

Practical aspects from an Owner perspective



Cologne – 2 March 2016

What has been done

14.03.2014	EASA-EBAA Workshop – How to prepare for Part-NCC
02.12.2014	EBAA NCC Workshop 1 – Setting the scene
30.06.2015	EBAA NCC Workshop 2 – Raising the issues with CAAs
15.09.2015	Part-NCC Conference Geneva – OPS aspects
28.01.2016	Part-NCC Conference London – OPS aspects
02.03.2016	EASA-EBAA Workshop – Part-NCC implementation
14.03.2016	Part-NCC Conference London – Legal aspects

& numerous panels and presentations at conventions and conferences in Europe in 2014-2015-2016

Main concerns raised by the BA community

Marked difference between CAT and NCC?



Lack of guidance and information from authorities



Which operators are considered as complex?



Regulatory & oversight duplication for TC aircraft



CAMO for TC aircraft?



Scope of Part-NCC

Part-NCC applies to...

- ... any complex or non-complex operator
- ... engaged in non-commercial operations
- ... of complex motor-powered aircraft
- ... and having its principal place of business or residence in one of the Member States.

Aircraft Owners' concerns

Registered Owner (SPC)



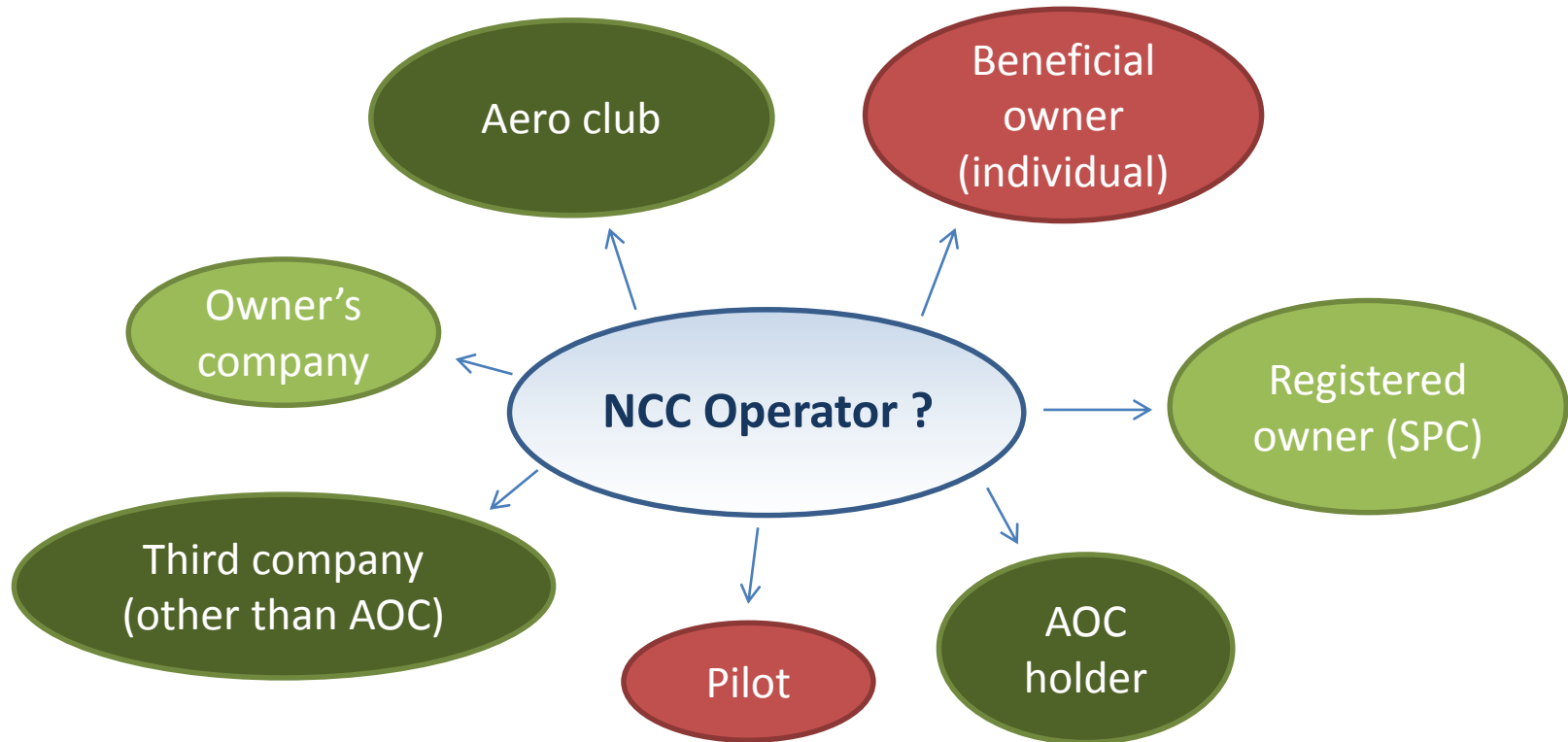
Operational structure



REORGANISATION!



Potential NCC operators



➡ signs the declaration : responsibility

➡ assumes the operational risk : liability



Civil

Criminal

Administrative



Operational control

Operational control is “the responsibility for the initiation, continuation, termination or diversion of a flight in the interest of safety”. (Regulation (EU) No 965/2012, Annex I (91))

ORO.GEN.110 Operator responsibilities

- (a) The operator is responsible for the operation of the aircraft (...)
- (c) The **operator** shall establish and **maintain a system for exercising operational control over any flight operated under the terms of its certificate, SPO authorisation or declaration.**



The PIC has also a part of the operational control in the exercise of his/her activity, however it does not make him/her the operator



If operational tasks are sub-contracted to third parties, who has the operational control? It shall be clearly defined in the agreements

Principal place of business & residence

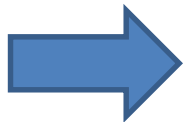
The “**competent authority**” shall be “the authority designated by the Member State in which the operator has its principal place of business or is residing”. (Regulation (EU) No 965/2012, NCC.GEN.100)

“**Principal place of business**” is defined as “the head office or registered office of the organisation within which the principal financial functions and operational control of the activities are exercised”.

(Regulation (EU) No 965/2012, Annex I (97))

“For non-commercial operations, this is usually the home base of the aircraft concerned, or the location of the flight department.”

(Guidance Material GM1 ORO.GEN.105)



In practice, the operational control and the flight department can be exercised and managed by one single part-time employee (AM) of the Operator, located in any country in the world.

Non-commercial passengers?

Commercial operation is “any operation of an aircraft, in return for remuneration or other valuable consideration, which is available to the public or, when not made available to the public, which is performed under a contract between an operator and a customer, where the latter has no control over the operator”.

(Regulation (EU) No 216/208, Art. 3 let. i))



Non-commercial operation:

- No remuneration or no valuable consideration **OR**
- Control of the customer over the operator



Is there a «control» if Owner's business partners pay part of the flight?

What if the aircraft is operated by a third party?



Need to define more precisely what is CAT and what not
Criteria must be understandable and enforceable

Owners' decision criteria

Notions of «Operator», «Operational control» and «Principal place of business» leave flexibility to Owners.

Owners' choice on the adequate OPS structure and principal place of business is mainly driven by following factors:

- Company law and taxation
- Import VAT
- Employment law
- Aviation regulations (OPS, FCL)




The location of the aircraft and the place of residence of the Owner are not decisive factors for the latter.

Case study

A/C Owner resides in Monaco. His TC registered A/C is located 40% in Switzerland, 30% in France and 30% in UK.

To avoid import VAT in Switzerland, Owner cannot create its operational structure in this country and could opt for France or UK.

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Because of his FAA license with ATPL(A) theory and the risk of new Part-FCL obligations as from 8 April 2017, he plans to set up a small operational structure within his SPC (with seat in a TC) and to hire a part-time AM to take care on the operational control and the books. All management services would be sub-contracted to a management company in France or UK. **Where is the principal place of business?**

Now, if BASA solves the FCL issue, Owner would agree to set up the operational structure in France or UK only if he has the guarantee that the operations will not suffer a duplication of OPS and technical regulations and oversight. **Can these countries guarantee this today?**

Obligation to coordinate with TC and to respect their rights



The safety and security oversight shall be coordinated between the State in which the operating base is located and the State of Registry (ICAO Annex 6 Part II, Art. 3.4.2.1.2.)

TC aircraft oversight shall be exercised within the limits set by the Chicago Convention (EU BR 216/2008, Preamble (2) (4))

EU regulations should ensure that Member States fulfill the obligations created by the Chicago Convention, including those vis-à-vis third countries (216/2008, Preamble (3))

Cooperation with third countries (216/2008, Art. 2 (2) (e) & Preamble (21) (23))

EU regulations should not affect the rights of third countries as specified in (...) the Chicago Convention (216/2008, Art. 4 (6))



Need for new IRs

To ensure a level playing field (fair competition) in the EU and global market, to reach and respect the objectives of 216/2008, to be compliant with this regulation and with the ICAO system, to respect the rights and obligations of TC and of the operators of A/C registered in such countries, the EU Implementing Rules should in particular be completed by:

- The obligation for the EASA MS and/or EASA to coordinate the safety and security oversight with TC
- A provision saying that the EU regulations and oversight shall not apply in areas within the fields of exclusive competence of TC pursuant to the ICAO SARPs
- A provision allowing the EASA MS and/or EASA, through a coordination agreement with the TC, to verify from time to time that these SARPs are effectively met in these fields
- A declaration form for operators of TC aircraft, which takes into account the rights and obligations of the TC and of operators of A/C registered in such countries

Thank you for your attention

