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GOVERNMENT OF INDIA

OFFICE OF THE DIRECTOR GENERAL OF CIVIL AVIATION

TECHNICAL CENTRE, OPPOSITE SAFDARJUNG AIRPORT, NEW DELHI

**CIVIL AVIATION REQUIREMENT
SECTION 3 – AIR TRANSPORT
SERIES ‘C’ PART I
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EFFECTIVE: FORTHWITH

F. No. _____

Subject: **Criteria for leasing of aircraft by Indian Operators.**

1. Introduction

- 1.1. Rule 1 of the Aircraft Rules, 1937 lays down extent of applicability of Aircraft Rules on aircraft leased in/out by an Indian Operator. .
- 1.2. This CAR is issued under Rule 133A of the Aircraft Rules, 1937 and lays down the requirements for leasing in or leasing out of aircraft by an Indian Operator.
- 1.3. With the issuance of this CAR, AIC 3 of 1998 stands cancelled.

2. Applicability

- 2.1. This CAR is applicable only to operational lease arrangements as described in para 6 of this CAR. This CAR is not applicable to financial and capital lease arrangements.

Note: The process of leasing has been detailed in Aircraft Leasing Manual (CAP 3200).

3. Definitions

- 3.1. *Lease: An agreement by a person (the lessor) to furnish an aircraft to another person (the lessee) to be used for compensation or hire purposes for a specified period or a defined number of flights.*
- 3.2. *Lessor: The party furnishing the aircraft under a lease.*

- 3.3. *Lessee: The party using the aircraft under the provisions of a lease.*
- 3.4. *Dry Lease: A lease arrangement whereby a lessor provides an aircraft without crew to the lessee.*
- 3.5. *Wet Lease: A lease arrangement whereby a lessor provides an aircraft with entire crew to the lessee for a specified period or a defined number of flights. A wet lease does not include a code sharing arrangement.*
- 3.6. *Damp Lease: A lease arrangement whereby a lessor provides an aircraft with partial crew to the lessee.*
- 3.7. *State of Registry: The State on whose register the aircraft is entered.*
- 3.8. *State of the Operator: The State where the principal place of business of the operator is located, or if no such business exists, the permanent residence of the operator.*
- 3.9. *Operator: A person, organisation or enterprise having an Air Operator Permit/ Certificate (AOP/AOC) engaged in aircraft operations to carry out specific commercial air transport operations.*
- 3.10. *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.*
- 3.11. *Operational Leases: Refer to leasing arrangements described in Para 6.*

4. Article 83 *Bis* to the Chicago Convention – Transfer of State Of Registry Responsibilities

Article 83 *bis* to the Chicago Convention provides for the transfer of certain safety oversight responsibilities from the State of Registry to the State of the Operator. Such a transfer will be recognised by all other States which have ratified Article 83 *bis*. The transfer of responsibility may involve functions and duties under Article 12, 30, 31 or 32 a) of the Chicago Convention, which address rules of the air, radio licensing, certificates of airworthiness, and personnel licences respectively.

5. Responsibilities of the State Of Registry and State of the Operator

5.1. Operators intending to engage in leasing arrangement should familiarize themselves with the responsibilities of the State of Registry and the State of the Operator, in the event that the aircraft is registered in a State different from the State responsible for oversight of its operations. It is important that the responsibilities of the lessor and lessee to be explicitly specified in the lease agreement between the lessor and lessee, to provide for proper airworthiness and operational oversight and control of the aircraft to be leased.

5.2. The State of Registry is the State on whose register the aircraft is entered. The State of Registry is responsible for the safety oversight and airworthiness standards for aircraft on its register, including those aircraft that are leased. The person or organisation to which the aircraft is registered must ensure that the aircraft comply with all applicable requirements of the State of Registry. The responsibilities of the State of Registry include:

- a) notifying the State of Design that it has entered such an aircraft type on its register.
- b) ensuring that the aircraft airworthiness standards of the State of Registry are maintained.
- c) issuing and validating the airworthiness certificate for aircraft (CoA) on its register.
- d) overseeing the continuing airworthiness of the aircraft according to the standards of the State of Registry, regardless of where it is operated in the world.
- e) ensuring that personnel performing maintenance work on the aircraft meets the experience, knowledge and skill requirements in accordance with the requirements of the State of Registry.
- f) ensuring that flight crew operating the aircraft meets the experience, knowledge and skill requirements to safely operate the aircraft in accordance with the requirements of the State of Registry.
- g) ensuring that operational personnel related with the aircraft operation continues to meet the standards required by the State of Registry.
- h) ensuring timely and appropriate actions are in place to correct all deficiencies highlighted by the flight crew on the maintenance of the aircraft and its operation.
- i) informing the organisation responsible for the type design on the faults, malfunctions, defects and other occurrences that cause or might cause adverse effects on the continuing airworthiness of the aircraft.
- j) ensuring that mandatory continuing airworthiness information from the State of Design is assessed and appropriate action is taken in a timely manner.

5.3. The State of the Operator is the State where the principal place of business of the operator is located, or if no such business exists, the permanent residence of the operator. The operator of the aircraft must make sure that the operations of the aircraft meet the requirements of the State of the Operator. The responsibilities of the State of the Operator include ensuring that its operators are able to:

- a) demonstrate safe and efficient operations prior to the initiation of any flight operations.
- b) conduct operations with respect to the original certification criteria or operational specifications on a continuing basis.
- c) take timely and necessary actions to resolve safety issues that are found with respect to the maintenance of aircraft, flight operations and other air operator responsibilities, including the actions of the operator's personnel.

6. Types Of Operational Leasing Arrangements

This section describes the types of operational leases. All parties who are part of the leasing arrangement should note the responsibilities of each party with respect to airworthiness and operational control of the aircraft. All such arrangements will be backed by regulatory bodies of the two parties either in the form of an Agreement under 83 bis or any other understanding.

6.1 WET OR DAMP LEASE ARRANGEMENT

6.1.1 In a wet or damp lease arrangement, the lessor assumes operational control of the aircraft operations. Aircraft operations must be in compliance with the requirements in the lessor's air operator certificate for the duration of the lease.

6.1.2 Wet or damp Lease(out) of Indian registered aircraft to a foreign operator ("Wet Lease Out")

Regulatory requirements related to Indian registered aircraft will apply. The Indian AOP/AOC holder will be responsible for the operational control of the aircraft for the duration of the lease. In the case of a damp lease, the qualification and operational control of crew provided by the lessee should be addressed and aligned with the lessor's operations policies.

6.1.3 Wet or damp lease(in) of a foreign registered aircraft by a Indian AOP/AOC holder ("Wet Lease In")

- i. Regulatory requirements related to the foreign Authority where the aircraft is registered will apply. The lessor will be responsible for the operational control of the aircraft for the duration of the lease. In the case of a damp lease, the qualification and operational control of crew provided by the lessee should be addressed and aligned with the lessor's operations policies.
- ii. **Wet or damp lease (In)** is only permitted in emergency situations by DGCA. Situations cover unexpected grounding of the aircraft of an existing AOP/AOC holder, aircraft under scheduled maintenance or checks or any other unforeseen circumstances.
- iii. Wet or damp lease (In) is not permitted for capacity or route expansion purpose of an existing AOP/AOC holder.

Note: The above conditions of wet or damp lease (In) do not apply if the lease is executed for Government of India requirements (eg. Haj Operations).

6.1.4 Wet or damp lease of Indian registered aircraft between Indian AOP/ AOC holders ("Intra State Wet Lease")

Regulatory requirements related to Indian registered aircraft applies. The lessor will continue to be responsible for the operational control of the aircraft for the

duration of the lease. In the case of a damp lease, the qualification and operational control of crew provided by the lessee should be addressed and aligned with the lessor’s operations policies.

6.1.5 Duration of Wet Or Damp Lease

Wet or Damp lease (out)	12 months
Wet or Damp lease (In)	3 months, subject to a one time extension of an additional 3 months.
Intra State Wet Lease	12 months, subject to a one time extension of an additional 12 months.

6.2 Dry lease arrangement

6.2.1 In a dry lease arrangement, the lessee usually assumes operational control of the aircraft. The aircraft is operated under the lessee’s AOP/AOC. Compliance to other relevant regulatory requirements would depend on the civil aviation authority of the State where the aircraft is registered.

6.2.2 **Dry lease(out)** of Indian registered aircraft to a foreign operator without change of aircraft registration (“Dry Lease Out”)

Regulatory requirements related to Indian registered aircraft will apply. The lessee will be responsible for the operational control of the aircraft under its AOP/AOC for the duration of the lease.

6.2.3 Dry lease(in) of foreign registered aircraft by Indian AOP/AOC holder without change of aircraft registration (“Dry Lease-In”)

The foreign regulatory requirements related to the foreign registered aircraft will apply. The Indian AOP/ AOC holder will be responsible for the operational control of the aircraft for the duration of the lease.

6.2.4 Duration of dry lease.

Dry Lease (In)	12 months, subject to one time extension of additional 12 months
Dry Lease (Out)	12 months, subject to a one time extension of an additional 12 months

7 Leasing Procedure

7.1 General

7.1.1 Application for approvals of lease arrangements should be submitted in writing together with detailed descriptions of the party(s) responsible for the operational control and continuing airworthiness for the aircraft in the lease arrangement. Depending on the complexities of the lease arrangement, DGCA may require

more information in order to determine that all airworthiness and operational issues are addressed. The minimum information required is as follows:

- a) Parties involved in the lease arrangement
- b) Make, model the serial number of the aircraft involved in the lease arrangement
- c) In the case of a lease-in arrangement:
 - i) the State of Registry and registration marks
 - ii) name and address of the registered owner of the aircraft
 - iii) a copy of the Certificate of Airworthiness
 - iv) proof of the maintenance programme approval from the foreign Authority
- d) Type of lease (lease-in/out, wet, damp, dry)
- e) Duration of the lease arrangement
- f) Whether the aircraft's registration will change during the lease
- g) Copy of the lease agreement or description of the lease provisions. The lease agreement or description of the provisions should include information on:
 - i) Arrangements for the continuing airworthiness of the aircraft during the lease period. This would include, but is not limited to, pre- and post- lease airworthiness standards, availability of up-to-date maintenance approved data, acceptable qualifications and training of certifying staff, reporting of defects and incidents that may affect the airworthiness of the aircraft and handling of mandatory airworthiness information.

Note: In the event of a temporary change of operator, such as during a dry lease, the aircraft records must be made available to the new operator.

- ii) Arrangements to address any operational matters during the lease period. This would include but not limited to acceptable qualifications and training of operational personnel like pilots and cabin crew, details of how operational deficiencies will be addressed, reporting of incidents, etc.
- h) Changes to the operations specifications for AOP/AOC holders, as applicable, as a result of the lease agreement
- i) Area of operations for the aircraft including where it will be based

The above information is necessary for DGCA to determine whether proper operational control and continuing airworthiness oversight for the aircraft are in place for the duration of the lease.

7.1.2 Safety responsibilities expected from the lessee and lessor:

At the minimum, the lessee and the lessor shall have obligations in accordance with the respective types of leasing arrangements as shown in Table 1.

7.2 Foreign registered aircraft leased to Indian Operators:

7.2.1 The applicant, i.e. the Indian AOP/AOC holder, shall submit to DGCA (Air Transport Directorate) at least 45 days prior to the proposed commencement of operations:

- a) a completed three (3) sets of Aircraft Leasing Form (LF-1 as given in CAP 3200),
- b) a copy of the lease agreement, and
- c) **Consent of Foreign Civil Aviation Authority** - The consent of the applicable foreign civil aviation authority is required before a leasing permission can be issued. This consent should be in writing.

7.2.2 The applicant for a leasing permission must provide evidence about the leasing operation that may be:

- a) specified within the lease;
- b) supplied through other documentation; or
- c) established through a review by DGCA of the proposed leasing operation.

7.2.3 The crew (Wet/ Damp) shall be security cleared by the Ministry of Home Affairs, Government of India.

7.2.4 Aircraft Eligibility Requirements

To be eligible for permission, an aircraft must be:

- in the DGCA type-acceptance list;
- registered in the foreign State;
- have a valid Certificate of Airworthiness; and
- will not be made the subject of another lease during the term of the lease authorized by DGCA for that aircraft;
- less than 15 years of age for passenger transportation and less than 25 years of age for cargo operations;

Note: In addition, the aircraft should not have completed more than 75 percent of its design economic life or 45,000 pressurization cycles.

- Free from accident; and
- have its maintenance programme approved from the foreign regulatory authority.

7.2.5 Long Term Airworthiness Requirements

Certain airworthiness requirements have long term implementation times that are subject to additional compliance action. These include, but are not limited to, Airworthiness Directives (ADs) that address corrosion prevention and control programs. Aircraft that are subject to these ADs must be inspected and

maintenance records reviewed to determine compliance with the provisions of the ADs, paying particular attention to the following:

- a) corrosion and structural related service bulletins;
- b) structural modifications and repairs, including major and multiple site damage repairs and damage tolerant repair;
- c) application of Supplemental Structural Inspection Programs (SSIPs);
- d) fatigue quality of multiple repairs; and
- e) major repair documentation, such as drawings, procedures and related technical data.

7.3 Indian registered aircraft leased to foreign operator:

7.3.1 The applicant, i.e. the Indian registered owner, shall submit to DGCA (Air Transport Directorate) at least 45 days prior to the proposed commencement of operations:

- a) a completed three (3) sets of Aircraft Leasing Form (LF-2 as given in CAP 3200),
- b) a copy of the lease agreement, and
- c) **Consent of Foreign Civil Aviation Authority** - The consent of the applicable foreign civil aviation authority is required before a leasing permission can be issued. This consent should be in writing.

7.3.2 The applicant for a leasing permission must provide evidence about the leasing operation that may be:

- a) specified within the lease;
- b) supplied through other documentation; or
- c) established through a review by DGCA of the proposed leasing operation.

7.3.3 Airworthiness Eligibility Requirements

The following clarifies the requirements of the regulations and standards and is necessary to ensure the safe operation of an Indian registered aircraft by a foreign air operator:

- a) where the aircraft is to be maintained by or under the authority of the foreign air operator, the organization that will perform and certify the work must have a valid maintenance approval or equivalent document, for the aircraft type that is the subject of the leasing operation, issued by the airworthiness authority of the country of the lessee. This approval will ensure that an evaluation of the maintenance organization has been carried out by the foreign civil aviation regulatory authority;

7.3.4 Long Term Airworthiness Requirements

Certain airworthiness requirements have long term implementation times that are subject to additional compliance action. These include, but are not limited to, Airworthiness Directives (ADs) that address corrosion prevention and control programs. Aircraft that are subject to these ADs must be inspected and

maintenance records reviewed to determine compliance with the provisions of the ADs, paying particular attention to the following:

- (i) corrosion and structural related service bulletins;
- (ii) structural modifications and repairs, including major and multiple site damage repairs and damage tolerant repair;
- (iii) application of Supplemental Structural Inspection Programs (SSIPs);
- (iv) fatigue quality of multiple repairs; and
- (v) major repair documentation, such as drawings, procedures and related technical data.

7.4 Leasing aircraft from one Indian operator to another Indian operator

7.4.1 The applicant, i.e. the Indian registered owner, shall submit to DGCA (Air Transport Directorate) at least 45 days prior to the proposed commencement of operations:

- a) a completed three (3) sets of Aircraft Leasing Form (LF-3 as given in CAP 3200), and
- b) a copy of the lease agreement

7.4.2 The applicant for a leasing permission must provide evidence about the leasing operation that may be:

- a) specified within the lease;
- b) supplied through other documentation; or
- c) established through a review by DGCA of the proposed leasing operation.

8. Reduction in notice period

The notice period of 45 days as stipulated in paragraph 7 may be dispensed with or reduced by DGCA in the following cases:-

- (i) the aircraft which was originally intended to operate the scheduled flight is grounded for technical reasons such as maintenance, inspection, mandatory checks or for any other reason beyond the control of the operator; or
- (ii) operation with leased aircraft is necessitated by the fact that the existing financial lease agreement has expired and a new financial lease agreement is yet to be concluded; or
- (iii) the aircraft has been leased or chartered to meet an emergency such as natural calamity, industrial unrest or any other similar situation.

9. Grant of Permission

9.1. Upon receipt of the information in accordance with paragraph 7, DGCA may convene a meeting with the Indian operator with a view to finalising the arrangements and modalities for operation of the leased aircraft during the period

of lease. In case of lease (in/out), representatives of foreign operator as well as the foreign regulatory authority may also be allowed to participate in the meeting.

- 9.2. On the basis of the deliberations in the meeting, the DGCA shall take a decision regarding desirability of conclusion of an agreement under Article 83 bis, with the State of Registry or the State of Operator, as the case may be, for transfer of certain regulatory functions, as considered appropriate.
- 9.3. Leasing under this CAR shall be permitted only between two scheduled air operators or between two non-scheduled operators. Leasing between a scheduled air operator and a non-scheduled air operator shall not be permitted.

Note: 1. A 'Scheduled air transport service' means an air transport service undertaken between the same two or more places and operated according to a published time table or with flights so regular or frequent that they constitute a recognisably systematic series, each flight being open to use by members of the public;

2. 'Non-Scheduled air transport service' means an air transport service, other than a scheduled air transport service as defined above, being operated for carriage of passengers, mail and goods, and includes charter operations.

- 9.4. The DGCA may grant permission to the Indian operator for operations with leased aircraft subject to such conditions as he may think fit to impose.
- 9.5. After grant of permission, the Indian operator shall conclude a formal lease agreement. It shall be ensured that the terms of the agreement, if any, concluded between the State of Registry and the State of the Operator as well as the conditions stipulated in the permission letter shall be incorporated in the lease agreement.
- 9.6. A signed copy of the lease must be submitted to the DGCA within seven days of the permission being issued by DGCA.
- 9.7. The leased aircraft shall be entered in or deleted from the Air Operator's Permit/ Certificate of the Indian operator.
- 9.8. The DGCA may withdraw permission for operation of an aircraft under lease if during service it is found that airworthiness and safety of the aircraft operations is in doubt or the requirements stipulated above or any other safety rules or regulations are not being complied with.

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Table 1: Obligations expected from Lessee and Lessor in Operational Leases

Scenario	Obligations
All Leases	<ul style="list-style-type: none"> a. The applicant will need to demonstrate the need to enter into aircraft operational leasing arrangements. b. The applicant will need to ensure that provisions are made in the leasing arrangement to enable DGCA inspectors to conduct necessary inspections.
Wet Leases	<ul style="list-style-type: none"> a. The lessee and lessor must hold valid air operator certificates throughout the duration of the lease. b. The lessor should retain operational control of the aircraft. c. For wet leasing arrangements among Indian air operators, the lessee must ensure that the lessor maintains the aircraft as per the lessor's approved maintenance program. d. For wet-lease in arrangements, the lessee must ensure that reportable occurrences and incidents affecting the leased aircraft are reported to DGCA¹.
Dry Leases	<ul style="list-style-type: none"> a. For Dry Lease Out arrangements, the lessee must maintain the subject aircraft to Indian requirements. b. For Dry Lease In arrangements, the lessee must ensure that the aircraft equipment relating to flight operations meets Indian requirements.
<p><i>Note 1: In all other types of leasing arrangements, Indian AOP holders shall report to DGCA all reportable occurrences involving the leased aircraft.</i></p>	