BỘ NGOẠI GIAO

BỘ NGOẠI GIAO	**CỘNG HÒA XÃ HỘI CHỦ NGHĨA VIỆT NAM** **Độc lập - Tự do - Hạnh phúc**
Số: 42/2012/TB-LPQT	*Hà Nội, ngày 22 tháng 8 năm 2012*

THÔNG BÁO
Về việc điều ước quốc tế có hiệu lực

Thực hiện quy định của Luật Ký kết, gia nhập và thực hiện điều ước quốc tế năm 2005, Bộ Ngoại giao trân trọng thông báo:

Nghị định thư sửa đổi Hiệp định giữa nước Cộng hòa xã hội chủ nghĩa Việt Nam và Vương quốc Hà Lan về vận chuyển hàng không giữa và qua lãnh thổ hai nước, ký tại La Hay ngày 28 tháng 9 năm 2011, có hiệu lực kể từ ngày 08 tháng 8 năm 2012.

Bộ Ngoại giao trân trọng gửi Bản sao Biên bản kỳ họp theo quy định tại Điều 68 của Luật nêu trên./.

TL. BỘ TRƯỞNG
KT. VỤ TRƯỞNG
VỤ LUẬT PHÁP VÀ ĐIỀU ƯỚC QUỐC TẾ
PHÓ VỤ TRƯỞNG

Lê Thị Tuyết Mai

PROTOCOL AMENDING THE AGREEMENT BETWEEN THE SOCIALIST REPUBLIC OF VIET NAM AND THE KINGDOM OF THE NETHERLANDS FOR AIR SERVICES BETWEEN AND BEYOND THEIR RESPECTIVE TERRITORIES

The Government of the Socialist Republic of Viet Nam

and

the Government of the Kingdom of the Netherlands (hereinafter "the Parties")

Referring to the Agreement between the Socialist Republic of Viet Nam and the Kingdom of the Netherlands for air services between and beyond their respective territories, done at Hanoi on 1 October 1993 (hereinafter "the Agreement");

Acknowledging the need to modify the Agreement in view of the Agreement between the Government of the Socialist Republic of Viet Nam and European Union on certain aspects of air services, signed in Brussels on 4 October 2010;

Have decided to amend the Agreement and its Annex as follows:

Article 1

Article 1, under b, of the Agreement shall be replaced by:

b. the term "aeronautical authorities" means:

for the Socialist Republic of Viet Nam, the Civil Aviation Authority of Viet Nam Ministry of Transport;

for the Kingdom of the Netherlands, the Minister of Infrastructure and the Environment;

or in either case any person or body authorized to perform any functions at present exercised by the said Minister or Organization;

Article 2

In Article 1, under I, of the Agreement, the term "tariffs" shall be replaced by "prices".

Article 3

Article 4, paragraph 1, of the Agreement shall be replaced by:

1. Each Contracting Party shall have the right by written notification through Diplomatic Channels to the other Contracting Party to designate two (2) airlines to operate air services on the routes specified in the Annex and to substitute an other airline for an airline previously designated.

Article 4

Article 6 of the Agreement shall be replaced by:

ARTICLE 6

PRICES

1. Each Contracting Party shall allow prices for air transportation to be established by each designated airline individually based upon commercial considerations in the marketplace. Intervention by the Contracting Parties shall be limited to:

   a. prevention of predatory and/or unreasonably discriminatory prices or practices;

   b. protection of consumers from prices that are unreasonably high or restrictive due to the abuse of a dominant position;

   c. protection of airlines from prices that are artificially low due to, amongst others, direct or indirect governmental subsidy or support.

2. Each Contracting Party may require notification to its aeronautical authorities of prices to be charged to or from its territory by airlines of the other Contracting Party.

3. Neither Contracting Party shall undertake unilateral action to prevent the inauguration or continuation of a price charged or proposed to be charged by (a) a designated airline of either Contracting Party for international air transportation between the territories of the Contracting Parties, or (b) an airline of one Contracting Party for international air transportation between the territory of the other Contracting Party and any other country.

If either Contracting Party considers any such prices inconsistent with the considerations set forth in paragraph (1) of this Article, it shall request consultations and notify the other Contracting Party of the reasons for its dissatisfaction as soon as possible. These consultations shall be held not later than thirty (30) days after receipt of the request of the other Contracting Party, and the Contracting Parties shall co-operate in securing information necessary for reasoned resolution of the issue. If the Contracting Parties reach agreement with respect to a price for which a notice of dissatisfaction has been given, each Contracting Party shall use its best efforts to put that agreement into effect. Without such mutual agreement, the new price shall not take effect and the current price shall continue to be in effect.

4. Notwithstanding the provisions of this Article, in the case of the Kingdom of the Netherlands, the prices to be charged by the designated airlines for carriage wholly within the European Union shall be subject to European Union law.

Article 5

Article 7 of the Agreement shall be replaced by:

ARTICLE 7

COMMERCIAL ACTIVITIES

1. The designated airline(s) of each Contracting Party shall have the right to establish offices in the territory of the other Contracting Party for promotion and sale of air services and other ancillary or supplemental products and services and facilities required for the provision of air services.

2. Any designated airline of each Contracting Party may engage in the sale of air services and its ancillary products, services and facilities in the territory of the other Contracting Party directly and, at the airline's discretion, through its agents. For this purpose, the designated airline may use its own transportation documents and any person shall be free to purchase such transportation and its ancillary products, services and facilities in the currency of that territory or in freely convertible currencies to the degree permitted by national laws and regulations, provided that they are applied on a non-discriminatory basis.

3. The designated airline(s) of each Contracting Party shall be entitled, in accordance with the laws and regulations of the other Contracting Party relating to entry, residence and employment, to bring in and maintain in the territory of the other Contracting Party managerial, sales, technical, operational and other specialist staff required for the provision of air services and other ancillary products and facilities. Such staff requirements may, at the option of the airline, be satisfied by its own personnel of any nationality or by using the services of any other airline, organization or company operating in the territory of the other Contracting Party and authorized to perform such services in the territory of such other Contracting Party.

Article 6

A new Article 10*bis* shall be added to the Agreement:

ARTICLE 10*bis*

USER CHARGES

1. User charges that may be imposed by the competent charging authorities of each Contracting Party on the designated airline(s) of the other Contracting Party shall be transparent, just, reasonable, non-discriminatory, and equitably apportioned among all categories of users. Such user charges shall be assessed on the designated airline(s) of the other Contracting Party on terms not less favourable than the terms available to any other airline at the time the charges are assessed.

2. User charges imposed on the designated airline(s) of the other Contracting Party may reflect, but shall not exceed, the full cost to the competent charging authorities of providing the appropriate airport, environmental, air navigation and aviation security facilities and

services at the airport or within the airport system. Such full cost may include a reasonable return on assets, after depreciation. Facilities and services for which charges are made shall be provided on an efficient and economic basis.

3. Each Contracting Party shall encourage consultations between the competent charging authorities in its territory and the designated airline(s) using the services and facilities. Each Contracting Party shall encourage the competent charging authorities and the airlines to exchange such information as may be necessary to permit an accurate and transparent review of the reasonableness of the charges in accordance with the principles stated in paragraphs (1) and (2) of this Article. Each Contracting Party shall encourage the competent charging authorities to provide users with reasonable notice of any proposal for changes in the user charges to enable the users to express their views before changes are implemented.

4. Neither Contracting Party shall be held, in dispute resolution procedures pursuant to Article 17 of this Agreement, to be in breach of a provision of this Article, if:

   i) it has undertaken a review of the charge or practice that is the subject of complaint by the other Contracting Party within a reasonable time, and

   ii) following such a review, it has taken all steps within its power to remedy any charge or practice that is inconsistent with this Article.

Article 7

A new Article 14*bis* shall be added to the Agreement:

ARTICLE 14*bis*

SAFETY

1. Each Contracting Party may request consultations at any time concerning safety standards in any area relating to air crew, aircraft or their operation adopted by the other Contracting Party. Such consultations shall take place within 30 (thirty) days of that request.

2. If, following such consultations, one Contracting Party finds that the other Contracting Party does not effectively maintain and administer safety standards and requirements in any such area that are at least equal to the minimum standards established at that time pursuant to the Chicago Convention, the first Contracting Party shall notify the other Contracting Party of those findings and the steps considered necessary to conform with those minimum standards, and that other Contracting Party shall take appropriate corrective action. Failure by the other Contracting Party to take appropriate action within 15 (fifteen) days or such longer period as may be agreed, shall be grounds for the application of Article 5 (Revocation and suspension of authorization) of this Agreement.

3. Notwithstanding the obligations mentioned in Article 33 of the Chicago Convention, it is agreed that any aircraft operated by or, under a lease agreement, on behalf of the airline or airlines of one Contracting Party on services to or from the territory of the other Contracting Party may, while within the territory of the other Contracting Party, be made the subject of an examination by the authorized representatives of the other Contracting Party, on board and around the aircraft, to check both the validity of the aircraft documents and those of its crew and the apparent conditions of the aircraft and its equipment (ramp inspections), provided this does not lead to unreasonable delay.

4. If any such inspection or series of ramp inspections gives rise to:

   a) serious concerns that an aircraft or the operation of an aircraft does not comply with the minimum standards established at that time pursuant to the Chicago Convention, or

   b) serious concerns that there is a lack of effective maintenance and administration of safety standards established at that time pursuant to the Chicago Convention,

   the Contracting Party carrying out the inspection shall, for the purposes of Article 33 of the Chicago Convention, be free to conclude that the requirements under which the certificates or licenses in respect of that aircraft or in respect of the crew of that aircraft had been issued or rendered valid, or that the requirements under which that aircraft is operated, are not equal to or above the minimum standards established pursuant to the Chicago Convention.

5. In the event that access for the purpose of undertaking a ramp inspection of an aircraft operated by the airline or airlines of one Contracting Party in accordance with paragraph 3 above is denied by the representative of that airline or those airlines, the other Contracting Party shall be free to infer that serious concerns of the type referred to in paragraph 4 above arise and draw the conclusions referred to in that paragraph.

6. Each Contracting Party reserves the right to suspend or vary the operating authorization of an airline or airlines of the other Contracting Party immediately in the event the first Contracting Party concludes, whether as a result of a ramp inspection, a series of ramp inspections, a denial of access for ramp inspection, consultations or otherwise, that immediate action is essential to the safety of the airline's operation.

7. Any action by one Contracting Party in accordance with paragraphs 2 or 6 above shall be discontinued once the basis for the taking of that action ceases to exist.

Article 8

Article 15 of the Agreement shall be replaced by:

ARTICLE 15

SECURITY

1. The Contracting Parties reaffirm, consistent with their rights and obligations under international law, that their obligations to each other to protect the security of civil aviation against acts of unlawful interference forms an integral part of this Agreement. 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 Chicago Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation, signed at Montreal on 23 September 1971, its Supplementary Protocol for the Suppression of Unlawful Acts of Violence at Airports Serving International Civil Aviation, signed at Montreal on 24

February 1988, and any other Convention on aviation security to which the Contracting Parties shall become Contracting Party.

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 standards and, so far as they are applied by them, the Recommended Practices established by the International Civil Aviation Organization and designated as Annexes to the Convention; they shall require that operators of aircraft of their registry, 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 provisions. In this paragraph the reference to aviation security standards includes any difference notified by the Contracting Party concerned.

4. Each Contracting 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 (including hold baggage) and aircraft stores prior to and during boarding or loading and that those measures are adjusted to meet the increase in the threat. Each Contracting Party agrees that its designated airline(s) may be required to observe the aviation security provisions referred to in paragraph 3 required by the other Contracting Party for entrance into, departure from, or while within, the territory of that other Contracting Party. 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 occurs, the Contracting Parties shall assist each other by facilitating communications and other appropriate measures intended to terminate as rapidly as possible commensurate with minimum risk to life such incident or threat.

6. When a Contracting Party has reasonable grounds to believe that the other Contracting Party has departed from the provisions of this Article,

the first Contracting Party may request immediate consultations with the other Contracting Party. Such consultations shall take place within 30 (thirty) days of that request. These consultations shall be aimed to reach an agreement upon the measures suitable to eliminate the more immediate reasons of worry and to adopt in the framework of the ICAO security standards, the actions necessary to establish the appropriate conditions of security.

7. Each Contracting Party shall take such measures as it may find practicable, to ensure that an aircraft subject to an act of unlawful seizure or other acts of unlawful interference which has landed in its territory is detained on the ground unless its departure is necessitated by the overriding duty to protect human life. Wherever practicable, such measures shall be taken on the basis of mutual consultations.

Article 9

The Annex to the Agreement shall be replaced by the following Annex:

ANNEX

ROUTE SCHEDULE

Section I

The route of the agreed services performed by the airline(s) designated by the Government of the Socialist Republic of Viet Nam shall be as follows in either or both directions:

Any point in Viet Nam – any intermediate point – any point in the European part of the Netherlands – any beyond point.

Section II

The route of the agreed services performed by the airline(s) designated by the Government of the Kingdom of the Netherlands shall be as follows in either or both directions:

Any point in the European part of the Netherlands – any intermediate point – any point in Viet Nam – any beyond point.

Section III

1. Each designated airline may on any or all flights and at its option:

   a. operate flights in either or both directions;
   b. combine different flight numbers within one aircraft operation;
   c. serve behind, intermediate, and beyond points and points in the territories of the Contracting Parties in any combination and in any order;
   d. omit stops at any point or points;
   e. transfer traffic from any of its aircraft to any of its other aircraft at any point;
   f. serve points behind any point in its territory with or without change of aircraft or flight number and hold out and advertise such services to the public as through services;
   g. make own stopovers at any points whether within or outside the territory of either Contracting Party; stopover rights shall not be available between points in the territory of the either Contracting Party;
   h. carry transit traffic through the other Contracting Party's territory; and
   i. combine traffic on the same aircraft regardless of where such traffic originates,

without directional or geographic limitation and without loss of any right to carry traffic otherwise permissible under this Agreement.

2. The right of the designated airline(s) of either Contracting Party to exercise fifth freedom traffic rights shall be discussed and agreed upon on a reciprocal basis by the aeronautical authorities of each Contracting Party. In the case of the Netherlands, the request for fifth freedom traffic rights shall be subject to national administrative laws; this means that the granting of fifth freedom traffic rights will take place after internal consultations. Such rights shall become available to the designated airline(s) immediately upon agreement between the civil aviation authorities of both Contracting Parties.

Article 10
Applicability

As regards the Kingdom of the Netherlands, this Protocol shall apply to the European part of the Netherlands only.

Article 11
Entry into force

This Protocol shall be provisionally applied from the date of its signature and shall enter into force on the day on which the Parties have informed each other in writing, through diplomatic channels, that the formalities constitutionally required therefore in their respective countries have been complied with.

IN WITNESS WHEREOF, the undersigned, being duly authorized thereto by their respective Governments, have signed this Protocol.

DONE in duplicate at The Hague this 28 day of September 2011, in the English language.

For the Government of the Socialist Republic of Viet Nam	For the Government of the Kingdom of the Netherlands
NGO THINH DUC	**JOOP ATSMA**
Deputy Minister of Transport	**State Secretary for Infrastructure and the Environment**