

**ECUADOR**

Quito, [date illegible] 2007

DGCA

Ref.: EC 2/16.8-07/43 dated 20 July 2007

Subject: **States' policies, positions and practices on air carrier ownership and control**

Sir,

In response to State letter EC 2/16.8-07/43, which encloses, for completion and submission, an ICAO questionnaire on States' current policies, positions and practices regarding air carrier ownership and control, and subsequent to coordination with the area concerned, our institution has the honour to inform you of the following:

Article I, Section 5 of the International Air Services Transit Agreement of December 1944, to which Ecuador is a party, establishes the right of each State to withhold or revoke a certificate or permit to an air transport enterprise of another State in any case where it is not satisfied that substantial ownership and effective control are vested in nationals of a contracting State.

This is not an obligatory provision, but rather one which is left to the discretion of each State. This, together with the subject matter of the agreement, makes binding application difficult for States.

As the concepts of substantial ownership and effective control have changed with time, CAN Decision 582, Article 12 establishes other criteria for the designation of an airline. These criteria include the requirement that the airline's registered office and main base of operation be located in CAN territory; that the aircraft crew hold licences issued by or rendered valid by the designating Member Country; and that the airline not be merely the charterer of its aircraft, but that it also exercise operational control and technical direction of said aircraft.

These criteria make no mention of the enterprise's capital.

The airline designation requirements indicated in the majority of bilateral agreements entered into by Ecuador stipulate that the substantial capital and effective control of the enterprise are to be vested in nationals. At present, it is recommended that these provisions not be recorded and that, in any case, the requirements of the aforementioned Decision 582 of the CAN be referred to.

In Ecuadorian national law, the pertinent section of Article 45 of the previous Law on Civil Aviation established that at least 65% of the capital of an Ecuadorian airline had to be permanently vested in Ecuadorian nationals. As well, at least two-thirds of executive personnel had to be Ecuadorian citizens and effectively control the enterprise. This provision served as a basis for ensuring that the majority of the capital stock of and the effective control of an enterprise were vested in Ecuadorians.

The Law on Investment Incentives and Guarantees, published in No. 219 of the Official Record of 19 December 1997, revises Article 45 of the Law on Civil Aviation as follows:

“Ecuadorian air services shall only be operated by Ecuadorian individuals or by legal persons created in Ecuador, whether with national or foreign investment”.

By virtue of this legal amendment, an airline legally constituted in Ecuador can be 100% constituted by foreign capital. In accordance with this, it cannot be legally required that the substantial capital of an enterprise be vested in Ecuadorians.

The Principles of Aeronautical Policy in force state that the aeronautical authority shall establish the conditions for ensuring that substantial ownership of the capital of and effective control of airlines be vested in nationals from said airlines. These conditions have not yet been established by the authority.

Notwithstanding what is indicated in all authorizations and operating permits issued by the National Civil Aviation Council, there is a provision which establishes, inter alia, the following as reasons for the cancellation of an authorization or operating permit before the scheduled expiry date:

For Ecuadorian airlines: “If it is established that ownership or effective control of the airline is not vested in Ecuadorian persons”.

For foreign airlines: “If it is established that ownership or effective control of the airline is not vested in the government which has designated it or in its nationals”.

Finally, it should be pointed out that as far as our office knows, neither before nor during the operation of services by a foreign airline has a check been carried out with regard to the two matters of the airline’s substantial capital and effective control.

In view of the considerations pointed out, it is rather difficult for me to satisfactorily respond to the ICAO questionnaire, since this would have to follow from a general policy which must be adopted by the aviation authority, which in this case is the National Civil Aviation Council.

Accept, Sir, etc. ...

[sgd] Estela Arellano de Camacho  
Chief, Air Transport

Secretary General  
ICAO  
Montreal