

Agreement

between the Government of the Hong Kong Special Administrative
Region of the People's Republic of China and the
Cabinet of Ministers of Ukraine Concerning
International Air Services Transit

**AGREEMENT BETWEEN THE GOVERNMENT OF THE
HONG KONG SPECIAL ADMINISTRATIVE REGION OF THE
PEOPLE'S REPUBLIC OF CHINA AND THE CABINET
OF MINISTERS OF UKRAINE CONCERNING
INTERNATIONAL AIR SERVICES TRANSIT**

The Government of the Hong Kong Special Administrative Region of the People's Republic of China ("the Hong Kong Special Administrative Region"), having been duly authorised to conclude this agreement by the Government of the People's Republic of China, and the Cabinet of Ministers of Ukraine (hereinafter referred to as the Contracting Parties),

Desiring to conclude an Agreement for the purpose of providing for air services transit between the Hong Kong Special Administrative Region and Ukraine,

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 the Hong Kong Special Administrative Region, the Director of Civil Aviation, and in the case of Ukraine, the State Aviation Administration of the Ministry of Transport of Ukraine, 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) in addition to the meaning assigned to it in Article 96 of the Convention on International Civil Aviation, opened for signature at Chicago on 7 December 1944, the term "airline" means:
 - i. in the case of the Hong Kong Special Administrative Region, an airline which is incorporated and has its principal place of business in the Hong Kong Special Administrative Region; or
 - ii. in the case of Ukraine, an airline in which substantial ownership and effective control are vested in the Cabinet of Ministers of Ukraine or its nationals.

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- (c) the term “area” in relation to the Hong Kong Special Administrative Region includes Hong Kong Island, Kowloon and the New Territories and in relation to Ukraine has the meaning assigned to “territory” in Article 2 of the said Convention;
- (d) the terms “international air service” and “stop for non-traffic purposes” have the meanings respectively assigned to them in Article 96 of the said Convention;
- (e) the term “this Agreement” includes any amendments 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 Annexes and any amendments to the Convention or to its Annexes which apply to both Contracting Parties, 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 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 granting to the airlines of the other Contracting Party the right to stop for non-traffic purposes may require such airlines to offer reasonable commercial service at the points at which such stops are made.

Such requirement shall not involve any discrimination between airlines operating on the same route, shall take into account the capacity of the aircraft, and shall be exercised in such a manner as not to prejudice the normal operations of the international air services concerned or the rights and obligations of the other Contracting Party.

- (3) If because of armed conflict, political disturbances or developments, or special and unusual circumstances, an airline or airlines 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

Customs Duties

- (1) Aircraft operated in international air services by airlines of one Contracting Party, their regular equipment, fuel, lubricants, consumable technical supplies, 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 exempted 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 regular equipment and such other items remain on board the aircraft.
- (2) Regular equipment, fuel, lubricants, consumable technical supplies, spare parts including engines, aircraft stores (including but not limited to such items as food, beverages and tobacco), printed ticket stock, air waybills, any printed material which bears insignia of an airline of one Contracting Party and usual publicity material distributed without charge by that airline, introduced into the area of the other Contracting Party by or on behalf of that airline or taken on board the aircraft operated by that airline, shall be exempted 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 such regular equipment and such other items are to be used on any part of a journey performed over the area of the other Contracting Party.
- (3) The regular equipment and the other items referred to in paragraphs (1) and (2) of this Article may be required to be kept under the supervision or control of the customs authorities of the other Contracting Party.
- (4) The regular equipment and the other items referred to in paragraph (1) of this Article may be unloaded in the area of the other Contracting Party with the approval of the customs authorities of that other Contracting Party. In these circumstances, such regular equipment and such items shall enjoy, on the basis of reciprocity, the exemptions provided for by paragraph (1) of this Article until they are re-exported or otherwise

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disposed of in accordance with customs regulations. The customs authorities of that other Contracting Party may however require that such regular equipment and such items be placed under their supervision up to such time.

- (5) The exemptions provided for by this Article shall also be available in situations where an airline of one 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 regular equipment and the other items referred to in paragraphs (1) and (2) of this Article except alcoholic beverages, provided that that other airline or airlines similarly enjoy such exemptions from that other Contracting Party.
- (6) Baggage and cargo in direct transit across the area of a Contracting Party shall be exempt from customs duties, excise taxes and similar fees and charges not based on the cost of services provided on arrival.

ARTICLE 5

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 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) 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 on International Civil Aviation, opened for signature at Chicago on 7 December 1944. Each Contracting Party shall require that operators of aircraft of its registry or operators of aircraft having their

principal place of business or permanent residence 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 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, 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 6

Provision of Statistics

The aeronautical authorities of each Contracting Party shall, on request, provide such periodic or other statements of statistics as may be reasonably required for the purpose of reviewing the level of services operated under this Agreement to the aeronautical authorities of the other Contracting Party.

ARTICLE 7

User Charges

- (1) 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.
- (2) A Contracting Party shall not impose or permit to be imposed on the airlines of the other Contracting Party user charges higher than those imposed on its own airlines operating similar international air services.

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- (3) Each Contracting Party shall encourage consultation on user charges between its competent charging authorities and airlines using the services and facilities provided by those charging authorities, where practicable through those airlines' representative organisations. Reasonable notice of any proposals for changes in user charges should be given to such users to enable them to express their views before changes are made. Each Contracting Party shall further encourage its competent charging authorities and such users to exchange appropriate information concerning user charges.

ARTICLE 8

Consultation

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

ARTICLE 9

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 a 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, a 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 a Contracting Party, 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 a 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) A Contracting Party may submit a request 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 10

Amendment

Any amendments to this Agreement agreed by the Contracting Parties shall enter into force when confirmed in writing by the Contracting Parties.

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ARTICLE 11

Termination

One 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 such notice by that other Contracting Party, unless such notice is withdrawn by agreement before the end of this period.

ARTICLE 12

**Registration with the
International Civil Aviation Organization**

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

ARTICLE 13

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 31st day of January 2002 in the English, Chinese and Ukrainian languages, all three texts being equally authoritative. In case of divergence of interpretation, the English text shall prevail.

For the Government of the Hong
Kong Special Administrative Region
of the People's Republic of China:

For the Cabinet of Ministers
of Ukraine:

Sandra LEE

Anatoliy ZLENKO

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(Translation)

Chief Executive
Hong Kong Special Administrative Region
People's Republic of China

Mr. TUNG Chee Hwa,

I hereby inform you that the Central People's Government has decided to authorise the Government of the Hong Kong Special Administrative Region to conclude the "Agreement between the Government of the Hong Kong Special Administrative Region of the People's Republic of China and the Cabinet of Ministers of Ukraine concerning International Air Services Transit".

Best regards,

(Signed) Tang Jiaxuan
Minister of Foreign Affairs

Beijing, 5 July 2000

(Extracted from the letter of authorisation dated 5 July 2000)