

**QUESTIONNAIRE ON STATE'S POLICIES AND PRACTICES
CONCERNING AIR CARRIER OWNERSHIP AND CONTROL**

Name of State: _____

INTRODUCTION

For a variety of reasons related to their objectives for air transport, many States have laws, regulations, policies or practices which require their national air carriers to be owned and controlled by the State and/or its nationals. Some also permit foreign investment in national air carriers. Such permission is usually conditioned by limitations on the amount of equity (and/or specifically of voting stock) that non-national investors may hold. Sometimes different limits are established for foreign airline investors and non-airline investors. Due to the lack of commonly recognized criteria or clear quantitative measurement, States' regulatory treatment on the question of control varies. Some approach it by using the applicable generic laws concerning corporate responsibility for decision-making, others by using special laws, regulations and policies specifically related to determining who exercises control of air carriers.

Along with the trends of globalization, liberalization and privatization, many States have introduced changes to their policies or rules to relax restrictions on foreign investment in national carriers. Some have allowed majority or full foreign ownership in their airlines flying internationally and/or domestically. Meanwhile, many airlines have continued to make equity investments in foreign carriers and/or have entered into codesharing and broader alliances as a means of extending market access. These developments have presented new challenges for the regulation of international air transport at the national, bilateral and global levels, as the regulation of air carrier ownership and control is closely linked with airline designation and authorization. This issue has been accorded increasing attention because of its bearing on further liberalization as well as the perception of current provisions causing a constraint on financing.

In regulating international air transport services under their bilateral air services agreements, States generally retain the right to withhold, revoke or impose conditions on the operating authorization of a foreign designated airline if the airline is not "substantially owned and effectively controlled by the designating State or its nationals" (hereinafter referred to as the "traditional criterion"). However, some exceptions exist which deviate from this criterion. The most familiar examples include: multinational air carriers created by intergovernmental agreement, such as the Scandinavian Airline System (SAS), Air Afrique and Gulf Air; air carriers substantially owned and effectively controlled by one or more States (or their nationals) belonging to a regional economic grouping, such as the "community carrier" in the European Union (EU); air carriers incorporated and with principal place of business in the designating State, such as air carriers based in Hong Kong, China.

In addressing the ownership and control issue, ICAO has developed guidance for States, for example, the concept of "community of interest" adopted by the Assembly in 1983 and the broadened criteria produced by the 1994 Worldwide Air Transport Conference and by the Air Transport Regulation Panel in 1997 (see ICAO Doc 9587 – Second Edition, *Policy and Guidance Material on the Economic Regulation of International Air Transport*. Further elaboration of the subject may be found in Doc 9626, *Manual on the Regulation of International Air Transport*). In view of the above developments and the call for further liberalization on this matter, the ICAO Secretariat has initiated a comprehensive study and, as a first step,

is conducting the present survey on States' relevant policies and practices. The information and views received from States will provide a substantive basis for the preparation of the study.

QUESTIONS

Note to the respondent. Some of the questions below ask for elaboration in an attachment. If you wish to elaborate, please check the related box, then use a separate paper as an attachment to the questionnaire and name it numerically with the corresponding question (for example, an elaboration to question 5 should be named Attachment Q5). If you wish to elaborate on any other question, please do so using the same numerical process. Any other comments which you may consider relevant or useful for the study are also welcome.

PART I. NATIONAL REGULATION

National laws, regulations and policies

1. Do you have national laws, regulations or policies regarding ownership and/or control of air carriers established and/or incorporated in your country?

Yes No

If "Yes", please indicate if they deal with:

- a) ownership and control together
- b) only ownership
- c) only control

If "No", do you have any plan to introduce any of the above in the near future (within 3 – 5 years)?

Yes No

Governing instrument

2. Which of the following governs the regulation of air carrier ownership and control in your country?

Civil Aviation Act or similar legislation

Legislation on national enterprises, corporations, etc.

Legislation on inward foreign investment

Special legislation (e.g. on privatization of national air carrier)

Government regulations, decisions or decrees

Other (*specify*) _____

If the relevant provisions of the above instruments are readily available in textual form, attach a copy of the text and identify it as Attachment Q2 .

Regulatory authority

3. Which of the following entities are in charge of formulating and/or enforcing rules on air carrier ownership and control in your country?

	Formulation	Enforcement
Civil aviation authority		
Ministry of transport		
Government department in charge of foreign investment		
Licencing authority for enterprises		
Other (<i>specify</i>)		

Rationale for regulation

4. Of the following, which were the main reasons for formulating your existing regulation on air carrier ownership and control?

(Enter the appropriate number in the box according to the degree of importance, using the following scale: 0 = not relevant; 1 = not important; 2 = important; 3 = very important.)

National security (defence)
Aviation safety
Economic interests of national airline(s)
National development/economic interests
Trade and tourism needs
Foreign exchange earnings
Job creation and preservation (labour)
Conformity with international agreements
Other (<i>specify</i>)

5. In considering regulatory liberalization on air carrier ownership and control in international air transport, which of the above aspects are still valid and, if so, why?
Elaborate in Attachment Q5 .

Treatment of air carriers

6. In regulating ownership and control, do you apply the same treatment to all your national air carriers?

Yes No

If “No”, indicate if you have different treatment for:

- a) air carriers operating international services
- b) air carriers operating only domestic services
- c) other (*specify*) _____

Government ownership

7. Does your government (including government-owned institutions) currently have any shareholding in your national air carrier(s)?

Yes No

If “Yes”, indicate the name of the air carrier(s) and the percentage of government shares (and, if possible, the percentage of shares held by other shareholder(s)). _____

8. If your government is not a majority shareholder of your national air carrier(s), does your government hold any “golden share” (i.e. a share which gives the owner a right to intervene or veto on decisions of strategic importance) in your national air carrier(s)?

Yes No

If “Yes”, indicate the name(s) of the airline(s) _____

9. If the method of “golden share” is not used, has your government used any alternative measure to ensure the maintenance of control of your national air carrier(s)?

Yes No

If “Yes”, elaborate here, or in Attachment Q9 . _____

10. If your national air carrier(s) was formerly government-owned but is now privatized (partly or fully), when was it privatized? _____

If the privatization was achieved in several phases, briefly describe each stage and the corresponding shareholding change in Attachment Q10 .

11. If your national air carrier(s) is still government-owned, is there any plan currently in place, or being contemplated by your government, to privatize the airline?

Yes No

If “Yes”, briefly describe below the plan (for example, the extent of privatization, and the timetable for achieving the aim), or in Attachment Q11 . _____

Inward foreign investment

12. Under your current regulations, what is the permissible limit of foreign investment in your national air carrier(s)?

	International carrier	Domestic carrier
a) Total shareholding	_____ %	_____ %
b) Maximum single share (if applicable)	_____ %	_____ %

Elaborate in Attachment Q12 if there are rules other than the above (e.g. a different limit on a particular carrier).

13. Are these rules also applied to other industries in your country? Yes No

If “Yes”, specify or give some examples _____

14. In terms of foreign investment in your national carrier(s), do you treat airline investors differently from non-airline investors?

Yes No

If “Yes”, indicate below the permissible limit for foreign airline investors:

	International carrier	Domestic carrier
a) Total shareholding	_____ %	_____ %
b) Maximum single share (if applicable)	_____ %	_____ %

15. Do you have any plan to change the rules on inward foreign investment?

Yes No

If “Yes”, indicate below, or in Attachment Q15 , to what extent the change is being contemplated (and the timetable for it). _____

Right of establishment

16. Under your current national laws, regulations or policies, are foreign entities (including air carriers) allowed to establish air carrier(s) in your country?

Yes No

If “Yes”, describe below, or in Attachment Q16 , the conditions, if any, imposed on the establishment of such an enterprise. _____

17. Are these rules also applied to other industries in your country? Yes No

If “Yes”, specify or give some example _____

18. Do you have any plan for change to the rules on right of establishment?

Yes No

If “Yes”, indicate below, or in Attachment Q18 , to what extent the change is being contemplated (and the timetable for it). _____

Foreign control

19. Do you have any specific provisions in your national laws, regulations or policies which determine or help determine what constitutes effective control of an air carrier?

Yes No

If “Yes”, briefly describe below; or if the relevant provisions are readily available in textual form, provide a copy of the text and identify it as Attachment Q19 . _____

20. If no such provisions currently exist, do you have any practical measures in place to ensure that your national air carrier(s) are not controlled by foreign nationals?

Yes No

If “Yes”, briefly describe below, or in Attachment Q20 (describe if different criteria are applied to different types of air carriers)_____

Exceptions/exemptions

21. Do your national laws, regulations or policies permit exceptions or exemptions from the statutory ownership and control requirement, if any?

Yes No

22. In practice, have you granted any exceptions and/or exemptions from the statutory ownership and control requirement, if any?

Yes No

If “Yes”, briefly describe the case(s), and the conditions attached, if any, in Attachment Q22 .

Airline commercial arrangements

23. When considering approval of an airline commercial cooperative arrangement which involves a foreign air carrier (such as alliance, codesharing, franchising), do you take into consideration any aspects of ownership and control of the air carrier(s) concerned?

Yes No

If “Yes”, describe briefly in Attachment Q23 what aspects you take into consideration, and why.

PART II. INTERNATIONAL AGREEMENTS AND ARRANGEMENTS

Bilateral agreements

24. As of 30 April 2001, how many bilateral air services agreements has your country concluded that are currently in force (including those you may have already filed with ICAO)? _____

If possible, attach a complete list of your bilateral agreements (indicating partner country and date of signature) as Attachment Q24 .

25. Of the bilateral agreements concluded by your country, how many have provisions that deviate from the “traditional criterion” on ownership and control (see Introduction to Questionnaire for description)? _____

26. In considering the acceptance of a foreign designated airline to operate the agreed services under the relevant bilateral agreement, which of the following alternative criteria have you accepted, or would you be prepared to accept, and under what conditions, if any?
(Check applicable ones, and elaborate as necessary, indicating with which country.)

- a) A multinational carrier created by intergovernmental agreement (e.g. SAS, Air Afrique, Gulf Air)

Yes

No

Elaborate in Attachment Q26

- b) An airline substantially owned and effectively controlled by one or more States that are parties to an agreement or within a predefined regional group (e.g. a “community of interest” carrier; an EU “community carrier”)

Yes

No

Elaborate in Attachment Q26

- c) An airline incorporated and having its principal place of business or permanent residence in the designating State (including its variants, such as those with the added requirement for a “strong link” with the designating State, for example, through an Air Operator Certificate)

Yes

No

Elaborate in Attachment Q26

- d) An airline incorporated and having its principal place of business in, and effectively controlled by the designating State (the formula used by five members of the Asia Pacific Economic Cooperation (APEC) in their plurilateral “open skies” agreement signed in November 2000, which removes the “substantial ownership” requirement)

Yes

No

Elaborate in Attachment Q26

- e) Other. Describe below, or elaborate in Attachment Q26 . _____

27. In your country's experience, have you ever taken action (for example, to refuse, revoke, suspend the operating authority) on the designated airline of a foreign country because of non-compliance with the ownership and control provision of the relevant bilateral agreement?

Yes No

If "Yes", briefly describe the case and how the problem was resolved in Attachment Q27 .

Regional agreements

28. Is your country a party to any regional or subregional air services agreements?

Yes No

If "Yes", identify below the regional or subregional agreement(s) to which your country is a party.

If "No", do you have any plan to become a party to a regional agreement?

Yes No

29. Based on your experience, do you have any comments on, or would you like to draw attention to, any specific elements of the regional agreements in regard to the ownership and control issue?

Yes No

If "Yes", provide your comments below, or in Attachment Q29 .

ICAO guidance

30. In practice, have you ever made use of the guidance developed by ICAO on air carrier ownership and control (contained in Part 2 of ICAO Doc 9587)?

Yes No

31. Do you see a need, or consider it desirable, for ICAO to develop guidance on further liberalizing the air carrier ownership and control regulation?

Yes No

If "Yes", identify below, or in Attachment Q31 , if there is any particular area you would like to suggest for ICAO to work on.

— END —