

No. 30335

**REPUBLIC OF KOREA
and
POLAND**

**Agreement for air services (with annex). Signed at Seoul on
14 October 1991**

Authentic texts: Korean, Polish and English.

Registered by the Republic of Korea on 6 October 1993.

**RÉPUBLIQUE DE CORÉE
et
POLOGNE**

**Accord concernant les services aériens (avec annexe). Signé à
Séoul le 14 octobre 1991**

Textes authentiques : coréen, polonais et anglais.

Enregistré par la République de Corée le 6 octobre 1993.

AGREEMENT¹ BETWEEN THE GOVERNMENT OF THE REPUBLIC OF KOREA AND THE GOVERNMENT OF THE REPUBLIC OF POLAND FOR AIR SERVICES

The Government of the Republic of Korea and the Government of the Republic of Poland (hereinafter 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, 1944,² 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 the present 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 the Convention and any amendment of the Annexes or Convention under Articles 90 and 94 thereof so far as these Annexes and amendments have been adopted by both Contracting Parties;

¹ Came into force on 3 April 1992, the date on which the Contracting Parties notified each other of the completion of the required formalities, in accordance with article 20.

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.

- b) the term "Aeronautical Authorities" means, in the case of the Republic of Korea, the Minister of Transportation or any person or body authorized to perform any function exercised at present by the said Minister or similar functions, and in the case of Poland, the Minister of Transport and Maritime Economy or any person or body authorized to perform any functions exercised at present by the said Minister or similar functions;
- c) the term "designated airline" means airlines which one Contracting Party has designated, by written notification to the other Contracting Party, in accordance with Article 3 of the present Agreement, for the operation of air services on the route specified in the Annex;
- 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 services 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 the present Agreement or as amended in accordance with the provisions of Article 17 of the present Agreement. The Annex forms an integral part of the present Agreement and all references to the Agreement shall include references to the Annex except where otherwise provided.

Article 2
Grant of Rights

1. Each Contracting Party grants to the other Contracting Party the rights specified in the present Agreement to enable its designated airlines to establish and operate international air services on the routes specified in the Annex to the present Agreement. Such services and routes are hereinafter called "the agreed services" and "the specified routes" respectively.
2. Subject to the provisions of the present Agreement, the designated airlines of each Contracting Party shall enjoy, while operating the agreed services on the specified routes, 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 take up and put down passengers, cargo and mail at any point on the specified routes subject to the provisions contained in the Annex to the present Agreement.
3. Nothing in paragraph 2 of this Article shall be deemed to confer on the designated 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 3
Designation of Airlines

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. On receipt of such designation, the other Contracting Party shall, subject to the provision of paragraph 3 and 4 of this Article, grant without delay to the designated airlines the appropriate operating authorization.
3. The aeronautical authorities of the 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 on International Civil Aviation opened for signature at Chicago on 7th December 1944, with the later amendment thereto.
4. Each Contracting Party shall have the right to refuse to accept the designation of 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 the present 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 10 and that tariffs established in accordance with the provisions of Article 11 of the present 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 the operating authorization or to suspend the exercise of the rights specified in Article 2 of the present 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 nationals of such Contracting Party; or
- (b) in case of failure by those airlines to comply with the laws and regulations of the Contracting Party granting those rights:
or
- (c) in case the airlines otherwise fail to comply with the provisions of the present Agreement.

2. Unless immediate action for revocation, suspension or imposition of the conditions mentioned in paragraph 1 of the present Article is essential

to prevent further infringements of laws and regulations, such rights 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 the agreed services by the designated airlines of one Contracting Party, as well as their regular equipment, spare parts, supplies of fuel and lubricants, 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 reexported.
2. There shall also be exempt from the same duties, taxes with the exception of charges corresponding to the services performed:
 - (a) aircraft stores taken on board in the territory of one Contracting Party, within limits fixed by the competent authorities of the said Contracting Party, and for use on board the aircraft engaged in the agreed services of the other Contracting Party;
 - (b) spare parts introduced into the territory of one Contracting Party for the maintenance or repair of aircraft engaged in operation on agreed services by the designated airlines of the other Contracting Party;
 - (c) fuel and lubricants intended for use in the operation of the agreed services by aircraft of the designated airlines of one Contracting Party, even when the supplies are to be used on the part of the route performed within the territory of the other Contracting Party in which they are taken on board.

Materials referred to in sub-paragraph (a), (b) and (c) above 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.

4. Materials adequate for advertisement used by the designated airlines of one Contracting Party in the territory of the other Contracting Party shall be exempt from the customs duties.

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, sojourn in, 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 applicable to the passengers, crew, cargo

or mail carried by the aircraft of the other Contracting Party while within the territory of the first Contracting Party.

Article 7
Direct Transit

Passengers, baggage and cargo in direct transit across the territory of one Contracting Party and not leaving the area of the airport reserved for such purpose shall only be subject to a very simplified control. Baggage and cargo in direct transit shall be exempt from customs duties and other similar taxes.

Article 8
Establishment of Airline Representative Offices

The designated airlines of one 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.

Article 9
Recognition of Certificates and Licences

1. Certificates of airworthiness, certificates of competency and licences 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 right, however, not to recognize as valid, for the purpose of flights over its own territory, certificates

of competency and licences granted to its own nationals or rendered valid for them by the other Contracting Party or by any other State.

Article 10
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 route.

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 operations.

5. The capacity to be provided on the specified routes such as frequency of services and the type of aircraft may be agreed between the designated airlines in accordance with the principles laid down in this Article and subject to the approval of the aeronautical authorities of the Contracting Parties. In the absence of an agreement between the designated airlines, both aeronautical authorities shall mutually determine the capacity.

Article 11 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 service (such as standards

of speed and accommodation) and the tariffs of other airline for any part of the specified routes.

3. These 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 forty-five (45) 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 the designated airlines concerned can not agree on the tariffs, or if for some other reasons tariffs can not be agreed upon in accordance with the provisions of paragraph 3 (a) of this Article, the Aeronautical Authorities of the Contracting Parties shall try to determine the tariffs by agreement between themselves.
- (e) If the Aeronautical Authorities of either Contracting Party do not approve any tariff submitted to them under the provisions of paragraph 3 (b) of this Article or the aeronautical authorities of both Contracting Parties can not determine any tariff under provisions of paragraph 3 (d) of this Article, the dispute shall be settled in accordance with the provisions of Article 15 of the present 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 12
Transfer of Earnings

Each Contracting Party shall grant to the designated airlines of the other Contracting Party the right to transfer freely the 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 accordance with the foreign exchange regulation in force.

Article 13
Exchange of Statistics

The aeronautical authorities of either 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 14
Consultation

There shall be consultations from time to time between aeronautical authorities of the Contracting Parties to ensure close collaboration in all matters affecting the fulfilment of the present Agreement.

Article 15
Settlement of Disputes

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.
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, or 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 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 days. If either Contracting Party fails to nominate an arbitrator within the period specified, or if the third arbitrator is not agreed, the President of the Council of the International Civil Aviation Organization may be requested by either Contracting Party to 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 body.

3. The Contracting Parties shall comply with any decision given, including any interim recommendation made under paragraph 2 of this Article.

4. 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 the present Agreement.

Article 16 Security

1. The Contracting Parties reaffirm their rights and obligations under international law, including the Convention on International Civil Aviation, opened for signature at Chicago on 7 December 1944, and including the Convention on Offences and Certain Other Acts Committed

on Board Aircraft, signed at Tokyo on 14 September 1963,¹ the Convention for the Suppression of Unlawful Seizure of Aircraft, signed at the Hague on 16 December 1970,² the Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation, signed at Montreal on 23 September 1971.³ The Contracting Parties affirm that their obligations to protect the security of civil aviation against acts of unlawful interference form, in their mutual relations, an integral part of the present Agreement.

2. The Contracting Parties shall provide upon request all possible assistance to each other to prevent acts of unlawful seizure of civil aircraft and other unlawful acts against the safety of such aircraft, passengers, crew, aircraft 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 shall require that operators of aircraft of their registry or operators 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 standards.

4. Each Contracting Party agrees that its airlines may be required to observe the aviation security provisions referred in paragraph 3 required by the other Contracting Party, for entrance into, departure from, or while within, the territory of the other Contracting Party. Each Contracting

¹ United Nations, *Treaty Series*, vol. 704, p. 219.

² *Ibid.*, vol. 860, p. 105.

³ *Ibid.*, vol. 974, p. 177, and vol. 1217, p. 404 (corrigendum to vol. 974).

Party shall ensure that effective measures are taken within its territory to protect aircraft, to screen passengers and their carry-on items, and to carry out appropriate checks on crew, cargo and aircraft stores prior to and during boarding or loading. Each Contracting Party shall also act favorably upon 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 occur, 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 17 Amendment

1. If either of the Contracting Parties considers it desirable to modify the terms of the present Agreement, it may at any time request consultation with the other Contracting Party in writing for the purpose of amending the present Agreement. Such consultation shall begin within a period of sixty days from the date of receipt of the request. However, if the amendment relates only to the Annex, consultation shall be between the aeronautical authorities of the Contracting Parties. The agreed amendment shall come into effect after they have been confirmed by an exchange of diplomatic notes.

2. If a general multilateral convention or agreement 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 or agreement.

Article 18
Termination

Either Contracting Party may at any time give notice to the other Contracting Party if it desires to terminate the present Agreement. Such notice shall be simultaneously communicated to the International Civil Aviation Organization.

If such notice is given, the present 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 19
Registration

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

Article 20
Entry into force

The present Agreement shall enter into force when both Contracting parties, through the Exchange of Notes, notify each other that they have completed the formalities required by their respective laws and regulations.

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

Done at *Seoul* on this *14th* day of *October* 19 *91* in duplicate in the Korean, Polish and English languages, all the texts being equally authentic. In case of divergent interpretation, the English text shall prevail.

For the Government
of the Republic of Korea:

For the Government
of the Republic of Poland:

*Lee Sang-ock*¹

*Krzysztof Skubiszewski*²

¹ Lee Sang-ock.

² Krzysztof Skubiszewski.

ANNEX

Section A

Routes to be operated in both directions by the designated airlines of Korea

<u>Points of Origin</u>	<u>Intermediate Points</u>	<u>Points in Poland</u>	<u>Beyond Points</u>
Points in Korea	Points to be specified later on	Warsaw	Points to be specified later on

1. The designated airlines of Korea may, on all or any flights, omit calling at any of the above points provided that the agreed services on the route begin at a point in the territory of Korea.
2. 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 designated airlines of the two Contracting Parties. Such agreements and any amendments thereto shall be submitted to the aeronautical authorities of the two Contracting Parties for approval.

Section B

Routes to be operated in both directions by the designated airlines of Poland

<u>Points of Origin</u>	<u>Intermediate Points</u>	<u>Points in Korea</u>	<u>Beyond Points</u>
Points in Poland	Points to be specified later on	Seoul	Points to be specified later on

1. The designated airlines of Poland may, on all or any flights, omit calling at any of the above points provided that the agreed services on the route begin at a point in the territory of Poland.
 2. 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 designated airlines of the two Contracting Parties. Such agreements and any amendments thereto shall be submitted to the aeronautical authorities of the two Contracting Parties for approval.
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