

法規名稱：AGREEMENT BETWEEN THE GOVERNMENT OF THE REPUBLIC OF CHINA AND THE GOVERNMENT OF THE REPUBLIC OF PALAU RELATING TO AIR SERVICE

簽訂日期：民國 88 年 12 月 02 日

生效日期：民國 88 年 12 月 02 日

The Government of the Republic of China and the Government of the Republic of Palau (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 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 Republic of Palau, the Minister of Commerce and Trade or any person or body authorized to perform the functions exercised by the Minister of Commerce and Trade with respect to aviation or similar functions and specifically include administrator of civil aviation; and in the case of the Government of

- the Republic of China, the Minister of Transportation and Communications or any person or body authorized to perform the functions exercised by the Minister 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 nontraffic purposes" have the meaning respectively assigned to them in Article 96 of the Convention;
 - f) the term "this Agreement" includes the Annex hereto and any amendments to it or to the Agreement; and
 - g) 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.

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 airlines 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

airlines 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 nontraffic 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.

4. If in the event of special and unusual circumstances, a designated airline of one Contracting Party is unable to operate on its normal routine, the other Contracting Party shall use its best efforts to facilitate the continued operation of such service through appropriate temporary rearrangement of routes.

ARTICLE 3

Designation and Authorization

1. Each Contracting Party shall have the right to designate in writing to the other Contracting Party multiple airlines, each of which shall be a designated airline, for the purpose of operating the agreed services on the specified routes and to withdraw or alter such designation in writing to the other Contracting party.

2. On receipt of the designation described in Paragraph 1 of this Article, 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 appro-

priate operating authorization.

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. 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 such 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) a designated airline fails to comply with the national laws and regulations referred to in paragraph (3) of this Article.
5. When an airline has been so designated and authorized, it may at any time begin to operate the agreed services, provided that a tariff established in accordance with the provisions of Article 7 of this Agreement is in force and an agreement in accordance with the provisions of Article 6 of the present Agreement has been reached in respect of that service.

ARTICLE 4

Suspension or Revocation of Operating Authorization

1. Each Contracting Party shall have the right to revoke the operating authorization or to suspend the exercise of the rights specified in Article 2 of this Agreement by the airline designated by the other Contracting party, or to impose such conditions as it may deem necessary on the exercise of these rights:
 - a) in any case where it is not satisfied that substantial ownership and effective control of that airline are vested in the Contracting Party designating the airline or in nationals of

- such Contracting Party, or
- b) in the case of failure by that airline to comply with the laws or regulations of the Contracting Party granting these rights, or
 - c) in case the airline otherwise fails to operate in accordance with conditions prescribed under the Agreement.
2. Unless immediate revocation, suspension or imposition of the conditions mentioned in Paragraph (1) of this Article is essential to prevent further infringements of laws or regulations or the conditions or the conditions prescribed under the Agreement, such rights shall be exercised only after consultations with the other Contracting Party. In such a case consultations shall begin within a period of sixty (60) days from the date request is made by either Contracting Party for consultations.

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, or mail, such as formalities regarding entry, exit, emigration and immigration, as well as customs and sanitary measures shall apply to passengers, crew, 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 with regard to the designated airline of the other Contracting Party in the application of the laws and regulations provided for by this Article.

ARTICLE 6

Principles Governing Operation of Agreed Services

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. In operating the agreed services, the designated airline of each Contracting Party shall take into account the interests of the designated airline of the other Contracting Party so as not to affect unduly the services which the later provides on the whole or part of the same routes.
3. 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 and shall have as their primary objectives the provision at a reasonable load factor of capacity adequate for the current and reasonably anticipated requirements of passengers and cargo including mail originating from or destined for the territory of the Contracting Party which has designated the airline.
4. The aeronautical authorities of the Contracting Parties shall from time to time jointly determine the practical application of the principles contained in the foregoing Paragraphs of this Article for the operation of the agreed services by the designated airlines.
5. 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 between the aeronautical authorities of both Contracting Parties on the basis of the estimated requirements of traffic between territories of the two Parties and any other traffic to be jointly agreed and determined. Pending such agreement or settlement, the capacity and frequency entitlements already in force shall prevail.
6. The capacity to be provided, the frequency of services to be operated and the nature of air services that is transiting th-

rough or terminating in the territory of either Contracting Party pursuant to this Article shall be specified in the Annex to this Agreement.

ARTICLE 7

Transport Tariffs

- 1.The tariffs on any agreed service shall be established at reasonable levels, due regard being paid to all relevant factors including cost of operation, reasonable profit and the tariffs of other airlines for any part of the specified route. These tariffs shall be fixed in accordance with the provisions of this Article.
- 2.Agreement on the tariffs shall, if both designated airlines are members of the International Air Transport Association, be reached whenever possible through the rate-making machinery of that Association. When this is not possible, tariffs in respect of each of the specified routes shall be agreed upon between the designated airlines concerned. In any case the tariffs shall be subject to the approval of the aeronautical authorities of both Contracting Parties.
- 3.If the designated airlines concerned cannot agree on the tariffs, or if the aeronautical authorities of either Contracting Party do not approve the tariffs submitted to them in accordance with the provisions of Paragraph (2) of this Article, the aeronautical authorities of the Contracting Parties shall endeavor to reach agreement on those tariffs.
- 4.If agreement under paragraph (3) of this Article cannot be reached, the dispute shall be settled in accordance with the provisions of Article 18 of this Agreement.
- 5.No new or amended tariffs shall come into effect unless they are approved by the aeronautical authorities of both Contracting Parties or are determined by a tribunal of arbitrators under Article 18 of Agreement. Pending determination of the tariffs in accordance with the provisions of this Article, the tariffs already in force shall apply.

ARTICLE 8

Exemption from Customs Duties and Other Charges

1. Aircraft operated on the agreed international air services by the designated airline of each Contracting Party, their regular equipment, supplies of fuel, lubricants, consumable technical supplies, spare parts and aircraft stores (including but not limited to such items as food, beverages and tobacco), on board such aircraft, shall be exempted from all customs duties, national excise taxes and other similar duties or taxes not based on the costs of services provided, on arrival in the territory of the other Contracting Party, provided such equipment and supplies remain on board the aircraft.
2. There shall also be exempt from the same duties, taxes, fees 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 a part of the journey performed 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 Co-

ntracting 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. In so far as no duties or other charges are imposed on goods mentioned in Paragraph 1 to 3 of this Article, such goods shall not be subject to any economic prohibitions or restrictions on importation, exportation and transit that may otherwise be applicable unless such prohibition or restriction applies to all airlines including the national airlines in respect to certain items mentioned Paragraph 1 to 3 of this Article.
5. The treatment specified in this Article shall be in addition to and without prejudice to that which each Contracting Party is under obligation to accord under Article 24 of the Convention.

ARTICLE 9

Recognition of Certificates and Licenses (Safety)

1. Certificates of airworthiness, certificates of competency and licenses issued or rendered valid by one of the Contracting Parties shall, during the period of their validity be recognized as valid by 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 on International Civil Aviation done at Chicago in 1944.
2. Each Contracting Party reserves its 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 other Contracting Party.

ARTICLE 10

Direct Transit

Passengers, baggage and cargo in direct transit across the territory of one Contracting Party and not leaving the area of the airport reserved for such purpose shall only be subject to a very simplified control. Baggage and cargo in direct transit shall be exempt from customs duties and other similar taxes.

ARTICLE 11

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 act in conformity with the provisions of the Convention on Offenses and Certain Other Acts Committed on Board Aircraft, signed at Tokyo on 14 September 1963, the Convention for the Suppression of Unlawful Seizure of Aircraft, signed at the Hague on 16 December 1970 and the Convention for the Suppression of Unlawful Acts Against the Safety of Civil Aviation signed at Montreal on 23 September 1971.
2. The Contracting Parties shall provide upon request all necessary assistance to each other 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, act in conformity with the aviation security provisions established by the International Civil Aviation Organization and designated as Annexes to the Convention on International Civil Aviation to the extent that such security provisions are applicable to the Parties; they shall require that operators of aircraft registered as such on their respective registries of operators who have their principal place of business or permanent

residence in their territory and the operators of airports in their territory act in conformity with such aviation security provisions.

4. Each Contracting Party agrees 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 that 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, carried on items, baggage, cargo and aircraft stores prior to and during boarding or loading. Each Contracting Party shall also give positive consideration to any request 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 assist each other by facilitating communications and other appropriate measures intended to terminate rapidly and safely such incident or threat thereof.
7. Accordingly, each Contracting Party shall advise the other Contracting Party of any difference between its national regulations and practices and the aforementioned aviation security provisions. Either Contracting Party may request immediate consultations with the other Contracting Party at any time to discuss any such difference.

ARTICLE 12

Transfer of Earnings

Each contracting Party will grant to the designated airline of the other Contracting party the right to transfer (in any freely convertible currency nominated by the airline of the other Cont-

racting Party) the excess of receipt over expenditure earned by that airline in the territory of the first Contracting Party in connection with the carriage of passengers, baggage, mail and cargo in accordance with the foreign exchange regulation in force (if any) at the official bank rate of exchange. If such transfers are regulated by a special agreement between the Contracting Parties, this special agreement shall apply.

ARTICLE 13

Representation, Ticketing Sales Promotion

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 and reside for the duration of employment 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 of other countries.

ARTICLE 14

Timetable Submission

As long in advance as practicable, but not less than thirty days before the introduction of an agreed service or any modification thereof, or within thirty days after receipt of a request from the aeronautical authorities, the designated airline of one Contracting Party shall provide to the aeronautical authorities of the other Contracting Party information regarding the nature of service, timetable, types of aircraft including the capacity pr-

provided on each of the specified routes and any further information as may be required to satisfy the aeronautical authorities of the other Contracting Party that the requirements of this Agreement are being duly observed.

ARTICLE 15

Statistics

The aeronautical authority of either Contracting Party shall supply to the aeronautical authority of other Contracting Party upon their request such periodic or other statements of statistics as may be reasonably required for the purpose of reviewing the capacity provided on the agreed services by the designated airline of the Contracting Party referred to first in the Article. Such statements shall include all information required to determine the amount of traffic carried by that airline on the agreed services and origins and destinations of such traffic.

ARTICLE 16

User Charges

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

ARTICLE 17

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. Any amendment so negotiated shall not come into force until they have been incorporated into an agreement concluded by way of an exchange of notes through the diplomatic channel.

- 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 with provisions of that convention.

ARTICLE 18

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 arbitrators, 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 through diplomatic channels 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 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 19

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. Such notice may be simultaneously communicated to the International Civil Aviation Organization by the Contracting Party giving notice. This Agreement shall terminate twelve (12) months after the date of receipt of the notice by the other Contracting Party, unless the notice is withdrawn by agreement before the expiry of this period.

ARTICLE 20

Registration with ICAO

This Agreement and any amendments thereto may be registered by either Party with the International Civil Aviation Organization.

ARTICLE 21

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 government, has signed this Agreement. Done, in duplicate in the English language, at Taipei on this Second day of December of 1999.

FOR THE GOVERNMENT OF
THE REPUBLIC OF CHINA
Lin Fong-Cheng

Minister of Transportation and
Communications

FOR THE GOVERNMENT OF
THE REPUBLIC OF PALAU

Okada Techitong
Minister of Commerce and trade

ANNEX

To the Agreement between the Government of the Republic of China
and the Government of the Republic of Palau Relating to Air Ser-
vices signed on December 2, 1999:

1. Operating Airlines

Notwithstanding the provisions set out in Paragraph 4 a) of
Article 3 and Paragraph 1 a) of Article 4, both sides agree to
broaden airline ownership and control criteria when circumsta-
nces require, and to authorize market access for a designated
air carrier which:

- a) has its principal place of business and permanent residence
in the territory of designating Contracting Party, and
- b) has and maintains a strong link to the designating Contracti-
ng Party.

2. Routing

The airlines designated to provide the air services in accord-
ance with the aforesaid Agreement shall be entitled to operate
on the following commercial air routes with full traffic righ-
ts:

- a) Route for the airlines designated by the Government of the
Republic of Palau:
Points in the Republic of Palau - two intermediate points -
points in the Republic of China - two beyond points and vice
versa.
- b) Route for the airlines designated by the government of the

Republic of China:

Points in the Republic of China - two intermediate points -
points in the Republic of Palau-two beyond points and vice
versa.

- c) The designated airlines of either Party may, on any or all
flight(s), omit and point or points on the route specified
above, provided that the point of origin or destination is in
that Party.

3.Frequencies and Capacity

On the routes specified in Paragraph 2 above, the designated
airlines of either Party shall be allowed to operate up to fo-
ur (4) weekly round trip services with any type of aircraft
with immediate effect.

Further increase in frequency shall be subject to the consult-
ation and agreement between both Parties as an amendment to
this Annex.