

AIR TRANSPORT AGREEMENT

BETWEEN THE

AUSTRIAN FEDERAL GOVERNMENT

AND THE

GOVERNMENT OF MONGOLIA

The Austrian Federal Government and the Government of Mongolia,

Hereinafter called in this Agreement the Contracting Parties,

Being Parties to the Convention on International Civil Aviation, opened for signature at Chicago on the seventh of December, 1944,

Desiring to conclude an Agreement, supplementary to the said Convention, for the purpose of establishing scheduled 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 "Contracting Party" means the Austrian Federal Government on the one hand and the Government of Mongolia 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 Annexes 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 Transport, Innovation and Technology, in the case of Mongolia the Ministry of Road, Transport and Tourism, or, in both cases, any other authority legally empowered to perform the functions exercised now by the said authorities;
- (d) the term "territory" in relation to a state means the land areas and territorial waters adjacent thereto under the sovereignty of that State;
- (e) the term "air service" means any scheduled air service performed by aircraft for the public transport of passengers, mail or cargo;
- (f) the term "international air service" means an air service which passes through the air space over the territory of more than one State;

- (g) the term "airline" means any air transport enterprise offering or operating an international air service;
- (h) the term "designated airline" means an airline which has been designated and authorized in accordance with Article 3 of the present Agreement;
- (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

TRAFFIC RIGHTS

- (1) Each Contracting Party grants to the other Contracting Party the following rights in respect of its scheduled international air services:
 - (a) the right to fly across its territory without landing;
 - (b) the right to make stops in its territory for non-traffic purposes.
- (2) Each Contracting Party grants to the other Contracting Party the rights specified in this Agreement for the purpose of establishing scheduled international air services on the routes specified in the Annex. Such services and routes are hereafter called "the agreed services" and "the specified routes" respectively. While operating an agreed service on a specified route, the airline(s) designated by each Contracting Party shall enjoy, in addition to the rights specified in paragraph 1 of this Article, the right to make stops in the territory of the other Contracting Party at the points specified for that route in the Schedule for the purpose of taking on board and discharging passengers and cargo including mail.
- (3) Nothing in paragraph 2 of this Article shall be deemed to confer on the airline(s) of one Contracting Party the privilege of taking on board, in the territory of the other Contracting Party, passengers and cargo including mail carried for hire or reward and destined for another point in the territory of that other Contracting Party.

Article 3

NECESSARY AUTHORIZATIONS

- (1) Each Contracting Party shall have the right to designate in writing to the other Contracting Party one airline or several airlines for the purpose of operating the agreed services on the specified routes.
- (2) On receipt of such designation, the aeronautical authorities of the other Contracting Party shall, subject to the provisions of paragraphs 4 and 5 of this Article, without delay grant to a designated airline the appropriate operating authorizations.
- (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) An airline designated by either Contracting Party may be required to satisfy the other Contracting Party that it is qualified to fulfil the conditions prescribed by the laws and regulations normally and reasonably applied by this Contracting Party to the operation of international air services in conformity with the provisions of the Convention.
- (5) Each Contracting Party shall have the right to refuse to grant the operating authorizations referred to in paragraph 2 of this Article, or to impose such conditions as it may deem necessary on the exercise by a designated airline of the rights specified in Article 2 of the present Agreement, in any case where the said Contracting Party is not satisfied that majority ownership and effective control of that airline are vested in the Contracting Party designating the airline or in its nationals.

- (6) When an airline has been so designated and authorized, it may at any time begin to operate the agreed services, provided that a tariff, established in accordance with the provisions of Article 11 of the present Agreement, is in force and an agreement in accordance with the provisions of Article 5 of the present Agreement has been reached in respect of that service.

Article 4

SUSPENSION AND REVOCATION

- (1) Each Contracting Party shall have the right to suspend the exercise of the rights specified in Article 2 of the present Agreement by the airline(s) designated by the other Contracting Party, or to revoke the operating authorization, 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 majority ownership and effective control of said airline(s) are vested in the Contracting Party designating the airline(s) or in its nationals, or
 - (b) in the case of failure by said airline(s) to comply with the laws or regulations of the Contracting Party granting these rights, or
 - (c) in case the airline(s) otherwise fail(s) to operate in accordance with the conditions prescribed under the present Agreement.
- (2) Unless immediate suspension, revocation 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 only after consultations with the other Contracting Party. In such a case consultations shall begin within a period of sixty (60) days from the date of request made by either Contracting Party for consultations.

Article 5

CAPACITY REGULATIONS

The capacity to be operated on the agreed scheduled air services shall be subject to the following conditions:

- (1) There shall be fair and equal opportunity for the designated airline(s) of both Contracting Parties to operate the agreed services on the specified routes.
- (2) In operating the agreed services, the airline(s) of each Contracting Party shall take into account the interests of the airline(s) of the other Contracting Party so as not to affect unduly the services which the latter provide(s) on the whole or part of the same routes.
- (3) The agreed services provided by the designated airline(s) of the Contracting Parties shall bear close relationship to the requirements of the public for transportation on the specified routes and shall have as their primary objective the provision of capacity adequate to carry the current and reasonably anticipated requirements for the carriage of passengers, cargo and mail between the territory of the Contracting Party designating the airline(s) and the countries of ultimate destination of the traffic.
- (4) Provisions for the carriage of passengers, cargo and mail both taken up and put down at points on the specified routes in the territories of States other than that designating the airline(s), shall be made in accordance with the general principle that capacity shall be related to:

- (a) traffic requirements between the country of origin and the countries of destination;
 - (b) traffic requirements of the area through which the airline(s) pass(es), after taking account of local and regional services established by airlines of the States comprising the area; and
 - (c) the requirements of through-airline operations.
- (5) The schedules of the agreed services 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.
- (6) The schedules established for one season in accordance with the provisions of this Article shall remain in force for corresponding seasons until new schedules have been established in accordance with the provisions of this Article.

Article 6

RECOGNITION OF CERTIFICATES AND LICENCES

- (1) Certificates of airworthiness, certificates of competency and licences 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 agreed services.
- (2) Each Contracting Party reserves the right, however, to refuse to recognize, for the purpose of flights above its own territory, certificates of competency and licences granted to its own nationals or rendered valid by another State.

Article 7

EXEMPTION FROM CUSTOMS AND OTHER DUTIES

- (1) Aircraft operated on international services by airline(s) designated by each Contracting Party, as well as their regular equipment, supplies of fuel and lubricants and the 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, within limits fixed by the authorities of said Contracting Party, and for use on board the aircraft engaged on a specified route 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 a specified route by the designated airline(s) of the other Contracting Party;
 - (c) fuel and lubricants destined to supply aircraft operated on a specified route by the designated airline(s) of the other Contracting Party, even if 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) 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 Contracting Party. In such case, they may be placed under the supervision of the said authorities up to such time as they are re-exported or otherwise disposed of in accordance with customs regulations.

Article 8

TAXATION

- (1) Profits from the operation of aircraft in international traffic shall be taxable only in the territory of the Contracting Party in which the place of effective management of the enterprise is situated.
- (2) Capital represented by aircraft operated in international traffic and by movable property pertaining to the operation of such aircraft shall be taxable only in the territory of the Contracting Party in which the place of effective management of the enterprise is situated.
- (3) Where a special Agreement for the avoidance of double taxation with respect to taxes on income and on capital exists between the Contracting Parties, the provisions of the latter shall prevail.

Article 9

DIRECT TRANSIT TRAFFIC

- (1) Passengers, baggage, cargo and mail in direct transit across the territory of either Contracting Party and not leaving the area of the airport reserved for such purpose shall, except in respect of security measures against violence, air piracy and smuggling of narcotic drugs, be subject to no more than a simplified control.
- (2) Baggage, cargo and mail in direct transit shall be exempt from customs duties and other similar taxes.

Article 10

AVIATION SECURITY

- (1) Consistent with their rights and obligations under international law, the Contracting Parties reaffirm their obligation to each other to protect the security of civil aviation against acts of unlawful interference. 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, the Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation signed at Montreal on 23 September 1971 and the Protocol for the Suppression of Unlawful Acts of Violence at Airports Serving International Civil Aviation signed at Montreal on 24 February 1988 or of any other Aviation Security Conventions to which the two parties may adhere.
- (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 Organisation and designated as Annexes to the Convention on International Civil Aviation to the extent that such security provisions are applicable to the Contracting Parties; 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 territory and the operators of airports in their territory act in conformity with such aviation security provisions.

- (4) Each Contracting Party agrees that such operators of aircraft shall be required to observe the aviation security provisions referred to in paragraph 3 above required by the other Contracting Party for entry into, departure from, or while within the territory of that 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.
- (6) Should a Contracting Party depart from the aviation security provisions of this Article, the aeronautical authorities of the other Contracting Party may request immediate consultations with the aeronautical authorities of that Party.

Article 11

TRANSPORT TARIFFS

- (1) Tariffs for international air transport operated pursuant to this Agreement may be required to be filed with the aeronautical authorities of either Contracting Party.
- (2) Intervention by the aeronautical authorities shall be limited especially to :
 - (i) preventing unreasonably discriminatory tariffs or practices;
 - (ii) protecting consumers from tariffs that are unreasonably high or unreasonably restrictive due either to the abuse of a dominant position or to concerted practices among air carriers; and
 - (iii) protecting airlines from tariffs that are artificially low because of direct or indirect governmental subsidy or support.
- (3) Notwithstanding the provisions of this Article the tariffs to be charged by the air carrier(s) designated by the Government of Mongolia for carriage wholly within the European Community shall be subject to European Community law.

Article 12

TRANSFER OF NET REVENUES

- (1) Each Contracting Party grants to the designated airline(s) of the other Contracting Party the right of free transfer of the excess of receipts over expenditure, earned on its territory in connection with the carriage of passengers, baggage, mail and freight by the designated airline(s) of the other Contracting Party, in a freely convertible currency at the official rate of exchange on the day the transfer is made. Transfers shall be effected immediately, at the latest within sixty (60) days after the date of request.
- (2) Where a special payment agreement exists between the Contracting Parties, payments shall be effected in accordance with the provisions of that agreement.

Article 13

REPRESENTATION, TICKETING AND SALES PROMOTION

1. The designated airline(s) of each Contracting Party shall have an equal opportunity to employ, subject to the laws and regulations of the other Contracting Party, the technical and commercial personnel for the performance of the agreed services on the specified routes and to establish and operate offices in the territory of the other Contracting Party.
2. The designated airline(s) of each Contracting Party shall further have an equal opportunity to issue all kinds of documents of carriage and to advertise and promote sales in the territory of the other Contracting Party.

Article 14

PROVISION OF STATISTICS

- (1) The aeronautical authorities of one Contracting Party shall supply to the aeronautical authorities of the other Contracting Party at their request periodic or other statements of statistics.
- (2) Such statements shall include all information required to determine the amount of traffic carried by the airline(s) on the agreed services and the origin and destination of such traffic.

Article 15

CONSULTATIONS AND MODIFICATIONS

- (1) In a spirit of close co-operation, the aeronautical authorities of 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.
- (2) If either of the Contracting Parties considers it desirable to modify any provision of the present Agreement, it may request consultations with the other Contracting Party. Such consultations (which may be prepared by discussions between the aeronautical authorities), shall begin within a period of sixty (60) days from the date of request, unless both Contracting Parties agree to an extension of this period. Modifications so agreed upon shall be approved by each Contracting Party in accordance with its constitutional procedures.
- (3) Modifications to the Annex shall be agreed upon between the appropriate authorities of the Contracting Parties.

Article 16

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 negotiations.
- (2) If the Contracting Parties fail to reach a settlement by negotiations, they may agree to refer the dispute for decision to some person or body; if they do not so agree, the dispute shall, 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 diplomatic channels requesting arbitration of the dispute and the third arbitrator shall be appointed within a further period of sixty (60) days. If either of the Contracting Parties 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 or arbitrators as the case requires. In the case that the President of the Council of the International Civil Aviation Organization is a national of either Contracting Party, the senior deputy of the presiding Council shall be requested to make the appropriate appointment. In any 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 undertake to comply with any decisions taken under paragraph 2 of this Article.
- (4) If and for so long as either Contracting Party fails to comply with a decision taken under paragraph 2 of this Article, the other Contracting Party may limit, suspend or revoke any rights or privileges which it has granted by virtue of this Agreement to the Contracting Party in default.

- (5) Each Contracting Party shall bear the expenses and remuneration necessary for its arbitrator; the fee for the third arbitrator and the expenses necessary for this one as well as those due to the activity of the arbitration shall be equally shared by the Contracting Parties.

Article 17

TERMINATION

- (1) Either Contracting Party may at any time give written notice through diplomatic channels to the other Contracting Party of its decision to terminate the present Agreement; such notice shall be simultaneously communicated to the Council of the International Civil Aviation Organization and the Secretariat of the United Nations.
- (2) In such case this 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 mutual 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 18

REGISTRATION

This Agreement and all amendments thereto shall be registered with the Council of the International Civil Aviation Organization and the Secretariat of the United Nations.

Article 19**ENTRY INTO FORCE**

This Agreement shall enter into force on the first day of the second month following the date on which the two Contracting Parties have notified each other by an exchange of diplomatic notes that the requirements for its entry into force under their respective constitutional procedures have been fulfilled, provided that an agreement between the European Community and Mongolia bringing the bilateral air service agreements between Member States of the European Union and Mongolia into conformity with European Community law is already in force.

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

DONE in duplicate at Vienna this 2nd day of October 2007 in the English language.

For the
Austrian
Federal Government:

Josef PRÖLL m.p.

For the
Government of
Mongolia:

Ichinkhorloogiin ERDENBAATAR m.p.

ANNEX 1

- A. The airline(s) designated by the Austrian Federal Government shall be entitled to operate scheduled air services in both directions on routes specified hereafter:

Points of departure:	Points of arrival:
Points in Austria	Points in Mongolia

- B. The airline(s) designated by the Government of Mongolia shall be entitled to operate scheduled air services in both directions on routes specified hereafter:

Points of departure:	Points of arrival:
Points in Mongolia	Points in Austria

- C. Any intermediate points and points beyond may be served by the designated airline(s) of each Contracting Party without exercising Fifth Freedom traffic rights.

The eventual exercise of Fifth Freedom traffic rights may be agreed upon by the aeronautical authorities of the two Contracting Parties.

ANNEX 2

Code-Sharing:

1. The designated airline or airlines of each country which hold out appropriate authority to provide the agreed services may operate and/ or hold out the agreed services on the specified routes under code-sharing together with any airline or airlines which have appropriate authority to do so.
2. It was further decided that each airline involved in code-share arrangements pursuant to this paragraph must, in respect of any ticket sold by it, make clear to the purchaser at the point of sale which airline will actually operate each sector of the service, and with which airline or airlines the purchaser is entering into a contractual relationship.