



**WORKING PAPER**

**ASSEMBLY — 40TH SESSION**

**ECONOMIC COMMISSION**

**Agenda Item 32: Economic Regulation of International Air Transport — Policy**

**DEVELOPMENT OF AN INTERNATIONAL CONVENTION ON FOREIGN INVESTMENT IN AIRLINES**

(Presented by the State of Qatar)

**EXECUTIVE SUMMARY**

This working paper examines issues and a possible option in the development of an international treaty to liberalize air carrier ownership and control, taking into account the outcome of the work of the Air Transport Regulation Panel (ATRP), ICAO's future work programme, and the continuation of the development of a Multilateral Convention on Foreign Investment in Airlines.

**Action:** The Assembly is invited to:

- a) support the proposal by Qatar in paragraphs 3.3 and 3.4 of this paper; and
- b) request the Council to include Qatar's proposals in paragraphs 3.3 and 3.4 in ICAO's future work programme with a view to be addressed by the ATRP.

<i>Strategic Objectives:</i>	This working paper relates to Strategic Objective — <i>Economic Development of Air Transport</i> .
<i>Financial implications:</i>	The activities referred to in this paper will be undertaken subject to the resources available in the 2020–2022 Regular Programme Budget and/or from extra budgetary contributions, including the Voluntary Air Transport Fund (TRAF).
<i>References:</i>	Doc 10075 - <i>Assembly Resolutions in Force</i> (as of 6 October 2016) Doc 10078 - <i>Report of the Economic Commission of the 39th Session of the Assembly</i> A40-WP/22-EC/7 – <i>Consolidated statement of continuing ICAO policies in the air transport field</i>

## 1. INTRODUCTION

1.1 Under their bilateral air services agreement, States have traditionally retained the right to withhold, revoke, or impose conditions on the operating permission of a foreign air carrier that is not “substantially owned and effectively controlled” by the designating State or its nationals, under their bilateral air services agreements. Although there has been some encouraging progress in State practice in terms of relaxing the application of the rules or accepting airlines with foreign ownership, legal restrictions on ownership and control of airlines in States’ laws and bilateral agreements have largely not changed, hence this “nationality clause” criterion continues to be included in many newly negotiated air services agreements.

1.2 The rationale for the nationality clause is that it provides a convenient link between the carrier and the designating State by which parties to the agreement can: a) implement a “balance of benefits” policy for the airlines involved; b) prevent a non-party State through its carrier from gaining, indirectly, an unreciprocated (“free rider”) benefit; and c) identify the country that is responsible for safety and security oversight of an air carrier. National defence considerations are also a factor in some cases.

1.3 Assembly Resolution A39-15, Appendix A, Section I, requested the Council, *inter alia*, “to continue the development of an international agreement to liberalize air carrier ownership and control... taking into account the goals of the ICAO long-term vision for international air transport liberalization”.

## 2. PROGRESS AND MAJOR DEVELOPMENTS

2.1 The ATRP has examined a draft Convention on Foreign Investment in Airlines, which provides for a “waiver” as an instrument to allow for airlines of the parties to the Convention to be “majority owned and effectively controlled” by nationals of any other party to the Convention.

2.2 While many Member States have expressed their general support for the draft Convention as a move in the right direction and consistent with ICAO’s Long-Term Vision for International Air Transport Liberalization, the draft Convention is still subject of concern to some States on the issues of “free riders” in situations where investors from one party, which has a restrictive agreement with a second party, could circumvent restrictions on traffic rights between them through investing in an airline of a third party that has a more liberal agreement with the second party, or where economic benefits flow to a less liberal third party.

## 3. DISCUSSION

3.1 There is wide recognition of the benefits of liberalizing air carrier ownership and control and the need to adopt the current regulatory regime.

3.2 Qatar strongly supports the idea to waive the traditional ownership requirements for the foreign investment in airlines. Thus, we would like to propose the development of a multi-tier regime, allowing the Contracting Parties to freely decide the extent to which they are willing to liberalize.

3.3 While addressing the concern of some States about the issue of “free riders”, Qatar would also like to recall the practice of “flags of convenience” in the shipping industry. To this end, Qatar would

like to propose the following tiers for the liberalization of the traditional “ownership and control” requirements:

- “Compliance with the provisions relating to safety and security” is the basic and mandatory requirement which shall be applied to all designated airlines;
- “Regulatory control by the designating Party” is an additional tier of protection to prevent “flags of convenience”;
- “Principal Place of Business” is introduced as the third tier of ownership and control requirements, which is optional for the Contracting Parties to address free-rider concerns;
- “Effective control by the designating Party” is the most restrictive requirement, which is optional for the Contracting Parties to prevent all potential free riders; and
- “Ownership” requirement shall be waived by this convention.

3.4 We have enclosed the draft text as an **Appendix** which should be included in ICAO’s future work programme and addressed by the Air Transport Regulation Panel (ATRP).

#### 4. CONCLUSION

4.1 The State of Qatar welcomes and supports ICAO leadership in the development of the draft Convention on Foreign Investment in Airlines, which aims to waive the traditional ownership requirements for foreign investment in airlines.

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**APPENDIX**

MULTILATERAL CONVENTION ON FOREIGN INVESTMENT IN AIRLINES

ARTICLE 4

Limits to Waiver of Designation Rights

This Convention shall not prevent a Party from withholding, refusing, revoking, suspending, or imposing conditions on operating authorisations of the airlines of any Party for reasons other than the level of foreign ownership and/or effective control of such airlines, in particular if the airline, or the Party designating the airline, fails to comply with other provisions applied to international air transportation between the territories of each Party, including but not limited to those relating to safety and security.

A Party may at any time, in a declaration deposited with the Depositary of the Convention, declare that it shall have the right to withhold, refuse, revoke, suspend, or impose conditions on operating authorizations of the airlines of any Party, in the following cases:

- a) The designated airline fails to comply with the laws or regulations of the Designating Party; and/or
- b) The designated airline is not incorporated and does not have its Principal Place of Business in the territory of the Designating Party; and/or
- c) The designated airline fails to meet the satisfaction of the said Party that effective control of the designated airline is vested in the Designating Party, in its nationals, or both.

— END —