

Agreement

between the Government of Hong Kong
and the Government of His Majesty the Sultan
and Yang Di-Pertuan of Brunei Darussalam

concerning Air Services

Hong Kong, 9 January 1989

**AGREEMENT BETWEEN THE GOVERNMENT OF HONG KONG
AND THE GOVERNMENT OF HIS MAJESTY THE SULTAN AND
YANG DI-PERTUAN OF BRUNEI DARUSSALAM
CONCERNING AIR SERVICES**

The Government of Hong Kong and the Government of His Majesty the Sultan and Yang Di-Pertuan of Brunei Darussalam,

Desiring to conclude an Agreement for the purpose of establishing air services between Hong Kong and Brunei Darussalam,

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 the case of Hong Kong, the Director of Civil Aviation, and in the case of Brunei Darussalam, the Minister of Communications, or, in both cases, any person or body authorised to perform any functions at present exercisable by the above-mentioned authorities or similar functions;
- (b) the term “designated airline” means an airline which has been designated and authorised in accordance with Article 4 of this Agreement;
- (c) the term “area” in relation to Hong Kong includes Hong Kong Island, Kowloon and the New Territories and in relation to Brunei Darussalam has the meaning assigned to “territory” in Article 2 of the Convention on International Civil Aviation, opened for signature at Chicago on 7 December 1944;
- (d) the terms “air service”, “international air service”, “airline” and “stop for non-traffic purposes” have the meanings respectively assigned to them in Article 96 of the said Convention;
- (e) the term “user charge” means a charge made to airlines by the competent authorities or permitted by them to be made for the provision of airport property or facilities or of air navigation facilities, including related services and facilities, for aircraft, their crews, passengers and cargo;
- (f) the term “this Agreement” includes the Annex hereto and any amendments to it or to this Agreement.

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 relevant Annexes, insofar as those 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 in respect of its international air services:
 - (a) the right to fly across its area without landing;
 - (b) the right to make stops in its area for non-traffic purposes.
- (2) Each Contracting Party grants to the other Contracting Party the rights hereinafter specified in this Agreement for the purpose of operating international air services on the routes specified in the appropriate Section of the Annex to this Agreement. Such services and routes are hereinafter called “the agreed services” and “the specified routes” respectively. While operating an agreed service on a specified route the airlines designated by each Contracting Party shall enjoy in addition to the rights specified in paragraph (1) of this Article the right to make stops in the area of the other Contracting Party at the points specified for that route in the Annex to this Agreement for the purpose of taking on board and discharging passengers and cargo including mail.
- (3) Nothing in paragraph (2) of this Article shall be deemed to confer on the designated airlines of one Contracting Party the right to take on board, at one point in the area of the other Contracting Party, passengers and cargo, including mail, carried for hire or reward and destined for another point in the area of the other Contracting Party.
- (4) If because of armed conflict, political disturbances or developments, or special and unusual circumstances, a designated airline of one Contracting Party is unable to operate a service on its normal routeing, the other Contracting Party shall use its best efforts to facilitate the continued operation of such service through appropriate temporary rearrangements of routes.

ARTICLE 4

Designation of and Authorisation of Airlines

- (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 a 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)
 - (a) The Government of Hong Kong 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(2) of this Agreement, in any case where it is not satisfied that substantial ownership and effective control of that airline are vested in the Government of His Majesty the Sultan and Yang Di-Pertuan of Brunei Darussalam or its nationals.
 - (b) The Government of His Majesty the Sultan and Yang Di-Pertuan of Brunei Darussalam 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(2) of this Agreement, in any case where it is not satisfied that that airline is incorporated and has its principal place of business in Hong Kong.
- (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 or Suspension of Operating Authorisation

- (1) Each Contracting Party shall have the right to revoke or suspend an operating authorisation for the exercise of the rights specified in Article 3(2) 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 those rights:
 - (a)
 - (i) in the case of the Government of Hong Kong, in any case where it is not satisfied that substantial ownership and effective control of that airline are vested in the Government of His Majesty the Sultan and Yang Di-Pertuan of Brunei Darussalam or its nationals;

- (ii) in the case of the Government of His Majesty the Sultan and Yang Di-Pertuan of Brunei Darussalam, in any case where it is not satisfied that that airline is incorporated and has its principal place of business in Hong Kong; or
 - (b) in the case of failure by that airline to comply with the laws or regulations of the Contracting Party granting those 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 infringements of laws or regulations, such right shall be exercised only after consultation with the other Contracting Party.

ARTICLE 6

Principles Governing Operation of Agreed Services

- (1) There shall be fair and equal opportunity for the designated airlines of both Contracting Parties to operate the agreed services on the specified routes.
- (2) In operating the agreed services the designated airlines of each Contracting Party shall take into account the interests of the designated airlines of the other Contracting Party so as not to affect unduly the services which the latter provide 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 objective the provision at a reasonable load factor of capacity adequate to meet the current and reasonably anticipated requirements for the carriage of passengers and cargo, including mail, originating in or destined for the area of the Contracting Party which has designated the airline. Provision for the carriage of passengers and cargo, including mail, both taken on board and discharged at points on the specified routes other than points in the area of the Contracting Party which designated the airline shall be made in accordance with the general principles that capacity shall be related to:
 - (a) traffic requirements to and from the area of the Contracting Party which has designated the airline;
 - (b) traffic requirements of the region through which the agreed service passes, after taking account of other transport services established by airlines of the States comprising the region; and
 - (c) the requirements of through airline operation.
- (4) The capacity to be provided on the specified routes shall be such as is from time to time mutually agreed by the aeronautical authorities of the Contracting Parties.

ARTICLE 7

Tariffs

- (1) The term “tariff” means:
 - (i) the fare charged by an airline for the carriage of passengers and their baggage on scheduled air services and the charges and conditions for services ancillary to such carriage;
 - (ii) the freight rate charged by an airline for the carriage of cargo (excluding mail) on scheduled air services;
 - (iii) the conditions governing the availability or applicability of any such fare or freight rate including any benefits attaching to it; and
 - (iv) the rate of commission paid by an airline to an agent in respect of tickets sold or air waybills completed by that agent for carriage on scheduled air services.
- (2) The tariffs to be charged by the designated airlines of the Contracting Parties for carriage between Hong Kong and Brunei Darussalam shall be those approved by both aeronautical authorities and shall be established at reasonable levels, due regard being had to all relevant factors, including the cost of operating the agreed services, the interests of users, reasonable profit and the tariffs of other airlines operating over the whole or part of the same route.
- (3) The tariffs referred to in paragraph (2) of this Article may be agreed by the designated airlines seeking approval of the tariff, after consultation with other designated airlines operating over the whole or part of the same route. However, a designated airline shall not be precluded from proposing, nor the aeronautical authorities from approving, any tariff, if that airline shall have failed to obtain the agreement of the other designated airlines to such a tariff, or because no other designated airline is operating on the same route. Reference in this and the preceding paragraph to “the same route” means the route operated, not the specified route.
- (4) Any proposed tariff for carriage between Hong Kong and Brunei Darussalam shall be filed with the aeronautical authorities of both Contracting Parties in such form as the aeronautical authorities may separately require to disclose the particulars referred to in paragraph (1) of this Article. It shall be filed not less than 60 days (or such shorter period as the aeronautical authorities may agree) before the proposed effective date. The proposed tariff shall be treated as having been filed with a Contracting Party on the date on which it is received by the aeronautical authorities of that Contracting Party.
- (5) Any proposed tariff may be approved by the aeronautical authorities of either Contracting Party at any time and, provided it has been filed in accordance with paragraph (4) of this Article, shall be deemed to have been approved by the aeronautical authorities unless, within 30 days (or such shorter period as the aeronautical authorities of both Contracting Parties may agree) after the date of filing, the aeronautical authorities of either Contracting Party have served on the aeronautical authorities of the other Contracting Party written notice of disapproval of the proposed tariff.
- (6) If a notice of disapproval is given in accordance with the provisions of paragraph (5) of this Article, the aeronautical authorities of the two Contracting Parties may determine the tariff by mutual agreement.

Either Contracting Party may, within 30 days of the service of the notice of disapproval, request consultations which shall be held within 30 days of the request.

- (7) If a tariff has been disapproved by one of the aeronautical authorities in accordance with paragraph (5) of this Article, and the aeronautical authorities have been unable to determine the tariff by agreement in accordance with paragraph (6) of this Article, the dispute may be settled in accordance with the provisions of Article 15 of this Agreement.
- (8) Subject to paragraph (9) of this Article, a tariff established in accordance with the provisions of this Article shall remain in force until a replacement tariff has been established.
- (9) Except with the agreement of the aeronautical authorities of both Contracting Parties, and for such period as they may agree, a tariff shall not be prolonged by virtue of paragraph (8) of this Article:
 - (a) where a tariff has a terminal date, for more than 12 months after that date;
 - (b) where a tariff has no terminal date, for more than 12 months after the date on which a replacement tariff is filed with both aeronautical authorities by the designated airline or airlines of one or both Contracting Parties.
- (10)
 - (a) The tariffs to be charged by a designated airline of Hong Kong for carriage between Brunei Darussalam and another State shall be subject to approval by the aeronautical authorities of Brunei Darussalam and, where appropriate, of the other State. The tariffs to be charged by a designated airline of Brunei Darussalam for carriage between Hong Kong and a State other than Brunei Darussalam shall be subject to approval by the aeronautical authorities of Hong Kong and, where appropriate, of the other State.
 - (b) No tariff shall be approved for such carriage unless it has been filed by the designated airline seeking that approval with the aeronautical authorities of the other Contracting Party in such form as those aeronautical authorities may require to disclose the particulars referred to in paragraph (1) of this Article not less than 90 days (or such shorter period as those aeronautical authorities may in a particular case agree) prior to the proposed effective date.
 - (c) The Contracting Party which has approved a tariff for such carriage may withdraw its approval of that tariff on giving 90 days' notice to the designated airline of the other Contracting Party applying the tariff and that tariff shall cease to be applied by that designated airline at the end of that period.

ARTICLE 8

Customs Duties

- (1) Aircraft operated in international air services by a designated airline of either Contracting Party, their regular equipment, fuel, lubricants, spare parts including engines, and aircraft stores (including but not limited to such items as food, beverages and tobacco) which are on board such aircraft shall be relieved by the other Contracting Party on the basis of reciprocity from all customs duties, excise taxes and

similar fees and charges not based on the cost of services provided on arrival, provided such equipment and supplies remain on board the aircraft.

- (2) Regular equipment, spare parts, supplies of fuels and lubricants, aircraft stores, printed ticket stock, air waybills, any printed material which bears insignia of a designated airline of either Contracting Party and usual publicity material distributed without charge by that designated airline, introduced into the area of the other Contracting Party by or on behalf of that designated airline or taken on board the aircraft operated by that designated airline and intended solely for use on board such aircraft in the operation of international air services, shall be relieved by the other Contracting Party on the basis of reciprocity from all customs duties, excise taxes and similar fees and charges not based on the cost of services provided on arrival, even when these supplies are to be used on any part of a journey performed over the area 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) Regular airborne equipment, spare parts, supplies of fuels and lubricants and aircraft stores on board the aircraft of a designated airline 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 Contracting Party who may require that these materials be placed under their supervision up to such time as they are re-exported or otherwise disposed of in accordance with customs regulations.
- (5) The reliefs provided for by this Article shall also be available in situations where a designated airline of either Contracting Party has entered into arrangements with another airline or airlines for the loan or transfer in the area of the other Contracting Party of the items specified in paragraphs (1) and (2) of this Article, provided such other airline or airlines similarly enjoy such reliefs from such other Contracting Party.

ARTICLE 9

Aviation Security

- (1) The Contracting Parties reaffirm that their obligation to each other to protect the security of civil aviation against unlawful interference forms an integral part of this Agreement. The Contracting Parties shall in particular act in conformity with the aviation security 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 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 applicable aviation security provisions established by the International Civil Aviation Organization and designated as

Annexes to the Convention on International Civil Aviation, opened for signature at Chicago on 7 December 1944. They shall require that operators of aircraft of their registry or operators of aircraft having 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) of this Article 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 sympathetic 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.

ARTICLE 10

Provision of Statistics

The aeronautical authorities of a 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 by the designated airlines of the Contracting Party referred to first in this Article. Such statements shall include all information required to determine the amount of traffic carried by those airlines on the agreed services and the origins and destinations of such traffic.

ARTICLE 11

Transfer of Earnings

A designated airline of Hong Kong shall have the right to convert and remit to Hong Kong on demand local revenues in excess of sums locally disbursed. A designated airline of Brunei Darussalam shall have the right to convert and remit to Brunei Darussalam 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.

ARTICLE 12

Airline Representation

The designated airline or airlines of one Contracting Party shall be entitled, in accordance with the laws and regulations relating to entry, residence and employment of the other Contracting Party, to bring in and maintain in the area of the other Contracting Party those of their own managerial, technical, operational and other specialist staff who are required for the provision of air services.

ARTICLE 13

User Charges

- (1) Neither Contracting Party shall impose or permit to be imposed on the designated airline or airlines of the other Contracting Party user charges higher than those imposed on its own airlines operating similar international air services.
- (2) Each Contracting Party shall encourage consultation between its competent charging authorities and airlines using the services and facilities, where practicable through the airlines' representative organisations. Reasonable notice should be given to users of any proposals for changes in user charges to enable them to express their views before changes are made. Each Contracting Party shall further encourage the competent charging authorities and the airlines to exchange appropriate information concerning user charges.

ARTICLE 14

Consultation

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

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 try to settle it by negotiation.
- (2) If the Contracting Parties fail to reach a settlement of the dispute by negotiation, it may be referred by them to such person or body as they may agree on or, at the request of either Contracting Party, shall

be submitted for decision to a tribunal of three arbitrators which shall be constituted in the following manner:

- (a) within 30 days after receipt of a request for arbitration, each Contracting Party shall appoint one arbitrator. A national of a State which can be regarded as neutral in relation to the dispute, who shall act as President of the tribunal, shall be appointed as the third arbitrator by agreement between the two arbitrators, within 60 days of the appointment of the second;
 - (b) if within the time limits specified above any appointment has not been made, either Contracting Party may request the President of the Council of the International Civil Aviation Organization to make the necessary appointment within 30 days. 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.
- (3) Except as hereinafter provided in this Article or as otherwise agreed by the Contracting Parties, the tribunal shall determine the limits of its jurisdiction and establish its own procedure. At the direction of the tribunal, or at the request of either of the Contracting Parties, a conference to determine the precise issues to be arbitrated and the specific procedures to be followed shall be held not later than 30 days after the tribunal is fully constituted.
 - (4) Except as otherwise agreed by the Contracting Parties or prescribed by the tribunal, each Contracting Party shall submit a memorandum within 45 days after the tribunal is fully constituted. Replies shall be due 60 days later. The tribunal shall hold a hearing at the request of either Contracting Party, or at its discretion, within 30 days after replies are due.
 - (5) The tribunal shall attempt to give a written decision within 30 days after completion of the hearing or, if no hearing is held, after the date both replies are submitted. The decision shall be taken by a majority vote.
 - (6) The Contracting Parties may submit requests for clarification of the decision within 15 days after it is received and such clarification shall be issued within 15 days of such request.
 - (7) The decision of the tribunal shall be binding on the Contracting Parties.
 - (8) Each Contracting Party shall bear the costs of the arbitrator appointed by it. The other costs of the tribunal shall be shared equally by the Contracting Parties including any expenses incurred by the President or Vice-President of the Council of the International Civil Aviation Organization in implementing the procedures in paragraph (2)(b) of this Article.

ARTICLE 16

Amendment

- (1) Any amendments to this Agreement other than the Annex agreed by the Contracting Parties shall come into effect when they are confirmed in writing between the Government of His Majesty the Sultan and Yang Di-Pertuan of Brunei Darussalam and the Government of Hong Kong.

- (2) Any amendments to the Annex agreed by the Contracting Parties shall come into effect when confirmed in writing between the aeronautical authorities of both Contracting Parties.

ARTICLE 17

Termination

Either Contracting Party may at any time give notice in writing to the other Contracting Party of its decision to terminate this Agreement. This Agreement shall terminate at midnight (at the place of receipt of the notice) immediately before the first anniversary of the date of receipt of the notice by the other Contracting Party, unless the notice is withdrawn by agreement before the end of this period.

ARTICLE 18

Registration with the International Civil Aviation Organization

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

ARTICLE 19

Entry into Force

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

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

Done, in duplicate at Hong Kong this 9th day of January 1989 in the English and Malay languages, both texts being equally authoritative.

For the Government of Hong Kong:

For the Government of His Majesty the
Sultan and Yang Di-Pertuan of Brunei
Darussalam:

ANSON CHAN

DATO HAJI ZAKARIA
DMW HAJI SULAIMAN

ANNEX

ROUTE SCHEDULE

Section 1

Routes to be operated by the designated airline or airlines of Hong Kong:

Hong Kong – intermediate points – points in Brunei Darussalam – points beyond.

Notes:

1. The designated airline or airlines of Hong Kong may on any or all flights omit calling at any points on the above-mentioned routes, and may serve them in any order, provided that the agreed services on these routes begin at Hong Kong.
2. No traffic may be picked up at an intermediate point or at a point beyond and set down at points in Brunei Darussalam or vice versa, except as may from time to time be agreed by the aeronautical authorities of the Contracting Parties.
3. No point in the mainland of China may be served as an intermediate point or a point beyond.

Section 2

Routes to be operated by the designated airline or airlines of Brunei Darussalam:

Points in Brunei Darussalam – intermediate points – Hong Kong – points beyond.

Notes:

1. The designated airline or airlines of Brunei Darussalam may on any or all flights omit calling at any points on the above-mentioned routes, and may serve them in any order, provided that the agreed services on these routes begin at points in Brunei Darussalam.
2. No traffic may be picked up at an intermediate point or at a point beyond and set down at Hong Kong or vice versa, except as may from time to time be agreed by the aeronautical authorities of the Contracting Parties.
3. No point in the mainland of China may be served as an intermediate point or a point beyond.