

No. 9477

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**JAPAN  
and  
MALAYSIA**

**Agreement for air services (with schedule). Signed at  
Kuala Lumpur on 11 February 1965**

**Revision of the Schedule to the above Agreement**

*Authentic text : English.*

*The above-mentioned Agreement and certified statement were registered by the  
International Civil Aviation Organization on 24 March 1969.*

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**JAPON  
et  
MALAISIE**

**Accord relatif au services aériens (avec tableau). Signé à  
Kuala Lumpur le 11 février 1965**

**Modification du tableau annexé à l'Accord ci-dessus**

*Texte authentique : anglais.*

*L'Accord et la déclaration certifiée susmentionnés ont été enregistrés par l'Orga-  
nisation de l'aviation civile internationale le 24 mars 1969.*

## AGREEMENT <sup>1</sup> BETWEEN THE GOVERNMENT OF JAPAN AND THE GOVERNMENT OF MALAYSIA FOR AIR SER- VICES

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The Government of Japan 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*

(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, <sup>2</sup> 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 at present exercised by the said Minister or similar functions ; and, 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 ;

(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 paragraph (1) of Article 3 of the present Agreement, for the operation of air services on the routes specified in such notification ;

(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 ;

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<sup>1</sup> Came into force on 4 November 1965 by the exchange of the instruments of ratification which took place at Tokyo, in accordance with article 15.

<sup>2</sup> 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.

(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 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 ; and

(g) the term "Schedule" means the Schedule to the present Agreement or as amended in accordance with the provisions 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*

(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 Schedule (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 the agreed services on the specified routes, 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 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.

(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 to the operation of international 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 a designated 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 a 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 nationals of such Contracting Party.

(5) An airline designated and authorised in accordance with the provisions of paragraphs (1) and (2) of this Article 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 a designated 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 a designated airline of those privileges, in any case where that 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*

In respect of customs duties, inspection fees and similar national or local duties or charges on 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 designated airline of the other Contracting Party and intended solely for use by or in the aircraft of that airline, the designated airline of the second Contracting Party shall, subject to compliance with normal customs regulations, be accorded, in addition to the treatment prescribed in Article 24 of the Convention, treatment not less favourable than that granted by the first Con-

tracting Party to the airlines of the most favoured nation or to its national airlines engaged in international air services.

#### *Article 5*

(1) There shall be fair and equal opportunity for the designated 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 airlines of each Contracting Party shall take into account the interests of the designated 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 a 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 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 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 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 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) That 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 airline 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 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 of either Contracting Party do not approve any tariff submitted to them under paragraph (2) of this Article or the aeronautical authorities of both Contracting Parties cannot determine any tariff under paragraph (3) of this Article, 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 airline of the other Contracting Party the right to transfer in accordance with the applicable laws and regulations of each Contracting Party to their head offices in U.S. Dollars or Pounds Sterling at the prevailing rate of exchange in the official market at the time of remittance all surplus earnings derived in connection with the carriage of passengers, cargo and mail 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 and the origins and destinations of such traffic.

#### *Article 10*

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.

#### *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, the dispute may at the request of either Contracting Party be submitted for decision to a tribunal of three arbitrators, one to be named by each Contracting Party and the third to be agreed upon by the two arbitrators so chosen, provided that such third arbitrator shall not be a national of either Contracting Party. Each of the Contracting Parties shall designate an arbitrator within a period of sixty days from the date of receipt by either Contracting Party from the other Contracting Party of a diplomatic note requesting

arbitration of the dispute and the third arbitrator shall be agreed upon within a further period of sixty days. If either of the Contracting Parties fails to designate its own arbitrator within the period of sixty days or if the third arbitrator is not agreed upon within the period indicated, the President of the International Court of Justice may be requested by either Contracting Party to appoint an arbitrator or arbitrators.

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

### *Article 12*

(1) Either Contracting Party may at any time request consultation with the other Contracting Party for the purpose of amending the present Agreement, such consultation to begin within a period of sixty days from the date of receipt of such request. 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 on the matter will come into effect after they have been confirmed by an exchange of diplomatic notes.

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

### *Article 13*

Either Contracting Party may at any time give notice to the other Contracting Party 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 date of receipt of the notice by the International Civil Aviation Organisation.

### *Article 14*

The present Agreement, any amendment to it and the diplomatic notes exchanged in accordance with Article 12 shall be registered with the International Civil Aviation Organisation.



*Article 15*

The present Agreement shall be ratified and shall enter into force on the date of exchange of instruments of ratification which shall take place as soon as possible at Tokyo.

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

DONE at Kuala Lumpur, this eleventh day of February, 1965 in duplicate in the English language.

For the Government  
of Japan :

Fumihiko KAI

For the Government  
of Malaysia :

Sardon BIN JUBIR

**SCHEDULE**

1. Route to be operated in both directions by the designated airline or airlines of Japan :

Points in Japan – Taipei – Hong Kong – Manila – Saigon – Bangkok – Kuala Lumpur – Singapore – Djakarta – Darwin – Sydney.

2. Route to be operated in both directions by the designated airline or airlines of Malaysia :

Points in Malaysia – Bangkok – Saigon – Hong Kong – Manila – Taipei – Osaka – Tokyo.

3. The agreed services provided by the designated airline or airlines of either Contracting Party shall begin at a point in the territory of that Contracting Party, but other points on the specified routes may at the option of the designated airline be omitted on any or all flights.

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## REVISION OF THE SCHEDULE TO THE AGREEMENT OF 11 FEBRUARY 1965

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By an Agreement in the form of an exchange of notes dated at Kuala Lumpur on 14 March 1967 the Schedule to the Agreement of 11 February 1965 was revised to read as follows :

### SCHEDULE

#### ROUTE I

Route to be operated in both directions by the designated airline or airlines of Japan :

Points in Japan — Taipei — Hong Kong — Manila — Saigon — Bangkok — Kuala Lumpur or Singapore — Djakarta.

#### ROUTE II

Route to be operated in both directions by the designated airline or airlines of Malaysia :

Points in Malaysia — Singapore — Points in Malaysia — Bangkok — Saigon — Hong Kong — Manila — Taipei — Tokyo — Seoul.

#### NOTE

A. The agreed services provided by the designated airline or airlines of either Contracting Party shall begin at a point in the territory of that Contracting Party. However, the designated airline of Malaysia, in the event that the same airline is also designated by the Government of the Republic of Singapore, may originate its services from Singapore and operate through points in Malaysia on the specified route.

B. Other points on the specified routes may at the option of the designated airline be omitted on any or all flights.

The revising Agreement came into force on 14 March 1967 by the exchange of the said notes.

*Authentic text of the revised Schedule : English.*

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