

REPUBLIC ACT NO. 8339

AN ACT GRANTING AIR PHILIPPINES CORPORATION (AIR PHILIPPINES), A FRANCHISE TO ESTABLISH, OPERATE AND MAINTAIN DOMESTIC AND INTERNATIONAL AIR TRANSPORT SERVICES

*Be it enacted by the Senate and House of Representatives of the Philippines in Congress assembled:*

SECTION 1. *Nature and Scope of Franchise.* – Subject to the provisions of the Constitution and applicable laws, rules and regulations, there is hereby granted to Air Philippines Corporation, hereunder referred to as the grantee, its successors or assigns, a franchise to establish, operate and maintain transport services for the carriage of passengers, mail, goods and property by air, domestic and international.

Air transport services shall include the maintenance and operation of hangars and aircraft service stations and facilities and other services of similar nature which may be necessary, convenient or useful as an auxiliary to aircraft transportation.

The grantee shall have the right at its terminal and landing fields, as well as in its aircraft, to construct, operate and maintain stations or transmitting sets for wireless telegraphy and direction findings, and other radio aids to air navigation, using wavelengths in accordance with the rules and regulations made from time to time by the proper agencies of the government. The wireless communication facilities shall be used solely for receiving and transmitting weather forecasts and other matters in connection with the grantee's services.

SEC. 2. *Civil Aeronautics Board.* – The grantee shall secure from the Civil Aeronautics Board the appropriate permits and licenses for its operations.

All aircraft used by the grantee including their accessories and equipment shall at all times be airworthy and the crew members shall be licensed by the government of the Philippines. They shall be equipped with radio communications, safety and other equipment and shall be operated and maintained in accordance with the regulations and technical requirements of the Air Transportation Office or such other regulatory bodies the government may prescribe for this purpose.

The grantee's equipment and the operation of such equipment shall at all times be subject to inspection and regulation by the Air Transportation Office.

The grantee shall comply with the provisions of Republic Act Numbered Seven Hundred and Seventy-Six (R.A. No. 776), and the regulation promulgated thereunder from time to time.

SEC. 3. *Responsibility to the Public.* – Excepting cases of *force majeure* and whenever weather conditions permit, the grantee shall maintain scheduled and/or non-scheduled and/or chartered air transport services to any and all points and places throughout the Philippines and between the Philippines and other countries at such frequencies as traffic needs may require; *Provided, however,* That at least twenty-five percent (25%) of all its frequencies shall be for the domestic market.

SEC. 4. *Rates for Services.* – The grantee shall fix just and reasonable rates for the transportation of passengers, mail, goods and freight, subject to the regulations and approval of the Civil Aeronautics Board and other proper regulatory agencies of the government.

SEC. 5. *Term of Franchise.* – This franchise shall be for a term of twenty-five (25) years from the date of effectivity of this Act, unless sooner revoked or cancelled. This franchise shall be deemed *ipso facto* revoked in the event the grantee fails to comply with any of the following conditions:

(a) Commence operations within one (1) year from the approval of its permit by the Civil Aeronautics Board;

(b) Operate continuously for two (2) years; and

(c) Commence operations within two (2) years from the effectivity of this Act.

SEC. 6. *Acceptance and Compliance.* – Acceptance of this franchise shall be given in writing within sixty (60) days after the effectivity of this Act. Upon giving such acceptance, the grantee shall exercise the privileges granted under this Act. Nonacceptance shall render the franchise void.

SEC. 7. *Bond.* – The grantee shall file a bond issued in favor of the Civil Aeronautics Board, which shall determine the amount, to guarantee the compliance with and fulfillment of the conditions under which this franchise is granted. If after three (3) years from the date of the approval of its permit by the Board, the grantee shall have fulfilled the same, the bond shall be cancelled by the Board. Otherwise, the bond shall be forfeited in favor of the government and the franchise *ipso facto* revoked.

SEC. 8. *Landing Facilities.* – The grantee may use the landing and other airport facilities on land and water as may be maintained or owned by the government within the Philippines on the grantee's lines subject to such terms and conditions, restrictions and national policy considerations as the Philippine government may impose: *Provided*, That the Philippine government shall have the right to use the landing and other airport facilities as may be maintained or owned by the grantee in the Philippines.

SEC. 9. *Contracts.* – The grantee is authorized to enter into transportation contracts with the Philippine government, including the carrying of mail, upon such terms and conditions as may be mutually agreed upon. The grantee shall give preferential consideration to contracts with the Philippine government. The grantee may likewise enter into transportation maintenance and/or servicing contracts, and such other contracts relating to air transport with other foreign-owned airlines particularly with those which have international routes.

SEC. 10. *Right of Government.* – A special right is hereby reserved to the President of the Philippines, in times of war,

rebellion, public peril, calamity, emergency, disaster or disturbance of peace and order, to temporarily take over and operate the facilities or equipment of the grantee, to temporarily suspend the operation of any facility or equipment in the interest of public safety, security and public welfare, or to authorize the temporary use and operation thereof by any agency of the government, upon due compensation to the grantee, for the use of said facilities or equipment during the period when they shall be so operated.

SEC. 11. *Tax Provisions.* – The grantee, its successors or assigns, shall be liable to pay the same taxes on their real estate, buildings and personal property, exclusive of this franchise, as other persons or corporations are now or hereafter may be required by law to pay. In addition thereto, the grantee, its successors or assigns, shall pay the value-added tax under Republic Act No. 7716, as amended, or a franchise tax of five percent (5%) *per annum* or at such percentage as may be prescribed by law on all gross receipts of its air transport business transacted under this franchise, whichever is higher: *Provided*, That the grantee, its successors or assigns, shall continue to be liable for income taxes payable under Title II of the National Internal Revenue Code pursuant to Section 2 of Executive Order No. 72 unless the latter enactment is amended or repealed, in which case the amendment or repeal shall be applicable thereto.

The grantee shall file the return with, and pay the taxes due thereon to the Commissioner of Internal Revenue or his duly authorized representatives in accordance with the National Internal Revenue Code and the return shall be subject to audit by the Bureau of Internal Revenue.

SEC. 12. *Warranty in Favor of National and Local Governments.* – The grantee shall hold the national, provincial and municipal governments of the Philippines harmless from all claims, accounts, demands or actions arising out of accidents or injuries, whether to property or to persons, caused by the operation of the services under the franchise hereby granted.

SEC. 13. *Sale, Lease, Transfer, Usufruct, etc.* – The grantee shall not lease, transfer, grant the usufruct of, sell nor assign

this franchise or the rights and privileges acquired thereunder to any person, firm, company, corporation or other commercial or legal entity, nor merge with any other corporation or entity, nor shall the controlling interest of the grantee be transferred, whether as a whole or in parts and whether simultaneously or contemporaneously, to any such person, firm, company or entity without the prior approval of the Congress of the Philippines. Any person or entity to which this franchise is sold, transferred or assigned shall be subject to the same conditions, terms, restrictions, and limitations of this Act.

SEC. 14. *Dispersal of Ownership.* – In accordance with constitutional provisions to encourage public participation in public utilities, the grantee shall offer at least thirty *per centum* (30%) of its outstanding capital stock or a higher percentage that may hereafter be provided by law in any securities exchange in the Philippines within five (5) years from the commencement of its operations. Noncompliance therewith shall render the franchise *ipso facto* revoked.

SEC. 15. *Interpretation of Franchise.* – This franchise shall not be interpreted to mean as an exclusive grant of the privileges herein provided for. However, in the event that any competing individual, partnership or corporation shall receive a similar permit or franchise with terms and/or provisions more favorable than those herein granted or which tend to place herein grantee at any disadvantage, then such terms and/or provisions shall be deemed part hereof and shall operate equally in favor of the herein grantee.

SEC. 16. *Separability Clause.* – If any of the sections or provisions of this Act is held invalid, all the other provisions not affected thereby shall remain valid.

SEC. 17. *Repealability and Nonexclusivity Clause.* – This franchise shall be subject to amendment, alteration or repeal by the Congress of the Philippines when the public interest so requires and shall not be interpreted as an exclusive grant of the privileges herein provided for.

SEC. 18. *Reportorial Requirement.* – The grantee shall submit an annual report to the Congress of the Philippines on its compliance with the terms and conditions of the franchise and on its operations within sixty (60) days from the end of every year.

SEC. 19. *Effectivity.* – This Act shall take effect fifteen (15) days from the date of its publication in at least two (2) newspapers of general circulation in the Philippines.

Lapsed into law on August 8, 1997 without the President's signature, pursuant to Sec. 27(1), Article VI of the Constitution.