

AGREEMENT

BETWEEN

THE GOVERNMENT OF NEW ZEALAND

AND

THE GOVERNMENT OF MACAU

ON

AIR SERVICES

THE GOVERNMENT OF NEW ZEALAND

AND

THE GOVERNMENT OF MACAU

(The latter being duly authorised by the competent sovereign institution of the Portuguese Republic and with the consent of the Government of the People's Republic of China);

Hereinafter referred to as "the Contracting Parties",

Desiring to conclude an agreement for the purpose of establishing air services between and beyond New Zealand and Macau;

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

Have agreed as follows:

ARTICLE 1

Definitions

For the purpose of this Agreement, unless the context otherwise requires:

(a) the term "aeronautical authorities" means, in respect of New Zealand, the Minister responsible for the subject of Civil Aviation and, in respect of Macau, the Civil Aviation Authority or, in both cases, any other authority or person empowered to perform the functions now exercised by the said authorities;

(b) the term "agreed services" means scheduled air services on the routes specified in the Annex to this Agreement for the transport of passengers, cargo and mail, separately or in combination;

(c) the term "Agreement" means this Agreement, its Annex, and any amendments thereto;

(d) the term "designated airline" means an airline which has been designated and authorised in accordance with Article 4 of this Agreement;

(e) the term "tariffs" means the prices to be paid for the carriage of passengers, baggage and cargo and the conditions under which those prices apply, including prices and conditions for agency and other ancillary services, but excluding remuneration and conditions for the carriage of mail;

(f) the term "air services", "international air service", "airline" and "stop for non-traffic purposes" have the meanings respectively assigned to them in Article 96 of the Chicago Convention referred to in Article 2 of this Agreement; and

(g) the term "area", in relation to Macau, includes the Macau Peninsula and the Taipa and Coloane Islands and, in relation to New Zealand, has the meaning assigned to "territory" in article 2 of the Chicago Convention referred to in Article 2 of this Agreement, the Cook Islands, Niue and Tokelau being excluded.

ARTICLE 2

Provisions of the Chicago Convention Applicable to International Air Services

In implementing this Agreement, the Contracting Parties shall act in conformity with the provisions of the Convention on International Civil Aviation, opened for signature at Chicago on 7 December 1944, including the Annexes and any amendments to the Convention or to its Annexes, insofar as these provisions are applicable to international air services.

ARTICLE 3

Grant of Rights

1. Each Contracting Party grants to the other Contracting Party the following rights for the conduct of international air services by the airlines designated by the other Contracting Party:

- (a) to fly without landing across the area of the other Contracting Party;
- (b) to make stops in the said area for non-traffic purposes; and
- (c) to make stops in the said area for the purpose of taking up and discharging, while operating the routes specified in the Annex, international traffic in passengers, cargo and mail, separately or in combination.

2. Nothing in paragraph 1 of this Article shall be deemed to confer on a designated airline of one Contracting Party the privilege of taking up, in the area of the other Contracting Party, passengers, cargo and mail carried for remuneration or hire and destined for another point in the area of that other Contracting Party.

3. Nothing in paragraph 1 of this Article shall be deemed to confer on the airlines designated by New Zealand the right to provide air transportation between Macau and Hong Kong, points in Taiwan and the mainland of China.

ARTICLE 4

Designation and Authorisation

1. Each Contracting Party shall have the right to designate in writing to the other Contracting Party one or more airlines for the purpose of operating the agreed services on the specified routes and to withdraw or alter such designations.

2. On receipt of such designation the other Contracting Party shall, subject to the provisions of paragraphs (3) and (4) of this Article, without delay grant to the airline or airlines designated the appropriate operating authorisations.

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 fulfil the conditions prescribed under the laws and regulations normally and reasonably applied to the operation of international air services by such authorities.

4. Each Contracting Party shall have the right to refuse to grant the operating authorisations 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 3 (1) of this Agreement, in any case where such Contracting Party is not satisfied that the airline is incorporated and has its principal place of business in the area of the other Contracting Party.

5. When an airline has been so designated and authorised it may begin to operate the agreed services, provided that the airline complies with the applicable provisions of this Agreement.

ARTICLE 5

Revocation and Limitation of Authorisation

1. Each Contracting Party shall have the right to revoke or suspend an operating authorisation for the exercise of rights specified in Article 3 (1) of this Agreement by an 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 the airline is incorporated and has its principal place of business in the area of the other Contracting Party;
- (b) in the case of failure by the airline to comply with the laws or regulations of that Contracting Party granting these rights; or
- (c) if that airline otherwise fails to operate in accordance with the conditions prescribed under this Agreement.

2. Unless immediate revocation or suspension of the operating authorisation mentioned in paragraph (1) of this Article or imposition of the conditions therein is essential to prevent further infringement of the laws and regulations, such rights shall be exercised only after consultation with the other Contracting Party.

ARTICLE 6

Applicability of Laws and Regulations

1. The laws, regulations and procedures of one Contracting Party relating to the admission to, remaining in, or departure from its area of aircraft engaged in international air navigation or to the operation and navigation of such aircraft shall be complied with by the airline or airlines of the other Contracting Party upon entrance into, departure from and while within the said area.

2. The laws and regulations of one Contracting Party respecting entry, clearance, transit, immigration, passports, customs and quarantine shall be complied with by the airline or airlines of the other Contracting Party and by or on behalf of its crews, passengers, cargo and mail upon transit of, admission to, departure from and while within the area of such a Contracting Party.

3. Neither of the Contracting Parties shall give preference to its own or any other airline over an airline of the other Contracting Party engaged in similar international air services in the application of its customs, immigration, quarantine and similar regulations.

4. Passengers, baggage and cargo in direct transit through the area of either Contracting Party and not leaving the part of the airport reserved for such purpose shall be subject to no more than a simplified control. Baggage and cargo in direct transit shall be exempt from customs duties and other similar taxes.

ARTICLE 7

Recognition of Certificates and Licences (Safety)

1. Certificates of airworthiness, certificates of competency and licences, issued or validated by one Contracting Party and still in force, shall be recognised as valid by the other Contracting Party for the purpose of operating the agreed services on the routes specified in the Annex provided that such certificates or licences were issued or validated pursuant to, and in conformity with, the standards established under the Convention referred to in Article 2 of this Agreement. Each Contracting Party reserves the right, however, to refuse to recognise, for the purpose of flights above or landing within its own area, certificates of competency and licences granted to its own nationals in the case of New Zealand and to its own residents in the case of Macau by the other Contracting Party.

2. Each Contracting Party may request consultations concerning the safety standards maintained by the other Contracting Party relating to aeronautical facilities, aircrew, aircraft, and operation of the designated airlines. If, following such consultations, one Contracting Party finds that the other Contracting Party does not effectively maintain and administer safety standards and requirements in these areas that at least equal the minimum standards which may be established pursuant to the Convention referred to in Article 2 of this Agreement, the other Contracting Party shall be notified of such findings and the steps considered necessary to conform with these minimum standards; and the other Contracting Party shall take appropriate corrective action. Each Contracting Party reserves the right to withhold, revoke or limit the operating authorisation or technical permission of an airline or airlines

designated by the other Contracting Party in the event the other Contracting Party does not take such appropriate action within a reasonable time.

ARTICLE 8

Aviation Security

1. 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. The Contracting Parties shall in particular act in conformity with the provision of the *Convention on Offences 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 Organisation and designated as Annexes to the Convention referred to in Article 2 of this Agreement to the extent that such security provisions are applicable to the Contracting Parties; they shall require that operators of aircraft of their registry or operators of aircraft who have their principal place of business or permanent residence in their area and the operators of airports in their area 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 area of that other Contracting Party. Each Contracting Party shall ensure that adequate measures are effectively applied within its area 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 give positive consideration to any request from the other Contracting Party for reasonable special security measures to meet a particular threat.

5. 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 crew, 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.

6. Should one Contracting Party encounter difficulties with regard to the application of the aviation security provisions of this Article, the aeronautical authorities of either Contracting Party may request immediate consultations with the aeronautical authorities of the other Contracting Party.

ARTICLE 9

Customs Duties and Other Charges

1. Each Contracting Party shall on a basis of reciprocity exempt the designated airline or airlines of the other Contracting Party to the fullest extent possible under its laws and regulations from import restrictions, customs duties, excise taxes, inspection fees and other duties and charges on aircraft, fuel, lubricating oils, consumable technical supplies, spare parts including engines, regular aircraft equipment, aircraft stores (including liquor, tobacco and other products destined for sale to passengers in limited quantities during the flight) and other items intended for use or used solely in connection with the operation or servicing of aircraft of the designated airline or airlines of such other Contracting Party operating the agreed services.

2. The exemptions granted by this Article shall apply to the items referred to in paragraph 1 of this Article:

- (a) introduced into the area of one Contracting Party by or on behalf of the designated airline or airlines of the other Contracting Party;
- (b) retained on board aircraft of the designated airline or airlines of one Contracting Party upon arriving in or leaving the area of the other Contracting Party; and

- (c) taken on board aircraft of the designated airline or airlines of one Contracting Party in the area of the other Contracting Party and intended for use in operating the agreed services;

whether or not such items are used or consumed wholly within the area of the Contracting Party granting the exemption, provided ownership of such items is not transferred in the area of the said Contracting Party.

3. The regular airborne equipment, as well as the materials and supplies normally retained on board the aircraft of the designated airline or airlines of either Contracting Party may be unloaded in the area of the other Contracting Party only with the approval of the Customs authorities of that area. In such case, they may be placed under the supervision of the said authorities up to such time as they are re-exported or otherwise disposed of in accordance with Customs regulations.

ARTICLE 10

Capacity

1. The designated airline or airlines of the Contracting Parties shall have a fair and equal opportunity to operate the agreed services covered by this Agreement.

2. The capacity provided by each designated airline shall be such as will enable that airline at a reasonable load factor to provide the agreed services taking full account of the requirements of through-airline operations.

3. Neither Contracting Party may unilaterally impose any restrictions on the designated airline or airlines of the other Contracting Party with respect to capacity, frequency or type of aircraft employed in connection with service over any of the routes specified in the schedule annexed to this Agreement. In the event that one of the Contracting Parties believes that the operation proposed or conducted by an airline of the other Contracting Party unduly affects the agreed services provided by one of its designated airlines, it may request consultation pursuant to Article 15 of this Agreement.

ARTICLE 11

Tariffs

1. Each Contracting Party shall allow prices for air transportation to be established by each designated airline based upon commercial considerations in the marketplace. Intervention by the Contracting Parties shall be limited to:

(a) prevention of predatory or discriminatory prices or practices by the designated airlines;

(b) protection of consumers from prices that are unduly high or restrictive because of the abuse of a dominant position by a designated airline or airlines; and

(c) protection of designated airlines from prices that are artificially low because of direct or indirect governmental subsidy or support.

2. Each Contracting Party may require notification to or filing with its aeronautical authorities of prices proposed to be charged to or from its area by airlines of the other Contracting Party. Notification or filing by the airlines of both Contracting Parties may be required no more than 60 days before the proposed date of effectiveness. In individual cases, notification or filing may be permitted on shorter notice than normally required.

3. Neither Contracting Party shall take unilateral action to prevent the inauguration or continuation of a price proposed to be charged or charged by (a) an airline of either Contracting Party for international air transportation between the

areas of the Contracting Parties, or (b) an airline of one Contracting Party for international air transportation between the area of the other Contracting Party and any non-Contracting Party, including in both cases transportation on an interline or intra-line basis. If either Contracting Party believes that any such price is inconsistent with the considerations set forth in paragraph 1 of this Article, it shall request consultations and notify 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 Contracting Parties shall co-operate in securing information necessary for reasoned resolution of the issue. If the Contracting Parties reach agreement with respect to a price for which a notice of dissatisfaction has been given, each Contracting Party shall use its best efforts to put that agreement into effect. Without mutual agreement, that price shall not go into or continue in effect.

4. Notwithstanding paragraph 3 of this Article, each Contracting Party shall allow (a) any airline of either Contracting Party or any airline of a non-Contracting Party to meet a lower or more competitive price proposed or charged by any other airline for international air transportation between the areas of the Contracting Parties, and (b) any airline of one Contracting Party to meet a lower or more competitive price proposed or charged by any other airline for international air transportation between the area of the other Contracting Party and a non-Contracting Party. As used herein, the term "meet" means the right to establish on a timely basis, using such expedited procedures as may be necessary, an identical or similar price on a direct, interline or intra-line basis, notwithstanding differences in conditions relating to routing, connections, type of service or aircraft type; or such price through a combination of prices.

ARTICLE 12

Airline Representation

1. The designated airline or airlines of one Contracting Party shall be allowed, on the basis of reciprocity and subject to paragraph 3 of this Article, to bring into and to maintain in the area of the other Contracting Party their representatives and commercial, operational and technical staff as required in connection with the operation of agreed services.

2. These staff requirements may, at the option of the designated airline or airlines of one Contracting Party, be satisfied by its own personnel or by using the services of any other organisation, company or airline operating in the area of the other Contracting Party only if they are authorised to perform such services (including handling for other airlines) in the area of that Contracting Party.

3. The representatives and staff referred to in paragraph 1 of this Article shall be subject to the laws and regulations of the other Contracting Party and, consistent with such laws and regulations, each Contracting Party shall, on the basis of reciprocity and with the minimum of delay, grant the necessary employment authorisations, visitor visas or other similar documents to the said representatives and staff.

ARTICLE 13

Commercial Opportunities and Transfer of Funds

1. Each designated airline shall have the right to engage in the sale of air transportation in the area of the other Contracting Party directly and, at its discretion, through its agents. Each designated airline shall have the right to sell transportation in the currency of that area or, to the extent permitted by laws and regulations, in freely convertible currencies, and to the same extent any person shall be free to purchase such transportation in currencies accepted for sale by that airline.

2. Each Contracting Party grants to any designated airline of the other Contracting Party the right of free transfer at the official rate of exchange of the excess of receipts over expenditure earned by that airline in the area of the first Contracting Party in connection with the carriage of passengers, mail and cargo.

ARTICLE 14

Statistics

The aeronautical authorities of either Contracting Party shall supply to the aeronautical authorities of the other Contracting Party, at 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.

ARTICLE 15

Consultation

1. In a spirit of close cooperation, the aeronautical authorities of the Contracting Parties shall consult each other from time to time with a view to ensuring the implementation of, and satisfactory compliance with, the provisions of this Agreement, and shall also consult when necessary to provide for amendment thereof.

2. Either Contracting Party may request consultation, which may be through discussion or by correspondence and shall begin within a period of sixty (60) days of receipt of a written request, unless both Contracting Parties agree to an extension of this period.

ARTICLE 16

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 endeavour to settle it by negotiation.

2. If the Contracting Parties fail to reach a settlement by negotiation, they may agree to refer the dispute for decision to some person or body, or either Contracting Party may submit the dispute 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 arbitrators. 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 the appropriate channels requesting arbitration of the dispute and the third arbitrator shall be appointed within a further period of sixty (60) days. 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 Organisation may be requested by either Contracting Party to appoint an arbitrator or arbitrators as the case requires. In all cases the third arbitrator shall not be a national of New Zealand or a resident of Macau and shall act as President of the arbitral tribunal.

3. The Contracting Parties shall comply with any decision given under paragraph 2 of this Article.

ARTICLE 17

Amendment of Agreement

If either of the Contracting Parties considers it desirable to amend any provision of this Agreement, it may request consultations with the other Contracting Party. Such consultations, which may be between aeronautical authorities and which may be through discussion or by correspondence, shall begin within a period of sixty (60) days of receipt of a written request unless both Contracting Parties agree to an extension of this period. Any amendments so agreed shall come into force when they have been confirmed by an exchange of letters.

ARTICLE 18

Termination

Either Contracting Party may at any time give notice in writing through the appropriate channels to the other Contracting Party of its decision to terminate this Agreement; such notice shall be communicated simultaneously to the International Civil Aviation Organisation. The 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 agreement before the expiry of this period. In the absence of acknowledgment of receipt by the other Contracting Party, the notice shall be deemed to have been received fourteen (14) days after the receipt of the notice by the International Civil Aviation Organisation.

ARTICLE 19

Registration

This Agreement and any amendment thereto shall be registered with the International Civil Aviation Organisation.

ARTICLE 20

Entry into Force

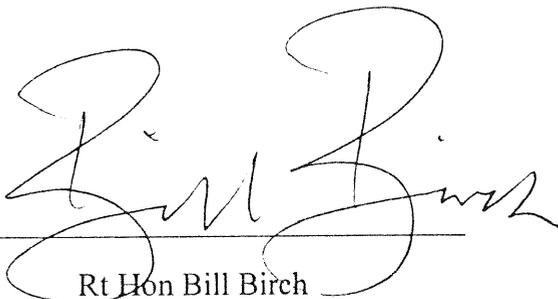
This Agreement shall enter into force on a date to be arranged by an exchange of letters between the Contracting Parties after they have completed any necessary internal procedures.

In witness whereof the undersigned, being duly authorised thereto by their respective Governments, have signed the present Agreement.

DONE in Duplicate at Macau on this 9th day of March 1995 in the English language.

FOR THE GOVERNMENT OF
NEW ZEALAND

FOR THE GOVERNMENT OF
MACAU



Rt Hon Bill Birch

Minister of Finance



Vasco Rocha Vieira

Governor

ANNEX

Route Schedule

- I. Routes to be operated in both directions by airlines designated by New Zealand:

From points in New Zealand via intermediate points in the South Pacific, including Australia, to Macau and beyond to points in the Middle East and Europe.

- II. Routes to be operated in both directions by airlines designated by Macau:

From Macau via intermediate points in South East Asia and Australia to points in New Zealand.

Points may be omitted on any or all flights provided that each service begins or ends in the area of the Contracting Party which has designated the airline in question and may be served in any order.