

Agreement

between the Government of Hong Kong
and the Government of Japan
for Air Services

**AGREEMENT BETWEEN THE GOVERNMENT OF HONG KONG
AND THE GOVERNMENT OF JAPAN
FOR AIR SERVICES**

The Government of Hong Kong and the Government of Japan,

Desiring to conclude an agreement for the purpose of maintaining the existing civil aviation relationship between Hong Kong and Japan and establishing a framework to further promote this relationship,

Have agreed as follows:

ARTICLE 1

1. For the purpose of this Agreement, unless the context otherwise requires:
 - (a) the term “aeronautical authorities” means, in the case of Japan, the Minister of Transport or any person or body authorized to perform any civil aviation functions at present exercisable by the said Minister or similar functions, and, in the case of Hong Kong, the Secretary for Economic Services or the Director of Civil Aviation or any person or body authorized to perform any civil aviation 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 authorized in accordance with Article 4 of this Agreement;
 - (c) the term “area” in relation to Japan 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 (hereinafter referred to as “the Convention”) and in relation to Hong Kong includes Hong Kong Island, Kowloon and the New Territories;
 - (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 Convention;
 - (e) the term “Annex” means the Annex to this Agreement and any amendments made to the Annex in accordance with the provisions of Article 16 of this Agreement;
 - (f) the term “specified route” means any of the routes specified in the Annex;
 - (g) the term “agreed service” means any air service operated on the specified routes.
2. The Annex forms an integral part of this Agreement, and all reference to the “Agreement” shall include reference to the Annex except where otherwise provided.

ARTICLE 2

In implementing this Agreement, the Contracting Parties shall act in conformity with the provisions of the Convention, including any Annex adopted under Article 90 of the Convention and any amendment made to the Convention or to its Annexes under Articles 90 and 94 thereof which apply to both Contracting Parties, insofar as these provisions are applicable to international air services.

ARTICLE 3

Each Contracting Party grants to the other Contracting Party the rights specified in this Agreement to enable its designated airlines to establish and operate the agreed services on the specified routes.

ARTICLE 4

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. The term “right to designate” includes the right to alter designations already made.
2. On receipt of such a designation the other Contracting Party shall, subject to the provisions of paragraph 3 of this Article and of paragraph 1 of Article 8, without delay grant to the airline or airlines designated the appropriate operating authorization in accordance with its laws and regulations.
3. An airline designated by one Contracting Party may be required to satisfy the aeronautical authorities of the other Contracting Party that it is qualified to fulfil the conditions prescribed by the laws and regulations normally and reasonably applied by those authorities to the operation of international air services.
4. An airline designated and authorized in accordance with the provisions of paragraphs 1 and 2 of this Article may begin to operate the agreed services, provided that tariffs established in accordance with the provisions of Article 10 of this Agreement are in force in respect of those services.

ARTICLE 5

1. Each Contracting Party grants to the other Contracting Party the rights to enable the airlines of the other Contracting Party to enjoy the following privileges in respect of their international air services:
 - (a) to fly across the area of the first Contracting Party without landing; and
 - (b) to make stops in the area of the first Contracting Party for non-traffic purposes.
2. Subject to the provisions of this Agreement, the designated airlines of each Contracting Party shall enjoy, while operating an agreed service on a specified route, in addition to the privileges specified in paragraph 1 of this Article the privilege to make stops in the area of the other Contracting Party at the points specified for that route in the Annex for the purposes of taking on board and discharging passengers, cargo and mail, separately or in combination.

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

ARTICLE 6

The charges which either of the Contracting Parties may impose, or permit to be imposed, on the designated airlines of the other Contracting Party for the use of airports and other facilities under its control shall not be higher than would be paid for the use of such airports and facilities by any airline of the first Contracting Party, or any other airlines, engaged in international air services.

ARTICLE 7

1. Aircraft engaged in the agreed services operated by the designated airlines of either Contracting Party as well as fuel, lubricating oils, spare parts, regular equipment and aircraft stores retained on board such aircraft shall be exempt from customs duties, excise taxes, inspection fees and other similar duties, taxes or charges in the area of the other Contracting Party, even when they are consumed or used on the part of the journey performed over that area.

2. Fuel, lubricating oils, spare parts, regular equipment and aircraft stores taken on board aircraft of the designated airlines of either Contracting Party in the area of the other Contracting Party and used in the agreed services shall, subject to the regulations of the latter Contracting Party, be exempt from customs duties, excise taxes, inspection fees and other similar duties, taxes or charges.

3. Fuel, lubricating oils, spare parts, regular equipment and aircraft stores introduced for the account of the designated airlines of either Contracting Party and stored in the area of the other Contracting Party under customs supervision for the purpose of supplying aircraft of those designated airlines, shall, subject to the regulations of the latter Contracting Party, be exempt from customs duties, excise taxes, inspection fees and other similar duties, taxes or charges.

ARTICLE 8

1. Each Contracting Party shall have the right to refuse to grant the operating authorization referred to in paragraph 2 of Article 4 of this Agreement, or to impose such conditions as it may deem necessary on the exercise by an airline designated by the other Contracting Party of the privileges specified in paragraph 2 of Article 5 of this Agreement:

- (a) in the case of the Government of Hong Kong, in any case where it is not satisfied that the airline is incorporated and has its principal place of business in Japan;
- (b) in the case of the Government of Japan, in any case where it is not satisfied that the airline is incorporated and has its principal place of business in Hong Kong.

2. Each Contracting Party shall have the right to revoke or suspend an operating authorization for the exercise of the privileges specified in paragraph 2 of Article 5 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 privileges:

- (a) (i) in the case of the Government of Hong Kong, in any case where it is not satisfied that the airline is incorporated and has its principal place of business in Japan;
- (ii) in the case of the Government of Japan, in any case where it is not satisfied that the 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 and 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.

3. Unless immediate revocation or suspension of the operating authorization mentioned in paragraph 2 of this Article or imposition of the conditions therein is essential to prevent further infringements of laws and regulations, or for reasons of safety of air navigation, such right shall be exercised only after consultation with the other Contracting Party.

ARTICLE 9

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 the operation by the designated airlines of either Contracting Party of the agreed services, the interests of the designated airlines of the other Contracting Party shall be taken into consideration 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 such services.

4. The agreed services provided by a designated airline 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, cargo and mail originating in or destined for the area of the Contracting Party which has designated the airline. Provision for the carriage of passengers, cargo and 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) the requirements of through airline operation; and

- (c) traffic requirements of the region through which the agreed service passes, after taking account of local and regional services.

5. The capacity to be provided by the designated airlines of the Contracting Parties in respect of the agreed services shall be agreed between the aeronautical authorities of both Contracting Parties in accordance with the principles set out in paragraphs 1, 2, 3 and 4 of this Article.

ARTICLE 10

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.

2. These tariffs shall be determined in accordance with the following provisions:

- (a) Agreement on the tariffs should, wherever possible, be reached by the designated airlines by use of an appropriate international rate-fixing mechanism such as the International Air Transport Association. When this is not possible, tariffs in respect of each of the specified routes and sectors thereof shall, wherever possible, be agreed between the designated airlines concerned. In any case the tariffs shall be submitted for the approval of the aeronautical authorities of both Contracting Parties in accordance with the procedures applicable in each Contracting Party.
- (b) 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, in accordance with the provisions of paragraph 2(a) of this Article, the aeronautical authorities of the Contracting Parties shall endeavour to reach agreement on the appropriate tariffs.
- (c) If the agreement between the aeronautical authorities under the provisions of paragraph 2(b) of this Article cannot be reached, the dispute shall be settled in accordance with the provisions of Article 15 of this Agreement.
- (d) No new tariff shall come into effect if the aeronautical authorities of either Contracting Party are dissatisfied with it, except under the terms of paragraph 5 of Article 15 of this Agreement. Pending determination of the tariffs in accordance with the provisions of this Article, the tariffs already in force shall prevail.

ARTICLE 11

1. The designated airlines of each Contracting Party shall be permitted in accordance with the applicable laws and regulations of the other Contracting Party within the area of the other Contracting Party to establish and maintain their offices and to engage in activities necessary for the provision of air services.

2. The designated airlines of each Contracting Party shall have the right, in accordance with the applicable laws and regulations of the other Contracting Party, to engage in the sale of air transportation in the area of the other Contracting Party, either directly or through agents. The designated airlines of each Contracting Party shall have the right to sell, and any person shall be free to purchase, in accordance with the applicable laws

and regulations of the other Contracting Party, such transportation in local currency or in any freely convertible other currency.

3. The designated airlines of each Contracting Party shall be entitled in accordance with the applicable laws and regulations of the other Contracting Party to bring in and maintain at their offices in the area of the other Contracting Party their own managerial, technical, operational and other specialist staff who are required for the provision of air services.

4. Each Contracting Party grants to the designated airlines of the other Contracting Party the right to transfer, in accordance with the applicable laws and regulations of the first Contracting Party, in convertible currencies, at the prevailing rate of exchange in the official market at the time of remittance, the excess of receipts over expenditure earned by those airlines in the area of the first Contracting Party, and to establish and maintain, for the provision of air services, accounts in foreign currency and in convertible domestic currency in accordance with the applicable laws and regulations of the first Contracting Party.

ARTICLE 12

The aeronautical authorities of either Contracting Party shall supply to the aeronautical authorities of the other Contracting Party at the latter's 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 first Contracting Party. Such statements shall include all information required to determine the amount of traffic carried by those airlines on the agreed services.

ARTICLE 13

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 aviation security provisions of the Convention on Offences and Certain Other Acts Committed on Board Aircraft, done at Tokyo on 14 September 1963, the Convention for the Suppression of Unlawful Seizure of Aircraft, done at The Hague on 16 December 1970 and the Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation, done at Montreal on 23 September 1971.

2. The Contracting Parties shall provide to each other upon request all necessary assistance in accordance with their respective laws and regulations 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, take all possible measures to 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 take all possible measures to require that its airlines incorporated and having their principal place of business in its area, and the operators of airports in its area, act in conformity with such aviation security provisions.

4. Each Contracting Party agrees that such airlines 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 taken 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 14

1. It is the intention of both Contracting Parties that there should be regular and frequent consultation between the aeronautical authorities of the Contracting Parties to ensure close collaboration in all matters affecting the fulfilment of this Agreement.

2. Each Contracting Party may at any time make a request in writing for consultation between the aeronautical authorities. Such consultation shall begin within a period of sixty days from the date such request is received, unless otherwise agreed by the Contracting Parties.

ARTICLE 15

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 between themselves.

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 named by each Contracting Party and the third to be agreed upon by the two arbitrators so chosen, provided that such third arbitrator shall not be a person who cannot be regarded as neutral in relation to the dispute by virtue of his or her nationality or residence and shall act as the President of the tribunal.

3. Each of the Contracting Parties shall designate an arbitrator within a period of sixty days from the date of receipt by either Contracting Party from the other Contracting Party of a note requesting arbitration of the dispute and the third arbitrator shall be agreed upon within a further period of sixty days. If either of the Contracting Parties fails to designate its own arbitrator within the period of sixty days or if the third arbitrator is not agreed upon within the period indicated, the President of the Council of the International Civil Aviation Organization may be requested by either Contracting Party to appoint an arbitrator or arbitrators.

4. If the President considers that he or she is a person who cannot be regarded as neutral in relation to the dispute by virtue of his or her nationality or residence, the most senior Vice-President who is not disqualified on that ground may be requested by either Contracting Party to make the appointment.

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

ARTICLE 16

1. Either Contracting Party may at any time request in writing consultation with the other Contracting Party for the purpose of amending this Agreement. Such consultation shall begin within a period of sixty days from the date of receipt of such request, unless otherwise agreed by the Contracting Parties.
2. If the amendment relates to the provisions of this Agreement other than those of the Annex, the amendment shall be approved by each Contracting Party in accordance with its legal procedures and shall enter into force on the date of exchange of notes between both Contracting Parties notifying such approval.
3. If the amendment relates only to the Annex, the consultation shall be between the aeronautical authorities of both Contracting Parties. When these authorities agree on a new or revised Annex, the amendments on the matter shall enter into force after they have been confirmed by exchange of notes between both Contracting Parties.

ARTICLE 17

Either of the Contracting Parties may at any time notify the other in writing of its intention to terminate this Agreement. If such notice is given, this Agreement shall terminate one year after the date of receipt by the other Contracting Party of the notice to terminate, unless by agreement between the Contracting Parties the notice under reference is withdrawn before the expiration of that period.

ARTICLE 18

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

ARTICLE 19

This Agreement shall be approved by each Contracting Party in accordance with its legal procedures and shall enter into force on the date of exchange of notes between both Contracting Parties notifying such approval.

IN WITNESS WHEREOF, the undersigned, being duly authorized by their respective Governments, have signed this Agreement.

DONE in duplicate, in the Japanese and English languages, both texts being equally authentic, at Hong Kong, this 28th day of February 1997.

For the Government of
Hong Kong:

STEPHEN IP

For the Government of
Japan:

HIDEAKI UEDA

ANNEX

Section I

Routes to be operated in both directions by the designated airline or airlines of Japan:

(Points in Japan)	(Intermediate Points)	(Points in Hong Kong)	(Points beyond)
Tokyo —	two intermediate — points in Asia	Hong Kong —	points beyond
Nagoya			
Osaka			
Fukuoka			
Kagoshima			
Naha			
Sapporo			
Two other points in Japan			

Note 1: The agreed services operated by the designated airline or airlines of Japan shall begin at a point in the area of Japan, but other points on the specified routes may at the option of each designated airline be omitted on any or all flights.

Note 2: Subject to Note 3, specific combinations of points on the specified routes to be operated by the designated airline or airlines of Japan shall be jointly determined and confirmed in writing between the Contracting Parties.

Note 3: The designated airline or airlines of Japan may continue to exercise the traffic rights, between the two intermediate points in Asia and Hong Kong, which were exercised by those airlines immediately before the date of entry into force of this Agreement.

Note 4: No point in the mainland of China may be served as an intermediate point or a point beyond.

Section II

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

(Points in Hong Kong)	(Intermediate Points)	(Points in Japan)	(Points beyond)
Hong Kong —	two intermediate — points in Asia	Fukuoka —	points beyond
		Osaka	
		Nagoya	
		Tokyo	
		Sapporo	
		Naha	
		Kagoshima	
		Sendai	
		Hiroshima	

- Note 1: The agreed services operated by the designated airline or airlines of Hong Kong shall begin at a point in the area of Hong Kong, but other points on the specified routes may at the option of each designated airline be omitted on any or all flights.
- Note 2: Subject to Note 3, specific combinations of points on the specified routes to be operated by the designated airline or airlines of Hong Kong shall be jointly determined and confirmed in writing between the Contracting Parties.
- Note 3: The designated airline or airlines of Hong Kong may continue to exercise the traffic rights, between the two intermediate points in Asia and Japan, which were exercised by those airlines immediately before the date of entry into force of this Agreement.
- Note 4: No point in the mainland of China may be served as an intermediate point or a point beyond.