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**Japan
and
Viet Nam**

**Agreement between the Government of Japan and the Government of the Socialist Republic of Viet Nam for air services (with schedule and exchange of notes).
Hanoi, 23 May 1994**

Entry into force: *8 August 1994 by notification, in accordance with article 20*

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**Japon
et
Viet Nam**

**Accord entre le Gouvernement du Japon et le Gouvernement de la République socialiste du Viet Nam relatif aux services aériens (avec liste et échange de notes).
Hanoi, 23 mai 1994**

Entrée en vigueur : *8 août 1994 par notification, conformément à l'article 20*

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[ENGLISH TEXT - TEXTE ANGLAIS]

**AGREEMENT BETWEEN
THE GOVERNMENT OF JAPAN AND
THE GOVERNMENT OF THE SOCIALIST REPUBLIC OF VIET NAM
FOR AIR SERVICES**

The Government of Japan and the Government of the Socialist Republic of Viet Nam,

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

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

Have agreed as follows:

ARTICLE 1

1. For the purpose of the present Agreement, unless the context otherwise requires:
 - (a) the term "aeronautical authorities" means, in the case of Japan, the Minister of Transport and any person or body authorized to perform any functions on civil aviation at present exercised by the said Minister or similar functions, and, in the case of the Socialist Republic of Viet Nam, the Civil Aviation Administration - Ministry of Transport and any person or body authorized to perform any functions on civil aviation at present exercised by the said Administration or similar functions;
 - (b) the term "designated airline" means an airline which one Contracting Party has designated by written notification to the other Contracting Party for the operation of air services on the routes specified in such notification, and to which the appropriate operating permission has been given by that other Contracting Party, in accordance with the provisions of Article 3 of the present Agreement;
 - (c) the term "territory" in relation to a State means the land areas and territorial waters adjacent thereto under the sovereignty of that State;

- (d) the term "air service" means any scheduled air service performed by aircraft for the public transport of passengers, cargo or mail;
- (e) the term "international air service" means an air service which passes through the air space over the territory of more than one State;
- (f) the term "airline" means any air transport enterprise offering or operating an international air service;
- (g) the term "stop for non-traffic purposes" means a landing for any purpose other than taking on or discharging passengers, cargo or mail;
- (h) the term "Schedule" means the Schedule to the present Agreement or as amended in accordance with the provisions of Article 16 of the present Agreement;
- (i) the term "specified route" means any of the routes specified in the Schedule;
- (j) the term "agreed service" means any air service operated on the specified routes.

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

ARTICLE 2

1. Each Contracting Party grants to the other Contracting Party the rights specified in the present Agreement, particularly to enable its designated airlines to establish and operate the agreed services.

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

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

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

4. Nothing in paragraph 3 of this Article shall be deemed to confer on the airlines of one Contracting Party the privilege of taking on, in the territory of the other Contracting Party, passengers, cargo or mail carried for remuneration or hire and destined for another point in the territory of that other Contracting Party.

ARTICLE 3

1. Each Contracting Party shall have the right to designate in writing to the other Contracting Party an airline or airlines for the purpose of operating the agreed services on the specified routes.

2. The agreed services on any specified route may be inaugurated immediately or at a later date at the option of the Contracting Party to which the rights are granted under Article 2 of the present Agreement, subject to the provisions of Article 10 of the present Agreement, and not before:

- (a) the Contracting Party to which the rights have been granted has designated an airline or airlines for that route, and
- (b) the Contracting Party granting the rights has given the appropriate operating permission in accordance with its laws and regulations to the airline or airlines concerned; which it shall, subject to the provisions of paragraph 3 of this Article and of paragraph 1 of Article 6, be bound to grant without delay.

3. Each of the airlines designated by either Contracting Party may be required to satisfy the aeronautical authorities of the other Contracting Party that it is qualified to fulfil the conditions prescribed by the laws and regulations normally and reasonably applied by those authorities to the operation of international air services.

ARTICLE 4

The charges which either of the Contracting Parties may impose, or permit to be imposed, on the designated airlines of the other Contracting Party for the use of airports and other facilities under its control shall be just and reasonable and not higher than would be paid for the use of such airports and facilities by the airlines of the most favoured nation or by any national airline of the first Contracting Party engaged in international air services.

ARTICLE 5

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

2. Fuel, lubricating oils, spare parts, regular equipment and aircraft stores taken on board aircraft of the designated airlines of either Contracting Party in the territory of the other Contracting Party and used in the agreed services shall, subject to the regulations of the latter Contracting Party, be exempt from customs duties, excise taxes, inspection fees and other similar duties, taxes or charges.

3. Fuel, lubricating oils, spare parts, regular equipment and aircraft stores introduced for the account of the designated airlines of either Contracting Party and stored in the territory of the other Contracting Party under customs supervisions for the purpose of supplying aircraft of those designated airlines, shall, subject to the regulations of the latter Contracting Party, be exempt from customs duties, excise taxes, inspection fees and other similar duties, taxes or charges.

ARTICLE 6

1. Each Contracting Party reserves the right to withhold or revoke the privileges specified in paragraphs 2 and 3 of Article 2 of the present Agreement in respect of an airline designated by the other Contracting Party, or to impose such conditions as it may deem necessary on the

exercise by the airline of those privileges, in any case where it is not satisfied that substantial ownership and effective control of such airline are vested in the Contracting Party designating the airline or in nationals of such Contracting Party.

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

ARTICLE 7

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

ARTICLE 8

In the operation by the designated airlines of either Contracting Party of the agreed services, the interests of the designated airlines of the other Contracting Party shall be taken into consideration so as not to affect unduly the services which the latter provide on all or part of the same routes.

ARTICLE 9

1. The agreed services provided by the designated airlines of the Contracting Parties shall bear a close relationship to the requirements of the public for such services.

2. The agreed services provided by a designated airline shall retain as their primary objective the provision at a reasonable load factor of capacity adequate to current and reasonably anticipated requirements for the carriage of passengers, cargo and mail originating from or destined for the territory of the Contracting Party which has designated the airline.

3. The designated airlines of both Contracting Parties shall have an equal entitlement in capacity. Capacity to be provided by the designated airlines of the Contracting Parties in respect of the agreed services shall be agreed through consultation between the aeronautical authorities of both Contracting Parties in accordance with the principles laid down in Articles 7,8, and paragraphs 1 and 2 of this Article.

ARTICLE 10

1. The tariffs on any agreed service shall be established at reasonable levels, due regard being paid to all relevant factors including cost of operation, reasonable profit, characteristics of services (such as standards of speed and accommodation) and the tariffs of other airlines for any part of the specified route.

2. These tariffs shall be fixed in accordance with the following provisions and the aeronautical authorities of each Contracting Party shall, in accordance with the procedures in each Contracting Party, ensure that the designated airlines conform to the tariffs thus fixed.

- (a) Agreement on the tariffs shall, wherever possible, be reached by the designated airlines concerned through the rate-fixing machinery of the International Air Transport Association. When this is not possible, tariffs in respect of each of specified routes and sectors thereof shall be agreed between the designated airlines concerned. In any case the tariffs shall be submitted for the approval of the aeronautical authorities of both Contracting Parties in accordance with the procedures applicable in each Contracting Party.
- (b) If the designated airlines concerned cannot agree on the tariffs, or if the aeronautical authorities of either Contracting Party do not approve the tariffs submitted in accordance with the provisions of paragraph 2 (a) of this Article, the aeronautical authorities of the Contracting Parties shall endeavour to reach agreement on the appropriate tariffs.
- (c) If the agreement between the aeronautical authorities under the provisions of paragraph 2 (b) of this Article cannot be reached, the dispute shall be settled in accordance with the provisions of Article 15 of the present Agreement.

- (d) No new tariff shall come into effect if the aeronautical authorities of either Contracting Party are dissatisfied with it, except under the terms of paragraph 3 of Article 15 of the present Agreement. Pending determination of the tariffs in accordance with the provisions of this Article, the tariffs already in force shall prevail.

ARTICLE 11

Each Contracting Party grants to the designated airlines of the other Contracting Party the right to transfer in accordance with the applicable laws and regulations of the first Contracting Party, in convertible currencies, at the prevailing rate of exchange in the official market, at the time of remittance, the excess of receipts over expenditure earned by those airlines in the territory of the first Contracting Party in connection with the operation of the agreed services, and to establish and maintain, for the operation of such agreed services, deposit accounts in foreign currencies and in convertible domestic currency in accordance with the applicable laws and regulations of the first Contracting Party.

ARTICLE 12

The aeronautical authorities of either Contracting Party shall supply to the aeronautical authorities of the other Contracting Party, at their request, such information and statistics relating to traffic carried on the agreed services by the designated airlines of the first Contracting Party to and from the territory of the other Contracting Party as may normally be prepared and submitted by the designated airlines to their national aeronautical authorities for publication. Any additional statistical traffic data which the aeronautical authorities of one Contracting Party may desire from the aeronautical authorities of the other Contracting Party shall, upon request, be a subject of mutual discussion between the aeronautical authorities of the two Contracting Parties.

ARTICLE 13

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 the present Agreement. Without

prejudice to 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, done at Tokyo on 14 September 1963, the Convention for the Suppression of Unlawful Seizure of Aircraft, done at The Hague on 16 December 1970 and the Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation, done at Montreal on 23 September 1971.

2. The Contracting Parties shall provide upon request all necessary assistance in accordance with their respective laws and regulations 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 should, 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 should require that their airlines and the operators of airports in their territory act in conformity with such aviation security provisions.

4. Each Contracting Party agrees that such airlines 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 should take appropriate measures 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 sympathetic 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.

ARTICLE 14

It is the intention of both Contracting Parties that there should be regular and frequent consultation between the aeronautical authorities of the Contracting Parties to ensure close collaboration in all matters affecting the fulfilment of the present Agreement.

ARTICLE 15

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

2. If the Contracting Parties fail to reach a settlement by negotiation, the dispute may, at the request of either Contracting Party, be submitted for decision to a tribunal of three arbitrators, one to be named by each Contracting Party and the third to be agreed upon by the two arbitrators so chosen, provided that such third arbitrator shall not be a national of either Contracting Party. Each of the Contracting Parties shall designate an arbitrator within a period of sixty days from the date of receipt by either Contracting Party from the other Contracting Party of a diplomatic note requesting arbitration of the dispute and the third arbitrator shall be agreed upon within a further period of sixty days. If either of the Contracting Parties fails to designate its own arbitrator within the period of sixty days or if the third arbitrator is not agreed upon within the period indicated, the President of the Council of the International Civil Aviation Organization may be requested by either Contracting Party to appoint an arbitrator or arbitrators.

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

ARTICLE 16

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

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

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

ARTICLE 17

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

ARTICLE 18

Either of the Contracting Parties may at any time notify the other of its intention to terminate the present Agreement. A copy of the notice shall be sent simultaneously to the International Civil Aviation Organization. If such notice is given, the present Agreement shall terminate one year after the date of receipt by the other Contracting Party of the notice to terminate, unless by agreement between the Contracting Parties the notice under reference is withdrawn before the expiration of that period. If the other Contracting Party fails to acknowledge receipt, notice shall be deemed to have been received fourteen days after the date of receipt by the International Civil Aviation Organization of its copy.

ARTICLE 19

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

ARTICLE 20

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

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

DONE in duplicate, in the English language, at Hanoi, this twenty-third day of May, 1994.

FOR THE GOVERNMENT
OF JAPAN:

Akihiko Furuya

FOR THE GOVERNMENT
OF THE SOCIALIST REPUBLIC
OF VIET NAM:

N. H. Nhi

SCHEDULE

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

Osaka and/or one other point in Japan to be agreed upon later - one intermediate point in Asia to be agreed upon later - Ho Chi Minh City and/or one other point in the Socialist Republic of Viet Nam to be agreed upon later.

Note 1: The designated airline or airlines of Japan may serve Ho Chi Minh City and/or one other point in the Socialist Republic of Viet Nam to be agreed upon later only after the Kansai International Airport is opened to international air services.

Note 2: The designated airline or airlines of Japan may exercise fifth freedom traffic rights between "one intermediate point in Asia to be agreed upon later" and "Ho Chi Minh City and/or one other point in the Socialist Republic of Viet Nam to be agreed upon later" by agreement between the aeronautical authorities of both Contracting Parties.

2. Routes to be operated in both directions by the designated airline or airlines of the Socialist Republic of Viet Nam:

Ho Chi Minh City and/or one other point in the Socialist Republic of Viet Nam to be agreed upon later - one intermediate point in Asia to be agreed upon later - Osaka and/or one other point in Japan to be agreed upon later.

Note 1: The designated airline or airlines of the Socialist Republic of Viet Nam may serve Osaka and/or one other point in Japan to be agreed upon later only after the Kansai International Airport is opened to international air services.

Note 2: The designated airline or airlines of the Socialist Republic of Viet Nam may exercise fifth freedom traffic rights between

"one intermediate point in Asia to be agreed upon later" and "Osaka and/or one other point in Japan to be agreed upon later" by agreement between the aeronautical authorities of both Contracting Parties.

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