

法規名稱：AIR SERVICES AGREEMENT BETWEEN THE GOVERNMENT OF THE REPUBLIC OF CHINA AND THE GOVERNMENT OF THE REPUBLIC OF THE MARSHALL ISLANDS (AD.1999.02.10)

簽訂日期：民國 88 年 02 月 10 日

生效日期：民國 88 年 02 月 10 日

The Government of the Republic of China and the Government of the Republic of the Marshall Islands (hereinafter referred to as the "Contracting Parties") :

Being willing to abide by the Convention on International Civil Aviation opened for signature at Chicago on the Seventh day of December 1944;

Desiring to conclude an Agreement, supplementary to the said Convention for the purpose of establishing scheduled air services between and beyond their respective territories;

Desiring to secure the highest degree of safety and security in international air transport;

Have agreed as follows:

ARTICLE 1 Definitions

1. For the purpose of this Agreement unless the context otherwise requires:

- a) the term "the Convention" means the Convention on International Civil Aviation, opened for signature at Chicago, on the seventh day of December 1944, and includes any Annex adopted under Article 90 of that Convention and any amendments of the Annexes or Convention under Article 90 and 94 thereof in so far as they become effective for both Contracting Parties;
- b) the term "Aeronautical Authorities" means in the case of the Government of the Republic of China, the Ministry of Transportation and Communications, or any person or body authorized to perform the functions exercised by the Ministry of Transportation and Communications or similar functions; and in the case of the Government of the Republic of the Marshall Islands, the Ministry of Transportation and Communications, or any person or body authorized to perform the functions exercised

- by the Ministry of Transportation and Communications or similar functions;
- c) the term "designated airline" means an airline which has been designated and authorized in accordance with Article 3 of this Agreement;
 - d) the term "territory" in relation to a State has the meaning assigned to it in Article 2 of the Convention;
 - e) the term "air service," "international air services," "airline" and "stop for non-traffic purposes" have the meaning respectively assigned to them in Article 96 of the Convention;
 - f) the term "tariff" means the prices to be paid for the carriage of passengers, baggage and cargo and the conditions under which these prices apply, including commission charges and other additional remuneration for agency or sale of transportation documents but excluding remuneration and conditions for carriage of mail; and
 - g) the term "this Agreement" includes the Annex hereto and any amendments to it or to the Agreement.
2. The Annex to this Agreement forms an integral part of the Agreement, and all references to the Agreement shall be deemed to include reference to the Annex except where otherwise provided.

ARTICLE 2 Grant of Rights

1. Each Contracting Party grants to the other Contracting Party the rights specified in this Agreement to enable its designated airline to establish and operate international air services on the routes specified in the Annex hereto (hereinafter called the "agreed services" and the "specified routes").
2. Subject to the provisions of this Agreement, the designated airline of each Contracting Party shall enjoy the following rights:
 - a) the right to fly without landing across the territory of the other Contracting Party;
 - b) the right to make stops in that territory for non-traffic purposes; and

- C) the right to make stops in the territory of the other Contracting Party while operating an agreed service on a specified route at points specified for that route in the Annex, for the purposes of putting down and taking on board international traffic in passengers, mail and cargo.
3. Nothing in paragraph (2) of this Article shall be deemed to confer on a designated airline of one Contracting Party the right to take on board, with or without remuneration, in the territory of the other Contracting Party passengers, baggage and cargo including mail destined for another point in the territory of the other Contracting Party.

ARTICLE 3 Designation and Authorization

1. Each Contracting Party shall have the right to designate in writing to the other Contracting Party multiple airlines for the purpose of operating the agreed services on the specified routes and to withdraw or alter such designation.
2. On receipt of such designation, the aeronautical authorities of the other Contracting Party shall, subject to the provisions of Paragraph (3) and (4) of this Article, without any unreasonable delay, grant to the designated airline the appropriate operating authorizations and technical permissions.
3. The aeronautical authorities of one Contracting Party may require an airline designated by the other Contracting Party to satisfy them that it is qualified to fulfill the conditions prescribed under the laws and regulations normally applied by them, in conformity with the provisions of the Convention, to the operation of international air services.
4. The aeronautical authorities of each Contracting Party shall have the right to refuse the grant of operation authorization referred to in Paragraph (2) of this Article, or to impose conditions as it may deem necessary on the exercise by a designated airline of the rights specified in Article 2 of this Agreement, in any case where:
- a) it is not satisfied that substantial ownership and effective

- control of that airline are vested in the Contracting Party designating the airline or in its nationals; or
- b) the designated airline fails to comply with the national laws and regulations referred to in paragraph (3) of this Article.

ARTICLE 4 Suspension or Revocation of Operating Authorization

1. The aeronautical authorities of each Contracting Party shall have the right to revoke, suspend or limit the operating authorizations or technical permissions of an airline designated by the other Contracting Party where:
- a) substantial ownership and effective control of that airline are not vested in the other Contracting Party designating the airline or in nationals of such Contracting Party; or
- b) that airline has failed to comply with the laws and regulations of the Contracting Party granting these rights; or
- c) that airline has failed to operate in accordance with conditions prescribed under the Agreement.
2. Unless immediate action is essential to prevent further infringements of laws and regulations, the rights established by this Article shall be exercised only after consultation with the other Contracting Party. In such a case the consultation shall begin within a period of sixty (60) days from the date request is made by either Contracting Party.

ARTICLE 5 Application of Laws

1. The laws and regulations of one Contracting Party governing entry into and departure from its territory of aircraft engaged in international air navigation or flights of such aircraft over that territory shall apply to the designated airline of the other Contracting Party.
2. The laws and regulations of one Contracting Party governing entry into, sojourn in, and departure from its territory of passengers, crew, baggage, cargo or mail, such as formalities regarding entry, exit, emigration and immigration, as well as customs and sanitary measures, shall apply to passengers, crew,

baggage cargo or mail carried by the aircraft of the designated airline of the other Contracting Party while they are within the said territory.

3. Each Contracting Party undertakes not to grant any preferences to its own airline over the designated airline of the other Contracting Party with regard to the application of the laws and regulations provided for by this Article.

ARTICLE 6 Capacity Provisions

1. There shall be fair and equal opportunity for the designated airline of each Contracting Party to operate the agreed services on the specified routes between and beyond their respective territories.
2. The agreed services provided by the designated airlines of the Contracting Parties shall bear a close relationship to the requirements of the public for transportation on the specified routes.
3. The capacity to be provided, the frequency of services to be operated shall be specified in the Annex to this Agreement. Any increases in the capacity to be provided or frequency of services to be operated by the designated airlines of either Contracting Party shall be agreed upon between the aeronautical authorities of both Contracting Parties.

ARTICLE 7 Tariffs

1. The aeronautical authorities of each Contracting Party shall allow tariffs for air transportation to be established by each designated airline based upon commercial considerations in the marketplace.
Intention shall be limited to:
 - a. prevention of unreasonably discriminatory tariffs or practices;
 - b. protection of consumers from tariffs that are unreasonably high or restrictive due to abuse of a dominant position; and
 - c. protection of airlines from tariffs that are artificially low

due to direct or indirect subsidy or support provided by the authorities.

2.The aeronautical authorities of each Contracting Party may require the designated airlines of the other Contracting Party to notify to or file with the said authorities of the tariffs to be charged to or from its territory no more than 30 days before the proposed date of effectiveness.

3.The aeronautical authorities of either Contracting Party shall not take unilateral action to prevent the inauguration or continuation of a tariff proposed to be charged or charged by (a) any designated airline for international air transportation between the territories of both Contracting Parties, or (b) an airline designated by one Contracting Party for international air transportation between the territory of the other Contracting Party and any other territory, including in both cases transportation on an interline or intraline basis. If the aeronautical authorities of either Contracting Party believes that any such tariff is inconsistent with the considerations set forth in Paragraph: (1) of this Article, it shall request consultations and notify the aeronautical authorities of the other Contracting Party of the reasons for its dissatisfaction as soon as possible. These consultations shall be held not later than 30 days after receipt of the request, and the aeronautical authorities of both Contracting Parties shall cooperate in securing information necessary for reasoned resolution of the issue.

If the aeronautical authorities of both Contracting Parties reach agreement with respect to a tariff for which a notice of dissatisfaction has been given, the aeronautical authorities of each Contracting Party shall use its best efforts to put that agreement into effect. Without such mutual agreement, the price shall go into effect or continue in effect.

ARTICLE 8 Exemption from Customs Duties and Other Charges

1.On arrival in the territory of the other Contracting Party, a-

ircraft operated on the agreed international air services by the designated airline of each Contracting Party, their regular equipment, fuel, lubricants, consumable technical supplies, spare parts (including engines) and aircraft stores (including but not limited to such items as food, beverages and liquor, tobacco and other products destined for sale to or use by passengers in limited quantities during flight) on board such aircraft, shall be exempt, on the basis of reciprocity, from all customs duties and other similar duties, taxes or charges not based on the costs of services provided, provided such equipment and supplies remain on board the aircraft.

2. There shall also be exempt, on the basis of reciprocity, from the same duties, taxes and charges, referred to in Paragraph 1 of this Article, with the exception of charges based on the costs of services provided:
 - a) aircraft stores introduced into or supplied in the territory of a Contracting Party and taken on board within reasonable limits, for use on board aircraft engaged in an international air service of a designated airline of the other Contracting Party;
 - b) spare parts including engines introduced into the territory of a Contracting Party for the maintenance or repair of aircraft used in the agreed service by the designated airline of the other Contracting Party; and
 - c) fuel, lubricants and consumable technical supplies introduced into or supplied in the territory of a Contracting Party for use in an aircraft engaged in the agreed air service by the designated airline of the other Contracting Party, even when these supplies are to be used on apart of the journey pedbrmed over the territory of the Contracting Party in which they are taken on board.
3. Equipment and supplies referred to in Paragraph 1 and 2 of this Article may be unloaded in the territory of the other Contracting Party only with the approval of the customs authorities of that Contracting Party. Such equipment and supplies may

be placed under the supervision or control of the appropriate authorities until they are re-exported or otherwise disposed of in accordance with customs regulations.

4. The exemptions provided by this Article shall also be available where the designated airlines of one Contracting Party have contracted with another airline, which similarly enjoys such exemptions from the other Contracting Party, for the loan or transfer in the territory of the other Contracting Party of the items specified in Paragraphs 1 and 2 of this Article.

ARTICLE 9 Recognition of Certificates and Licenses

1. Certificates of airworthiness, certificates of competency and licenses issued or rendered valid by the aeronautical authorities of one Contracting Party shall, during the period of their validity, be recognized as valid by the aeronautical authorities of the other Contracting Party, provided that the requirements for such certificates and/or licenses are at least equal to the minimum standards which may be established pursuant to the Convention.
2. The aeronautical authorities of each Contracting Party reserve their rights, however, not to recognize as valid, for the purpose of flights in its own territory, certificates of competency and licenses granted to its own nationals or rendered valid for them by the aeronautical authorities of the other Contracting Party.

ARTICLE 10 Aviation Security

1. Consistent with their rights and obligations under international law, the Contracting Parties reaffirm that their obligation to each other to protect the security of civil aviation against acts of unlawful interference forms an integral part of this Agreement. Without limiting the generality of their rights and obligations under international law, the Contracting Parties shall in particular ensure conformity with the provisions of the Convention on Offenses and Certain Other Acts Com-

mitted on Board Aircraft, done at Tokyo on 14 September 1963 the Convention for the Suppression of Unlawful Seizure of Aircraft, done at the Hague on 16 December 1970, the Convention for the Suppression of Unlawful Acts Against the Safety of Civil Aviation done at Montreal on 23 September 1971, and the Protocol for the Suppression of Unlawful Acts of Violence at Airports Serving International Civil Aviation, done at Montreal on 24 February 1988.

- 2.The Contracting Parties shall ensure that upon request all necessary assistance be provided to authorities of the other Contracting Party to prevent acts of unlawful seizure of civil aircraft and other unlawful acts against the safety of such aircraft, their passengers and crew, airports and air navigation facilities, and any other threat to the security of civil aviation.
- 3.The Contracting Parties shall, in their mutual relations, ensure conformity with the aviation security provisions established by the International Civil Aviation Organization and designated as Annexes to the Convention; they shall ensure that operators of aircraft registered in their respective territory or operators who have their principal place of business or permanent residence in their respective territory and the operators of airports in their respective territory act in conformity with such aviation security provisions.
- 4.Each Contracting Party agrees to ensure that such operators of aircraft may be required to observe the aviation security provisions referred to in Paragraph 3 above required by the other Contracting Party for entry into, departure from, or while within the territory of the other Contracting Party.
- 5.Each Contracting Party shall ensure that adequate measures are effectively applied within its territory to protect the aircraft and to inspect passengers, crew, carry-on items, baggage, cargo and aircraft stores, prior to and during boarding or loading. Each Contracting Party shall also ensure that their aeronautical authorities give positive consideration to any req-

uest from the other Contracting Party for reasonable special security measures to meet a particular threat.

6. When an incident or threat of an incident of unlawful seizure of civil aircraft or other unlawful acts against the safety of such aircraft, their passengers and crews, airports or air navigation facilities occurs, the Contracting Parties shall ensure that assistance is provided to facilitate communications and other appropriate measures intended to terminate rapidly and safely such incident or threat.

ARTICLE 11 Transfer of Earnings

Each Contracting Party shall grant to the designated airline of the other Contracting Party the right to transfer in any freely convertible currency the excess of revenue over expenditure earned by that airline in the territory of the first-mentioned Contracting Party in connection with the carriage of passengers, baggage, mail and cargo in accordance with the foreign exchange regulations in force at the official bank rate of exchange.

ARTICLE 12 Commercial Opportunities

Subject to the laws and regulations of the other Contracting Party, the designated airline of each Contracting Party shall have an equal opportunity:

- a) to enter, reside, employ in the other Contracting Party, or to bring in and maintain in the territory of the other Contracting Party those of their own managerial and other specialist staff who are required for the provision of air services; and
- b) to issue all kinds of documents of carriage and to advertise and to promote sales in the territory of the other Contracting Party, to engage in the sale of air transportation in that territory directly or at the airline's discretion through its agents. Each airline shall have the right to sell such transportation in the currency of that territory or in freely convertible currencies.

ARTICLE 13 User Charges

1. Neither Contracting Party shall impose on the designated airlines of the other Contracting Party user charges higher than those imposed on its own designated airlines operating similar international air services.
2. Each Contracting Party shall use its best efforts to ensure that charges imposed on the designated airlines of the other Contracting Party are just and reasonable,

ARTICLE 14 Consultations and Amendment

1. In order to ensure close collaboration in the performance of this Agreement the aeronautical authorities of the Contracting Parties shall consult on request of either of those authorities.
2. If either of the Contracting Parties considers it desirable to amend any provision of the present Agreement including the Annex, it may request consultation with the other Contracting Party. Such consultation, which may be between aeronautical authorities and which may be through discussion or by correspondence, shall begin within a period of sixty (60) days from the date of receipt of the request.
3. If a multilateral convention concerning air transport comes into force on request of both Contracting Parties, this Agreement shall be amended so as to conform to provisions of that convention.

ARTICLE 15 Settlement of Disputes

1. If any dispute arises between the Contracting Parties relating to the interpretation or application of this Agreement, the Contracting Parties shall in the first place endeavor to settle it by negotiation.
2. If the Contracting Parties fail to reach a settlement by negotiation, the dispute may at the request of either Contracting Party be submitted for decision to a tribunal of three arbitra-

tors, one to be nominated by each Contracting Party and the third to be appointed by the two so nominated. Each of the Contracting Parties shall nominate an arbitrator within a period of sixty (60) days from the date of receipt by either Contracting Party from the other of a notice requesting arbitration of the dispute and the third arbitrator shall be appointed within a further period of sixty (60) days.

- 3.If either of the Contracting Parties fails to nominate an arbitrator within the period specified, or if the third arbitrator is not appointed within the period specified, the President of the Council of the International Civil Aviation Organization may be requested by either Contracting Party to appoint an arbitrator or arbitrators as the case requires. In any case, the third arbitrator shall be national of a third State and shall act as President of the arbitral tribunal.
- 4.The Contracting Parties shall undertake to comply with any decision given under Paragraph (2) of this Article.

ARTICLE 16 Termination

Either Contracting Party may at any time give written notice through appropriate channels to the other Contracting Party of its decision to terminate this Agreement. In such case this Agreement shall terminate twelve (12) months after the date of receipt of the notice by the other Contracting Party, unless the notice to terminate is withdrawn by mutual agreement before the expiry of this period.

ARTICLE 17 Entry into Force

This Agreement shall enter into force on the date of signature.

IN WITNESS WHEREOF, the undersigned, being duly authorized thereto by their respective Governments, has signed this Agreement. Done at Taipei in duplicate in the English language on the tenth day of the second month, One Thousand Nine Hundred and Ninety Nine.

For the Government of
the Republe of China
Lee Teng -hni
President
Republic of China

For the Government of
the Republic of the Marshall Islands
Imata Kabna
President
Republic of the Marshall Islands