



LEGAL AND PRACTICAL ASPECTS OF AIRCRAFT LEASING IN INDIA

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I. Introduction

A single wide body passenger jetliner such as Boeing 777-9, can cost up to USD 409 million. Any airline in the ever-competitive aviation industry needs a fleet of aircrafts flying to multiple destinations, however it is neither feasible nor practicable for the operator to purchase all of its aircrafts.

Since the 1980s, when aircraft operating leases represented less than 5% of the overall aircraft operating market, the number of aircraft operating leases has grown significantly. Airlines have realized the advantage of aircraft leasing, adding aircraft to the current fleet for a convenient period of time, without the economic risk of aircraft ownership. Prior to the actual lease, a complicated process is enacted to make sure a lease contract satisfies both the Lessor and the airline. Over time this process has become more cumbersome and time-consuming due to the associated delivery and redelivery processes. The complexity and timespan of this process often catches airlines off-guard.¹

Section 3 of the Civil Aviation Requirement– Air Transport Series ‘C’ Part I defines ‘Aircraft’ Lease is defined as 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. The DGCA requirements also define the ‘lessor’ as the party furnishing the aircraft under a lease.

There are different types of leases depending on the terms and conditions of the agreement. In India, like across the world, aircraft leasing is quite prevalent. There is an entire gamut of legislations, viz. Directorate General of Civil Aviation (“DGCA”), the Reserve Bank of India, Income Tax regulations, which lessors and lessees have to consider in an aircraft leasing transaction in India.²

Leasing agents have become a core part of the aviation industry. Leasing reduces the initial capital outlay for airlines, provides access to the latest technologies and models, and allows airlines to flex the size of their fleet to mirror demand. In 2016, approximately 40% of demand for funding came from lessors.³

II. Aircraft Leasing Scenario in India

In 2015, Boeing projected India's demand for aircraft to touch 1,740, valued at \$240 billion, over the next 20 years in India. This would account for 4.3 per cent of global volumes. According to Airbus, India will be one of the top three aviation markets globally in the next 20 years. Airbus is expecting an annual growth rate of over 11 per cent for the domestic market in India over the next ten years, while the combined growth rate for

¹IATA, Guidance Material and Best Practices for Aircraft Leases, ISBN 978-92-9229-594-3 (2017).

² PSA, ‘Aircraft Leasing in India - A look at the DGCA’s Policy Prescription’ (2010) <<http://psalegal.com/wp->

<content/uploads/2017/01/Aviation-Bulletin-Issue-IX02032010100932AM.pdf> >

³ ‘Boeing Current Aircraft Finance Market Outlook’ 2017.

<http://www.boeing.com/resources/boeingdotcom/company/capital/pdf/2017_BCC_market_report.pdf. >



domestic and international routes would also be more than 10 per cent.⁴

The aviation industry in India, as per the European aircraft manufacturer Airbus, would need around 1750 aircrafts in the next 20 years. As per another study done by Centre for Asia Pacific Aviation (CAPA, 2018a), “the number of aircrafts operating in India would exceed 5000 mark by 2050. The Indian carriers are known to have ordered a total of around 1000 aircraft which are to be delivered over the next decade”. Large numbers of these aircrafts are leased through leasing companies located offshore. The aircrafts leased through offshore lessors are valued worth more than \$45 billion and is estimated to generate an annual lease revenue of \$ 5 billion and annual tax revenue of \$200 million from leasing.⁵

As per Annual Report of Indigo, total lease rental payment by Indigo in FY18 was around INR 36 billion and is expected to rise to almost INR 75 billion in 2020-21. This shows that aircraft leasing industry is a huge industry and Indian carriers are incurring large dollar-denominated expenses. As a result, Indian rupee sliding against dollar will amount to large cut in net profits for the Indian Carriers.⁶

III. Types of Leases

Aircraft leases can be effectively categorized into three categories (i) wet lease; (ii) dry lease; and (iii) damp lease on the basis on their functions, operation, duration and utility.

i. **Wet Lease:** Also known as the ACMI (Aircraft, Crew, Maintenance, and Insurance) lease, is when essential ACMI services are also leased along with the aircraft. The salaries of the crew are to be paid by the lessor and not the lessee i.e. the company operating the aircraft. Whereas, aircraft operating charges such as cost of fuel, parking, overfly charges etc. are payable by operating airline.

A wet lease generally lasts 1–24 months. A wet lease is typically utilized during peak traffic seasons or annual heavy maintenance checks, or to initiate new routes.⁷

ii. **Dry Lease:** Unlike wet leases, a dry lease does not include crew, maintenance or insurance. A dry lease can be further classified into two (i) Operating (ii) Finance. If the dry lease is for a long term and the lessee has the option to purchase the aircraft at the period of expiry of the lease it is termed as a finance lease. Whereas, if the aircraft is leased for a short period of time compared to its total lifetime, and the lessee does not have the option to purchase the aircraft it is termed as an operating lease.

iii. **Damp Lease:** - Damp lease is a form of wet lease, wherein the aircraft is leased along with its maintenance and insurance, but aircraft crew is not leased. However, an initial crew member may be provided for training the lessees crew. Paragraph 2.5 of DGCA Aircraft Leasing Manual defines damp lease as a ‘lease arrangement whereby a lessor provides an aircraft with partial crew to the lessee’.

IV. Civil Aviation Requirements

⁴ https://www.business-standard.com/article/companies/india-emerging-biggest-aircraft-market-115111000052_1.html

⁵ Pawan Kumar Chugan, ‘Aircraft Financing and Leasing in India Challenges & Opportunities’ (2019).

⁶ Pawan Kumar Chugan, ‘Aircraft Financing and Leasing in India Challenges & Opportunities’ (2019).

⁷ http://www.globalplanesearch.com/aircraft_leasing/definition.htm



Paragraph 1.1 of DGCA Aircraft Leasing Manual provides that no Indian operator shall take any aircraft on lease or give any aircraft on lease to a foreign operator without permission from the Director General of Civil Aviation. The guidelines under the Civil Aviation Requirements are applicable to parties involved in operational leasing agreements, including Indian Air Operator Permit/ Certificate Holders and foreign air operators.

IV.I Article 83 BIS to the Chicago Convention

Article 83 bis to the Chicago Convention imposes essential safety oversight responsibilities. Any aircraft transfer made under the said provision is to be recognised by all states which have ratified Article 83-bis. The transfer of responsibility involves functions and duties under, various provisions of the Chicago Convention pertaining to the rules of the air, radio licensing, certificates of airworthiness, and personnel licences, respectively.

- i. Article 12:** Obligation upon every contracting state to ensure that every aircraft bearing their nationality mark, shall comply with rules and regulations with respect to the flight and manoeuvre of aircraft.
- ii. Article 30:** Mandatory licensing of aircraft radios by the state of registry if they are to be carried over the territory of other contracting states.
- iii. Article 31:** Every aircraft engaged in International navigation must be provided with a Certificate of Airworthiness issued or rendered valid by the State of Registry.
- iv. Article 32:** The pilot and crew of every aircraft engaged in international air navigation shall be provided with licenses

and certificates of competency by the state in which the aircraft is registered. However, each contracting state reserves the right to refuse to recognize the certificates of competence given to any of its nationals by another contracting state.

IV.II Aircraft License Agreement: Article 83 BIS

Paragraph 4.2 of DGCA Aircraft Leasing Manual states that; Once it has been established that an Article 83 bis agreement is the best solution for maintaining effective airworthiness control and regulatory oversight of a particular aircraft that is subject to an international leasing arrangement, there are four mandatory components that must be addressed before an Article 83 bis agreement can come into force.⁸ These are (i) a formal agreement (ii) an exchange of letters (iii) a delegations agreement (iv) an agreement regarding airworthiness responsibilities.

Leasing Procedure as per DGCA Requirements

Under Chapter 7 of the DGCA Aircraft Leasing Manual the parties to the lease agreement are mandated to make an application for approval 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. DGCA may further require supplementary documents to determine the airworthiness and operations under the lease agreement.

Paragraph 9.1 of the DGCA Aircraft Leasing Manual provides that once an application is made to the Air Transport Directorate of DGCA, it may convene a meeting with the

⁸ <http://164.100.60.133/manuals/cap3200.pdf>



Indian operator with a view to finalising the arrangements and modalities for operation of the leased aircraft during the period of lease. The representatives of foreign operator as well as the foreign regulatory authority may also be allowed to participate in the meeting. The Directorate General of Civil Aviation shall take a decision regarding desirability of conclusion of an agreement under Article 83 bis. Subject to the provisions and the requirements contained in chapter 7.

VI. Indian Registered Aircraft Leased to Foreign Operator

Paragraph 7.3.1 of the Civil Aviation Requirement Section 3- Air Transport Series 'C' Part I provides that the Indian registered owner, shall submit the following to the Directorate General of Civil Aviation: (i) a completed three sets of Aircraft Leasing (ii) a copy of the lease agreement, and (iii) Consent of Foreign Civil Aviation Authority, at least 45 days prior to the proposed date of proposed date of commencement of operations. It should be noted that the consent of the applicable foreign civil aviation authority is required before a leasing permission can be issued. Such consent should be in writing.

Paragraph 7.3.3 provides for Airworthiness Eligibility Requirements necessary to ensure the safe operation of an Indian registered aircraft by a foreign air operator: (i) 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. (ii) The

above approval will ensure that an evaluation of the maintenance organization has been carried out by the foreign civil aviation regulatory authority.⁹

VII. Leasing Aircraft from One Indian Operator to Another Indian Operator

The applicant shall submit to DGCA (Air Transport Directorate) the following: (i) a completed three sets of Aircraft Leasing Form, and (ii) a copy of the lease agreement, at least 45 days prior to the proposed date of commencement of operations.

The aforementioned notice period of 45 days can be waived or reduced by the authority 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;
- ii. or 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;
- iii. or the aircraft has been leased or chartered to meet an emergency such as natural calamity, industrial unrest or any other similar situation.

Conclusion

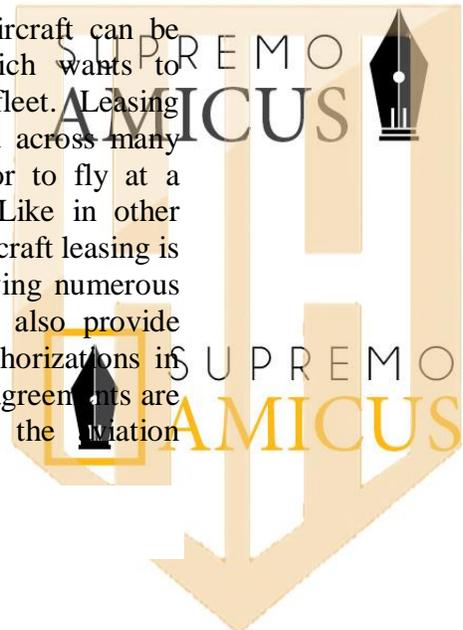
The Indian aviation sector has undergone a rapid transformation, passenger numbers have skyrocketed over the past couple of years. In order to meet the growing market, the airlines have turned towards leasing as a mode of acquisition of aircrafts. Although, India does not have any legislation dedicated

⁹ Civil Aviation Requirement Section 3- Air Transport Series 'C' Part I



to aircraft financing, but the DGCA has come up with various guidelines in form of Civil Aviation Requirements to ensure oversight of aircraft leasing agreements. To ensure that air worthiness and compliance the requirements provide that no Indian operator shall take any aircraft on lease or give any aircraft on lease to a foreign operator without permission from the Director General of Civil Aviation. The regulations also provide detailed requirements and authorizations in order to enable that the lease agreements are effective and beneficial for the aviation business environment.

The cost of purchasing an aircraft can be restrictive to an airline which wants to embark on or expand its fleet. Leasing enables the cost to be spread across many years and allows the operator to fly at a relatively economical price. Like in other jurisdictions, the process of aircraft leasing is fairly complex in India involving numerous paperwork.¹⁰ The regulations also provide detailed requirements and authorizations in order to enable that the lease agreements are effective and beneficial for the aviation business environment.



¹⁰ PSA, 'Aircraft Leasing in India - A look at the DGCA's Policy Prescription' (2010) <<http://psalegal.com/wp->

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