

PERATURAN DIREKTUR JENDERAL PERHUBUNGAN UDARA

NOMOR : KP 126 TAHUN 2016

TENTANG

PEDOMAN TEKNIS OPERASIONAL BAGIAN 8900 – 3.13
(*ADVISORY CIRCULAR 8900 – 3.13*)
PERJANJIAN SEWA GUNA USAHA
(*LEASING AGREEMENT*)

DENGAN RAHMAT TUHAN YANG MAHA ESA

DIREKTUR JENDERAL PERHUBUNGAN UDARA,

- Menimbang :
- a. bahwa dalam rangka memberikan keteraturan dan panduan dalam proses perjanjian sewa guna usaha (*leasing agreement*) bagi operator penerbangan di Indonesia perlu adanya petunjuk pelaksanaan bagi operator penerbangan dalam pelaksanaan perjanjian sewa guna usaha (*leasing agreement*);
 - b. bahwa berdasarkan pertimbangan sebagaimana dimaksud pada huruf a, perlu menetapkan Peraturan Direktur Jenderal Perhubungan Udara tentang Pedoman Teknis Operasional Bagian 8900 – 3.13 (*Advisory Circular 8900-3.13*) Perjanjian Sewa Guna Usaha (*Leasing Agreement*);
- Mengingat :
1. Undang-Undang Nomor 1 Tahun 2009 tentang Penerbangan (Lembaran Negara Republik Indonesia Tahun 2009 Nomor 1, Tambahan Lembaran Negara Republik Indonesia Nomor 4956);
 2. Peraturan Presiden Nomor 3 Tahun 2001 tentang Keamanan dan Keselamatan Penerbangan (Lembaran Negara Republik Indonesia Tahun 2001 Nomor 9, Tambahan Lembaran Negara Nomor 4075);

3. Peraturan Presiden Nomor 7 Tahun 2015 tentang Organisasi Kementerian Negara (Lembaran Negara Republik Indonesia Tahun 2015 Nomor 8);
4. Peraturan Presiden Nomor 40 Tahun 2015 tentang Kementerian Perhubungan (Lembaran Negara Republik Indonesia Tahun 2015 Nomor 75);
5. Keputusan Menteri Perhubungan Nomor KM 18 Tahun 2002 tentang Persyaratan-Persyaratan Sertifikasi dan Operasi Bagi Perusahaan Angkutan Udara Niaga Untuk Penerbangan Komuter dan Charter sebagaimana telah beberapa kali diubah, terakhir dengan Peraturan Menteri Perhubungan Nomor PM 152 Tahun 2015;
6. Peraturan Menteri Perhubungan Nomor PM 28 Tahun 2013 tentang Peraturan Keselamatan Penerbangan Sipil Bagian 121 (*Civil Aviation Safety Regulation Part 121*) tentang Persyaratan-Persyaratan Sertifikasi dan Operasi Bagi Perusahaan Angkutan Udara Yang Melakukan Penerbangan Dalam Negeri, Internasional Dan Angkutan Udara Niaga Tidak Berjadwal (*Certification And Operating Requirements: Domestic, Flag, And Supplemental Air Carriers*) sebagaimana telah diubah terakhir dengan Peraturan Menteri Perhubungan Nomor PM 107 Tahun 2015;
7. Peraturan Menteri Perhubungan Nomor PM 59 Tahun 2015 tentang Kriteria, Tugas dan Wewenang Inspektur Penerbangan;
8. Peraturan Menteri Perhubungan Nomor PM 189 Tahun 2015 tentang Organisasi dan Tata Kerja Kementerian Perhubungan;

MEMUTUSKAN

Menetapkan : PERATURAN DIREKTUR JENDERAL PERHUBUNGAN UDARA TENTANG PEDOMAN TEKNIS OPERASIONAL BAGIAN 8900-3.13 (*ADVISORY CIRCULAR 8900-3.13*) PERJANJIAN SEWA GUNA USAHA (*LEASING AGREEMENT*).

Pasal 1

Memberlakukan Pedoman Teknis Operasional Bagian 8900-3.13 (*Advisory Circular 8900-3.13*) Perjanjian Sewa Guna Usaha (*Leasing Agreement*), sebagaimana tercantum dalam Lampiran yang merupakan bagian tak terpisahkan dari Peraturan ini.

Pasal 2

Pedoman Teknis sebagaimana dimaksud dalam Pasal 1 mengatur panduan bagi operator pesawat udara dalam proses perjanjian sewa guna usaha (*leasing agreement*).

Pasal 3

Direktur Kelaikudaran dan Pengoperasian Pesawat Udara mengawasi pelaksanaan Peraturan ini.

Pasal 4

Peraturan ini mulai berlaku sejak tanggal ditetapkan.

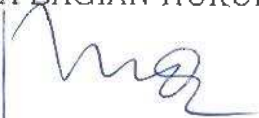
Ditetapkan di JAKARTA
Pada tanggal : 8 APRIL 2016

DIREKTUR JENDERAL PERHUBUNGAN UDARA

ttd.

SUPRASETYO

Salinan sesuai dengan aslinya
KEPALA BAGIAN HUKUM,



RUDI RICHARDO, S.H, M.H
Pembina Tk. I (IV/b)
NIP. 19670118 199403 1 001

Advisory Circular

AC 8900 – 3.13

Leasing Agreement

Amendment : 0
Date : April 2016

**REPUBLIC OF INDONESIA – MINISTRY OF TRANSPORTATION
DIRECTORATE GENERAL OF CIVIL AVIATION
JAKARTA – INDONESIA**

FOREWORD

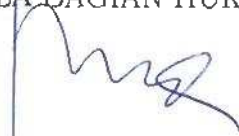
1. **PURPOSE** : This Advisory Circular has been prepared to guide and assist applicant, in the processes and procedures evaluating aircraft leases and interchange agreements for Indonesian operators.
2. **REFERENCES** : This Advisory Circular should be used in accordance with the applicable regulations.
3. **CANCELLATION** : -.
4. **AMENDMENT** : The amendment of this Advisory Circular shall be approved by the Director General of Civil Aviation.

DIRECTOR GENERAL OF CIVIL AVIATION

signed

SUPRASETYO

Salinan sesuai dengan aslinya
KEPALA BAGIAN HUKUM


RUDI RICHARDO, SH, MH
Pembina Tk. I / (IV/b)
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AMENDMENT RECORD LIST

Amendment No.	Issue Date	Inserted By	Insertion Date
0	April 2016		

SUMMARY OF AMENDMENTS

Amendment No.	Source/s	Subject/s	Approved
0		New issued	

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CHAPTER I. GENERAL

1. Purpose

This Staff Instruction provides guidance for evaluating aircraft leases and interchange agreements for Indonesian operators.

2. Definitions

- a. Dry Lease- Any agreement in which a lessor, (which could be a foreign air carrier, bank, or leasing company) leases an aircraft without flight crewmembers to an air carrier (the lessee), and in which the lessee maintains operational control.
- b. Interchange Agreement- Any agreement between in which the operational control of an aircraft is transferred for short periods of time from one operator to another. With this type agreement, the latter operator assumes responsibility for the operational control of the aircraft at the time of transfer.
- c. Wet Lease- Any agreement in which a lessor, leases an aircraft, with at least one pilot flight crewmember, to either an air carrier, foreign air carrier, or a foreign person (the lessee).
- d. Damp Lease- A wet-leased aircraft that includes a cockpit crew but not cabin attendants.
- e. Lease: Any agreement by a person (the lessor) to furnish an aircraft to another person (lessee) to be used for compensation or hire purposes.
- f. Lessee: The party using the aircraft under the provisions of a lease.
- g. Lessor: The party furnishing the aircraft under a lease.
- h. Operational control: The exercise of authority over the initiation, continuation, diversion or termination of a flight in the interest of the safety of the aircraft and the regularity and efficiency of the flight.

3. Regulatory References

- a. Regulations. CASR Part 121 section 121.6 and CASR Part 135 section 135.41.
- b. ICAO Annexes 6; ICAO Doc. 8335 Part V (Lease and Charter Operations).
- c. Staff Instruction (SI) 8900-3.18 - Operations Specifications

CHAPTER II EVALUATE AIRCRAFT LEASE AGREEMENT

1. General

- a. Determining "Operational Control" of a Dry-Leased Aircraft. Normally, operational control of any dry leased aircraft rests with the lessee. In most dry lease agreements the lessor is a bank of either a leasing or a holding company. In neither case will the lessor have the operational expertise, the facilities, or the desire to assume responsibility and liability for controlling the day-to-day operations of the aircraft.
- b. Determining "Operational Control" of Wet-Leased Aircraft. The fact that the DGCA characterizes a lease as a wet lease does not necessarily make the lessor responsible for operational control.
- c. Other Factors in Determining Operational Control of Leased Aircraft.
 1. CASR Parts 121 and 135 provide that the DGCA shall determine if a person has operational control if that person exercised authority and responsibility for a specified number of operational functions. This could include scheduling flights and crewmembers, initiating flights, and terminating flights.
 2. In cases where there is doubt or controversy over who exercises operational control, the DGCA may consider additional factors, such as who is responsible for maintenance, servicing, and crewmember training.

2. DGCA Responsibilities

- a. Determine DGCA Responsibility. Approval of the OpSpecs and/or ACL is the responsibility of the Director of Airworthiness and Aircraft Operations assigned to the operator exercising operational control of the aircraft. This determination must be made by reviewing the specific assignment of operational control listed on the lease/interchange agreement.
- b. Review the Lease. An aircraft lease agreement is reviewed to determine if all of the responsibilities of the lessor/lessee are described. The inspector must ensure that the lease contains all effective dates and provisions required by regulation. Those items not required by regulation must be reviewed to determine their applicability and compatibility with the regulatory requirements.
- c. The Lessor's Operator's Manual. The lessor's manual must be reviewed for the following:
 1. The Maintenance Program, for the aircraft, engines, propellers (if applicable), and appliances,

2. The maintenance reliability program, if applicable,
 3. A training program for the maintenance personnel on the aircraft,
 4. Fueling procedures for the aircraft,
 5. Provision for use of an approved minimum equipment list (MEL), and
 6. Provisions for leasing the aircraft to the lessee.
- d. **The Lessee's Operator's Manual.** The lessee's manual must be reviewed for the following:
1. To determine if the manuals provide adequate procedures and guidance for incorporating leased aircraft into its operating system,
 2. Procedures for the use of the lessor's maintenance program, for the aircraft, engines, propellers (if applicable), and appliances,
 3. Procedures for the use of the maintenance reliability program, if applicable,
 4. Procedures in the maintenance training program that are adequate to provide for configuration differences, if the aircraft is maintained under the lessor's maintenance program,
 5. Fueling procedures for the aircraft, and
 6. Provisions for use of an approved MEL.
- e. **Aircraft Maintenance Records.** The lessor will maintain the aircraft maintenance record and ensure that the items required to be inspected, repaired, or overhauled are addressed in those records.
- f. **Aircraft Conformity Inspections.** Aircraft conformity inspections are conducted to ensure that:
1. Differences between aircraft already in a lessee's fleet and aircraft being leased are noted. These differences must be addressed with:
 2. Amendments to the lessee's OpSpecs and/or ACL,
 3. Revisions to the lessee's maintenance manual, and
 4. Configuration of the aircraft meets the regulatory requirements of the intended operation.

3. Coordination Requirements

This task requires coordination among airworthiness and operations aviation safety inspectors.

4. References;

- a. Staff Instruction (SI) 8900.3.18 - Air Operator Certificate, Operating Certificate and Operations Specifications Operations Specifications.
- b. Staff Instruction (SI) 120-03(O) and SI 120-03(M).

5. Procedures for Lease Agreements

- a. **Determine if a Lease Agreement Has Occurred.** Request a copy of the lease or lease memorandum:
 1. Determine which DGCA should be involved in the evaluation of the lease agreements.
 2. Determine DGCA which is responsible for approving the operations and maintenance portions of the operations specifications.
- b. **Review the Lease.** Ensure that:
 1. The lessor and lessee are properly identified on the lease,
 2. The lease is signed by the appropriate personnel in both the lessor's and the lessee's organizations,
 3. All strikeovers, erasures, and corrections are initialed by both the lessor and the lessee,
 4. The aircraft subject to the lease agreement are identified by aircraft make and model, registration number, and serial number,
 5. The effective dates of the lease are identified,
 6. Operational control is specifically designated,
 7. Responsibilities for performing maintenance are specifically designated,
 8. Responsibilities for keeping aircraft maintenance records are specifically designated, and
 9. Maintenance programs (lessee's or lessor's) that will be utilized are designated.
 10. Expiration date of lease agreement.

- c. **Review the Lessee's Manuals.** Ensure that the manual includes the following:
 - 1. Procedures adequate to incorporate the leased aircraft into his operating system (aircraft acceptance checks, etc.),
 - 2. Provisions in the maintenance training program to account for any differences in the configuration of the leased aircraft from the existing fleet,
 - 3. A program that is adequate to provide for configuration differences if the aircraft is to be maintained under the lessee's maintenance program, and
 - 4. A MEL that is applicable to the leased aircraft.
- d. **Review the Aircraft Maintenance Records** as required by CASR part 43.9. See also SI 8300 Vol. 2, Ch. 71 (Evaluate CASR Part 121 Operator's Maintenance Records).
- e. **Perform an Aircraft Conformity Inspection.** After performing the inspection, review the results to ensure that the differences between the leased aircraft and the aircraft already in operation are identified and will be addressed in the OpSpecs and the lessee's maintenance manual.

6. Task outcomes

- a. **Complete the Record.**
- b. **Complete the Task.** Completion of this task will result in one of the following:
 - 1. **Approval** of the agreement by accomplishing the following:
 - a) Sending a letter to the operator indicating acceptance of the agreement,
 - b) Approval of OpSpecs in accordance with SI 8900-3.18 (Operations Specifications) CASR Parts 121/135 OpSpecs.
 - 2. **Disapproval** of the agreement by sending a letter to the operator/applicant listing the reasons for disapproval.
- c. **Document the Task.** File all supporting paperwork in the operator/applicant's office file.

7. Future Activities. Normal surveillance.

CHAPTER III - WET LEASE AGREEMENTS

1. General.

- a. A wet lease is any leasing arrangement whereby a person agrees to provide an entire aircraft and at least one crewmember, for use for a specified period or a defined number of flights.
- b. Where both parties to a wet lease agreement hold AOCs, serious factual questions arise concerning which party, the lessor or the lessee, is actually responsible for the operation and compliance with the applicable safety regulations. The responsible authority or authorities, if the lessor and lessee are from different States, need to resolve such questions before operations involving use of the wet leased aircraft can be commenced.

2. Processing Wet Lease Arrangements.

- a. The lessor must submit a copy of the lease arrangement to the DGCA for processing.
- b. A wet lease must contain four attributes:
 1. Identification of a specific aircraft by serial number,
 2. Grant of exclusive possession and use of that aircraft to the lessee,
 3. Defined duration for the grant of possession and use, and
 4. Provision by the lessor of at least one crewmember with the aircraft.
- c. Operation and Airworthiness inspectors immediately review the lease arrangement to ensure that it is complete. An operator also must meet each part 121 or 135 requirement applicable to the kind of operation specified in the wet lease arrangement. Following this review, Operation and Airworthiness inspectors make a written operational assessment, where the Indonesian AOC holder will have operational control under the terms of the lease.
- d. The DGCA then makes a determination as to which party to the arrangement holds responsibility for operational control and to the applicability of the CASR and associated OpSpecs and/or ACL. For making proper determination of operational control, it may be necessary to ask the lessor to submit any clarifying or supplemental information regarding the lease arrangement.

3. Determination of Operational Control.

CASR Part 121 & Part 135 provides that the DGCA shall determine that a party has operational control of flights if that party exercises authority and responsibility for a specified number of operational functions.

- a. In cases where doubt or controversy exists, the DGCA shall also consider additional factors such as who is responsible for maintenance, servicing, and crewmember training.
- b. Operational functions include:
 1. Provision of one or more crewmembers,
 2. Provision of the training of those crewmembers,
 3. Assigning crewmembers for particular flights,
 4. Directly paying crewmembers for services,
 5. Responsibility for airworthiness,
 6. Responsibility for performance of maintenance,
 7. Dispatch of flights, and
 8. Initiating and terminating flights.

4. Amending Operations Specifications (OPSPECS) and/or Authorization, Condition And Limitation (ACL).

After the appropriate DGCA determine which party to the arrangement has operational control, the OpSpecs and/or ACL can be amended, include following information:

- a. The names of the parties to the arrangement and the duration of the arrangement;
- b. The make, model, and series of each aircraft involved in the arrangement;
- c. The kind of operation (for example, domestic, flag, supplemental, commuter, or charter);
- d. The expiration date of the lease arrangement;
- e. A statement specifying the party deemed to have operational control; and
- f. Any other item, condition, or limitation the Director General determines necessary.

CHAPTER IV – DRY LEASE

1. **General**

Dry lease is Any agreement in which a lessor, (which could be a foreign air carrier, bank, or leasing company) leases an aircraft without flight crewmembers to an air carrier (the lessee), and in which the lessee maintains operational control.

2. **RESERVED**

CHAPTER V – DAMP LEASE

Damp Lease is a wet-leased aircraft that includes a cockpit crew but not cabin attendants. A damp leased shall be reviewed according to procedure for reviewing of wet-leased on chapter III of this SI.

The lessee's cabin crew members will need to receive additional training, under the approved training programme of the lessor, with respect to their emergency duties on the particular aircraft. In addition, they may have no knowledge of the requirements of the lessor's State of the Operator with respect to flight and duty time limitations and the provision of rest periods, and to the performance of their duties and responsibilities aboard the wet leased aircraft.

CHAPTER VI – INTERCHANGE AGREEMENT

1. General

Interchange Agreement is any agreement between operators in which the operational control of an aircraft is transferred for short periods of time from one operator to another. With this type agreement, the latter operator assumes responsibility for the operational control of the aircraft at the time of transfer.

2. RESERVED

CHAPTER VII - LIST OF APPLICABLE FORMS

1. 120-17 AIRCRAFT LEASING EVALUATION CHECKLIST