



FOCA GM/INFO

Guidance Material / Information

Operational leasing and codeshare agreements for commercial operations

EU965/2012 – Annex III – ORO.AOC.110 / ORO.SPO.100

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|-----------------|---|
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0 Introduction

This document provides information about the handling of leasing and codeshare agreements and the specific treatment for aeroplane and helicopter operator with CAT operations or commercial SPO.

0.1 Legal References

Legal references may be found in Commission Regulation (EU) No 965/2012 and further regulations referred to therein, e.g.:

- ORO.AOC.110 Leasing agreements
- ORO.AOC.115 Codeshare agreements
- ORO.SPO.100 Leasing within commercial SPO
- ORO.MLR.100 Leasing agreements in Manuals, Logs and Records

0.2 Definitions

| | |
|-----------------------------|--|
| AOG | ... aircraft on ground and not airworthy |
| Leasing statement | ... Statement signed by the lessee that the parties to the lease agreement fully understand their respective responsibilities under the applicable regulations. |
| Community (CM) Member State | ... means either a Member State of the European Union (27 Member States), or an EFTA State (Iceland, Liechtenstein, Norway and Switzerland), including the following territories in which Regulation (EU) 2018/1139 (Basic Regulation) applies: Åland Islands, Azores, Madeira, Canary Islands, Guadeloupe, French Guiana, Martinique, Réunion, Saint-Martin, Mayotte (according applicability of EASA Part-TCO) |
| Lessee | "... the party to which the aircraft is leased" (ICAO Doc 8335). |
| Lessor | "... the party from which the aircraft is leased" (ICAO Doc 8335). |
| State of 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." (ICAO Doc 8335) |
| State of Registry | "... the State on whose register the aircraft is entered" (ICAO Doc 8335). |
| Third Country (TC) | ...means any country outside the Community |
| Community Leasing | ... means you dry lease in/out an aircraft registered in the Community, or you wet lease-in/out an aircraft from/to a commercial operator (AOC/SPO) certified by / with principle place of business in a country in the Community. |
| Third Country Leasing | ... means you lease in/out an aircraft registered in a third country (dry lease), or from/to a third country operator (wet lease) |
| HRA | Authorisation of high risk commercial specialised operations, called "high risk authorisation". |

0.3 Competent section for operational oversight

For aeroplane: sboc@bazl.admin.ch

For helicopter: heli@bazl.damin.ch

To apply for a leasing approval, contact your competent section for operational oversight and provide the information required as stated below.

1 General Information concerning Leasing

(ORO.AOC.110 / ORO.SPO.100)

1.1 Introduction

Basically, "leasing" in the sense of EU 1008/2008 and EU 965/2012 means any operational agreement between two commercial operators (AOC/SPO) under which one operator provides aircraft (dry lease) or operational services (wet lease) to the other. A pure financial lease (operator leases aircraft from leasing company) is not treated as an "operational lease" and therefore does not fall within the scope of this document.

However, for lease-in of either an aircraft without EASA CofA or a third country operator, the leasing requirements according to EU 965/2012 fully apply, irrespective of the ownership of the aircraft.

For most types of leasing, the operator has to obtain specific approvals in advance; in certain cases even from various authorities (e.g. FOCA, the department of transport or foreign authorities). Therefore, as much time as possible should be given in advance so that the arrangements can be made before the planned start date of the leasing. As soon as foreign agencies have to be involved, it is hardly predictable how long it will take to process a leasing application.

Once the necessary agreements have been accepted from all parties involved, the FOCA will issue the required documents e.g. leasing approval, instructions, exemptions, OpSpecs, HRA, permits and licence validations (depending on the type of lease) before the aircraft can be legally operated under the aforementioned agreement.

Before you step into the process, always check the following topics:

- where does the aircraft come from (registry / operational environment, i.e. AOC/SPO/NCC),
- where does it go to, e.g. it may come from an AOC dry lease-out and go to a SPO dry lease-in; many options are possible.
- which role do you play within the leasing (lessor / lessee)
- which countries are involved (CH, foreign state of community or third country)

1.2 Operating ban

In any case a Swiss operator shall not lease-in aircraft included in the list of operators subject to operational restrictions, or registered in a state of which all operators under its oversight are subject to an operating ban or from an operator that is subject to an operating ban pursuant to Regulation (EC) No 2111/2005 (Black list).

1.3 Insurance

With any leasing agreement, the insurance agreements have to be checked and adapted as required in order to cover the whole leasing operations.

1.4 HB registry

In order to register an aircraft in the Swiss aircraft registry, the owner has to be a Swiss citizen, or a Swiss company. However, when the aircraft is going to be used by a Swiss AOC or commercial SPO Operator, then this operator may apply for an exemption at the FOCA registry office according art. 3 ff LFV SR748.01.

1.5 ICAO article 83bis

If a lease agreement imposes specific delegation of functions of the State of registry to the State of Operation (e.g. delegation of technical oversight/approval), this delegation must be initiated by the State of registry by using the ICAO 83bis procedure.

An agreement according ICAO 83bis will normally be applied with dry lease-in/out. It is also conceivable to apply the procedure in a special wet-lease case.

The procedure for article 83bis of the Chicago Convention is described in ICAO Doc 10059. Depending on the case, it might be quite complex and very time consuming. Therefore, operators should inform the civil aviation authorities involved as early as possible to allow sufficient time for the necessary arrangements to be made before the planned start of the lease.

1.6 What is a dry lease?

A dry lease agreement is considered as a temporary transfer of an aircraft between two commercial operators (operating CAT or SPO) without changing the owner of the aircraft (aircraft has not been sold), while

- operational and technical control lies with the lessee (as the new operator)
- operational oversight lies with the authorities of the state of operator
- technical oversight lies with the authorities of the state of registry, or as concluded between the state of operator and the state of registry according ICAO 83bis
- Dry lease approvals are considered as variations of the AOC or the SPO declaration by adding/deleting an aircraft.

When the owner of an aircraft changes, the process for owner change applies. For addition or removal of an aircraft to/from an AOC refer to the corresponding change process.

1.7 What is a wet lease?

A wet lease agreement is mainly a delegation of a flight operation to/from another operator, while

- the operational and technical control and responsibility lies with the lessor but the commercial responsibility remains with the lessee.
- wet-lease agreements are only possible within same type of operation, i.e. AOC to AOC or SPO to SPO.
 - AOC to AOC means: The lessor operates under his own AOC (operational control and responsibility, e.g. crew and OM) but under the operating licence of the lessee (commercial control and responsibility, e.g. passenger, cargo).
 - SPO to SPO means: The lessor operates under his own SPO-Declaration (operational control and responsibility, e.g. crew, SOP, HRA) for the lessee which remains commercially responsible.

2 Leasing an aircraft within your AOC

(ORO.AOC.110)

2.1 Dry lease-in to your AOC

(ORO.AOC.110(d))

FOCA approval is required and aircraft will be added on your AOC. If the aircraft is not registered in Switzerland, verification of ICAO 83bis procedure is required. For an application for approval please consider the following points and submit the required evidences to your competent section for operational oversight of FOCA:

| | Aircraft registered in | | |
|--|------------------------|----------------|----|
| | CH | CM (w/o CH) | TC |
| Copy of the lease agreement, including <ul style="list-style-type: none"> • aircraft type, registration markings and serial number • Duration of the lease | x | x | x |

| | | | |
|---|---|---|---|
| • Name and address of the registered owner | | | |
| Copy of insurance certificates (for third party and passenger legal liability) | x | x | x |
| Leasing statement | x | x | x |
| Change of operator in registry | x | | |
| New or revised Operations Manuals incl. Form 330, PRA and Compliance List filtered to the relevant OPS paragraphs (OM-A, B, C, D, MEL, CAME, Maintenance contract, Maintenance Programme, Technical Log, Reliability Programme,...) as required | x | x | x |
| Copy of a valid certificate of airworthiness | | x | x |
| Check with Swiss Customs (Eidgenössische Zollverwaltung), which formalities apply | | x | x |
| Review with FOCA and state of registry, if ICAO 83bis is required (due to schedule reasons) | | x | x |
| The AOC holder has to demonstrate FOCA that an operational need has been identified which cannot be satisfied through leasing an aircraft registered in the EU. | | | x |
| The duration of the dry lease-in does not exceed 7 months in any 12 consecutive month's period. | | | x |
| Compliance with (EU) No 1321/2014 (Continuing Airworthiness) is assured | | | x |
| Aircraft must be equipped in accordance with EU regulations for air operations | | | x |

When leasing is finished, reverse all changes from above as applicable.

2.2 Dry lease-out from your AOC

(ORO.AOC.110(e))

FOCA approval is required and aircraft will be deleted from your AOC. If the aircraft will be operated by a non-CH Operator, verification of ICAO 83bis procedure is required. Note: A dry lease-out of a Swiss registered aircraft with a foreign ownership is not possible.

For an application for approval please consider the following points and submit these evidences to your competent section for operational oversight of FOCA:

| | Aircraft will be operated by an operator from | | |
|--|---|----------------|----|
| | CH | CM (w/o CH) | TC |
| Copy of the lease agreement, including <ul style="list-style-type: none"> aircraft type, registration markings and serial number Duration of the lease Name and address of the registered owner | x | x | x |
| Leasing statement | x | x | x |
| New or revised Operations Manuals (removal from AOC) incl. Form 330, PRA and Compliance List filtered to the relevant OPS paragraphs (OM-A, B, C, D, MEL, CAME, Maintenance contract, Maintenance Programme, Technical Log, Reliability Programme, Compliance List EASA OPS Subpart K & L, Compliance List CS26) | x | x | x |
| Review with FOCA, if ICAO 83bis is required | | x | x |

If the aircraft is deregistered and registered within the country of the lessee, it will be treated as an export of an aircraft and the following forms need to be submitted additionally:

| | | | |
|---|--|---|---|
| Request for deregistration form | | x | x |
| Certificate of Airworthiness for Export | | x | x |

2.3 Wet lease-in to your AOC

(ORO.AOC.110(c))

2.3.1 General

For wet lease-in there are the following possibilities for approval

- limited wet-lease-in approval
 - The approval will be issued for (a) specific flight number(s) and for a specified period of time (e.g. 10 days) by means of a letter of approval.
- unlimited wet-lease-in with framework approval
 - framework consists of processes for assessment and management of potential lessors listed on a so called 'white list' (incl. notification to FOCA), all documented in the OM and approved by FOCA without a time restriction.
 - lessors listed on the 'white list' must be a community operator and may be wet leased-in without further approval
 - urgent wet lease-in of a lessor not on 'white list' as part of framework approval (allowed in case of AoG only)

For all wet-lease in operations, passengers have to be informed of the identity of the operating air carrier or carriers according to Commission Regulation (EC) No. 2111/2005.

2.3.2 Limited wet lease-in approval

For an application for a limited approval please consider the following points and submit these evidences to your competent section for operational oversight of FOCA:

| | Aircraft leased in will be operated by | | |
|---|--|--------------------|-----|
| | CH AOC | CM AOC (w/o CH) | TCO |
| Aircraft type, registration markings and serial number | x | x | x |
| Name and address of the registered owner/operator | x | x | x |
| Copy of the lease agreement | x | x | x |
| Duration of the lease | x | x | x |
| Leasing statement | x | x | x |
| Maintain a record of occasions when lessors are used | x | x | x |
| Copy of insurance certificates (Certificate for third party legal liability, Certificate of passenger legal liability) | | x | x |
| Copy of valid EASA AOC and operation specifications of the lessor, covering the planned activities and routes | | x | |
| Copy of a valid EASA certificate of airworthiness | | x | |
| Copy of valid AOC issued in accordance with ICAO Annex 6 and operation specifications of the lessor, covering the planned activities and routes (areas of operation) | | | x |
| Copy of standard certificate of airworthiness in accordance to ICAO Annex 8 | | | x |
| Assessment of safety standards of the TCO with regard to continuing airworthiness and air operations are equivalent to the applicable requirements established by (EC) No 1321/2014 and 965/2012, or evidence demonstrating compliance with AMC1 ORO.AOC.110(c) | | | x |
| A record of all TCO wet-lease-in has to be maintained for inspections by FOCA | | | x |
| Holder of a Swiss route licence for scheduled flights need prior approval by the traffic rights department of FOCA according to Art. 117 Federal Civil Aviation Ordinance. | | | x |

Additionally, one of the following conditions needs to be fulfilled in order to get an approval by FOCA according to (EC) No 1008/2008:

| | | | |
|---|--|--|---|
| The operator justifies such leasing on the basis of exceptional needs, in which case an approval may be granted for a period of up to 7 months that may be renewed once for a further period of up to 7 months, or | | | X |
| The operator demonstrates that the lease is necessary to satisfy seasonal capacity needs, which cannot reasonably be satisfied through leasing aircraft registered within the community, or | | | X |
| The operator demonstrates that the lease is necessary to overcome operational difficulties and it is not possible or reasonable to lease aircraft registered within the community, in which case the approval shall be of limited duration strictly necessary for overcoming the difficulties | | | X |

FOCA has to inform the member states concerned about a wet lease-in of a TCO.

2.3.3 Unlimited wet lease-in framework approval

This procedure is limited to CH operators who intend to wet lease-in community registered aircraft operated by a community operator on a regular basis or to cover AOG.

Basically, you as AOC operator have to assess the possible leasing partner(s) in advance and list those on a so called 'white list'. The assessment process and the 'white list' including any change thereof require prior approval from the FOCA. The approval will be valid without any time limitation.

The required processes and assessment methods as well as the 'white list' must be documented in the OM. This includes at least the following processes:

- Assessment and periodical review of lessors (process and method for white list and urgent wet lease-in if applicable)
Note: Process shall include management of all evidences required according to the table in chapter 2.3.2 for all lessors on the 'white list'
- Initial development of 'white list' and its changes (e.g. lessors, fleet and possible limitations)
- Application to FOCA traffic rights when operating outside the community
Note: According to the route licence (Streckenkonzession), basically Swiss registered aircraft shall be used for flights to/from outside the community.
- Notification procedure(s) of all leases to FOCA (white list and/or urgent wet lease-in)
- Logs and records of framework leasing

Procedure to get a framework approval (initial):

- Document all required policies and processes in your OM according ORO.MLR and provide FOCA with application for framework approval and draft OM chapters for acceptance
- If policies and processes are accepted by FOCA, assess the required leasing partners using these processes, list them on the 'white list' in the OM and provide FOCA with the final OM Revision (including 'white list') and evidence of the assessment of the lessor(s).
- Upon successful assessment, FOCA will provide approval for the wet lease-in framework including the 'white list'.
- Any change to the process and/or to the 'white list' (addition/deletion) require FOCA approval.

Any wet lease-in that is carried out with a lessor that is not on the 'white list', or the leasing has not been notified to the FOCA according procedure, may result in a Level 1 finding with restriction on the framework approval. The FOCA will incorporate a review of the operator's wet leasing activities into its auditing schedule.

2.3.3.1 Wet lease-in from 'white list'

Having an approved 'white list', a CH AOC operator may now lease-in an aircraft from an operator on that list without further approval. All leases conducted pursuant to this approval must be notified to the competent section for operational oversight according to the approved notification process (monthly).

2.3.3.2 Urgent wet lease-in in case of AOG with operators not listed on the 'white list'

An urgent wet lease-in may be conducted under the following circumstances

- CH AOC operator (lessee) holds a wet lease-in framework approval
- operator(s) (lessor) on the 'white list' are not available for wet lease-in
- reason for urgent need is AOG
- process for urgent wet lease-in is part of framework approval (e.g. policy, notification)

To validate the urgent wet lease-in, assess the lessor according to the approved framework process and notify the urgent wet lease-in before the first flight takes place to your competent section for operational oversight (email) with the following details:

- Aircraft type, registration markings and serial number
- Name and address of the registered owner/operator
- Copy of the lease agreement
- Duration of the lease
- Leasing statement
- Confirmation from 'white list' lessor(s) that it/they is/are not available

This notified urgent wet lease-in is herewith considered as approved. As soon as FOCA will receive/read the notification, it will assess the content for compliance.

Note: For the operation on routes to/from outside the community, see chapter 2.3.3 and notify traffic rights with a detailed explanatory note of the reason for the leasing before the flight takes place.

An urgent wet lease-in is in any case limited to 7 consecutive days. If you as CH AOC operator need to continue the leasing with that lessor, immediately inform the competent section of operational oversight and submit a formal application for the continuation of the leasing (either an addition of the operator to the 'white list' or according to limited wet lease-in procedure).

2.4 Wet lease-out from your AOC

(ORO.AOC.110(f))

Wet lease-out agreements are not subject to approval but notification is mandatory. Whenever a Swiss AOC Operator plans to wet lease-out an aircraft, a notification has to be forwarded to your competent section for operational oversight of FOCA prior operation comprising the following information:

- Copy of the lease agreement, including aircraft type, registration markings, serial number, name and address of the lessee and duration of the lease (AMC1 ORO.AOC.110(f))
- Planned DEST and/or area of operation
- Contact details to foreign NAA (in case of request for confirmation of foreign NAA)

All operational responsibilities remain with the Swiss AOC holder. In any case, it should verify that

- the lessee is holding an approval for wet-lease in
- any traffic rights needed are obtained
- the operations specifications allow such operation (e.g. type/area of operation) before starting operation.
- For leaseings with longer duration than 6 months, verify need of ICAO 83bis with FOCA.

3 Leasing an aircraft used for CAT (AOC) and SPO

(ORO.AOC.110 / ORO.SPO.100)

If a leased aircraft is used for CAT and SPO, the requirements for the respective AOC-chapter (above) have to be applied as well as the respective SPO-chapters (below). Always search thoroughly which chapters apply – first for the “leasing-out” and then for the “leasing-in”.

Note: if an aircraft from a AOC-holder will be used by another SPO, NCC or NCO operator for a period of time not exceeding 30 days, then the procedures according ORO.GEN.310 *Use of aircraft listed on an AOC for non-commercial operations and specialised operations* shall be applied and the aircraft does not have to be removed from the AOC. The necessary approval for this kind of usage is not treated here. Therefore, please check out *GM/INFO ORO.GEN.310 mixed Operations*.

4 Leasing an aircraft for Specialised Operations (SPO)

(ORO.SPO.100)

For leaseings between two commercial SPO operators having both their principle place of business in the community, no specific leasing-approval is required. However, the associated required adaptations to the relevant documents as stated below have to be assessed and implemented prior to operations.

A leasing-approval is only required for third country registered aircrafts or third country operators.

4.1 Dry lease-in to your SPO

The full responsibility for the operations, maintenance and airworthiness transfers to your SPO. Following considerations have to be assessed and implemented prior to operations:

| | Aircraft registered in | | |
|---|------------------------|----------------|----|
| | CH | CM (w/o CH) | TC |
| Amend your SPO Declaration (add aircraft) | x | x | x |
| Amend your HRA (add aircraft) and cross-border authorisations (as required) | x | x | x |
| Amend SPA, SOP, OM, MEL, AMP, CAME as required | x | x | x |
| TC only: apply for an approval @ FOCA prior operations by demonstrating the below listed items: | | | x |
| • evidence that no EU-aircraft is available | | | x |
| • maximum duration of lease agreement of 7 month within any 12 consecutive month | | | x |
| • safety standard equivalent with EU 1321/2014 | | | x |
| • aircraft is equipped according to EASA Part-SPO | | | x |
| • leasing agreement | | | x |
| • leasing statement | | | x |
| • valid CofA | | | x |

When leasing is finished, reverse all changes from above as applicable.

4.2 Dry lease-out from your SPO

The full responsibility for the operations, maintenance and airworthiness transfers to the other operator. Following considerations have to be assessed and implemented prior to operations:

| | Principle place of business of SPO operator in | | |
|--|--|----------------|----|
| | CH | CM (w/o CH) | TC |
| Amend your SPO Declaration (delete aircraft) | x | x | x |
| Amend your HRA (delete aircraft) and cross-border authorisations (as required) | x | x | x |
| Amend SPA, SOP, OM, MEL, AMP, CAME as required | x | x | x |
| TC only: Verify and comply with applicable local procedures/requirements | | | x |

When leasing is finished, reverse all changes from above as applicable.

4.3 Wet lease-in to your SPO

The full responsibility for the operations, maintenance and airworthiness remains with the other operator. Following considerations have to be assessed and implemented prior to operations:

| | Aircraft leased in will be operated by | | |
|--|--|--------------------|-----|
| | CH SPO | CM SPO (w/o CH) | TCO |
| Verify that the leased-in SPO Operator holds the following | x | x | x |
| • valid CofA | x | x | x |
| • CAMO | x | x | x |
| • Required insurances | x | x | x |
| • Required SOP | x | x | x |
| • Cross-border HRA for Switzerland (if not, it must apply for HRA to its own Civil Aviation Authority) | | x | x |
| Verify that the leased-in SPO Operator complies with all Swiss legislation, e.g. | | x | x |
| • Authorisation to fly under the minimum altitude | | x | x |
| • Authorisation for landing outside airports | | x | x |
| • Pilots licences incl. MOU(H) if required | | x | x |
| • FTL acc. VBRI | | x | x |
| • All personnel have a working permit for Switzerland | | x | x |
| Evidence about wet lease-out notification of lessor to its authority | | x | x |
| TC only: apply for an approval @ FOCA prior to operations by demonstrating the below listed items: | | | x |
| • maximum duration of lease agreement of 7 month within any 12 consecutive month | | | x |
| • Assessment of safety standards of the TCO with regard to continuing airworthiness and air operations are equivalent to the applicable requirements established by (EC) No 1321/2014 and 965/2012, or evidence demonstrating compliance with AMC1 ORO.SPO.100(c)(1) | | | x |
| • leasing agreement | | | x |
| • leasing statement | | | x |
| • valid CofA according ICAO Annex 8 | | | x |
| Maintain a record of all TCO wet-lease-in operations for inspections by FOCA | | | x |

4.4 Wet lease-out from your SPO

The full responsibility for the operations, maintenance and airworthiness remains with your SPO. Following considerations have to be assessed and implemented prior to operations:

| | Wet-lease to an operator in | | |
|--|-----------------------------|----------------|-----|
| | CH | CM (w/o CH) | TCO |
| Amend your HRA according to the required cross-border operations (as required) | x | x | |
| Amend SPA, SOP, CAME as required | x | x | x |
| Notify FOCA before starting operations | x | x | x |
| Verify and comply with applicable local procedures/requirements | | x | x |

5 Codeshare Agreements

(ORO.AOC.115)

Codeshare agreements are not subject to approval. However, any Codeshare agreement between an Swiss AOC operator and a third country operator (TCO) shall be notified to your competent section for operational oversight of FOCA (see chapter 0.3). The notification shall be supported by information about the TCO's compliance with ORO.AOC.115 including the ICAO Standards referred to therein.