

ROYAUME DE BELGIQUE
MINISTRE DES COMMUNICATIONS
ET DE L'INFRASTRUCTURE

Administration de l'Aéronautique

CIRCULAIRE

CIR/OPS-05

Date **10/96**

Edition : **4**

Objet :

Cette circulaire a pour objectif de définir les conditions requises pour la location ou l'affrètement d'un aéronef par un exploitant belge dans le transport aérien commercial.

Réf. :

- 1) Règlement CEE n° 3922/91 relatif à l'harmonisation des règles techniques et des procédures administratives dans le domaine de l'aviation civile.
- 2) Règlement CEE n° 2407/92 concernant les licences des transporteurs aériens, en particulier les articles 8 et 10.
- 3) Règlement fixant les mesures techniques à prendre pour l'exploitation dans le transport aérien commercial des avions d'un poids total maximum autorisé égal ou supérieur à 5.700 kg, établi par l'A.M. du 13 février 1970.
- 4) Règlement fixant les mesures techniques en matière d'exploitation des aéronefs d'un poids total maximum autorisé inférieur à 5.700 kg utilisés dans le transport aérien commercial, établi par l'A.M. du 12 septembre 1991.
- 5) A.M. du 03 août 1994 fixant les conditions de délivrance des licences d'exploitation aux transporteurs aériens, en particulier l'article 6.

L'édition 4 comprend :

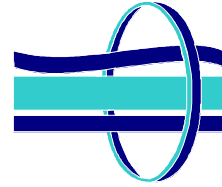
Le Directeur Général,

E. VAN NUFFEL

17 pages datées : **10/96**

Objet de la circulaire

1. La location ou l'affrètement d'un aéronef par un exploitant belge est soumis au respect de conditions techniques et opérationnelles décrites dans la présente circulaire et son annexe.
2. Cette circulaire distingue 2 types de location ou d'affrètement d'aéronef, définis ci-après :
 - 2.1. le "dry lease" : l'aéronef est exploité sous couvert du certificat de transporteur aérien de l'exploitant locataire ;
 - 2.2. le "wet lease" : l'aéronef est exploité sous couvert du certificat de transporteur aérien de l'exploitant bailleur.
3. Les Règlements européens d'application sont les Règlements CEE 3922/91 et 2407/92



CIVIL AVIATION ADMINISTRATION, BELGIUM
a member of the
JOINT AVIATION AUTHORITIES

**LEASING OF AIRCRAFT
FOR COMMERCIAL
AIR TRANSPORT**

Leasing of Aircraft CIR/OPS-05

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I. TERMINOLOGY

Terms used in this Circular have the following meaning:

(1) **Air operator certificate (AOC)** – A document issued by the Authority which affirms that the operator has the professional ability and organization to secure the safe operation of aircraft for the aviation activities specified in the certificate. The AOC is required by the EEC Regulation nr 2407/92 and is distinct from the Operating License also required by the same Regulation.

(2) **Authority** - The organization responsible within a State for the safety regulation of civil aviation. In Belgium, the Authority is the Belgian Civil Aviation Administration (BCAA).

(3) **JAA Member State** - A State which is signatory of the Joint Aviation Authorities (JAA) Agreements as full member.

(4) **Non JAA Member State** - A State which is Signatory of the Chicago Convention and of its Annex 6, other than a Joint Aviation Authorities (JAA) full member State.

(5) **Dry lease** - Is when the aircraft is operated under the AOC of the lessee.

(6) **Wet lease** - Is when the aircraft is operated under the AOC of the lessor.

(7) **Operating license** - An authorization granted by the Authority to an undertaking, permitting it to carry out carriage by air of passengers, mail and/or cargo, as stated in the operating license, for remuneration and/or hire.

(8) **Operator** - An air transport undertaking with a valid operating license.

II. LEASING OF AIRCRAFT BY A BELGIAN OPERATOR TO AND FROM A JAA MEMBER STATE

(a) DRY LEASE-IN BY A BELGIAN OPERATOR OF AN AIRCRAFT REGISTERED IN A JAA MEMBER STATE

(1) As specified in article 8 of the European Union Regulation 2407/92, the aircraft operated by a Belgian operator are registered, as elected by the BCAA, either on the Belgian register or in a JAA Member State.

(2) A Belgian Operator dry leasing-in an aircraft registered in JAA member State shall obtain prior approval from the BCAA. To this end, the Belgian operator shall submit the lease agreement. The conditions of the approval shall form part of the lease agreement.

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(3) Approval request for inscription of a dry leased-in aircraft on the Belgian operator's air operator certificate shall be handled by his maintenance management in the same manner as for a Belgian registered aircraft and in accordance with procedures laid down in the Belgian operator's maintenance management exposition. In particular :

- (i) Dry leased-in aeroplanes shall be certified FAR/JAR 23 commuter category or FAR/JAR 25 and shall be certified for commercial air transport. A copy of the certificate of airworthiness shall be provided tot the BCAA ;
- (ii) The aircraft shall be maintained according to a maintenance programme approved or accepted by the BCAA. A copy of the maintenance programme approved by the competent JAA Authority shall be provided tot the BCAA;
- (iii) The aircraft shall be maintained in an appropriately JAR 145 approved organization. A copy of the contracts covering the base and the line maintenance of the aircraft shall be provided tot the BCAA;
- (iv) The airworthiness directives issued by the airworthiness Authorities of the manufacturer shall have been enforced on the aircraft and the record of them shall be provided tot the BCAA;
- (v) The review of the maintenance works performed since last base maintenance checks, as well as the records of aircraft flight hours/cycles, engine hours/cycles and the remaining hours/cycles until next maintenance checks shall be provided to the BCAA;
- (vi) Any differences existing with the Belgian Regulations regarding instruments, safety equipment, communications and navigational equipments shall be reported to the BCAA for approval.

(4) The Belgian Operator shall :

- (i) Apply for the inscription of the leased aircraft on his operating license and on his AOC;
- (ii) Amend his operations manual accordingly;
- (iii) Provide any necessary training, briefing and/or documentation to his crews, his ground operations personnel and his technical personnel ;
- (iv) Ensure that the maintenance of the leased aircraft will be covered by and performed according to the operator's maintenance management exposition approved by the BCAA.

(5) The leased aircraft shall be removed from any other AOC during the lease period.

(6) Unless due operator's justification is accepted by the BCAA, the flight crews of the Belgian operator shall have a pilot's license issued by Belgium, by a

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European Union member State or by a State associated to European Union. In any case, the considered pilot's license shall be valid and recognized or validated by the Authority where the aircraft is registered.

(7) The dry lease-in contract shall only be valid after the BCAA has accepted the operational and maintenance supervision of the leased aircraft, according tot the dispositions of article 83 bis of the Chicago Convention.

(b) DRY LEASE-OUT OF AN AEROPLANE BY A BELGIAN OPERATOR TO AN OPERATOR OF A JAA MEMBER STATE

- (1) A Belgian operator shall not dry lease out an aircraft to an operator of a JAA member State without prior approval of the BCAA and provided that the following conditions are met:
- (i) the lessee has already an air operator certificate and already operates the type of aircraft proposed for the lease since at least one year;
 - (ii) the BCAA has removed the aircraft from the operator's operating license and AOC;
 - (iii) the Belgian operator shall submit for acceptance the lease agreement that includes a complete exposition of the arrangements he proposes for the execution of the aircraft maintenance programme. A copy of the maintenance contracts with appropriate JAR 145 organization(s) shall be provided tot the BCAA;
 - (iv) the Belgian registered aircraft shall be operated and maintained according to the Regulations laid down by the lessee's Authority, with exception of the following conditions:
 - (A) the conformity with the aircraft Flight Manual approved by the BCAA;
 - (B) the maintenance of airframe and engines according to the maintenance programme approved by the BCAA;
 - (C) the accomplishment of any airworthiness directive;
 - (D) the approval of modifications or major repairs by the BCAA;
 - (E) the renewal of the certificate of airworthiness by the BCAA; and
 - (F) the notification of incidents or accidents to the BCAA.
 - (v) During the lease period, the Belgian operator shall continuously ensure the availability of the technical data tot maintain the airworthiness of the aircraft and for the renewal of the certificate of airworthiness;
 - (vi) The minimum equipment list of the lessee shall have been assessed by the Belgian operator.

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(2) The flight crews of the lessee shall have a pilot's license issued by Belgium, by a European Union member State or by a State associated to European Union, that shall be valid and recognized or validated by the BCAA.

(3) The dry lease-out contract shall only be valid after the lessee's Authority has accepted the operational and maintenance supervision of the leased aircraft, according to the dispositions of article 83 bis of the Chicago Convention.

(c) WET LEASE-IN BY A BELGIAN OPERATOR OF AN AIRCRAFT OPERATED BY AN OPERATOR OF A JAA MEMBER STATE

As a general rule, the BCAA may at any time refuse a wet lease-in agreement or restrict the number of wet lease in agreements requested by a Belgian operator when it appears that the aim is to bypass rules and regulations that are a prerequisite for the grant of a determined operating license and AOC.

(1) Article 10 of European Union Regulation 2407/92 requires that :

- (i) For the purposes of ensuring safety and liability standards, a Belgian Operator shall obtain prior approval for the operation from the BCAA. The conditions of the approval shall be part of the lease agreement between the parties;
- (ii) The BCAA shall not approve wet lease-in agreements concluded by a Belgian operator, unless safety and liability standards equivalent to those imposed by the BCAA are met.

(2) The lesser must be holder of an operating license and of an AOC for commercial air transport. The approval request must include :

- (i) the evidence that the proposed lease agreement remains in reasonable proportion with the capacity offered by the aircraft specified on his operating license and AOC ;
- (ii) the results of a recent technical and operational audit of the lessor's safety and liability standards, that is performed by the Belgian operator according to BCAA's requirement;

(3) The lessor, providing an aircraft to the Belgian Operator and retaining all the functions and responsibilities prescribed for the issue of his AOC, shall remain the operator of the aircraft. As a consequence, the lessor is responsible for any aspect of operations such as the training and the competence of all the flight crews and of the maintenance of the aircraft.

(4) The aircraft shall be maintained in an appropriately JAR 145 approved organization. A copy of the contracts covering the base and the line maintenance of the aircraft shall be provided to the BCAA;

(5) On basis of a clause to be inserted in the lease agreement, the Belgian Operator will continuously ensure during the lease period a recent technical and operational supervision of the lessor, so as to make sure that safety and liability standards equivalent to those imposed by the BCAA are met.

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(6) The technical and operational supervision prescribed in (5) here above shall mainly be exercised by line inspections covering at least :

- (i) the airworthiness and maintenance status of the aircraft;
- (ii) the competency of the flight crews.

The Belgian operator shall specify in the approval request the periodicity of the line inspections he proposes to perform.

(7) The flight crews employed by the lessor within the scope of the lease agreement shall hold a pilot's license issued by Belgium, by a European Union member State or by a State associated to European Union. The lessee should ascertain that these flight crews have reasonable experience on the considered aircraft type and meet the level of competency of the lessee's crews.

(8) The minimum equipment list of the lessee shall have been assessed by the Belgian operator.

(9) The lease agreement shall provide that the lessor is not allowed to subcontract the flights to a third party.

(d) WET LEASE-OUT OF AN AIRCRAFT OPERATED BY A BELGIAN OPERATOR TO AN OPERATOR OF A JAA MEMBER STATE

(1) The Belgian Operator shall notify the lease agreement to the BCAA, together with a copy of the approval delivered by the lessee's Authority.

(2) The Belgian Operator, providing an aircraft to the lessee and retaining all the functions and responsibilities prescribed for the issue of his AOC, shall remain the operator of the aircraft. As a consequence, the Belgian operator is responsible for any aspect of operations such as the training and the competence of all the flight crews and the maintenance of the aircraft.

(3) Prior to the operation, the Belgian operator shall have provided for acceptance a complete exposition of the arrangements he proposes for the execution of the aircraft maintenance programme (maintenance contracts with appropriate JAR 145 organization(s)). A copy of the contracts shall be forwarded tot the BCAA.

III. LEASING OF AIRCRAFT BY A BELGIAN OPERATOR TO AND FROM A NON JAA MEMBER STATE

The leasing to and from a non JAA Member State is wording outside JAA harmonization process. Therefore, the Belgian operator has to take into account that he has to demonstrate the technical and operational level of the operation by means of documentation and audit.

(a) DRY LEASE-IN BY A BELGIAN OPERATOR OF AN AIRCRAFT REGISTERED IN A NON JAA MEMBER STATE

(1) A Belgian operator shall not dry lease-in an aircraft registered in a non JAA member State. A waiver may be granted by the BCAA, as specified in article 8 paragraph 3 of the European Union Regulation nr 2407/92, to meet *exceptional circumstances* or *temporary needs for a period not exceeding 45 days*. The conditions of the approval shall be part of the lease agreement.

(2) Request of a waiver for inscription of a dry leased-in aircraft on the Belgian operator's air operator certificate shall be handled by his maintenance management in the same manner as for a Belgian registered aircraft and in accordance with procedures laid down in the Belgian operator's maintenance management exposition. In particular :

- (i) Dry leased-in aircraft shall be certified FAR/JAR 23 commuter category or FAR/JAR 25 and shall be certified for commercial air transport. A copy of the certificate of airworthiness shall be provided tot the BCAA.
- (ii) The aircraft shall be maintained according to a maintenance programme approved by the BCAA.
- (iii) The aircraft shall be maintained in an appropriately JAR 145 approved organization. A copy of the contracts covering the line and base maintenance of the aircraft shall be provided tot the BCAA;
- (iv) The airworthiness directives issued by the airworthiness Authorities of the manufacturer shall have been enforced on the aircraft and the record of them shall be provided tot the BCAA;
- (v) an overall review of the maintenance works performed since last base maintenance checks, as well as the records of aircraft flight hours/cycles, engine hours/cycles and the remaining hours/cycles until next maintenance checks shall be provided tot the BCAA;
- (vi) any differences existing with the Belgian Regulations regarding instruments, safety equipment, communications and navigational equipments shall be reported tot the BCAA for approval.

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- (3) The Belgian Operator shall :
- (i) apply for the inscription of the leased aircraft on his operating license and on his AOC;
 - (ii) amend his operations manual accordingly;
 - (iii) provide any necessary training, briefing and/or documentation to his crews, his ground operations personnel and his technical personnel ;
 - (iv) ensure that the maintenance of the leased aircraft will be covered by and performed according to his operator's maintenance management exposition approved by the BCAA (confer Operations Manual – Part E Maintenance) ;

(4) The leased aircraft shall be removed from any other AOC during the lease period.

(5) Unless due operator's justification is accepted by the BCAA, the flight crews of the Belgian operator shall have a pilot's license issued by Belgium, by a European Union member State or by a State associated to European Union. In any case, the considered pilot's license shall be valid and recognized or validated by the Authority where the aircraft is registered.

(6) The dry lease-in contract shall only be valid after the BCAA has accepted the operational and maintenance supervision of the leased aircraft, according to the dispositions of article 83 bis of the Chicago Convention.

(b) DRY LEASE-OUT OF AN AIRCRAFT BY A BELGIAN OPERATOR TO AN OPERATOR OF A NON JAA MEMBER STATE

(1) A Belgian operator shall not dry lease out an aircraft to an operator of a non JAA member State without prior approval of the BCAA and provided that the following conditions are met :

- (i) the lessee has already an air operator certificate and already operates the type of aircraft proposed for the lease since at least on year;
- (ii) the dry lease-out period does not exceed 45 days;
- (iii) the BCAA has removed the aircraft from the operator's operating license and AOC;
- (iv) the Belgian operator has provided for acceptance a complete exposition of the arrangements he proposes for the execution of the aircraft maintenance programme. The aircraft shall be maintained in an appropriately JAR 145 approved organization. A copy of the contracts shall be provided tot the BCAA;

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- (v) the Belgian registered aircraft shall be operated and maintained according to the Regulations laid down by the lessee's Authority, with exception of the following conditions:
 - (A) the conformity with the aircraft Flight Manual approved by the BCAA;
 - (B) the maintenance of airframe and engines according to the maintenance programme approved by the BCAA;
 - (C) the accomplishment of any airworthiness directive;
 - (D) the approval of modifications or major repairs by the BCAA;
 - (E) the renewal of the certificate of airworthiness by the BCAA; and
 - (F) the notification of incidents or accidents to the BCAA.
 - (vi) The minimum equipment list of the lessee shall have been assessed by the Belgian operator.
- (2) The flight crews of the lessee shall have a pilot's license issued by, recognized or validated by the BCAA.
- (3) The dry lease-out contract shall only be valid after the lessee's Authority has accepted the operational and maintenance supervision of the leased aircraft, according to the dispositions of article 83 bis of the Chicago Convention.

(c) WET LEASE-IN BY A BELGIAN OPERATOR OF AIRCRAFT OPERATED BY AN OPERATOR OF A NON JAA MEMBER STATE.

- (1) A Belgian operator shall not wet lease-in an aircraft registered in a non JAA Member State. A waiver may be granted by the BCAA, as specified in article 8 paragraph 3 of the European Union Regulation nr 2407/92, to meet *exceptional circumstances* or *temporary needs for a period not exceeding 45 days*. The conditions of the approval shall be part of the lease agreement.
- (2) Article 10 of European Union Regulation 2407/92 requires that :
- (i) For the purposes of ensuring safety and liability standards, a Belgian operator shall obtain prior approval for the operation for the operation from the BCAA. The conditions of the approval shall be part of the lease agreement between the parties;
 - (ii) The BCAA shall not approve wet lease-in agreements concluded by a Belgian operator, unless safety and liability standards equivalent to those imposed by the BCAA are met. The Belgian operator shall provide full documented technical files and audit reports to assess above mentioned standards;

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(3) As a general rule, the BCAA may at any time refuse a wet lease-in agreement or restrict the number of wet lease in agreements requested by a Belgian operator when it appears that the aim is to bypass rules and regulations that are a prerequisite for the grant of a determined operating license and AOC.

(4) The lessor must be holder of an operating license and of an AOC for commercial air transport. The approval request must include :

- (i) the evidence that the proposed lease agreement remains in reasonable proportion with the capacity offered by the aircraft specified on his operating license and AOC;
- (ii) the results of a recent technical and operational audit of the lessor's safety and liability standards, that is performed by the Belgian operator according to BCAA's requirement;

(5) The lessor, providing an aircraft to the Belgian Operator and retaining all the functions and responsibilities prescribed for the issue of his AOC, shall remain the operator of the aircraft. As a consequence, the lessor is responsible for any aspect of operations such as the training and the competence of all the flight crews and for the maintenance of the aircraft.

(6) the lessor's Authority shall be an ICAO Member State :

- (i) having signed and still applying the Chicago Convention and its Annexes;
- (ii) having an Aviation Authority for more than 7 years;

(7) the aircraft shall be certified FAR/JAR 23 commuter category or FAR/JAR 25 and shall be certified for commercial air transport;

(8) The aircraft shall be maintained in an appropriately JAR 145 approved organization. Where an harmonization programme exists between the State of the lessor and the JAA, a waiver may be granted on a case by case basis pending on the harmonization level achieved. A copy of the contracts covering the base and the line maintenance of the aircraft shall be provided tot the BCAA ;

(9) the lessor has already an air operator certificate and already operates the type of aircraft proposed for the lease since at least one year;

(10) any requirement made applicable by the BCAA shall be complied with.

(11) all the documents issued by the lessor's Authority shall be written in the Dutch, French or English language.

(12) On basis of a clause to be inserted in the lease agreement, the Belgian Operator shall continuously ensure during the lease period a technical and operational supervision of the lessor, so as to make sure that safety and liability standards equivalent to those imposed by the BCAA are met.

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(13) The technical and operational supervision prescribed in (11) here above shall be exercised by line inspections covering at least :

- (i) the airworthiness and maintenance status of the aircraft;
- (ii) the competency of the flight crews.

The Belgian operator shall specify in the approval request the periodicity of the line inspections he proposes to perform.

(14) The flight crews concerned within the scope of the lease agreement shall be employed by the lessor. The lessee should ascertain that these flight crews have reasonable experience on the considered aircraft type and meet the level of competency of the lessee's crews.

(15) The lease agreement shall provide that the lessor is not allowed to subcontract the flights to a third party.

(d) WET LEASE-OUT OF AN AIRCRAFT OPERATED BY A BELGIAN OPERATOR TO AN OPERATOR OF A NON JAA MEMBER STATE

(1) The wet lease-out period shall normally not exceed 45 days.

(2) The Belgian Operator shall submit the lease agreement to the approval of the BCAA.

(3) The Belgian operator, providing an aircraft to the lessee and retaining all the functions and responsibilities prescribed for the issue of his AOC, shall remain the operator of the aircraft. As a consequence, the lessor is responsible for any aspect of operations such as the training and the competence of all the flight crews and the maintenance of the aircraft.

(4) The Belgian operator shall provide for acceptance a complete exposition of the arrangements he proposes for the execution of the aircraft maintenance programme. The aircraft shall be maintained in an appropriately JAR 145 approved organization. A copy of the contract shall be provided to the BCAA.

IV. LEASING OF AIRCRAFT AT SHORT NOTICE

In circumstances where a Belgian operator is faced with an immediate, urgent and unforeseen need for a replacement aircraft. BCAA's prior approval does not apply provided that :

- (1) the lessor is an operator holding an AOC issued by a JAA Member State;

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(2) the Belgian operator has ascertained that the lessor has safety and liability standards equivalent to the safety standards of the lessee. As far as possible, the Belgian operator should conclude cooperation agreements well in advance with other operators to cover leasing at short notice;

(3) the lease-in period does not exceed 2 consecutive days; and

(4) the use of this provision is reported to the BCAA with a maximum delay of 12 hours after decision is taken and with the necessary evidences it covers an immediate, urgent and unforeseen need for a replacement aircraft. Replacement means this provision may not be used to increase the transport capacity of the operator.

V. ADMINISTRATIVE PROCESS

When authorization or approval of the BCAA is needed, the Belgian operator shall introduce a complete request (see [Appendix 1](#)) in written form to the BCAA, Air Transport Division, at least 21 calendar days before intended date of operation, except that for a dry or wet-lease in operation under Parts III a and III c above the complete request must be introduced at least 60 calendar days before intended date of operation. Above mentioned delays start from the time that the BCAA is in possession of the complete file.

The technical aspects of the request shall have been coordinated between the maintenance management of the Belgian operator and the BCAA, Certification/Maintenance Division, to the satisfaction of the latter.

In case of a dry or wet lease in and when the Belgian operator is not holding a JAR 145 certificate appropriate for the leased aeroplane, the Belgian operator must be helped for the technical audit by a properly JAR 145 approved organization.

The operational aspects of the request shall have been coordinated between the operations management of the Belgian operator and the BCAA, Operations Division, to the satisfaction of the latter.

Where operational and technical audits to be conducted by the BCAA induce extraordinary expenses such as work and travel abroad, the audits will only be performed if the operator accepts in writing to support these expenses at his own costs.

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VI. GENERAL

The BCAA may at any time impose any requirement the Authority judges necessary to ensure that safety and liability standards are met. Moreover, the BCAA is in no case responsible when the intended date of operation is not respected due tot the operator's failure to provide all requested data in due time to be examined by the Authority.

Any breach to the dispositions of this Circular and its Annex exposes the operator to prosecution proceedings.

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APPENDIX 1

CIR/OPS-05 LEASING APPROVAL REQUEST

1. TYPE OF LEASING REQUESTED

2. AIRCRAFT

- Type :

- Current registration :

3. TYPE OF OPERATION

4. MAINTENANCE

- Line maintenance organisation :

- Base maintenance organisation :

5. MOTIVATION OF THE LEASING

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6. ON BASIS OF CIRCULAR CIR/OPS-05, THE FOLLOWING DOCUMENTATION AND DEMONSTRATION DOCUMENTS ADAPTED TO OUR SPECIFIC LEASING APPROVAL REQUEST ARE JOINED IN ANNEXE :

Type of document

in conformity with applicable Requirements

Quality visa

7. THE FOLLOWING DOCUMENTS ARE PRESENTLY MISSING, BUT WILL BE FORWARDED AS SOON AS POSSIBLE TO THE BCAA :

Type of document