

MINISTRY OF TRANSPORT

OPEN AVIATION MARKET LICENCES (AUSTRALIA)

Information for international airlines

1. Introduction

1.1 In order to operate a scheduled international air service to or from New Zealand (including by way of code-sharing on the aircraft of another airline)¹, an airline is required under Part VIII A of the Civil Aviation Act 1990 to hold a *scheduled international air service licence* or, for scheduled services between New Zealand and countries or territories that have been specifically designated by the Minister of Transport (currently Australia, Brunei Darussalam, the Cook Islands, Luxembourg, Malaysia, Samoa, Singapore, Tonga, the United Arab Emirates, and the United States of America), an *open aviation market licence*.

1.2 Compliance with the relevant provisions of the Civil Aviation Act 1990 involves various licensing requirements and procedures. Those outlined in this information pamphlet relate only to *open aviation market licences for SAM airlines for services between Australia and New Zealand*. Licences for designated airlines for the open aviation markets with: Australia, Brunei, the Cook Islands, Luxembourg, Malaysia, Samoa, Singapore, Tonga, the United Arab Emirates, and the United States of America, are dealt with in a separate pamphlet. An airline intending to operate scheduled services between New Zealand and a country **other** than Australia or the other seven countries listed above may do so only with a scheduled international air service licence, the requirements and procedures for which are set out in other pamphlets.

1.3 Under an open aviation market licence, an airline is required to file, for information purposes only, a statement of the nature of its scheduled services between Australia and New Zealand for **each** IATA schedule period, and any subsequent amendments. Periodic retrospective returns are also required for additional **non**-scheduled (charter) flights operated between Australia and New Zealand, but prior approvals for such flights are not required.

1.4 The Secretary for Transport is the licensing authority for open aviation market licences but relevant powers are usually exercised under delegated authority by the Ministry's Deputy Secretary Air Services. Unless otherwise stated, the term "licensing authority" is used in this leaflet.

¹ As defined by Section 87A of the Civil Aviation Act 1990, *scheduled international air service* means a series of flights performed by aircraft for the transport of passengers, cargo, or mail between New Zealand and one or more points in any other country or territory, where the flights are so regular or frequent as to constitute a systematic service, whether or not in accordance with a published timetable, and which are operated in such a manner that each flight is open to use by members of the public.

1.5 Before scheduled services between New Zealand and Australia can be commenced, applicant airlines must also meet the requirements of the relevant Australian authorities.

2. Application for a licence

2.1 Intending applicants for an open aviation market licence which are based in New Zealand are invited to have a preliminary discussion with the Ministry of Transport prior to their lodging a formal licence application. A copy of the Air Services Agreement between New Zealand and Australia is also available on request. For either purpose, New Zealand applicants should contact the Principal Adviser in the Ministry's Air Services Team (address, e-mail and fax number are given in paragraph 2.2 below; or telephone 04 - 498 0647).

2.2 An application for an open aviation market licence should be lodged **in duplicate** with the Secretary for Transport at the following address: Ministry of Transport, Level 8, Petherick Tower, 38-42 Waring Taylor Street, or P O Box 3175, Wellington, New Zealand (or FAX: + 64 - 4 - 498 0678). Alternatively, applications may be e-mailed to airservices@transport.govt.nz. There is currently no fee for a licence, nor any application form.

3. Requirements for a licence

3.1 As specified by the Secretary for Transport under Section 87c of the Civil Aviation Act, an application for an open aviation market licence must include the following information concerning each service proposed:

- (a) the route to be followed, including all points to be served;
- (b) the aircraft type to be operated and, for passenger services, its seating configuration;
- (c) the frequency of the service per week;
- (d) details of any code-share arrangements; and
- (e) the date on which it is intended to commence the service.

3.2 Applicants may also be requested to submit for information purposes a schedule of full passenger fares.

3.3 Section 87T of the Civil Aviation Act prescribes the matters which the licensing authority must take into account when considering an application for an open aviation market licence. These matters, relating to international agreements, and safety and security requirements, are outlined in the following paragraphs of this section.

International agreements

3.4 If granting a licence would be contrary to the Australia - New Zealand Air Services Agreement or to any other international agreement, convention or

arrangement to which New Zealand is a party, the licensing authority must refuse to grant the licence.

Ownership and control

3.5 In order to demonstrate that the applicant meets eligibility criteria under the SAM provisions of the Australia - New Zealand Air Services Agreement, an application for an open aviation market licence must include affidavits with details showing:

- (a) that Australian and/or New Zealand nationals -
 - (i) own a majority of the paid-up capital of the airline, and that, for passenger airlines, the total paid-up capital is commensurate with the scale of the operation proposed², and
 - (ii) have effective control of the airline by holding at least two-thirds of the positions on the board, including that of chairperson;
- (b) that the airline's head office and operational base are in Australia or New Zealand; and
- (c) whether or not arrangements relating to the operation of the proposed service in effect vest control of the airline in a foreign interest.

3.6 An airline that does not meet these ownership and control requirements may be granted an open aviation market licence if the airline is jointly approved as a "SAM airline" by both the Australian and New Zealand Ministers responsible for civil aviation in accordance with the Single Aviation Market Arrangements between the two countries.

Safety and security certification

3.7 In order to meet aviation safety and security requirements, an applicant is likely to need to also hold an air operator certificate. An application for this certificate should be lodged with the Director of Civil Aviation at the following address: Civil Aviation Authority, Aviation House, Cnr Market Grove & Woburn Road, or P O Box 31-441, Lower Hutt, New Zealand (FAX: + 64 - 4 - 569 2024). There is both an application form and a fee for an air operator certificate. Initial contact to clarify what is required should be made with the Manager Flight Operations - Airlines at the above address or telephone +64 - 4 - 560 9400.

² For purposes of assessing whether the total paid-up capital is commensurate with the scale of the operation proposed, the following minimum capital levels apply:

<u>Aircraft type</u>	<u>Capital per aircraft operated</u>
B717, B727, B737, A320, MD80, DC9	NZ\$2,000,000
B757, B767, A300, A310, DC10, L1011	NZ\$3,000,000
B747, B777	NZ\$4,000,000

3.8 An application for an open aviation market licence may be made in anticipation of the issuing of an air operator certificate, but if a certificate is required the licence can be granted only after the certificate has been issued.

4. Granting of licence

4.1 After taking into account the requirements set out above, the licensing authority may refuse a licence application, or grant it wholly or in part, and subject to such conditions as the authority thinks fit. If an applicant airline has met all the requirements, a decision on the granting of a licence can normally be made within one week of receipt of the application. However, a licence can not be granted until all these requirements have been met.

Public notice that licence granted

4.2 When a licence has been granted, notice of this is given in *The New Zealand Gazette*.

Duration of licence

4.3 A licence takes effect from the date stated in the licence. For *foreign* international airlines, the licence is normally of indefinite duration but, in some circumstances, may be granted for a specified period. For *New Zealand* international airlines, a licence is normally granted for a period of five years but, in some circumstances, may be granted for a shorter period. The status of the airline, whether New Zealand or foreign, is determined by the location of the airline's operational base.

5. Commencement of services

5.1 It is a condition of an open aviation market licence that the licensee must commence the service(s) authorised by the licence not more than 12 months from the date on which the licence is granted.

Insurance

5.2 Before an airline commences the service(s) authorised by an open aviation market licence, it must supply to the licensing authority proof of insurance covering any liability that may arise from or in connection with the operation of the service(s) in respect of death or bodily injury, or of property damage. The licensee may be called upon at any subsequent time to supply proof of such insurance.

Nature of service filings

5.3 Under an open aviation market licence, an airline is required to file, for information purposes, a statement of the nature of its scheduled services for **each** IATA schedule period, and any subsequent amendments. There is also

a requirement to make quarterly returns of the non-scheduled international flights that have been operated.

Ownership and control

5.4 In order to continue to exercise the rights granted in an open aviation market licence, an airline must either continue to be substantially owned and effectively controlled by Australian and/or New Zealand nationals in accordance with the criteria set out in paragraph 3.5 above, or have been jointly approved as a “SAM airline” by Australian and New Zealand Ministers as specified in paragraph 3.6 above.

6. Variation of terms and conditions of a licence

6.1 The licensing authority may, of the authority’s own motion or on the application of a licensee, amend or revoke any of the terms and conditions of a licence or add any new terms or conditions that in the authority’s opinion are necessary or desirable in the public interest.

Application for an amendment

6.2 As with an original application for a licence, an application for an amendment to a licence should be lodged with the Secretary for Transport. (For address, fax and telephone numbers, see Section 2 above.)

Amendments subject to conditions

6.3 The amendment of licences is subject to the following conditions:

- (a) where it is proposed that this power be exercised on the authority’s own motion, the authority must give the licensee not less than 21 clear days’ notice in writing of this intention; and
- (b) where the licensee seeks approval for a change or addition in the route(s) to be operated or point(s) to be served, the licensing authority must apply the same criteria relating to international agreements and safety/security certification as are applied at the time an application is made for a new licence (see section 3 above).

Public notice that licence amended

6.4 When the terms or conditions of a licence have been varied, notice of the variation, including its terms, is given in *The New Zealand Gazette*.

7. Renewal of licence

Application three months in advance

7.1 Where a licence has been granted for a specified term, an application for its renewal must be lodged with the Secretary for Transport (at the address given in paragraph 2.2 above) not less than three months before the date on which the licence expires.

Requirements

7.2 An application for the renewal of a licence must include information on the same matters as is required when applying for a new licence; and the licensing authority must apply the same criteria relating to international agreements and safety/security certification as are applied at the time an application is made for a new licence (see section 3 above).

Renewal takes effect

7.3 The renewal of a licence takes effect from the date of expiry of the licence for which renewal is granted. The licence may be renewed for an indefinite or specified term.

8. Suspension and revocation of a licence

8.1 A licence may be suspended or revoked in the circumstances prescribed in Sections 87zc and 87zd, respectively, of the Civil Aviation Act 1990.

NOTE

The information in this pamphlet is correct at the time of publication (see date below) but may be amended in future editions. If in doubt, a check should be made with the Ministry (see Section 2 for contact details) to ascertain whether this edition of the pamphlet is still current. Changes since April 2002 edition of this pamphlet have been made to reflect the requirements for Single Aviation Market airlines in the new New Zealand – Australia Air Services Agreement, which has provisional application from 20 November 2000, and the designation of Samoa and Tonga as open aviation markets.