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Air Operator Merger or Take-Over Procedures

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Foreword

This Air Operator Merger or Take-Over Procedures Guide provides instructions regarding the oversight of the merger of air operators or the take-over of one air operator by another.

It sets out Transport Canada, Civil Aviation (TC) processes and procedures to oversee an air operator's compliance with regulatory requirements and safe operating practices during the transition period.

Michel Gaudreau
Director
Commercial & Business Aviation

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1.0 GENERAL INFORMATION

Mergers or take-overs affect the capability and character of the merging of take-over of air operators. These procedures provide TC and by extension air operator personnel with guidance in the merger or take-over of air operators. TC must be sure of the company's continuing compliance with regulatory requirements and safe operating practices during the transition period. Each company must continue to operate under its current TC approvals until a new or amended Air Operator Certificate (AOC) is issued in the name of the "Controlling Certificate Holder" and the other OAC's are cancelled. Mergers or take-overs vary considerably, ranging from a simple change of name to a complex situation involving several air operators. TC must consider each application on its own merits.

2.0 DEFINITIONS

1. Controlling Certificate Holder

Refers to the air operator who will emerge as the surviving air operator following the merger or take-over. TC will issue the new or amended AOC to this air operator;

2. Principal Operations Inspector (POI)

Refers to the Civil Aviation Safety Inspector who is responsible for the operations surveillance of an air operator;

3. Principal Airworthiness Inspector (PMI)

Refers to the Civil Aviation Safety Inspector who is responsible for the airworthiness surveillance of an air operator; and

4. Principal Cabin Safety Inspectors

Refers to the Cabin Safety Inspector who is responsible for the cabin safety aspect of an air operator;

3.0 MERGERS OR TAKE-OVERS AND EXPLANATIONS

Mergers or take-overs are one of the following types:

1. Take-Over-Integrated:

- (a) a corporate entity with outside interests, buys the assets of an air operator, including taking the employees onto the "new company's payroll"; and

- (b) as an AOC is not transferable from one legal entity to another, this requires the corporate entity with outside interests to apply for a new AOC;
- 2. Take-Over Non-Integrated:
 - (a) one air operator assumes management or operational control, or both, of another air operator;
 - (b) these air operators may operate at arm's length under their original AOCs, but may also incorporate management agreements for personnel, operations and maintenance. They may decide to use one operations manual and one maintenance manual. There may not be a change in their individual AOCs. However, TC may issue an operations specification specifying the conditions of approval based on the management agreements. Management agreements can only be in effect for one year to allow time for the completion of the merger or take-over.
- 3. Take-Over Corporate
 - (c) the formation of a holding company to control and operate two or more air operators;
 - (d) this is short of a complete consolidation of operations with each company operating under its original name. Usually, TC issues a single AOC to the holding company. This allows it to *"carry on business as or under the firm name and style of, etc."*. Operations and maintenance are generally under central control and it is not uncommon for each to have a separate operations manager, chief pilot and the person responsible for the maintenance control system;
- 4. Merger
 - (a) a consolidation of all personnel, equipment and facilities of two or more air operators into one company.
 - (b) this is a total consolidation of operations, maintenance, aircraft, personnel and routes under one AOC and one company name.

4.0 MERGER OR TAKE-OVER ANNOUNCEMENT

When a company announces its intent to merge or TC learns that a merger or take-over is likely to occur, TC must become involved to understand exactly what changes in operations, maintenance, training and facilities may take place. The following outlines the procedures to be followed to be sure that the merger or take-over will take place with a minimum of delay and difficulty.

5.0 REGIONAL INTERFACE

More often than not, mergers or take-overs will involve more than one region and may, in fact, involve all regions and Headquarters. Cooperation and coordination at all levels are essential. Where a merger or take-over involves certificates that are held in two or more Regions including AOCs, Approved Training Organization (ATO), Airworthiness Engineering Organization (AEO), or Aircraft Maintenance Organization (AMO) a Functional Director, normally the Director, Commercial and Business Aviation, is appointed to oversee the merger or take-over. The assigned functional director is responsible to ensure that all regulatory requirements are met prior to authorizing the amendment, issue, or cancellation of any certificate resulting from the merger or take-over process. The Functional Director may form an Integration Team of TC Inspectors representing different disciplines, and drawn from different regions, to participate in the review process. In the case of a large merger or take-over, it may be desirable to have an Operations Team and a Maintenance Team. There will be a Team Leader for each team, to whom members will report. The integration plan that shows how TC proposes to conduct oversight of the merged companies. It should contain details of any changes to TC's oversight, and how those changes will be made within the various regions. It should also contain timelines for completion of the changes, and should reflect those associated with the merger/take-over process. This will be developed by the Functional Director in consultation with concerned policy makers and affected Regional Personnel. It will be disseminated to Regional Directors and Managers.

6.0 INITIAL MEETING

An early and timely date for a meeting between the air operator's key personnel and the necessary TC personnel should be arranged. Key personnel must be in place and should attend the initial meeting so that TC can brief these personnel on exactly what is required. This is particularly important if there will be new management staff requiring approval by TC. An organization chart showing duties and responsibilities should be presented at this meeting. The company should, at this meeting, indicate the intent and extent of the merger or take-over. TC should brief the company on the process they intend to follow in providing regulatory oversight including a detailed briefing on the purpose, requirements, and contents of the transition plan.

7.0 TRANSITION PLAN

The company must provide a transition plan showing how they plan to proceed. The plan must address all issues related to the operation that are a TC Safety and Security responsibility including Labour Code and Transportation of Dangerous Goods requirements. The air operator should specify what the end result will be (see 3 above). The air operator should be cautioned to avoid making immediate changes before

completion of the merger or take-over which could invalidate the conditions under which their original AOCs were issued, unless such changes are authorized by TC through the approved transition plan or other regulatory instrument. Where the companies have an Approved Maintenance Organisation (AMO), a separate plan may be presented depending on the complexity of the process. The plans should reference all the issues that need to be dealt with to accomplish the merger or take-over. They should be as detailed as possible, but where any details remaining to be worked out, there should be timelines for when those details will be provided to TC. The plans may be in the form of Gantt Charts, but in this case, there should be supporting documentation that give detailed explanations of the various issues. As the integration process evolves, it is important that TC is kept abreast of improvements and changes to the plans.

8.0 TARGET DATE

Once the company has presented its transition plan or take-over plan to TC, the TC representatives (i.e., Certification Inspector, Principal Inspector, Principal AM&M Inspector, Cabin Safety Inspector, Dangerous Goods Inspector) will then detail the certification requirements and the timeframe within which they are to be met. All parties must agree to a realistic target date for the amendment, issue or cancellation of any certificate involved in the merger or takeover. An unrealistic deadline brings needless pressure on both parties to meet requirements and could compromise safety.

9.0 MANUALS

An important aspect of a merger or take-over is the approval of the manuals required for an AOC. The company may decide either to use one of the present manuals, to use part of each company's manual or to produce a new manual entirely. Since the new or revised manuals have to reflect how the new company operates, they will require considerable review before TC can approve them. The process of integration of operational and maintenance issues may be complex, and there could be a need to have interim manuals approved. If this is the case, it is critical that any changes to the company's personnel, procedures or facilities after the interim manuals are approved be incorporated into them in a timely manner to ensure that they remain current. Since TC approval will be required, a formal process of managing such changes should be implemented by the company. Of particular significance are the issues of personnel changes, and their effects on the company organisation chart, and the interface between the Air Operator and its Maintenance Engineering organisations or contractors. Transition plans should allocate significant time for manual development and approval and since the quality of the documents will influence review time, companies should thoroughly review these documents for accuracy and consistency prior to submission to TC.

10.0 MAINTENANCE/APPROVED MAINTENANCE ORGANISATIONS

- (a) TC will check the merger or take-over application for changes to the maintenance structure and capabilities. The company's plan should provide details of how and when they will merge operations specifications, maintenance, inspection and training programs, manuals, record keeping systems and key maintenance personnel. The air operator should include in its merger or take-over plan the following or similar maintenance related information:
- (i) the appointment of a company representative who will provide merger or take-over information to TC;
 - (ii) the company shall provide the maintenance and inspection programs they intend to use. It shall also provide temporary measures associated with the merger of these programs, also a supplementary inspection structure document;
 - (iii) the company shall provide temporary training procedures to ensure that maintenance personnel remain qualified. These procedures shall include the amendments to the training programs, the updating of the training files and the training schedules in accordance with the integrated program;
 - (iv) the temporary training procedures concerning the maintenance files and the proposed amendments to the integrated program systems of updating the files;
 - (v) procedures for integration of Maintenance Control Manuals (MCM), aircraft maintenance manuals, minimum equipment lists (MELs) and any other maintenance related manuals;
 - (vi) changes of responsibility for reliability programs, contract maintenance and continuing analysis and surveillance programme;
 - (vii) changes to maintenance facilities and equipment (that is, establishment of alternate bases of operation);
 - (viii) procedures for the combining of parts and material inventories and component certification;
 - (ix) changes regarding the phasing of aircraft into the controlling certificate holder's maintenance programme.
 - (x) Procedures for the integration of Airworthiness Directives and any other mandated maintenance requirements;
 - (xi) Procedures for the integration of the Maintenance Dispatch organisation, such as Maintenance Control Centre (MCC) or Maintenance Operations Centre (MOC), particularly how the company will control the issuance of MELs, MEL extensions, maintenance deviations, deferred defects etc., and how this organisation interfaces with Flight Operations and Engineering; and

- (xii) Procedures for the integration and harmonisation of the maintenance planning personnel and planning systems, to ensure that the approved maintenance schedules are coordinated correctly; and
 - (xiii) Procedures for integration of the Approved Training Organisation (ATO) and the ATO manuals, courses and personnel.
- (b) This list is not all inclusive. The principal airworthiness inspector will advise the air operator of any other information to be included in their plan.

11.0 DANGEROUS GOODS

During the merger of one or more air operators' operations the Commercial and Business Aviation, Dangerous Goods Inspectors, review all elements of the new organisation to ensure that both during and after the transition period the transport of dangerous goods will continue to be done in compliance with the *Transportation of Dangerous Goods Regulations*. The elements of this review include the examination of the responsibilities of the flight Crew, Cabin Safety Personnel, Passenger Acceptance Staff, Ground Handling Staff, Cargo Acceptance Staff, Shippers and any other General regulatory requirements that pertain to the operation.

12.0 AVIATION OCCUPATIONAL HEALTH AND SAFETY

The following issues need to be addressed in the transition plan:

- (a) Retention of records for both companies: complaints, first aid, materials handling, manual lifting, Personal Protective Equipment (PPE), Workplace Hazardous Materials Information Systems (WHMIS), supervisory/manager (A-OH&S) training; defective equipment reports, Hazardous Occurrence Investigation Reports, Employer's Annual Hazardous Occurrence Investigation Reports (EAHOIR), committee minutes, committee annual reports, first aid records, injury reports;
- (b) Must address continuity of committees representatives responsibilities during transition;
- (c) Ensure consultation with Policy or Work Place (WP) committees or the (A-OH&S) representatives to plan the implementation of changes that may affect work processes and procedures as they relate to (OH&S);
- (d) New Company (A-OH&S) policy statement (ensures employees understand how company management acknowledge (A-OH&S);
- (e) Further to the record keeping – ensure that all employees are aware/trained in all hazardous substances/products they may come in contact with;

- (f) Reporting procedures of hazardous occurrences (who, when, what, where and how report);
- (g) Although not mandatory many companies now have a safety manual – if available ensure it is updated to avoid confusion with the merged employees.

13.0 AIRCRAFT

- (1) Companies operating the same type of aircraft would appear to present fewer merger or take-over problems. However, there are many models of a single type of aircraft. Cockpit differences can be extensive. TC needs to assess internal and external configurations, for example, combis, gravel kits, etc. Flight Manual and Minimum Equipment List consolidation, Maintenance Manual, Service Bulletin, and Airworthiness Directives (AD) status are also an important consideration for these aircraft, particularly where operational requirements such as Required Navigation Performance (RNP), Extended Range of Twin-Engine Operations (ETOPS) and Reduced Vertical Separation Minimum (RVSM) are involved.
- (2) Re-registration of the aircraft should coincide with the issuance of the AOC. TC needs to confirm there will be no problems with proof of ownership, lease purchases, and subleases, so when the time for re-registration arrives, there will be minimum delay.
- (3) The companies may plan to request lease type interchange of aircraft during the interim phase of a merger or take-over. TC must be sure that cockpit differences and type training is complete. When requested, TC must approve Flight Attendant difference and type training, as well as emergency equipment storage. TC must also approve the maintenance procedures in use during this phase.

14.0 BASE OF OPERATION

The company must establish a main base for operations and maintenance plus any sub-bases necessary. As bases are often associated with Minimum Equipment Lists, problems could arise with operations as bases are omitted from the AOC.

15.0 PERSONNEL QUALIFICATIONS

Pilots

- (1) TC will have to look closely at pilot qualifications, if an interchange of aircraft and pilots will take place. As stated in “Aircraft”, there are considerable differences in equipment, operational procedures and training procedures. For example, are all crews capable of oceanic, mountainous, arctic or Minimum Navigation Performance Specifications (MNPS) operations? If not, when will they become so qualified and what are the scheduling controls in the interim?
- (2) The company must standardise variations in training and operational procedures and must have an approved crew training programme in place before the merger or take-over is complete. TC must approve such training before the training begins and the company’s transition plan must provide a schedule for this training.

Maintenance Personnel

Aircraft Certification Authorities (ACA) and Shop Certification Authorities (SCA) may need to be reissued for at least some personnel. An assessment must be made of their current qualifications and training, and any additional training required to obtain their new ACAs or SCAs. This must be given in good time to allow for appropriate certification authorities to be issued when needed. Consideration must be given to the integration and approval of personnel at foreign stations, and those providing maintenance by sub contracted companies.

Engineering Personnel

Selected Engineers’ qualifications and training must be reviewed and their delegations harmonised under the resulting Airworthiness Engineering Organisation.

Flight Attendants

The company must submit a revised or new training program for approval by TC. In addition, the new company must be sure that all procedures are standardised and that flight attendants have received the required training. This training may involve general differences training, operational procedures, emergency procedures, equipment locations and/or new aircraft type training. Flight attendant training must be approved prior to the commencement of required training. The transition plan must show the schedule for training.

Dispatch

- (1) Dispatch procedures are an important part of an Approved Flight Watch system. This is true for air operators using large aircraft in scheduled and non-scheduled operations. It is also true where operations involve arctic, oceanic or any unusual type of operation. It is TC's responsibility to be sure that the air operator uses flight dispatchers qualified for the particular type s of operations as mentioned in section 705.110 of the CARs and, after Just 1, 1998 the dispatchers must hold a flight dispatcher certificate.
- (2) The company must train all aircrew in the correct use of the dispatch system. A newly approved Dispatch Manual may include new weight and balance procedures.

16.0 MINIMUM EQUIPMENT LISTS (MELS)

Where these lists are mandatory, the company must submit the final version for each aircraft to TC as soon as possible. TC must approve the documents before they may be used.

17.0 CONTRACT SERVICES

Contracting of services is becoming an ever increasing way of doing business, particularly for the airworthiness side of the organisation. When such contracts exist, the company must submit the versions that will be in place after the merger or take-over. TC will approve them as part of the overall maintenance programme when the company does its training under contract. These contracts must be part of an approved training programme.

18.0 AIR OPERATOR CERTIFICATES (AOCS) AND OPERATIONS SPECIFICATIONS

- (1) Normally, TC produces these aviation documents when the company meets all requirements. The certification section must examine all facets of the merger or take-over and must confirm that all conditions are met before issuing the documents. The air operator must provide copies of business documents showing the approved/accepted names together with any trade names. The AOC will reflect the company's name as per such documents.
- (2) Authorities granted to one of the merging or take-over companies will not automatically be granted to the new company. The TC must review each request in

detail to be sure that they are appropriate for the new company. It may be necessary to impose more stringent limits on some parts of the operation through the operations specifications, until TC considers unrestricted operations can be conducted safely. When TC has issued the new AOC, the old certificates will become redundant.

19.0 MANAGEMENT AGREEMENTS

Management Agreements will be time limited, between existing AOC holders for the purpose of a merger or take-over.

20.0 CANADIAN TRANSPORTATION AGENCY (AGENCY) LICENCES

The Agency will take licence action after the AOC is issued.

21.0 MERGER OR TAKE-OVER REMINDER CHECK LIST

- (1) The following list illustrates the types of items that could be included in a merger or take-over plan. It is neither an all-inclusive nor mandatory list, due to the variable nature of each merger or take-over situation. It is designed to remind inspectors and operators of the need to schedule work activities and submissions in a logical time manner.
- (2) Manuals
 - (a) General Operations Manual;
 - (b) Approved Airplane Flight Manual;
 - (c) Company Aircraft Operations Manual;
 - (d) Aircraft Checklists;
 - (i) Normal,
 - (ii) Abnormal, and
 - (iii) Emergency
 - (e) Flight Attendant Manual;
 - (f) Dispatcher/Flight Following Manual;
 - (g) Station Operations Manual

- (h) Company Emergency Manual;
 - (i) Airport/Data Enroute Manual (Charts and Plates)
 - (j) Minimum Equipment List;
 - (k) Configuration Deviation List;
 - (l) Maintenance Control Manual;
 - (m) Maintenance Policy Manual
 - (n) Maintenance Technical Manuals
 - (i) Airframe/Powerplant,
 - (ii) Structural Repair,
 - (iii) Reliability Programs,
 - (iv) Parts Catalogue,
 - (v) Maintenance/Inspection Programme,
 - (vi) Manufacturer's/Vendor's Manual,
 - (vii) Wiring Manual, and
 - (viii) Overhaul Manual
 - (o) Fuelling/Refuelling/Defuelling Manual;
 - (p) Weight and Balance Programme;
 - (q) Transportation of Dangerous Goods Manual; and
 - (r) De-icing procedures.
- (3) Training Programmes
- (s) Flight Crew
 - (i) Basic Indoctrination,
 - (ii) Initial Aircraft, (Ground/Simulator (LOFT)),
 - (iii) Emergency,
 - (iv) Recurrent,
 - (v) Differences,
 - (vi) Transition,
 - (vii) Upgrade,
 - (viii) Instructor, and
 - (ix) Company Check Pilot;
 - (t) Flight Attendant

- (i) Initial Training,
 - (ii) Annual Training,
 - (iii) Type Training,
 - (iv) Line Indoctrination,
 - (v) In-Charge Training,
 - (vi) Emergency Training,
 - (vii) First aid training,
 - (viii) Safety procedures training,
 - (ix) Flight attendant training syllabi;
 - (u) Dispatcher
 - (i) Basic Indoctrination,
 - (ii) General Subjects,
 - (iii) Initial Aircraft, and
 - (iv) Weight and Balance;
 - (v) Security Training;
 - (w) Dangerous Goods Training; and
 - (x) Maintenance Training
 - (i) Mechanic/Repairman,
 - (ii) Inspection Personnel,
 - (iii) Ground Handling/Servicing,
 - (iv) Station Personnel, and
 - (v) MEL Dispatch Procedures,
 - (vi) ATO Manual; and
 - (vii) AEO Manual.
- (4) Contracts/Leases/Agreements
- (a) Training Contracts;
 - (b) Maintenance Contracts/Agreements;
 - (c) Aircraft Leases;
 - (d) Weather/Communication Contracts;
 - (e) Airports Analysis Contracts; and
 - (f) Exclusive-Use Contracts.

(5) Other Documents/Programmes

- (a) Environmental Assessment – Noise;
- (b) Existing Deviations/Exceptions and Deviation Requests;
- (c) Emergency Evacuation Demonstration Plan;
- (d) Proving Test Plan – INS/OMEGA;
- (e) Operations Specifications;
- (f) Safety Features Cards;
- (g) Record Keeping Systems;
- (h) Use and Disposition of Aircraft Log Papers;
- (i) Training Facilities;
- (j) Carry-On Baggage Control Program;
- (k) Cabin Emergency Evacuation Trainer;
- (l) Passenger and Cabin Safety Procedures;
- (m) Minimum Crew;
- (n) Instructor qualification, and
- (o) Flight Attendant Stations.