

Revised 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 those agreements to refuse, revoke, suspend, or limit operating authorizations or technical permissions for airlines of the other parties to such agreements unless substantial ownership and effective control of those airlines are vested in the other parties, their nationals, or both;

Deleted: an airline

Deleted: party

Deleted: that airline

Deleted: party, its

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;

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

Acknowledging that such nationality clauses are not required under international law and may discourage foreign investment in airlines; and

Deleted: 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. “Partner List A” means a list submitted by a Party, in accordance with paragraph 1 (a) of Article 4.

Deleted: of Partners

3. “Partner List B” means a list submitted by a Party, in accordance with paragraph 1 (b) of Article 4.

Article 2 Waiver of Nationality Clause

1. A Party shall not 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

Deleted: No

Deleted: may

Formatted: Font color: Red

effective control of that airline is vested in any third Party or Parties, their nationals, or both, provided that each said Party has included all other said Parties on its Partner List A.

Deleted: a

Deleted: of Partners

2. A Party that includes itself on its Partner List A shall not exercise any available rights under an air services agreement 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, its nationals, or both, provided that each of the two Parties has included the other on its Partner List A.

Article 3

Removal of Limitation on Foreign Ownership and Control

A Party shall not limit on the basis of nationality the ownership or control of the airlines of that Party by nationals of another Party or Parties, provided the first Party has included the other Party or Parties on its Partner List B and each of the other Parties has included the first Party on its Partner List B.

Formatted: Underline

Formatted: Line spacing: single, Hyphenate, Tabs: Not at -0.5"

Deleted: List of Partners¶

Article 4

Partner Lists

1. Each Party, at the time of ratification, acceptance, or approval of or accession to this Convention, shall submit to the Depositary:

Deleted: upon

Deleted:

a. a Partner List A of partners as to which 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; and

Formatted: Indent: Before: 0.5"

Deleted: list

Deleted: , pursuant to Article 2,

Deleted: .

b. at its discretion, a Partner List B of partners as to which it shall not limit on the basis of nationality the ownership or control of airlines of that Party by nationals of one or more of those partners.

2. A Party may add partners to or delete partners from a Partner List 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 Partner List. Additions shall become effective 30 days after the date of receipt of the new list by the Depositary and deletions shall become effective at the end of the International Air Transport Association (IATA) traffic season in effect one year after the date of receipt of the new list by the Depositary.

Deleted: its

Deleted: of Partners

Deleted: of Partners

3. The requirement under paragraph 1(a) of this article that a Party submit a Partner List A may also be satisfied by a Party submitting to the Depositary written notice that it will not exercise any available rights under its air services agreements with any Party to this Convention to refuse, revoke, suspend, or limit operating authorizations or technical permissions of an airline of that Party on the grounds that substantial ownership or effective control of the airline is vested in another Party or Parties, nationals of a Party or Parties, or both.

4. The discretionary filing under paragraph 1(b) of this article of a Partner List B may also be satisfied by a Party submitting to the Depositary written notice that it will not limit on the basis of nationality ownership or control of airlines of that Party by nationals of any Party or Parties to this Convention.

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

Nothing in this Convention requires a Party to permit foreign ownership or control of airlines of that Party.

Article 6 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, acceptances, and approvals of and accessions to this Convention in accordance with Article 7, and any amendments thereto;
- b. The dates on which this Convention enters into force for each Party in accordance with Article 7; and
- c. Any withdrawals from this Convention and the effective date thereof in accordance with Article 9.

4. The Depositary shall maintain a centralized register accessible to all Parties, including on the Internet, of each Partner List submitted to it in accordance with Article 4.

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

Deleted: ¶ Article 4¶ Ownership and Control
Deleted: Foreign Airlines¶ by a Party's Own Nationals¶ ¶ 1. A
Deleted: that includes itself on its List of Partners agrees thereby
Formatted: Font: Not Bold
Deleted: to
Deleted: arrangements
Deleted: a second
Deleted: for
Deleted: second
Deleted: that
Deleted: the first Party's own
Deleted: , provided that each
Deleted: the two Parties has included the other on its List of Partners
Formatted: Font: Bold
Deleted: 2. Unless
Deleted: includes itself on its List of Partners, this Convention shall not limit a Party's right
Deleted: refuse, revoke, suspend, or limit operating authorizations or technical permissions for an airline of any other Party on
Deleted: grounds
Deleted: substantial
Deleted: effective
Deleted: airline is vested in
Deleted: the first
Formatted: Font: Bold
Formatted ... [1]
Deleted: shall affect
Deleted: Party's laws and regula ... [2]
Deleted: and
Formatted: Font: Italic
Formatted: Left
Deleted: Consultations¶ ... [3]
Deleted: 8
Deleted: 8
Deleted: 10
Deleted: of Partners
Deleted: 3.

Convention on International Civil Aviation and with the United Nations in accordance with Article 102 of the UN Charter.

Deleted: . Any amendments of this Convention which enter into force shall also be registered with the Council of the International Civil Aviation Organization.

Formatted: Font: Not Bold

Formatted: Left, Don't adjust right indent when grid is defined, Line spacing: single, Hyphenate, Don't adjust space between Latin and Asian text, Don't adjust space between Asian text and numbers, Tabs: Not at -0.5"

Deleted: 8

Deleted: Ratification, Accession

Deleted: 2

Deleted: on the date

Deleted:

Article 7 **Signature, Consent to be Bound, 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 3 of this Article.

2. This Convention is subject to ratification, acceptance, or approval by signatory States and shall be open to accession by non-signatory States.

3. This Convention shall enter into force 30 days after the third instrument of ratification, acceptance, approval, or accession has been deposited with the Depositary.

Deleted: 3. After this Convention

Deleted: entered into force

Deleted: 2

Deleted: it

Deleted: 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

Formatted: Don't adjust right indent when grid is defined, Line spacing: single, Hyphenate, Don't adjust space between Latin and Asian text, Don't adjust space between Asian text and numbers, Tabs: Not at -0.5"

Deleted: 9

Formatted: Font: Bold, Font color: Red

Formatted: Centered

Deleted: 10

Deleted: end

Deleted: one-year period

Formatted: Font: Not Bold

Formatted: Font color: Red

Article 8 **Regional Economic Integration Organizations**

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

Article 9 **Withdrawal**

A Party may withdraw from this Convention by giving written notice of withdrawal to the Depositary. The withdrawal shall be effective at the end of the IATA traffic season in effect 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 effective date of the withdrawal.

Article 10 **No Reservation**

No reservation shall be made to this Convention.

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

| DONE at [], this [] day of [], 2011.

Deleted: 200[], in the English language.

Formatted: Font: Not Bold

Page 3: [1] Formatted	USG	10/09/2009 09:43:00
-----------------------	-----	---------------------

Centered, Line spacing: At least 12 pt, Don't hyphenate, Tabs: -0.5", Left

Page 3: [2] Deleted	USG	10/09/2009 09:43:00
---------------------	-----	---------------------

Party's laws and regulations concerning

Page 3: [3] Deleted	USG	10/09/2009 09:43:00
---------------------	-----	---------------------

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