

**Council for Trade in Services**

## **TYPOLGY OF THE BILATERAL AIR SERVICES AGREEMENTS CONTAINING LEASING PROVISIONS**

### Note by the Secretariat

At the 28-29 September meeting of the Council for Trade in Services devoted to the review mandated under paragraph 5 of the Air Transport Annex, the Secretariat was requested to prepare, with the help of ICAO, a typology of bilateral air services agreements containing leasing provisions according to the three categories described in paragraph 168 of document S/C/W/163, that is to say:

- Agreements requiring simple notification of the lease to the competent authorities;
- agreements authorizing the lease from a third party only on the condition that this third party does not derive any economic benefit from the bilateral agreement;
- agreements demanding, in addition to the preceding conditions, "appropriate authority" (i.e the underlying traffic rights) and reciprocity from the state of the lessor.

Annex 1 contains the list of the agreements classified according to these categories.

Annex 2 contains an excerpt of the ICAO leasing study (EC2/82, LE4/55-99/54, dated 14 May 1999) describing in more detail how bilateral agreements deal with leasing.

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**ANNEX 1**  
**LIST OF BILATERAL AIR SERVICES AGREEMENTS CONTAINING LEASING**  
**PROVISIONS CLASSIFIED BY TYPE OF PROVISIONS**

**Total number of agreements registered with ICAO containing leasing provisions: 36**  
of which:

**a) Simple notification provision: 11**

Vanuatu - New Zealand – 14 July 1989  
Western Samoa - Cook Islands – 23 June 1993  
Fiji - Vanuatu – 24 March 1993  
Tonga - Western Samoa – 21 April 1978  
Brunei - Vietnam – 28 November 1991  
Salomon Island - New Zealand – 30 May 1990  
New Zealand - Samoa – 23 June 1978  
United States - Saudi Arabia – 02 October 1993  
Honduras - Panama – 15 October 1987  
Panama - Netherlands – 24 September 1987  
Panama - Dominican Republic – 27 January 1984

**b) Provision conditioning authorization by the absence of economic advantage: 18**

Nepal - Singapore – 15 June 1984  
Singapore - Brunei – 24 May 1997  
Cambodia - Singapore – 04 November 1996  
Cambodia - Myanmar – 17 October 1996  
Cambodia - Vietnam – 19 April 1996  
Uzbekistan - Vietnam – 14 July 1995  
Myanmar – Vietnam – 13 October 1995  
Indonesia - Singapore – 29 September 1994  
Sri Lanka - Singapore – 29 August 1985  
Mongolia - Singapore – 18 May 1993  
Vietnam - Singapore – 20 April 1992  
Hungary - Singapore – 9 March 1990  
Mexico - Singapore – 21 June 1990  
Bahrain - Singapore – 12 December 1991  
Maldives - Singapore – 12 August 1983  
Brunei - Bahrain – 27 June 1990  
Sri Lanka - United Kingdom - 05 August 1949  
Laos – Singapore – 24 April 1995

**c) Provision requiring underlying traffic rights : 4**

United States - Czech Republic – 10 September 1996  
United States - Singapore – 08 April 1997  
New Zealand - Singapore – 27 November 1997  
United States - Finland – 29 March 1949

**d) Agreements having only a reference to leasing but no specific Article: 3**

South Africa - Brazil – 26 November 1996

Russian Federation - Australia – 11 July 1994

Dominican Republic - Jamaica – 15 May 1984

## ANNEX 2

### EXCERPT FROM THE ICAO LEASING STUDY ON THE TYPOLOGY OF BILATERAL AGREEMENTS

"4.11 The bilateral agreements that contain leasing provisions<sup>4</sup> deal with the practice in basically three ways:

- a) by requiring prior notification of any designated airline's intention to lease, on a continuing basis, any aircraft not owned by it or by the designated airlines of the Contracting Parties;
- b) either implicitly allowing or requiring only notification for leases involving non-airline entities while conditioning the approval of an airline lease so that no economic benefit accrues to the lessor airline; or
- c) applying the provision only to leases involving airlines and prescribing specific criteria for their approval.

In the approach in a) above, designated airlines are free to lease, charter, hire or otherwise use or operate aircraft owned by other designated airlines, but all financial and operating leases as well as all those involving third country airlines are subject to a 60-day prior notification requirement. Presumably each Party will approve/disapprove such leases on the basis of its national criteria. The phrase "on a continuing basis" implies that short-term, sub-charters might not fall under this provision, but could be handled on the basis of each State's policy for such cases. An example of this type of provision is contained in the bilateral agreement between New Zealand and Samoa (ICAO No. 3478).

4.12 The leasing clause for b) above, in addition to requiring that the arrangement shall not be equivalent to giving a lessor airline operator of another country access to traffic rights not otherwise available to that airline, also requires an air carrier lease to meet two conditions to ensure that no economic benefit from the route in question accrues to the lessor air carrier. The first condition prohibits payment linked in any way to traffic carried, thus calling for fixed lease payments not related to the traffic carried (for example, one based on an hourly/daily rate). The second condition is aimed at preventing the lessor airline from enhancing its own operations by prohibiting any linkage which would result in through services on the lessor airline's route or routes. For example, using a wet-leased aircraft for what would be a fifth freedom service by the lessor airline which connected with, and therefore would feed passengers/cargo to, a fourth freedom service of the lessor airline, would not be permitted.

4.13 Bilateral agreements which have the clause in b) above in common take a different approach to leases by non-airline entities. The first approach implicitly allows such leases, subject to prior notification and approval, by stating that a designated airline is not otherwise prohibited from using leased aircraft provided that any lease arrangement entered into satisfies the conditions for airline leases, which by their nature financial and operating leases would do. This type of clause appears, for example, in the bilateral agreement between Myanmar and Vietnam (ICAO No. 4014). The second approach is to require notification rather than approval for leases involving non-airline entities. An

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<sup>4</sup> The text of the four examples of bilateral leasing clauses described in this section are included in Appendix B.

example of this approach is contained in the bilateral agreement between Singapore and Indonesia (ICAO No. 3950).

4.14 The approach described in c) is similar to that of a) in that it focuses on leasing arrangements involving airlines, but broader in that it allows leasing arrangements with an airline or airlines of either party and of a third country which meet certain criteria. In the case of leases with an airline or airlines of the Parties to the bilateral there are two criteria: 1) that all airlines in such arrangements have the appropriate authority; and 2) that they meet the requirements normally applied to such arrangements. In the case of leases involving an airline or airlines of a third country, in addition to the two foregoing conditions, there is a reciprocity requirement, specifically that the third country authorizes or allows comparable arrangements between the airlines of the other Party and other airlines on services to, from and via such third country. The bilateral agreement between El Salvador and the United States (not yet registered with ICAO) contains an example of this type of clause."

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