning which party is responsible for the safe operation and airworthiness of the aircraft and which States' regulations are applicable.

### **1.4 Responsibilities**

1.4.1 When entering into a lease agreement, it is the responsibility of the operators to provide to the CAAM information on the lease agreement before entering into it.

1.4.2 Upon receipt of the information from the operator, the CAAM will consider the next steps in order to proceed and approve or otherwise the lease agreement.

- 1.4.3 The operator shall ensure the aircraft intended to be leased:
- a) complies with the Aircraft Maintenance Program including Human Factor Principle approved by State of Registry.
  - b) complies with the Mandatory Continuing Airworthiness Instruction as per requirements of State of Registry.
  - c) the modifications and repairs are carried out in accordance with the airworthiness requirements as prescribed by the State of Registry.
  - d) the required substantiating data supporting compliance with the airworthiness requirements be retained in accordance with the airworthiness requirements of State of Registry.
  - e) the Continuing Airworthiness activities are carried out in accordance with the airworthiness requirements as prescribed by the State of Registry.
  - f) the Aircraft Maintenance activities are carried out in accordance with the airworthiness requirements as prescribed by the State of Registry including signing of Maintenance Release.
  - g) Aircraft Maintenance Record been retained in accordance with airworthiness requirements as prescribed by the State of Registry.
  - h) validity of Noise Certificate issued by State of Registry.
  - i) validity of Station Radio License issued by State of Registry.

## **1.5 Regulatory and Guidance References**

- 1.5.1 Regulation 115 (1) and (2) of the MCAR for Lease-In of a Foreign Registered Aircraft.
- 1.5.2 Regulation 116 (1), (2) and (3) of the MCAR for Lease-Out of a 9M Registered aircraft.
- 1.5.3 Regulation 63 (1) and (2) of the MCAR on validation of foreign licences issued by an ICAO Contracting State.
- 1.5.4 Regulation 189 of the MCAR for application of Licenses, certificates, permits etc.
- 1.5.5 Article 83bis of the Chicago Convention.
- 1.5.6 ICAO Circular 295 - Guidance on the Implementation of Article 83bis of the Convention on International Civil Aviation.
- 1.5.7 ICAO Document 8335-AN/879, Part V & Part VI on lease charter and interchange of equipment.
- 1.5.8 UK CAA Leasing Procedures.

1.5.9 UAE GCAA Leasing Procedures.

## 1.6 Definitions

1.6.1 **Lessor** means the party (an Operator) from which the aircraft is leased and the term “Lessee” means the party to which the aircraft is being leased (another Operator).

1.6.2 **Dry Lease** is the lease of an aircraft where the aircraft is operated under the AOC of the lessee. It is a lease of an aircraft without crew, operated under the custody and the operational and commercial control of the lessee, and using the lessee’s designator code and traffic rights.

1.6.3 **Wet Lease** is an agreement between air operators pursuant to which the aircraft is operated under the AOC of the lessor. It is normally a lease of an aircraft with crew, operated under the commercial control of the lessee and using the lessee’s designator code and traffic rights.

1.6.4 **Damp Lease** is a wet lease with the flight deck crew only. Where such a situation exists, the state of the operator shall ensure all the crews that operate on the aircraft are trained to use common communication and emergency procedures.

1.6.5 When not specifically mentioned a “Malaysian Operator” means any organisations to which the MCAR and CAD 6 Part I and Part III apply.



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## 2 Terms of leases

### 2.1 The terms of leasing are divided into one of the following general criteria:

#### 2.1.1 Short term lease.

2.1.1.1 A short-term lease is normally for an urgent and immediate unplanned event such as to cover an Aircraft On Ground (AOG).

2.1.1.2 A short-term lease is defined as a lease no longer than 5 consecutive days. The operator may immediately use this provision without prior approval from the CAAM, however, in keeping with Regulation 115 of the MCAR, the CAAM shall be notified of the lease prior to beginning such process.

2.1.1.3 More detailed agreement shall be provided to the CAAM prior to seeking CAAM approval for short term leases and for the use of call sign.

*Note. – The operator must be mindful to the fact that repetitive short-term leases may be identified as a shortfall of the operator in running his own operations.*

#### 2.1.2 Long term lease.

2.1.2.1 A long-term lease may be applicable in the scenarios as follows:

- a) Unavailability or limited availability of aircraft for a Malaysian operator who has just started operations (e.g. delivery delays, initial lease purchase condition by specific requirements e.g. financier, manufacturer, etc.).
- b) A Malaysian operator with no experience on type who wishes to carry out a market feasibility study or a lease for a certain period.
- c) To obtain experience from another operator especially when operating a new aeroplane to gain technical experience from that operator about the new aircraft type to be introduced in the fleet.
- d) Any other ways that the operator proposed to seek lease as interim temporary measure and acceptable to the CAAM such as to cover Haj flights of certain charter with known period (peak seasons), or some other factor such as performance limited aircraft.

2.1.3 Pursuant to Regulations 115 and 116 of the MCAR, for all types of leases, with the exception of a short-term lease of less than 5 days, prior approvals must be obtained from the Chief Executive Officer of the CAAM.



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### 3 Acceptable types of leases

#### 3.1 The types of leases applicable to a Malaysian Operator are:

- 3.1.1 Malaysian to Malaysian AOC Wet Lease: Malaysian air operator to utilise another Malaysian operator's aircraft and its crew (Wet lease within Malaysian operators).
- 3.1.2 Malaysian to Malaysian AOC Dry Lease: Malaysian air operator to utilise another Malaysian operator's aircraft (Dry lease within Malaysian operators); this may be allowed for specific purposes.
- 3.1.3 Malaysian AOC Lease-In: Malaysian air operator to utilise/lease Aircraft and its crew from a foreign operator (Wet lease in) or without crew from Foreign aircraft registry (Dry lease in).
- 3.1.3.1 The maximum allowable period for a lease-in (wet or dry lease) is 12 months after which, the aircraft, if under a foreign registration, must be deregistered and included in the Malaysian Civil Aircraft Registry and the Operator's Ops Specs. For wet lease-in, a one-time extension of an additional 6 months may be approved by the CAAM.
- 3.1.4 Malaysian AOC Damp Lease in: Malaysian air operator to utilise/lease Aircraft and their Flight crew from foreign operator/register (Damp lease in).
- 3.1.4.1 The maximum allowable time period for a damp lease in is 12 months absolute after which, the aircraft, if under a foreign registration, must be deregistered and included in the Malaysian Civil Aircraft Registry and the Operator's Ops Specs.
- 3.1.5 Malaysian Operator to lease out 9M registered aircraft to be operated outside Malaysia (Dry or Wet Lease out).
- 3.1.5.1 The time limit for Dry or Wet Lease out is 12 months, or dependant on the limitations set by the CAA of the State of the Operator. A one-time extension of an additional 12 months may be approved by the CAAM.
- 3.1.5.2 The CAAM will conduct periodic regulatory oversight on the operations of the aircraft and maintenance requirements in accordance with the regulations whilst the aircraft is being operated and maintained in the State of the Operator.
- 3.1.5.3 The CAAM may also enter into a Technical Agreement with the CAA of the State of the Operator to safeguard its interest on the airworthiness status of the aircraft and the competency of the flight crew in the case of long-term wet lease out. (refer to the provisions in Section 6)



- 3.1.5.4 Refer to Section 6.2 for the practice to avail Article 83bis (CAAM or the other State). However, this practice shall be minimised as the process could be laborious and the man hours required for it is huge. Instead, a type of lease that maintains the safety oversight within the CAAM is suggested.



## 4 Leasing applications

### 4.1 Dry Leases

#### 4.1.1 Dry Lease-In

4.1.1.1 Applications for the Dry Lease-in of a Foreign registered aircraft shall include the following minimum information:

- a) aircraft type, model and serial number.
- b) name and address of the registered owner.
- c) registration marks, nationality and state of registration of the aircraft.
- d) routes to be flown.
- e) the period of the lease (start and end date) and whether or not it is proposed to put the aircraft on the Malaysian register in the future.
- f) copy of the lease agreement or description of lease provisions.
- g) the design standard of the aircraft and, in particular, any failure to comply with the applicable airworthiness requirements for certificate.
- h) The proposed arrangements for the continued airworthiness/maintenance of the aircraft. Advice can be obtained from the CAAM Airworthiness Department.
- i) items of equipment not fitted or not in compliance with requirements shall be identified and exemptions applied for. There is no guarantee that such exemptions will be granted.
- j) name and address of the Lessor, if different from the registered owner.
- k) the name of the department or a contact in the Lessor's State of Registry CAA dealing with the lease. The foreign operator may have this information, and
- l) the name of the individual who will act as co-ordinator for the Malaysian operator.

#### 4.1.2 Dry Lease-Out

4.1.2.1 Applications for the Dry Lease-out of a 9M registered aircraft shall include the following minimum information:

- a) aircraft type, model, and serial number.
- b) registration of the aircraft.
- c) name and address of the registered owner and/or Lessor.
- d) name and address of the foreign operator (Lessee).

- e) the period of the lease including ferry flights, if these are done by the foreign operator.
- f) routes on which it is proposed to use the aircraft.
- g) copy of the lease agreement or description of the lease provisions.
- h) MAVCOM Approval.
- i) the arrangements for the maintenance and airworthiness management, during the period of the lease, shall be defined by the Lessor. Any modification required by the foreign operator or regulatory authority will require CAAM approval; and
- j) the number of foreign pilots or flight engineers who require a Validation for their flight crew licence.
- k) The Lessor co-ordinator for the lease and a contact in the foreign regulatory authority who will be dealing with the lease arrangements.

## **4.2 Wet Leases**

### **4.2.1 Wet Lease-In**

4.2.1.1 In order to wet lease-in from a Foreign Operator, the Lessee must first obtain prior approval as follows:

- a) Provide all the information as in Paragraph 4.1.1.1.
- b) Lease approval from the Chief Executive Officer of the CAAM issued under Regulation 115 (1) and (2) of the MCAR.
- c) The Lessor's pilots will be required to hold an ICAO Contracting State pilot licence to be validated in accordance with Regulation 63 (1) and (2) of the MCAR.

### **4.2.2 Wet Lease Out**

4.2.2.1 Regulation 116 (1) of the MCAR requires a Malaysian AOC holder who intends to lease a 9M registered aircraft to a foreign operator shall obtain an approval from the Chief Executive Officer of the CAAM.

4.2.2.2 Thereby, the following requirements apply:

- a) Before the aircraft is wet leased-out, the Malaysian Operator must submit an application to the CEO of the CAAM.
- b) The Malaysian Operator's AOC must cover the areas of operation.

4.2.3 Lease Application – Responsibility for Conduct of Operations.

- 4.2.3.1 For all types of leases, the applications will be reviewed as appropriate, and the CAA of the State of Registry or Operator will be contacted as necessary to verify accuracy and completeness.
- 4.2.3.2 The CAAM will make the determination as to which party is responsible for the conduct of the operation under the lease agreement. To determine this, the responsibilities of the parties under the lease agreement will be considered as follows:
- a) flight crew member licensing and training.
  - b) cabin crew member training.
  - c) airworthiness of the aircraft and the performance of maintenance.
  - d) operational control, including dispatch and flight following.
  - e) scheduling of flight crew and cabin crew members; and
  - f) signing the maintenance release
- 4.2.3.3 In the case of a dry lease, but no delegation of responsibility has been agreed between the CAAM and the CAA of the State of Registry or State of the Operator, the lessee will be required to show that:
- a) the flight crew hold current and valid and appropriate certificates or licences issued or validated by the State of Registry.
  - b) the aircraft will be maintained in accordance with the airworthiness requirements of the State of Registry; and
  - c) the aircraft will be operated in compliance with the applicable regulations of the State of Registry and the CAAM, the operator's AOC, the associated operations specifications and the operations manual and CAME.



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## **5 Due Diligences**

### **5.1 Wet Lease-In**

5.1.1 For Wet lease in, the Operator shall perform their due diligence including an audit. The audit report shall cover at least the following items:

- a) Lessor area of operations meets or exceed the lessee intended area of operations.
- b) Lessor FTL (Flight Time Limitation) meets or exceed the lessee FTL.
- c) Lessor Training meets or exceed the lessee training requirements.
- d) Appropriate aircraft Insurance.
- e) Maintenance arrangements.

### **5.2 Dry Lease-In**

5.2.1 For Dry lease in, the Operator Audit report shall cover at least the following items:

- a) Lessor Aircraft Instrument and Equipment meets or exceed the lessee aircraft Instrument and Equipment requirements.
- b) Maintenance arrangements.
- c) Continuing Airworthiness requirements shall meet the existing Airworthiness Code.

### **5.3 Liability and Protection**

5.3.1 When evaluating the leases, the liability of the CAAM and the protection of the financial interests and assets of the lessor shall be addressed as appropriate.

5.3.2 During the evaluation, the operator having operational control and maintenance control (where applicable) over the aircraft must be determined.

5.3.3 For dry leased aircraft, the Lessee is made responsible for operational control and for wet leased aircraft, the Lessor is made responsible for operational control, unless a written agreement has been entered into by both the CAAM and the CAA of the State of Operator.

### **5.4 Amendments to Operations Specifications**

5.4.1 If the operator plan to lease-in the aircraft for more or equal to 3 months, then the operator shall submit an application for Ops Specs amendment to amend the Paragraph on Leasing.

- 5.4.2 Whenever dry lease in/out is involved and the Malaysian operator is responsible for operational control, all operations shall be conducted in accordance with the Malaysian operator's Operations Specifications.
  - 5.4.3 Scheduled operations conducted under a wet lease arrangement shall not be planned to be conducted to any aerodrome other than those listed in the Malaysian Operator's Operations Specifications.
  - 5.4.4 Non-scheduled or charter operations may be conducted into any suitable aerodrome in accordance with the AOC and Operations Specifications issued by the appropriate State of the Operator.
- 5.5 Other Conditions**
- 5.5.1 The operator shall ensure that the lease agreement approval and a certified true copy of the agreement (if Technical Agreement or Article 83bis involved) to be carried on board the aircraft during the term of the lease.
  - 5.5.2 The operator shall ensure that all relevant documentation affected by the approval of the lease agreement is updated accordingly.

## **6 Leases Requiring Technical Agreement or Transfer of Responsibilities under Article 83 Bis of the Convention**

### **6.1 Leases requiring Technical Agreement**

6.1.1 For Long Term Wet and Dry Lease Out, a Technical Agreement between the CAAM and the CAA of the State of the Operator may be required.

6.1.2 The purpose of the signing of a Technical Agreement with the CAA of the State of the Operator is to coordinate the safety oversight and support of the airworthiness of 9M registered aircraft which are being utilised/based in the territory and airspace of the State of the Operator and maintenance organisation approved by the CAAM based in the State of the Operator.

6.1.3 However, the lease agreement may be implemented in accordance with the lease agreement prior to the finalisation and signing of the Technical Agreement which may take time to complete.

6.1.4 The following shall apply:

- a) Before the aircraft is wet leased-out, the Malaysian Operator must notify the CAAM of its intention to wet lease an aircraft to a foreign operator. The notification shall be forwarded to the Principle FOI.
- b) The Malaysian Operator's AOC must cover the areas of operation.
- c) Submission of an application letter to the CAAM detailing the following information:
  - 1) aircraft type and model.
  - 2) registration(s) of the aircraft.
  - 3) name and address of the foreign operator (Lessee).
  - 4) the period of the lease; and
  - 5) routes to be flown.
- d) In addition, the following documentation shall accompany the application letter:
  - 1) Copy of the lease agreement or description of the lease provisions.
  - 2) A copy of the report on the safety assessment/audit carried out by the lessor on the foreign operator.
  - 3) Air Operator Certificate (AOC) and/or Operating Licence and/or Certificate of Competency issued by the CAA of the State of Operator;
  - 4) Certificate of Registration of the aircraft.
  - 5) Certificate of Airworthiness of the aircraft.
  - 6) Aircraft Noise Certificates.
  - 7) Certificate of Insurance.



- 6.1.5 The contents of the Technical Agreement shall include, but not limited, to the following sub-paragraphs:
- 6.1.5.1 The CAAM and the CAA of the State of the Operator shall assume the responsibilities to fulfil the agreement.
- 6.1.5.2 There shall be no transfer of responsibilities (licensing, rules of the air, maintenance and operations) between the CAAM and the CAA of the State of the Operator.
- 6.1.5.3 The responsibilities of the CAA of the State of the Operator shall include at least the following:
- a) accept licences issued by the CAAM to the flight and maintenance personnel. Attestation of the 'Type Certificate' with specification cards, approved by the CAAM to be acknowledged by the CAA of the State of the Operator.
  - b) depending upon satisfactory compliance with requirements of ICAO Standard and Recommended Practices, meeting requirements of Civil Aviation Regulations of the State of the Operator and Malaysia, issue authorisation to the Malaysian operator and maintenance organisation.
  - c) conduct periodic safety oversight inspections including security arrangements of the Malaysian operator and maintenance organisation in accordance with ICAO Standards and Recommended Practices.
  - d) have the right to monitor and conduct ground (ramp) and cabin inspections as and when required (with prior notice in case of cabin inspections), in order to ensure compliance with relevant Regulations; and
  - e) exchange of report findings with the CAAM for purpose of continuing airworthiness and flight operations requirements.
- 6.1.5.4 The responsibilities of the CAAM shall include at least the following:
- a) provide all possible support to the CAA of the State of the Operator in the investigation of accidents/incidents involving the 9M registered aircraft within the territory of the State of the Operator.
  - b) on the request of the CAA of the State of the Operator, extend all possible consultation and necessary information concerning 9M registered aircraft on maintenance and flight operations.
  - c) provide when requested by the CAA of the State of the Operator with information on results of regular safety oversight inspections performed in respect of the Malaysian operator, maintenance organisation and aircraft airworthiness based in the State of the Operator.



- d) ensure that the Malaysian operator comply with security arrangements according to the State of the Operator and Malaysian Regulations and ICAO Annex 6 and 17 provisions applicable in the State of the Operator and Malaysia.
- e) provide to the CAA of the State of the Operator upon request, the required assistance and consultations on maintenance and flight operations.
- f) the maintenance of 9M registered aircraft in the territory of the State of the Operator shall be carried out by a maintenance organisation certified by the CAAM.
- g) inform the CAA of the State of the Operator prior to the conduct of any audits/inspections on the Malaysian operator and maintenance organisation in the territory of the State of the Operator.
- h) consult the CAA of the State of the Operator for no objection prior to certifying Malaysian operator and/or maintenance organisation intending to be based in the State of the Operator.

6.1.6 For the purpose of coordination, meetings should be conducted between the CAAM and the CAA of the State of the Operator to discuss both operations and airworthiness matters resulting from inspections that have been conducted by respective inspectors. The following subjects may be reviewed during these meetings:

- a) Flight Operations;
- b) Continuing airworthiness surveillance and aircraft maintenance;
- c) Operator Maintenance Control Manual procedures as applicable;
- d) Licensing;
- e) Security;
- f) Flight safety;
- g) Accident and incident investigation; and.
- h) Any other significant matters arising from inspections.

6.1.7 The operator and the maintenance organisation shall be subject to a surveillance schedule on a case by case basis because the CAAM remains responsible for on-going surveillance and needs to ensure that the aircraft is operated and maintained in accordance with CAAM standards, except for cases where a transfer agreement under Article 83bis as described in 6.2 has been reached.

## **6.2 Leases requiring the signing of a MOU involving the transfer of responsibilities under Article 83 bis of the Convention**



- 6.2.1 Article 83bis gives ground for the transfer of certain functions and duties to another State. Nevertheless, before agreeing to transfer any functions, it is the prerogative of the CAAM to decide whether the CAA of the State of the Operator is fully capable of carrying out the functions to be transferred.
- 6.2.2 To accomplished this determination, the CAAM may need to conduct a safety oversight audit by the Departments of Flight operations and Airworthiness on the CAA of the State of the Operator.
- 6.2.3 For a simple lease and limited period, this determination may be accomplished through a review of reports of safety oversight audits conducted either by ICAO, under the Universal Safety Oversight Audit Programme (USOAP), or by another Contracting State.
- 6.2.4 There may be occasions where States are unable to reach agreement on the delegation and acceptance of responsibilities as provided for in Article 83bis or where delegation is not an alternative that is acceptable to the parties involved. In such circumstances the CAAM would retain (respectively refuse) responsibility for maintaining proper surveillance of the leased aircraft.
- 6.2.5 The development of transfer agreement could be very long, it is essential to determine if the agreement can be reached within the time required.
- 6.2.6 The development of a transfer agreement under Article 83 bis between the CAAM and a foreign State shall be dependent on the following:
- 6.2.6.1 The interests of the CAAM and Malaysia are to be upheld and secured when entering into Article 83bis.
- 6.2.6.2 The establishment of such transfer agreement under Article 83 bis will only be done if it is deemed as feasible by the CAAM. CAAM will only enter into any technical agreement if the CAA of the other State has the appropriate legal capability to enter any agreement on its own capacity.
- 6.2.6.3 A transfer of functions and duties can only be initiated with an ICAO contracting State which is a party to Article 83bis.
- 6.2.6.4 If a transfer agreement between Malaysia and the other State already exist, this agreement will be evaluated to determine whether it satisfies the requirements for the new lease agreement approval under processing.
- 6.2.6.5 The transfer agreement shall meet Regulations 115 and 116 of the MCAR.
- 6.2.7 Upon confirmation of the agreement:
- 6.2.7.1 In case of lease-out, the draft of the transfer agreement and a letter of request will be sent to the CAA of the State of the Operator (Lessee) to accept the transfer of certain CAAM functions and duties.



- 6.2.7.2 In case of lease-in, the transfer agreement from the State of Registry will be reviewed accordingly for the CAAM to accept the transfer of certain functions.
- 6.2.7.3 Upon satisfactory review, the transfer agreement will be signed by the CEO of the CAAM and a copy will be sent to the CAA of the State of Registry or State of Operator.
- 6.2.7.4 The Department of Flight Operations and Airworthiness will retain a copy of the transfer agreement.
- 6.2.7.5 The operator shall ensure that a reference to the transfer agreement is made in the aircraft lease agreement.
- 6.2.7.6 The transfer agreement will be registered with ICAO (as per the terms of Article 83bis).
- Note. – Transfer agreements registered with ICAO can be found on the ICAONet, searching for “all signatories” and “Article 83bis” as the subject.*
- 6.2.8 If a transfer agreement is not reached, the operator will be informed that the lease agreement conditions are not acceptable to the CAAM.



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## **7 Termination or extension of lease agreements.**

### **7.1 A lease agreement approval terminates:**

- 7.1.1 as stated in/by the lease agreement; or
- 7.1.2 as specified by CAAM in the lease agreement approval (not longer than 6 months for wet lease-in as per the provisions in Paragraphs 3.1.3.1 and 3.1.4.1; or
- 7.1.3 upon the suspension or cancelation of the aircraft nationality and registration markings; or
- 7.1.4 upon the lessee and lessor certificate's (e.g. AOC) covering the aircraft type are suspended or cancelled; or
- 7.1.5 upon violation of any of the leasing regulations or conditions as specified in the lease authorisation.
- 7.1.6 upon violation of any of the leasing regulations or conditions as specified in the lease authorisation.

### **7.2 Extension of Lease Agreements**

#### **7.2.1 Wet Lease In**

- 7.2.1.1 The lease agreements are up to a maximum of 6 months; however, the approval shall be based on a case by case basis and require an approval from the Chief Executive Officer of the CAAM.

#### **7.2.2 Wet Lease Out**

- 7.2.2.1 After approval of the extension of a long term lease-out agreement, the operator shall be subject to surveillance schedule because the CAAM remains responsible for on-going surveillance and needs to ensure that the aircraft is operated and maintained in accordance with the required standards, except for cases where a transfer agreement under Article 83bis has been reached.



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## 8 Appendices

### 8.1 Appendix 1 – Sample Letter for No Objection of Lease Out

Mr. xxxxx

Chairman of xxAC,

xxxx Civil Aviation Authority

City, Country

Email:

SUBJECT: No Objection Letter to Malaysian Air Operator to operate in [Other State of Operator]

With regards to Malaysian Air Operator agreement with [Foreign State of Operator] AOC Holder to operate the aircraft mentioned below, after reviewing the documents relevant to the Operations and airworthiness aspects, the CAAM would like to express No Objection to the lease agreement, with the following details:

Operating Wet Lease Out:

Between: (Lessor & Lessee)

Period of lease

Proposed Aircraft

Area of Operations: The authorisation will be reflected in Operations Specifications or in Operations Manual part C for Unscheduled operator.

This no objection letter is subject to your acceptance. The CAAM is not delegating its operational control and safety oversight. However, this does not restrict [Foreign State of Operator] to perform inspection as required, for safety related and relevant to area of operations.

Regards,

Xxxxxxx xxxxx

CEO

CAAM

## 8.2 Appendix 2 – Sample Technical Agreement

The Civil Aviation Authority of  
Malaysia

(Civil Aviation Authority)  
(The State of the Operator)

### TECHNICAL AGREEMENT

between

THE CIVIL AVIATION AUTHORITY  
(MALAYSIA)

and

(THE CIVIL AVIATION AUTHORITY)  
(THE STATE OF THE OPERATOR)

concerning safety oversight and support

of

the airworthiness of civil aircraft  
registered in Malaysia which are being utilised/based  
in the territory of the (State of the Operator)

and

maintenance organisations approved by Malaysia  
based in the (State of the Operator)



## I. PREMISES

The Civil Aviation Authority of Malaysia (CAAM) and the Civil Aviation Authority (CAA) of the (State of the Operator);

Desiring to conduct combined regulatory oversight of aircraft registered in Malaysia and operated in the airspace and territory of the (State of the Operator) and maintenance organisations based in the (State of the Operator);

Have agreed as follows:

## II. GENERAL

1. The CAA of the (State of the Operator) and the CAAM shall assume responsibilities to fulfil this agreement.

2. There shall be no transfer of responsibilities (licensing, rules of the air, maintenance and operations) between the CAA of the (State of the Operator) and the CAAM of civil aircraft registered in Malaysia operated under this agreement in the (State of the Operator).

## III. SCOPE OF APPLICATION

3. The scope of this agreement shall be limited to:

a) aircraft on the register of civil aircraft of the CAAM and operated in commercial air transportation in the airspace and territory of the (State of the Operator); and

b) Maintenance organisation approved by the CAAM.

#### IV. RESPONSIBILITIES OF THE CAA OF MALAYSIA

4. Under this agreement, the parties agree that the CAAM shall exercise safety oversight responsibilities in respect of the aircraft specified above and shall ensure that those operations are conducted in accordance with applicable Malaysian Civil Aviation Regulations and Directives:

- a) Personnel Licensing;
- b) Operational Control;
- c) Continuing Airworthiness and Maintenance of Aircraft; and
- d) Accident/Incident Investigation.

5. To this effect, the CAAM shall:

- a) provide all possible support to the CAA of (State of the Operator) in the investigation of accidents/incidents involving aircraft registered in Malaysia within the territory of the (State of the Operator);
- b) on the request of the CAA of the (State of the Operator), extend all possible consultation and necessary information concerning aircraft registered and/or manufactured in Malaysia on maintenance and flight operations;
- c) periodically conduct inspections and provides to the CAA of the (State of the Operator) with information on results of regular safety oversight inspections performed in respect of Malaysian operators, maintenance organisations and aircraft airworthiness based in the (State of the Operator);
- d) ensure that the operator comply with security arrangements according to Annexes 6 and 17 of the Chicago Convention, the (State of the Operator) and Malaysian Regulations applicable in the (State of the Operator) and Malaysia;

- e) give all possible support to the CAA of the (State of the Operator) in order to determine the airworthiness of those aircraft registered in Malaysia and are now based in the (State of the Operator);
  
- f) provide to the CAA of the (State of the Operator) upon request, the required assistance and consultations on maintenance and operations of the aircraft registered in Malaysia based in the (State of the Operator);
  
- g) inform the CAA of the (State of the Operator) prior to the conduct of any audits/inspections on the Malaysian operator and maintenance organisation in the territory of the (State of the Operator).

#### V. RESPONSIBILITIES OF THE CAA OF THE (STATE OF THE OPERATOR)

6. Under this agreement, the parties agree that the CAA of the (State of the Operator) shall:

- a) accept certificates issued by the CAAM to the flight and maintenance personnel. Attestation of the 'Type Certificate' with specification cards, approved by the CAAM would be acknowledged to by the CAA of the (State of the Operator);
  
- b) depending upon satisfactory compliance with requirements of ICAO Standard and Recommended Practices, meeting requirements of Civil Aviation Regulations of the (State of the Operator) and Malaysia, issue authorisation to the Malaysian operator and maintenance organisation;
  
- c) conduct safety oversight inspections including security arrangements of the Malaysian operator and maintenance organisation in accordance with ICAO Standards and Recommended Practices;
  
- d) conduct periodic random inspections of all facets of operations of the Malaysian operator and maintenance organisation;
  
- e) have the right to monitor and conduct ground (ramp) and in-flight inspections and audits as and when required, in order to ensure compliance with relevant Regulations; and

f) exchange of report findings with the CAAM for purpose of continuing airworthiness and flight operations requirements.

## VI. COMBINED RESPONSIBILITIES

7. Under this agreement, the parties agree that the CAAM and the CAA of the (State of the Operator) shall:

a) participate in joint actions (combined audits) having the objective of ensuring the safety oversight of those aircraft registered in Malaysia and now based in the (State of the Operator); and

b) coordinate effort in the field of safety, airworthiness and aviation security in respect of those aircraft registered in Malaysia.

## VII. CO-ORDINATION

8. Meetings between the CAAM and the CAA of the (State of the Operator) will be arranged as necessary to discuss both operations and airworthiness matters resulting from inspections that have been conducted by respective inspectors. The following subjects may be reviewed during these meetings:

- Flight Operations;
- Continuing airworthiness surveillance and aircraft maintenance;
- Operator Maintenance Control Manual procedures as applicable;
- Licensing;
- Security;
- Any other significant matters arising from inspections.



VIII. FINAL

9. This agreement shall enter into force on its date of signature, and shall be valid until its cancellation. The Parties shall agree any modification to this agreement in writing.

10. The content of the general arrangement and their appendices may be amended by written agreement signed by the two Parties and shall be an integral part of this agreement.

11. This agreement is done in duplicate in Putrajaya, Malaysia on (date) in Bahasa Malaysia and the English language. All texts are equal. In case of divergence of interpretation of the provisions of this agreement, the parties will use the version in English.

12. This agreement is accepted and signed by:

MALAYSIA  
For the CAAM

(STATE OF THE OPERATOR)  
For the Civil Aviation Authority

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XXX  
Chief Executive Officer

---

XXX  
Director General

Dated: (date) Place: Putrajaya

Dated: (date) Place: XXX



Attachments: Schedule 1 – Aircraft affected by this Agreement

Schedule 1

List of Malaysian Aircraft and Operators Authorised to be based in the (State of the Operator)

Operator	Aircraft Type	Registration Mark	Serial Number
XXX	XXX	9M-XXX	XXX

Schedule 2

List of Maintenance Organisations

Maintenance Organisation	Principle Base
XXX	XXX

### 8.3 Appendix 3 – Sample MOU under Article 83 bis

WHEREAS the Protocol relating to Article 83bis of the Convention on International Civil Aviation (Chicago, 1944) (hereinafter referred to as "the Convention"), to which [State 1] and [State 2] are parties, entered into force on (date);

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

WHEREAS, in line with Doc 9760 (Airworthiness Manual), Volume II, Part B, Chapter 10, and in light of Doc 8335 (Manual of Procedures for Operations Inspection, Certification and Continued Surveillance), Chapter 10, it is necessary to establish precisely the international obligations and responsibilities of [State 1] (State of Registry) and [State 2] (State of the Operator) in accordance with the Convention;

WHEREAS, with reference to the relevant Annexes to the Convention, this Agreement organises the transfer from [State 1] to [State 2] of responsibilities normally carried out by the State of Registry, as set out in Sections 3 and 4 below;

The Government of [State 1], represented by its [Civil Aviation Authority], and

The Government of [State 2], represented by its [Civil Aviation Authority],

Hereinafter referred to as "the Parties", have agreed as follows on the basis of Articles 33 and 83bis of the Convention:

Article I: Scope;

Section 1;

[State 1] shall be relieved of responsibility in respect of the functions and duties transferred to [State 2], upon due publicity or notification of this Agreement as determined in paragraph (b) of Article 83bis.

Section 2;

The scope of this Agreement shall be limited to [types of aircraft] on the register of civil aircraft of [State 1] and operated under leasing arrangement by [operator], whose principal place of business is in [State 2].

The list of aircraft concerned, identified by type, registration number and serial number, is reproduced in Attachment 1, which also indicates the term of each leasing arrangement.

Article II: Transferred responsibilities

Section 3;

Under this Agreement, the Parties agree that [State 1] transfers to [State 2] the following functions and duties, including oversight and control of relevant items contained in the respective Annexes to the Convention:

- Annex 1: Personnel licensing, issuance and validation of licenses.
- Annex 2: Rules of the Air, enforcement of compliance with applicable rules and regulations relating to the flight and manoeuvre of aircraft.

Annex 6: Operation of Aircraft (Part I; International Commercial Air Transport/Airplanes), all responsibilities which are normally incumbent on the State of Registry. Where responsibilities in Annex 6, Part I, may conflict with responsibilities in Annex 8: Airworthiness of Aircraft, allocation of specific responsibilities is defined in Appendix 2.

Section 4;

Under this Agreement, while [State 1] shall retain full responsibility under the Convention for the regulatory oversight and control of Annex 8 "Airworthiness of Aircraft", the responsibility for the approval of line stations used by the [operator], which are located away from its main base, is transferred to [State 2]. The procedures related to the continuing airworthiness of aircraft to be followed by the [operator] shall be contained in the operator's maintenance control manual (MCM). Appendix 2 hereunder describes the responsibilities of the Parties regarding the continuing airworthiness of aircraft.

Article III: Notification

Section 5;

Responsibility for notifying directly any States concerned of the existence and contents of this Agreement pursuant to Article 83bis(b) rests with [State 2] as the State of the Operator, as needed. This Agreement, as well as any amendments to it, shall also be registered with ICAO by [State 1] as the State of Registry or [State 2] as the State of the Operator, as required by Article 83 of the Convention and in accordance with the Rules for Registration with ICAO of Aeronautical Agreements and Arrangements (Doc 6685).

Section 6;

A certified true copy of this Agreement shall be placed on board each aircraft to which this Agreement applies.

Section 7;

A certified true copy of the air operator certificate (AOC) issued to [operator] by [State 2], in which the aircraft concerned shall be duly listed and properly identified, shall also be carried on board each aircraft.

Article IV: Coordination

Section 8;

Meetings between [State 1-CAA] and [State 2-CAA] shall be held at one month intervals to discuss both operations and airworthiness matters resulting from inspections that have been conducted by respective inspectors. For the sake of enhanced safety, these meetings shall take place for the purpose of resolving any discrepancies found as a result of the inspections and in order to ensure that all parties are fully informed about the [operator's] operations. The following subjects shall be among those reviewed during these meetings:

- Flight operations
- Continuing airworthiness and aircraft maintenance
- Operator's MCM procedures, if applicable





- Flight and cabin crew training and checking
- Any other significant matters arising from inspections

Section 9;

Subject to reasonable notice, [State 1-CAA] shall be permitted access to [State 2-CAA] documentation concerning [operator] in order to verify that [State 2] is fulfilling its safety oversight obligations as transferred from [State 1].

Section 10;

During the implementation of this Agreement, and prior to any aircraft subject to it being made the object of a sub-lease, [State 2], remaining the State of the Operator, shall inform [State 1]. None of the duties and functions transferred from [State 1] to [State 2] may be carried out under the authority of a third State without the express written agreement of [State 1].

Article V: Final Clauses

Section 11;

This Agreement shall enter into force on its date of signature, and come to an end for aircraft listed in Attachment 1 at the completion of the respective leasing arrangements under which they are operated. Any modification to the Agreement shall be agreed by the parties thereto in writing.

Section 12;

Any disagreement concerning the interpretation or application of this Agreement shall be resolved by consultation between the Parties.

Section 13;

In witness thereof, the undersigned directors of civil aviation of [State 1] and [State 2] have signed this Agreement.

For the Government of [State 1]

For the Government of [State 2]

Signature;

Signature;

Name:

Name:

Title, place and date

Title, place and date

## Schedule 1

Aircraft Type	Registration	Serial Number	Leasing Term
XXX	XXX	XXX	XXX

## Schedule 2

## Responsibilities of States

ICAO Doc	Subject	State of Registry	State of the Operator
XXX	XXX	XXX	XXX