

No. 35372. Austria and China

AGREEMENT BETWEEN THE AUSTRIAN FEDERAL GOVERNMENT AND THE GOVERNMENT OF THE HONG KONG SPECIAL ADMINISTRATIVE REGION OF THE PEOPLE'S REPUBLIC OF CHINA CONCERNING AIR SERVICES. VIENNA, 2 OCTOBER 1998 [*United Nations, Treaty Series*, vol. 2047, I-35372.]

EXCHANGE OF LETTERS BETWEEN THE AUSTRIAN FEDERAL GOVERNMENT AND THE GOVERNMENT OF THE HONG KONG SPECIAL ADMINISTRATIVE REGION OF THE PEOPLE'S REPUBLIC OF CHINA ("THE HKSAR") AMENDING THE AGREEMENT BETWEEN THE AUSTRIAN FEDERAL GOVERNMENT AND THE GOVERNMENT OF THE HKSAR CONCERNING AIR SERVICES DONE IN VIENNA ON 2 OCTOBER 1998. HONG KONG, 18 OCTOBER 2013 AND 21 OCTOBER 2013*

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N° 35372. Autriche et Chine

ACCORD ENTRE LE GOUVERNEMENT FÉDÉRAL D'AUTRICHE ET LE GOUVERNEMENT DE LA RÉGION ADMINISTRATIVE SPÉCIALE DE HONG-KONG DE LA RÉPUBLIQUE POPULAIRE DE CHINE RELATIF AUX SERVICES AÉRIENS. VIENNE, 2 OCTOBRE 1998 [*Nations Unies, Recueil des Traités*, vol. 2047, I-35372.]

ÉCHANGE DE LETTRES ENTRE LE GOUVERNEMENT FÉDÉRAL D'AUTRICHE ET LE GOUVERNEMENT DE LA RÉGION ADMINISTRATIVE SPÉCIALE DE HONG-KONG DE LA RÉPUBLIQUE POPULAIRE DE CHINE ("LA RASHK ") MODIFIANT L'ACCORD ENTRE LE GOUVERNEMENT FÉDÉRAL D'AUTRICHE ET LE GOUVERNEMENT DE LA RASHK RELATIF AUX SERVICES AÉRIENS FAIT À VIENNE LE 2 OCTOBRE 1998. HONG KONG, 18 OCTOBRE 2013 ET 21 OCTOBRE 2013*

Entrée en vigueur : 1^{er} décembre 2013, conformément aux dispositions desdites lettres

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[ENGLISH TEXT – TEXTE ANGLAIS]

I

Secretary for Transport and Housing
of the Government of the HKSAR to Austrian Consul-General in the
HKSAR

Transport and Housing Bureau
The HKSAR

18 October 2013

Dear Consul-General,

I have the honour to refer to the Agreement between the Government of the HKSAR and the Austrian Federal Government Concerning Air Services done in Vienna on 2 October 1998 ("the Agreement"), and to propose, on behalf of the Government of the HKSAR that the following Articles shall replace Articles 4 and 5 of the Agreement:

**"Article 4
Designation and Operating Authorisation**

(1) The international air services on the routes specified in accordance with Article 3 of this Agreement may be started at any time, provided that:

- (a) the Contracting Party to whom the rights specified in Article 3 of this Agreement are granted has designated one or several airlines in writing; and
- (b) the Contracting Party granting these rights has authorised the designated airline or airlines to initiate the air services.

(2) On receipt of such a designation the other Contracting Party shall grant the appropriate authorisations and permissions with minimum procedural delay, provided that:

- (a) in the case of an airline designated by the Austrian Federal Government:
 - (i) the airline is established in the territory of Austria under the Treaty on European Union and the Treaty on the Functioning of the European Union and has a valid Operating Licence in accordance with European Union law; and
 - (ii) effective regulatory control of the airline is exercised and maintained by the European Union Member State responsible for issuing its Air Operator's Certificate and the relevant aeronautical authority is clearly identified in the designation; and
 - (iii) the airline is owned directly or through majority ownership and effectively controlled by any European Union Member States and/or the Republic of Iceland, the Kingdom of Norway, the Principality of Liechtenstein and the Swiss Confederation and/or national(s) of such States;
- (b) in the case of an airline designated by the Government of the Hong Kong Special Administrative Region:
 - (i) the airline is incorporated in and has its principal place of business in the area of the Hong Kong Special Administrative Region and has a valid Air Operator's Certificate in accordance with the applicable law of the Hong Kong Special Administrative Region; and
 - (ii) the Hong Kong Special Administrative Region has and maintains effective regulatory control of the airline;

and

- (c) the designated airline proves upon request of the other Contracting Party that it is qualified to meet the requirements to be fulfilled for the operation of international air transport under the laws and regulations applicable in the area of that Contracting Party.

(3) Either Contracting Party shall have the right to replace, subject to the provisions of paragraphs (1) and (2) above, an airline it has designated by another airline. The newly designated airline shall have the same rights and be subject to the same obligations as the airline which it replaces.

Article 5
Refusal, Revocation, Suspension or Limitation of the Operating
Authorisation

(1) Either Contracting Party may refuse, revoke, suspend or limit the operating authorisation or technical permissions of an airline designated by the other Contracting Party where:

- (a) in the case of an airline designated by the Austrian Federal Government:
 - (i) the airline is not established in the territory of Austria under the Treaty on European Union and the Treaty on the Functioning of the European Union or does not have a valid Operating Licence in accordance with European Union law; or
 - (ii) effective regulatory control of the airline is not exercised or not maintained by the European Union Member State responsible for issuing its Air Operator's Certificate, or the relevant aeronautical authority is not clearly identified in the designation; or
 - (iii) the airline is not owned directly or through majority ownership and effectively controlled by any European Union Member States and/or the Republic of Iceland, the Kingdom of Norway, the Principality of Liechtenstein and the Swiss Confederation and/or national(s) of such States; or
 - (iv) the airline, by exercising traffic rights under this Agreement for the operation of services that include a point in another European Union Member State, including the operation of services which are marketed as or otherwise constitute through services, the airline would in effect circumvent any restriction on the traffic rights imposed by an agreement between the Hong Kong Special Administrative Region and that other European Union Member State; or
 - (v) the airline holds an Air Operator's Certificate issued by another European Union Member State and no bilateral air services agreement is in force between the Hong Kong Special Administrative Region and that other European Union Member State, and that European Union Member State has denied traffic rights to the airline(s) designated by the Hong Kong Special Administrative Region.
- (b) in the case of an airline designated by the Government of the Hong Kong Special Administrative Region:
 - (i) the airline is not incorporated in or does not have its principal place of business in the area of the Hong Kong Special Administrative Region or does not have a valid Air Operator's Certificate in accordance with the applicable law of the Hong Kong Special Administrative Region; or

- (ii) the Hong Kong Special Administrative Region does not have or is not maintaining effective regulatory control of the airline;

or

- (c) the designated airline does not comply with the laws and regulations of the Contracting Party granting those rights; or
- (d) if that airline otherwise fails to operate in accordance with the conditions prescribed under this Agreement.

(2) Such refusal, revocation, suspension or limitation of the authorisation shall be preceded by consultations as provided for in Article 16 (Consultation) of this Agreement, unless an immediate suspension of operations or immediate limitations are necessary to avoid further infringements of laws or regulations.”

If the foregoing proposal is acceptable to the Austrian Federal Government, I have the honour to propose that the present letter and your reply to that effect shall constitute an agreement between our two Governments. I also confirm that the internal procedural requirements for the entry into force of the amendment have been fulfilled. In accordance with Articles 18 and 21 of the Agreement, this amendment will enter into force on the first day of the second month following the date of your reply.

I avail myself of this opportunity to renew to you the assurance of my highest consideration.

Yours sincerely,

Anthony BL Cheung
Secretary for Transport and Housing