

No. 22065

**NEW ZEALAND
and
JAPAN**

**Agreement for air services (with schedule). Signed at
Auckland on 18 January 1980**

Authentic texts: English and Japanese.

Registered by New Zealand on 26 July 1983.

**NOUVELLE-ZÉLANDE
et
JAPON**

**Accord relatif aux services aériens (avec annexe). Signé à
Auckland le 18 janvier 1980**

Textes authentiques : anglais et japonais.

Enregistré par la Nouvelle-Zélande le 26 juillet 1983.

AGREEMENT¹ BETWEEN NEW ZEALAND AND JAPAN FOR AIR SERVICES

The Government of New Zealand and the Government of Japan,

Desiring to conclude an agreement for the purpose of establishing and operating air services between their respective territories,

Being parties to the Convention on International Civil Aviation opened for signature at Chicago on December 7, 1944,²

Have agreed as follows:

Article 1. 1. For the purpose of the present Agreement, unless the context otherwise requires:

(a) The term “aeronautical authorities” means, in the case of New Zealand, the Minister responsible for Civil Aviation and any person or body authorised to perform any functions on civil aviation at present exercised by the said Minister or similar functions, and in the case of Japan, the Minister of Transport and any person or body authorised to perform any functions on civil aviation at present exercised by the said Minister or similar functions;

(b) The term “designated airline” means an airline which one Contracting Party has designated by written notification to the other Contracting Party for the operation of air services on the routes specified in such notification, and to which the appropriate operating permission has been given by that other Contracting Party, in accordance with the provisions of Article 3 of the present Agreement;

(c) The term “territory” in relation to a State means the land areas and territorial waters adjacent thereto under the sovereignty, suzerainty, protection or trusteeship of that State;

(d) The term “air service” means any scheduled air service performed by aircraft for the public transport of passengers, cargo or mail;

(e) The term “international air service” means an air service which passes through the air space over the territory of more than one State;

(f) The term “airline” means any air transport enterprise offering or operating an international air service;

(g) The term “stop for non-traffic purposes” means a landing for any purpose other than taking on or discharging passengers, cargo or mail;

(h) The term “Schedule” means the Schedule to the present Agreement or as amended in accordance with the provisions of Article 16 of the present Agreement.

¹ Came into force on 18 June 1980, the date of the exchange of notes confirming its approval, in accordance with article 20.

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.

2. The Schedule forms an integral part of the present Agreement, and all reference to the "Agreement" shall include reference to the Schedule except where otherwise provided.

Article 2. Each Contracting Party grants to the other Contracting Party the rights specified in the present Agreement, particularly, to enable its designated airlines to establish and operate international air services on the routes specified in the Schedule (hereinafter called "agreed services" and "specified routes" respectively).

Article 3. 1. The agreed services on any specified route may be inaugurated immediately or at a later date at the option of the Contracting Party to which the rights are granted under Article 2 of the present Agreement, subject to the provisions of Article 11 of the present Agreement, and not before:

- (a) The Contracting Party to which the rights have been granted has designated an airline or airlines for that route, and
- (b) The Contracting Party granting the rights has given the appropriate operating permission in accordance with its laws and regulations to the airline or airlines concerned; which it shall, subject to the provisions of paragraph 2 of this Article and of paragraph 1 of Article 7, be bound to grant without delay.

2. Each of the airlines designated by either 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.

Article 4. 1. The airlines of each Contracting Party shall enjoy the following privileges in respect of their international air services:

- (a) To fly across the territory of the other Contracting Party without landing; and
- (b) To make stops in the territory of the other Contracting Party for non-traffic purposes.

2. Subject to the provisions of the present Agreement, the designated airlines of each Contracting Party shall enjoy, while operating an agreed service on a specified route, the privilege to make stops in the territory of the other Contracting Party at the points specified for that route in the Schedule for the purposes of discharging and of taking on international traffic in passengers, cargo and mail separately or in combinations.

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, in the territory of the other Contracting Party, passengers, cargo or mail carried for remuneration or hire and destined for another point in the territory of that other Contracting Party.

Article 5. 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 be just and reasonable and not higher than would be paid for the use of such airports and facilities by the airlines of the most favoured nation or by any national airline of the first Contracting Party engaged in international air services.

Article 6. 1. Fuel, lubricating oils, spare parts, regular equipment and aircraft stores retained on board aircraft engaged in the agreed services operated by the designated airlines of either Contracting Party shall be exempt from customs duties, excise taxes, inspection fees and other similar duties, taxes or charges in the territory of the other Contracting Party, even when they are consumed or used on the part of the journey performed over that territory.

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 territory 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 territory of the other Contracting Party under customs supervisions 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 7. 1. Each Contracting Party reserves the right to withhold or revoke the privileges specified in paragraphs 1 and 2 of Article 4 of the present Agreement in respect of an airline designated by the other Contracting Party, or to impose such conditions as it may deem necessary on the exercise by the airline of those privileges, in any case where it is not satisfied that substantial ownership and effective control of such airline are vested in the Contracting Party designating the airline or in nationals of such Contracting Party.

2. Each Contracting Party reserves the right to suspend the exercise by a designated airline of the other Contracting Party of the privileges referred to in paragraph 1 above, or to impose such conditions as it may deem necessary on the exercise by the airline of those privileges, in any case where such airline fails to comply with the laws and regulations of the Contracting Party granting those privileges or otherwise fails to operate in accordance with the conditions prescribed in the present Agreement; provided that, unless immediate suspension or imposition of conditions is essential to prevent further infringements of such laws and regulations, or for reasons of safety of air navigation, this right shall be exercised only after consultation with the other Contracting Party.

Article 8. There shall be fair and equal opportunity for the designated airlines of both Contracting Parties to operate the agreed services on the specified routes between their respective territories.

Article 9. 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 all or part of the same routes.

Article 10. 1. 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.

2. The agreed services provided by the designated airline of either Contracting Party shall retain as their primary objective the provision at a reason-

able load factor of capacity adequate to current and reasonably anticipated requirements for the carriage of passengers, cargo and mail originating from or destined for the territory of the Contracting Party which has designated the airline.

3. Provision for the carriage of passengers, cargo and mail both taken on and discharged at points on the specified routes in the territories of States other than that designating the airline shall be made in accordance with the general principles that capacity shall be related to:

- (a) Traffic requirements to and from the territory of the Contracting Party which has designated the airline;
- (b) The requirements of through airline operation; and
- (c) Traffic requirements of the area through which the airline passes, after taking account of local and regional services.

Article 11. 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, characteristics of service (such as standards of speed and accommodation) and the tariffs of other airlines for any part of the specified route.

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

- (a) Agreement on the tariffs shall, wherever possible, be reached by the designated airlines concerned through the rate-fixing machinery of the International Air Transport Association. When this is not possible, tariffs in respect of each of specified routes and sectors thereof shall 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 and the tariffs so approved shall be observed in accordance with their respective laws and regulations.
- (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 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 the present 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 3 of Article 15 of the present Agreement. Pending determination of the tariffs in accordance with the provisions of this Article, the tariffs already in force shall prevail.

Article 12. The aeronautical authorities of either Contracting Party shall supply to the aeronautical authorities of the other Contracting Party, at their request, such information and statistics relating to traffic carried on the agreed services by the designated airlines of the first Contracting Party to and from the territory of the other Contracting Party as may normally be prepared and submitted by the designated airlines to their national aeronautical authorities for

publication. Any additional statistical traffic data which the aeronautical authorities of one Contracting Party may desire from the aeronautical authorities of the other Contracting Party shall, upon request, be a subject of mutual discussion between the aeronautical authorities of the two Contracting Parties.

Article 13. The Contracting Parties, considering that unlawful acts against the safety of civil aviation including seizure or exercise of control of aircraft in flight jeopardize the safety of persons and property and seriously affect the operation of air service, shall cooperate closely for the prevention and suppression of unlawful acts against the safety of civil aviation or threat thereof.

Article 14. 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 the present Agreement.

Article 15. 1. If any dispute arises between the Contracting Parties relating to the interpretation or application of the present 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 national of either Contracting Party. 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 diplomatic 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.

3. The Contracting Parties undertake to comply with any decision given under paragraph 2 of this Article.

Article 16. 1. Either Contracting Party may at any time request consultation with the other Contracting Party for the purpose of amending the present Agreement. Such consultation shall begin within a period of sixty days from the date of receipt of such request.

2. If the amendment relates to the provisions of the Agreement other than those of the Schedule, the amendment shall be approved by each Contracting Party in accordance with its constitutional procedures and shall enter into force on the date of exchange of diplomatic notes indicating such approval.

3. If the amendment relates only to the Schedule, the consultation shall be between the aeronautical authorities of both Contracting Parties. When these authorities agree on a new or revised Schedule, the agreed amendments on the matter shall enter into force after they have been confirmed by exchange of diplomatic notes.

Article 17. If a general multilateral convention concerning air transport comes into force in respect of both Contracting Parties, the present Agreement shall be amended so as to conform with the provisions of such convention.

Article 18. Either of the Contracting Parties may at any time notify the other of its intention to terminate the present Agreement. A copy of the notice shall be sent simultaneously to the International Civil Aviation Organization. If such notice is given, the present 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. If the other Contracting Party fails to acknowledge receipt, notice shall be deemed to have been received fourteen days after the date of receipt by the International Civil Aviation Organization of its copy.

Article 19. The present Agreement and any amendment thereto shall be registered with the International Civil Aviation Organization.

Article 20. The present Agreement shall be approved by each Contracting Party in accordance with its constitutional procedures and shall enter into force on the date of exchange of diplomatic notes indicating such approval.

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

DONE in duplicate at Auckland in the English and Japanese languages, both texts being equally authentic, this eighteenth day of January, 1980.

For the Government
of New Zealand:

[Signed — Signé]¹

For the Government
of Japan:

[Signed — Signé]²

SCHEDULE

1. Routes to be operated in both directions by the designated airline or airlines of New Zealand:

Points in New Zealand – Nadi, Hong Kong and two other points in Southeast Asia and/or in South Pacific including Australia to be specified later – Tokyo.

NOTE: Points in Southeast Asia shall be limited to Manila, Bangkok, Kuala Lumpur, Singapore and Jakarta unless otherwise agreed.

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

Points in Japan – Nadi, Sydney and two other points in Southeast Asia and/or in South Pacific to be specified later – Auckland.

NOTE: Points in Southeast Asia shall be limited to Hong Kong, Manila, Bangkok, Kuala Lumpur, Singapore and Jakarta unless otherwise agreed.

3. The agreed services provided by the designated airline or airlines of either Contracting Party shall begin at a point in the territory of the Contracting Party, but other points on the route may at the option of the designated airline be omitted on any or all flights.

¹ Signed by Brian E. Talboys — Signé par Brian E. Talboys.

² Signed by Saburo Okita — Signé par Saburo Okita.