

**Insertion of Part 48 in Regulations**

3. The Regulations are amended by the insertion after Part 47 of the following Part:

**“PART 48: LEASING OF AIRCRAFT****LIST OF REGULATIONS****SUBPART 1: GENERAL**

48.01.1 Applicability

**SUBPART 2: FINANCIAL OR CAPITAL LEASES**

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**SUBPART 1  
GENERAL****Application**

**48.01.1** This Part applies –

- (a) to all aircraft lease agreements involving Namibian air service operators, Namibian registered aircraft and foreign registered aircraft operated by Namibian air service operators;
- (b) with the necessary changes to any dry lease agreement where either the lessor or the lessee is a Namibian entity but not an air service operator; or

- (c) with the necessary changes to any sub-lease agreement.

## **SUBPART 2 FINANCIAL OR CAPITAL LEASES**

### **Filing of lease agreement**

**48.02.1** (1) A Namibian operator, who enters into a financial or capital lease agreement as lessee in respect of an aircraft, must –

- (a) provide the Executive Director with a certified copy of such lease agreement; and
- (b) comply with the provisions of the Convention on International Interests in Mobile Equipment on Matters Specific to Aircraft Equipment signed at Cape Town on 16 November 2001, where applicable.

(2) An aircraft, acquired on a financial or capital lease, to be used for the provision of an air service, –

- (a) is considered to be on a dry lease, and the provisions of Regulation 48.03.1 apply with the necessary changes; and
- (b) must be placed on the Namibia Register of Aircrafts, if not already so registered in accordance with the provisions of Part 47 of these regulations.

## **SUBPART 3 OPERATING LEASES**

### **Dry lease-in**

**48.03.1** (1) An operator who intends to dry lease-in an aircraft for the purpose of providing an air service, must submit an application on the form provided for in Document NAM-CAT-LA 48, signed by both parties, together with the fee referred to in Part 187 of these regulations to the Executive Director for prior approval to dry lease-in such aircraft.

(2) The oversight responsibilities in respect of a dry lease-in of a foreign registered aircraft may be fully or partially transferred in terms of an Article 83*bis* agreement referred to in Subpart 6 from the appropriate authority of the state of registry to the Authority.

(3) The Executive Director may, subject to the conditions as he or she may determine, grant a dry lease-in agreement contemplated in subregulation (1) if he or she is satisfied that –

- (a) an aircraft to be dry leased-in is type-certificated in accordance with the requirements referred to in Part 21 of these regulations;
- (b) the aircraft to be dry leased-in is maintained in accordance with an approved maintenance programme, the design and application of which must observe human factors principles, and current manufacturer's maintenance manual;
- (c) an aircraft to be dry leased-in is operated under an operating certificate held by a concerned lessee and an applicant may not operate an air service concerned contrary to the provisions of the Act or the Air Services Act;
- (d) in case of a foreign registered aircraft –

- (i) if the transfer of responsibilities, as contemplated in subregulation (2) of a foreign aircraft have not been fully effected ;
  - (ii) an appropriate authority of a state of registry is able to carry out its oversight responsibilities effectively;
  - (iii) the duration of a dry lease-in agreement is for a period not exceeding six consecutive calendar months in any 12-months period calculated from the date of commencement of such dry lease-in agreement; and
  - (iv) the number of foreign registered aircraft leased by a concerned operator constitutes not more than half the number of aircraft listed on that operator's operating certificate.
- (4) If the conditions, contemplated in subregulation (3)(d), are not met, the aircraft to be dry leased-in must be registered in Namibia as contemplated in Part 47 of these regulations, and –
  - (a) the aircraft be subject to the airworthiness certification, maintenance, and inspection procedures provided by these regulations in respect of Namibian registered aircraft;
  - (b) the responsibility or custody of the aircraft and control of all operations is vested in the lessee operator;
  - (c) the responsibility for the airworthiness and maintenance of the aircraft is vested in the lessee operator; and
  - (d) the registration of the aircraft is valid only for the duration of the lease agreement, and for as long as the aircraft is operated in accordance with –
    - (i) these regulations;
    - (ii) the terms or conditions specified in the lessee operator's operating certificate;
    - (iii) the related operations specifications; and
    - (iv) the lessee operator's operations and maintenance control manuals.
- (5) The conditions for granting an application referred to in subregulation (3) must be made part of the lease agreement and must specify the responsibilities of the parties involved in respect of –
  - (a) airworthiness of the aircraft and performance of maintenance;
  - (b) signing the maintenance release;
  - (c) flight and cabin crew member certification;
  - (d) crew member training, competency and currency;
  - (e) scheduling of crew members;
  - (f) dispatch or flight-following; and
  - (g) insurance arrangements.

(6) A dry lease agreement between Namibian operators must include the arrangements concerning each party's respective responsibilities in respect of the airworthiness of the aircraft.

### **Dry lease-out**

**48.03.2** (1) An operator of a Namibian registered aircraft may dry lease-out the aircraft to any other Namibian operator (lessee), subject to the provisions of subregulation (2).

(2) A dry lease-out agreement of a Namibian registered aircraft, dry leased-out in terms of subregulation (1), must include the confirmation of the parties respective responsibilities in the agreement in respect of the continued airworthiness of the aircraft and that the aircraft will be operated in terms of the operating certificate held by the lessee.

(3) An operator of a Namibian registered aircraft may dry lease-out an aircraft to any other operator in a contracting state.

(4) The Executive Director may, upon application on the form provided for in Document NAM-CATS-LA 48, by an operator (lessor) of a Namibian registered aircraft, remove such aircraft from the operating certificate held by such operator.

(5) The removal, contemplated in subregulation (4), in respect of an aircraft to be dry-leased-out to an operator in a contracting state, is on condition that –

- (a) the appropriate authority of the state of the operator to whom such aircraft is dry leased-out concludes an Article 83*bis* agreement with the Minister, in which such authority accepts responsibility for the surveillance of maintenance and operation of such aircraft in terms of the applicable requirements in Subpart 6; and
- (b) such aircraft is maintained in accordance with an approved maintenance schedule and current manufacturers maintenance manual.

(6) If a Namibian registered aircraft is dry leased-out to an operator in a state that is not a contracting state, the Minister may not transfer responsibility for surveillance of the maintenance and operation of the aircraft to the appropriate authority of such state, and the lessor operator is liable for –

- (a) any costs incurred by the Authority in carrying out its oversight function in respect of such aircraft;
- (b) any such costs in respect of an aircraft for which no transfer of responsibilities, as contemplated in subregulation (5)(a), has been agreed upon.

(7) The provisions of subregulation (5) and (6) apply with the necessary changes in respect of a dry leased-out aircraft remaining on the operating certificate of the lessor.

### **Wet lease-in**

**48.03.3** (1) A Namibian operator who intends to wet lease-in an aircraft for the purpose of providing an air service, must –

- (a) be the holder of an air service licence and operating certificate applicable to the category and type of aircraft, as defined in the Air Services Act; and
- (b) submit an application on the form provided for in Document NAM-CATS-LA 48, signed by both parties, together with the fee referred to in Part 187, to the Executive Director for prior approval to wet lease-in such aircraft.

(2) The duration of the wet lease-in agreement, in respect of a foreign-registered aircraft, is limited to a maximum period of six consecutive calendar months in any 12-months period calculated from the date on which the Executive Director approves such wet lease-in agreement.

(3) The Executive Director may, subject to such conditions as he or she may determine grant a wet lease-in agreement approval referred to in subregulation (1)(b), if such aircraft –

- (a) is from an operator who is the holder of an operating certificate or similar document issued by an appropriate authority;
- (b) has been type-certificated by an appropriate authority;
- (c) has been issued with a valid certificate of airworthiness or similar document issued by an appropriate authority;
- (d) is maintained and operated in accordance with safety standards equivalent to the safety standards referred to in these regulations in respect of aircraft operated in a commercial air transport operation; and
- (e) is operated in terms of the operating certificate or similar document held by the lessor, on condition that, if the operator concerned is a foreign operator, the appropriate authority of the State of Registry concludes an Article 83*bis* agreement with the Minister in which it is agreed that a wet leased-in aircraft must be operated in terms of the operating certificate of a Namibian lessee, and that certain specified oversight responsibilities be transferred from that authority to the Executive Director.

(4) The lessee must –

- (a) satisfy the Executive Director that the safety standards of the lessor are not less than the applicable safety standards referred to in these regulations; and
- (b) ensure that any law applicable to the aircraft to be wet leased-in and the maintenance or operation of such aircraft is complied with.

(5) The total number of wet leased-in aircraft, either foreign or Namibian registered, may not constitute more than half the number of aircraft listed on the operating certificate of an operator referred to in subregulation (1).

(6) The conditions under which a wet lease-in agreement is granted by the Executive director as contemplated to in subregulation (3) must be part of the lease agreement between the lessor and the lessee.

(7) If an agreement, contemplated in sub-regulation (3)(e), has been concluded, such agreement must be formally registered with the Council of ICAO and the appropriate authority of a third state affected by such agreement must be notified.

#### **Wet lease-out**

**48.03.4** (1) A Namibian operator of a Namibian registered aircraft who intends to wet lease-out an aircraft to any non-Namibian operator, if the non-Namibian operator is licensed in a non-contracting state, must remain the operator of the aircraft in terms of his or her operating certificate, and the responsibility for the surveillance of maintenance and operation of such aircraft may not be transferred to the appropriate authority of the state of the operator to which such aircraft is wet leased-out to.

(2) The provisions of regulation 48.03.2(6) in respect of the cost of oversight by the Authority apply with the necessary changes.

(3) Subject to subregulation (5), a Namibian operator of a Namibian registered aircraft may wet lease-out an aircraft to any non-Namibian operator in a contracting state.

(4) The Executive Director may, upon application on the form provided for in Document NAM-CATS-LA 48, by a Namibian operator referred to in subregulation (3), remove a Namibian registered aircraft from the operating certificate held by such operator, on condition that –

(a) the appropriate authority of the State of the Operator to whom such aircraft is wet leased has in writing accepted, responsibility for the surveillance of the maintenance and operation of such aircraft, as provided for in an Article 83*bis* agreement; and

(b) such aircraft is maintained in accordance with an approved maintenance schedule.

(5) A non-Namibian licensed lessee operator may only use a wet lease-out a Namibian registered aircraft, in commercial air transport operations to and from Namibia if the lessee operator has the underlying traffic rights to enter Namibia.

(6) A Namibian registered aircraft wet leased-out to a foreign operator does not need to be listed on such foreign operator's permit of lease.

(7) A Namibian operator, intending to wet lease-out a Namibian registered aircraft to another Namibian operator must submit an application on the form provided for in Document NAM-CATS-LA 48, signed by both parties, together with the fee referred to in Part 187, to the Executive Director for prior approval to wet lease-out the aircraft.

(8) Any conditions specified in granting a approval referred to in subregulation (7) must be incorporated by the operator's into the wet lease-out agreement.

(9) Despite subregulations (7) and (8), the Executive Director may provide any Namibian operator with a list of Namibian operators from whom an aircraft may be wet leased-out by such operator without prior approval.

(10) A Namibian operator who agrees to wet lease-out an aircraft to another Namibian operator must remain the operator of the aircraft and must retain the functions and responsibilities specified in his or her operating certificate.

(11) Despite subregulation (10), the lessee operator who in terms of the Air Services Act is required to be actively and effectively in control of the air service must ensure that the lessor operator adheres to the conditions of the latter's operating certificate and its operating specifications, which conditions may not be in conflict or less than the conditions of the lessee operator's operating certificate.

(12) The terms of an approved wet lease agreement between Namibian operators must include –

(a) the arrangement concerning the operating certificate under which the flights with the leased aircraft must be operated; and

(b) any deviation from the operating certificate under which the flights with the leased aircraft must be operated.

**Damp lease**

**48.03.5** (1) If an aircraft is damp leased with only a partial crew of either flight or cabin crew the provisions of regulations –

- (a) 48.03.3 and 48.03.4 apply with the necessary changes in respect of the crew provided as part of the lease; and
- (b) 48.03.1 and 48.03.2 apply with the necessary changes in respect of the aircraft provided by the lessee.

(2) The cabin or flight crew members provided by the lessee for the operation must undergo the standard operating procedures training of the lessor prior to the commencement of any commercial air transport operation.

**SUBPART 4  
SUB-CHARTERS**

**Sub-charters**

**48.04.1** (1) In exceptional circumstances provided for in Documents NAM-CATS-LA 48, an operator may sub-charter an aircraft with or without flight crew provided –

- (a) the sub-charter period does not exceed five consecutive days; and
- (b) the sub-charterer informs the Executive Director, within 24 hours of such sub-charter.

(2) In the case of Part 121 operations, the provisions of subregulation (1) apply only to wet lease operations.

**SUBPART 5  
INSURANCE**

**Insurance**

**48.05.1** Any reference to insurance in this Part means a reference to the compulsory insurance in terms of the Air Services Act and the Act.

**SUBPART 6  
TRANSFERS OF RESPONSIBILITIES BETWEEN STATES**

**Article 83bis agreement**

**48.06.1** (1) The Minister, being duly authorised, may in the case of dry or wet leased aircraft enter into an Article 83bis agreement in accordance with the requirements contained in this Subpart for the transfer of certain or all the functions and duties from the state of registry of an aircraft to the state of operator, if such functions and duties can more adequately be discharged by the state of the operator and register such agreement of transfer with the Council of ICAO.

(2) The functions and duties, referred to in subregulation (1) are the functions and duties allocated by the Chicago Convention to the state of registry in respect of –

- (a) Article 12 which provides for Rules of the Air;

- (b) Article 30 which provides for Aircraft radio equipment;
  - (c) Article 31 which provides for Certificates of Airworthiness; and
  - (d) Article 32 which provides for Licences of Personnel.
- (3) The transfer of any function or duty contemplated in subregulation (1) becomes effective in respect of any other contracting state after –
- (a) the Article 83*bis* agreement between the states, has been registered with the Council of ICAO and made public as required in Article 83*bis*; or
  - (b) the existence and scope of the Article 83*bis* agreement have been directly communicated by the state party to the agreement to the appropriate authorities of the other contracting state or states concerned.
- (4) The Minister may accept certain or all of the functions and duties of the appropriate authority of a state of registry in respect of an aircraft on that state's aircraft register as contemplated in subregulation (1) to the extent provided for in the relevant Article 83*bis* agreement, and consider such aircraft to be a Namibian aircraft for the purpose of these regulations.
- (5) If Namibia is a state of an operator with respect to a dry lease-in or wet lease-in of an aircraft operating under an Article 83*bis* agreement, the Executive Director must transmit a copy of such Article 83*bis* agreement together with a summary of such agreement in the format provided for in Document NAM-CATS-LA 48, to the ICAO for registration.

### Personnel licensing

- 48.06.2** (1) A Namibian air services operator who dry leases-in a foreign aircraft must satisfy the Executive Director that –
- (a) the flight and cabin crew to be designated for duty on the aircraft already possess valid licences or approvals issued by the state of registry, or that arrangements have been made for such personnel to obtain the necessary licences or approvals; and
  - (b) ensure that all the regulations of the state of registry in respect of personnel licensing and the allocation, training and checking of flight and cabin crew have been complied with.
- (2) If there is reasonable belief that the lessee operator is not complying with the appropriate regulations of the state of registry, as contemplated in subregulation (1)(b), the appropriate authority of that state must be advised and a request made to such authority for the matter to be investigated.
- (3) The Minister may in terms of an Article 83*bis* agreement, take responsibility for oversight of the matters contemplated in subregulation (1)(b).
- (4) The Executive Director may, on conditions he or she determines, issue validations to a lessee operator's flight and cabin crew members, designated for duty in respect of a Namibian aircraft dry leased-out to a foreign operator.
- (5) A validation, contemplated in subregulation (4), may be issued in the format provided for in Document NAM-CATS –LA 48.

**Airworthiness**

**48.06.3** (1) A Namibian air services operator who dry leases-in a foreign aircraft must satisfy the Executive Director that –

- (a) the AMO, responsible for the continued airworthiness of the aircraft, already possesses valid licences or approvals issued by the State of Registry, or that arrangements have been made for such organisation to obtain the necessary licences or approvals; and
- (b) the organisation, contemplated in paragraph (a), carries out its maintenance functions in accordance with all the relevant regulations of the state of registry.

(2) If the lessee operator is not complying with the relevant regulations of the state of registry, the appropriate authority of that state must be advised and a request made to such authority for the matter to be investigated.

(3) The Minister may in terms of an Article 83*bis*, take responsibility for the oversight of the matters contemplated in subregulation (1)(b).

(4) The Executive Director may, in respect of an aircraft, dry leased-out to a foreign operator, and on such conditions as he or she determine, grant a foreign-based AMO to carry out all or part of the maintenance on the aircraft referred to in subregulation (1), in accordance with the aircraft's approved maintenance schedule and remove the aircraft from the Namibia Register of Aircrafts for the duration of the dry lease-out period and facilitate such aircrafts registration in the state of the operator.

**Recognition**

**48.06.4** (1) The Executive Director must recognise an Article 83*bis* agreement between two contracting states that have ratified Article 83*bis* in which the state of the operator is substituted for the state of registry, within the limits established by the transfer arrangements, provided that –

- (a) the Article 83*bis* agreement has been duly registered with ICAO for registration; or
- (b) the affected third-party states have been informed directly by at least one of the states party to the Article 83*bis* agreement.

(2) The Executive Director may not recognise the transfer of functions and duties contemplated in an Article 83*bis* agreement –

- (a) between such states are not parties to an Article 83*bis* agreement or if states that are parties to such agreement, but have not registered such agreement with ICAO; and
- (b) if Namibia has not been informed directly by at least one of the state parties to the Article 83*bis* agreement, of such transfer.

(3) The Executive Director must recognise the validity of licences and certificate if contracting states that have ratified an Article 83*bis* agreement, have transferred the authority to render valid or to renew crew licences, radio licences and certificates of airworthiness in terms of an Article 83*bis* agreement from the state of registry to the state of the operator, if he or she has been officially informed of such transfer, provided that these licences and certificates have been issued, rendered valid or renewed by the appropriate authority of the state of the operator and fully meets the requirements of Annexes 1 and 8 to the Convention.

**Transfer of responsibilities**

**48.06.5** (1) The Article 83*bis* agreement must specifically mention the functions and duties to be transferred and those functions not mentioned will be considered to remain with the state of registry.

(2) A listing of responsibilities regarding airworthiness that may or may not be transferred between states is contained in Document NAM-CATS-LA 48.

(3) If an Article 83*bis* agreement has been concluded, the state of registry is relieved of responsibility and, where applicable, of liability in respect of the functions and duties duly transferred to the appropriate authority of the state of operator and such authority must apply these regulations.

(4) The Ministry must ensure that relevant information concerning the existence of an Article 83*bis* agreement relating to aircraft operating to or from Namibia's territory is without delay relayed to any Namibian authority involved in the inspection of documents required to be carried on board an aircraft.

(5) For the purpose of identifying the individual states' responsibility for safety oversight when any verification process, such as ramp inspections, a certified true copy of the Article 83*bis* Agreement and of the operating certificate under which the aircraft is operated and in which such responsibility it is listed must be carried on board the aircraft at all times while the Article 83*bis* agreement is in force.

(6) Document NAM-CATS-LA 48 contains examples of suitable Article 83*bis* agreements.

**Operations under Article 83 bis**

**48.06.6** (1) An operator of an aircraft operating under an Article 83*bis* agreement must ensure that a certified copy of such Article 83*bis* agreement summary referred to in regulation 48.06.1 and an english translation where such agreement summary is issued in a language other than english is carried on board such aircraft.

(2) An operator of an aircraft operating under an Article 83*bis* agreement must on request by an authorised officer, inspector or authorised person, make such Article 83*bis* agreement summary available in order to determine which functions and duties have been transferred under such agreement by a state of registry to a state of an operator, when conducting surveillance activities, such as ramp checks.

**Substitution of Part 91 of Regulations**

4. The Regulations are amended by the substitution for Part 91 of the following Part:

**PART 91:  
GENERAL AVIATION AND OPERATING FLIGHT RULES**

**LIST OF REGULATIONS**

**SUBPART 1: GENERAL PROVISIONS**

- |         |                                                  |
|---------|--------------------------------------------------|
| 91.01.1 | Applicability                                    |
| 91.01.2 | Compliance with laws, Regulations and Procedures |
| 91.01.3 | Specific Approvals                               |
| 91.01.4 | Authorisation of personnel to taxi aircraft      |