



**The Air Charter
Association**

The ACA Position Paper

Aircraft Dry Leasing / Day Leasing Arrangements



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Key Messages

- In certain circumstances, Dry Leasing has a strong potential to be an illegal air charter flight, if exploited and made valid for out of the ordinary periods, such as one day - 'Day Leasing'.
- In that context, this can mean the passenger, as the lessee, is legally responsible and accountable for the actions of that aircraft and the way it is operated.
- Consequently, insurance is potentially invalidated, both for the aircraft and the passenger's own life cover.
- Lower levels of oversight, independent audit, pilot training, maintenance safety and security compared to Commercial Air Transport.
- Companies and individuals providing Day Leasing to non-CAT operators are not accepted as Association members.

1. Introduction

Commercial Air Transport (CAT) is the carriage of passengers or freight in return for money or any other valuable consideration. Establishing as a commercial operator requires a significant investment of time, money, and effort, with the aim of developing and sustaining significant processes and procedures that allow for the safe operation of complex aircraft and protect the travelling public. When a CAT flight takes off, it is the culmination of a long and detailed planning process where a large number of people and systems have been involved in minimising and mitigating the risks of flying, in what is already a very safe mode of transport.

Every CAT flight involves teams focussed on Planning, Safety, Security, Ground Operations, Training, Flight Operations, Compliance Management and Engineering Quality Management. In each instance, CAT flights will have come into contact with at least six different individuals whose sole focus is on asking independent questions about the details of the flight, all designed to make the part which most people see, the flight crew and flight attendant, the front-end of a safe and secure structure.

International regulations covering CAT ensure that travellers receive the safest possible flight and are designed to act as a sense check, preventing flights which may be less safe, or with more risk, from taking place.

The ACA is concerned that there is a growing presence in the market of 'Day Leased' aircraft which exploit the normal conditions to which these terms apply, allowing aircraft owners to skirt around the CAT regulation and hire their aircraft out to unrelated parties, provide a pilot under a separate contract and in the majority of cases, the unsuspecting passenger flies without understanding the repercussions and their role under such a lease arrangement.

The ACA is working on initiatives that seek to educate the public and end-user of charter flight standards, while addressing underlying policy frameworks. Consequently, The ACA is calling for Regulators around the world to tighten up the misused and archaic Dry Lease regulations to protect those operators who invest in the infrastructure that upholds the excellent safety standards through a CAT operation.

2. What is Dry / Day Leasing?

Dry Leasing or Day Leasing, as it is often referred to for clarity, is the act of an owner leasing an aircraft without crew or fuel, to an individual or company. This is not to be confused with the common practice of Dry Leasing of aircraft by a leasing company or owner and a fully licensed operator / AOC holder.

Aircraft leasing comes from the tradition of Commercial Air Transport operators needing to lease in additional capacity to cover particularly busy periods, such as the 'Winter Sun' periods in Europe. In the 1980's such leasing accounted for less than 5% of all aircraft operating in the market, however, the benefits of leasing entire aircraft fleets rather than owning them has become a more attractive proposition for the industry and it now forms the basis of the majority of ownership models. It was, and remains, a very practical way of CAT operators procuring their fleets.

Day Leasing dates back to the 1940's and has rarely been assessed since. Aviation's international governing body, ICAO (the International Civil Aviation Organisation), details leases in considerable depth in Part V of their publication "*Doc 8335: Manual of Procedures for Operations Inspection, Certification and Continued Surveillance*"¹ and includes the definition "A Dry Lease is understood to be the lease of an aircraft where the aircraft is operated under the AOC of the lessee. It is normally a lease of an aircraft without crew, operated under the custody and the operational and commercial control of the lessee, and using the lessee's airline designator code and traffic rights."

IATA (the International Air Transport Association), defines a lease as "A legal document outlining the terms under which one party agrees to rent property from another party. A lease guarantees the Lessee (the renter) use of an asset and guarantees the Lessor (the property owner) regular payments from the Lessee for a specified number of months or years. Both the Lessee and the Lessor must uphold the terms of the contract for the lease to remain valid."² The process of leasing, documented by IATA, has a very specific and regimented set of steps including Letters of Intent, Pre-delivery Process, Delivery, Operation and Redelivery and by its nature virtually sustains an entire section of the legal profession around the globe.

The CAA (UK Civil Aviation Authority) details³ various leasing arrangements which are available to the holders of UK Air Operator Certificates (AOC, their CAT Licence) and EASA (the European Aviation Safety Agency) defines a Dry Lease as "an agreement between undertakings pursuant to which the aircraft is operated under the air operator certificate (AOC) of the Lessee or, in the case of commercial operations other than CAT, under the responsibility of the Lessee."⁴

Conversely, the FAA's position on Dry Leasing and especially so in the context of 'General Aviation' make it clear and, in doing so, provides a sound basis on which to mitigate the risks and in turn, inform all parties through that clear guidance⁵, where responsibility lies, in addition to protecting the interests of commercial operators. By clearly setting out lease terms and the specifics of the arrangements, and the implementation of lease provisions in their totality, definitions are far less ambiguous and aid in the promotion of safe operations.

To The ACA it remains very clear that the intent of a lease is to support the CAT industry with a means of retaining an aircraft in its fleet or for supplemental capacity when schedules demand it, the definitions throughout make no reference to anything other than CAT.

¹ [https://www.icao.int/APAC/Meetings/2012_FAOSD_Training/Doc%208335%20-%20Manual%20for%20Ops%20Inspection%20Cert%20Continued%20Surv%20Ed%205%20\(En\)%5B1%5D.pdf](https://www.icao.int/APAC/Meetings/2012_FAOSD_Training/Doc%208335%20-%20Manual%20for%20Ops%20Inspection%20Cert%20Continued%20Surv%20Ed%205%20(En)%5B1%5D.pdf)

² <https://www.iata.org/contentassets/bf8ca67c8bcd4358b3d004b0d6d0916f/ac-leases-4th-edition.pdf>

³ <https://www.caa.co.uk/Commercial-industry/Aircraft/Leasing/Aircraft-leasing/>

⁴ <https://part-aero.com/#air-operations-def/def.40>

⁵ https://www.faa.gov/about/initiatives/safe_charter_operations/media/GADryLeasingGuide.pdf

In the past decade, there has become a growing part of the charter market addressed by an interpretation of what constitutes a Dry Lease, which has allowed aircraft that have been unable to be added to CAT certificates, such as Single Engine Turbine types in Europe until recently, or ones which would not be permitted to operate charter flights in a specific territory by nature of the country in which they are registered, to be leased by members of the general public under a Dry Lease arrangement, with the Lessor becoming the Operator of the aircraft for the duration of the Lease. A pilot is hired under a separate contract, but generally from an approved list provided by the Owner/Lessor at the same time as the Lease is signed.

3. What is The ACA's position on 'Day Leasing'?

Whilst the legal requirements of a Lease may be met, and the provision of a pilot under a separate contract may break any link between the Owner/Lessor and the Lessee, the Association is increasingly aware of a number of situations where sufficient clarity is not being provided, especially so in the UK and Europe, to ensure that the Lessee truly understands the full impact of being the Operator of the aircraft for the duration of the Lease and ensuring that they remain compliant with aviation law during the time when they are fully responsible for that aircraft and its actions.

The responsibilities that come with being the Operator of an aircraft are significant, both in terms of basic regulatory compliance on routine flights and in areas such as corporate manslaughter in the event of a death, as a result of a fatal accident. An aircraft operator is ultimately accountable for how that aircraft is operated and for ensuring that it is done so safely, efficiently and in full accordance with aviation law, in terms of the pilot's experience, the airworthiness (maintenance) of the aircraft, ensuring that the aircraft insurance is compliant with the requirements of the Regulatory Authority it operates under, as well as any territorial law requirements, such as the UK and EU Government rules on aircraft insurance. These issues are not checklists that can be simply transferred on a daily basis, without considerable thought and skill. To provide some context, a commercial airline leasing transfer project would take anything from a month to six months to complete and ensure that all legal and safety compliance processes are carried out. The lease agreements that are being signed on non-commercial aircraft at present comply with the very basic regulation on leasing, but often fail to address in sufficient and clear detail, in the way that a Lease to a Commercial Air Carrier would, what the implications of the Lease really are to an inexperienced aircraft user. Therefore, it is this aspect where our main area of concern lies.

If an inexperienced, or even first time, charter passenger approaches a CAT operator or experienced broker they will be led through the process to secure a flight on a licensed air carrier, approved by a recognised Regulatory Authority who has been independently audited and has comprehensive safety, quality, training, maintenance and operational management systems in place. The flight will be operated by pilots tested on emergency procedures at least every six months and usually on simulators designed to be as realistic as possible under a scheme tailored to the operator's individual risks and requirements. They will have undergone fire and survival training and will be monitored regularly to ensure that they operate within the company's standard operating procedures – all designed to minimise risk. Each flight will be risk assessed throughout the booking and planning process, checked by a series of independent teams and individuals, any of whom have the ability to stop the flight from operating if they are not satisfied with any aspect of the flight's safety. By the time the passenger meets the flight crew at the aircraft around eight separate levels of sense check will have taken place to ensure the flight is as safe as possible.

If they approach a Dry Lease operator, often the only risk mitigation in the entire process is the pilot and, in some circumstances, these can even be non-Commercial pilots, as was the case in a recent high profile fatal accident - but a first-time user would be unaware of what that meant, and any potential implications. What it means is that an independent sense check of the entire flight has not been undertaken, the pilot has planned everything themselves, without any process and without a team to make and oversee all the arrangements. With no safety or quality system to control the actions that are taken, all decisions on the safety of the flight are taken by, generally, one individual, without anyone independent being able to assess and, if applicable, say 'stop, this is not safe'. There is no requirement for simulator training and testing, there is no training management system in place to ensure that the pilot's abilities in emergency situations are tested, no risk analysis is carried out on the flight from start to finish which seeks to further reduce risk to the lowest possible level. And, of course, as the Lessee of the aircraft, the passenger is fully responsible and accountable for everything that happens on that flight, with all the financial and legal repercussions that would arise in the event of an accident. Given the Insurance Industry's very clear position on the coverage of leases and the requirement to seek permission for every lease, it is very possible that the aircraft's insurance for the hull itself and the liabilities of the people on board, and those on the ground, would be invalidated.

Whilst we encourage aviation in all its forms, we are conscious that Lessees of private aircraft on a by-the-day basis are very unlikely to understand the full implications of the Lease and could suffer significantly in the event of any accident or incident.

4. Conclusion

Amongst other legitimate examples, Dry Leasing between two CAT operators, or indeed, a CAT operator and purpose-built leasing company, allows CAT operators to scale up without heavy asset investment and the aviation industry to respond to periods of additional capacity requirements, such as maintenance, new routes or fleet expansion. In that regard it is fully encouraged and endorsed by the Association. Day Leasing between private owners, for short term flight requirements, goes against the spirit of the purpose for which leasing was included in aviation regulations and, to the Association, provides an easy way of skirting around the CAT requirements when flights should simply take place under CAT Regulations. As a result, the Association does not accept members who provide Day Leasing aircraft for lease by non-CAT operators, as we firmly believe this acts against the best interests of members who operate Commercial Air Transport charter flights and the robust safety measures and controls which they provide.

Obtaining a licence to carry out Commercial Air Transport requires considerable time and substantial investment. Businesses holding them are subject to regular audits by regulatory authorities and independent quality processes designed to reduce risk to the lowest possible level.

Commercial Air Transport pilots are training more regularly and, in more depth, than those outside of the CAT environment. They are subject to constant oversight and regular flight inspections to ensure they fly and operate their aircraft safely and effectively.

Independent Maintenance, Risk, Safety and Quality Management Systems control everything in CAT operations, but these simply do not exist with a Day Leased flight.

When a CAT flight takes off, there have been around eight different opportunities for independent individuals to say 'stop' if there is a risk; in a Day Leased flight, often there is just one, the pilot.

And finally, in the areas of concern discussed in this paper, the unsuspecting passenger is the Operator of the aircraft. Whatever happens is their responsibility and they will be held accountable for the actions of that aircraft. If there is a fatal accident, there will be legal cases and huge legal fees, estates will be held financially liable for any awards that are made. If there is a non-fatal accident, the aircraft insurance would be unlikely to pay out on the aircraft itself, but the Lessee (the passenger) would be liable to the owner of the aircraft (the Lessor) for paying for it. Insurance would, in a lot of cases, be invalidated, meaning the debt would need to be paid.

The ACA calls on Regulators around the globe to review and clearly define their approach to Day Leasing and, its growing prevalence in the charter industry to ensure that unsuspecting non-experienced charter passengers do not get caught in the trap of being able to lease an aircraft without a full and clear understanding of what that means, rather than simply choosing a legal and experienced Commercial Air Transport operator to perform the flight.



The Air Charter Association represents the interests of over 260 companies in the Air Charter industry.

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