

AIR SERVICES AGREEMENT
BETWEEN
NEW ZEALAND
AND
THE KINGDOM OF DENMARK

The Government of the Kingdom of Denmark and the Government of New Zealand, hereinafter referred to as the "Contracting Parties";

Desiring to promote an international aviation system based on competition among airlines in the marketplace;

Desiring to facilitate the expansion of international air transport opportunities;

Recognising that efficient and competitive air services enhance trade, the welfare of consumers, and economic growth;

Desiring to make it possible for airlines to offer the travelling and shipping public a variety of service options, and wishing to encourage airlines to develop and implement innovative and competitive prices;

Desiring to ensure the highest degree of safety and security in international air transport and reaffirming their grave concern about acts or threats against the security of aircraft, which jeopardise the safety of persons or property, adversely affect the operation of air transport, and undermine public confidence in the safety of civil aviation;

Being parties to the Convention on International Civil Aviation and the International Air Services Transit Agreement opened for signature at Chicago on the seventh day of December 1944, and

Desiring to conclude an agreement, in conformity with the said Convention, for the main purpose of establishing scheduled air services between and beyond their respective territories;

Have agreed as follows:

Article 1

Definitions

For the purpose of this Agreement:

- (a) "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 amendment of the Annexes or of the Convention under Articles 90 and 94 thereof in so far as those Annexes and amendments are effective for both Contracting Parties;
- (b) "aeronautical authorities" means, in the case of the Kingdom of Denmark, the Ministry of Transport; and in the case of New Zealand, the Minister responsible for Civil Aviation, and any person or agency authorised to perform the functions exercised by the said Minister; or in either case any person or body authorised to perform any particular function to which this Agreement relates;
- (c) "designated airline" means an airline which has been designated in accordance with Article 3 of this Agreement;
- (d) "air service", "international air service", "airline" and "stop for non-traffic purposes" have the meanings laid down in Article 96 of the Convention;
- (e) "Agreement" means this Agreement, its Annex, and any amendments thereto;
- (f) "Annex" means any Annex to this Agreement or as amended in accordance with the provisions of paragraph 2 of Article 17 of this Agreement. The

Annex forms an integral part of this Agreement and all references to the Agreement include the Annex unless otherwise stated;

- (g) "tariff" means the prices to be paid for the carriage of passengers and baggage, and the conditions under which those prices apply, including prices and conditions for other services performed by the carrier in connection with the air transportation, and including remuneration and conditions offered to agencies, but excluding remuneration or conditions for the carriage of mail; and
- (h) "territory" has the meaning assigned to it in Article 2 of the Convention, provided that, in the case of New Zealand, the term "territory" shall exclude Tokelau;

Article 2

Grant of Rights

1. Each Contracting Party grants to the other Contracting Party the following rights for the conduct of international air services by airlines designated by the other Contracting Party:
 - (a) to fly across its territory without landing,
 - (b) to make stops in its territory for non-traffic purposes,
 - (c) to make stops in the said territory at the points specified in the Annex to this Agreement for the purpose of taking on board and discharging - in international traffic - 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 right of taking on board - in the territory of the other Contracting Party - passengers, cargo, and mail carried for remuneration or hire and destined for another point in the territory of that Contracting Party.
3. The airlines of each Contracting Party, other than those designated under Article 3, shall also enjoy the rights specified in paragraph 1 (a) and (b) of this Article.

Article 3

Designation and Authorisation

1. Each Contracting Party shall have the right to designate in writing through diplomatic channels to the other Contracting Party one or more airlines for the purpose of operating air services on the routes specified in the Annex 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 undue delay grant to a designated airline the appropriate operating authorisation.
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, regulations and rules normally and reasonably applied to the operation of international air services by such authorities in conformity with the provisions of the Convention.
4. Each Contracting Party shall have the right to refuse to grant the operating authorisation 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, in any case where it is not satisfied that effective control of that airline is maintained in the territory of the other Contracting Party and that the airline is incorporated and has its principal place of business in the said territory.
5. When an airline has been so designated and authorised, it may begin to operate air services on the routes specified in the Annex provided that the airline complies with all applicable provisions of this Agreement.

Article 4

Revocation and Limitation of Authorisation

1. Each Contracting Party shall have the right to revoke an operating authorisation or to suspend the exercise of the rights specified in Article 2 by an airline designated by the other Contracting Party, or to impose such conditions, as it may deem necessary, on the exercise of those rights:
 - (a) in any case where it is not satisfied that effective control of that airline is maintained in the territory of the other Contracting Party and that the airline is incorporated and has its principal place of business in the said territory;
 - (b) in the case of failure by that airline to comply with the laws, regulations and rules of the Contracting Party granting this authorisation or these rights; or
 - (c) in the case that the 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 immediate imposition of the conditions mentioned therein is essential to prevent further infringements of laws, regulations and rules, such rights shall be exercised only after consultations with the other Contracting Party.
3. Such consultations shall be held within thirty (30) days from the date the other Contracting Party receives such request in writing.

Article 5

Customs Duties

1. Aircraft operated on international air services by a designated airline of either Contracting Party, as well as its regular equipment, supplies of fuel and lubricants and aircraft stores (including food, beverages and tobacco) on board such aircraft shall be exempt from all customs duties, inspection fees and other duties or taxes on arriving in the territory of the other Contracting Party, provided such equipment, supplies and stores remain on board the aircraft up to such time as they are re-exported.
2. With the exception of charges based on the cost of the service provided, the following items shall also be exempt from the duties, fees and charges referred to in paragraph 1 of this Article:
 - (a) aircraft stores, introduced into or supplied in the territory of a Contracting Party, and taken on board, within reasonable limits, for use on outbound aircraft engaged in 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 an international air service of a 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 an international air service of a 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. The items referred to in paragraphs 1 and 2 of this Article may be required to be kept under the supervision or control of the appropriate authorities.
4. The exemptions provided for by this Article shall also apply in situations where a designated airline of one Contracting Party has entered into arrangements with other airlines 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, provided such other airlines similarly enjoy such exemptions from the other Contracting Party.

Article 6

Storage of Airborne Equipment and Supplies

The regular airborne equipment, as well as the materials and supplies retained on board the aircraft of either Contracting Party, may be unloaded in the territory of the other Contracting Party only with the approval of its customs authorities. Such items 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 7

Entry Clearance Regulations

1. Passengers in transit across the territory of either Contracting Party shall be subject to no more than a very simplified customs and immigration control. Baggage and cargo in direct transit shall be exempt from customs duties and other similar taxes.
2. The laws, regulations and rules of one Contracting Party regarding entry, clearance, transit, immigration, passports, customs and quarantine shall be complied with by the designated airlines of the other Contracting Party and by or on behalf of passengers, crew, cargo and mail, upon transit of, admission to, departure from and while within the territory of such a Contracting Party.
3. Neither Contracting Party may grant any preference to its own or any other airline over the designated airline of the other Contracting Party in the application of the laws, regulations and rules provided for in this Article.

Article 8

Capacity Provisions

1. Each Contracting Party shall allow a fair and equal opportunity for the designated airlines of both Contracting Parties to compete in the international air transportation covered by this Agreement.
2. Each Contracting Party shall take all appropriate action within its jurisdiction to eliminate all forms of discrimination or unfair competitive practices adversely affecting the competitive position of the airlines of the other Contracting Party.
3. Each Contracting Party shall allow a designated airline to determine the frequency and capacity of the international air services it offers based upon commercial considerations in the marketplace. Consistent with this right, neither Contracting Party shall unilaterally limit the volume of traffic, frequency or regularity of service, or the aircraft type or types operated by the designated airlines of the other Contracting Party, except as may be required for customs, technical, operational or environmental reasons under uniform conditions consistent with Article 15 of the Convention.
4. Neither Contracting Party shall impose on the other Contracting Party's designated airlines a first refusal requirement, uplift ratio, no-objection fee or any other requirement with respect to the capacity, frequency or traffic which would be inconsistent with the purposes of this Agreement.

Article 9

Tariffs

1. Tariffs for international air transport operated pursuant to this Agreement shall not be required to be filed with the aeronautical authorities of either Contracting Party.
2. Without limiting the application of general competition and consumer law in each Contracting Party, intervention by the Contracting Parties may be initiated to:
 - (i) prevent unreasonably discriminatory tariffs or practices;
 - (ii) protect consumers from tariffs that are unreasonably high or unreasonably restrictive due either to the abuse of a dominant position or to concerted practices among air carriers; and
 - (iii) protect airlines from tariffs that are artificially low because of direct or indirect governmental subsidy or support.

Article 10

Transfer of Earnings

Each designated airline shall have the right to convert and remit to its country on demand local revenues in excess of sums locally disbursed. Conversion and remittance shall be permitted without restrictions at the rate of exchange applicable to current transactions which is in effect at the time such revenues are presented for conversion and remittance, and shall not be subject to any charges except those normally made by banks for carrying out such conversion and remittance.

Article 11

Airline Representation

1. Each Contracting Party grants to a designated airline of the other Contracting Party, on the basis of reciprocity, and subject to its laws and regulations relating to entry, residence and employment, the right to maintain in its territory representatives including office, administrative, commercial and technical personnel as may be necessary for the requirements of the designated airline concerned.
2. The designated airlines of a Contracting Party shall have the right to engage in the sale of air transportation in the territory of the other Contracting Party, either directly or through agents. A Contracting Party shall not restrict the right of the designated airlines of the other Contracting Party to sell, and of any person to purchase, such transportation in local or in any freely convertible currency. Nor shall a Contracting Party restrict the right of a designated airline of the other Contracting Party to pay in local or in any freely convertible currency its locally incurred costs.

Article 12

Approval of Flight Schedules

1. Airlines designated by a Contracting Party may be required to submit their traffic programmes for approval to the aeronautical authorities of the other Contracting Party at least thirty (30) days prior to the beginning of the operation, or at such shorter notice as the aeronautical authorities may allow. The programme shall include in particular the timetables, the frequency of the services and the types of aircraft to be used.
2. Any alteration made in an approved air traffic programme at a later date shall also be submitted for approval.

Article 13

Aviation Safety

1. Each Contracting Party may request consultations at any time concerning safety standards in any area relating to aircrew, aircraft or their operation adopted by the other Contracting Party. Such consultations shall take place within thirty (30) days of that request.
2. If, following such consultations, one Contracting Party finds that the other Contracting Party does not effectively maintain and administer safety standards in any such area that are at least equal to the minimum standards established at that time pursuant to the Convention, the first Contracting Party shall notify the other Contracting Party of those findings and the steps considered necessary to conform with those minimum standards, and that other Contracting Party shall take appropriate corrective action. Failure by the other Contracting Party to take appropriate action within fifteen (15) days or such longer period as may be agreed, shall be grounds for the application of Article 4 of this Agreement.
3. Notwithstanding the obligations mentioned in Article 33 of the Convention, it is agreed that any aircraft operated by the airline or airlines of one Contracting Party on services to or from the territory of another Party, may, while within the territory of the other Contracting Party, be made the subject of an examination by the authorised representatives of the other Contracting Party, on board and around the aircraft to check both the validity of the aircraft documents and those of its crew and the apparent condition of the aircraft and its equipment (in this Article called "ramp inspection"), provided this does not lead to unreasonable delay.

4. If any such ramp inspection or series of ramp inspections gives rise to:
- a) serious concerns that an aircraft or the operation of an aircraft does not comply with the minimum standards established at that time pursuant to the Convention, or
 - b) serious concerns that there is a lack of effective maintenance and administration of safety standards established at that time pursuant to the Convention,

the Contracting Party carrying out the inspection shall, for the purposes of Article 33 of the Convention, be free to conclude that the requirements under which the certificate or licenses in respect of that aircraft or in respect of the crew of that aircraft has been issued or rendered valid, or that the requirements under which that aircraft is operated, are not equal to or above the minimum standards established pursuant to the Convention.

5. In the event that access for the purpose of undertaking a ramp inspection of an aircraft operated by the airline or airlines of the other Contracting Party in accordance with paragraph 3 above is denied by the representative of that airline or airlines, the other Contracting Party shall be free to infer that serious concerns of the type referred to in paragraph 4 above arise and draw the conclusions referred to in that paragraph.
6. Each Contracting Party reserves the right to suspend or vary the operating authorisation of an airline or airlines of the other Contracting Party immediately in the event the first Contracting Party concludes, whether as a result of a ramp inspection, consultation or otherwise, that immediate action is essential to the safety of an airline operation.

7. Any action by one Contracting Party in accordance with paragraphs 2 or 6 above shall be discontinued once the basis for the taking of that action ceases to exist.

Article 14

Aviation Security

1. Each Contracting Party reaffirms that its obligation to the other Contracting Party to protect the security of civil aviation against unlawful interference forms an integral part of this Agreement. Each Contracting Party shall in particular act in conformity with the provisions 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, the *Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation*, signed at Montreal on 23 September 1971, and any other multilateral agreement governing civil aviation security binding upon both Contracting Parties.
2. Each Contracting Party shall be provided at its request with all necessary assistance by 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, act in conformity with the applicable aviation security provisions established by the International Civil Aviation Organization and designated as Annexes to the Convention. Each Contracting Party shall require that operators of aircraft of its registry or operators of aircraft who have their principal place of business or permanent residence in its territory and the operators of airports in its territory act in conformity with such aviation security provisions.

4. Each Contracting Party agrees that operators of aircraft may be required to observe the aviation security provisions referred to in paragraph 3 of this Article required by the other Contracting Party for entry into, departure from, or while within the territory of that other Contracting Party. 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, mail and aircraft stores prior to and during boarding or loading. Each Contracting Party shall also give sympathetic consideration to any request from the other Contracting Party for reasonable special security measures to meet a particular threat.
5. If 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, airport or air navigation facilities occurs, each Contracting Party shall assist the other Contracting Party by facilitating communications and other appropriate measures intended to terminate rapidly and safely such incident or threat thereof.

Article 15

Consultations

Either Contracting Party may at any time request consultations on the implementation, interpretation or amendment to this Agreement or compliance with the Agreement. Such consultations, which may be between aeronautical authorities, shall begin within a period of sixty (60) days from that date the other Contracting Party receives a written request, unless otherwise agreed by the Contracting Parties.

Article 16

Amendments

1. Any amendments to this Agreement, except the Annex, shall enter into force on the date of an Exchange of Notes indicating that all necessary constitutional procedures have been completed by both Parties.
2. Amendments to the Annex to this Agreement may be made by direct agreement between the competent aeronautical authorities of the Contracting Parties, effected by and entering into force on the date of an exchange of diplomatic notes.

Article 17

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 endeavour to settle it by negotiation.
2. If the Contracting Parties fail to reach a settlement of the dispute by negotiation, they may agree to refer the dispute for decision to an arbitrator, or 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. 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 all cases, the third arbitrator shall be a national of a third State, shall act as president of the arbitral tribunal and shall determine the place where the arbitration will be held. If the President considers that he is a national of a State which cannot be regarded as neutral in relation to the dispute, the most Senior Vice-President who is not disqualified on that ground shall make the appointment. The arbitral tribunal shall reach its decision by a majority of votes.

3. Each Contracting Party shall bear the costs of the arbitrator it has nominated as well as of its representation in the arbitral proceeding. The costs of the president and any other costs shall be borne in equal parts by the Contracting Parties.
4. The Contracting Parties undertake to comply, to the degree consistent with their respective national laws, with any decision given under paragraph 2 of this Article.
5. If and as long as either Contracting Party fails to comply with any decision under paragraph 2 of this Article, the other Contracting Party may limit, withhold or revoke any rights or privileges which it has granted by virtue of this Agreement to the Contracting Party in default or to a designated airline in default.

Article 18

Registration

This Agreement, its Annex and any subsequent amendments thereto shall be submitted by the Contracting Parties to the International Civil Aviation Organization.

Article 19

Termination

Either Contracting Party may at any time give notice to the other Contracting Party of its decision to terminate this Agreement; such notice shall be simultaneously communicated to the International Civil Aviation Organization. In such case 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 acknowledgement of receipt by the other Contracting Party, notice shall be deemed to have been received fourteen (14) days after the receipt of the notice by the International Civil Aviation Organization.

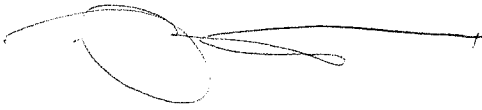
Article 20

Entry into Force

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

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

DONE at Wellington on 7th February 2000 in duplicate in the English language.

A stylized, handwritten signature consisting of a large, loopy initial 'D' followed by a horizontal line.

FOR THE GOVERNMENT OF
THE KINGDOM OF DENMARK

A handwritten signature that appears to read 'M. Josebe' in a cursive script.

FOR THE GOVERNMENT OF
NEW ZEALAND

ANNEX

- 1
 - a) Routes to be operated in both directions by the airlines designated by the Government of the Kingdom of Denmark:

Points in Denmark, via intermediate points, to a point or points in New Zealand, and to points beyond.
 - b) Routes to be operated in both directions by the airlines designated by the Government of New Zealand:

Points in New Zealand, via intermediate points, to a point or points in Denmark, and to points beyond.
2. Subject to the legal obligations of each Contracting Party, the designated airlines of either Contracting Party may serve intermediate and/or beyond points with fifth freedom traffic rights.
3. In operating or holding out services on the agreed routes, any designated airline may enter into co-operative arrangements, including but not limited to code-sharing arrangements, with any other airline, including airlines of third countries, which has the appropriate traffic rights and, if appropriate, operating authorisations for the co-operative arrangement in question.