

Discussion Draft

Multilateral Convention on Foreign Investment in Airlines

The Parties to this Convention;

Recognizing that many air services agreements include “nationality clauses” that allow each party to refuse, revoke, suspend, or limit operating authorizations or technical permissions for an airline of the other party unless substantial ownership and effective control of that airline are vested in the other party, its nationals, or both;

Acknowledging that such nationality clauses may discourage foreign investment in airlines;

Seeking to enhance the access of airlines to global capital markets in order to strengthen competition and reflect the realities of a global aviation industry; and

Desiring to facilitate foreign investment in the airlines of those states that permit or encourage such investment;

Have agreed as follows:

Article 1 Definitions

For the purposes of this Convention the term:

1. “Airline of a Party” means an airline that has received its air operator certificate (AOC) from and has its principal place of business in the territory of that Party; and
2. “List of Partners” means a list submitted in accordance with Article 3.

Article 2 Waiver of Nationality Clause

No Party may exercise any available rights under an air services agreement with another Party to refuse, revoke, suspend, or limit operating authorizations or technical permissions for an airline of such other Party on the grounds that substantial ownership or effective control of that airline is vested in a third Party or Parties, their nationals, or both, provided that each said Party has included all other said Parties on its List of Partners.

Article 3
List of Partners

1. Each Party, upon ratification of or accession to this Convention, shall submit to the Depositary a list of partners as to which, pursuant to Article 2, it shall not exercise any available rights under its air services agreements with those partners to refuse, revoke, suspend, or limit operating authorizations or technical permissions of an airline of those partners on the grounds that substantial ownership or effective control of the airline is vested in another partner or partners on the list, nationals of that other partner or partners, or both.

2. A Party may add partners to or delete partners from its List of Partners by submitting a new list to the Depositary superseding its prior list. The new list shall identify any additions to and deletions from the Party's prior List of Partners. Additions shall become effective 30 days after the date of receipt of the new list by the Depositary and deletions shall become effective one year after the date of receipt of the new list by the Depositary.

Article 4
Ownership and Control of Foreign Airlines
by a Party's Own Nationals

1. A Party that includes itself on its List of Partners agrees thereby not to exercise any available rights under air services arrangements with a second Party to refuse, revoke, suspend, or limit operating authorizations or technical permissions for an airline of that second Party on the grounds that substantial ownership or effective control of that airline is vested in the first Party's own nationals, provided that each of the two Parties has included the other on its List of Partners.

2. Unless a Party includes itself on its List of Partners, this Convention shall not limit a Party's right to refuse, revoke, suspend, or limit operating authorizations or technical permissions for an airline of any other Party on the grounds that substantial ownership or effective control of that airline is vested in nationals of the first Party.

Article 5
Ownership and Control of a Party's Own Airlines

Nothing in this Convention shall affect a Party's laws and regulations concerning ownership and control of airlines of that Party.

Article 6
Consultations

Any dispute arising under this Convention that is not within the scope of the dispute resolution clause of another international agreement shall be resolved through consultations among the affected Parties. Such disputes shall not be referred to any third party, court, or tribunal for resolution.

Article 7 Depositary

1. The original of this Convention shall be deposited with [], which is hereby designated as the Depositary of this Convention.
2. The Depositary shall transmit certified true copies of this Convention and any amendments thereto to all Parties and signatories.
3. The Depositary shall notify all Parties and signatories of:
 - a. All signatures, ratifications, and accessions to this Convention in accordance with Article 8, and any amendments thereto;
 - b. The dates on which this Convention enters into force for each Party in accordance with Article 8; and
 - c. Any withdrawals from this Convention and the effective date thereof in accordance with Article 10.
4. The Depositary shall maintain a centralized register accessible to all Parties of each List of Partners submitted to it in accordance with Article 3.
5. Following entry into force of this Convention, it shall be registered with the Council of the International Civil Aviation Organization in accordance with Article 83 of the Convention on International Civil Aviation. Any amendments of this Convention which enter into force shall also be registered with the Council of the International Civil Aviation Organization.

Article 8 Ratification, Accession, and Entry into Force

1. This Convention shall be open to all States for signature at [] until it enters into force in accordance with paragraph 2 of this Article.
2. This Convention shall enter into force on the date the third instrument of ratification has been deposited with the Depositary.
3. After this Convention has entered into force in accordance with paragraph 2 of this Article, it shall enter into force for any signatory State that has not previously deposited

its instrument of ratification 30 days after the date of deposit of such instrument with the Depositary.

4. After this Convention has entered into force in accordance with paragraph 2 of this Article, any State may accede to this Convention by deposit of an instrument of accession with the Depositary.

5. This Convention shall enter into force for an acceding State 30 days after the date of deposit of its instrument of accession with the Depositary.

Article 9
Regional Economic Integration Organizations

[Text to be developed in consultation with key
Regional Economic Integration Organizations]

Article 10
Withdrawal

A Party may withdraw from this Convention by giving written notice of withdrawal to the Depositary. The withdrawal shall be effective one year after the date of receipt of the notice by the Depositary, unless the Party withdraws its notice by written communication to the Depositary prior to the end of the one-year period.

IN WITNESS WHEREOF, the undersigned, being duly authorized, have signed this Convention.

DONE at [], this [] day of [], 200[], in the English language.