

**PROVISIONAL AGREEMENT BETWEEN
THE GOVERNMENT OF THE PEOPLE'S REPUBLIC OF CHINA
AND THE GOVERNMENT OF THE REPUBLIC OF KOREA
FOR CIVIL AIR TRANSPORT**

The Government of the People's Republic of China and the Government of the Republic of Korea (hereinafter referred to as “the Contracting Parties”),

Desiring to facilitate friendly contacts between their two peoples and develop mutual relations between the two countries in the field of civil aviation ,

Being Parties to the Convention on International Civil Aviation opened for signature at Chicago on December 7,1944,

Have agreed on the establishment and operation of air services between and beyond their respective territories as follows:

Article 1

Definitions

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

(1) the term “the 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 Convention under Articles 90 and 94 thereof so far as these annexes and amendments have been effective for both Contracting Parties ;

(2) the term “aeronautical authorities” means, in the case of the People's Republic of China, the General Administration of Civil Aviation of China, in the case of the Republic of Korea, the Minister of Transportation , or in both cases any other person or agency authorized to perform the functions presently exercised by the said authorities;

(3) the term “designated airline” means an airline which has been designated and authorized in accordance with Article 3 of this Agreement ;

(4) the terms “air service”, “international air service”, “airline” and “stop for non -traffic purposes” have the meaning respectively assigned to them in Article 96 of the Convention ;

(5) the term “capacity” means :

(a) in relation to an aircraft, the payload of that aircraft available on a route or section of a route ;

(b) in relation to an air service, the capacity of the aircraft used on such service multiplied by the frequency operated by such aircraft over a given period on a route or section of a route.

(6) the term “carriage of traffic” means carriage of passengers, cargo and mail;

(7) the term “tariff” means the prices to be paid for the carriage of

passengers, baggage and cargo and the conditions under which those prices apply, including prices and conditions for agency and other auxiliary services, but excluding remuneration and conditions for the carriage of mail;

(8) the term “Annex” means the Route Schedule annexed to this Agreement or as amended in accordance with the provisions of Article 17 of this Agreement.

The Annex forms an integral part of this Agreement.

Article 2

Grant of Rights

(1) Each Contracting Party grants to the other Contracting Party the rights specified in this Agreement to enable its designated airlines to establish and operate international air services on the routes specified in the Annex (hereinafter called “the agreed Services” and “the specified routes” respectively).

(2) Subject to the provisions of this Agreement, the designated airlines of each Contracting Party shall enjoy, while operating the agreed services on the specified routes, the following rights:

(a) to fly without landing across the territory of the other Contracting Party along the air routes prescribed by the aeronautical authorities of the other Contracting Party ;

(b) to make stops for non-traffic purposes in the territory of the other Contracting Party, at points to be agreed upon between the aeronautical

authorities of both Contracting Parties; and

(c) to make stops at the points on the specified routes in the territory of the other Contracting Party for the purpose of taking on board and discharging international traffic in passengers, baggage, cargo and mail originating in or destined for the first Contracting Party.

(3) The right of the designated airlines of one Contracting Party to take on board and discharge at points in the territory of the other Contracting Party international traffic to or from a third country shall be agreed upon between the aeronautical authorities of the two Contracting Parties.

Article 3

Airline Designation and Authorization

(1) Each Contracting Party shall have the right to designate in writing to the other Contracting Party airlines to operate the agreed services on the specified routes, and to withdraw or alter such designations.

(2) The substantial ownership and effective control of the airlines designated by each Contracting Party shall remain vested in such Contracting Party or its nationals.

(3) The aeronautical authorities of the other Contracting Party may require the airlines designated by the first Contracting Party to satisfy them that they are qualified to fulfil the conditions prescribed under the laws and regulations

normally and reasonably applied by the said authorities to the operation of international air services.

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

(5) When an airline has been so designated and authorized, it may commence operation of the agreed services from the date agreed upon between the aeronautical authorities of the two Contracting Parties in accordance with the relevant provisions of this Agreement.

Article 4

Revocation, Suspension and Imposition of Conditions

(1) Each Contracting Party shall have the right to revoke or suspend the operating authorization granted to the designated airline(s) of the other Contracting Party or to impose such conditions as it may deem necessary on the exercise by the said designated airline(s) of the rights specified in Article 2 of this Agreement, in any of the following cases:

(a) where it is not satisfied that substantial ownership and effective control of that airline is vested in the other Contracting Party or its nationals, or

(b) where that airline fails to comply with the laws and regulations of the first Contracting Party, or

(c) where that airline otherwise fails to operate in accordance with the

conditions prescribed under this Agreement.

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

Article 5

Application of Laws and Regulations

(1) The laws and regulations of one Contracting Party relating to the admission to, stay in and departure from its territory of aircraft engaged in the international operation shall be applicable to the aircraft of the designated airlines of the other Contracting Party, while entering, within, and departing from the territory of the first Contracting Party.

(2) The laws and regulations of one Contracting Party relating to admission to, stay in or departure from its territory of passengers, crew, cargo or mail, such as the laws and regulations relating to entry, passports, customs, currency, medical and quarantine measures, shall be applicable to the passengers, crew, cargo or mail carried by the aircraft of the designated airlines of the other Contracting Party while entering, within and departing from the territory of the first Contracting Party.

(3) Passengers, baggage and cargo in direct transit and not leaving the area

of the airport reserved for such purpose shall be subject to no more than a simplified control.

Article 6

Capacity Provisions

(1) There shall be fair and equal opportunity for the designated airlines of the 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 the latter provide on the whole or part of the same routes.

(3) On any specified route the capacity provided by the designated airlines of one Contracting Party together with the capacity provided by the designated airlines of the other Contracting Party shall be maintained in reasonable relationship to the requirements of the public for air transport on that route.

(4) The agreed services provided by the designated airlines of each Contracting Party shall have as their primary objective the provision, at a reasonable load factor, of capacity adequate to meet the current and foreseeable traffic demands to and from the territory of the Contracting Party designating the airlines. The carriage of traffic embarked or disembarked in the territory of the other Contracting Party to and from points on the specified routes in the

territories of States other than that designating the airlines shall be of supplementary character. The right of such airlines to carry traffic between points of the specified routes located in the territory of the other Contracting Party and points in third countries shall be exercised in the interests of an orderly development of international air transport in such a way that the capacity is related to:

(a) the traffic demand to and from the territory of the Contracting Party designating the airlines;

(b) the traffic demand existing in the areas through which the agreed services pass, taking account of local and regional air services; and

(c) the requirements of through airline operation.

(5) The designated airlines of either Contracting Party may, according to traffic requirements, apply for operation of extra section on the specified route. The application for such flight shall be submitted at least seven days before its proposed operation to the aeronautical authorities of the other Contracting Party, and the flight can be operated only after approval has been obtained from such authorities.

Article 7

Commercial Arrangements

(1) Capacity, frequency and type of aircraft shall be agreed upon between

the aeronautical authorities of the Contracting Parties.

(2) Matters relating to sales agency and ground handling shall be agreed upon between the designated airlines or any other institutions of the Contracting Parties. Notwithstanding the foregoing, the designated airlines of each Contracting Party may, through their offices or licensed agents of their choices, sell in the territory of the other Contracting Party air transportation on the agreed services.

Article 8

Tariffs

(1) The tariffs on any agreed services shall be established at reasonable levels, due regard being paid to all relevant factors including cost of operation, reasonable profit, characteristics of service such as standards of speed and accommodation, and the tariffs of other airlines for any part of the specified routes.

(2) The tariffs shall be fixed in accordance with the following provisions:

(a) The tariffs referred to in paragraph (1) of this Article shall, if possible, be agreed in respect of each of the specified routes and sectors thereof between the designated airlines concerned;

(b) The tariffs so agreed shall be submitted for the approval of the aeronautical authorities of both Contracting Parties at least sixty (60) days before

the proposed date of their introduction. In special cases, this period may be reduced, subject to the agreement of the said authorities;

(c) If a tariff cannot be agreed upon in accordance with the provisions of paragraph (2) (a) of this Article, the aeronautical authorities of the two Contracting Parties shall try to determine the tariff by mutual agreement;

(d) If the aeronautical authorities cannot agree on any tariff submitted to them under paragraph (2) (b) of this Article, or on the determination of any tariff under paragraph (2) (c) of this Article, the dispute shall be settled in accordance with the provisions of Article 18 of this Agreement.

(e) A tariff established in accordance with the provisions of this Article shall remain in force until a new tariff has been established. Nevertheless, tariff shall not be prolonged by virtue of this paragraph for more than twelve (12) months after the date on which it would otherwise have expired.

Article 9

Provisions of Technical Services and Rate of Charges

(1) Each Contracting Party shall designate regular airports and alternate airports in its territory to be used by the designated airlines of the other Contracting Party for the operation of the agreed services, and shall provide those airlines with such communications, navigational, meteorological and other auxiliary services as are required for the operation of the agreed services.

(2) the designated airlines of each Contracting Party shall be charged for the use of airports (including the technical equipment and other facilities and services), communications and navigational facilities and other auxiliary services of the other Contracting Party at fair and reasonable rates prescribed by the appropriate authorities of the other Contracting Party. Such rates shall not be higher than those applicable to any airline of other states engaged in international air services for the use of similar equipment, facilities and services.

Article 10

Customs Duties

(1) Aircraft operated on international air services by the designated airlines of one Contracting Party, as well as their regular equipment, spare parts (including engines), fuels, oil (including hydraulic fluids), lubricants, and aircraft stores (including food, beverages and tobacco) on board such aircraft shall be exempt from all customs duties, taxes, inspection fees and other similar fees and charges on arriving in the territory of the other Contracting Party, provided such equipment and items remain on board the aircraft up to such time as they are re-exported .

(2) The following equipment and items shall also be exempt from the same customs duties, taxes, inspection fees and other similar fees and charges, with the exception of charges corresponding to the services provided:

(a) regular equipment, spare parts (including engines), fuels, oil (including hydraulic fluids), lubricants and aircraft stores (including food, beverages and tobacco) introduced by the designated airlines of one Contracting Party into the territory of the other Contracting Party or taken on board the aircraft in the territory of the other Contracting Party and exclusively intended for use or consumption by aircraft engaged in international services, even when such equipment and items are to be used on part of the journey performed over the territory of the other Contracting Party;

(b) spare parts (including engines) introduced into the territory of one Contracting Party by the designated airlines of the other Contracting Party for the maintenance or repair of aircraft engaged in operation of international services ;

(3) Printed ticket stock, airway bills and publicity materials introduced into the territory of one Contracting Party by the designated airlines of the other Contracting Party shall be exempt from all the customs duties, taxes, inspection fees and other similar fees and charges, on a reciprocal basis, in accordance with the provisions of the laws and regulations in force of each Contracting Party.

(4) The equipment and items referred to in paragraphs (1) and (2) of this Article may be unloaded in the territory of the other Contracting Party with the approval of the customs authorities of the other Contracting Party. Such equipment and items shall be kept under the supervision or control of the customs authorities of the other Contracting Party up to such time as they are

re-exported, or otherwise disposed of in accordance with the customs regulations.

(5) Baggage and cargo in direct transit shall be exempt from all the customs duties, taxes, inspection fees and other similar fees and charges with the exception of the charges corresponding to the services provided.

Article 11

Airline Offices and Personnel

(1) For the operation of the agreed services on the specified routes, the designated airlines of each Contracting Party shall have the right to set up airline offices at the points of call on the specified routes and other points as necessary and approved by the other Contracting Party within the territory of the other Contracting Party.

(2) The staff members of the airline offices of the designated airlines of each Contracting Party shall be nationals of either Contracting Party. The number of such staff shall be adequate to perform the functions described in this Agreement associated with the provision of the agreed services, and in no event shall be less than that permitted to any foreign airline performing comparable services. Such staff shall be subject to the laws and regulations in force of the other Contracting Party.

(3) Each Contracting Party shall extend assistance and facilities to the

airline offices and their staff members of the designated airlines of the other Contracting Party as necessary for the efficient operation of the agreed services.

(4) The crew members of the designated airlines of either Contracting Party on flights into and out of the territory of the other Contracting Party shall be nationals of the first Contracting Party. If a designated airline of either Contracting Party desires to employ crew members of any other nationality on flights into and out of the territory of the other Contracting Party, agreement shall be obtained from that other Contracting Party.

Article 12

Recognition of Certificates and Licenses

(1) Certificates of airworthiness, certificates of competency and licenses issued or rendered valid by either Contracting Party for the operation of the agreed services on the specified routes shall, during the period of their validity, be recognized as valid by the other Contracting Party.

(2) Each Contracting Party reserves the right, however, not to recognize as valid, for the purpose of flights over its own territory, certificates of competency and licenses granted to its own nationals or rendered valid for them by the other Contracting Party or by any other State.

Article 13

Conversion and Remittance of Revenue

(1) The designated airlines of each Contracting Party shall have on the reciprocal basis the right to remit to the Contracting Party designating the airlines their revenue received in the territory of the other Contracting Party.

(2) The conversion and remittance of such revenue shall be effected in freely convertible currencies at the effective rate of exchange prevailing on the date of remittance.

(3) Each Contracting Party shall facilitate the conversion and remittance of the revenue received in its territory by the designated airlines of the other Contracting Party, and assist the said airlines in attending to the relevant formalities.

Article 14

Aviation Security

(1) The Contracting Parties reaffirm that their obligation to each other to protect the security of civil aviation against acts of unlawful interference forms an integral part of this Agreement. The Contracting Parties shall in particular act in conformity with the 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.

(2) The Contracting Parties shall provide upon request all necessary assistance to each other to prevent acts of unlawful seizure of civil aircraft and other unlawful acts against the safety of such aircraft, their passengers and crew, airports and air navigation facilities, and any other threat to the security of civil aviation.

(3) The Contracting Parties shall, in their mutual relations, act in conformity with the aviation security provisions and technical requirements established by the International Civil Aviation Organization and designated as Annexes to the Convention on International Civil Aviation to the extent that such security provisions and requirements are applicable to the Contracting Parties; they shall require that operators of aircraft of their registry or operators of aircraft who have their principal place of business or permanent residence in their territory 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 and requirements established 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 safety

of the aircraft prior to and during boarding or loading, and to inspect passengers, crew, baggage, cargo and aircraft stores prior to 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 15

Provision of Statistics

The aeronautical authorities of one 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 first Contracting Party. Such statements shall include all information required to determine the amount of traffic carried by those airlines on the agreed services and the points of embarkation and disembarkation of such traffic.

Article 16

Consultation

(1) The Contracting Parties shall, in the spirit of close cooperation and mutual support, ensure the correct implementation of and satisfactory compliance with the provisions of the Agreement. To this end, the aeronautical authorities of the Contracting Parties shall consult each other from time to time.

(2) Either Contracting Party may at any time request consultation with the other Contracting Party concerning the Agreement. Such consultation shall begin as soon as possible, and at least within sixty (60) days from the date of receipt of the request by the other Contracting Party unless otherwise agreed to.

Article 17

Amendment and Modification

(1) If either of the Contracting Parties considers it desirable to amend any provision of this Agreement or its Annex, it may at any time request consultation with the other Contracting Party, and such consultation, which may be between aeronautical authorities and which may be through discussion or by correspondence, shall begin within a period of sixty (60) days from the date of receipt of the request by the other Contracting Party, unless both Contracting Party agree to an extension of this period.

(2) Any amendment to this Agreement or its Annex agreed upon as a result of the consultation referred to in paragraph (1) of this Article shall come into force when it has been confirmed by an exchange of notes through diplomatic channels.

Article 18

Settlement of Disputes

(1) If any dispute arises between the Contracting Parties relating to the interpretation or implementation of this Agreement, the aeronautical authorities the two Contracting Parties shall in the first place endeavour to settle the dispute by negotiation.

(2) If the aeronautical authorities of the Contracting Parties fail to reach a settlement of the said dispute, it shall be settled through diplomatic channels or by mediation, conciliation, or arbitration if the Contracting Parties so agree.

Article 19

Termination

Either Contracting Party may at any time give notice to the other Contracting Party through diplomatic channels of its decision to terminate this Agreement.

This Agreement shall then terminate twelve months after the date of receipt of

the notice by the other Contracting Party unless such notice is withdrawn by agreement between the Contracting Parties before the expiry of this period.

Article 20

Entry Into Force

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

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

Done at Seoul on this 31st day of October 1994 in duplicate in the Chinese, Korean and English languages, all the texts being equally authentic. In case of any divergence of interpretation, the English text shall prevail.

For the Government of
the People's Republic of China

For the Government of
the Republic of Korea

Annex

Route Schedule

(1) The routes of the agreed services operated by the airlines designated by the Government of the People's Republic of China shall be as follows in both directions :

points in the People's Republic of China --- points in the Republic of Korea - beyond points

(2) The routes of the agreed services operated by the airlines designated by the Government of the Republic of Korea shall be as follows in both directions :

points in the Republic of Korea --- points in the People's Republic of China --- beyond points

(3) The designated airlines of either Contracting Party may omit on any or all flights, any point on the specified routes, provided the agreed services begin and terminate in the territory of the Contracting Party designating the airlines.

(4) All the unspecified points on the routes described in paragraphs (1) and (2) of this Annex shall be subject to the agreement between the aeronautical authorities of both Contracting Parties.