

No. 29640

**HONG KONG (UNDER AN ENTRUSTMENT
OF AUTHORITY FROM THE UNITED
KINGDOM GOVERNMENT)**

**and
SWITZERLAND**

**Agreement concerning air services (with annex). Signed at
Hong Kong on 26 January 1988**

Authentic texts: English and French.

*Registered by the United Kingdom of Great Britain and Northern Ireland
on 22 March 1993.*

**HONG-KONG (EN VERTU D'UNE DÉLÉGATION
DE POUVOIRS DE LA PART
DU GOUVERNEMENT DU ROYAUME-UNI)**

**et
SUISSE**

**Accord relatif aux services aériens (avec annexe). Signé à
Hong-Kong le 26 janvier 1988**

Textes authentiques : anglais et français.

*Enregistré par le Royaume-Uni de Grande-Bretagne et d'Irlande du Nord
le 22 mars 1993.*

AGREEMENT¹ BETWEEN THE GOVERNMENT OF HONG KONG AND THE SWISS FEDERAL COUNCIL CONCERNING AIR SERVICES

The Government of Hong Kong and the Swiss Federal Council;

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

Have agreed as follows:

ARTICLE 1

Definitions

For the purpose of this Agreement, unless indicated otherwise:

- (a) the term "aeronautical authorities" means in the case of Hong Kong, the Director of Civil Aviation, and in the case of Switzerland, the Federal Office for 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 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 Switzerland 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;²
- (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;
- (g) the term "laws and regulations" of a Contracting Party means the laws and regulations at any time in force in the area of that Contracting Party.

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.

¹ Came into force on 1 February 1993, the date on which the Contracting Parties notified each other of the completion of the required procedures, in accordance with article 21.

² United Nations, *Treaty Series*, vol. 15, p. 295. For the texts of the Protocols amending this Convention, see vol. 320, pp. 209 and 217; vol. 418, p. 161; vol. 514, p. 209; vol. 740, p. 21; vol. 893, p. 117; vol. 958, p. 217; vol. 1008, p. 213 and vol. 1175, p. 297.

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 for the purpose of taking on board or discharging passengers, baggage and cargo, including mail, to be carried to and from:
 - (a) the area of the first Contracting Party; and
 - (b) such intermediate and beyond points as may from time to time be agreed by the aeronautical authorities of both Contracting Parties.
- (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 rearrangements of routes.

ARTICLE 4**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 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 Swiss Contracting Party or Swiss nationals.
 - (b) The Swiss Contracting Party 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

Application of Laws and Regulations

- (1) The laws and regulations of one Contracting Party relating to the admission to or departure from its area of aircraft engaged in international air navigation, or to the operation and navigation of such aircraft while within its area, shall be applied to the aircraft of the airline or airlines designated by the other Contracting Party without distinction as to nationality, and shall be complied with by such aircraft upon entry into, departure from, or while within, the area of the first Contracting Party.
- (2) The laws and regulations of one Contracting Party relating to the admission to or departure from its area of passengers, crew, cargo or mail of aircraft, such as regulations relating to entry, clearance, immigration, passports, customs and quarantine, shall be complied with by or on behalf of such passengers, crew, cargo or mail of the airline or airlines designated by the other Contracting Party upon entry into, departure from, or while within, the area of the first Contracting Party.
- (3) In the application to the designated airline or airlines of the other Contracting Party of the laws and regulations referred to in this Article a Contracting Party shall not grant more favourable treatment to its own airline or airlines.

ARTICLE 6

Revocation or Suspension of Operating Authorisation

- (1) Each Contracting Party shall have the right to revoke or suspend an operating authorisation or to suspend 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 Swiss Contracting Party or Swiss nationals;
 - (ii) in the case of the Swiss Contracting Party, 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 or suspension of the exercise of the rights mentioned in paragraph (1) of this Article or imposition of 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 7

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, to or from 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.

ARTICLE 8

Approval of Schedules

- (1) The designated airlines of the Contracting Parties shall submit their proposed schedules for the agreed services and any amendments thereto for the approval of the aeronautical authorities of both Contracting Parties no later than thirty days before their proposed effective date.
- (2) The designated airlines of the Contracting Parties may operate on an ad hoc basis flights supplementary to the agreed services. Applications for approval of such flights shall be submitted to the aeronautical authorities of both Contracting Parties no later than three working days before the proposed date of operation.

ARTICLE 9

Tariffs

- (1) The term "tariff" means:
 - (a) 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;
 - (b) the freight rate charged by an airline for the carriage of cargo (excluding mail) on scheduled air services;
 - (c) the conditions governing the availability or applicability of any such fare or freight rate including any benefits attaching to it; and
 - (d) 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 applied by a designated airline of one Contracting Party for carriage to and from the area of the other Contracting Party shall be established at reasonable levels, due regard being paid to all relevant factors, including cost of operation, the interests of users, reasonable profit, the characteristics of each service and the tariffs charged by other airlines.
- (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 airlines. 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. In this context "the same route" means the route operated, not the specified route.
- (4) The tariffs referred to in paragraph (3) of this Article shall be submitted for approval to the aeronautical authorities of the Contracting Parties at least sixty days before the proposed date of their introduction. If within thirty days after the submission of the tariffs neither of the aeronautical authorities notifies to the other aeronautical authorities its disapproval these tariffs shall be considered to have been approved. In special cases, these time limits may be reduced, subject to the agreement of the said authorities.