COMMERCIAL AIR TRANSPORT BY FOREIGN AIR OPERATORS WITHIN [STATE]
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PART I - SAMPLE BASIC AIR LAW CONCERNING FOREIGN AIR OPERATORS

Note: The information in this Part is included for information, as the State primary aviation legislation probably includes similar provisions for all air operators, including foreign air operators. If similar provision are not already included in the primary aviation legislation, similar content should be included.

1.0 Definition

Foreign air operator - Any operator that holds an air operator certificate issued by one State and that operates, or seeks to operate, into the airspace above the territory of another State.

2.0 Authority of the Director General Concerning Foreign Air Operators

2.1 The Director General shall be authorized to promulgate regulations for the safety of operations and surveillance of foreign air operators operating within [STATE].

2.2 The Director General shall be authorized access to civil aircraft, without unreasonable delay, to search on landing or departure and to inspect the certificates and other documents prescribed under the Convention on International Civil Aviation for the purposes of ensuring that these aircraft are being operated in accordance with this Act and regulations issued under this Act.

2.3 (1) The Director General is authorized to direct the operator or the pilot in command of a foreign civil aircraft operating within [State], that the aircraft is not to be operated when unsafe or likely to be operated in an unsafe manner.

   Note: The concept of ‘unsafe’ is used extensively in Annex 8 without definition. A standard practice in interpretation is to use the usual definition of a word. This is a key authority to permit an inspector to exercise their best judgment in the interests of safety. The application of ‘unsafe’ can be addressed through training and State-level guidance.

23 (2) Subject to the Convention on International Civil Aviation, the Director General may take such steps as are necessary to detain such aircraft and to notify the state of registry and the state of the operator as appropriate.
PART II - CIVIL AVIATION REGULATIONS

XXX.1 APPLICABILITY
This Part shall apply to the operation of any civil aircraft for the purpose of commercial air transport operations by any air operator whose Air Operator Certificate is issued and controlled by a civil aviation authority other than the [civil aviation authority of [STATE]].

XXX.2 DEFINITIONS
For the purposes of Part XXX, the following definitions shall apply:

1. Accident – according to Annex 13 to the Convention
2. Air Operator Certificate (AOC) – A certificate authorizing an operator to carry out specified commercial air transport operations.
3. Foreign air operator - Any operator that holds an air operator certificate issued by one State and that operates, or seeks to operate, into the airspace above the territory of another State.
4. Foreign Authority – The civil aviation authority that represents the State of Registry or the State of the Operator.
5. Serious Incident – according to Annex 13 to the Convention

XXX.3 REQUIREMENT FOR A VALIDATION
An operator shall not perform an operation to which this Part applies except under and in accordance with an air operator certificate that has been validated under this Part.

XXX.4 ISSUE, SUSPENSION OR REVOCATION OF A VALIDATION

1. Subject to subjection (2), a Validation of Air Operator Certificate remains in force as long as the Air Operator Certificate on which it is based remains valid or until it is suspended or revoked by the Director General.

2. A Validation of Air Operator Certificate shall expire immediately at the end of the twelfth month following the last air transport operation in [STATE] to which the validation applies.

3. The holder of a Validation of Air Operator Certificate that expires or is suspended or revoked shall forthwith surrender the validation to the Director General.

1 Definition of Foreign Air Operator not necessary if it is contained in the Aviation Act
XXX.5 COMPLIANCE

(1) A foreign air operator shall not operate an aircraft in commercial air transportation operations contrary to the requirements of:
   a) Part XXX;
   b) Applicable paragraphs of Parts [STATE GENERAL OPERATING RULES];
   c) The AOC issued to the foreign air operator;
   d) The Validation of Air Operator Certificate;
   e) The rules of the state of registry of the aircraft and the state of the operator that give effect to the Standards and Recommended Practices contained in Annexes 1, 6, 8 and 18 to the Chicago Convention.

(2) Despite paragraph (1) e), if a requirement of these Regulations is more stringent than the comparable requirement of a rule of the state of registry or the state of the operator mentioned in that paragraph, the requirement of these Regulations applies.

XXX.6 EXEMPTIONS IN THE CASE OF EQUIVALENT STANDARDS

[STATE] may exempt the operator of an aircraft engaged in operations under an Air Operator Certificate from compliance with a provision of this Part in respect of the aircraft only if:

(1) [CAA] is satisfied that, under the operator’s air operator certificate, the operator is required to comply with an equivalent provision of no less a standard in respect of the safe operation of the aircraft than the provision of this Part from which an exemption is sought; and

(2) The operation is conducted on an infrequent, non-scheduled basis.

Note: [STATE] should consider also a condition here related to the frequency or number of such non-scheduled flights. This would include special purpose flights such as those for humanitarian relief, etc.

XXX.7 FORM OF A VALIDATION OF AIR OPERATOR CERTIFICATE FOR FOREIGN OPERATOR

(1) A Validation of Air Operator Certificate shall contain:
   a) The operator’s full name;
   b) The date of issue and term of the air operator certificate;
   c) The operator’s business address and contact details for operational management;
   d) The operator’s [STATE] business address and contact details;
   e) Any limitations;
   f) A statement that the Validation is issued on the basis of an AOC that is in effect and that any changes to the original AOC or related conditions or limitations affecting operations by the operator in [STATE] must be notified by the operator in writing to [STATE] within 30 days of such a change;
g) A statement that the Validation ceases to have effect immediately upon the expiry, suspension, revocation, cancellation or any similar action in respect of the air operator certificate.

   Note: [STATE] should consider adding any other conditions that might be necessary.

(2) Conditions imposed on an operator by the operations specifications of an Air Operator Certificate issued by the State of the Operator are also conditions of the Validation of Air Operator Certificate issued by [STATE].

XXX.8 VALIDATION

(1) An air operator engaged in operations under a Validation of Air Operator Certificate must hold a valid AOC that:

   a) Is issued by a state of the operator that is acceptable to [State]; and
   b) Authorizes the holder to conduct those operations into, within or from [State] territory.

(2) [State] must be satisfied, for an air operator mentioned in subsection (1), that the responsible authority mentioned in paragraph (a) continues to maintain its functions in respect of operations under the Air Operator Certificate in accordance with the Chicago Convention.

(3) If an AOC or its associated operations specifications mentioned in subsection (1) is suspended, revoked, cancelled, or its validity affected in any similar manner, or provisions related to operations in [State] amended, the air operator must inform [State] in writing within 30 days of the effective date of such action.

   Note: Notification ‘in writing’ includes facsimile transmission and electronic messaging (email).

XXX.9 AUTHORITY TO INSPECT

Subject to the Convention on International Civil Aviation, a foreign air operator shall ensure that any person authorized by the [STATE] will be permitted at any time, without prior notice, to board any aircraft within [STATE] operated for commercial air transportation, to inspect the documents and manuals required by XXX.10 and to perform inspections to ensure compliance with these regulations.

   Note: DOC 8335 and Guidance material provides further information regarding inspection. There should be no need to be more specific in the regulation.
XXX.10 PRODUCTION OF DOCUMENTATION, MANUALS AND RECORDS

(1) A foreign air operator shall:
   (a) Give any person authorized by the [State] access to any documents, manuals and
       records which are related to flight operations and maintenance; and
   (b) Produce all such documents, manuals and records, when requested to do so by the
       Authority, within a reasonable period of time.

(2) The pilot in command shall, within a reasonable time of being requested to do so by a
person authorized by the [State], produce to that person the documentation, manuals and
records required by the Convention to be carried on board.

XXX.11 PRESERVATION, PRODUCTION AND USE OF FLIGHT RECORDER
RECORDINGS

Following an accident or serious incident, or an incident within [State] when the [State] so
directs, the operator of an aircraft on which a flight recorder is carried shall preserve the
original recorded data for flight recorders within the meaning of Annex 13 to the Convention
on International Civil Aviation for a period of 60 days unless otherwise directed by the
[STATE] investigating authority.

Note: This means that the preservation requirements are effective
after every accident or serious incident, and also after any incident at
the State’s notification. This would impose a minimum requirement of
60 days, but that could be lengthened or shortened at the discretion of
the State.