

No. 31464

**REPUBLIC OF KOREA
and
FIJI**

Agreement for air services between and beyond their respective territories (with annex). Signed at Sigatoka on 28 October 1994

Authentic texts: Korean and English.

Registered by the Republic of Korea on 6 January 1995.

**RÉPUBLIQUE DE CORÉE
et
FIDJI**

Accord relatif aux services aériens entre leurs territoires respectifs et au-delà (avec annexe). Signé à Sigatoka le 28 octobre 1994

Textes authentiques : coréen et anglais.

Enregistré par la République de Corée le 6 janvier 1995.

AGREEMENT¹ BETWEEN THE GOVERNMENT OF THE REPUBLIC
OF KOREA AND THE GOVERNMENT OF THE SOVEREIGN
DEMOCRATIC REPUBLIC OF FIJI FOR AIR SERVICES BE-
TWEEN AND BEYOND THEIR RESPECTIVE TERRITORIES

The Government of the Republic of Korea and the Government of
the Sovereign Democratic Republic of Fiji (hereinafter referred to as
‘the Contracting Parties’);

Being parties to the Convention on International Civil Aviation
opened for signature at Chicago on the seventh day of December 1944;²

Desiring to conclude an Agreement, supplementary to the said
Convention, for the purpose of establishing air services between
and beyond their respective territories;

Have agreed as follows:

Article 1
Definitions

For the purpose of this Agreement, unless otherwise stated,
the term:

- (a) ‘Convention’ means the Convention on International Civil
Aviation, opened for signature at Chicago on the seventh day
of December 1944, and includes:
- (i) any Annex or any amendment thereto adopted under Article
90 of the Convention in so far as such Annex or amendment
is at any given time in force for both Contracting Parties;
and

¹ Came into force on 28 October 1994 by signature, in accordance with article 21 (1).

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.

- (ii) any amendment which has entered into force under Article 94 (a) of the Convention and has been ratified by both Contracting Parties;
- (b) "aeronautical authorities" means the Minister responsible for the subject of Civil Aviation or any authority or person empowered to perform the functions now exercised by the said authorities;
- (c) "designated airline" means an airline which one Contracting Party shall have designated by written notification to the other Contracting Party in accordance with Articles 2 (Designation) and 4 (Authorisation) of this Agreement;
- (d) "territory" has the meaning assigned to it in Article 2 of the Convention;
- (e) "air service", "international air service", "airline" and "stop for non-traffic purposes" have the meanings respectively assigned to them in Article 96 of the Convention;
- (f) "agreed services" means scheduled air services on the routes specified in the Annex to this Agreement for the transport of passengers and cargo, separately or in combination, in accordance with agreed capacity entitlement;
- (g) "Agreement" means this Agreement, its Annex and any amendments thereto;
- (h) "cargo" includes mail;
- (i) "ground handling" includes but not limited to passenger, cargo and baggage handling and the provision of catering facilities;
- (j) "specified route" means a route specified in the Annex to the Agreement;
- (k) "tariffs" means the prices which the designated airlines charge for the transport of passengers and cargo and the conditions under

which those prices apply but excluding remuneration and conditions for the carriage of mail.

Article 2
Designation

Each Contracting Party shall have the right to designate in writing to the other Contracting Party one or more airlines to operate the agreed services on the specified routes and to withdraw, in writing, the designation of such airlines.

Article 3
Grant of Rights

1. Subject to the provisions of this Agreement, each Contracting Party grants to the other Contracting Party the following rights to enable each other's designated airline to establish and operate scheduled international air services on the routes specified in the Annex:

- (a) to fly without landing across the territory of the other Contracting Party;
- (b) to make stops in that territory for non-traffic purposes; and
- (c) to make stops in the territory of the other Contracting Party at the points specified for that route in the Annex to this Agreement for the purpose of taking on board and discharging passengers and cargo including mail.

2. Nothing in paragraph 1 of this Article shall be deemed to confer on the airline of one Contracting Party the privilege of taking on board, in the territory of the other Contracting Party, passengers and cargo including mail carried for hire or remuneration and destined for another point in the territory of that other Contracting Party.

3. At points in the specified routes, each designated airline shall have the right to use all airways, airports and other facilities provided by the Contracting Parties on a non-discriminatory basis.

Article 4
Authorisation

1. The agreed services may begin at any time, in whole or in part, but not before:
 - (a) the Contracting Party to whom the rights have been granted shall have designated pursuant to Article 2 (Designation) one or more airlines for the specified route; and
 - (b) the Contracting Party granting the rights shall have given, with the least possible delay, the appropriate operating permission to the airline concerned, subject to the provisions of Article 5 (Revocation or Limitation of Authorisation).

2. The aeronautical authorities of one Contracting Party may require a designated airline of the other Contracting Party to satisfy them that the airline is qualified to fulfil the conditions prescribed under the laws and regulations normally applied by those aeronautical authorities, in conformity with the provisions of the Convention, to the operation of international air services.

Article 5
Revocation or Limitation of Authorisation

1. The aeronautical authorities of each Contracting Party shall, with respect to the designated airline of the other Contracting Party, have

the right to revoke an operating authorisation or to suspend the exercise of the rights specified in Article 3 (Grant of Rights) and Article 4 (Authorisation) of this Agreement, by the airline designated by the other Contracting Party, or to impose such conditions temporarily or permanently as it may deem necessary on the exercise of these rights:

- (a) in any case where it is not satisfied that substantial ownership and effective control of that airline are vested in the Contracting Party designating the airline or in nationals of such Contracting Party;
- (b) in the case of failure by that airline to comply with the laws and regulations of the Contracting Party granting these rights; or
- (c) in case the airline otherwise fails to operate in accordance with the conditions prescribed under this Agreement.

2. Unless immediate revocation, suspension or imposition of the conditions mentioned in paragraph 1 of this Article is essential to prevent further infringements of laws or regulations, such right shall be exercised only after consultations with the aeronautical authorities of the other Contracting Party in conformity with Article 17 (Consultations) of this Agreement.

Article 6 Application of Laws

1. The laws and regulations of one Contracting Party relating to entry into or departure from its territory of aircraft engaged in international air services or to the operation and navigation of such aircraft while within its territory shall apply to aircraft of the designated airline of the other Contracting Party.

2. The laws and regulations of one Contracting Party relating to the entry into, sojourn in and departure from its territory of passengers, crew, cargo and aircraft (including laws and regulations relating to entry, clearance, aviation security, immigration, passports, customs, quarantine, or in the case of mail, postal laws and regulations) shall be applicable to the passengers, crew, cargo and the aircraft of the designated airline of the other Contracting Party.

Article 7
Recognition of Certificates and Licences

Certificates of airworthiness, certificates of competency and licences issued or rendered valid by one Contracting Party and still in force, shall be recognized as valid by the other Contracting Party for the purpose of operating the agreed services provided that such certificates or licences were issued or rendered valid pursuant to, and in conformity with, the standards established under the Convention. Each Contracting Party reserves the right, however, to refuse to recognize, for the purpose of flights undertaken pursuant to rights granted under Article 3 (Grant of Rights), certificates of competency and licences granted to its own nationals by the other Contracting Party.

Article 8
Safety

1. Each Contracting Party may request consultations concerning the safety standards maintained by the other Contracting Party relating to aeronautical facilities, aircrew, aircraft and operation of the designated airline. If, following such consultations, one Contracting Party finds

that the other Contracting Party does not effectively maintain and administer safety standards and requirements in these areas that are at least equal to the minimum standards which may be established pursuant to the Convention, the other Contracting Party shall be notified of such findings and the steps considered necessary to conform with these minimum standards; and the other Contracting Party shall take appropriate corrective action. Failure by the other Contracting Party to take appropriate action within a reasonable time, and in any case within fifteen (15) days, shall be grounds for the application of paragraph 1 of Article 5 (Revocation or Limitation of Authorisation) of this Agreement.

2. Any action taken by one Contracting Party in accordance with paragraph 1 of this Article shall be discontinued upon compliance by the other Contracting Party with the safety provisions of this Article.

Article 9 Aviation Security

1. Consistent with their rights and obligations under international law, the Contracting Parties affirm 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.

2. Without limiting the generality of their rights and obligations under international law, 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, opened for signature at Tokyo on 14 September 1963,¹ the Convention for the Suppression of Unlawful Seizure of Aircraft, opened for signature at The Hague on 16 December 1970,² the Convention for the Suppression of Unlawful Acts Against the Safety of Civil Aviation, opened for signature at Montreal on 23 September 1971,³ the Protocol for the Suppression of Unlawful Acts of Violence at Airports Serving International Civil Aviation, signed at Montreal on 24 February 1988,⁴ and any other multilateral agreement governing civil aviation security binding upon both Contracting Parties.

3. 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.

4. The Contracting Parties shall, in their mutual relations, act in conformity with the aviation security provisions established by the International Civil Aviation Organisation and designated as Annexes to the Convention on International Civil Aviation to the extent that such security provisions are applicable to the Contracting Parties.

5. In addition, the Contracting Parties 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,

¹ United Nations, *Treaty Series*, vol. 704, p. 219.

² *Ibid.*, vol. 860, p. 105.

³ *Ibid.*, vol. 974, p. 177 and vol. 1217, p. 404 (corrigendum to vol. 974).

⁴ *Ibid.*, vol. 1589, No. A-14118.

and the operators of airports in their territory, act in conformity with such aviation security provisions as are applicable. Each Contracting Party shall advise the other Contracting Party of any difference between its national regulations and practices and the aviation security standards of the Annexes referred to in Paragraph 4 above. Either Contracting Party may request immediate consultations with the other Contracting Party at any time to discuss any such differences.

6. Each Contracting Party agrees that such operators of aircraft may be required to observe the aviation security provisions referred to in paragraph 4 above required by the other Contracting Party to entry into, departure from or sojourn in, the territory of that other Contracting Party. Each Contracting Party shall also ensure that adequate measures are effectively applied within its territory to protect the aircraft and to inspect passengers, crew, carry-on items, baggage, cargo and aircraft stores prior to and during boarding and loading. Each Contracting Party shall give positive consideration to any request from the other Contracting Party for reasonable security measures to meet a particular threat.

7. When an incident or threat of an incident of unlawful seizure of civil aircraft or other unlawful act against the safety of such aircraft, their passengers and crew, airports and air navigation facilities occurs, the Contracting Parties shall assist each other by facilitating communications and other appropriate measures intended to terminate such incident or threat as rapidly as possible commensurate with minimum risk to life.

8. When a Contracting Party has reasonable grounds to believe that the other Contracting Party has departed from the provisions of this Article, the aeronautical authorities of the first Contracting Party

may request immediate consultations with the aeronautical authorities of the other Contracting Party. Failure to reach a satisfactory agreement within fifteen (15) days from the date of such request shall constitute grounds for the application of paragraph 1 of Article 5 (Revocation or Limitation of Authorisation) of this Agreement. When required by an emergency, a Contracting Party may take action under paragraph 1 of Article 5 (Revocation or Limitation of Authorisation) prior to the expiry of fifteen (15) days. Any action taken in accordance with this paragraph shall be discontinued upon compliance by the other Contracting Party with the security provisions of this Article.

Article 10
Airport, Services and Facility Charges

1. The charges imposed on the designated airline of one Contracting Party by the responsible charging bodies of the other Contracting Party for the use by that designated airline of airport, airways and other civil aviation facilities and services shall not be higher than those imposed by such Contracting Party on its own designated airline engaged in similar international operations using similar aircraft and associated facilities and services.
2. Each Contracting Party shall encourage consultations between its responsible charging bodies and the designated airlines using the facilities and services. Where practicable, such consultations should be through the appropriate representative airline organisation. Reasonable advance notice shall, whenever possible, be given to the designated airlines of any proposals for changes to charges referred to in this Article.

Article 11
Principles Governing Operation of Agreed Services

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

2. In operating the agreed services, the airline of each Contracting Party shall take into account the interests of the airline of the other Contracting Party so as not to affect unduly the services which the latter provides on the whole or part of the same routes.

3. The agreed services provided by the designated airlines of the Contracting Parties shall bear 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 carry the current and reasonably anticipated requirements for the carriage of passengers and cargo including mail originating from or destined for the territory of the Contracting Party which has designated the airline. Provision by a designated airline for the carriage of traffic originating in or destined for points on the specified routes in the territories of third countries 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) traffic requirements of the area through which the airline passes, after taking account of other transport services established by airlines of the States comprising the area; and
- (c) the requirements of through airline operation.

4. The capacity which may be provided in accordance with this Article by the designated airline to each Contracting Party on the agreed services shall be such as is agreed between the aeronautical authorities of the Contracting Parties before the commencement by the designated airline concerned of the agreed services and from time to time thereafter.

5. The aeronautical authorities may mutually decide from time to time the procedure or formula for concluding such agreements on capacity under this Article.

Article 12 Provision of Statistics

The aeronautical authorities of each Contracting Party shall provide or shall cause its designated airline to provide to the aeronautical authorities of the other Contracting Party upon request, periodic or other statements of statistics as may reasonably be required for the purpose of reviewing the capacity provided on the agreed services by the designated airline of the Contracting Party referred to first in this Article. Such statements shall include all information required to determine the amount of traffic carried by those airlines on the agreed services and the origins and destinations of such traffic.

Article 13 Customs Duties and Other Charges

1. Aircraft operated on agreed services by the designated airline of either Contracting Party, as well as their normal equipment, spare parts (including engines), supplies of fuel, and lubricating oils (including

hydraulic fluids), lubricants, consumable technical supplies, and aircraft stores (including food, beverages, liquor, tobacco and other product for sale to or use by passengers in limited quantities, during the flight) and other items intended for or used solely in connection with the aviation operation or servicing which are on board such aircraft, shall, on entering into the territory of the other Contracting Party, be exempt from customs duties, excise duties and charges provided such equipment, supplies and stores remain on board the aircraft until they are re-exported.

2. The following shall be exempt from customs duties, excise duties, inspection fees and charges in accordance with the provisions of the laws and regulations in force of each Contracting Party:

- (a) aircraft stores taken on board in the territory of one Contracting Party, and intended for use on board the aircraft operated on an international air service by the designated airline of the other Contracting Party;
- (b) spare parts (including engines) and normal airborne equipment introduced into the territory of one Contracting Party for the maintenance or repair of aircraft operating agreed services;
- (c) fuels, lubricating oils (including hydraulic fluids) and lubricants destined for the designated airline of each Contracting Party to supply aircraft operating agreed services, even when those supplies are to be used on any part of a journey performed over the territory of the Contracting Party in which they are taken on board.

3. The normal airborne equipment, as well as spare parts (including engines), aircraft stores, supplies of fuel, lubricating oils (including hydraulic fluids) and lubricants and other items mentioned in paragraph 1

of this Article retained on board the aircraft operated by the designated airline of each Contracting Party may be unloaded in the territory of the other Contracting Party only with the approval of the customs authorities of that other Contracting Party. In such case, they may be placed under the supervision of those customs authorities until they are re-exported or otherwise disposed of in accordance with the customs laws and procedures of that Contracting Party.

Article 14 Tariffs

1. The tariffs to be charged by the airline of one Contracting Party for carriage to or from the territory of the other Contracting Party shall be established at reasonable levels, due regard being paid to all relevant factors, including cost of operation, reasonable profit, characteristics of the service such as standards of speed and accommodation and the tariffs of other airlines.
2. The tariffs referred to in paragraph 1 of this Article shall, if possible, be agreed by the designated airlines concerned of both Contracting Parties, after consultation with the other airlines operating over the whole or part of the route, and such agreement shall, wherever possible, be reached by the use of the procedures of the International Air Transport Association for the working out of tariffs.
3. 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.

4. This approval may be given expressly. If neither of the aeronautical authorities has expressed disapproval within thirty (30) days from the date of submission, in accordance with paragraph 3 of this Article, these tariffs shall be considered as approved. In the event of the period for submission being reduced, as provided for in paragraph 3, the aeronautical authorities may agree that the period within which any disapproval must be notified shall be less than thirty (30) days.

5. If a tariff cannot be agreed in accordance with paragraph 2 of this Article, or if, during the period applicable in accordance with paragraph 4 of this Article, one aeronautical authority gives the other aeronautical authority notice of its disapproval of a tariff agreed in accordance with the provisions of paragraph 2 of this Article, the aeronautical authorities of the two Contracting Parties shall, after consultation with the aeronautical authorities of any other State whose advice they consider useful, endeavour to determine the tariff by mutual agreement.

6. If the aeronautical authorities cannot agree to any tariff submitted to them under paragraph 3 of this Article, or on the determination of any tariff under paragraph 5 of this Article, the dispute shall be settled in accordance with the provisions of Article 19 (Settlement of Disputes) of the Agreement.

7. A tariff established in accordance with the provisions of this Article shall remain in force until a new tariff has been established. Nevertheless, a 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 15
Commercial Opportunities

1. The designated airlines of each Contracting Party shall have the right to establish offices in the territory of the other Contracting Party for the purposes of provision and sale of air services. Each designated airline shall have the right to engage in the sale of air transportation in the territory of the other Contracting Party directly and, at its discretion, through its agents. Each designated airline shall have the right to use for this purpose its own transportation documents.
2. The designated airlines of each Contracting Party shall have the right to sell such air transportation in local or freely convertible currencies, and to transfer them from the territory of the other Contracting Party at will. Conversion and transfer of funds obtained in the ordinary course of their operations shall be permitted, in accordance with the provisions of the laws and regulations in force of each Contracting Party, at the foreign exchange market rates for payments prevailing at the time of submission of the requests for conversion or transfer and shall not be subject to any charges except normal service charges levied for such transactions.
3. The designated airlines of each Contracting Party shall have the right at their discretion to pay for local expense, including purchases of fuel, in the territory of the other Contracting Party in local currency or, provided this accords with local currency regulations, in freely convertible currencies.
4. At their option, the designated airlines of each Contracting Party shall, in the territory of the other Contracting Party, have the right to contract with a competent agent of their choice, including any other airlines which perform ground-handling, for such services in whole or in part.

Article 16
Airline Representatives

The designated airlines of each Contracting Party shall be allowed on the basis of reciprocity, to maintain in the territory of the other Contracting Party, consistent with such other Contracting Party's laws, regulations and practices, their representatives and staff.

Article 17
Consultations

1. In a spirit of close co-operation, the aeronautical authorities of the Contracting Parties shall consult each other from time to time with a view to ensuring the implementation of, and satisfactory compliance with, the provisions of this Agreement and the Annex and shall consult when necessary to provide for modifications thereof.

2. Either Contracting Party may at any time request consultations in writing, and which shall begin within a period of sixty (60) days of the date of receipt of the request, unless both Contracting Parties agree to an extension of this period, on the implementation, interpretation, application or amendment of this Agreement.

Article 18
Amendment

If either Contracting Party considers it desirable to modify any provision of this Agreement, such modification, if agreed between the Contracting Parties and if necessary after consultation in accordance with Article 17 (Consultations) of this Agreement, shall come into effect when confirmed by an exchange of notes, through the diplomatic channel.

Article 19
Settlement of Disputes

1. Any disputes except those which may arise with respect to specific tariff filings, relating to the interpretation or application of this Agreement which cannot be settled by negotiations between the Contracting Parties, either through discussion, correspondence or the use of diplomatic channels, may, at the request of either Contracting Party, be submitted to an arbitral tribunal.
2. Within a period of sixty (60) days from the date of receipt by either Contracting Party from the other Contracting Party of a note through the diplomatic channel requesting arbitration of the dispute by a tribunal, each Contracting Party shall nominate an arbitrator. Within a period of sixty (60) days from the appointment of the arbitrator last appointed, the two arbitrators shall appoint a president who shall be a national of a third State. If within sixty (60) days after one of the Contracting Parties has nominated its arbitrator, the other Contracting Party has not nominated its own or, if within sixty (60) days following the nomination of the second arbitrator, both arbitrators have not agreed on the appointment of the president, either Contracting Party may request the President of the Council of the International Civil Aviation Organisation to appoint an arbitrator or arbitrators as the case requires.
3. Except as otherwise determined by the Contracting Parties or prescribed by the tribunal, each Contracting Party shall submit a memorandum within forty-five (45) days after the tribunal is fully constituted. Replies shall be due sixty (60) days later. The tribunal shall hold a hearing at the request of either Contracting Party, or at its discretion, within thirty (30) days after replies are due.

4. The tribunal shall attempt to give a written decision within thirty (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.
5. The Contracting Parties may submit requests for clarification of the decision within fifteen (15) days after it is received and such clarification shall be issued within fifteen (15) days of such request.
6. The Contracting Parties undertake to comply with any arbitration decision given under this Article.
7. The expenses of arbitration under this Article shall be shared equally between the Contracting Parties.

Article 20 Termination

1. Either Contracting Party may at any time from the entry into force of this Agreement give notice in writing through the diplomatic channel to the other Contracting Party of its decision to terminate this Agreement. Such notice shall be communicated simultaneously to the International Civil Aviation Organisation (ICAO). This Agreement shall terminate one (1) year after the date of receipt of the notice by the other Contracting Party, unless the notice to terminate is withdrawn by mutual consent of the Contracting Parties before the expiry of this period.
2. In default of acknowledgement of receipt of a notice of termination by the other Contracting Party, the notice shall be deemed to have been received fourteen (14) days after the date on which ICAO acknowledge receipt thereof.

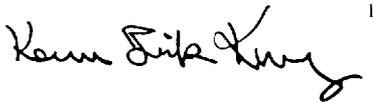
Article 21
Validity and Registration

1. This Agreement shall enter into force on the date of signature.
2. This Agreement and any exchange of notes in accordance with Article 18 shall be registered with the International Civil Aviation Organisation.

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

DONE at *Sigatoka* on this *Twenty-Eighth* day of *October, 1994*, in duplicate in the English and the Korean languages, both texts being equally authentic. In case of any differences of interpretation, the English text shall prevail.

For the Government
of the Republic of Korea:

 1

For the Government of the Sovereign
Democratic Republic of Fiji:

 2

¹ Kang Keun-taik.

² Harold Powell.

ANNEX

(ROUTE SCHEDULE)

SECTION I

Routes to be operated in both directions by the designated airlines of the Republic of Korea.

Points of Departure	Intermediate Points	Points of Destination	Points Beyond
Points in Korea	Three (3) points in South East Asia to be agreed upon later.	Nadi	Auckland and two (2) points in Oceania to be agreed upon later.

SECTION II

Routes to be operated in both directions by the designated airlines of Fiji.

Points of Departure	Intermediate Points	Points of Destination	Points Beyond
Points in Fiji	Three (3) points in the South Pacific Region and South East Asia to be agreed upon later.	Seoul	Three (3) points in Asia to be agreed upon later.

NOTES

1. The designated airlines of each Contracting Party may, on any or all flights, alter the order of calling and/or omit calling at any of the points specified above, provided the international air service begins or terminates in the territory of the Contracting Party which has designated the airlines.
2. The designated airlines of each Contracting Party may serve points not mentioned, on condition that no traffic rights are exercised between such points and the territory of the other Contracting Party.