

No. 27819

**AUSTRIA
and
INDIA**

**Agreement relating to air services (with annex). Signed at
New Delhi on 26 October 1989**

Authentic texts: German, Hindi and English.

Registered by Austria on 19 December 1990.

**AUSTRALIE
et
INDE**

**Accord relatif aux transports aériens (avec annexe). Signé à
New Delhi le 26 octobre 1989**

Textes authentiques : allemand, hindi et anglais.

Enregistré par l'Autriche le 19 décembre 1990.

AGREEMENT¹ BETWEEN THE AUSTRIAN FEDERAL GOVERNMENT AND THE GOVERNMENT OF INDIA RELATING TO AIR SERVICES

The Austrian Federal Government and the Government of India, hereinafter described as the "Contracting Parties",

BEING parties to the Convention on International Civil Aviation (hereinafter referred to as the "Convention") opened for signature at Chicago on the 7th December, 1944,²

AND DESIRING to conclude an Agreement for the purpose of establishing air services between their respective territories,

HAVE AGREED as follows:

Article 1

Definitions

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

- (a) the term "Contracting Party" means the Austrian Federal Government on the one hand and the Government of India on the other;
- (b) 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 Annex or Convention under Articles 90 and 94 thereof insofar as these have become effective for both Contracting Parties;
- (c) the term "aeronautical authorities" means, in the case of the Austrian Federal Government, the Federal Minister for Public Economy and Transport and, in the case of the Government of India, the Director General of Civil Aviation, or any other authority legally empowered to perform the functions exercised now by the said authorities;
- (d) the term "designated airline" means an airline which has been designated and authorized in accordance with Article 3 of the present Agreement;
- (e) the term "territory" in relation to a state means the land areas and territorial waters adjacent thereto under the sovereignty of that State;
- (f) the term "air service" means any scheduled air service performed by aircraft for the public transport of passengers, mail or cargo;
- (g) the term "international air service" means an air service which passes through the air space over the territory of more than one State;
- (h) the term "airline" means any air transport enterprise offering or operating an international air service;
- (i) the term "stop for non-traffic purposes" means a landing for any purpose other than taking on or discharging passengers, cargo or mail;
- (j) the term "capacity" means:
 - (i) in relation to an aircraft, the payload of that aircraft available on a route or section of a route;
 - (ii) in relation to a specified air service, the capacity of the aircraft used on such service, multiplied by the frequency operated by such aircraft over a given period on a route or a section of a route.

Article 2

Grant of Traffic Rights

1. Each Contracting Party grants to the other Contracting Party the rights specified in the present Agreement for the purpose of establishing air services on the routes specified in the Annex thereto (hereinafter called "the agreed services" and "the specified routes"). The agreed services may be inaugurated at any time after the provisions of Article 3 have been complied with.
2. Subject to the provisions of the present Agreement, the airline designated by each Contracting Party shall enjoy the following rights:

¹ Came into force on 1 December 1989, i.e., the first day of the second month following the date (26 October 1989) on which the Contracting Parties had notified each other of the completion of the required constitutional procedures, in accordance with article 20 (2).

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.

- (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) while operating an agreed service on a specified route, to make stops in the territory of the other Contracting Party at the point specified for that route in the Annex to the present Agreement, for the purpose of embarking or disembarking traffic in passengers, cargo or mail.
3. Nothing in paragraph (2) of this Article shall be deemed to confer on the airline of one Contracting Party the privilege of taking on, in the territory of the other Contracting Party, passengers, cargo or mail destined for another point in the territory of that other Contracting Party.
 4. The laws, regulations and instructions of one Contracting Party, relating to entry into or departure from its territory, of aircraft or air services operated in international air navigation or to the operation of such aircraft or air services while within its territory shall apply to aircraft and agreed services of the designated airline of the 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 for the purpose of operating the agreed services in accordance with the Annex to this Agreement.
2. On receipt of the designation, the Contracting Party shall, through its own aeronautical authorities and subject to the provisions of paragraphs (4) and (5) of this Article, without delay grant to the designated airline the appropriate operating authorization.
3. Each Contracting Party shall have the right, by written notification to the other Contracting Party, to withdraw the designation of any such airline and to designate another one.
4. The aeronautical authorities of one Contracting Party may require the airline designated by the other Contracting Party to satisfy them that it is qualified to fulfil the conditions prescribed under the laws and regulations normally applied by them to the operation of air carriers and of international commercial air services.
5. Each Contracting Party shall have the right to refuse to accept the designation of the airline or to withhold the grant to the airline of the

rights specified in paragraph (2) of Article 2 of the present Agreement or to impose such conditions as it may deem necessary on the exercise by the airline of those rights in any case where it is not satisfied that substantial ownership and effective control of that airline are vested in the other Contracting Party or its nationals. For the purpose of this paragraph, the expression "substantial ownership and effective control" means that in any case where the designated airline operates its services under this Agreement by entering into any agreement with the airline of any other country or the Government or nationals of any other country, the Contracting Party designating the airline or its nationals shall not be deemed to have substantial ownership and effective control of the designated airline, unless the Contracting Party or its nationals, in addition to the ownership of the major part of the assets of the designated airline, have also

- (i) effective control in the management of the designated airline, and
 - (ii) ownership and effective control of the major part of the fleet of aircraft and equipment used in the operation of the services.
6. The airline so designated and authorized may begin to operate the agreed services at any time provided that the provisions of Articles 10 and 12 have been complied with.

Article 4

Revocation or Suspension of Operating Authorization

Each Contracting Party reserves the right to itself to revoke the operating authorization or to impose such appropriate conditions as it may deem necessary in case of failure by a designated airline of the other Contracting Party to comply with the laws and regulations of the former Contracting Party, or in case, in the judgement of the former Contracting Party, there is a failure to fulfil the conditions under which the rights are granted in accordance with the present Agreement. This shall also apply if the provisions of paragraph (5) of Article 3 are not complied with. Such action shall be taken only after consultation between the Contracting Parties in accordance with Article 16 of the present Agreement unless an immediate suspension of operations or imposition of conditions is necessary to avoid further infringement of laws, regulations or provisions of the present Agreement.

Article 5**Charges**

The charges imposed in the territory of one Contracting Party for the use of airports and other aviation facilities by the aircraft of the designated airline of the other Contracting Party shall not be higher than those paid by the aircraft of a national airline engaged in similar international air services.

Article 6**Exemption from Customs and other Duties**

Supplies of fuel, lubricating oils, spare parts, regular equipment and aircraft stores introduced into or taken on board aircraft of the designated airline of one Contracting Party and intended solely for use by or in such aircraft and remaining on board on departure from the last airport of call in the territory of the second Contracting Party shall be accorded, with respect to customs duty, inspection fees or similar charges, treatment not less favourable than that granted by the second Contracting Party to the national airlines operating scheduled international air services or to the airlines of the most favoured nation:

Provided that neither Contracting Party shall be obliged to grant to the designated airline of the other Contracting Party exemption or remission of customs duty, inspection fees or similar charges unless such other Contracting Party grants exemption or remission of such charges to the designated airline of the first Contracting Party.

Article 7**Equal Opportunity**

The designated airline of each Contracting Party shall, in all respects, enjoy fair and equal opportunity for the carriage of international traffic between the territories of the two Contracting Parties.

Article 8**Interest of Designated Airlines**

In the operation by the designated airline of either Contracting Party of the agreed air services, the interest of the designated airline of the other Contracting Party shall be taken into consideration so as not to affect unduly the services which the latter provides on the same route.

Article 9**Representation, Ticketing and Sales Promotion**

Subject to the laws and regulations of the other Contracting Party, the designated airline of each Contracting Party shall have an equal opportunity to:

- (a) employ technical and commercial personnel;
- (b) establish and operate offices;
- (c) issue all documents of carriage; and
- (d) advertise and promote sales in the territory of the other Contracting Party, for the requirements of the concerned designated airline.

Article 10**Capacity**

1. The capacity to be provided and the frequency of services to be operated shall be agreed between the designated airlines in accordance with the principles laid down in Articles 7 and 8 and the provisions of this Article.
2. The schedules so agreed upon shall be submitted for approval to the aeronautical authorities of both 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 consent of the said authorities.
3. Any increase in the capacity to be provided and/or frequency of services to be operated by the designated airline of either Contracting Party shall be agreed in the first instance between the designated airlines and shall be subject to the approval of the aeronautical authorities on the basis of the estimated requirements of traffic between the territories of the Contracting Parties. Pending such agreement or settlement, the capacity and frequency entitlements already in force shall prevail.
4. If the designated airlines of the Contracting Parties fail to agree on any matter the aeronautical authorities of the Contracting Parties shall endeavour to reach agreement thereon.
5. The capacity to be provided and the frequency of services to be operated in terms of paragraph (1) of this Article, as agreed shall be specified in an exchange of letters. Any increase in the frequency so specified pursuant to paragraph (3) of this Article shall be specified jointly by the aeronautical authorities.