

No. 7567

**NETHERLANDS
and
MALAYSIA**

**Agreement for air services between and beyond their
respective territories (with schedule). Signed at Kuala
Lumpur, on 7 April 1964**

Official text: English.

Registered by the International Civil Aviation Organization on 3 February 1965.

**PAYS-BAS
et
MALAISIE**

**Accord relatif aux services aériens entre les territoires des
deux pays et au-delà (avec tableau). Signé à Kuala-
Lumpur, le 7 avril 1964**

Texte officiel anglais.

Enregistré par l'Organisation de l'aviation civile internationale le 3 février 1965.

No. 7567. AGREEMENT¹ BETWEEN THE GOVERNMENT OF THE KINGDOM OF THE NETHERLANDS AND THE GOVERNMENT OF MALAYSIA FOR AIR SERVICES BETWEEN AND BEYOND THEIR RESPECTIVE TERRITORIES. SIGNED AT KUALA LUMPUR, ON 7 APRIL 1964

The Government of the Kingdom of the Netherlands and the Government of Malaysia being parties to the Convention on International Civil Aviation, and

Desiring to conclude an Agreement for the purpose of establishing air services between and beyond their respective territories,

Have agreed as follows :

Article 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 the seventh day of December, 1944,² 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 Malaysia, the Minister of Transport and any person or body authorised to perform any functions at present exercised by the said Minister or similar functions; and, in the case of the Kingdom of the Netherlands means the Director General of Civil Aviation and any person or body authorised to perform any functions at present exercised by the said Director General;
- (c) the term “designated airline” means an airline which one Contracting Party shall have designated, by written notification to the other Contracting Party, in accordance with Article 3 of the present Agreement, for the operation of air services on the routes specified in such notification;

¹ Applied provisionally as from 7 April 1964, the date of signature, in accordance with the provisions of article 15.

² See footnote 2, p. 5 of this volume.

- (d) 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;
- (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; and
- (f) the terms “air service”, “international air service”, “airline” and “stop for non-traffic purposes” have the meanings respectively assigned to them in Article 96 of the Convention.

Article 2

(1) Each Contracting Party grants to the other Contracting Party the rights specified in the present Agreement for the purpose of establishing air services on the routes specified in the appropriate Section of the Schedule¹ thereto (hereinafter called “the agreed services” and “the specified routes”).

(2) Subject to the provisions of the present Agreement, the airlines designated by 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 to the present Agreement for the purpose of putting down and taking on international traffic in passengers, cargo and mail.

(3) Nothing in paragraph (2) 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 3

(1) Each Contracting Party shall have the right to designate in writing to the other Contracting Party one or more airlines for the purpose of operating the agreed services on the specified routes.

(2) On receipt of the designation, the other Contracting Party shall, subject to the provisions of paragraphs (3) and (4) of this Article, without delay grant to the airline or airlines designated the appropriate operating authorisation.

¹ See p. 98 of this volume.

(3) The aeronautical authorities of one Contracting Party may require an airline designated by the other Contracting Party to satisfy them that it is qualified to fulfil the conditions prescribed under the laws and regulations normally and reasonably applied by them in conformity with the provisions of the Convention to the operation of international commercial air services.

(4) Each Contracting Party shall have the right to refuse to accept the designation of an airline and to withhold or revoke the grant to an airline of the privileges specified in paragraph (2) of Article 2 of the present Agreement or to impose such conditions as it may deem necessary on the exercise by an 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 nationals of the Contracting Party designating the airline.

(5) At any time after the provisions of paragraphs (1) and (2) of this Article have been complied with, an airline so designated and authorised may begin to operate the agreed services provided that a service shall not be operated unless a tariff established in accordance with the provisions of Article 7 of the present Agreement is in force in respect of that service.

(6) Each Contracting Party shall have the right to suspend the exercise by an airline of the privileges specified in paragraph (2) of Article 2 of the present Agreement or to impose such conditions as it may deem necessary on the exercise by an airline of those privileges in any case 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 essential to prevent further infringements of laws or regulations, this right shall be exercised only after consultation with the other Contracting Party.

Article 4

(1) Aircraft operated on international services by the designated airlines of either Contracting Party, as well as their regular equipment, spare parts, supplies of fuels 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 duties or taxes on arriving in the territory of the other Contracting Party, provided such equipment and supplies remain on board the aircraft up to such time as they are re-exported.

(2) Supplies of fuels, lubricants, spare parts, regular equipment and aircraft stores introduced into the territory of one Contracting Party by or on behalf of a designated airline of the other Contracting Party or taken on board the aircraft operated by such designated airline and intended solely for use in the operation

of international services shall be exempt from all national duties and charges, including customs duties and inspection fees imposed in the territory of the first Contracting Party, even when these supplies are to be used on the parts of the journey performed over the territory of the Contracting Party in which they are taken on board. The materials referred to above may be required to be kept under customs supervision or control.

(3) The regular airborne equipment, spare parts, aircraft stores and supplies of fuels and lubricants retained on board the aircraft of either Contracting Party may be unloaded in the territory of the other Contracting Party only with the approval of the customs authorities of that Party, who may require that these materials be placed under their supervision up to such time as they are re-exported or otherwise disposed of in accordance with customs regulations.

(4) Fuel, lubricating oils, spare parts, regular aircraft equipment and aircraft stores taken on board aircraft of one Contracting Party in the territory of the other Contracting Party and used solely on flights between two points in the territory of the latter Contracting Party shall be accorded with respect to customs duties, inspection fees and other similar national or local duties and charges treatment not less favourable than that granted to national airlines or to the most favoured airline operating such flights.

Article 5

(1) There shall be fair and equal opportunity for the 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 airlines of each Contracting Party shall take into account the interests of the 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 routes.

(3) The agreed services provided by the designated airlines of the Contracting Parties shall bear close relationship to the requirements of the public for transportation on the specified routes and shall have as their primary objective the provision, at a reasonable load factor, of capacity adequate to carry the 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. Provision for the carriage of passengers, cargo and mail both taken up and put down 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;
- (b) traffic requirements of the area through which the airline passes, after taking account of other air transport services established by airlines of the States comprising the area; and
- (c) the requirements of through airline operation.

Article 6

A designated airline 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 connexion 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 5 of the present Agreement shall govern all arrangements made with regard to change of gauge.

Article 7

(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, where 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 other 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 tariffs 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 11 of the present Agreement.

(5) No tariff shall come into force if the aeronautical authorities of either Contracting Party are dissatisfied with it except under the provisions of paragraph (3) of Article 11 of the present Agreement.

(6) When tariffs have been established in accordance with the provisions of this Article these tariffs shall remain in force until new tariffs have been established in accordance with the provisions of this Article.

Article 8

Each Contracting Party grants to the designated airlines of the other Contracting Party the right to transfer to their head offices in Malaysian dollars or sterling at the prevailing rate of exchange in the official market at the time of remittance all surplus earnings whatever the currency in which they were earned.

Article 9

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.

Article 10

To ensure close collaboration in all matters affecting the fulfilment of the present Agreement or its Annex¹ consultation between the aeronautical authorities of the Contracting Parties shall take place at the request of either Contracting Party.

¹ See p. 98 of this volume.

Article 11

(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 negotiation,

- (a) they may agree to refer the dispute for decision to an arbitral tribunal appointed by agreement between them or to some other person or body; or
- (b) if they do not so agree or if, having agreed to refer the dispute to an arbitral tribunal, they cannot reach agreement as to its composition, either Contracting Party may submit the dispute for decision to any tribunal competent to decide it which may hereafter be established within the International Civil Aviation Organisation or, if there is no such tribunal, to the Council of the said Organisation.

(3) The Contracting Parties undertake to comply with any decision given under paragraph (2) of this Article.

(4) If and so long as either Contracting Party or a designated airline of either Contracting Party fails to comply with a decision given under paragraph (2) of this Article, the other Contracting Party may limit, withhold or revoke any rights or privileges which it has granted by virtue of the present Agreement to the Contracting Party in default or to the designated airline or airlines of that Contracting Party or to the designated airline in default.

Article 12

(1) If either of the Contracting Parties considers it desirable to modify the terms of this Agreement or its Annex, it may request consultation between the aeronautical authorities of both Contracting Parties in relation to the proposed modification. Consultation shall begin within a period of sixty days from the date of the request. Any modifications so agreed shall come into force when they have been confirmed by an exchange of diplomatic notes, which, in the case of modification of the Agreement, shall state that the formalities required by the national legislation of each Contracting Party have been accomplished.

(2) In the event of the conclusion of any general multilateral convention concerning air transport by which both Contracting Parties become bound, the present Agreement shall be amended as to conform with the provisions of such convention.

Article 13

Either Contracting Party may at any time give notice to the other if it desires to terminate the present Agreement. Such notice shall be simultaneously communicated to the International Civil Aviation Organisation. If such notice is given, the present Agreement shall terminate twelve months after the date of receipt of the notice by the other Contracting Party, unless the notice to terminate is withdrawn by agreement before the expiry of this period. In the absence of acknowledgement of receipt by the other Contracting Party, notice shall be deemed to have been received fourteen days after the receipt of the notice by the International Civil Aviation Organisation.

Article 14

The present Agreement and any Exchange of Notes in accordance with Article 12 shall be registered with the International Civil Aviation Organisation.

Article 15

(1) The present Agreement shall be provisionally applicable from the date of its signature and shall come into force on a date to be laid down in an exchange of diplomatic notes, which shall state that the formalities required by the national legislation of each Contracting Party have been accomplished.

(2) As regards the Kingdom of the Netherlands, the Agreement shall be applicable only to the Kingdom in Europe.

IN WITNESS WHEREOF the undersigned plenipotentiaries, being duly authorised thereto by their respective Governments, have signed the present Agreement.

DONE at Kuala Lumpur, this 7th day of April in the year One Thousand Nine Hundred and Sixty-Four in duplicate in the English language.

For the Government
of the Kingdom of the Netherlands :
(*Signed*) L. KRUYTBOSCH

For the Government
of Malaysia :
(*Signed*) Sardon JUBIR

SCHEDULE

SECTION I

Routes to be operated by the designated Airline or Airlines of the Kingdom of the Netherlands

<i>Points of departure</i>	<i>Intermediate points (any one or more of the following)</i>	<i>Points in Malaysia</i>	<i>Points beyond (any one or more of the following)</i>
Points in the Netherlands	Points in Europe, Egypt, the Near and Middle East, Pakistan, Afghanistan, New Delhi, Calcutta, points in Ceylon, Burma, Thailand, Vietnam, and Cambodia	Kuala Lumpur, Singapore	Points in Indonesia, and the Philippines, Darwin, Sydney, and points in New Zealand

SECTION II

Routes to be operated by the designated Airline or Airlines of Malaysia

<i>Points of departure</i>	<i>Intermediate points (any one or more of the following)</i>	<i>Points in the Netherlands</i>	<i>Points beyond (any one or more of the following)</i>
Points in Malaysia	Points in Thailand, Burma, Ceylon, India, Pakistan, the Middle and Near East, Egypt, and Europe	Amsterdam	Points beyond