



WORKING PAPER

WORLDWIDE AIR TRANSPORT CONFERENCE (ATCONF)

SIXTH MEETING

Montréal, 18 to 22 March 2013

Agenda Item 2: Examination of key issues and related regulatory framework

Agenda Item 2.2: Air carrier ownership and control

AIR CARRIER OWNERSHIP AND CONTROL PRINCIPLE

(Presented by Indonesia)

EXECUTIVE SUMMARY

This working paper provides information on Indonesia's regulatory practice in dealing with air carrier ownership and control, and presents its views and suggestions on how the related issues should be addressed.

Action: The Conference is invited to agree to the recommendations presented in paragraph 4.

References: ATConf/6 reference material is available at www.icao.int/meetings/atconf6.

1. INTRODUCTION

1.1 Capital resources are a vital factor for air transport companies as a basis for any investment. Business is always a step ahead in looking for capital than the States and cannot be stopped. Capital flows run borderless vis a vis with States interest to ensure its control for the sake of safety and protection of its nation as well as its passenger and also to protect its traffic right from free rider.

1.2 Liberalizing national and foreign air carrier designation requirements in terms of the principle of substantial ownership and effective control has been a major topic recently, and Indonesia will give its perspective on both aspects.

2. OWNERHIP AND CONTROL IN INDONESIA

2.1 **For national air carrier designation** – All Indonesian airlines have the same opportunity to be designated as Indonesian air carriers under a bilateral air services agreement as long as they are substantially owned and effectively controlled by an Indonesian legal entity. With regard to ownership, the maximum foreign equity participation is capped to 49% and the domestic share should be a single majority. To ensure effective control, the Personnel Director should be an Indonesian citizen.

This policy goes along with the implementation of the cabotage principle which has a strong relationship to the substantial ownership and effective control principle.

2.2 **For foreign air carrier designation** – For a long time, Indonesia required substantial ownership and effective control for all foreign designated airlines operating to and from Indonesia. The reason was to ensure that the airline belongs to and is controlled by the designating State, or its nationals, whose agreement will be implemented. However, following the global trends of cross border investment, acquisition and mergers of airlines, Indonesia now allows foreign airlines whose designating States are the adopted principal place of business for such airlines to operate into and from Indonesia, as long as they can provide a Government Statement that the airline has its Principal Place of Business (PPOB) in its territory and is controlled by the Government designating the airline.

3. **DISCUSSION**

3.1 Indonesia is of the view that States should still make sovereignty as the main criteria for its national designated airlines, and that ICAO guidelines are more preferable than establishing an agreement on this matter. Something that we should think further is on how to define “control” in terms of management since ICAO connects control with safety. Meanwhile, control of management is also essential for ensuring that traffic rights belong to the right entity. Important questions are whether the majority of a Board of Directors or Commissioners is enough to assume that control is vested in the State or its nationals, or whether control is defined by the entity which remunerates the Board of Directors.

3.2 Indonesia goes along with the ICAO initiative to ensure that PPOB airlines can operate into and from another country. However, ICAO should also consider a way to ensuring that the responsibility for safety and management control is under the purview of the designating State.

4. **RECOMMENDATIONS**

4.1 The Conference is invited to:

- a) recommend that the initiative for the approval of PPOB for foreign designated airlines, taking into account that the control of safety is with designating States;
- b) recommend that the ICAO Secretariat develop guidance on how to define control of management; and
- c) recommend that the ICAO Secretariat carry out a study on the impact of the changing ownership and control criterion on the cabotage principle in terms of economic, social, political and national security perspectives.