

No. 33230

**NEW ZEALAND
and
CHILE**

Air Transport Agreement (with annexes). Signed at Wellington on 1 December 1992

Authentic texts: English and Spanish.

Registered by New Zealand on 11 October 1996.

**NOUVELLE-ZÉLANDE
et
CHILI**

Accord relatif au transport aérien (avec annexes). Signé à Wellington le 1^{er} décembre 1992

Textes authentiques : anglais et espagnol.

Enregistré par la Nouvelle-Zélande le 11 octobre 1996.

AIR TRANSPORT AGREEMENT¹ BETWEEN THE GOVERNMENT OF NEW ZEALAND AND THE GOVERNMENT OF THE REPUBLIC OF CHILE

The Government of New Zealand and the Government of the Republic of Chile, (hereinafter referred to as the "Contracting Parties");

Desiring to promote an international air transport system based on competition among airlines in the marketplace with minimum governmental interference and regulation;

Desiring to facilitate the expansion of international air transport opportunities;

Desiring to make it possible for airlines to offer the travelling and shipping public a variety of service options at the lowest prices that are not predatory or discriminatory and do not represent abuse of a dominant position and wishing to encourage individual airlines to develop and implement innovative and competitive prices;

Desiring to ensure the highest degree of safety and security in international air transport and reaffirming their grave concern about acts or threats against the security of aircraft, which jeopardise the safety of persons or property, adversely affect the operation of air transportation, and undermine public confidence in the safety of civil aviation;

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

¹ Came into force on 28 June 1995 by notification, in accordance with article 18.

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.

Have agreed as follows:

ARTICLE 1

Definitions

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

- (a) "aeronautical authorities" means in the case of Chile, the Civil Aeronautics Board of Chile, or its successor agency or agencies; and in the case of New Zealand, means the Minister for the time being responsible for civil aviation;
- (b) "Agreement" means this Agreement, its Annexes and any amendments thereto;
- (c) "air transportation" means any operation performed by aircraft for the public carriage of traffic in passengers, baggage, cargo and mail, separately or in combination, for remuneration or hire;
- (d) "Convention" means the Convention on International Civil Aviation, opened for signature at Chicago on 7 December 1944, and includes:
 - (i) Any amendment which has entered into force under Article 94(a) of the Convention and has been ratified by both Contracting Parties; and

- (ii) Any annex or amendment thereto adopted under Article 90 of the Convention, insofar as such Annex or amendment is at any given time effective for both Contracting Parties;
- (e) "designated airline" means an airline designated and authorised in accordance with Article 3 of this Agreement;
- (f) "price" means:
 - (i) any fare, rate, or price to be charged by airlines, or their agents, and the conditions governing the availability of such fare, rate and price;
 - (ii) the charges and conditions for services ancillary to carriage of traffic which are offered by airlines; and
 - (iii) amounts charged by airlines to air transportation intermediaries;for the carriage of passengers (and their baggage) and/or cargo (excluding mail) in air transportation;
- (g) "international air transportation" means air transportation which passes through the air space over the territory of more than one State;
- (h) "stop for non-traffic purposes" means a landing for any purpose other than taking on or discharging passengers, baggage, cargo and mail in air transportation;

- (i) "territory" has the meaning assigned to it in Article 2 of the Convention except that in the case of New Zealand the term territory shall exclude the Cook Islands, Niue and Tokelau;
- (j) "user charge" means a charge made to airlines for the provision of airport, air navigation or aviation security property or facilities.

ARTICLE 2

Granting of Rights

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

- (a) the right to fly across its territory without landing;
- (b) the right to make stops in its territory for non-traffic purposes; and
- (c) the right to make stops in its territory at any point on the routes specified in Annex I for the purpose of putting down and taking on international traffic in passengers, cargo and mail.

2. Nothing in paragraph 1 of this Article shall be deemed to grant the right for one Contracting Party's airlines to participate in air transportation between points in the territory of the other Contracting Party.

3. At points on the specified routes, the designated airlines of one Contracting Party shall have the right to use all airways, airports and other facilities in the territory of the other Contracting Party on a non-discriminatory basis.

4. If because of armed conflict, political disturbances or developments, or special or unusual circumstances, the designated airlines of one Contracting Party are unable to operate a service on their normal routes, the other Contracting Party shall use its best efforts to facilitate the continued operation of such service through appropriate temporary re-arrangements of such routes as mutually decided by the Contracting Parties.

ARTICLE 3

Designation and Authorisation

1. Each Contracting Party shall have the right to designate as many airlines as it wishes to conduct international air transportation in accordance with this Agreement, and to withdraw or alter such designations. Such designations shall be transmitted to the other Contracting Party in writing through diplomatic channels, and shall identify whether the airline is authorised to conduct the type of air transportation specified in Annex I or in Annex II or in both.

2. On receipt of such designation, the aeronautical authorities of the other Contracting Party shall without delay, subject to the provisions of paragraphs 3 and 4 of this Article, grant to the airline or airlines designated in accordance with paragraph 1 of this Article, the appropriate operating authorisation.

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 the regulations normally applied to the operation of international air services by such authorities in conformity with the provisions of the Convention.

4. Each Contracting Party shall have the right to refuse the designation referred to in paragraph 2 of this Article, or to impose such conditions as it may deem necessary on the exercise by the designated airline of the rights specified in Article 2 of this Agreement, in any case where the said Contracting Party is not satisfied that substantial ownership and effective control of that airline are vested in the Contracting Party designating the airline or its nationals.

5. When an airline has been so designated and authorised, it may begin to operate the agreed services for which it has been designated in accordance with the provisions of Article 12 of this Agreement.

ARTICLE 4

Revocation of Authorisation

1. Each Contracting Party may revoke, suspend or limit the operating authorisations or technical permissions of an airline designated by the other Contracting Party where:

- (a) substantial ownership and effective control of that airline are not vested in the other Contracting Party, the other Contracting Party's nationals, or both; or

- (b) that airline has failed to comply with the laws and regulations referred to in Article 5 (Application of Laws) of this Agreement.

2. The rights reserved in paragraph 1 of this Article shall be exercised by the aeronautical authorities of one Contracting Party only after consultation with the aeronautical authorities of the other Contracting Party in accordance with Article 13 (Consultations), unless the immediate revocation, suspension or imposition of conditions is necessary to prevent further infringements of the laws and regulations of the first mentioned Contracting Party.

3. This Article does not limit the rights of either Contracting Party to stop, limit or condition air transportation in accordance with the provisions of Article 6 (Safety) and 7 (Aviation Security).

ARTICLE 5

Application of Laws

1. The laws and regulations of one Contracting Party relating to admission into or departure from its territory of aircraft engaged in international services, or to the operation and navigation of aircraft, shall be complied with by the airlines of the other Contracting Party while entering, within or leaving the territory of the first Contracting Party.

2. The laws and regulations of one Contracting Party relating to admission into or departure from its territory of passengers, crew or cargo on aircraft (including regulations concerning entry, clearance, aviation security,

immigration, passports, customs and quarantine or, in the case of mail, postal regulations) shall be complied with by or on behalf of such passengers, crew or cargo of the other Contracting Party's airlines on arrival into, during its stay and on departure from the first Contracting Party's territory. Such laws and regulations shall be applied equally by each Contracting Party to the passengers, crew, cargo and aircraft of all countries without distinction as to nationality of airline.

3. The laws and regulations of one Contracting Party relating to the provision of statistical information shall be observed by the airlines of the other Contracting Party.

ARTICLE 6

Safety

1. Each Contracting Party shall recognise as valid, for the purpose of operating the air transportation provided for in this Agreement, Certificates of Airworthiness, Certificates of Competency, and licenses issued or validated by the other Contracting Party and still in force, provided that the requirements for such certificates or licenses at least equal the minimum standards which may be established pursuant to the Convention. Each Contracting Party may, however, refuse to recognise as valid for the purpose of flight above its own territory, Certificates of Competency and licenses granted to or validated for 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. In accordance with their rights and obligations under international law, the Contracting Parties reaffirm that their obligation to protect, in their mutual relationship, the security of civil aviation against acts of unlawful interference forms an integral part of this Agreement.

2. The Contracting Parties shall provide upon request all necessary assistance to each other to prevent acts of unlawful seizure of aircraft and other unlawful acts against the safety of passengers, crew, aircraft, airports and air navigation facilities and any other threat to aviation security.

3. Without limiting the generality of their rights and obligations under international law, the Contracting Parties

shall both 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 1963,¹ the Convention for the Suppression of Unlawful Seizure of Aircraft, signed at The Hague on 16 December 1970,² and the Convention for the Suppression of Unlawful Acts Against the Safety of Civil Aviation signed at Montreal on 23 September 1971.³

4. 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 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.

5. Each Contracting Party agrees that its operators of aircraft may be required to observe the security provisions required by the other Contracting Party for entry into, departure from, or sojourn in the territory of that other Contracting Party and take adequate measures to protect aircraft and to inspect passengers, crew, their carry-on items as well as 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 special security measures to meet a particular threat.

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).

6. When an incident or threat of an incident of unlawful seizure of civil aircraft or other unlawful acts against the safety of passengers, crew, aircraft, airports and air navigation facilities occurs, the Contracting Parties shall assist each other by facilitating communications and other appropriate measures intended to terminate rapidly and safely that incident or threat thereof.

7. When a Contracting Party has reasonable grounds to believe that the other Contracting Party has departed from the aviation security provisions of this Article, the aeronautical authorities of that Contracting Party may request immediate consultations with the aeronautical authorities of the other Contracting Party. Failure to reach a satisfactory agreement within 15 days from the date of such request shall constitute grounds to withhold, revoke, limit or impose conditions on the operating authorisations or technical permission of an airline or airlines of the other Contracting Party. When required by an emergency, a Contracting Party may take interim action within 15 days.

ARTICLE 8

Commercial Opportunities

1. The airlines of either Contracting Party may establish offices in the territory of the other Contracting Party for the promotion and sale of air transportation.

2. The designated airlines of either Contracting Party may, in accordance with the laws and regulations of the other Contracting Party relating to entry, residence and employment, bring in and maintain in the territory of the

other Contracting Party managerial, sales, technical, operational and other specialist staff required for the provision of air transportation.

3. Each designated airline may perform its own ground handling in the territory of the other Contracting Party ("self-handling") or, at its option, select among competing agents for such services. These rights shall be subject only to physical constraints resulting from considerations of airport safety. Where such considerations preclude self-handling, ground services shall be available on an equal basis to all airlines; charges shall be based on the costs of services provided; and such services shall be comparable to the kind and quality of services if self-handling were possible.

4. Each designated airline of either Contracting Party may engage in the sale of air transportation in the territory of the other Contracting Party directly and, at the airline's discretion, through its agents. Each designated airline may sell such transportation, and any persons shall be free to purchase such transportation, in the currency of that territory or in freely convertible currencies.

5. Each Contracting Party grants to the designated airlines of the other Contracting Party the right to remit to its head office the excess over expenditure of receipts earned in the territory of the first Contracting Party. The procedure for such remittance, however, shall be in accordance with the foreign exchange regulations of the Contracting Party in the territory of which the revenue accrued.

ARTICLE 9Customs Duties

1. Aircraft operated on international services by the designated airlines of the Contracting Parties, as well as their regular equipment, spare parts, supplies of fuel and lubricants, and aircraft stores (including food, beverages and tobacco) on board such aircraft shall be exempt from all customs duties, inspection fees and other duties or taxes on arriving in the territory of the other Contracting Party, provided such equipment and supplies remain on board the aircraft up to such time as they are re-exported.

2. There shall also be exemption from same duties and taxes, with the exception of charges corresponding to the service performed:

- (a) aircraft stores taken on board in the territory of either Contracting Party, within limits fixed by competent authorities of said Contracting Party, and for use on board aircraft engaged in the agreed services of the other Contracting Party;
- (b) spare parts brought into the territory of either Contracting Party for the maintenance or repair of aircraft used on the agreed services by the designated airline or airlines of the other Contracting Party; and
- (c) fuel and lubricants destined to supply aircraft operated on the agreed services by the designated airline or airlines of the other Contracting Party, even when these supplies are to be used on the part of the journey performed

over the territory of the Contracting Party in which they are taken on board.

Materials referred to in subparagraphs (a), (b) and (c) above may be required to be kept under customs supervision or control.

3. The regular airborne equipment, as well as the materials and supplies retained on board the aircraft 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 other Contracting Party. In such case, they may be placed under the supervision of said authorities up to such time as they are re-exported or otherwise disposed of in accordance with customs regulations.

ARTICLE 10

User Charges

1. User charges imposed by the competent charging bodies on the airlines of the other Contracting Party shall be just, reasonable and non-discriminatory.

2. Each Contracting Party shall encourage consultations between the competent charging bodies in its territory and airlines using the services and facilities, and shall encourage the competent charging bodies and the airlines to exchange such information as may be necessary to permit an accurate review of the reasonableness of the charges.

ARTICLE 11Capacity

1. Each Contracting Party shall allow a fair and equal opportunity for the designated airlines of both Contracting Parties to compete in the international air transportation covered by this Agreement.

2. The capacity of transport offered by the designated airlines in the routes specified in Annex I shall be determined by each one of them on the basis of market requirements.

3. Neither Contracting Party shall unilaterally limit the volume of traffic, frequency or regularity of service, or the aircraft type or types operated by the designated airlines of the other Contracting Party, except as may be required for customs, technical, operational or environmental reasons under uniform conditions consistent with Article 15 of the Convention.

4. Each Contracting Party shall take all appropriate action within its jurisdiction to eliminate all forms of discrimination or unfair competitive practices adversely affecting the competitive position of the airlines of the other Contracting Party.

5. Each Contracting Party shall minimise the administrative burdens of filing requirements and procedures on air transportation intermediaries and on designated airlines of the other Contracting Party and shall ensure that such requirements and procedures are applied on a non-discriminatory basis.

ARTICLE 12Pricing

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. Neither Contracting Party's aeronautical authorities shall take unilateral action to prevent the inauguration or continuation of a price proposed to be charged or charged by a designated airline of either Contracting Party otherwise than in accordance with paragraphs 3 and 4 of this Article.

3. The aeronautical authorities of each Contracting Party may require notification or filing of prices proposed to be charged to or from its territory by designated airlines of the other Contracting Party. Such notification or filing may be required no more than sixty (60) days before the proposed date of effectiveness.

4. If the aeronautical authorities of either Contracting Party believe that any price proposed to be charged or charged is inconsistent with the consideration set forth in

paragraph 1 of this Article, they shall notify the aeronautical authorities of the other Contracting Party of the reasons for their dissatisfaction as soon as possible. The aeronautical authorities of both Contracting Parties shall then endeavour to resolve the matter between them. Either Contracting Party may request consultations. These consultations shall be held not later than thirty (30) days after receipt of the request, and the Contracting Parties shall co-operate 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 after the completion of the consultations.

ARTICLE 13

Consultations

1. Either Contracting Party may, at any time, request consultations relating to this Agreement, including its Annexes. Such consultations shall begin at the earliest possible date, but not later than 60 days from the date the other Contracting Party receives the request unless otherwise agreed.

2. Any amendment to this Agreement (except the Annexes) shall become effective on the date of an Exchange of Notes indicating that all necessary internal procedures have been completed by both Contracting Parties.

3. Any amendments to Annex I or Annex II of this Agreement shall become effective upon Exchange of Notes.

ARTICLE 14Settlement 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 between themselves. If the Contracting Parties fail to reach a settlement by negotiation they may agree to refer the dispute for decision to an arbitral tribunal.

2. Arbitration shall be carried out by a tribunal composed by three arbitrators to be constituted as follows:

- (a) Within 30 days after the receipt of a request for arbitration, each Contracting Party shall name one arbitrator. Within 60 days after these two arbitrators have been named, they shall by agreement appoint a third arbitrator, who shall act as President of the Arbitral Tribunal;
- (b) If either Contracting Party fails to name an arbitrator, or if the third arbitrator is not appointed in accordance with subparagraph (a) of this paragraph, either Contracting Party may request the President of the Council of the International Civil Aviation Organisation to appoint the necessary arbitrator or arbitrators within 30 days. If the President is of the same nationality as one of the Contracting Parties, the most senior Vice President who is not disqualified on that ground shall make the appointment.

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

4. If and so long as either Contracting Party or the designated airlines of either Contracting Party fails to comply with a decision given under paragraph 2 of this Article, the other Contracting Party may limit, withhold or revoke any rights or privileges which it has granted by virtue of this Agreement to the Contracting Party in default.

ARTICLE 15

Termination

1. Either Contracting Party may, at any given time, give notice in writing to the other Contracting Party of its decision to terminate this Agreement. Such notice shall be sent simultaneously to the International Civil Aviation Organization. This Agreement shall terminate at midnight (at the place of receipt of notice to the other Contracting Party) immediately before the first anniversary of the date of receipt of the notice by the other Contracting Party, unless the notice is withdrawn by agreement before the end of this period.

2. If the Contracting Party fails to acknowledge receipt of the notice of termination, the notice shall be deemed to have been received fourteen (14) days after the date on which ICAO acknowledges receipt of the notice.

ARTICLE 16Multilateral Agreement

If a multilateral agreement, accepted by both Contracting Parties, concerning any matter covered by this Agreement enters into force, this Agreement shall be amended so as to conform with the provisions of the multilateral agreement.

ARTICLE 17Registration with ICAO

This Agreement and all amendments thereto shall be registered with the International Civil Aviation Organization.

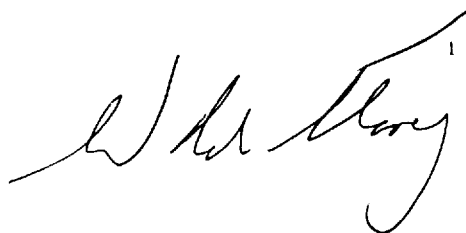
ARTICLE 18Entry into Force

This Agreement will enter into force on the date of an Exchange of Notes indicating that all necessary internal procedures have been completed by both Contracting Parties.

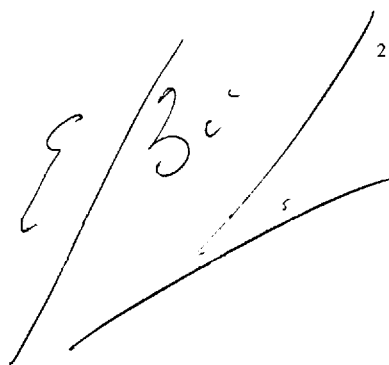
IN WITNESS WHEREOF, the undersigned, being duly authorised by their respective Governments, have signed this Agreement.

Done in duplicate, at Wellington, in English and Spanish languages, both texts being equally authentic, on 1 December 1992

For the Government
of New Zealand:

A handwritten signature in cursive script, appearing to read 'W. Rob Storey'. A small superscript '1' is located at the top right of the signature.

For the Government
of the Republic of Chile:

A handwritten signature in cursive script, appearing to read 'Edgardo Boeninger Kausel'. A small superscript '2' is located at the top right of the signature.

¹ W. Rob Storey.

² Edgardo Boeninger Kausel.

ANNEX I

ROUTE SCHEDULE

Section 1

Designated airlines of each Contracting Party shall, in accordance with the terms of their designation, be entitled to perform international air transportation on the following routes:

- (a) Routes for the airline or airlines designated by the Government of New Zealand:

From New Zealand via intermediate points in Papeete and one to be nominated to Santiago (optionally via Easter Island).

- (b) Routes for the airline or airlines designated by the Government of the Republic of Chile:

From Chile via intermediate points in Papeete and Rarotonga to Auckland and another point in New Zealand to be nominated.

Section 2

Each designated airline may, on any or all flights and at its option, operate flights in either or both directions, serve points on the routes in any order, and omit stops at any point or points outside the territory of the Contracting Party which has designated that airline, without loss of any right to carry traffic otherwise permissible under this Agreement.

Section 3

On any international segment or segments of the routes described in Section 1 above, a designated airline may perform international air transportation without any limitation as to change, at any point on the route, in type or number of aircraft operated, provided that in the outbound direction the transportation beyond such point is a continuation of the transportation from the territory of the Contracting Party which has designated the airline and, in the inbound direction, the transportation to the territory of the Contracting Party which has designated the airline is a continuation of the transportation from behind such point.

ANNEX II

CHARTER AIR SERVICE

Section 1

Airlines of one Contracting Party designated under this Annex shall, in accordance with the terms of their designation and of the Route Schedule at Annex I, be entitled to perform international air transportation to and from any point or points in the territory of the other Contracting Party, either directly or with stopovers enroute, for one-way or round-trip carriage of any traffic to or from a point or points in the territory of the Contracting Party which has designated the airline. Multi-destination charters shall also be permitted. In addition, designated airlines of one Contracting Party may operate charters with traffic originating in or destined for the territory of the other Contracting Party.

Section 2

Each designated airline performing air transportation under this Annex shall comply with such laws, regulations and rules of the Contracting Party in whose territory the traffic originates, whether on a one-way or round-trip basis, as that Contracting Party now or hereafter specifies shall be applicable to such transportation.
