

**No. 12440**

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**JAPAN  
and  
BURMA**

**Agreement for air services (with annex and exchange of notes). Signed at Rangoon on 1 February 1972**

*Authentic text : English.*

*Registered by the International Civil Aviation Organization on 19 April 1973.*

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**JAPON  
et  
BIRMANIE**

**Accord relatif aux transports aériens (avec annexe et échange de notes). Signé à Rangoon le 1<sup>er</sup> février 1972**

*Texte authentique : anglais.*

*Enregistré par l'Organisation de l'aviation civile internationale le 19 avril 1973.*

## AGREEMENT<sup>1</sup> BETWEEN THE GOVERNMENT OF JAPAN AND THE GOVERNMENT OF THE UNION OF BURMA FOR AIR SERVICES

The Government of Japan and the Government of the Union of Burma,  
Being parties to the Convention on International Civil Aviation opened for  
signature at Chicago on the seventh day of December 1944,<sup>2</sup> and  
Desiring to conclude an agreement for the purpose of establishing and  
operating air services between and beyond their respective territories,  
Have agreed as follows :

*Article 1.* 1. For the purpose of this Agreement, unless the context other-  
wise 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  
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 in so  
far as those annexes and amendments have been adopted by both Contracting  
Parties;

(b) The term “aeronautical authorities” means, in the case of Japan, the  
Minister of Transport and any person or body authorised to perform any  
functions on civil aviation at present exercised by the said Minister or similar  
functions, and, in the case of the Union of Burma, the Department of Civil  
Aviation under the Ministry of Transport and Communications or any person  
or agency authorised to perform the functions exercised at present by the  
Ministry of Transport and Communications;

(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 3 of this Agreement;

(d) 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;

(e) 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

(f) The term “annex” means the annex to this Agreement or as amended  
in accordance with the provisions of article 14 of this Agreement.

<sup>1</sup> Came into force on 21 September 1972, the date of the exchange of diplomatic notes indicating its approval  
by each Contracting Party under their legal procedures, in accordance with article 18.

<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; vol. 514, p. 209, and vol. 740, p. 21.

2. The annex forms an integral part of this Agreement, and all reference to the Agreement shall include reference to the annex except where otherwise provided.

*Article 2.* 1. 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 annex (hereinafter called "agreed services" and "specified routes" respectively).

2. 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 privileges:

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

3. Nothing in paragraph 2 of this article shall be deemed to confer on the airline 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 airline 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 designated the appropriate operating permission.

3. The aeronautical authorities of one Contracting Party may require the 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 to the operation of international air services by such authorities.

4. Each Contracting Party shall have the right to withhold the grant to the airline designated by the other Contracting Party or revoke the grant to the designated airline of the operating permission referred to in paragraph 2 of this article or to impose such conditions as it may deem necessary on the exercise by such airline of the privileges specified in paragraph 2 of article 2 of this Agreement, in case where it is not satisfied that substantial ownership and effective control of such airline are vested in the Contracting Party designating the airline or in nationals of such Contracting Party.

5. The 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 tariffs established in accordance with the provisions of article 9 of this Agreement are in force in respect of those services.

6. Each Contracting Party shall have the right to suspend the exercise by the designated airline of the other Contracting Party of the privileges specified in paragraph 2 of article 2 of this Agreement or to impose such conditions as it may deem necessary on the exercise by such designated airline of those privileges, in case where such airline fails to comply with the laws and regulations of the Contracting Party granting those privileges or otherwise fails to operate in accordance with the conditions prescribed in this Agreement; provided that,

unless immediate suspension or imposition of conditions is essential to prevent further infringements of such laws and regulations, or for reasons of safety of air navigation, this right shall be exercised only after consultation with the other Contracting Party.

Such consultation shall commence within a period of sixty days from the date of request made by either Contracting Party for consultation.

7. In the event of action by one Contracting Party under this article, the rights of the other Contracting Party under article 13 shall not be prejudiced.

*Article 4.* The charges which either of the Contracting Parties may impose, or permit to be imposed, on the designated airline 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 5.* 1. Aircraft of the designated airline of either Contracting Party on a flight to, from, or across the territory of the other Contracting Party shall be admitted temporarily free of duty, subject to the customs regulations of that other Contracting Party. Fuel, lubricating oils, spare parts, regular equipment and aircraft stores on board an aircraft of the designated airline of either Contracting Party, on arrival in the territory of the other Contracting Party and retained on board on leaving the territory of that other Contracting Party shall be exempt from customs duty, inspection fees or similar national or local duties and charges. This exemption shall not apply to any quantities or articles unloaded, except in accordance with the customs regulations of that other Contracting Party, which may require that they shall be kept under customs supervision.

2. Spare parts and equipment imported into the territory of either Contracting Party for incorporation in or use on an aircraft of the designated airline of the other Contracting Party shall be admitted free of customs duty, subject to compliance with the regulations of the first Contracting Party, which may provide that the articles shall be kept under customs supervision and control.

*Article 6.* 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.

*Article 7.* In the operation by the designated airline of either Contracting Party of the agreed services, the interests of the designated airline of the other Contracting Party shall be taken into consideration so as not to affect unduly the services which the latter provides on all or part of the same routes.

*Article 8.* 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 the designated airline shall retain as their primary objective the provision at a reasonable load factor of capacity adequate to current and reasonably anticipated demands 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 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 demands to and from the territory of the Contracting Party which has designated the airline;
- (b) the requirements of through airline operation; and
- (c) traffic demands of the area through which the airline passes, after taking account of local and regional services.

*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 service (such as standards of speed and accommodation) and the tariffs of other airlines for any part or whole of the specified route.

2. These tariffs shall be fixed in accordance with the following provisions :

- (a) 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 and sectors thereof between the designated airlines concerned. The rate-fixing formula of the International Air Transport Association may, where possible, be made use of in determining the tariffs and the rates of agency commission referred to above. The tariffs so agreed shall be subject to the approval of the aeronautical authorities of both Contracting Parties.
- (b) 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, in accordance with the provisions of paragraph 2 (a) of this article, the aeronautical authorities of the Contracting Parties shall endeavour to reach agreement on the appropriate tariffs.
- (c) if the agreement under the provisions of paragraph 2 (b) of this article cannot be reached, the dispute shall be settled in accordance with the provisions of article 13 of this Agreement.
- (d) 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 3 of article 13 of this Agreement. Pending determination of the tariffs in accordance with the provisions of this article, the tariffs already in force shall prevail.

*Article 10.* Each Contracting Party shall grant to the designated airline of the other Contracting Party the right to transfer in accordance with the applicable laws and regulations of the first Contracting Party, in U.S. Dollars at the prevailing rate of exchange in the official market at the time of remittance, the excess of receipt over expenditure earned by that airline in the territory of that first Contracting Party in connection with the operation of agreed services.

*Article 11.* The aeronautical authorities of either Contracting Party shall supply to the aeronautical authorities of the other Contracting Party, at their request, such information and statistics relating to traffic carried on the agreed services by the designated airline of the first Contracting Party to and from the territory of the other Contracting Party as may normally be prepared and submitted by the designated airline to their national aeronautical authorities for publication. Any additional statistical traffic data which the aeronautical authorities of one Contracting Party may desire from the aeronautical authorities of the

other Contracting Party shall, upon request, be a subject of mutual discussion between the aeronautical authorities of the two Contracting Parties.

*Article 12.* It is the intention of both Contracting Parties that there should be regular and frequent consultation between the aeronautical authorities of the Contracting Parties to ensure close collaboration in all matters affecting the fulfilment of this Agreement.

*Article 13.* 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 between themselves.

2. If the Contracting Parties fail to reach a settlement by negotiation, the dispute shall, 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 Council of the International Civil Aviation Organization 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 14.* Either Contracting Party may at any time request consultation with the other Contracting Party for the purpose of amending this Agreement. Such consultation shall begin within a period of sixty days from the date of receipt of such request. If the amendment relates only to the annex, the consultation shall be between the aeronautical authorities of both Contracting Parties. When these authorities agree on a new or revised annex, the agreed amendments on the matter will come into effect after they have been confirmed by an exchange of diplomatic notes.

*Article 15.* If a general multilateral convention 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 such convention.

*Article 16.* Either of the Contracting Parties may at any time notify the other of its intention to terminate this Agreement. A copy of the notice shall be sent simultaneously to the International Civil Aviation Organization. If such notice is given, this 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 17.* This Agreement and any amendment thereto shall be registered with the International Civil Aviation Organization.

*Article 18.* This Agreement shall be approved by each Contracting Party in accordance with its legal procedures and 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 this Agreement.

DONE in duplicate, in the English language, at Rangoon this day of 1st February 1972.

For the Government  
of Japan :

[Signed]

TAKASHI SUZUKI  
Ambassador Extraordinary  
and Plenipotentiary

For the Government  
of the Union of Burma :

[Signed]

THA KYAW  
Secretary Ministry of Transport  
and Communications

#### ANNEX

1. Route to be operated in both directions by the designated airline of the Union of Burma :

Points in Burma—Bangkok and/or Chiangmai—Kuala Lumpur and/or Singapore—one point in Laos, two points in Cambodia and/or Saigon—Hong Kong and/or Manila—Naha (Okinawa)—one point to be specified later either Osaka or Tokyo.

The agreed services provided by the designated airline of the Union of Burma shall begin at a point in the territory of the Union of Burma, but other points on the specified route may at the option of the designated airline be omitted on any or all flights.

2. Route to be operated in both directions by the designated airline of Japan :

Points in Japan—Hong Kong and/or Manila—Saigon, two points in Cambodia and/or one point in Laos—Singapore, Kuala Lumpur and/or Penang—Bangkok—Rangoon.

The agreed services provided by the designated airline of Japan shall begin at a point in the territory of Japan, but other points on the specified route may at the option of the designated airline be omitted on any or all flights.

#### EXCHANGE OF NOTES

##### I

Rangoon, February 1, 1972

Excellency,

I have the honour to refer to the Agreement between the Government of Japan and the Government of the Union of Burma for Air Services signed today and to confirm, on behalf of the Government of Japan, the understanding reached between the representatives of both Governments during the course of the negotiations on the said Agreement concerning the following measures to be

taken by their Governments within the scope of the laws and regulations in force in the respective countries :

1. The designated airline of either Contracting Party shall be permitted within the territory of the other Contracting Party to establish and maintain its branches and to engage in activities necessary for the operation of the agreed services.

2. The officers and staff of branches of the designated airline of either Contracting Party of which they are nationals as well as their dependants shall be permitted to stay in the territory of the other Contracting Party in connection with the operation of the agreed services.

I have further the honour to request Your Excellency to be good enough to confirm, on behalf of your Government, that this is also the understanding of the Government of the Union of Burma.

I avail myself of this opportunity to renew to Your Excellency the assurance of my highest consideration.

TAKASHI SUZUKI  
Ambassador Extraordinary and Plenipotentiary  
of Japan

His Excellency U Tha Kyaw  
Secretary to the Government  
of the Union of Burma  
Ministry of Transport and Communications

## II

Rangoon, February 1, 1972

Excellency,

I have the honour to acknowledge receipt of Your Excellency's note of today's date, which reads as follows :

[*See note I*]

I have the honour to confirm on behalf of my Government that the foregoing is also the understanding of the Government of the Union of Burma.

I avail myself of this opportunity to renew to Your Excellency the assurance of my highest consideration.

THA KYAW  
Secretary to the Government of the Union of Burma  
Ministry of Transport and Communications

His Excellency Mr. Takashi Suzuki  
Ambassador Extraordinary and Plenipotentiary  
of Japan

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