

**No. 33241**

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**NEW ZEALAND  
and  
BRUNEI**

**Agreement on air services (with annex). Signed at Wellington  
on 10 April 1995**

*Authentic text: English.*

*Registered by New Zealand on 11 October 1996.*

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**NOUVELLE-ZÉLANDE  
et  
BRUNÉI**

**Accord relatif aux services aériens (avec annexe). Signé à  
Wellington le 10 avril 1995**

*Texte authentique : anglais.*

*Enregistré par la Nouvelle-Zélande le 11 octobre 1996.*

AGREEMENT<sup>1</sup> BETWEEN THE GOVERNMENT OF NEW ZEALAND AND THE GOVERNMENT OF HIS MAJESTY THE SULTAN AND YANG DI-PERTUAN OF BRUNEI DARUSSALAM ON AIR SERVICES

THE GOVERNMENT OF NEW ZEALAND

AND

THE GOVERNMENT OF HIS MAJESTY THE SULTAN  
AND YANG DI-PERTUAN OF BRUNEI DARUSSALAM

Hereinafter referred to as "the Contracting Parties";

Being Parties to the Convention on International Civil Aviation opened for signature at Chicago, on the 7th day of December, 1944;<sup>2</sup>

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

Desiring to ensure the highest degree of safety and security in international air transport;

Have agreed as follows:

ARTICLE 1

Definitions:

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

- (a) the term "aeronautical authorities" means the Minister responsible for the subject of Civil Aviation or any other authority or person

<sup>1</sup> Came into force on 10 April 1995 by signature, in accordance with article 20.

<sup>2</sup> 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.

empowered to perform the functions now exercised by the said authorities;

- (b) the term "agreed services" means scheduled air services on the routes specified in the Annex to this Agreement for the transport of passengers, cargo and mail, separately or in combination;
- (c) the term "Agreement" means this Agreement, its Annex, and any amendments thereto;
- (d) the term "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 of the Convention under Articles 90 and 94 thereof so far as those Annexes and amendments have become effective for both Contracting Parties;
- (e) the term "designated airline" means an airline which has been designated and authorised in accordance with Article 3 of this Agreement;
- (f) the term "tariffs" 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 ancillary services, but excluding remuneration and conditions for the carriage of mail;

- (g) the term "air services", "international air service", "airline" and "stop for non-traffic purposes" have the meanings respectively assigned to them in Article 96 of the Convention; and
- (h) the term "territory" has the meaning assigned to it in Article 2 of the Convention, provided that, in the case of New Zealand, the term "territory" shall exclude the Cook Islands, Niue and Tokelau.

## ARTICLE 2

### Grant of Rights

1. Each Contracting Party grants to the other Contracting Party the following rights for the conduct of international air services by the airline designated by the other Contracting Party:

- (a) to fly without landing across the territory of the other Contracting Party;
- (b) to make stops in the said territory for non-traffic purposes; and
- (c) to make stops in the said territory for the purpose of taking up and discharging, while operating the routes specified in the Annex, international traffic in passengers, cargo and mail, separately or in combination.

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

### ARTICLE 3

#### Designation and Authorisation

1. 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 or alter such designations.

2. On receipt of such designation and subject to the provisions of Article 4 of this Agreement, the aeronautical authorities of the other Contracting Party shall grant without delay to the airline or airlines so designated the appropriate authorisations to operate the agreed services for which that airline has been designated.

3. Upon receipt of such authorisations the airline may begin at any time to operate the agreed services, in whole or in part, provided that the airline complies with the applicable provisions of this Agreement, in particular, that tariffs are established in accordance with the provisions of Article 10 of this Agreement.

## ARTICLE 4

Revocation and Limitation of Authorisation

1. The aeronautical authorities of each Contracting Party shall have the right to withhold the authorisations referred to in Article 3 of this Agreement with respect to an airline designated by the other Contracting Party, to revoke or suspend such authorisations or impose conditions, temporarily or permanently:

- (a) in the event of failure by such airline to qualify before the aeronautical authorities of that Contracting Party under the laws and regulations normally and reasonably applied by these authorities in conformity with the Convention;
- (b) in the event of failure by such airline to comply with the laws and regulations of that Contracting Party;
- (c) in the event that they are not satisfied that substantial ownership and effective control of the airline are vested in the Contracting Party designating the airline or in its nationals; and
- (d) in case the airline otherwise fails to operate in accordance with the conditions prescribed under this Agreement.

2. Unless immediate action is essential to prevent further infringement of the laws and regulations referred to above, the rights enumerated in paragraph 1 of this

Article shall be exercised only after consultations with the aeronautical authorities of the other Contracting Party in conformity with Article 14 of this Agreement.

## ARTICLE 5

### Applicability of Laws and Regulations

1. The laws, regulations and procedures of one Contracting Party relating to the admission to, remaining in, or departure from its territory of aircraft engaged in international air navigation or to the operation and navigation of such aircraft shall be complied with by the airline or airlines of the other Contracting Party upon entrance into, departure from and while within the said territory.

2. The laws and regulations of one Contracting Party respecting entry, clearance, transit, immigration, passports, customs and quarantine shall be complied with by the airline or airlines of the other Contracting Party and by or on behalf of its crews, passengers, cargo and mail upon transit of, admission to, departure from and while within the territory of such a Contracting Party.

3. Neither of the Contracting Parties shall give preference to its own or any other airline over an airline of the other Contracting Party engaged in similar international air services in the application of its customs, immigration, quarantine and similar regulations.

4. Passengers, baggage and cargo in direct transit through the territory of either Contracting Party and not leaving the area of the airport reserved for such purpose shall be subject to no more than a simplified control. Baggage and cargo in direct transit shall be exempt from customs duties and other similar taxes.

## ARTICLE 6

### Recognition of Certificates and Licences (Safety)

1. Certificates of airworthiness, certificates of competency and licences, issued or validated by one Contracting Party and still in force, shall be recognised as valid by the other Contracting Party for the purpose of operating the agreed services on the routes specified in the Annex provided that such certificates or licences were issued or validated pursuant to, and in conformity with, the standards established under the Convention. Each Contracting Party reserves the right, however, to refuse to recognise, for the purpose of flights above or landing within its own territory, certificates of competency and licences granted to its own nationals by the other Contracting Party.

2. 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 airlines. 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 at least equal 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. Each Contracting Party reserves the right to withhold, revoke or limit the operating authorisation or technical permission of an airline or airlines designated by the other Contracting Party in the event the other Contracting Party does not take such appropriate action within a reasonable time.

## ARTICLE 7

### Aviation Security

1. Consistent with their rights and obligations under international law, 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. 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*, signed at Tokyo on 14 September 1963,<sup>1</sup> the *Convention for the Suppression of Unlawful Seizure of Aircraft*, signed at The Hague on 16 December 1970,<sup>2</sup> and the *Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation*, signed at Montreal on 23 September 1971.<sup>3</sup>

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<sup>1</sup> United Nations, *Treaty Series*, vol. 704, p. 219.

<sup>2</sup> *Ibid.*, vol. 860, p. 105.

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

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 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 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 and the operators of airports 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 referred to in paragraph 3 above required 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 aircraft and to inspect passengers, crew, carry-on items, baggage, cargo and aircraft stores prior to and during boarding or loading. Each Contracting Party shall also give positive 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.

6. Should one Contracting Party encounter difficulties with regard to the application of the aviation security provisions of this Article, the aeronautical authorities of either Contracting Party may request immediate consultations with the aeronautical authorities of the other Contracting Party.

## ARTICLE 8

### Customs Duties and Other Charges

1. Each Contracting Party shall on a basis of reciprocity exempt the designated airline or airlines of the other Contracting Party to the fullest extent possible under its national law from import restrictions, customs duties, excise taxes, inspection fees and other national duties and charges on aircraft, fuel, lubricating oils, consumable technical supplies, spare parts including engines, regular aircraft equipment, aircraft stores (including liquor, tobacco and other products destined for sale to passengers in limited quantities during the flight) and other items intended for use or used solely in connection with the operation or servicing of aircraft of the designated airline or airlines of such other Contracting Party operating the agreed services.

2. The exemptions granted by this Article shall apply to the items referred to in paragraph 1 of this Article:

- (a) introduced into the area of one Contracting Party by or on behalf of the designated airline or airlines of the other Contracting Party;
- (b) retained on board aircraft of the designated airline or airlines of one Contracting Party upon arriving in or leaving the territory of the other Contracting Party;
- (c) taken on board aircraft of the designated airline or airlines of one Contracting Party in the territory of the other Contracting Party and intended for use in operating the agreed services;

whether or not such items are used or consumed wholly within the territory of the Contracting Party granting the exemption, provided the ownership of such items is not transferred in the territory of the said Contracting Party.

3. The regular airborne equipment, as well as the materials and supplies normally retained on board the aircraft of the designated airline or airlines of either Contracting Party may be unloaded in the territory of the other Contracting Party only with the approval of the Customs authorities of that territory. In such case, they may be placed under the supervision of the said authorities up to such time as they are re-exported or otherwise disposed of in accordance with Customs regulations.

## ARTICLE 9

Principles Governing the 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 routes specified in the Annex.

2. In the operation of the agreed services, the designated airlines of both Contracting Parties shall consider the interests of the designated airline of the other Contracting Party so as not to affect unduly the agreed services which the latter operates on the whole or part of the same route.

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. They shall have as their primary objective the provision at a reasonable load factor of capacity adequate for the current and reasonably anticipated requirements of passengers, cargo and mail originating from or destined for the territory of the Contracting Party which has designated the airline or airlines.

4. Provision for the carriage of passengers, cargo and mail both taken up and discharged at 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 areas through which the airline passes, local and regional air services being taken into account; and
- (c) the requirements of through airline operations.

5. The aeronautical authorities of the Contracting Parties shall from time to time jointly determine the practical application of the principles contained in the foregoing paragraphs of this Article for the operation of the agreed services by the designated airlines.

## ARTICLE 10

### Tariffs

1. Each Contracting Party shall allow prices for air transportation to be established by each designated airline based upon commercial considerations in the marketplace. Intervention by the Contracting Parties shall be limited to:

- (a) prevention of predatory or discriminatory prices or practices;
- (b) protection of consumers from prices that are unduly high or restrictive because of the abuse of a dominant position; and

- (c) protection of airlines from prices that are artificially low because of direct or indirect governmental subsidy or support.

2. Each Contracting Party may require notification to or filing with its aeronautical authorities of prices proposed to be charged to or from its territory by designated airlines of the other Contracting Party. Notification or filing by the designated airlines of both Contracting Parties may be required no more than 60 days before the proposed date of effectiveness. In individual cases, notification or filing may be permitted on shorter notice than normally required.

3. Neither Contracting Party shall take unilateral action to prevent the inauguration or continuation of a price proposed to be charged or charged by (a) a designated airline of either Contracting Party for international air transportation between the territories of the Contracting Parties, or (b) a designated airline of one Contracting Party for international air transportation between the territory of the other Contracting Party and any other country, including in both cases transportation on an interline or intra-line basis. If either Contracting Party believes that any such price is inconsistent with the considerations set forth in paragraph 1 of this Article, it shall request consultations and notify the other Contracting Party of the reasons for its dissatisfaction as soon as possible. These consultations shall be held not later than 30 days after receipt of the request, and the Contracting Parties shall cooperate in securing information necessary for reasoned resolution of the issue. If the Contracting Parties reach agreement with respect to a price for which a notice of dissatisfaction has been given, each Contracting Party shall use its best efforts to put that agreement into effect. Without mutual agreement, that price shall not go into or continue in effect.

4. Notwithstanding paragraph 3 of this Article, each Contracting Party shall allow (a) any airline of either Contracting Party or any airline of a third country to meet a lower or more competitive price proposed or charged by any other airline for international air transportation between the territories of the Contracting Parties, and (b) any airline of one Contracting Party to meet a lower or more competitive price proposed or charged by any other airline for international air transportation between the territory of the other Contracting Party and a third country. For the purposes of this Article, the term "meet" means the right to establish on a timely basis, using such expedited procedures as may be necessary, an identical or similar price on a direct, interline or intra-line basis, notwithstanding differences in conditions relating to routing, connections, type of service or aircraft type; or such price through a combination of prices.

## ARTICLE 11

### Airline Representation

1. The designated airline or airlines of one Contracting Party shall be allowed, on the basis of reciprocity and subject to paragraph 3 of this Article, to bring into and to maintain in the territory of the other Contracting Party their representatives and commercial, operational and technical staff as required in connection with the operation of agreed services.

2. These staff requirements may, at the option of the designated airline or airlines of one Contracting Party, be satisfied by its own personnel or by using the



services of any other organisation, company or airline operating in the territory of the other Contracting Party, and authorised to perform such services in the territory of that Contracting Party.

3. The representatives and staff referred to in paragraph 1 of this Article shall be subject to the laws and regulations of the other Contracting Party and, consistent with such laws and regulations, each Contracting Party shall, on the basis of reciprocity and with the minimum of delay, grant the necessary employment authorisations, visitor visas or other similar documents to the said representatives and staff.

## ARTICLE 12

### Commercial Opportunities and Transfer of Funds

1. 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 sell transportation in the currency of that territory or, to the extent permitted by national law, in freely convertible currencies of other countries, and to the same extent any person shall be free to purchase such transportation in currencies accepted for sale by that airline.

2. Each Contracting Party grants to any designated airline of the other Contracting Party the right of free transfer at the official rate of exchange of the excess

of receipts over expenditure earned by that airline in the territory of the first Contracting Party in connection with the carriage of passengers, mail and cargo.

## ARTICLE 13

### Statistics

The aeronautical authorities of either 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.

## ARTICLE 14

### Consultation

1. In a spirit of close cooperation, 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 shall also consult when necessary to provide for amendment thereof.

2. Either Contracting Party may request consultation, which may be through discussion or by correspondence and shall begin within a period of sixty (60)

days of receipt of a written request, unless both Contracting Parties agree to an extension of this period.

## ARTICLE 15

### Settlement of Disputes

1. If any dispute arises between the Contracting Parties relating to the interpretation or application of this Agreement, the Contracting Parties shall in the first place endeavour to settle it by negotiation.

2. If the Contracting Parties fail to reach a settlement by negotiation, they may agree to refer the dispute for decision to some person or body, or either Contracting Party may submit the dispute for decision to a tribunal of three arbitrators, one to be nominated by each Contracting Party and the third to be appointed by the two arbitrators. Each of the Contracting Parties shall nominate an arbitrator within a period of sixty (60) days from the date of receipt by either Contracting Party from the other of a notice through the diplomatic channels requesting arbitration of the dispute and the third arbitrator shall be appointed within a further period of sixty (60) days. If either of the Contracting Parties fails to nominate an arbitrator within the period specified, or if the third arbitrator is not appointed within the period specified, the President of the Council of the International Civil Aviation Organization may be requested by either Contracting Party to appoint an arbitrator or arbitrators as the case requires. In all cases the third arbitrator shall be a national of a third State and shall act as President of the arbitral tribunal.

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

## ARTICLE 16

### Amendment of Agreement

If either of the Contracting Parties considers it desirable to amend any provision of this Agreement, it may request consultations with the other Contracting Party. Such consultations, which may be between aeronautical authorities and which may be through discussion or by correspondence, shall begin within a period of sixty (60) days of receipt of a written request unless both Contracting Parties agree to an extension of this period. Any amendments so agreed shall come into force when they have been confirmed by an exchange of diplomatic notes.

## ARTICLE 17

### Multilateral Convention

This Agreement shall be amended so as to conform with any multilateral convention which may become binding on both Contracting Parties.

## ARTICLE 18

Termination

Either Contracting Party may at any time give notice in writing through diplomatic channels to the other Contracting Party of its decision to terminate this Agreement; such notice shall be communicated simultaneously to the International Civil Aviation Organization. The Agreement shall terminate twelve (12) months after the date of receipt of the notice by the other Contracting Party, unless the notice to terminate is withdrawn by agreement before the expiry of this period. In the absence of acknowledgment of receipt by the other Contracting Party, the notice shall be deemed to have been received fourteen (14) days after the receipt of the notice by the International Civil Aviation Organization.

## ARTICLE 19

Registration

This Agreement and any amendment thereto shall be registered with the International Civil Aviation Organization.

## ARTICLE 20


Entry into Force

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

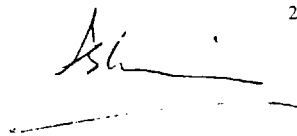
In witness whereof the undersigned, being duly authorised thereto by their respective Governments, have signed the present Agreement.

DONE in duplicate at Wellington, New Zealand on this 10th day of April 1995 in the English language.

For the Government  
of New Zealand:

A handwritten signature in black ink, appearing to read "M. Williamson", with a small superscripted "1" to its right.

For the Government  
of His Majesty the Sultan  
and Yang Di-Pertuan  
of Brunei Darussalam:

A handwritten signature in black ink, appearing to read "Lim Jock Seng", with a small superscripted "2" to its right.

<sup>1</sup> Maurice Williamson.

<sup>2</sup> Dato Paduka Lim Jock Seng.

## ANNEX

## ROUTE SCHEDULE

- I. Routes to be operated in both directions by airlines designated by New Zealand:

Points in New Zealand via two intermediate points to be nominated to Brunei Darussalam and beyond to a point to be nominated.

- II. Routes to be operated in both directions by airlines designated by Brunei Darussalam:

Brunei Darussalam to a point in New Zealand to be nominated.

Points may be omitted on any or all flights provided that each service begins or ends in the territory of the Contracting Party which has designated the airline in question.

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