

KINGDOM OF BAHRAIN
Ministry of Transportation
and Telecommunications



مملكة البحرين
وزارة المواصلات والاتصالات

CIVIL AVIATION PUBLICATION

CAP 06

LEASING & CHARTER ARRANGEMENTS

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CAP 06

LEASING & CHARTER ARRANGEMENTS

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1. INTRODUCTION

1.1 Background

The purpose of this CAP on lease and charter arrangements, and other aspects of cooperation between operators, is to assist operators, who propose to act as a lessor or lessee or otherwise cooperate with another operator. These practices are economically driven and advantageous to operators. However, the CAA is responsible to ensure that safety takes precedence over any economic issues presented by the operator.

As leasing may involve all CAA Sections, it is important that any application (ALD/AIR/F038) is submitted as soon as possible otherwise delays may result.

Note: It would be advisable to notify/apply to the CAA prior to the lease being signed as the regulatory process may determine the lease is not acceptable or impose further requirements

1.2 General Requirements

- (a) Prior to initiating and/or considering an aircraft lease in, the lessee/operator should ensure that the safety standards and their implementation by the lessor/AOC holder (including its State of Registry) in respect of maintenance and operations are equivalent to that of CAA.
- (b) In the opinion of the Bahrain CAA, the lease must be in the public interest.
- (c) Private aircraft cannot be leased to a Bahraini operator unless registered in the Transport Category on the Certificate of Airworthiness.
- (d) Transport Category aircraft can be leased to a private operator.
- (e) The lease agreement document must ensure:
 - (1) the lessor and lessee are properly identified;
 - (2) the aircraft subject to the lease agreement is identified by aircraft make and model, registration number and manufacturer's serial number;
 - (3) the effective dates of the lease are properly identified;
 - (4) the person having operational control is specifically identified;
 - (5) the State of Registry, the applicable airworthiness code and the regulations under which the aircraft will be maintained are identified;
 - (6) the responsibilities for the accomplishment of maintenance in accordance with the designated regulations are specifically identified;
 - (7) the responsibilities for keeping the aircraft maintenance records in accordance

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with the designated regulations are specifically identified;

- (8) the maintenance/inspection programme that will be utilized is specifically identified; and
 - (9) the lessor and lessee clearly identify a coordination mechanism, periodic meetings may be arranged to ensure that the continuing airworthiness of the aircraft is maintained;
 - (10) include the routes on which it is proposed to operate, including a description of the operation;
 - (11) the organisation which will maintain the aircraft is identified;
- (f) all maintenance approvals held by the maintenance organisation must be provided;
 - (g) the lease agreement shall be carried in the aircraft; and
 - (h) the CAA shall be notified at the termination of the lease.

1.3 Definitions

The term “**lessor**” means the party from which the aircraft is leased.

The term “**lessee**” means the party to which the aircraft is leased.

A “**dry lease**” is understood to be the lease of an aircraft where the aircraft is operated under the AOC of the lessee. It is normally 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 airline designator code and traffic rights.

A “**wet lease**” is generally understood to be a lease of an aircraft where 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 airline designator code and traffic rights. Some authorities define a wet lease as the lease of an aircraft with at least the flight crew, while other authorities define a wet lease as the lease of an aircraft with at least one crew member, or the lease of an aircraft with an entire aircraft crew (flight and cabin crew members).

A “**damp lease**” is generally understood to be a wet lease of an aircraft where the aircraft is operated under the AOC of the lessor, with the flight crew and possibly part of the cabin crew being provided by the lessor. Part or all of the cabin crew could be provided by the lessee. In such case, the State of the Operator should ensure that both the flight and cabin crew are trained to use common communications and emergency procedures and that the cabin crew receives appropriate training.

“**Codesharing**” is a marketing arrangement under which an airline places its designator code on a flight operated by another airline, and sells and issues tickets for that flight.

“**Franchising**” is a commercial arrangement that involves a franchiser operator granting a

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franchise or right to use various of its corporate identity elements (such as its flight designator code, livery and marketing symbols) to a franchisee operator to market or deliver the latter's air service products, typically subject to standards and controls intended to maintain the quality desired by the franchiser.

1.4 Application

For all leases, the applicant or operator must provide the CAA with the following information using Form ALD/AIR/F038:

- (a) the aircraft type, model and serial number;
- (b) the name and address of the registered owner;
- (c) State of Registry, nationality and registration marks;
- (d) Certificate of Airworthiness;
- (e) Certificate of Registration;
- (f) Air Operator Certificate
- (g) Certificate of Insurance;
- (h) Radio Station Licence;
- (i) Noise Certificate;
- (j) MEL approval letter;
- (k) Operations Manual approval letter;
- (l) current Maintenance Programme approval;
- (m) any other documentation such as ADs and modification status;
- (n) a statement from the registered owner that the aircraft fully complies with the airworthiness requirements of the State of Registry;
- (o) a Lease No Objection letter from the State of Registry indicating that the lease will not affect the registration and Certificate of Airworthiness of the aircraft;
- (o) name, address and signature of lessee or person responsible for operational control of the aircraft under the lease agreement, including a statement that such individual and the parties to the lease agreement fully understand their respective responsibilities under the applicable regulations;
- (p) name, address and signature of lessee or person responsible for maintenance control of the aircraft under the lease agreement, including a statement that such individual and the parties to the lease agreement fully understand their respective responsibilities under the applicable regulations;

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- (q) copy of the lease agreement or description of lease provisions;
- (r) any differences from the requirements prescribed in ANTR Subparts K and L;
- (s) areas of operation; and
- (t) any other documentation considered necessary to process the application.

1.5 Records and documentation

Documentation must be provided to establish the national regulations under which the maintenance and operation of the aircraft have been carried out. This should also include, where applicable, details of any deviations from, or exemptions issued against, those regulations. Prior to initiation of the lease, representatives of both parties should coordinate the scope and content requirements of the technical logs and the aircraft journey log book that will eventually be required upon aircraft return or further transfer. The governing record-keeping regulation under which the aircraft records should be maintained should be determined prior to initiation of the lease or transfer.

All aircraft records should be maintained in the English language. If another language was used a translation to the English language may be required at the time of transfer. Documentation requirements for incoming components and parts should be identified in the operator's manual to support its purchasing and receiving inspection functions. This includes, but is not limited to, documentation of AD compliance, time on life-limits, descriptions of work performed and certification of new and repaired parts. Once these requirements are satisfied and the essential information is entered into the operator's records system, the only source documentation required to be retained is that necessary to:

- (a) satisfy the requirements of the CAA;
- (b) support the operator's continuing analysis and surveillance system; and
- (c) support future maintenance on the affected parts.

Operators must retain or archive documentation of AD compliance, life-limited part service times and other information which may be useful in the future. The CAA will determine the specific data required as part of a maintenance record. An operator is normally not required to retain actual work documents to show accomplishment of the work on a given airframe, engine, propeller, rotor or appliance in order to document AD compliance unless such records are otherwise called for by the requirements of the existing State of Registry.

When an aircraft, airframe, engine, propeller, rotor or appliance is leased, the associated records should be transferred as if the transaction were a sale. By agreement between the lessee and the lessor, some records, such as work cards and inspection records, may be retained by the owner; however, the lessee has a responsibility to review the records retained by the owner and to ensure that the summary information used to support the airworthiness of the item is complete and accurate.

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1.6 Charges

Charges for the assessment of aircraft charter, lease or sub-lease agreements are required to be paid to the Bahrain CAA by the operator, prior to the assessment of the agreement.

2. DRY LEASE

2.1 General

Under most dry lease agreements the lessee, who provides the crew, is the accountable party who exercises operational control over the aircraft with all the attendant responsibilities.

If the lessee does not have operational control of the leased aircraft under the lease agreement, the CAA needs to carefully evaluate the arrangements to ensure that the operation can be conducted with an adequate level of safety in accordance with the applicable regulations.

After careful review of the information contained in the application by all applicable Sections, and liaison as necessary with other competent authorities, the CAA will make the determination as to which party to the lease agreement is in fact responsible for the conduct of the operation.

2.2 Dry Lease In – General

The ANTR-OPS 1.165 state, for dry lease in, that;

- (a) An operator shall not dry lease-in an aeroplane from an entity unless approved by the Authority. Any conditions which are part of this approval must be included in the lease agreement.
- (b) An operator shall ensure that, with regard to aeroplanes that are dry leased-in, any differences from the requirements prescribed in Subparts K, L, and/or ANTR M, are notified to and are acceptable to the Authority.”

2.3 Dry Lease In (Bahraini Registered Aircraft)

If the dry lease arrangement is between Bahraini operators with Bahraini registered aircraft and is acceptable to the CAA, the operations manual and/or the operations specifications will be amended to provide at least the following data:

- (a) names of the parties to the lease agreement and the duration thereof;
- (b) nationality and registration marks of each aircraft involved in the agreement;
- (c) type of aircraft to be used;
- (d) areas of operation; and

2.4 Dry lease in (Foreign Registered Aircraft)

In this case it is desirable for the State of Registry and the CAA to enter into agreement

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regarding the transfer of all or part of the functions, duties or responsibilities of the State of Registry under the Convention, if possible under its national laws, to the CAA.

- (a) Where a dry lease has been agreed, the lessee should be required to show that:
 - (1) the flight crew hold current valid and appropriate certificates or licences issued or validated by the State of Registry;
 - (2) the aircraft will be maintained in accordance with the airworthiness requirements of the State of Registry; and
 - (3) the aircraft will be operated in compliance with the applicable regulations of the State of Registry and the CAA, the operator's AOC, the associated operations specifications and the operations and maintenance control manuals.
- (b) The aircraft;
 - (1) must have a standard Certificate of Airworthiness (C of A), or equivalent, issued in respect of the aircraft by the State of Registry;
 - (2) must conform with the Type Certificate issued in respect of the aircraft type or other equivalent standard acceptable to the Bahrain CAA;
 - (3) must be operated in accordance with a Minimum Equipment List (MEL), which is acceptable to the Bahrain CAA;
 - (4) must be maintained in accordance with the applicable airworthiness standards and certified in accordance with rules and regulations which are acceptable to the Bahrain CAA; and
 - (5) must be maintained to a Maintenance Programme acceptable to Bahrain CAA.
- (c) The lease authorisation must be carried on board the aircraft during the term of the lease.

2.5 Dry Lease Out - General

The ANTR-OPS 1.165 state, for dry lease out, that an operator may dry lease-out an aeroplane for the purpose of commercial or private air transportation to any operator of a State which is signatory to the Chicago Convention provided that the following conditions are met:

- (a) The Authority has exempted the operator from the relevant provisions of ANTR OPS 1 and, after the foreign regulatory authority has accepted responsibility in writing for surveillance of the maintenance and operation of the aeroplane(s), has removed the aeroplane from its AOC; and
- (b) The aeroplane is maintained according to an approved maintenance programme.”

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2.6 Dry Lease Out (Bahraini Operators)

If the dry lease arrangement is between Bahraini operators and is acceptable to the CAA, the operations specifications should be amended to remove the aeroplane from one operator's AOC and placed on the AOC of the other.

2.7 Dry Lease Out (Foreign Operator)

In cases where the dry lease is with a foreign operator it is desirable for the CAA and State of Operator to enter into agreement regarding the transfer of all or part of the functions, duties or responsibilities as provided by Article 83 *bis*, provided the State of Operator has ratified that Article.

Where a dry lease out has been agreed, the lessee should be required to show that:

- (a) the flight crew hold current valid and appropriate certificates or licences issued or validated by the CAA;
- (b) the aircraft will be maintained in accordance with the airworthiness requirements of the CAA; and
- (c) the aircraft will be operated in compliance with the applicable regulations of the CAA, and the State of the Operator, the operator's AOC, the associated operations specifications and the operations and maintenance control manuals.

3. WET LEASE

3.1 General

In wet leases the lessor normally exercises operational control of the aircraft. A wet lease situation therefore means that an aircraft will be operated under an AOC issued by the State of the lessor. In this case the State of the Operator may also be the State of Registry of the leased aircraft. The terms of a wet lease agreement are important, since they may obscure the true relationship between, and the obligations of, the parties to the agreement. Additional information may be needed to be examined by the respective authorities responsible for monitoring the operation of the wet leased aircraft. The final determination of responsibility for the exercise of operational control will depend upon a careful examination of all the factors in the particular situation.

3.2 Determination of Responsibility for Operational Control and Safety

Normally the decision as to whether the lessor or the lessee is responsible for the safety of the operation will be made by the Director Aeronautical Licensing on the advice of the Chiefs of Airworthiness & Aircraft Operations. Consultation and co-ordination with counterparts from the State of the Operator of the lessor of the aircraft, who are assigned to work with the lessor, are most important in this decision process. The decision to be made is whether the aircraft should be operated under the lessor's AOC and associated operations specifications, or whether it should be operated under the authority of the lessee. The usual determination is that if a party, the lessor, leases an aircraft to another and also provides the flight crew, maintenance and fuel for the aircraft, the lessor of the aircraft is regarded as the operator.

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If the lessor makes a charge for the use of the aircraft and related service, the operation of the aircraft will be subject to the applicable regulations of the State of the Operator of the lessor.

Operational control of the aircraft may be the responsibility of the lessor even though the lease may be characterized in terms similar to those of a dry lease, expressly stating that services such as flight following, communications, weather information, etc. are to be performed by the lessee. In some instances, it is therefore necessary to examine the manner in which the operations are to be conducted, to determine which party to a lease will actually have operational control and hence responsibility and accountability for safety.

3.3 Short Term Wet Lease, Charter or Sub-Charter

Some wet leasing operations, charters or sub-charters, are organised for short terms at very short notice, for example, where an operator wishes to replace an unserviceable aircraft on a particular service and is forced to contract with another operator for that service to be operated.

The CAA may consider a request from operators to provide lists of approved lessors and lessees to facilitate such short term leases or charters. In the case of short term wet lease, charter or sub-charter, the lessor will retain all responsibilities and operational control.

3.4 Wet Lease In

The ANTR-OPS 1.165 states, for wet lease in, an operator shall not wet lease-in an aeroplane from an entity without the approval of the Authority. In addition, an operator shall ensure that, with regard to aeroplanes that are wet leased-in:

- (a) The safety standards of the lessor with respect to maintenance and operation are equivalent to ANTRs;
- (b) The lessor is an operator holding an AOC issued by a State which is a signatory to the Chicago Convention;
- (c) The aeroplane has a standard Certificate of Airworthiness issued in accordance with ICAO Annex 8.
- (d) the lease agreement;
 - (1) must be authorised by the foreign operator's Civil Aviation Authority; and
 - (2) any requirement made applicable by the lessee's Authority is complied with.

In addition, unless otherwise agreed by the CAA,

- (a) the lessee audits the operation of the lessor to confirm compliance with operating and aircrew training standards equivalent to ANTR OPS 1/3 maintenance standards equivalent to ANTR 145, and aircraft certification standards in ANTRs; and
- (b) For the duration of the lease, the flight and duty time limitations and rest

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requirements used by the lessor are not more permissive than apply in ANTR-OPS, Subpart Q.

- (c) Lessors, when first approved by the Authority, and any revalidations, remain valid for a period not exceeding 12 months.

3.5 Wet Lease Out

The ANTR-OPS 1.165 states, for wet lease out, that an operator providing an aeroplane and complete crew to another entity and retaining all the functions and responsibilities prescribed in ANTR Subpart C, shall remain the operator of the aeroplane.

The CAA would retain full responsibility for oversight and confirmation of this responsibility must be agreed with the foreign operator's civil aviation authority.

For operations, the Bahraini operator must comply with the lessee's civil aviation rules. Whichever rule (foreign or Bahrain) is more restrictive shall apply in each instance of the application of the rules. Any changes to the operator's continuing airworthiness arrangements or manuals must be notified and approved by the CAA.

4. OTHER ASPECTS OF COOPERATION BETWEEN OPERATORS

4.1 Codeshare arrangements

Codesharing is a marketing arrangement under which an airline places its designator code on a flight operated by another airline, and sells and issues tickets for that flight. Operators throughout the world continue to form codeshare alliances to strengthen or expand their market presence or competitive ability. Codesharing may be between operators from the same State or operators from different States.

In deciding whether to authorize a codeshare arrangement, the CAA may consider whether the arrangement is in the public interest. Where the codeshare will involve an operator from another State, such public interest determinations should include consideration of whether the operations of that operator meet an acceptable level of safety. In making these safety determinations, the CAA will consider whether or not that operator will conduct operations in accordance with standards that meet or exceed minimum international standards.

In considering the safety of a proposed codeshare involving an operator from another State, the CAA should consider requiring an audit of the standards maintained by that operator in conducting its operations. Such a system of codeshare audits should establish criteria for determining satisfactory audit results. The initial audit would be followed by periodic audits for the duration of the codeshare arrangement. Should an audit reveal that an operator was failing to maintain a satisfactory standard of safety, the CAA may withhold or withdraw its approval of the codeshare.

Note: An internationally recognized audit system that may be acceptable to the State for the codeshare audit is the International Air Transport Association Operational Safety Audit (IOSA) programme.

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The CAA may consider requiring an operator to monitor a codeshare partner from another State on an ongoing basis. Such monitoring of a codeshare partner should include the following factors:

- (a) accident/incident rates;
- (b) the operator's financial condition, ownership and economic condition;
- (c) the operator's management, operating history, current organisation, sophistication, and stability (including any turnover of key personnel, strikes, etc.);
- (d) age of equipment, equipment on order, and equipment being returned;
- (e) operational capabilities (e.g. international service as compared to only domestic service) and established infrastructure (e.g. approved maintenance and repair facilities, flight simulation training devices, etc.); and
- (f) the interface and cooperation between codeshare partners, including familiarity with personnel, sharing of data through meetings, conferences, etc.

4.2 Franchising

Airline franchising is a commercial arrangement that involves a franchiser operator granting a franchise or right to use various of its corporate identity elements (such as its flight designator code, livery and marketing symbols) to a franchisee operator to market or deliver the latter's air service products, typically subject to standards and controls intended to maintain the quality desired by the franchiser. Generally, this increasingly common practice consists of a large airline franchising part of its short and medium haul network to smaller, more cost-efficient operators.

Franchising arrangements are independent of, but may coexist with, a codesharing arrangement.

Under ANTR-OPS provisions, an air operator is responsible for conducting the commercial operations in accordance with the air operator certificate issued by the CAA. Therefore, franchising flights are conducted under the responsibility of the operator that is actually operating the flight no matter what the aircraft livery or flight number might be. The oversight of such operation is normally conducted by the CAA.

However, if the operator uses aircraft registered in a State other than that of the operator, oversight may be required by the State of Registry if an agreement such as Article 83 *bis* or a bilateral agreement is not in place between the States concerned.

4.3 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 operator on each route.

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An interchange provides passengers with the benefit of a single-plane service on what is essentially an interline operation and may provide additional benefits to the operators involved in terms of better aircraft utilization.

Interchange operations may involve operators from two States of the Operator, neither of which may be the State of Registry of the aircraft involved. It is therefore necessary for the States concerned to be clear about their respective responsibilities. Whilst in the case of interchange there can be no confusion over which operator has operational control, other aspects are similar to those encountered when aircraft are leased under a dry lease.

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