

No. 12910

**AUSTRALIA
and
MALAYSIA**

**Agreement relating to air services (with schedule). Signed at
Sydney on 4 October 1972**

Authentic texts: English and Malay.

Registered by Australia on 18 December 1973.

**AUSTRALIE
et
MALAISIE**

**Accord relatif aux services aériens (avec annexe). Signé à
Sydney le 4 octobre 1972**

Textes authentiques : anglais et malais.

Enregistré par l'Australie le 18 décembre 1973.

AGREEMENT¹ BETWEEN THE GOVERNMENT OF THE COMMONWEALTH OF AUSTRALIA AND THE GOVERNMENT OF MALAYSIA RELATING TO AIR SERVICES

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

Article I. (1) For the purposes of this 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 or 94 thereof;

(b) The term 'aeronautical authorities' means, in the case of Malaysia, the Minister of Communications and any person or body authorized to perform the functions exercised by the Minister of Communications or similar functions, and 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;

(c) The term 'territory' in relation to a State has the meaning assigned to it in article 2 of the Convention except that for the word 'mandate' appearing therein is substituted the word 'trusteeship';

(d) The term 'designated airline' means an airline which one Contracting Party has designated in writing to the other Contracting Party in accordance with article IV as being the airline authorized to operate international air services in accordance with the provisions of article III;

(e) The term 'air service' means any scheduled air service performed by aircraft for the public transport of passengers, cargo or mail;

(f) The term 'international air service' means an air service which passes through the air space over the territory of more than one State;

(g) The term 'airline' means any air transport enterprise offering or operating an international air service; and

(h) 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 II. To the extent to which they are applicable to the air services established under this Agreement, the provisions of the Convention shall remain in force in their present form as between the Contracting Parties for the duration of

¹ Came into force on 28 January 1973, in accordance with article XVI.

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

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 III. 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 IV. (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 III, but not before:

- (a) the Contracting Party to which the rights have been granted has designated an airline for that route; and
- (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 paragraph (1) of article VII, 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 V. (1) 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 taking on international traffic in passengers, cargo or mail.

(2) Nothing in paragraph (1) of this article shall be deemed to confer on the designated airline of one Contracting Party the privilege of taking up, in the territory of the other Contracting Party, passengers, cargo or mail destined for another point in the territory of that other Contracting Party.

Article VI. 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 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 VII. (1) Each Contracting Party shall have the right to withhold or revoke the rights granted under article III 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 shall have the right to suspend the exercise by a designated airline of the other Contracting Party of the rights granted under article III, 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 specified 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 VIII. (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 of 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.

(4) The capacity which may be provided in accordance with this article by the designated airline of each of the Contracting Parties on the agreed services shall be such as is agreed between the aeronautical authorities of the Contracting Parties before the commencement by the designated airline concerned of an agreed service and from time to time thereafter.

Article IX. (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 XIV.

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

Article X. Each Contracting Party grants to the designated airline of the other Contracting Party the right to transfer to their Head Offices at the prevailing market rate of exchange 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 XI. 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 XII. This Agreement shall be registered with the International Civil Aviation Organization.

Article XIII. (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 amend any provision of the present Agreement, including the schedule, it may request consultation with the other Contracting Party. Such consultation, which may be between aeronautical authorities and which may be through discussion or by correspondence, shall begin within a period of sixty days from the date of receipt of the request. Any amendments so negotiated shall not come into force until they have been incorporated into an agreement concluded by way of an exchange of notes through the diplomatic channel.

(3) If a 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 XIV. (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 note through the diplomatic channel requesting arbitration of the dispute and the third arbitrator shall be appointed within a period of sixty days from the appointment of the arbitrator last appointed. 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 XV. Either of the Contracting Parties may at any time give to the other notice of its intention to terminate this Agreement. Such notice shall be given in writing through the diplomatic channel and a copy of the notice shall be sent simultaneously to the International Civil Aviation Organization by the Contracting Party giving notice. 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 XVI. This Agreement shall enter into force on the 28th day of January 1973.

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

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

[Signed—Signé]¹

For the Government
of the Commonwealth
of Australia

[Signed—Signé]²

For the Government
of Malaysia

¹ Signed by Robert Cotton—Signé par Robert Cotton.

² Signed by Ran Sri Haji Sardon Bin Haji Jubir—Signé par Ran Sri Haji Sardon Bin Haji Jubir.

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 (any one or more of the following)	Intermediate points (any one or more of the following if desired)	Points in the territory of Malaysia	Points beyond (if desired) in
1. Points in the Commonwealth of Australia, Papua New Guinea, Christmas Island and Cocos (Keeling) Islands	Points in Indonesia Singapore	Kuala Lumpur	Thailand Bangladesh Republic of Sri Lanka India Pakistan Middle East U.S.S.R. Indian Ocean Africa Europe United Kingdom
2. Points in the Commonwealth of Australia, Papua New Guinea, Christmas Island and Cocos (Keeling) Islands	—	Kota Kinabalu	Manila Hongkong 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 (any one or more of the following if desired)	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

NOTE:

Points on any of the above routes may at the option of the designated airline concerned be omitted on any or all flights, provided that an agreed service shall have its starting point or terminal in the territory of the Contracting Party designating the airline.

The designated airline of either Contracting Party may call at one or more points not indicated on the routes specified in the schedule but shall not have the right to uplift or discharge at any such point or points traffic to be discharged, or which has been uplifted, at any point in the territory of the other Contracting Party.
