



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

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TABLE OF CONTENTS

	<i>Page</i>
Foreword	(vii)
Chapter 1. Definitions, abbreviations and overview of key terms.....	1-1
1.1 Definitions	1-1
1.2 Abbreviations	1-3
1.3 Overview of key terms	1-3
Chapter 2. Rationale of Article 83 <i>bis</i>	2-1
2.1 Background	2-1
2.2 Safety aspects of economic liberalization	2-1
2.3 Main features	2-2
2.4 Registration and publication of Article 83 <i>bis</i> agreements	2-3
2.5 Transfer of responsibility vs. delegation of authority	2-3
2.6 Options outside Article 83 <i>bis</i>	2-4
2.7 State of the Operator's functions are not transferable under Article 83 <i>bis</i>	2-5
Chapter 3. Appropriate use of Article 83 <i>bis</i>	3-1
3.1 Two potential situations: dry or wet lease	3-1
3.2 Responsibilities that flow from the transfer of functions and duties	3-2
3.3 Usage of Article 83 <i>bis</i> to provide effective safety oversight and where alternative means would be more appropriate	3-3
Chapter 4. Preparation for negotiation of an Article 83 <i>bis</i> agreement	4-1
4.1 Agreement scope	4-1
4.2 Legislation	4-1
4.3 Assessment	4-1
4.4 Agreement content	4-2
4.5 Authority to enter into agreements	4-2
4.6 Agreement registration	4-3
4.7 Agreement status	4-3
4.8 Documents carried on aircraft	4-3
4.9 Coordination and safety oversight responsibilities of the two States	4-3
Chapter 5. Content of an Article 83 <i>bis</i> agreement.....	5-1
5.1 Main elements of an Article 83 <i>bis</i> agreement.....	5-1
5.2 Definitions of the functions and duties covered under the agreement	5-1
5.3 Packages for the transfers under Article 83 <i>bis</i> — combinations of responsibilities	5-2
5.4 True copy of the Agreement Summary to be carried on board the aircraft.....	5-5
5.5 Coding of emergency locator transmitters (ELT) under an Article 83 <i>bis</i> agreement	5-5
5.6 Article 83 <i>bis</i> Agreement Summary template	5-6

Chapter 6. Rules for registration of an Article 83 bis agreement	6-1
6.1 Obligation to register Article 83 bis agreements	6-1
6.2 Notification to third parties	6-1
6.3 Rules for registration	6-1
6.4 Database of agreements	6-3
Chapter 7. Safety oversight responsibilities	7-1
7.1 Overview	7-1
7.2 Coordination between State of the Operator/PLG and the State of Registry	7-1
7.3 Safety oversight responsibilities of the State of the Operator/PLG	7-1
7.4 Safety oversight responsibilities of the State of Registry	7-3
Chapter 8. Surveillance by other States — Ramp inspections	8-1
8.1 Overview	8-1
8.2 Application of Article 33 of the Convention	8-1
8.3 Assembly Resolution A36-6: State recognition of the Air Operator Certificate of foreign operators and surveillance of their operations	8-1
8.4 Assembly Resolution A37-5: The Universal Safety Oversight Audit Programme (USOAP) continuous monitoring approach	8-3
8.5 Responsibilities of other States	8-4
8.6 Training of inspectors	8-4
8.7 Other considerations	8-4
8.8 Procedures for ramp inspections	8-5
8.9 Guidance for inspectors of States not party to Article 83 bis	8-5
Chapter 9. States not party to Article 83 bis — Implications	9-1
9.1 Background	9-1
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	9-1
9.3 Surveillance actions recommended for a State that is not party to Article 83 bis	9-2
Chapter 10. Responsibilities on the termination or amendment of an Article 83 bis agreement	10-1
10.1 Introduction	10-1
10.2 Dispute resolution and termination clauses	10-1
10.3 Practical consequences of terminating Article 83 bis agreements	10-2
10.4 Necessary provisions	10-3
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	App A-1
Appendix B. Article 83 bis agreement — Assessment by the State of Registry of the State of the Operator/PLG	App B-1
Appendix C. Example of record of State of Registry and State of the Operator duties and functions for a commercial air transport operation	App C-1

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.
