

## MINISTRY OF TRANSPORT

### SCHEDULED INTERNATIONAL AIR SERVICE LICENCES

#### Information for New Zealand international airlines<sup>1</sup>

#### 1. Introduction

1.1 In order to operate scheduled international air services to or from New Zealand (including by way of code-sharing on the aircraft of another airline)<sup>2</sup>, an airline is required under Part VIII A of the Civil Aviation Act 1990 to hold a *scheduled international air service licence* or, for services between New Zealand and countries or territories that have been specifically designated by the Minister of Transport (currently Australia, Brunei, Chile, the Cook Islands, Luxembourg, Malaysia, Peru, 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 *scheduled international air service licences*. An airline intending to operate scheduled services **only** between New Zealand and Australia, or New Zealand and Brunei, Chile the Cook Islands, Luxembourg, Malaysia, Peru, Samoa, Singapore, Tonga, the United Arab Emirates, or the United States of America, may do so with an open aviation market licence, the requirements and procedures for which are set out in two separate pamphlets.

1.3 For New Zealand international airlines, the Minister of Transport is the licensing authority for scheduled international air service licences. However, certain limited powers (e.g., relating to the amendment and renewal of licences) are exercised under delegated authority by the Secretary for Transport or, more usually, the Deputy Secretary Air Services in the Ministry of Transport. In relation to these powers, the term “licensing authority” is used in this pamphlet.

1.4 Before scheduled services can be commenced between New Zealand and other countries or territories, applicant airlines must also meet the requirements of the relevant authorities in each of those other countries or territories.

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<sup>1</sup> As defined by Section 87A of the Civil Aviation Act 1990, *New Zealand international airline* means a New Zealand air transport enterprise that is offering or operating a scheduled international air service or intends to offer or operate such a service.

<sup>2</sup> 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.

## 2. Application for a licence

2.1 Prior to lodging a formal licence application for a scheduled international air service licence, intending applicants are invited to have a preliminary discussion with the Ministry of Transport so that they can be briefed on the availability of air traffic rights and any other relevant matters. For this purpose, 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 a scheduled international air service 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, Wellington, or P O Box 3175, Wellington (FAX: + 64 - 4 - 498 0678). Alternatively, applications may be e-mailed to [airservices@transport.govt.nz](mailto:airservices@transport.govt.nz). There is currently no fee for a licence, nor any application form.

2.3 It is possible that the rights sought are not available because there is no air services agreement between New Zealand and the country concerned or there is no unallocated capacity under an existing agreement. In such circumstances, if the applicant still wishes to proceed, it should make a formal request, with supporting case, that New Zealand seek to negotiate the rights.

## 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 a scheduled international air service 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;
- (e) the date on which it is intended to commence the service; and
- (f) a schedule of full passenger fares.

3.2 Section 87F of the Civil Aviation Act prescribes the matters which the Minister of Transport must take into account when considering an application for a scheduled international air service licence. These matters, relating to international agreements, safety and security requirements, the financial ability of the applicant, written representations, and such other matters as the Minister thinks fit, are outlined in the following paragraphs of this section.

*International agreements*

3.3 If granting a scheduled international air service licence would be contrary to the relevant bilateral air services agreement or associated arrangements, or to any other international agreement, convention or arrangement to which New Zealand is a party, the Minister must refuse to grant the licence.

*Ownership and control*

3.4 A scheduled international air service licence will not be granted to a New Zealand airline unless it is substantially owned and effectively controlled by New Zealand nationals. The right of an airline to operate international scheduled services can otherwise be challenged under most of New Zealand's bilateral air services agreements. Accordingly, an application must also include affidavits with details showing:

- (a) that New Zealand nationals -
  - (i) own at least 51% of the paid-up capital of the airline, and
  - (ii) have effective control of the airline by holding a majority of the positions on the board, including that of chairperson (in addition, if services are to be provided to Australia, at least two-thirds of the board positions must be held by Australian and/or New Zealand nationals);
- (b) that not more than 25% of the airline is owned by a foreign airline (or foreign airline interest), and not more than 35% in aggregate is owned by foreign airlines (or foreign airline interests);
- (c) that the airline's head office and operational base will be in New Zealand; and
- (d) whether or not arrangements relating to the operation of the proposed service in effect vest control of the airline in a foreign interest.

*Safety and security certification*

3.5 In order to meet aviation safety and security requirements, an airline 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 (CAA), Cnr. Market Grove & Woburn Road, Lower Hutt, or post to P O Box 31-441, Lower Hutt, (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 04 - 560 9400.

3.6 An application for a scheduled international air service licence may be made in anticipation of the issuing of an air operator certificate, but the licence can be granted only after the certificate has been issued.

*Financial ability and experience*

3.7 In considering any application for a scheduled international air service licence made by a New Zealand international airline, the Minister of Transport is also required to take into account the financial ability of the applicant to carry on the proposed service, and the likelihood of the applicant carrying on the proposed service satisfactorily. So that a report can be made to the Minister on these matters, an application must include:

- (a) a business plan for the enterprise that sets out its objectives and the resources available to achieve them, including the total amount of paid-up capital of the airline at the time it is expected to commence services, any banking accommodation arranged, and any planned capital-raising programmes;
- (b) a budgeted statement of financial performance of the airline for the first year of operation that is in table format and shows income and expenditure levels itemised by major items, together with a schedule that sets out the key assumptions made (e.g., flight frequency, load factors, fares and rates to be charged, etc.) in arriving at the figures;
- (c) a statement of financial position that shows the different forms of assets and liabilities of the enterprise immediately prior to the date of application and as predicted over the airline's first year of operation;
- (d) a cash flow analysis on a month-by-month basis for the airline's first year of operation, and information on the financial arrangements to deal with those months, if any, in which there are negative cash flows;
- (e) a list of commitments and guarantees given by the enterprise and/or its directors and management team, together with contingent liabilities; and
- (f) a summary of the relevant qualifications and work experience of the senior management personnel of the airline (other than technical and operational personnel assessed by the CAA - see para. 3.5 above).

*Public notice of applications, and written representations*

3.8 When a licence application has been received, notice of the application is given in *The New Zealand Gazette* and copies of the Notice may be sent direct to interested parties. The Notice outlines the services proposed (route, frequency, aircraft, etc.), but no confidential financial information is released. The Notice also specifies a period of not less than 21 clear days within which the Minister will receive written representations relating to the application. Written representations, if any, are among those matters that the Minister is

required to take into account when considering a licence application. An applicant is given the opportunity to comment on any representations received and this response is also taken into account by the Minister.

*Competing claims for air traffic rights*

3.9 Under most of New Zealand's bilateral air services agreements, the capacity available for allocation to New Zealand international airlines is restricted, and under some agreements each side is further restricted to designating only one airline. Wherever there are such constraints, it is possible for the air traffic rights available to be subject to competing bids from New Zealand airlines. When considering an application for a scheduled international air service licence in these circumstances, the Minister takes into account the criteria set out below, and applicants should therefore address these matters in their licence applications:

- (a) the extent to which the proposed service(s) would contribute to the development of a competitive environment on the route(s) concerned;
- (b) the extent to which an airline's proposed service(s) would facilitate increased inbound tourism, and trade and investment - the level of promotion, market development and investment proposed by the airline;
- (c) the extent to which an airline has the ability to satisfy consumer interests in terms of degree of choice (e.g., frequency, aircraft type, product range generally); efficiency (e.g., as reflected in lower tariffs, improved standards of service); and consumer service innovation; and
- (d) where a dedicated freight service is proposed, the extent to which such a service would contribute to the development of trade, in particular, export market(s), and, where relevant, the economic benefit relative to a combination passenger/freight service.

**4. Granting of a licence**

4.1 After taking into account the requirements set out above, the Minister may refuse a licence application, or may grant it wholly or partly, and subject to such conditions as the Minister thinks fit. If an applicant airline has met all the requirements, a decision on the granting of a scheduled international air service licence can normally be made within two months of receipt of the licence 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 to that effect is given in *The New Zealand Gazette*.

*Duration of licence*

4.3 A scheduled international air service licence for a New Zealand international airline takes effect from the date stated in the licence and is normally granted for a period of five years but, in some circumstances, a licence may be granted for a shorter term.

*Designation*

4.4 If the Minister of Transport grants a licence, the Minister also then designates the airline in accordance with the provisions of the relevant bilateral air services agreement(s), and the Government of each country concerned is notified accordingly. Designation is the official procedure by which a government advises its bilateral partner(s) of an airline that is entitled to exercise the traffic rights negotiated between them.

**5. Commencement of services**

5.1 It is a condition of a scheduled international air service 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. If the service(s) have not been commenced within that period, the entitlement is reviewed in order that consideration can be given to withdrawing the rights concerned so they become available for allocation to other New Zealand airlines. Non-commencement of the service(s) authorised by a licence also constitutes grounds for the revocation of a licence.

*Insurance*

5.2 Before an airline commences the services(s) authorised by a scheduled international air service 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 its service(s) in respect of death or bodily harm, or of property damage. The licensee may be called upon at any time to supply proof of such insurance.

*Nature of service filings*

5.3 Under a scheduled international air service licence, an airline is also required to file a statement of the nature of its services for **each** IATA schedule period, and any subsequent amendments.

*Periodic reviews of licence entitlements*

5.4 Periodic reviews of licence entitlements are undertaken and rights that have not been used within the previous 12 months may be withdrawn.

*Ownership and control*

5.5 In order to continue to exercise the rights granted in a scheduled international air service licence, an airline must continue to be substantially owned and effectively controlled by New Zealand nationals in accordance with the criteria set out in paragraph 3.4 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 the 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, but it would be useful first to discuss any such proposal with the Principal Adviser in the Ministry's Air Services Team, especially concerning the availability of the relevant traffic rights. (For address, fax and telephone numbers, see Section 2 above.) If the rights sought are not available, but the airline still wishes to proceed, it should make a formal request, with supporting case, that New Zealand seek to negotiate the rights.

*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 licensing authority's own motion, the authority must give the licensee not less than 21 clear days' notice in writing of this intention;
- (b) an airline may seek a change or addition in the route(s) operated, or an increase in the capacity of the service(s) provided, only if it intends to commence services on the changed or additional route(s) or utilise the increased capacity within 12 months from the date on which its application is determined;

- (c) in addition, where any proposed variation involves a change or addition in the route(s) to be operated, or an increase in the capacity of the service(s) provided, notice of the intention of the licensing authority to consider such a variation is given in *The New Zealand Gazette*. The notice also specifies a period of not less than 21 clear days within which the licensing authority will receive written representations relating to the proposed variation;
- (d) such representations are among those matters that the licensing authority is required to take into account when considering a variation. The licensee is given the opportunity to comment on any representations received and this response is also taken into account by the licensing authority;
- (e) the licensing authority must apply the same criteria relating to international agreements, safety/security certification, financial ability, and competing claims to air rights, etc., 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 An application for the renewal of a licence 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.

*Renewal process*

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, safety/security certification, financial ability, etc., as are applied at the time an application is made for a new licence (see section 3 above).

7.3 Notice of the intention of the licensing authority to consider a licence renewal is given in *The New Zealand Gazette*. The notice provides a period of not less than 21 clear days within which the licensing authority will receive written representations relating to the proposed renewal. Such representations are among those matters that the licensing authority is required to take into account when considering a renewal. The licensee is given the opportunity to comment on any representations received and this response is also taken into account by the licensing authority.

*Renewal takes effect*

7.4 A licence renewal takes effect from the date of expiry of the licence for which renewal is granted, and it may be for five years or a shorter 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 the May 2002 edition of this pamphlet reflect the designation of Chile and Peru as open aviation markets.

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