

ANTIGUA AND BARBUDA

STATUTORY INSTRUMENTS

1997, No. 39

The Multilateral Agreement concerning the Operation of Air Services within the Caribbean Community, approved by Resolution of the House of Representatives pursuant to section 3 (1) (c) of the Ratification of Treatise Act Cap. 364.

PREAMBLE

Member States

Conscious of the need to improve the level, quality and efficiency of air services within and beyond the Caribbean Community;

Mindful of the Community of Interest within the Caribbean Community and the need to achieve economic viability of CARICOM air carriers;

Aware of the initiatives being taken within the international air transport environment with respect to liberalisation, globalisation, the creation of regional groupings and the likely impact of these and other developments on the growth, expansion and efficiency of air transport services within the Caribbean Region;

Cognisant of the strategic role that air transport services play in fostering the sustainable development of economies within the Caribbean Community;

Desirous of creating an air transport regulatory framework which will provide for a more liberal and transparent exchange of commercial route rights within the Caribbean Community in the context of traffic requirements, thereby fostering healthy competition and growth together with quality and economic efficiency in the operation of air transport services;

Having as an objective the creation of such mechanisms as would maximise for CARICOM air carriers the economic and social benefits arising from aviation activities to, from and within the Caribbean Community in the context of liberalisation, globalisation and the creation of regional groupings in the international aviation community;

Have agreed as follows:

ARTICLE I

DEFINITIONS

- (a) "air carrier" means an air transport enterprise with a valid operating licence to operate scheduled, non-scheduled or air taxi services;
- (b) "air operator's certificate" means a document issued by the competent aeronautical authority of a Member State which affirms that the operator named therein is competent to secure the safe operation of aircraft for the aviation activities specified in the certificate;
- (c) "air service" means a flight or a series of flights transporting passengers, cargo or mail for reward;
- (d) "air taxi services" means services performed exclusively by aircraft of less than 14,500 pounds [or 6591 kilograms] maximum take-off weight (MTOW) with not more than nineteen seats;
- (e) "cabotage" means the taking on in the territory of one Member State, by an air carrier of another Member State of passengers, cargo or mail carried for reward originating in and destined for another point in the territory of the first Member State;
- (f) "CARICOM air carrier" means an air carrier which [is owned by a company or other legal entity constituted in a Member State in conformity with the law thereof and has its registered office in a Member State, the majority of the shares of which are owned by one or more Member States or their nationals and which is effectively controlled by such State or States or nationals thereof].
- (g) "Community" means the Caribbean Community established by the Treaty done at Chaguaramas on 4 July 1973;
- (h) "Convention" means the Convention on International Civil Aviation, opened for signature at Chicago on 7 December 1944, including any amendment thereto which has entered into force under Article 94 (a) thereof and has been ratified by Member States, as well as any Annex or amendment thereto adopted under Article 90 of that Convention, insofar as such amendment or Annex is at any given time effective for such Member States;

- (i) "fifth freedom traffic right" means the right of an air carrier to undertake the air transport of passengers, cargo or mail between two States other than the State in which it is registered;
- (j) "fourth freedom traffic right" means the right of an air carrier licensed in one State to take on, in the territory of another State, passengers, cargo or mail for off-loading in the State in which it is registered;
- (k) "Member State" means any State or territory which is or becomes a Member of the Caribbean Community being a Party to this Agreement;
- (l) "national" means, for the purpose of this Agreement,
 - (i) a person who is a citizen of a Member State; or
 - (ii) a person who has a connection with a Member State of a kind which entitles that person to be regarded as belonging to, or if it be so expressed, as being a native or resident of that State for the purpose of such laws thereof relating to immigration as are for the time being in force; or
 - (iii) a company or other legal entity constituted in a Member State in conformity with the law thereof and has its registered office in a Member State, the Majority of the shares of which are owned by one or more Member States or their nationals and which is effectively controlled by such State or States or nationals thereof;
- (m) "operating licence" means an authorisation granted to an air carrier by the competent aeronautical authority of a Member State enabling it to carry out the carriage by air of passengers, mail or cargo, as specified in the licence, for reward;
- (n) "scheduled air service" means a series of flights possessing all of the following characteristics:
 - (i) it is performed by aircraft for the transport of passengers, cargo or mail, in such a manner that on each flight, seats are available for individual purchase by members of the public either directly from the carrier or from its authorised agent;
 - (ii) it is operated either:
 - (1) according to a publicised timetable; or
 - (2) with flights so regular or frequent that they constitute a recognisable systematic series;

- (o) "tariffs" means the prices to be paid for the carriage of passengers, luggage and cargo and the conditions under which the prices apply, including prices and conditions for other services performed by the carrier in connection with air transportation, but excluding remuneration and conditions for the carriage of mail;
- (p) "third freedom traffic right" means the right of an air carrier licensed in one State to put down, in the territory of another State, passengers, cargo, or mail taken up in the State in which it is registered.

ARTICLE 2

LICENSING REQUIREMENTS

1. A CARICOM air carrier shall not be permitted to operate within the Community unless it has been issued with an operating licence by a Member State.

2. [Subject to other provisions of this Agreement] an air carrier satisfying the requirement of this Article shall be entitled to receive an operating licence, but such a licence does not in itself confer any rights of access to specific routes or markets within the Community. Member States shall require any applicant for an operating licence to satisfy the following requirements —

- (a) registration of the air carrier in a Member State;
- (b) possession of an air operators certificate or other document evidencing a similar certification issued by the competent aeronautical authority of the Member State in which the CARICOM air carrier is registered;
- (c) ownership of the majority of the shares of the air carrier by one or more Member States or their nationals and effective control by such States or nationals;
- (d) provision of a business plan to support its financial fitness and to demonstrate its ability to meet actual and potential obligations for a period of thirty-six months from the commencement of the proposed operations.

ARTICLE 3

INSURANCE AND REPORTING REQUIREMENTS IN RESPECT OF HOLDERS OF OPERATING LICENCES

1. A Member State shall require holders of operating licences issued by that State to provide annually audited accounts and other relevant information as may

be specified which would disclose any significant changes in operations and ownership.

2. A Member State shall not permit a CARICOM air carrier to operate air services unless it is insured to cover liability in case of accidents, in particular, in respect of passengers, baggage, cargo, mail and third parties.

3. A Member State in the territory of which a CARICOM air carrier performs air services may require such an air carrier to demonstrate that it meets the requirements of Article 2.

ARTICLE 4

MARKET ACCESS

1. A Member State shall accept multiple designation on a country-pair basis by another Member State, except in cases where by virtue of the nature of the route and, in particular, the characteristics of the market, the operation of air services by additional CARICOM air carriers would lead to serious financial loss to the existing air carriers licensed by both Member States.

2. Where such special circumstances exist, the first-mentioned Member State shall communicate its concerns to the other Member State and request an exchange of data in respect of the market. The other Member State shall co-operate fully in such exchange data and both Parties shall resort to the provisions of Article 17 or such other means as they may agree to resolve the matter.

ARTICLE 5

TRANSIT RIGHTS

Subject to the provisions of this Agreement CARICOM air carrier shall enjoy, while operating an air service, the following rights:

- (a) to fly, without landing, across the territory of a Member State; and
- (b) to make stops in a Member State for non-traffic purposes.

ARTICLE 6

THIRD AND FOURTH FREEDOM TRAFFIC RIGHTS

A CARICOM air carrier shall be permitted by a Member State to exercise third and fourth freedom traffic rights between itself and another Member State, subject to Article 2 and the following provisions of this Article:

- (a) the carrier's application to the aeronautical authority of the other Member State is made at least forty-five days [or such shorter period as may be agreed by the aeronautical authorities] prior to the proposed commencement of the service;
- (b) the proposed service is not within the category of an air taxi -operation for which special arrangements are provided in Article 9;
- (c) the proposed service is not affected by the provisions of Article 4.

ARTICLE 7

FIFTH FREEDOM TRAFFIC RIGHTS

CARICOM air carriers shall be permitted to exercise fifth freedom traffic rights between points in two Member States or between a Member State and a non-Member State on the basis of the reciprocal and liberal exchange of these rights between the Member States concerned.

ARTICLE 8

CABOTAGE

A Member State shall not be required to grant cabotage traffic rights to a CARICOM air carrier of another Member State.

ARTICLE 9

AIR TAXI OPERATIONS

Notwithstanding the provisions of Article 6 in respect of third and fourth freedom traffic rights, Member States shall take special account of the nature and market circumstances with respect to day tours and air taxi [services] and may, on a bilateral basis, stipulate, as necessary, uplift or directional conditions in keeping with the prevailing traffic requirements.

ARTICLE 10

APPLICATION OF LAWS

While entering, within or leaving the territory of a Member State, its laws and other regulations relating to the operation and navigation of aircraft shall be complied with by the air carrier of another Member State.

ARTICLE 11**SAFETY**

1. Each Member State shall recognise as valid, for the purpose of operating the air services provided for in this Agreement, certificates of airworthiness, certificates of competency and licences issued or validated by another Member [State], provided that the requirements for such certificates or licences at least equal the minimum standards which may be established pursuant to the Convention.

2. A Member State may request consultations concerning the safety and security standards maintained by another Member State relating to aeronautical facilities, air crew, aircraft and the operation of air services by the air carrier of [that other] Member State. If, following such consultations, a Member State considers that the other Member State does not effectively maintain and administer safety and security standards which may be established pursuant to the Convention, the other Member State shall be notified accordingly of the steps considered necessary to conform with those minimum standards; the other Member state shall take appropriate corrective action. Each Member State reserves the right to withhold, revoke or limit the operating authorisation or technical permission of the air carrier of another Member State in the event that the other Member State does not take such appropriate action within a reasonable time.

ARTICLE 12**AVIATION SECURITY**

1. Consistent with their rights and obligations under international law, Member states affirm that their obligation to protect, in their mutual relationship, 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, Member States shall, act in conformity with the provisions of:

- (a) the Convention on Offences and Certain Other Acts Committed on Board Aircraft, opened for signature at Tokyo on 14 September 1963;
- (b) the Convention for the Suppression of Unlawful Seizure of Aircraft, opened for signature at the Hague on 16 December 1970;
- (c) the convention for the Suppression of Unlawful Acts Against the Safety of Civil Aviation, opened for signature at Montreal on 23 September 1971; and
- (d) any other multilateral agreement governing civil aviation security binding upon Member States.

3. Member States 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, airport and air navigation facilities, and any other threat to the security of civil aviation.

4. Member States 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 Member States.

5. In addition, Member States 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 as are applicable to Member States. Accordingly, each Member State shall advise the other Member States of any differences between its national regulations and practices and the aviation security standards of the Annexes referred to in paragraph 4 above. A Member State reporting such differences, or any other Member State, may request immediate consultations with any Member State at any time to discuss such differences.

6. Each Member State agrees that its operators of aircraft shall be required to observe the aviation security provisions referred to in paragraph 4 above applied by another Member State [upon entering, or departure from], or sojourn in, the territory of that other Member State. Each Member State shall ensure that adequate measures are effectively applied within its territory to protect aircraft and to apply security controls to passengers, crew, carry-on items, baggage, cargo and aircraft stores, prior to and during boarding and loading. Each Member State shall give sympathetic consideration to any request from another Member State for reasonable special security measures in its territory to meet a particular threat to civil aviation.

7. When an incident, or threat of an incident of unlawful seizure of civil aircraft or other unlawful act against the safety of such aircraft, their passengers and crew, airports and air navigation facilities occurs, Member States shall assist each other by facilitating communications and other appropriate measures intended to terminate such incident or threat as rapidly as possible commensurate with minimum risk to life.

8. [A Member State which has reasonable grounds to believe that another Member State has departed from the provisions of this Article, may request immediate consultations with that other Member State on the matter.]

ARTICLE 13**REVOCATION OF AUTHORISATION**

1. A Member State may revoke, suspend or limit the operating authorisations or technical permissions which it has granted to a CARICOM air carrier where —

- (a) majority ownership and effective control of that air carrier are not vested in one or more Member States or in their nationals;
- (b) the air carrier has failed to comply with the provisions of this Agreement; or
- (c) the Member State granting the air operator's certificate or other document evidencing a similar certification is not maintaining and administering the standards specified in Article 11.

2. Unless immediate action is necessary to prevent further non-compliance with paragraph 1 (b) or 1 (c) of this Article, the rights conferred by this Article shall be exercised only after consultation with the other Member States.

ARTICLE 14**FAIR COMPETITION**

1. Member States shall allow a fair and equal opportunity for all CARICOM air carriers to compete in the air transportation covered by this Agreement.

2. Member States shall take all appropriate action within their respective jurisdictions to eliminate all forms of discrimination or unfair competitive practices adversely affecting the competitive position of CARICOM air carriers.

3. Member States shall take into account the interests of CARICOM air carriers of other Member States so as not to affect unduly the services which the latter provide on the whole, or part, of the same routes on which their carriers provide a service.

4. Member States shall take into account the requirements of the public for transportation and the need for stability on the specific routes, and shall have as their primary objective the provision, at a reasonable load factor, of capacity adequate to meet the current and reasonably anticipated requirements for the carriage of passengers, cargo and mail on the specified routes.

ARTICLE 15**ESTABLISHMENT OF TARIFFS**

1. Member States shall approve tariffs in respect of scheduled [air] services by CARICOM air carriers if these tariffs:

- (a) are reasonably related to all relevant factors, including, [but not limited to,] the cost of operation of the carriers;
- (b) provide a reasonable profit;
- (c) take into consideration the characteristics of the service in question;
- (d) are not reasonably discriminatory, unduly high or restrictive because of the abuse of a dominant position; or
- (e) are not artificially low because of direct or indirect subsidy or support.

2. CARICOM air carriers shall establish tariffs paying due regard to the provisions of paragraph 1 of this Article.

3. The tariffs so established shall be submitted for approval by the aeronautical authorities of both Member States concerned at least thirty-five days prior to the proposed date of their introduction. In special cases, that period may be reduced subject to the agreement of the aeronautical authorities.

4. Approval may be given expressly, but if the aeronautical authority of neither Member State concerned has expressed disapproval of the proposed tariffs within twenty days from the date of submission, these tariffs shall be deemed to be approved.

5. In the event of the period for submission being reduced in accordance with paragraph 3 of this Article, the aeronautical authorities may agree that the period within which any disapproval may be notified shall be reduced accordingly.

6. Notwithstanding the provisions of this Article, CARICOM air carriers shall be free to charge tariffs in respect of carriage on non-scheduled services, as long as these tariffs have been notified to the Member States concerned.

ARTICLE 16**EXEMPTION FROM CHARGES ON EQUIPMENT, FUEL, STORES,
ETC.**

1. Aircraft operated on international air services by a designated air carrier of a Member State, as well as the 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 similar charges on arriving in the territory of another Member State, provided such equipment and supplies remain on board the aircraft up to such time as they are re-exported, or are used on the part of the journey performed over the territory of that Member State.

2. There shall also be exempt from the same duties, fees and charges, with the exception of charges corresponding to the services performed:

- (a) aircraft stores taken on board in the territory of a Member State, within limits fixed by the authorities of the said Member State, and for use on board outbound aircraft engaged in an international air service of another Member State;
- (b) spare parts introduced into the territory of a Member State for the maintenance or repair of aircraft used on international air services by a designated air carrier of another Member State; and
- (c) fuel and lubricants supplied in the territory of a Member State to an outbound aircraft of a designated air carrier of another member State engaged in an international air service, even when these supplies are to be used on the part of the journey performed over the territory of the Member State in which they are taken on board.

3. Materials referred to in the foregoing sub-paragraphs (a), (b) and (c) may be required to be kept under customs supervision or control.

ARTICLE 17

CONSULTATIONS

1. A Member State may, at any time, request consultations relating to this Agreement. Such consultations shall begin at the earliest possible date, but not later than forty-five days from the date the other Member State received the request unless otherwise agreed. Each Member State shall prepare and submit during such consultations relevant evidence in support of its position in order to facilitate rational and economic decisions.

2. Any Member State may address a request to the Secretary-General of the Community for general consultation on this Agreement or any specific provisions thereof. The Secretary-General shall communicate such request to all other Member States within fourteen days of receiving the request. If within thirty days, at least two-thirds of the Member States signify their agreement, the Secretary-General shall convene a meeting of all Member States to discuss the matters proposed for consultation.

ARTICLE 18**EXISTING AGREEMENTS**

[Notwithstanding the provisions of Article 2, this Agreement shall not affect any bilateral, multilateral or other contractual agreement or arrangements; or operating licences or other documents evidencing similar authorisations already in force between Member States or between a Member State and a non-Member State.”]

ARTICLE 19**SETTLEMENT OF DISPUTES**

1. Any dispute between two or more Member States concerning the interpretation or application of this Agreement or of any other separate Agreement concluded pursuant to the present Agreement shall be settled, insofar as possible, by negotiation.

2. Any dispute which is not settled by negotiation shall be submitted to arbitration if any one of the Member States in dispute so requests and shall be referred accordingly to one or more arbitrators selected by agreement by the Member States in dispute. If within forty-five days from the date of the request for arbitration the Member States in dispute are unable to agree on the selection of an arbitrator or arbitrators, any of those Member States may request the Secretary-General of the Community to nominate a single arbitrator to whom the dispute shall be referred for decision.

3. The decision of the arbitrator or arbitrators appointed under the preceding paragraph shall be binding on the Member States in dispute.

ARTICLE 20**SIGNATURE**

This Agreement shall be open for signature by the [Member] States listed in the Annex to this Agreement.

ARTICLE 21**RATIFICATION**

This Agreement and any amendments thereto shall be subject to ratification by Member States in accordance with their respective constitutional procedures. Instruments of Ratification shall be deposited with the Secretary-General of the Community, who shall transmit certified copies to the Government of each Member State.

ARTICLE 22

ENTRY INTO FORCE

This Agreement shall enter into force upon the deposit of the eighth Instrument of Ratification in accordance with Article 21.

ARTICLE 23

ACCESSION

After the entry into force of this Agreement, any State listed in the Annex to this Agreement which is not a signatory to the Agreement, or any State or Territory which becomes a Member State of the Community wishing to become a Party to this Agreement shall deposit an appropriate Instrument of Accession with the Secretary-General of the Community and such Accession shall take effect on the date of the receipt of such Instrument by the Secretary-General who shall transmit a certified copy to the Government of each Member State.

ARTICLE 24

AMENDMENT

1. Any Member State may propose an amendment to this Agreement. The text of any such amendment and the reasons therefor shall be transmitted to the Secretary-General of the Community who shall transmit them to the Government of each Member State.

2. The Member States shall be requested to communicate to the Secretary-General whether the proposed amendment is acceptable and also to submit any comments thereon.

3. If all Member States agree to the proposed amendment and deposit their respective Instruments of Ratification with the Secretary-General in accordance with Article 21 of this Agreement, the amendment shall enter into force on the deposit of the last such Instrument of Ratification.

4. The Secretary-General shall notify the Member States of the entry into force of any such amendment.

ARTICLE 25

WITHDRAWAL

1. A Member State may withdraw from this Agreement by giving twelve months' notice in writing to the Secretary-General of the Community who shall forthwith

notify the other Member States. Such withdrawal shall take effect on the expiry of twelve months after the date on which the notice is received by the Secretary-General unless the notice is withdrawn before the expiry of this Period.

2. If, as a result of withdrawals, the number of Parties to this Agreement is less than eight, this Agreement shall cease to be in force from the date on which the last of such withdrawals becomes effective.

3. A Member State shall honour any financial obligations duly assumed by it during the period it has been a Party to this Agreement.

ARTICLE 26 [New]

REGISTRATION OF AGREEMENT

This Agreement and all amendments thereto shall be registered with the Council of the International Civil Aviation Organisation.

IN WITNESS WHEREOF, the undersigned, being duly authorised by their respective Governments, have affixed their signatures to this Agreement.

Done at.....this.....day of

.....one thousand nine hundred and ninety-six in a single copy which shall be deposited with the Caribbean Community Secretariat which shall transfer certified copies to all the Contracting Parties.

Signed by
For the Government of Antigua and Barbuda, on
at

Signed by
For the Government of the Bahamas, on
at

Signed by
For the Government of Barbados, on
at

Signed by
For the Government of Belize, on
at

Signed by
For the Government of Dominica, on
at

Signed by
For the Government of Grenada, on
at

Signed by
For the Government of Guyana, on
at

Signed by
For the Government of Jamaica, on
at

Signed by
For the Government of Montserrat, on
at

Signed by
For the Government of St. Kitts and Nevis, on
at

Signed by
For the Government of Saint Lucia, on
at

Signed by
For the Government of St. Vincent and the Grenadines on
at

Signed by
For the Government of Suriname, on
at

Signed by
For the Government of Trinidad and Tobago, on
at

ANNEX

**LIST OF [MEMBER] STATES REFERRED TO IN ARTICLE 20 OF THE
AGREEMENT**

Antigua and Barbuda
The Bahamas
Barbados
Belize
Dominica

Grenada
Guyana
Jamaica
Montserrat
St. Kitts and Nevis
Saint Lucia
St. Vincent and the Grenadines
Suriname
Trinidad and Tobago

Passed by Resolution of the House of Representatives this 6th day of October 1997.

Bridget Harris, (Mrs.)
Speaker.

Sylvia Walker, (Mrs.)
Clerk to the House of Representatives.

Printed at the Government Printing Office, Antigua and Barbuda,
by Rupert Charity, Government Printer
— By Authority, 1998

800—12.98

[Price \$6.10]