CHAPTER 43

EVALUATION AIRCRAFT LEASE/INTERCHANGE AGREEMENT

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1.0 OBJECTIVE.

This chapter provides guidance for evaluating aircraft leases and interchange agreements for Nigeria certificated operators. Reference: ICAO Document 8335-AN/879 Chapter 10 and Nig. CARs Part 9.2.3.1, 9.2.3.2, 9.2.3.3 and 9.2.3.4.

2.0 GENERAL

A. Definitions

(1) *Lease:* Any agreement by a person (the lessor) to furnish an aircraft to another person (lessee) to be used for compensation or hire purposes.

(2) *Dry Lease:* Any agreement in which a lessor, (which could be an air carrier, bank, or leasing company) leases an aircraft without flight crewmembers to an air carrier (the lessee), and in which the lessee maintains operational control.

(3) *Wet Lease:* Any agreement in which a lessor, (Nigeria air carrier only), leases an aircraft, with at least one pilot flight crewmember, to either a Nigeria air carrier, foreign air carrier, or a foreign person (the lessee).

(4) *Damp Lease:* When an aircraft is wet leased with only a partial crew, the provisions of section 24 (3) and 26 (3) of this Part shall apply in respect of the crew, while the provisions of section 24 (2) and 26 (2) of this Part shall apply in respect of the crew provided by the lessee.

(5) *Interchange Agreement:* Any agreement between operators (Nigerian and foreign) in which the operational control of an aircraft is transferred for short periods of time from one operator to another. With this type agreement, the latter Operator assumes responsibility for the operational control of the aircraft at the time of transfer.

(6) *Operational Control:* Operation of aircraft

(7) *Lessee:* The party using the aircraft under the provisions of a lease

(8) *Lessor:* The party furnishing the aircraft under a lease

B. *Determining Operational Control of a Dry-Leased Aircraft.* Normally, operational control of any dry-leased aircraft rests with the lessee. In most dry lease agreements, the lessor is a bank of either a leasing or a holding company. In neither case will the

lessor have the operational expertise, the facilities, or the desire to assume responsibility and liability for controlling the day-to-day operations of the aircraft.

C. *Determining Operational Control of Wet-Leased Aircraft.* The fact that the NCAA characterizes a lease as a wet lease does not necessarily make the lessor responsible for operational control. When Legal Unit determines who has operational control, the AOC Certification and Surveillance Unit of DAWS must be advised by letter. The AOC Certification and Surveillance Unit must make this letter a matter of record in the operator's office file.

D. Other Factors in Determining Operational Control of Leased Aircraft

(1) Nig. CARs Parts 9 provides that the NCAA shall determine if a person has operational control if that person exercised authority and responsibility for a specified number of operational functions. This could include scheduling flights and crewmembers, initiating flights, and terminating flights.

(2) Regulation 9.2.3.4 and IS 9.2.3.4 of the Nigeria Civil Aviation Regulations provides that the Lessee has operational control considering the extent and control of certain operational functions such as –

a) Initiating and terminating flights;

b) Maintenance and servicing of aircraft;

c) Scheduling crew members;

d) Paying crew members; and

e) Training crew members;

(3) In cases where there is doubt or controversy over who exercises operational control, the Legal Unit may consider additional factors, such as who is responsible for maintenance, servicing, and crewmember training.

3.0 INTERCHANGE AGREEMENTS

A. An interchange agreement is a form of dry lease agreement. It allows an air carrier to dry lease aircraft to another air carrier for short periods of time.

B. Occasionally, important details may be overlooked unless interchange conditions are closely monitored. Equipment variances can be potentially dangerous unless effective training or corrective action is taken before operations begin. For example, life rafts or an emergency radio might be improperly stowed during over-water flights on aircraft that have no provisions for their stowage, thus creating a hazardous condition in turbulent weather.

4.0 NCAA RESPONSIBILITIES

A. *Determine UNIT Responsibility.* Approval of the operations specifications is the responsibility of the AOC Certification and Surveillance Unit, assigned to the operator exercising operational control of the aircraft. This determination must be made by reviewing the specific assignment of operational control listed on the lease/interchange

agreement by the NCAA Legal Unit.

B. *Review the Lease.* An aircraft lease/interchange agreement is reviewed to determine if all of the responsibilities of the lessor/lessee are described. The inspector must ensure that the lease/interchange contains all effective dates and provisions required by regulation. Those items not required by regulation must be reviewed to determine their applicability and compatibility with the regulatory requirements.

The aircraft lease agreement must include as a minimum, the following details;

a) Details of the lessor and lessee: The aircraft identity by make/model, nationality, registration number and manufacturer's serial number;

b) The effective dates of the lease;

c) The identity of the person having operational control;

d) The identity of the person having maintenance control;

e) The State of Registry and the airworthiness regulations under which the aircraft will be maintained;

f) Responsibilities for the carrying out of the maintenance in accordance with Airworthiness regulations;

g) Responsibilities for keeping the maintenance records of the aircraft in accordance with Airworthiness regulations; and

h) The maintenance/inspection programme, including the system of maintenance that will be utilized.

C. *The Lessor's Operator's Manual.* The lessor's manual must be reviewed for the following:

(1) The continuous airworthiness maintenance program, for the aircraft, engines, propellers (if applicable), and appliances

(2) The maintenance reliability program, if applicable

(3) A training program for the maintenance personnel on the aircraft

(4) Fueling procedures for the aircraft

(5) Provision for use of an approved Minimum Equipment List (MEL)

(6) Provisions for leasing the aircraft to the lessee

D. *The Lessee's Operator's Manual.* The lessee's manual must be reviewed for the following:

(1) To determine if the manuals provide adequate procedures and guidance for incorporating leased aircraft into its operating system

(2) Procedures for the use of the lessor's continuous airworthiness maintenance program, for the aircraft, engines, propellers (if applicable), and appliances

(3) Procedures for the use of the maintenance reliability program, if applicable

(4) Procedures in the maintenance training program that are adequate to provide for configuration differences, if the aircraft is maintained under the lessor's maintenance program

(5) Fueling procedures for the aircraft
(6) Provisions for use of an approved MEL

E. *Aircraft Maintenance Records.* The lessor will maintain the aircraft maintenance record and ensure that the items required to be inspected, repaired, or overhauled are addressed in those records.

F. *Aircraft Conformity Inspections.* Aircraft conformity inspections are conducted to ensure that:

(1) Differences between aircraft already in a lessee's fleet and aircraft being leased are noted. These differences must be addressed with:

- Amendments to the lessee's operations specifications
- Revisions to the lessee's maintenance manual

(2) Configuration of the aircraft meets the regulatory requirements of the intended operation

G. NCAA must notify the Authority of the State of the Lessor of its intention to issue a lease approval and any condition(s) attached to the approval.

H. The lessor will be asked to submit the following information regarding the lease needed for making proper determination of operational control:

(1) A copy of his Air Operator Certificate;
(2) A copy of his Operations Specifications;
(3) A list of the aircraft registration of all the aircraft which will be used in the wet lease operations;
(4) A list of flight crew member names, licence numbers and licence validity date. Flight crew members must hold an appropriate licence, or have their licence validated by the state of the aircraft registry.
(5) A list of names of all maintenance personnel who will be maintaining the aircraft during the period of the lease. Maintenance personnel must hold an appropriate licence, or have their licence validated by the state of the aircraft registry
(6) Name of contact person at lessor's Civil Aviation Authority;
(7) Official letter from the lessor's CAA to the Authority that they are aware of the leasing arrangements and assume responsibility for the operations under ICAO Annexes 1, 6 and 8;
(8) A copy of the lease agreement with details of the lease and including a clear statement that the lessor maintains operational control.

5.0 PREREQUISITES AND COORDINATION REQUIREMENTS

A. Prerequisites

- Knowledge of the regulatory requirements of Nig. CARs Parts 8 and 9
- Successful completion of Airworthiness Inspector's Indoctrination Course for General Aviation and Air Carrier Inspections, or previous equivalent

B. *Coordination.* This task requires coordination among maintenance, avionics, and operations Aviation Safety Inspectors (ASIs). Regional coordination will also be required.

6.0 REFERENCES, FORMS, AND JOB AIDS

A. References

- Evaluate Nig. CARs Part 8 Operator's Maintenance Records, and Nig. CARs Part 9 Operations Specifications

B. Checklist/Forms

- NCAA Operations Specifications forms
- Lease Agreement Checklist CL: O-AWS043

7.0 PROCEDURES FOR LEASE AGREEMENTS

A. *The assigned inspector determines if a Lease Agreement has Occurred.* Request a copy of the lease or lease memorandum.

(1) Determine which UNIT(s) should be involved in the evaluation of the lease agreements.

(2) Determine UNIT PMI responsibility. If more than one UNIT is involved, determine which PMI will be responsible for approving the operations and maintenance portions of the operations specifications.

(3) Determine that the lessee has in-house capability to oversee the type of operation it intends to make wet lease arrangement for. i.e. scheduled opeations)

B. The inspector reviews the Lease to ensure that:

(1) The lessor and lessee are properly identified on the lease

(2) The lease is signed by the appropriate personnel in both the lessor's and the lessee's organizations

(3) All strikeovers, erasures, and corrections are initialed by both the lessor and the lessee

(4) The aircraft subject to the lease agreement are identified by aircraft make and model, registration number, and serial number

(5) The effective dates of the lease are identified

(6) Operational control is specifically designated

(7) Responsibilities for performing maintenance release are specifically designated

(8) Responsibilities for ensuring AD compliance are specifically designated.

(9) Responsibilities for keeping aircraft maintenance records are specifically designated

(10) Maintenance programs task completion (lessee's or lessor's) that will be utilized are specifically designated

C. *Review the Lessee's Manuals.* Ensure that the manual includes the following:

(1) Procedures adequate to incorporate the leased aircraft into his operating system, i.e., aircraft acceptance checks, etc.

(2) Provisions in the maintenance training program to account for any differences in the configuration of the leased aircraft from the existing fleet

(3) A program that is adequate to provide for configuration differences if the aircraft is to be maintained under the lessee's maintenance program

(4) A Minimum Equipment List (MEL) that is applicable to the leased aircraft

D. Review the Aircraft Maintenance Records.

E. *Perform an Aircraft Conformity Inspection.* After performing the inspection, review the results to ensure that the differences between the leased aircraft and the aircraft already in operation are identified and will be addressed in operation specifications and the lessee's maintenance manual.

8.0 PROCEDURES FOR INTERCHANGE AGREEMENTS

A. *The inspector reviews the Agreement and* ensures that:

(1) The operator submits a written agreement or memorandum of the interchange agreement

(2) The aircraft subject to the interchange agreement are identified by aircraft make and model, registration number, and serial number

(3) The effective dates/times of the interchange are identified

(4) Operational control is specifically designated

(5) Responsibilities for performing maintenance are specifically designated

(6) Responsibilities for keeping aircraft maintenance records are specifically designated

(7) The maintenance program to be utilized is designated

(8) All strikeovers, erasures, and corrections are initialed by both parties to the agreement

(9) The interchange agreement or memorandum provides for all differences in aircraft configuration due to the operating or maintenance requirements of both operators

B. *Review the Lessor's Operator's Manual.* Review the following:

1) The continuous airworthiness maintenance program, for the aircraft, engines, propellers (if applicable), and appliances

(2) The maintenance reliability program, if applicable

(3) A training program for the maintenance personnel on the aircraft

(4) Fueling procedures for the aircraft

(5) Provision for use of an approved MEL

(6) Provisions for leasing the aircraft to the lessee

C. *Review the Lessee's Operator's Manual.* Review for the following:

(1) To determine if the manuals provide adequate procedures and guidance for incorporating leased aircraft into its operating system

(2) Procedures for the use of the lessor's continuous airworthiness maintenance program, for the aircraft, engines, propellers (if applicable), and appliances

(3) Procedures for the use of the maintenance reliability program, if applicable

(4) Procedures in the maintenance training program that are adequate to provide for configuration differences, if the aircraft is maintained under the lessor's maintenance program

(5) Fueling procedures for the aircraft

(6) Provisions for use of an approved MEL

D. *Analyze the Findings.* Evaluate all deficiencies to determine what corrections will be required.

E. *Schedule a Meeting.* If deficiencies are discovered during the evaluation, advise the

operator/applicant. Schedule a meeting with the operator/applicant to discuss the problem areas, if necessary.

9.0 TASK OUTCOMES

A. Completion of this task will result in one of the following:

(1) Approval of the agreement by accomplishing the following:

- Sending a letter to the operator indicating acceptance of the agreement
- Approval of operations specifications in accordance with Nig. CAR Part 9.

(2) Disapproval of the agreement by sending a letter to the operator/applicant listing the reasons for disapproval

B. *Document Task.* File all supporting paperwork in the operator/applicant's office file.

10.0 FUTURE ACTIVITIES

Normal surveillance.