

What is the significance of Article 83 bis of the Convention on International Civil Aviation?

In an effort to resolve the problems associated with international leasing operations in terms of determining the party that bears the responsibility of oversight functions, i.e. the state of registry or the state of the operator, the International Civil Aviation Organisation (ICAO) put forward recommendations whereby each state enters into an agreement mapping out their oversight responsibilities. The legal framework detailing the terms of the agreement is contained in the protocol relating to Article 83 bis of the Convention on International Civil Aviation.

The purpose of article 83 bis is the transfer of duties and functions from the state of registry to the state of the operator in order to ensure better regulation and oversight over air safety in the case of international lease, charter or interchange of aircraft. Transfer of oversight functions and duties may include: Ensuring compliance with the rules and regulations relating to the flight and maneuver of aircraft in force (Art. 12), the rules and regulations that govern the carrying and use of radio transmitting apparatus aboard an aircraft (Art. 30), issuing and rendering a valid aircraft certificate of airworthiness (Art. 31), issuing and rendering valid pilot and other crew members certificates of competence and licenses (Art. 32a).

To effect the transfer, the parties must enter into transfer agreements, which must state specifically, the duties and functions to be transferred. Such agreement shall be recognized by all other contracting states which have ratified it. The state of registry shall be relieved of responsibility in respect of the functions and duties transferred.

The procedure for article 83 bis application and approval requires the holder of an Air Operators Certificate wishing to lease or lease out an aircraft necessitating the transfer or acceptance of safety oversight responsibilities to or from another contracting state to

submit an application to the authority indicating the likelihood of transferring oversight duties and responsibilities to the authority in the state of operation.

The authority will evaluate the state of operation's capacity, capability and competence to undertake the effective safety oversight functions of the aircraft in question. Upon successful completion of the evaluation process, an article 83bis agreement will be drawn up and signed by the two state authorities. The signed agreement shall be communicated to the ICAO council for publication or to other contracting states which may be affected by the transfer. The state of registry should however, be permitted unrestricted access to the aircraft at any place and time, although it has been relieved of responsibility in respect of functions and duties transferred.

Lastly, though it is the responsibility of the state of registry in ensuring that the contracting state possesses the competence to undertake the functions being transferred as stated above, however, existing differences in the laws and regulations between the state of registry and the state of the operator may result in the state of registry losing control over safety compliance.

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