

No. 7284

**JAPAN
and
KUWAIT**

**Agreement for air services (with schedule). Signed at
Tokyo, on 6 October 1962**

Official texts: English, Japanese and Arabic.

Registered by the International Civil Aviation Organization on 8 June 1964.

**JAPON
et
KOWEÏT**

**Accord relatif aux services aériens (avec tableau). Signé à
Tokyo, le 6 octobre 1962**

Textes officiels anglais, japonais et arabe.

Enregistré par l'Organisation de l'aviation civile internationale le 8 juin 1964.

No. 7284. AGREEMENT¹ BETWEEN THE GOVERNMENT OF JAPAN AND THE GOVERNMENT OF KUWAIT FOR AIR SERVICES. SIGNED AT TOKYO, ON 6 OCTOBER 1962

The Government of Japan and the Government of Kuwait,

Being parties to the Convention on International Civil Aviation signed at Chicago on December 7, 1944,²

And desiring to conclude an agreement for the purpose of establishing and operating air services between their respective territories and beyond,

Have agreed as follows :

Article 1

- (1) For the purpose of the present Agreement, unless the context otherwise requires :
- (a) the term “the Convention” means the Convention on International Civil Aviation opened for signature at Chicago on December 7, 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 ;
 - (b) the term “aeronautical authorities” means, in the case of Japan, the Minister of Transportation and any person or body authorised to perform any functions on civil aviation presently exercised by the said Minister or similar functions, and, in the case of Kuwait, the Director General of Civil Aviation and any person or body authorised to perform any functions presently exercised by the said Director General ;
 - (c) the term “designated airline” means an airline which one Contracting Party has designated by written notification to the other Contracting Party for the operation of air services on the routes specified in such notification, and to which the appropriate operating permission has been given by that other Contracting Party, in accordance with the provisions of Article 4 of the present Agreement ;

¹ Came into force on 20 June 1963, the date of an exchange of diplomatic notes indicating approval by each contracting Party, in accordance with article 16.

² See footnote 2, p. 4 of this volume.

- (d) the terms "air service", "international air service", "airline" and "stop for non-traffic purposes" shall have the meanings respectively assigned to them in Article 96 of the Convention ;
 - (e) the term "territory" in relation to a State means the land areas and territorial waters adjacent thereto under the sovereignty, suzerainty, protection or trusteeship of that State ;
 - (f) the term "capacity" in relation to an aircraft means the pay load of that aircraft available on a route or section of a route ;
 - (g) the term "capacity" in relation to "agreed service" as defined in Article 2 means the capacity of the aircraft used on such service, multiplied by the frequency operated by such aircraft over a given period and route or section of a route ;
 - (h) the term "change of gauge" means the operation of an air service by a designated airline in such a way that one section of the route is flown by aircraft different in capacity from those used on another section ;
 - (i) the term "Schedule" means the schedule to the present Agreement¹ or as amended in accordance with the provisions of paragraph (2) of Article 12 of the present Agreement.
- (2) The Schedule forms an integral part of the present Agreement, and all reference to the "Agreement" shall include reference to the Schedule except where otherwise provided.

Article 2

Each Contracting Party grants to the other Contracting Party the rights specified in the present Agreement to enable its designated airline or airlines to establish and operate international air services on the routes specified in the Schedule (hereinafter called "agreed services" and "specified routes" respectively).

Article 3

- (1) Subject to the provisions of the present Agreement, the designated airline or airlines of each Contracting Party shall enjoy, while operating an agreed service on a specified route, the following privileges :
- (a) to fly without landing across the territory of the other Contracting Party ;
 - (b) to make stops in the said territory for non-traffic purposes ; and
 - (c) to make stops in the said territory at the points specified for that route in the Schedule for the purposes of discharging and of taking on international traffic in passengers, cargo and mail.

¹ See p. 296 of this volume.

(2) Nothing in paragraph (1) of this Article shall be deemed to confer on the airlines of one Contracting Party the privilege of taking up, in the territory of the other Contracting Party, passengers, cargo or mail carried for remuneration or hire and destined for another point in the territory of that other Contracting Party.

Article 4

(1) The agreed services on any specified route may be inaugurated immediately or at a later date at the option of the Contracting Party to which the rights are granted under the provisions of Article 2 of the present Agreement, but not before :

- (a) the Contracting Party to which the rights have been granted has designated an airline or airlines for that route, and
- (b) the Contracting Party granting the rights has given the appropriate operating permission in accordance with its laws and regulations to the airline concerned, which it shall be bound to grant without delay ;

provided that a tariff established in accordance with the provisions of Article 10 of the present Agreement is in force in respect of the agreed services.

(2) The airline or airlines designated by either Contracting Party may be required to satisfy the aeronautical authorities of the other Contracting Party that it is qualified to fulfil the conditions prescribed by the laws and regulations normally and reasonably applied by those authorities to the operation of international air services.

Article 5

(1) Each Contracting Party shall have the right to refuse to accept the designation of an airline, to withhold or revoke the grant to a designated airline of the privileges specified in Article 3 of the present Agreement or to impose such conditions as it may deem necessary on the exercise by the designated airline of those privileges in any case where it is not satisfied that substantial ownership and effective control of that airline are vested in the Contracting Party designating the airline or in its nationals.

(2) Each Contracting Party shall have the authority to suspend the exercise by a designated airline of the privileges specified in Article 3 of the present Agreement or to impose such conditions as it may deem necessary on the exercise by that airline of those privileges where the airline fails to comply with the laws or regulations of the Contracting Party granting those privileges or otherwise fails to operate in accordance with the conditions prescribed in the present Agreement, provided that, unless immediate suspension or imposition of conditions is considered necessary to prevent further infringement of laws or regulations or is in the interest of aviation safety, this authority shall be exercised only after consultation with the other Contracting Party.

(3) In the event of action by one Contracting Party under this Article, the rights of the other Contracting Party under Article 13 of the present Agreement shall not be prejudiced.

Article 6

(1) There shall be fair and equal opportunity for the designated airline or airlines of both Contracting Parties to operate the agreed services on the specified routes between their respective territories.

(2) In operating the agreed services, the designated airline or airlines of each Contracting Party shall take into account the interests of the designated airline or airlines of the other Contracting Party so as not to affect unduly the services which the latter provide on the whole or part of the same route.

Article 7

(1) The agreed services provided by the designated airlines of the Contracting Parties shall bear a close relationship to the requirements of the public for such services.

(2) The agreed services provided by a designated airline shall retain as their primary objective the provision at a reasonable load factor of capacity adequate to current and reasonably anticipated requirements for the carriage of passengers, cargo and mail originating from or destined for the territory of the Contracting Party which has designated the airline.

(3) Provision for the carriage of passengers, cargo and mail both taken up and discharged at points on the specified routes in the territories of States other than that designating the airline shall be made in accordance with the general principles that capacity shall be related to :

- (a) traffic requirements to and from the territory of the Contracting Party which has designated the airline or airlines ;
- (b) the requirements of through airline operation ; and
- (c) traffic requirements of the area through which the airline passes, after taking account of local and regional services.

Article 8

A designated airline or airlines of one Contracting Party may make a change of gauge at a point in the territory of the other Contracting Party only on the following conditions :

- (a) that it is justified by reason of economy of operation ;

- (b) that the aircraft used on the section more distant from the terminal in the territory of the former Contracting Party are smaller in capacity than those used on the nearer section ;
- (c) that the aircraft of smaller capacity shall operate only in connection with the aircraft of larger capacity and shall be scheduled so to do ; the former shall arrive at the point of change for the purpose of carrying traffic transferred from, or to be transferred into, the aircraft of larger capacity ; and their capacity shall be determined with primary reference to this purpose ;
- (d) that there is an adequate volume of through traffic ; and
- (e) that the provisions of Article 7 of the present Agreement shall govern all arrangements made with regard to change of gauge.

Article 9

- (1) Each Contracting Party shall cause its designated airline or airlines to provide to the aeronautical authorities of the other Contracting Party, before starting to operate air routes agreed upon in the Schedule of the present Agreement, copies of tariffs, schedules and other relevant information concerning the operation of the agreed services and also subsequent modifications of such information.
- (2) The aeronautical authorities of either Contracting Party shall supply to the aeronautical authorities of the other Contracting Party at their request such periodic or other statements of statistics as may be reasonably required for the purpose of reviewing the capacity provided on the agreed services by the designated airlines of the first Contracting Party. Such statements shall include all information required to determine the amount of traffic carried by those airlines on the agreed services and the origins and destinations of such traffic.

Article 10

- (1) The tariffs on any agreed service shall be established at reasonable levels, due regard being paid to all relevant factors including cost of operation, reasonable profit, characteristics of service (such as standards of speed and accommodation) and the tariffs of other airlines for any part of the specified route. These tariffs shall be fixed in accordance with the following provisions of this Article.
- (2) The tariffs referred to in paragraph (1) of this Article, together with the rates of agency commission used in conjunction with them shall, if possible, be agreed in respect of each of the specified routes between the designated airlines concerned, in consultation with other airlines operating over the whole or part of that route, and

such agreement shall, wherever possible, be reached through the rate-fixing machinery of the International Air Transport Association. The tariffs so agreed shall be subject to the approval of the aeronautical authorities of both Contracting Parties.

(3) If the designated airlines cannot agree on any of these tariffs, or if for some reason a tariff cannot be agreed in accordance with the provisions of paragraph (2) of this Article, the aeronautical authorities of the Contracting Parties shall try to determine the tariff by agreement between themselves.

(4) If the aeronautical authorities cannot agree on the approval of any tariff submitted to them under paragraph (2) of this Article or on the determination of any tariff under paragraph (3), the dispute shall be settled in accordance with the provisions of Article 13 of the present Agreement.

(5) No new tariff shall come into effect if the aeronautical authorities of either Contracting Party are dissatisfied with it except under the terms of paragraph (4) of Article 13 of the present Agreement. Pending determination of the tariffs in accordance with the provisions of this Article, the tariffs already in force shall prevail.

Article 11

(1) Fuel, lubricating oils, spare parts, regular aircraft equipment and aircraft stores introduced into the territory of one Contracting Party, or taken on board aircraft in that territory, by or on behalf of the other Contracting Party or its designated airline or airlines and intended solely for use by or in the aircraft of that airline shall be accorded by the first Contracting Party, in respect of customs duties, inspection fees and other similar national or local duties and charges, treatment not less favourable than that granted to its national airlines engaged in the operation of international air services or to the airlines of the most favoured nation.

(2) Supplies of fuel, lubricating oils, spare parts, regular equipment and aircraft stores retained on board aircraft of the designated airline or airlines of one Contracting Party shall be exempt in the territory of the other Contracting Party from customs duties, inspection fees or similar duties or charges, even though such supplies be used by such aircraft on flights in that territory. Goods so exempted may only be unloaded with the approval of the customs authorities of the other Contracting Party. Those goods, which are to be re-exported, shall be kept in bond, until re-exportation under customs supervision.

(3) The charges which either of the Contracting Parties may impose, or permit to be imposed, on the designated airline or airlines of the other Contracting Party for the use of airports and other facilities under its control shall be just and reasonable and not higher than would be paid for the use of such airports and facilities by the

airlines of the most favoured nation or by any national airline of the first Contracting Party engaged in international air services.

Article 12

(1) There shall be regular and frequent consultation between the aeronautical authorities of the Contracting Parties to ensure close collaboration in all matters affecting the fulfilment of the present Agreement.

(2) Either Contracting Party may at any time request consultation with the other Contracting Party for the purpose of amending the present Agreement. Such consultation shall begin within a period of 60 days from the date of receipt of such request. Any amendments of the present Agreement agreed to as a result of such consultation shall be approved by each Contracting Party in accordance with its constitutional procedures and shall enter into force on the date of exchange of diplomatic notes indicating such approval. If the amendment relates only to the Schedule, the consultation shall be between the aeronautical authorities of both Contracting Parties. When these authorities agree on a new or revised Schedule, the agreed amendments will not come into effect until after they have been confirmed by an exchange of diplomatic notes.

(3) If a general multilateral convention concerning air transport comes into force in respect of both Contracting Parties, the present Agreement shall be amended so as to conform with the provisions of such convention.

Article 13

(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 negotiation between themselves.

(2) If the Contracting Parties fail to reach a settlement by negotiations, they may agree to refer the dispute for decision to an arbitration tribunal or to any other person or organization. The arbitration tribunal shall be composed as follows :

- (a) each Contracting Party shall nominate an arbitrator ;
- (b) the third arbitrator who shall preside shall be agreed upon between the Contracting Parties ; failing agreement within 60 days, the President of the International Court of Justice shall appoint him at the request of either Contracting Party, after consultation with both Contracting Parties.

(3) If either of the Contracting Parties does not agree to refer the dispute to an arbitration tribunal or to a person or an organization, the other Contracting Party

shall have the right to submit the dispute to an arbitration tribunal appointed by the President of the International Court of Justice.

(4) The Contracting Parties undertake to comply with any decision given under this article.

Article 14

Either Contracting Party may at any time notify the other of its intention to terminate the present Agreement. A copy of the notice shall be sent simultaneously to the International Civil Aviation Organization. If such notice is given, the present Agreement shall terminate one year after the date of receipt by the other Contracting Party of the notice to terminate, unless by agreement between the Contracting Parties the notice under reference is withdrawn before the expiration of that period. If the other Contracting Party fails to acknowledge receipt, notice shall be deemed to have been received fourteen days after the date of receipt by the International Civil Aviation Organization of its copy.

Article 15

The present Agreement, any amendment to it and the diplomatic notes exchanged in accordance with the provisions of paragraph (2) of Article 12 shall be registered with the International Civil Aviation Organization.

Article 16

The present Agreement shall be approved by each Contracting Party in accordance with its constitutional procedures and the Agreement shall enter into force on the date of exchange of diplomatic notes indicating such approval.

IN WITNESS WHEREOF, the undersigned, being duly authorised by their respective Governments, have signed at Tokyo, this sixth day of October, 1962, the present Agreement done, in duplicate, in the Japanese, Arabic and English languages each of which shall have equal authenticity. If there should be any disagreement as to the meaning or interpretation of any provisions of the present Agreement, the English text shall prevail.

For the Government
of Japan :

(Signed) [illegible]

For the Government
of Kuwait :

(Signed) [illegible]

SCHEDULE

SECTION I

Routes to be operated by the designated airline or airlines of Kuwait

Kuwait — Tokyo with intermediate points.

NOTE :

The intermediate points on the route mentioned above are not yet determined, but will be agreed upon between the Contracting Parties on a basis of full reciprocity.

SECTION II

Routes to be operated by the designated airline or airlines of Japan

Points in Japan — Hong Kong or Manila — Saigon — Bangkok — Rangoon or Dacca — Calcutta — Kuwait — Athens — Rome — Frankfurt am Main — Paris — London.

NOTE 1 :

Traffic rights of the designated airline or airlines of Japan between Kuwait and London shall be exercised temporarily and shall be cancelled automatically upon the inauguration of services by the designated airline of Kuwait to London.

NOTE 2 :

Traffic rights of the designated airline or airlines of Japan between Kuwait and Frankfurt shall be exercised temporarily and shall be cancelled automatically upon the inauguration of services by the Kuwait designated airline to Frankfurt. At such time the Contracting Parties will negotiate to determine a point in Germany to which traffic rights may be exercised by the designated airline or airlines of Japan.

NOTE 3 :

The designated airline or airlines of Japan may

- (a) omit calling at any of the above-mentioned points ;
- (b) call at additional points provided that no traffic rights are exercised between such points and Kuwait ;

provided that in both cases the agreed services begin at a point in the territory of Japan.