

AIR SERVICES AGREEMENT BETWEEN THE GOVERNMENT OF THE GRAND DUCHY OF LUXEMBOURG AND THE GOVERNMENT OF THE REPUBLIC OF THE PHILIPPINES

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THE GOVERNMENT OF THE GRAND DUCHY OF LUXEMBOURG AND THE GOVERNMENT OF THE REPUBLIC OF THE PHILIPPINES, hereinafter described as the Contracting Parties;

BEING PARTIES to the Convention on International Civil Aviation and the International Air Services Transit Agreement, both opened for signature at Chicago on the 7th day of December 1944;

DESIRING to conclude an agreement for the purpose of establishing and operating air services between the territories of the Grand Duchy of Luxembourg and the Republic of the Philippines; and

DESIRING FURTHER to ensure the highest degree of safety and security in international air transport,

AGREE AS FOLLOWS:

ARTICLE I

DEFINITIONS

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

(a) the term "aeronautical authorities" means in the case of the Grand Duchy of Luxembourg, the Minister responsible for the subject of Civil Aviation and/or any person or body authorized to perform any functions exercised at present by the said authority, and, in the case of the Republic of the Philippines, the Civil Aeronautics Board and/or any person or body authorized to perform any functions exercised at present by the said authority;

(b) the term "designated airline" means an airline or airlines which one Contracting Party shall have designated, by written notification to the other Contracting Party, in accordance with Article III of the present Agreement, for operation of air services on the routes specified in the Annex thereto;

(c) the term "territory of the Contracting Party" means the territory of the Grand Duchy of Luxembourg and the territory of the Republic of the Philippines, respectively, as defined in the Constitution and pertinent laws of each State. In the case of the Republic of the Philippines, its national territory comprises the Philippine archipelago, with all the islands and waters embraced therein, and all other territories over which the Philippines has sovereignty or jurisdiction, consisting of its terrestrial, fluvial, and aerial domains, including its territorial sea, the seabed, the subsoil, the insular shelves, and other submarine areas. The waters around, between, and connecting the islands of the archipelago, regardless of their breadth and dimensions, form part of the internal waters of the Philippines;

(d) 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 Article 90 and 94 thereof, so far as those Annexes and amendments have been adopted or ratified by both Contracting Parties;

- (e) the term "Agreement" means this Agreement, its Annex, and any amendments thereto;
- (f) the term "air services", "international air services", "airline" and "stop for non-traffic purposes" have the meaning respectively assigned to them in Article 96 of the Convention;
- (g) 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;
- (h) the term "specified route" means a route specified in the Annex to this Agreement; and
- (i) the term "Annex" means the Annex to this Agreement or as amended in accordance with the provisions of Article XIV of this Agreement. The Annex forms an integral part of this Agreement and all references to the Agreement shall include the Annex except where explicitly agreed otherwise.

ARTICLE II

GRANT OF RIGHTS

1. Each Contracting Party grants to the other Contracting Party the rights specified in the present Agreement for the purpose of establishing and operating air services specified in the Annex to this Agreement.
2. Subject to the provisions of the present Agreement, the airline designated by each Contracting Party shall enjoy the following privileges:
 - (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 at the points specified for that route in the Annex for the purpose of putting down and taking on international traffic in passengers, cargo and mail, separately or in combination, coming from or destined for other points so specified.
3. Nothing in paragraph (2) of this Article shall be deemed to confer on the airlines of one Contracting Party the privilege 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 III

PRINCIPLES GOVERNING THE DESIGNATIONS OF AIRLINES

AND THE REVOCATION OR SUSPENSION

OF OPERATING AUTHORIZATION

1. Each Contracting Party shall have the right to designate in writing to the other Contracting Party two (2) or more airlines for the purpose of operating the agreed services on the specified routes, and may withdraw or alter such designations.
2. On receipt of the designation, the other Contracting Party shall, subject to the provisions of paragraphs (3) and (4) of this Article, without unnecessary delay, grant to the airline designated the appropriate operating authorization.
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 fulfill the conditions prescribed under the laws and regulations normally and reasonably applied by them in a manner not inconsistent with the provisions of the Convention to the operation of international commercial air services.

4. Each Contracting Party shall have the right to refuse to accept the designation of an airline and withhold or revoke the grant to an airline of the operating authorization specified in paragraph (2) of this Article or to impose such conditions as it may deem necessary in the exercise by an airline of the operating authorization in any case where it is not satisfied that the airline:

- (a) is substantially owned and under the effective control of the Contracting Party designating the said airline or of the nationals of the Contracting Party designating the airline;
- (b) is incorporated and has its principal place of business in the territory of the other Contracting Party; and
- (c) holds a current Air Operator's Certificate issued by the aeronautical authority of the other Contracting Party.

5. Subject to the provisions of Article VII of the present Agreement, and to the statutory powers of the aeronautical authorities of the Contracting Parties, at any time after the provisions of paragraphs (1), (2) and (3) of this Article have been complied with, an airline so designated and authorized may begin to operate the agreed services.

6. Each Contracting Party shall have the right to suspend the exercise by an airline of the operating author(2) of this Article or to impose such conditions as it may deem necessary on the exercise by an airline of the operating authorization in any case where the airline(s) fails to comply with the laws and regulations of the Contracting Party granting the operating authorization 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 laws or regulations, this right shall be exercised only after consultation with the other Contracting Party.

ARTICLE IV

EXEMPTION FROM CUSTOMS DUTIES AND OTHER CHARGES

1. Aircraft operated on international services by the designated airline of either Contracting Party, as well as their regular equipment, 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 exempt from the 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, and for use on board aircraft engaged in an international air service of the other Contracting Party;
- (b) spare parts entered into the territory of either Contracting Party for the maintenance or repair of aircraft used on international air services by the designated, airline of the other Contracting Party; and
- (c) fuel and lubricants destined to supply aircraft operated on international air services by the designated airline 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 sub-paragraphs (a), (b) and (c) may be required to be kept under customs supervision or control.

3. The exemptions provided by paragraph (2) of this Article shall also be available where the airline of one Contracting Party has contracted with another airline, which similarly enjoys such exemptions from the other Contracting Party, for loan or transfer in the territory of the other Contracting Party of the items specified in paragraph (2) of this Article.

ARTICLE V

MAINTENANCE OF TECHNICAL AND ADMINISTRATIVE PERSONNEL

1. Each designated airline is authorized to maintain in the territory of the other Contracting Party its own technical and administrative personnel, without prejudice to the national regulations of the respective Contracting Parties.

ARTICLE VI

COMMERCIAL OPPORTUNITIES AND REMITTANCE OF EARNINGS

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 undertakes to grant the other Party free transfer, in any freely convertible currency at the official rate of exchange at the time of transfer or remittance, of the excess of the receipts over expenditure and taxes achieved on its territory in connection with the carriage of passengers, baggage, mail shipments and freight by the designated airline of the other Contracting Party. Whenever the payment system between the Contracting Parties is governed by a special agreement, the said agreement shall apply.

ARTICLE VII

APPLICABILITY OF LAWS AND REGULATIONS

1. The laws and regulations of one Contracting Party relating to the admission to, remaining in or departure from its territory of aircraft engaged in international air services, or to the operation and navigation of such aircraft while within its territory, shall be applied to the aircraft of the airline designated by the other Contracting Party, and shall be complied with by such aircraft upon entering or departing from or while within the territory of the first Contracting Party.

2. The laws and regulations of one Contracting Party as to the admission to, remaining in or departure from its territory of passengers, crew or cargo of aircraft, such as regulations relating to entry, clearance, immigration, passports, customs and quarantine shall be complied with by or on behalf of such passengers, crew or cargo of the airline designated by the other Contracting Party upon entrance into or departure from, or while within the territory of the first party.

3. Neither of the Contracting Parties shall give preference to its own or any other airline over an airline to 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 VIII

PRINCIPLES GOVERNING THE OPERATION

OF THE AGREED SERVICES

In order to develop the air transport services along the routes or sections thereof in the schedule made part of the Annex and for the purpose of achieving and maintaining equilibrium between the capacity of the specified air services and requirements of the public for air transportation, as determined by the aeronautical authorities of the Contracting Parties, the following principles shall apply:

- (1) The designated airline of each Contracting Party shall enjoy fair and equal opportunity for the operation of air services for the carriage of traffic between the territories of the two parties;
- (2) In the operation by the designated airline of either Contracting Party of the specified air services, the interests of the airline of the other Contracting Party shall be taken into consideration so as not to affect unduly the services which the latter provides on all or part of the same route;
- (3) The agreed services provided by the designated airline of the Contracting Parties shall bear close relationship to the requirements of the public for transportation on the specific routes and shall have as their primary objective the provision, at a reasonable load factor, of capacity adequate to carry the current and reasonably anticipated requirements of passengers and cargo including mail between the territories of the Contracting Parties. Provisions for the carriage of passengers, baggage and cargo including mail both taken on board and discharged at points on the specified routes in the territories of States other than that designating the airline 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) the requirements of through airline operations;
 - (c) the air transport needs of the area through which the airline passes; and
 - (d) the adequacy of other air transport services established by airlines of the States concerned between their respective territories.

ARTICLE IX

TARIFFS

1. The tariffs to be charged by the airline of one Contracting Party for carriage of traffic to or from the territory of the other Contracting Party shall be established at reasonable levels, due regard being paid to all relevant factors including cost of operation, reasonable profit, and the tariffs of other airlines.
2. The tariffs referred to in paragraph (1) of this Article shall, if possible, be agreed to by the designated airlines of both Contracting Parties, in consultation with other airlines operating over the whole or part of the route, and such agreement shall, where possible, be reached through the International Air Transport Association.
3. The tariffs so agreed shall be submitted for the approval of the aeronautical authorities of the Contracting

Parties at least thirty (30) days before the proposed date of their introduction; in special cases, this time limit may be reduced, subject to the agreement of the said authorities.

4. If the designated airline(s) cannot agree on any of these tariffs, or if for some other reason a tariff cannot be fixed in accordance with the provisions of paragraph (2) of this Article, or if during the first fifteen (15) days of the thirty (30) day period referred to in paragraph (3) of this Article one Contracting Party gives the other Contracting Party notice of its dissatisfaction with any tariff agreed in accordance with the provisions of paragraph (3) of this Article, the aeronautical authorities of the Contracting Parties shall try to determine the tariff by agreement between themselves.

5. If the aeronautical authorities cannot agree on the approval of any tariff submitted to them under paragraph (3) of this Article and on the determination of any tariff under paragraph (4), the dispute shall be settled in accordance with the provisions of Article XIII of the present Agreement.

6. No tariff shall come into force if the aeronautical authorities of either Contracting Party have not approved it.

7. The tariffs established in accordance with the provisions of this Article shall remain in force until new tariffs have been established in accordance with the provisions of this Article.

ARTICLE X

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.

2. Without limiting the generality of their rights and obligations under international law, the Contracting Parties shall in particular act in conformity with the provisions of the Convention on Offenses and Certain Other Acts Committed on Board Aircraft, signed at Tokyo on September 14, 1963, the Convention for the Suppression of Unlawful Seizure of Aircraft/ signed at The Hague on December 16, 1970, and the Convention for the Suppression of Unlawful Acts Against the Safety of Civil Aviation, signed at Montreal on September 23, 1971, and other multilateral agreements governing aviation security binding upon both Contracting Parties.

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

4. The Contracting Parties shall act in conformity with the aviation security provisions and technical requirements 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 and technical requirements are applicable to the Contracting Parties; they shall require that operators of aircraft of their registry, 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.

5. Each Contracting Party agrees that its operators of aircraft may be required to observe the aviation security provisions and technical requirements referred to in paragraph (4) above required by the other Contracting Party for entry into, departure from, or while within the territory of that other Contracting Party. Each 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 and loading.

6. Each Contracting Party shall give sympathetic consideration to any request from the other Contracting Party for reasonable special security measures to meet a particular threat.

7. Each Contracting Party shall also give sympathetic consideration to a request from the other Contracting Party to enter into reciprocal administrative arrangements whereby the aeronautical authorities of one Contracting Party could make in the territory of the other Contracting Party their own assessment of the security measures being carried out by aircraft operators in respect of flights destined to the territory of the first Contracting Party.

8. 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 Party shall assist each other by facilitating communications and other appropriate measures intended to terminate rapidly and safely such incident or threat thereof.

9. When a Contracting Party has reasonable grounds to believe that the other Contracting Party has departed from the provisions of this Article, the first Contracting Party may request immediate consultations with the other Contracting Party.

ARTICLE XI

RECOGNITION OF CERTIFICATES AND LICENSES

1. Certificates of airworthiness, certificates of competency and licenses issued or rendered valid by one Contracting Party and still in force shall be recognized as valid by the other Contracting Party for the purpose of operating the routes and services described in the Annex to this Agreement, provided that such certificates or licenses were issued or validated pursuant to, and in conformity with, the standards established under the Convention. Each Contracting Party reserves the right to refuse to recognize for the purpose of flight above its own territory, certificates of competency and licenses granted to its own nationals by another state.

2. Each Contracting Party may request consultations concerning the safety standards maintained by the other Contracting Party relating to the aeronautical facilities, aircrew, aircraft, and operation of 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 necessity to conform with these minimum standards, and the other Contracting Party shall take appropriate corrective action.

ARTICLE XII

CONSULTATIONS

1. In the spirit of close co-operation, 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 the present Agreement, and the Annex thereto, and shall also consult when necessary to provide for the modification thereof.

2. Either Contracting Party may request, through diplomatic channels, such consultation, which shall begin within a period of sixty (60) days from the date the other Contracting Party receives a written request, unless the Contracting Parties agree to an extension of this period.

ARTICLE XIII

SETTLEMENT OF DISPUTES

1. If any dispute arises between the Contracting Parties relating to the interpretation or application of the present Agreement and its Annex, the Contracting Parties shall in the first place endeavor to settle it by negotiation between themselves.
2. If the Contracting Parties fail to reach a settlement by negotiation, they may agree to refer the dispute 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 diplomatic channels, requesting arbitration of the dispute by such a tribunal 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 be requested by either Contracting Party to appoint an arbitrator who shall be a national of a third State having diplomatic relations with both Contracting Parties and who shall act as President of the arbitral tribunal.
3. The Contracting Parties shall equally share the remuneration necessary for the arbitrators as well as other expenses due to the activity of the tribunal.
4. The Contracting Parties undertake to comply with any decision given under paragraph (2) of this Article.
5. If and so long as either Contracting Party or a designated airline of either Contracting Party fails to comply with the decision given under paragraph (2) of this Article, the other Contracting Party may limit, withhold or revoke any rights which it has granted by virtue of the present Agreement to the Contracting Party in default or to the designated airline or airlines of the Contracting Party.

ARTICLE XIV

AMENDMENT

If either of the Contracting Parties considers it desirable to modify the terms of the present Agreement including its Annexes, it may request, through diplomatic channels, consultation with the other Contracting Party. Such consultation shall begin within a period of sixty (60) days from the date of the request. Any modifications so agreed shall come into force when they have been confirmed by an exchange of diplomatic notes.

ARTICLE XV

MULTILATERAL CONVENTION

In the event of the conclusion of a multilateral convention or agreement concerning air transport to which both Contracting Parties adhere, the present Agreement shall be modified to conform with the provisions of such convention or agreement.

ARTICLE XVI

REGISTRATION WITH THE INTERNATIONAL

CIVIL AVIATION ORGANIZATION

The present Agreement and any modifications thereto in accordance with Article XIV above shall be registered with the International Civil Aviation Organization.

ARTICLE XVII

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 the present Agreement; such notice shall be simultaneously communicated to the International Civil Aviation Organization. In such case 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 acknowledgement of receipt by the other Contracting Party, notice shall be deemed to have been received fourteen (14) days after the receipt of the notice by the International Civil Aviation Organization.

ARTICLE XVIII

ENTRY INTO FORCE

The present Agreement shall enter into force and effect on the date of the exchange of written notification by the Contracting Parties, through diplomatic channels, indicating that the respective constitutional requirements of each Contracting Party have been complied with.

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

DONE IN DUPLICATE in the English language in the Grand Duchy of Luxembourg on this 21st day of November 2001, both texts being equally authentic.

FOR THE GOVERNMENT OF THE

FOR THE GOVERNMENT OF THE

REPUBLIC OF THE PHILIPPINES

GRAND DUCHY OF LUXEMBOURG

(Sgd.) H.E. CLEMENCIO F. MONTESA

(Sgd.) H.E. LYDIE POLFER

Ambassador Extraordinary

Minister of foreign Affairs

and Plenipotentiary

ANNEX

ROUTE SCHEDULE

Routes to be operated by the designated airline or airlines of both Contracting Parties:

1. East-bound Sectors:

Luxembourg - Intermediate points - Points in the - Points beyond Philippines

2 . West-bound Sectors:

Points in the - Intermediate points - Luxembourg - Points beyond

Philippines

Note:

The designated airline or airlines of both Contracting Parties may on any or all flights omit calling at any points on the routes specified above, and may serve them in any order, provided that the agreed services on these routes begin at Luxembourg or the Philippines.

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