

No. 11854

**AUSTRALIA
and
MALAYSIA**

**Agreement relating to air services (with schedule). Signed at
Toowoomba on 9 October 1967**

**Exchange of notes constituting an agreement amending the
above-mentioned Agreement. Kuala Lumpur, 1 and
6 April 1971**

Authentic texts of the Agreement: English and Malay.

Authentic text of the Exchange of notes: English.

Registered by Australia on 30 June 1972.

**AUSTRALIE
et
MALAISIE**

**Accord relatif aux services aériens (avec annexe). Signé à
Toowoomba le 9 octobre 1967**

**Échange de notes constituant un accord modifiant l'Accord
susmentionné. Kuala Lumpur, 1^{er} et 6 avril 1971**

Textes authentiques de l'Accord : anglais et malais.

Texte authentique de l'échange de notes : anglais.

Enregistrés par l'Australie le 30 juin 1972.

AGREEMENT¹ BETWEEN THE GOVERNMENT OF THE
COMMONWEALTH OF AUSTRALIA AND THE GOV-
ERNMENT OF MALAYSIA RELATING TO AIR SERV-
ICES

The Government of the Commonwealth of Australia and the Govern-
ment of Malaysia (hereinafter referred to as the Contracting Parties),
Desiring to conclude an agreement relating to air services,

Agree as follows:

Article 1

(1) For the purposes of this Agreement, unless the context otherwise requires:

(a) the term “aeronautical authorities” means, in the case of the Commonwealth of Australia, the Director-General of Civil Aviation and any person or body authorized to perform the functions exercised by the Director-General of Civil Aviation or similar functions, and in the case of Malaysia, the Minister of Transport and any person or body authorized to perform the functions exercised by the Minister of Transport or similar functions;

(b) 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;

(c) the term “designated airline” means an airline which one Contracting Party has designated in writing to the other Contracting Party in accordance with Article 4 as being the airline authorized to operate international air services in accordance with the provisions of Article 3;

(d) the term “air service” means any scheduled air service performed by aircraft for the public transport of passengers, cargo or mail;

(e) the term “international air service” means an air service which passes through the air space over the territory of more than one State;

¹ Came into force on 9 October 1967 by signature, in accordance with article 16.

(f) the term “airline” means any air transport enterprise offering or operating an international air service; and

(g) the term “stop for non-traffic purposes” means a landing for any purpose other than taking on or discharging passengers, cargo or mail.

(2) The Schedule to this Agreement forms an integral part of the Agreement, and all references to the “Agreement” shall be deemed to include reference to the Schedule except where otherwise provided.

Article 2

To the extent to which they are applicable to the air services established under this Agreement, the provisions of the Convention on International Civil Aviation signed at Chicago on December 7th, 1944¹ (hereinafter called “the Convention”) shall remain in force in their present form as between the Contracting Parties for the duration of this Agreement as if they were incorporated herein, unless both Contracting Parties ratify any amendment to the Convention which shall have come into force, in which case the Convention as amended shall remain in force as aforesaid.

Article 3

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

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 Article 3, but not before:

(a) the Contracting Party to which the rights have been granted has designated an airline for that route; and

¹ 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.

- (b) the Contracting Party granting the rights has given the appropriate operating permission to the airline concerned. Operating permission shall, subject to the provisions of paragraph (2) of this Article and of paragraph (1) of Article 7, be given without delay.

(2) An airline designated by one 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 applied by those authorities to the operation of international air services.

Article 5

Subject to the provisions of this Agreement, the designated airline of each Contracting Party shall enjoy, while operating an agreed service on a specified route, the following rights:

- (a) the right to fly without landing across the territory of the other Contracting Party;
- (b) the right to make stops in that territory for non-traffic purposes; and
- (c) the right to make stops in that territory, at the points specified for that route in the Schedule, for the purposes of putting down and of taking on international traffic in passengers, cargo or mail.

Article 6

Fuel, lubricating oils, spare parts, regular equipment and aircraft stores on board aircraft of the designated airline of one Contracting Party on arrival in the territory of the other Contracting Party or taken on board those aircraft in that territory, and not unloaded from the aircraft without the consent of the customs authorities, if intended solely for use by or in aircraft of that airline in the operation of the agreed services shall, subject to compliance in other respects with the customs requirements of the latter Contracting Party, be exempted from customs duties, inspection fees and similar national or local duties and charges imposed in the territory of the

latter Contracting Party, even though the supplies are used in or consumed by the aircraft on flights in that territory.

Article 7

(1) Each Contracting Party reserves the right to withhold or revoke the rights granted under Article 3 in respect of an airline designated by the other Contracting Party, or to impose such conditions as it deems necessary on the exercise of those rights in any case where it is not satisfied that substantial ownership and effective control of the airline are vested in the Contracting Party designating the airline or in nationals of that Contracting Party.

(2) Each Contracting Party reserves the right to suspend the exercise by a designated airline of the other Contracting Party of the rights granted under Article 3, or to impose such conditions as it deems necessary on the exercise of those rights, in any case where the airline fails to operate in accordance with the conditions specified in this Agreement.

(3) The rights reserved in paragraphs (1) and (2) of this Article shall be exercised by a Contracting Party only after consultation with the other Contracting Party unless the immediate suspension of the rights or the imposition of conditions is necessary to prevent further infringements of the laws and regulations of the first mentioned Contracting Party.

Article 8

(1) There shall be a 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 airline of each Contracting Party shall take into consideration the interest of the designated airline 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 or the Contracting Parties shall bear a close relationship to the requirements of the

public for transportation on the specified routes. The agreed services provided by a designated airline shall have as their primary objective the provision of capacity adequate for the requirements of traffic originating in or destined for the territory of the Contracting Party which has designated that airline. Provision for the carriage on the agreed services of traffic both originating in and destined for 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) the requirements of traffic originating in or destined for the territory of the Contracting Party which has designated the airline;
- (b) the traffic requirements of the area through which the airline passes, after taking account of local and regional services; and
- (c) the requirements of through airline operations.

Article 9

(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 the 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 provisions of this Article.

(2) Agreement on the tariffs shall, whenever possible, be reached by the designated airlines concerned through the ratefixing machinery of the International Air Transport Association. When this is not possible, tariffs in respect of each of the specified routes shall be agreed upon between the designated airlines concerned. In any case the tariffs shall be subject to the approval of the aeronautical authorities of both Contracting Parties.

(3) If the designated airlines concerned cannot agree on the tariffs, or if the aeronautical authorities of either Contracting Party do not approve the tariffs submitted to them in accordance with the provisions of paragraph (2)

of this Article, the aeronautical authorities of the Contracting Parties shall endeavour to reach agreement on those tariffs.

(4) If agreement under paragraph (3) of this Article cannot be reached, the dispute shall be settled in accordance with the provisions of Article 14.

(5) No new or amended tariff shall come into effect unless it is approved by the aeronautical authorities of both Contracting Parties or is determined by a tribunal of arbitrators under Article 14. Pending determination of the tariffs in accordance with the provisions of this Article, the tariffs already in force shall apply.

Article 10

Each Contracting Party grants to the designated airline of the other Contracting Party the right to transfer to their Head Offices at the prevailing rate of exchange in the official market at the time of remittance in sterling or the local currency of the airline making the transfer all surplus earnings, whatever the currency in which they are earned.

Article 11

The aeronautical authorities of each Contracting Party shall supply to the aeronautical authorities of the other Contracting Party upon 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. These statements shall include information relating to the amount of traffic carried by those airlines on the agreed services to and from the territory of the other Contracting Party, including the origin and destination of the traffic.

Article 12

This Agreement shall be registered with the International Civil Aviation Organization.

Article 13

(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 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. When these authorities agree on modifications to this Agreement, the modifications shall come into effect when they have been confirmed by an exchange of notes through the diplomatic channel.

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

Article 14

(1) If any dispute arises between the Contracting Parties relating to the interpretation or application of this Agreement, the Contracting Parties shall in the first place endeavour to settle it by negotiation.

(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 nominated by each Contracting Party and the third to be appointed by the two so nominated. Each of the Contracting Parties shall nominate an arbitrator within a period of sixty days from the date of receipt by either Contracting Party from the other of a diplomatic note requesting arbitration of the dispute and the third arbitrator shall be appointed within a further period of sixty days. If either of the Contracting Parties fails to nominate an arbitrator within the period specified or if the third arbitrator is not appointed within the period specified, the President of the Council of the International Civil Aviation

Organization may be requested by either Contracting Party to appoint an arbitrator or arbitrators as the case requires.

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

Article 15

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

Article 16

This Agreement shall enter into force on the date of signature.

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

DONE at Toowoomba this ninth day of October in the year one thousand nine hundred and sixty-seven in duplicate in the Malay and English languages, the two texts being equally authentic. In the event of a conflict the English text shall prevail.

For the Government
of the Commonwealth of Australia:

[Signed]

R. W. SWARTZ

For the Government
of Malaysia:

[Signed]

TAN SRI SARDON

SCHEDULE

SECTION I

Routes to be operated in both directions by the designated airline of Australia

<i>Column 1</i>	<i>Column 2</i>	<i>Column 3</i>	<i>Column 4</i>
Points of departure (anyone or more of following)	Intermediate points (any one or more of the following if desired)	Points in the territory of Malaysia (any one or more of the following)	Points beyond (if desired)
Points in the territory of the Commonwealth of Australia	Points in Indonesia Singapore	Kuala Lumpur	Any points beyond excluding Hong Kong, Taiwan, Japan, Korea, the Philippines, Mainland, China, U.S.A. and Canada via a Pacific routing
Points in the territory of the Commonwealth of Australia		Jesselton	Manila Hong Kong and beyond

SECTION II

Routes to be operated in both directions by the designated airline of Malaysia

<i>Column 1</i>	<i>Column 2</i>	<i>Column 3</i>	<i>Column 4</i>
Points of departure	Intermediate points	Points in the territory of the Commonwealth of Australia (any one or more of the following)	Points beyond
Points in Malaysia	Singapore Points in Indonesia	Darwin Perth Melbourne Sydney	Auckland

EXCHANGE OF NOTES CONSTITUTING AN AGREEMENT¹
AMENDING THE AGREEMENT OF 9 OCTOBER 1967²
RELATING TO AIR SERVICES BETWEEN THE GOV-
ERNMENT OF THE COMMONWEALTH OF AUSTRALIA
AND THE GOVERNMENT OF MALAYSIA

I

1 April, 1971

Note No. 53

Your Excellency,

I have the honour to refer to the Agreement between the Government of Malaysia and the Government of the Commonwealth of Australia Relating to Air Services signed on 9 October, 1967² and to propose a modification of the Agreement by the deletion of the word "Hong Kong" from the list of Excluded Points in Column 4 in the Australian Route 1 in Section 1 of the Schedule to the Agreement. I have further the honour to propose that this deletion be deemed to be effective as from 29 October, 1970.

Should the foregoing be acceptable to the Malaysian Government, I propose that this Note together with your reply to that effect shall be regarded as constituting an Agreement between our two Governments.

Accept, Your Excellency, the assurances of my highest consideration.

[Signed]

J. R. ROWLAND

High Commissioner of Australia

His Excellency Y. A. B. Tun Haji Abdul Razak bin Dato Hussein, S. M. N.
Minister for Foreign Affairs
Kuala Lumpur
Malaysia

¹ Came into force on 6 April 1971 by the exchange of the said notes, with retroactive effect from 29 October 1970, in accordance with the provisions of the said notes.

² See p. 484 of this volume.

II

6th April, 1971

Your Excellency,

I have the honour to acknowledge receipt of your Note No. 53 dated 1 April, 1971, which reads as follows:

[See note I]

I have further the honour to express the agreement of my Government with its contents.

Accept, Your Excellency, the assurances of my highest consideration.

[Signed]

ZAINAL ABIDIN BIN SULONG
Deputy Secretary-General for Foreign Affairs

His Excellency Mr. J. R. Rowland
High Commissioner of Australia
Australian High Commission
Kuala Lumpur
