

No. 49670*

**Republic of Korea
and
Brunei Darussalam**

Agreement between the Government of the Republic of Korea and the Government of His Majesty the Sultan and Yang Di-Pertuan of Brunei Darussalam for air services between and beyond their respective territories (with annex). Seoul, 5 August 1992

Entry into force: *30 July 2003 by notification, in accordance with article 19*

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**République de Corée
et
Brunéi Darussalam**

Accord entre le Gouvernement de la République de Corée et le Gouvernement de Sa Majesté le Sultan et Yang Di-Pertuan de Brunei Darussalam relatif aux services aériens entre et au-delà de leurs territoires respectifs (avec annexe). Séoul, 5 août 1992

Entrée en vigueur : *30 juillet 2003 par notification, conformément à l'article 19*

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[ENGLISH TEXT – TEXTE ANGLAIS]

AGREEMENT BETWEEN
THE GOVERNMENT OF THE REPUBLIC OF KOREA AND
THE GOVERNMENT OF HIS MAJESTY THE SULTAN AND YANG DI-PERTUAN OF BRUNEI DARUSSALAM
FOR AIR SERVICES BETWEEN AND BEYOND THEIR RESPECTIVE TERRITORIES

The Government of the Republic of Korea and the Government of His Majesty the Sultan and Yang Di-Pertuan of Brunei Darussalam (herein-after 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, and

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

Have agreed as follows:

Article 1
Definitions

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

- (a) the term "the 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 Convention under Articles 90 and 94 thereof so far as these annexes and amendments have been effective for both Contracting Parties;
- (b) the term "aeronautical authorities" means, in the case of the Republic of Korea, the Minister of Transportation and in the case of Brunei Darussalam, the Minister of Communications or in both cases any other person or body authorized to perform the functions exercised at present by the said authorities;

- (c) the term "designated airline" means any 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 the Annex of this Agreement, and to which the appropriate operating permission has been given by that other Contracting Party, in accordance with Article 3 of this Agreement.
- (d) the term "territory" in relation to a State has the meaning assigned to it in Article 2 of the Convention;
- (e) the terms "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) the term "capacity" in relation to an aircraft means the payload of that aircraft available on a route or section of a route;
- (g) the term "capacity" in relation to an agreed service means the capacity of the aircraft used on such service multiplied by the frequency operated by such aircraft over a given period and route or section of a route;
- (h) the term "carriage of traffic" means carriage of passengers, cargo and mail; and
- (i) the term "Annex" means the Annex to this Agreement or as amended in accordance with the provisions of Article 16 of this Agreement.

The Annex forms an integral part of this Agreement, and all references to the Agreement shall include references to the Annex except where otherwise explicitly provided.

Article 2
Grant of Rights

1. Each Contracting Party grants to the other Contracting Party the rights specified in this Agreement to enable its designated airlines to establish and operate scheduled international air services on the routes specified in the Annex. Such services and routes are hereinafter called "the agreed services" and "the specified routes" respectively.

2. Subject to the provisions of this Agreement, the designated airlines of each Contracting Party shall enjoy, while operating the agreed services on the specified routes, the following rights:

- (a) to fly without landing across the territory of the other Contracting Party;
- (b) to make stops in the territory of the other Contracting Party for non-traffic purposes; and
- (c) to take up and put down passengers, cargo and mail at any point on the specified routes subject to the provisions contained in the Annex.

3. Nothing in paragraph 2 of this Article shall be deemed to confer on the designated airlines of one Contracting Party the rights of taking up, 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
Designation of Airlines

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

2. On receipt of such designations, the other Contracting Party shall subject to the provisions of paragraphs 3 and 4 of this Article, grant without delay to the designated airlines the appropriate operating authorization.

3. The aeronautical authorities of one Contracting Party may require the designated airlines of the other Contracting Party to satisfy them that they are qualified to fulfil the conditions prescribed under the laws and regulations normally and reasonably 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 to accept the designation of an airline or airlines, or to refuse to grant the operating authorization referred to in paragraph 2 of this Article, or to impose such conditions as it may deem necessary on the exercise by the designated airlines 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 those airlines are vested in the Contracting Party designating the airlines or in its nationals.

5. The airlines designated and authorized in accordance with the provisions of paragraphs 1 and 2 of this Article may begin to operate the agreed services, provided that the capacity is regulated under Article 9 of this Agreement and that tariffs established in accordance with the provisions of Article 10 of this Agreement are in force in respect of those services.

Article 4
Revocation and Suspension of Rights.

1. Each Contracting Party shall have the right to revoke an operating authorization or to suspend the exercise of the rights specified in Article 2 of this Agreement by the airlines designated by the other Contracting Party, or to impose such conditions 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 those airlines are vested in the Contracting Party designating the airlines or in nationals of such Contracting Party; or
- (b) in case of failure by those airlines to comply with the laws or regulations of the Contracting Party granting those rights; or
- (c) in case the airlines otherwise fail to comply with the provisions of 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 by each Contracting Party only after consultation with the other Contracting Party.

Article 5
Customs Duties and other Similar Charges

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 similar charges on arriving in the territory of the other Contracting Party in accordance with the provisions of the laws and regulations in force of each Contracting Party, provided such equipment and supplies remain on board the aircraft up to such time as they are reexported.

2. There shall also be exempt from the same duties, fees and charges, in accordance with the provisions of the laws and regulations in force of each Contracting Party, with the exception of charges corresponding to the service performed:

- (a) aircraft stores taken on board in the territory of either Contracting Party, within the limits fixed by the competent authorities of the 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 airlines of the other Contracting Party;

- (c) fuel and lubricants destined to supply aircraft operated on the agreed services by the designated airlines of the other Contracting Party, even when those 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 sub-paragraphs (a), (b) and (c) of this paragraph 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 the said authorities up to such time as they are reexported or otherwise disposed of in accordance with customs regulations.

Article 6 Applicability of Laws and Regulations

1. The laws and regulations of one Contracting Party governing entry into or departure from its territory of an aircraft engaged in international air navigation or flights of such aircraft over that territory shall be applied to the aircraft of the designated airlines of the other Contracting Party and shall be complied with by such aircraft upon entering into or departing from, and while within the territory of the first Contracting Party.

2. The laws and regulations of one Contracting Party governing entry into, stay in, transit through or departure from its territory of passengers, crew, cargo and mail, such as those concerning the formalities of entry and exit, of emigration and immigration, customs, currency, medical and quarantine measures, shall be applied to the passengers, crew, cargo or mail carried by the aircraft of the designated airlines of the other Contracting Party while within the territory of the first Contracting Party.

Article 7
Establishment of Airline Representative Offices

The designated airlines of each Contracting Party shall have the right to establish representative offices in the territory of the other Contracting Party. Those representative offices may include commercial operational and technical staff.

The representative offices, representatives and staff shall be established in accordance with the laws and regulations in force in the territory of that other Contracting Party.

Article 8
Recognition of Certificates and Licenses

1. Certificates of airworthiness, certificates of competency and licenses issued or rendered valid by either Contracting Party shall, during the period of their validity, be recognized as valid by the other Contracting Party.

2. Each Contracting Party reserves the rights, however, not to recognize as valid, for the purpose of flights over its own territory, certificates of competency and licenses granted to its own nationals or rendered valid for them by the other Contracting Party or by any other State.

Article 9
Capacity Regulations

1. There shall be fair and equal opportunity for the designated airlines of both Contracting Parties to operate the agreed services on the specified routes.
2. In operating the agreed services, the designated airlines of each Contracting Party shall take into account the interests of the designated airlines of the other Contracting Party so as not to affect unduly the services which the latter provides on all or part of the same routes.
3. On any specified route the capacity provided by the designated airlines of one Contracting Party together with the capacity provided by the designated airlines of the other Contracting Party shall be maintained in reasonable relationship to the requirements of the public for air transport on that route.
4. The agreed services provided by the designated airlines of each Contracting Party shall have as their primary objective the provision, at a reasonable load factor, of capacity adequate to the current and foreseeable traffic demands to and from the territory of the Contracting Party designating the airlines. The carriage of traffic embarked or

disembarked in the territory of the other Contracting Party to and from points on the specified routes in the territories of States other than that designating the airlines shall be of supplementary character. The right of such airlines to carry traffic between points of the specified routes located in the territory of the other Contracting Party and points in third countries shall be exercised in the interests of an orderly development of international air transport in such a way that the capacity is related to:

- (a) the traffic demand to and from the territory of the Contracting Party designating the airlines;
- (b) the traffic demand existing in the areas through which the agreed services pass, taking account of local and regional air services; and
- (c) the requirements of through airline operation.

Article 10 Tariffs

1. For the purpose of the following paragraphs, the term "tariffs" means the prices to be paid for the carriage of passengers and cargo and the conditions under which those prices apply, including prices and conditions for agency and other auxiliary services but excluding remuneration and conditions for the carriage of mail.

2. The tariffs on any agreed services 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 routes.

3. The tariffs shall be fixed in accordance with the following provisions:

- (a) The tariffs referred to in paragraph 2 of this Article together with the rates of agency commission used in conjunction with them shall, if possible, be agreed in respect of each of the specified routes and sectors thereof between the designated airlines concerned, and such agreement shall, where possible, be reached through the rate-fixing machinery of the International Air Transport Association;
- (b) 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;
- (c) 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 (b) 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 (b), the aeronautical authorities may agree that the period within which any disapproval must be notified shall be less than thirty (30) days.
- (d) If a tariff cannot be agreed upon in accordance with the provisions of paragraph 3 (a) of this Article or if during the period applicable in accordance with paragraph 3 (c) of this

Article, the aeronautical authorities of one Contracting Party give the aeronautical authorities of the other Contracting Party notice of their disapproval of a tariff agreed in accordance with the provisions of paragraph 3 (c) of this Article, the aeronautical authorities of the two Contracting Parties shall try to determine the tariff by mutual agreement.

- (e) If the aeronautical authorities cannot agree on any tariff submitted to them under paragraph 3 (b) of this Article, or on the determination of any tariff under paragraph 3 (d) of this Article, the dispute shall be settled in accordance with the provisions of Article 14 of this Agreement.
- (f) 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 11
Transfer of Revenues

Each Contracting Party shall grant to the designated airlines of the other Contracting Party the right of transfer of excess of receipts over expenditure earned by the airlines in the territory of the first Contracting Party in connection with the carriage of passengers, mail and cargo, in any of freely convertible currencies in accordance with the foreign exchange regulations in force.

**Article 12
Provision of Statistics**

The aeronautical authorities of one 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 by the designated airlines of the first Contracting Party. Such statements shall include all information required to determine the amount of traffic carried by those airlines on the agreed services and the points of embarkation and disembarkation of such traffic.

**Article 13
Consultation**

It is the intention of both Contracting Parties that there shall be frequent consultations between the aeronautical authorities of the Contracting Parties to ensure close collaboration in all matters affecting the fulfilment of this Agreement.

**Article 14
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. If they do not so agree, the dispute may at the request of either Contracting

Party be submitted 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 so nominated. 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 channel requesting arbitration of the dispute and the third arbitrator shall be appointed within a further period of sixty (60) days. If either Contracting Party 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 at the request of either Contracting Party appoint an arbitrator or arbitrators as the case requires. In such case, 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, including any interim recommendation made under paragraph 2 of this Article.

4. The arbitration proceedings shall be heard at a location to be jointly determined by the Contracting Parties. The expenses of each national arbitrators shall be borne by the respective Contracting Party. All other expenses of the arbitral tribunal, including the fees and expenses of the third arbitrator, shall be shared equally by the Contracting Parties.

5. If and so long as either Contracting Party or a designated airline of either Contracting Party fails to comply with the requirements of paragraph 3 of this Article, the other Contracting Party may limit or revoke any right which it has granted by virtue of this Agreement.

Article 15
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, the Convention for the Suppression of Unlawful Seizure of Aircraft, signed at the Hague on 16 December 1970, and the Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation, signed at Montreal on 23 September 1971, or any other convention on aviation security to which both Contracting Parties shall become members.

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 to the extent that such security provisions are applicable to the Contracting Parties; and 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 territories, and the operators of airports in their territories, 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 of this Article required by the other Contracting Party for entry into, departure from, or while within, the territory of the 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 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 16
Amendment

1. If either Contracting Party considers it desirable to amend any provisions of this Agreement, it may at any time request consultation

with the other Contracting Party. Such consultation may be through discussions or by correspondence, and shall begin within a period of sixty (60) days from the date of receipt of the request. Any amendments so agreed shall come into force when they have been confirmed by an exchange of diplomatic notes.

2. Amendments of the Annex may be made by direct agreement between the aeronautical authorities of the Contracting Parties and confirmed by an exchange of diplomatic notes.

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

Article 17 Termination

Either Contracting Party may at any time give notice to the other Contracting Party of its decision to terminate this Agreement. Such notice shall be simultaneously communicated to the International Civil Aviation Organization. In such case this Agreement shall be terminated 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 acknowledgement 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 18

Article 18
Registration

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

Article 19
Entry into Force

This Agreement shall enter into force on the date when both Contracting Parties, through diplomatic channels, notify each other that they have completed internal legal procedures necessary for its entry into force.


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

Done at Seoul on this *5th* day of August 1992 in duplicate in the English language. An official translation of the Agreement into Korean and Malay languages will be exchanged through diplomatic channels.

FOR THE GOVERNMENT OF
THE REPUBLIC OF KOREA



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



A N N E X

SECTION A

Routes to be operated in both directions by the designated airline or airlines of the Republic of Korea:

Points of Origin: Points in the Republic of Korea

Intermediate Points: Points to be specified later on

Points of Destination: Points in Brunei Darussalam

Beyond Points: Points to be specified later on

SECTION B

Routes to be operated in both directions by the designated airline or airlines of Brunei Darussalam:

Points of Origin: Points in Brunei Darussalam

Intermediate Points: Points to be specified later on

Points of Destination: Points in the Republic of Korea

Beyond Points: Points to be specified later on

Notes:

1. The designated airlines of both Contracting Parties may, on all or any flights, omit calling at any of the above points provided that the agreed services on the route begin at the points of origin in the respective countries.
2. The intermediate points, beyond points and the exercise of 5th freedom traffic rights (both to and from intermediate points and to and from points beyond) shall be subject to an agreement between the two aeronautical authorities.