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**CIVIL
AVIATION
BYE-LAW**

LEASE, CHARTER AND INTERCHANGE OF AIRCRAFT UNDER ARTICLE 83 *bis*

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PREAMBLE: These Bye-Laws are made by the Civil Aviation Authority of Botswana with the approval of the Minister of Transport and Communications under Section 8 (2) of the Civil Aviation Act, 2011.

CITATION: These Bye Laws may be cited as the Civil Aviation Authority of Botswana (Lease, Charter and Interchange of Aircraft Under Article 83 bis) Bye Laws.

1. PURPOSE

The purpose of this Civil Aviation Bye-Law (CABY) is to clarify the requirements for 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 of air safety in the case of international lease, charter or interchange of aircraft.

2. APPLICABILITY

This Bye-Law shall apply when an Air Operator Certificate (AOC) holder leases a foreign registered aircraft or when a Botswana registered aircraft is leased to another Contracting State.

3. EFFECTIVITY

This Civil Aviation Bye-Law (08-2015) shall be deemed to have taken effect on 26th August 2015.

4. REFERENCES

- Botswana Civil Aviation Act, 2011, Section 62
- Civil Aviation (Air Operator Certification & Administration) Regulations 2013, Regulation 29
- ICAO Circular 295 – Guidance on the Implementation of Article 83 *bis* of the Convention on International Civil Aviation
- Flight Operations Inspectors Manual – Volume 2, Chapter 6, Paragraph 6.1.4

5. REQUIREMENTS

5.1 The Civil Aviation Authority of Botswana (CAAB) is legally obliged and committed to implement national standards and procedures for the consistent application of international standards and will apply its Policy in implementing the provisions of Article 83 bis.

5.2 In accordance with Section 62 of the Botswana Civil Aviation Act, 2011, the Authority may enter into an agreement on behalf of Botswana with another state relating to the transfer of functions and duties of a State of Registry in respect of an aircraft operated pursuant to an agreement for the lease, charter or interchange of the aircraft or similar arrangement. In this regard, the Minister may, on the recommendation of CAAB, make regulations relating to the operation

of aircraft pursuant to an agreement for the transfer of functions and duties of a state of registry under Article 83 *bis* of the Chicago Convention.

5.3 The transfer of oversight functions and duties may include:

(a) Article 12 - Rules of the Air

The Article makes States to be responsible for ensuring that every aircraft carrying its nationality mark, wherever such aircraft may be, shall comply with the State's rules and regulations relating to the flight and manoeuvre of aircraft.

(b) Article 30 - Aircraft Radio Equipment

Aircraft radios shall be licensed by the State of Registry if they are to be carried in or over the territory of other Contracting States. The use of radio apparatus shall be in accordance with the regulations of the State flown over. Radios shall only be used by members of the flight crew licensed for that purpose by the State of Registry.

(c) Article 31 - Certificates of airworthiness.

This Article requires every aircraft engaged in international navigation to be provided with a certificate of airworthiness issued or rendered valid by the State in which it is registered.

(d) Article 32a - Licences of Personnel.

The pilot and crew of aircraft engaged in international navigation shall be provided with certificates of competency issued or rendered valid by the State of Registry. States may refuse to recognize, for the purpose of flight above their territory, certificates of competency and licences granted to any of its nationals by another Contracting State.

5.4 IMPLEMENTATION

5.4.1 All or part of the duties and functions pertaining to Articles 12, 30, 31 and 32 (a) of the Convention on International Civil Aviation may be transferred from the State of Registry to the State of the Operator. In order to effect the transfer, the parties shall enter into transfer agreements, which shall state specifically the duties and functions to be transferred. The State of Registry shall be relieved of responsibility in respect of the functions and duties transferred. Those duties and functions not specifically mentioned in the transfer agreement shall be deemed to remain with the State of Registry. The transfer agreement shall be recognized by all other contracting states which have ratified it.

5.4.2 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 CAAB indicating the likelihood of transferring oversight duties and responsibilities to the civil aviation authority in the state of operation. The aircraft concerned shall be clearly identified in the agreement by including reference to the aircraft type, registration and serial numbers.

5.4.3 CAAB shall 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 83 bis agreement shall 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 shall 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.

5.4.4 These document when signed shall form part of the operator's operations specifications and shall be carried on board the aircraft at all times.

6. GUIDANCE

The provisions of this Bye-Law shall be read together with the provisions of the Botswana Civil Aviation Act, 2011, Civil Aviation (Air Operator Certification & Administration) Regulations 2013, ICAO Circular 295 – Guidance on the Implementation of Article 83 *bis* of the Convention on International Civil Aviation and Flight Operations Inspectors Manual – Volume 2, Chapter 6, Paragraph 6.1.4.

Approved on this 22nd Day of MAY 2018

Onkokame K. Mokaila
Minister
Ministry of Transport and Communications

Made on this 22nd Day of MAY 2018

Puseletso G. Moshabesha
Chief Executive Officer
Civil Aviation Authority of Botswana