

May 26, 1997

**AGREEMENT BETWEEN THE GOVERNMENT OF THE REPUBLIC OF
THE PHILIPPINES AND THE GOVERNMENT OF HONG KONG
CONCERNING AIR SERVICES**

The Government of the Republic of the Philippines and the Government of Hong Kong, hereinafter referred to as the "Contracting Parties",

Desiring to conclude an Agreement for the purpose of providing the framework for air services between the Philippines and Hong Kong,

Have agreed as follows:

**ARTICLE I
Definitions**

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

(a) the term "aeronautical authorities" means in the case of the Republic of the Philippines, the Civil Aeronautics Board, and in the case of Hong Kong, the Director of Civil Aviation, 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 IV 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 the Philippines includes the land areas and territorial waters adjacent thereto under the sovereignty of the Philippines;

(d) the term "the Chicago Convention" means the Convention on International Civil Aviation opened for signature at Chicago on 07 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;

(e) the term "this Agreement" includes the Annex hereto and any amendments to it or to this Agreement;

(f) 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 Chicago Convention;

(g) the term "agreed services" means scheduled international air services on the routes specified in the appropriate section of the Annex to this Agreement for the transport of passengers, cargo and mail;

(h) the term "specified route" means a route specified in the appropriate section of the Annex to this Agreement;

**ARTICLE II
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 Chicago Convention.

ARTICLE III

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. While operating an agreed service on a specified route the designated airlines of 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 points determined for that route in accordance with the Annex to this Agreement for the purpose of taking on board and discharging passengers and cargo, including mail, separately or in combination.

(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 routing, the other Contracting Party shall use its best efforts to facilitate the continued operation of such service through appropriate temporary rearrangement of routes.

ARTICLE IV

Designation 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 unnecessary delay, grant to the airline or airlines designated the appropriate operating authorisation.

(3) a) The Government of Hong Kong shall have the right to refuse to grant the operating authorisation referred to in paragraph (2) of this Article, or to impose such conditions as it may deem necessary on the exercise by a designated airline of the rights specified in Article 01(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 the Republic of the Philippines or its nationals.

b) The Government of the Philippines shall have the right to refuse to grant the operating authorisation referred to in paragraph (2) of this Article, or to impose such conditions as it may deem necessary on the exercise by a designated airline of the rights specified in Article 10(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;

(4) 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 fulfill the conditions prescribed under the laws and regulations normally and reasonably applied to the operation of international air services by such authorities.

(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 V

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 III(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 the Republic of the Philippines or its nationals;

(ii) in the case of the Government of the Philippines, 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 farther infringements of laws or regulations, such right shall be exercised only after consultation with the other Contracting Party.

ARTICLE VI

Principles Governing Operation of Agreed Services

(1) In order to develop the air transport services along the routes or sections in the Annex and for the purpose of achieving and maintaining equilibrium between the capacity of the specified air services and the requirements of the public for air transportation, as determined by the aeronautical authorities of the Contracting Parties, the following principles shall apply:

(a) There shall be fair and equal opportunity for the designated airlines of the Contracting Parties to operate the agreed services on the specified routes.

(b) 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.

(2) 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 they 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 services pass, taking account of other air services established by airlines of the States comprising that region; and

(c) the requirements of through airline operation.

(3) The capacity to be provided on the specified routes shall be such as is from time to time jointly determined by the Contracting Parties.

ARTICLE VII

Tariffs

(1) The tariffs to be charged by the designated airlines of the Contracting Parties for carriage between the Philippines and Hong Kong shall be those approved by the aeronautical authorities of both Contracting Parties 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.

(2) The tariffs referred to in paragraph (1) of this Article may be agreed by the designated airlines of the Contracting Parties seeking approval of the tariffs, which may consult other airlines operating over the whole or part of the same route, before proposing such tariffs. However, a designated airline shall not be precluded from proposing, nor the aeronautical authorities of the Contracting Parties from approving, any tariff, if that airline shall have failed to obtain the agreement of the other designated airlines to such tariff, or because no other designated airline is operating on the same route. References in this and the preceding paragraph to "the same route" are to the route operated, not the specified route.

(3) Any proposed tariff for carriage between Hong Kong and the Philippines shall be filed with the aeronautical authorities of the Contracting Parties by the designated

airline or airlines seeking its approval in such form as the aeronautical authorities may separately require. It shall be filed not less than 30 days, (or such shorter period as the aeronautical authorities of the Contracting Parties may agree) before the proposed effective date. The proposed tariff shall be treated as having been filed with the aeronautical authorities of a Contracting Party on the date on which it is received by those aeronautical authorities.

(4) Any proposed tariff may be approved by the aeronautical authorities of a Contracting Party at any time and, provided it has been filed in accordance with paragraph (3) of this Article, shall be deemed to have been approved by the aeronautical authorities of that Contracting Party unless, within 30 days (or such shorter period as the aeronautical authorities of the Contracting Parties may agree) after the date of filing, the aeronautical authorities of one Contracting Party have served on the aeronautical authorities of the other Contracting Party written notice of disapproval of the proposed tariff.

(5) If a notice of disapproval is given in accordance with the provisions of paragraph (4) of this Article, the aeronautical authorities of the Contracting Parties may jointly determine the tariff. For this purpose, one Contracting Party may, within 30 days of the service of the notice of disapproval, request consultations between the aeronautical authorities of the Contracting Parties which shall be held within 30 days from the date the other Contracting Party receives such request in writing.

(6) If a tariff has been disapproved by the aeronautical authorities of a Contracting Party in accordance with paragraph (4) of this Article, and if the aeronautical authorities of the Contracting Parties have been unable jointly to determine the tariff in accordance with paragraph (5) of this Article; the dispute may be settled in accordance with the provisions of Article XVI of this Agreement.

(7) Subject to paragraph (8) of this Article, a tariff established in accordance with the provisions of this Article shall remain valid until a replacement tariff has been established.

(8) Except with the agreement of the aeronautical authorities of both Contracting Parties, and for such period as they may agree, the validity of a tariff shall not be prolonged by virtue of paragraph (7) 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 the aeronautical authorities of the Contracting Parties by a designated airline of a Contracting Party.

(9) (a) The tariffs to be charged by the designated airlines of Hong Kong for carriage between the Philippines and another State shall be subject to approval by the aeronautical authorities of the Philippines and, where appropriate, of the other State. The tariffs to be charged by the designated airlines of the Philippines for carriage between Hong Kong and a State other than the Philippines shall be subject to approval by the aeronautical authorities of Hong Kong and, where appropriate, of the other State.