

No. 8862

**DENMARK
and
MALAYSIA**

Agreement for air services between and beyond their respective territories (with annexed schedule). Signed at Kuala Lumpur, on 19 October 1967

Official texts: English and Malay.

Registered by Denmark on 14 December 1967.

**DANEMARK
et
MALAISIE**

Accord relatif à des services aériens entre les territoires des deux pays et au-delà (avec tableau en annexe). Signé à Kuala-Lumpur, le 19 octobre 1967

Textes officiels anglais et malais.

Enregistré par le Danemark le 14 décembre 1967.

No. 8862. AGREEMENT¹ BETWEEN THE GOVERNMENT OF THE KINGDOM OF DENMARK AND THE GOVERNMENT OF MALAYSIA FOR AIR SERVICES BETWEEN AND BEYOND THEIR RESPECTIVE TERRITORIES. SIGNED AT KUALA LUMPUR, ON 19 OCTOBER 1967

The Government of the Kingdom of Denmark 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 I

RIGHTS TO ESTABLISH AIR SERVICES ON SPECIFIED ROUTES

Each Contracting Party shall grant to the other Contracting Party the right to establish air services, within the meaning of Article 96(a) of the Chicago International Civil Aviation Convention of 1944,² hereinafter called the “agreed services”, on the routes specified in the Routes Schedule, hereinafter called the “specified routes”.

Article II

RIGHTS AND CONDITIONS FOR THE DESIGNATION OF AIRLINES

1. Each Contracting Party shall have the right to designate by written notification to the other Contracting Party, one or more airlines within the meaning of Article 96(c) of the 1944 International Civil Aviation Convention for the purpose of operating the agreed services on the specified routes.

2. Subject to the provisions of paragraphs 4 and 5 of this Article, the other Contracting Party shall, on receipt of the designation, without delay grant to the airline or airlines designated the appropriate authorisation to operate.

¹ Came into force on 19 October 1967, upon signature, in accordance with article XIV.

² United Nations, *Treaty Series*, Vol. 15, p. 295; for the texts of the Protocols amending this Convention, see Vol. 320, pp. 209 and 217; Vol. 418, p. 161, and Vol. 514, p. 209.

3. At any time after the compliance of paragraphs 1 and 2 of this Article, the airline so designated and authorised may commence the operation of the agreed services, provided that any service shall not be operated unless a tariff established in accordance with the provisions of Article VII of this Agreement is in force in respect of that service.

4. Notwithstanding the provisions of paragraphs 1 and 2 of this Article the aeronautical authorities of one Contracting Party, which in the case of the Kingdom of Denmark is the Ministry of Public Works and any person or body authorised to perform any function at present exercised by the said Ministry or similar function, and in the case of Malaysia is the Minister of Transport and any person or body authorised to perform any function at present exercised by the Minister, or similar function, may require an airline designated by the other party to satisfy the authorities that it is qualified to fulfil the conditions prescribed under the laws and regulations normally and reasonably applied by such authorities to the operation of international commercial air services in conformity with the provisions of the 1944 International Civil Aviation Convention.

5. Nothing in the provisions of paragraphs 1 and 2 of this Article shall be construed as a bar to the right of each Contracting Party to refuse to accept the airline designated by the other party.

Article III

GRANT, WITHHOLDING OF, SUSPENSION, REVOCATION AND IMPOSITION OF CONDITIONS ON THE GRANT OF PRIVILEGES TO DESIGNATED AIRLINE

1. The airline 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, which for the purpose of this Agreement and in relation to a State means the land areas and territorial waters adjacent thereto, under the sovereignty, suzerainty, protection, or trusteeship of that State;
- (b) to make stops in the said territory for non-traffic purposes — within the meaning assigned to it in Article 96(d) of the 1944 International Civil Aviation Convention; 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.

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

3. Notwithstanding the provisions of paragraph 1 of this Article, each Contracting Party shall have the right to withhold or revoke the grant to the designated airline of the privileges specified therein or to impose such conditions as it may deem necessary on the exercise by those airlines of these privileges in any case where it is not satisfied that the substantial ownership and effective control of that airline are vested in the Contracting Party or in nationals of the Contracting Party designating the airline.

4. Each Contracting Party shall also have the right to suspend or to impose such conditions as it may deem necessary on the exercise by the designated airline of the privileges specified in paragraph 1 of this Article, 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 this right shall be exercised only after consultation with the other Contracting Party unless immediate suspension or imposition of necessary conditions is essential to prevent further infringement of the laws or regulations of the Party granting those privileges in which case such consultation may be dispensed with.

Article IV

EXEMPTION AND FAVOURABLE TREATMENT OF FUELS, SPARE PARTS AND AIRCRAFT EQUIPMENT FROM CUSTOMS DUTIES, INSPECTION FEES AND OTHER LOCAL DUTIES AND CHARGES

Fuel, lubricating oils, spare parts, regular aircraft equipment and aircraft stores, introduced into the territory of one Contracting Party, or taken on board an aircraft in that territory by or on behalf of the other Contracting Party or its designated airline or airlines intended solely for use by or in the aircraft of those airlines, shall be accorded the following treatment by the first Contracting Party

in respect of customs duties, inspection fees and other similar national or local duties and charges :

- (a) in the case of fuel and lubricating oils, remaining on board aircraft at the last airport of call before departure from the said territory, exemption; and
- (b) in the case of fuel and lubricating oils, not included under (a), and spare parts, regular aircraft equipment and aircraft stores, treatment not less favourable than that accorded to similar supplies introduced into the said territory or taken on board aircraft in that territory and intended for use by or in the aircraft of a national airline of the first Contracting Party, or of the most favoured foreign airline, engaged in international air services within the meaning of Article 96(b) of the 1944 International Civil Aviation Convention. This treatment shall be in addition to and without prejudice to that which each Contracting Party is under obligation to accord under Article 24 of the Chicago International Civil Aviation Convention of 1944.

Article V

FAIR AND EQUAL OPPORTUNITY TO OPERATE

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 provides 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 transport services established by airlines of the States comprising the area; and
- (c) the requirements of through airline operation.

Article VI

RIGHTS AND CONDITIONS TO MAKE A CHANGE OF GAUGE

A designated airline of one Contracting Party may make a change of gauge, which for the purpose of this Agreement 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, 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 V of the present Agreement shall govern all arrangements made with regard to change of gauge.

Article VII

TARIFF ON AGREED SERVICE

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.

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 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 X 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 X 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 VIII

RIGHT TO TRANSFER SURPLUS EARNINGS

Each Contracting Party shall grant to the designated airlines of the other Contracting Party the right to transfer to their head offices in Malaysian dollars,

U.S. dollars or sterling at the official rates of exchange all surplus earnings whatever the currency in which they were earned.

Article IX

SUPPLY OF PERIODIC STATEMENTS OF STATISTICS

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 X

SETTLEMENT OF DISPUTE BY NEGOTIATION, ARBITRATION

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 XI

CONSULTATION FOR THE PURPOSE OF MODIFICATION OF THE AGREEMENT

1. In order to ensure close collaboration in all matters affecting the performance of this Agreement the aeronautical authorities of the Contracting Parties shall consult on request of either of the authorities.

2. If either of the Contracting Parties considers it desirable to modify the terms of this Agreement it may request consultation with the other Contracting Party in relation to the proposed modification. Consultation shall begin within a period of sixty days from the date of the request. If the modification relates only to the Schedule to this Agreement, the consultation may be between the aeronautical authorities of both Contracting Parties. Any modification to this Agreement or its annexes shall come into effect when they have been confirmed by an exchange of notes between the Contracting Parties.

3. 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 so as to conform with the provisions of such convention.

Article XII

PROCEDURE FOR TERMINATION OF THE AGREEMENT

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 XIII

REGISTRATION OF AGREEMENT AND EXCHANGE OF NOTES

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

Article XIV

DATE OF ENFORCEMENT

The present Agreement shall come into force on the date of signature.

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

DONE at Kuala Lumpur this nineteenth day of October 1967 in duplicate in the English and the Malay languages. Both copies being equally authentic. In the event of any conflict, the English text shall prevail.

For the Government of the Kingdom of Denmark :
Kjeld WILLUMSEN

For the Government of Malaysia :
Tan Sri Haji Sardon BIN HAJI JUBIR

SCHEDULE

SECTION I

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

<i>Column I</i>	<i>Column II</i>	<i>Column III</i>	<i>Column IV</i>
<i>Points of departure: (any one or more of the following)</i>	<i>Intermediate points: (any one or more of the following, if desired)</i>	<i>Points in Malaysia</i>	<i>Points beyond (if desired)</i>
Copenhagen	Points in Europe including Scandinavia, U.S.S.R. United Arab Republic, Near and Middle East, Afghanistan, Karachi, Calcutta, New Delhi, Bombay, Rangoon, Colombo, Bangkok.	Kuala Lumpur	Singapore, Djakarta, Sydney, Melbourne

The designated airline or airlines of the Kingdom of Denmark may, on any or all flights omit calling at any of the above points, provided that the agreed services on this route begin at a point in Denmark.

SECTION II

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

<i>Column I</i>	<i>Column II</i>	<i>Column III</i>	<i>Column IV</i>
<i>Points of departure: (any one or more of the following)</i>	<i>Intermediate points (any one or more of the following, if desired)</i>	<i>Points in Scandinavia (any one or more of the following)</i>	<i>Points beyond (if desired)</i>

—Nil—

NOTE

1. Det Danske Luftfartselskab (DDL), co-operating with Det Norske Luftfartselskab (DNL) and AB Aerotransport (ABA) under the designation of Scandinavian Airlines System (SAS), may operate the routes for which it has been designated under the Agreement with aircraft, crews and equipment of either or both of the other two airlines.

2. In so far as Det Danske Luftfartselskab (DDL) employ aircraft, crews and equipment of the other airlines participating in the Scandinavian Airlines System (SAS) the provisions of the Agreement shall apply to such aircraft, crews and equipment as though they were the aircraft, crews and equipment of Det Danske Luftfartselskab (DDL), and the competent Danish authorities and Det Danske Luftfartselskab (DDL) shall accept full responsibility under the Agreement therefor.