

THE FUNDAMENTALS OF AN AIRCRAFT MANAGEMENT AGREEMENT



AVIATION LAW SECTION
WINTER CLE PROGRAM

BUSINESS JET CENTER – 2ND FLOOR
CONFERENCE CENTER
DALLAS LOVE FIELD AIRPORT

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“If I had to choose, I would rather have birds
than airplanes.”

— Charles A. Lindbergh (1902-1974)



**What type of agreement are
we talking about?**

**Like any other contract, but
what is unique is the
question of
*Operational Control***



**What type of agreement are we talking about?
Questions of Operational Control**

→ The FAA will tell you that “management agreements are not regulated” – but what does that really mean?



**What type of agreement are we talking about?
Questions of Operational Control**

- Asked another way: What exactly is regulated?
- leasing activity
- commercial operations



**What type of agreement are we talking about?
Questions of Operational Control**

➔ **What's the key factor?**

*Who is the Operator, or
Who is Exercising Operational Control?*



**What type of agreement are we talking about?
Questions of Operational Control**

→ Components of Operational Control:



**What type of agreement are we talking about?
Questions of Operational Control
Components of Operational Control:**

➔ Who is the Operator?

➔ Starting presumption: The registered owner of the aircraft is the operator – but the operator can become a different party through an agreement, such as a lease or operating agreement, with the owner – *a third party such as an aircraft manager may also effectively become the operator through some other form of agreement.*



What type of agreement are we talking about?

Questions of Operational Control

Components of Operational Control:

➔ FAR does not define the term “*operator*” directly; it does provide that “*Operate*, with respect to aircraft, means use, cause to use or authorize to use aircraft, for the purpose . . . of air navigation including the piloting of aircraft, with or without the right of legal control (as owner, lessee, or otherwise)”



What type of agreement are we talking about?
Questions of Operational Control
Components of Operational Control:

➔ FAR further provides that “*Operational control*, with respect to a flight, means the exercise of authority over initiating, conducting or terminating a flight”



What type of agreement are we talking about?
Questions of Operational Control
Components of Operational Control:

➔ Thus, the “*operator*” of an aircraft is the person – be it a natural person or some form of corporate entity – exercising *operational control* over the aircraft in order to *operate* it in the national airspace



**What type of agreement are we talking about? Questions of Operational Control
Guidance from FAA as to who has
“Operational Control”:**

➔ **Guidance from FAA as to who has
*“Operational Control”***



**What type of agreement are we talking about? Questions of Operational Control
Guidance from FAA as to who has
“Operational Control”:**

**→ Guidance from FAA as to who has
Operational Control:**

→ Who provides the flight crew?



What type of agreement are we talking about? Questions of Operational Control Guidance from FAA as to who has “Operational Control”:

→ Guidance from FAA as to who has Operational Control:

→ Who makes the decision with respect to accepting flight requests and initiating, conducting, and terminating flights?



**What type of agreement are we talking about? Questions of Operational Control
Guidance from FAA as to who has
“Operational Control”:**

**→ Guidance from FAA as to who has
Operational Control:**

**→ Who ensures that the crew members are
trained and qualified in accordance with the
applicable regulations?**



What type of agreement are we talking about? Questions of Operational Control Guidance from FAA as to who has “Operational Control”:

→ Guidance from FAA as to who has Operational Control:

→ Who specifies the conditions under which a flight may be operated?



What type of agreement are we talking about? Questions of Operational Control Guidance from FAA as to who has “Operational Control”:

→ Guidance from FAA as to who has Operational Control:

→ Who determines weather and fuel requirements, and who directly pays for the fuel?



What type of agreement are we talking about? Questions of Operational Control Guidance from FAA as to who has “Operational Control”:

→ Guidance from FAA as to who has Operational Control:

→ Who directly pays for the airport fees, parking and hangar costs, food service, and rental cars?



What type of agreement are we talking about? Questions of Operational Control Guidance from FAA as to who has “Operational Control”:

→ Guidance from FAA as to who has Operational Control:

→ Prior to departure, who ensures that the flight, aircraft, and crew comply with regulations?



What type of agreement are we talking about? Questions of Operational Control Guidance from FAA as to who has “Operational Control”:

→ Guidance from FAA as to who has Operational Control:

→ Who ensures that the aircraft is airworthy and in compliance with applicable regulations?



**What type of agreement are we talking about? Questions of Operational Control
Guidance from FAA as to who has
“Operational Control”:**

**→ Guidance from FAA as to who has
Operational Control:**

**→ Who maintains the aircraft, and where is it
maintained?**



**What type of agreement are we talking about? Questions of Operational Control
Guidance from FAA as to who has
“Operational Control”:**

**→ Guidance from FAA as to who has
Operational Control:**

**→ Who decides when/where maintenance is
accomplished, and who directly pays for the
maintenance?**



What type of agreement are we talking about? Questions of Operational Control Guidance from FAA as to who has “Operational Control”:

➔ Important note: Key question is not necessarily who physically performs each function but, who is ultimately responsible for ensuring that the functions have been properly performed. For example, the executives of companies that are proper FAR Part 91 operators are not expected to do the maintenance, check the weather, and fly the airplane themselves, but they are expected to conduct enough appropriate due diligence to ensure that all of those things are properly done.



**What type of agreement are we talking about? Questions of Operational Control
Guidance from FAA as to who has
“Operational Control”:**

→ All arguably boils down to two key indicia of operational control:

→ Who gets to say where the airplane is going on a given day, and

→ Who is ultimately responsible for the safe conduct of the flight?



What type of agreement are we talking about? Questions of Operational Control Guidance from FAA as to who has “Operational Control”:

- ➔ If those two indicia – primarily the second one – rest with the aircraft manager, *then it’s not a management agreement, it’s effectively a wet lease;*
- ➔ Question: What kind of indemnification and liability limiting language is in the agreement?
- ➔ Question: Who holds the LOA’s?



What type of agreement are we talking about? Questions of Operational Control Guidance from FAA as to who has “Operational Control”:

- ➔ **Conversely, if those indicia rest with someone else (i.e., the owner or a true dry lessee), and that someone then engages the manager to merely assist in those duties (with the ultimate responsibility remaining that that operator), then it’s a “management agreement”**





“We have clearance, Clarence.
Roger, Roger. What’s our vector,
Victor?”

— Cockpit crew in movie *Airplane*.



**What type of agreement are we talking
about? Questions of Operational Control
Other Key Considerations:**

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**What type of agreement are we talking about? Questions of Operational Control
Other Key Considerations:**

→ Any other FAA concerns?

→ Arguably not really (but note separate pilot qualification issues)



**What type of agreement are we talking about? Questions of Operational Control
Other Key Considerations:**

→ **What about IRS concerns?**



**What type of agreement are we talking about? Questions of Operational Control
Other Key Considerations:**

→ **What about IRS concerns?**

→ **FET: Similar analysis with respect to imposition of federal excise tax – is the manager providing a commercial air transportation service?**



**What type of agreement are we talking about? Questions of Operational Control
Other Key Considerations:**

- ➔ **What about IRS concerns?**
 - ➔ **Income Tax: Both an IRS and DOL issue – is the manager truly an independent contractor or effectively an employee?**
 - ➔ **Is the manager an individual or a company?**
 - ➔ **Is the manager and/or its employees appointed as the operator's agents?**
 - ➔ **What about employment taxes?**



**What type of agreement are we talking about? Questions of Operational Control
Other Key Considerations:**

→ Finally – does the agreement follow good general contracting principles?



What type of agreement are we talking about? Questions of Operational Control

Conclusion





“Aviation in itself is not inherently dangerous.
But to an even greater degree than the sea, it is
terribly unforgiving of any carelessness,
incapacity or neglect.”

— Captain A.G. Lamplugh,
British Aviation Insurance Group,
London, circa 1930

