

No. 13105

**MAURITIUS
and
INDIA**

**Agreement relating to air services (with annex). Signed at
New Delhi on 28 January 1972**

Authentic texts: English and Hindi.

Registered by the International Civil Aviation Organization on 28 February 1974.

**MAURICE
et
INDE**

**Accord relatif aux services aériens (avec annexe). Signé à
New Delhi le 28 janvier 1972**

Textes authentiques : anglais et hindi.

Enregistré par l'Organisation de l'aviation civile internationale le 28 février 1974.

AGREEMENT¹ BETWEEN THE GOVERNMENT OF MAURITIUS AND THE GOVERNMENT OF INDIA RELATING TO AIR SERVICES

The Government of Mauritius and the Government of India hereinafter described as the “Contracting Parties”,

Being parties to the Convention on International Civil Aviation (hereinafter described as “the Convention”) opened for signature at Chicago on the 7th December, 1944²,

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. For the purpose of the present Agreement, unless the context otherwise requires—

a) The term “aeronautical authorities” shall mean, in the case of Mauritius, the Ministry charged with responsibility for Civil Aviation and in the case of India, the Director General of Civil Aviation and in both cases any person or body authorised to perform the functions presently exercised by the said Ministry or by the said Director General;

b) The term “designated airline” shall mean an airline which the aeronautical authorities of one Contracting Party have designated in writing to the aeronautical authorities of the other Contracting Party, in accordance with article III of the present Agreement;

c) The terms “territory”, “air services”, “international air service” and “stop for non-traffic purposes” have the meanings respectively assigned to them in articles 2 and 96 of the Convention.

Article II. 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 route specified in the annex thereto (hereinafter called “the agreed services” and “the specified routes”). The agreed services may be inaugurated at any time after the provisions of article III have been complied with.

2. Subject to the provisions of the present Agreement, the airline designated by each Contracting Party shall enjoy the following rights—

- a) to fly without landing across the territory of the other Contracting Party;
- b) to make stops in the territory of the other Contracting Party for non-traffic purposes; and
- c) while operating an agreed service on a specified route, to make stops in the territory of the other Contracting Party at the point specified for that route in the annex to the present Agreement, for the purpose of putting down or taking on international traffic in passengers, cargo and mail, originating in or destined for the territory of the first Contracting Party or of a third country.

¹Came into force on 28 July 1972 by the exchange of the instruments of ratification, in accordance with article XVII (3).

²United 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.

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

4. The laws, regulations and instructions of one Contracting Party, relating to entry into or departure from its territory, of aircraft or air services operated in international air navigation or to the operation of such aircraft or air services while within its territory shall apply to aircraft and agreed services of the designated airline of the other Contracting Party.

Article III. 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 Contracting Party shall, through its own aeronautical authorities and subject to the provisions of paragraphs 3 and 4 of this article, without delay grant to the designated airline the appropriate authorisation.

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 applied by them to the operations of air carriers and of international commercial air services.

4. Each Contracting Party shall have the right to refuse to accept the designation of the airline or to withhold the grant to the airline of the rights specified in paragraph 2 of article II of the present Agreement or to impose such conditions as it may deem necessary on the exercise by the airline of those rights in any case where it is not satisfied that substantial ownership and effective control of that airline are vested in the other Contracting Party or its nationals. For the purpose of this paragraph, the expression "substantial ownership and effective control" means that in any case where the designated airlines operate their services under this Agreement by entering into any agreement with the airline of any other country or the Government or nationals of any other country, the Contracting Party designating the airlines or its nationals shall not be deemed to have substantial ownership and effective control of the designated airlines, unless the Contracting Party or its nationals, in addition to the ownership of the major part of the assets of the designated airlines, have also

- i) effective control in the management of the designated airlines, and
- ii) ownership and effective control of the major part of the fleet of aircraft and equipment used in the operation of the services.

5. The airline so designated and authorised may begin to operate the agreed services at any time provided that the provisions of article X and XII have been complied with.

Article IV. Each Contracting Party reserves the right to itself to revoke the operating authorisation or impose such appropriate conditions as it may deem necessary in case of failure by a designated airline of the other Party to comply with the laws and regulations of the former Party, or in case, in the judgement of the former party there is a failure to fulfil the conditions under which the rights are granted in accordance with the present Agreement. This shall also apply if the provisions of paragraph 4 of article III are not complied with. Such action shall be taken only after consultation between the Contracting Parties in accordance with article XIV of the present Agreement unless an immediate suspension of operations or imposition of conditions is necessary to avoid further infringements of laws, regulations or provisions of the present Agreement.

Article V. The charges imposed in the territory of one Contracting Party for the use of airports and other aviation facilities by the aircraft of the designated airline of the other Contracting Party shall not be higher than those paid by the aircraft of a national airline engaged in similar international air services.

Article VI. Supplies of fuel, lubricating oils, spare parts, regular equipment and aircraft stores introduced into or taken on board aircraft of the designated airline of one Contracting Party and intended solely for use by or in such aircraft and remaining on board on departure from the last airport of call in that territory shall be accorded, with respect to customs duty, inspection fees or similar charges, treatment not less favourable than that granted by the second Contracting Party to the national airlines operating scheduled international air services or to the airline of the most favoured nation:

Provided that neither Contracting Party shall be obliged to grant to the designated airline of the other Contracting Party exemption or remission of customs duty, inspection fees or similar charges unless such other Contracting Party grants exemption or remission of such charges to the designated airline of the first Contracting Party.

Article VII. The designated airline of each Contracting Party shall, in all respects, enjoy fair and equal opportunity for the carriage of international traffic between and beyond the territories of the two Parties.

Article VIII. In the operation by the designated airline of either Contracting Party of the agreed air services the interests of the designated airline of the other 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 route.

Article IX. The capacity to be provided, the frequency of services to be operated and the nature of air service that is, transiting through or terminating in the territory of the other Contracting Party shall be agreed between designated airlines in accordance with the principles laid down in articles VII and VIII and the provisions of this article. Such agreement shall be subject to the approval of the aeronautical authorities of the two Contracting Parties.

2. Any increase in the capacity to be provided or frequency of services to be operated by the designated airline of either Contracting Party shall be agreed, in the first instance, between the designated airlines and shall be subject to the approval of the aeronautical authorities on the basis of the estimated requirements of traffic between the territories of the two Parties and any other traffic to be jointly agreed and determined. Pending such agreement or settlement, the capacity and frequency entitlements already in force shall prevail.

3. If the designated airlines of the Contracting Parties fail to agree on any matter on which their agreement is required under the provisions of this article, the aeronautical authorities of the Contracting Parties shall endeavour to reach agreement thereon.

4. The capacity to be provided, the frequency of services to be operated and the nature of air service, that is, transiting through or terminating in the territory of the other Contracting Party as agreed to in accordance with the provisions of this article shall be specified in an exchange of letters between the aeronautical authorities of the Contracting Parties.

Article X. Each Contracting Party shall cause its designated airline to communicate to the aeronautical authorities of the other Contracting Party, as long in advance as practicable, prior to the inauguration of the agreed services, the type of service, the type of aircraft to be used, the flight schedules, tariff schedules, and all other relevant information concerning the operation of the agreed services including

such information as may be required to satisfy the aeronautical authorities that the requirements of the present Agreement are being duly observed. The requirements of this article shall likewise apply to any changes concerning the agreed services.

Article XI. The aeronautical authorities of each Contracting Party shall furnish to the aeronautical authorities of the other Contracting Party statistics relating to the traffic carried during each month on their air services to or from or through the territory of the other Contracting Party showing the countries of origin and destination and the points of embarkation and disembarkation of such traffic. Such statistics shall be furnished as early as possible.

Article XII. 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. 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, and such agreement shall wherever 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 provision 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 on the determination of any tariff under paragraph 3 the matter shall be referred to the Contracting Parties for settlement in accordance with the provisions of article XV of the present Agreement.

5. Pending determination of the tariffs in accordance with the provisions of this article, the tariffs already in force shall prevail.

Article XIII. In a spirit of close collaboration, the aeronautical authorities of the two Contracting Parties shall exchange views regularly on the application and interpretation of the present Agreement.

Article XIV. Consultations may be requested at any time by either Contracting Party for the purpose of initiating any amendments to the present Agreement. Consultation may also be required on matters concerning the interpretation and application of the present Agreement if either Contracting Party considers that an exchange of views within the meaning of article XIII has been without success. Such consultation shall begin within a period of sixty days from the date of the request. Any modification of the present Agreement as a result of such consultations shall come into effect after the respective constitutional requirements have been fulfilled and when it has been confirmed by an exchange of diplomatic notes.

Article XV. If any dispute arises relating to the interpretation or application of the present Agreement the aeronautical authorities of the Contracting Parties shall endeavour to settle it by negotiations between themselves, failing which the dispute shall be referred to the Contracting Parties for settlement.

Article XVI. To the extent to which they are applicable to the air services established under the present Agreement, the provisions of the Convention shall remain in force in their present form between the Contracting Parties for the dura-

tion of the Agreement, as if they were an integral part of the Agreement, unless both Contracting Parties ratify any amendment to the Convention, which shall have duly come into force in which case the Convention as amended shall remain in force for the duration of the present Agreement.

2. Pending adherence of the Government of Mauritius to the International Air Services Transit Agreement opened for signature at Chicago on the 7th December, 1944¹, the provisions thereof shall apply as between the Contracting Parties as if the Government of Mauritius has adhered to the International Air Services Transit Agreement.

Article XVII. The annex to the present Agreement shall be deemed to be part of the Agreement and all references to the Agreement shall include references to the annex, except where otherwise expressly provided.

2. The present Agreement shall be subject to ratification and instruments of ratification shall be exchanged as soon as possible.

3. The present Agreement shall come into force on the date of the exchange of instruments of ratification.

Article XVIII. Either Contracting Party may, at any time, give written notice to the other, of its desire to terminate the present Agreement. Such notice shall be simultaneously communicated to the International Civil Aviation Organization. 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 Organization.

DONE at New Delhi this 28th day of January, 1972 A.D., corresponding to the 8th day of Magha, 1893 Saka Era, in four originals, two each in the English and Hindi languages, all the four texts being equally authentic. In case of any divergence of interpretation, the English text shall prevail.

S. RAMGOOLAM
For the Government
of Mauritius

KARAN SINGH
For the Government
of India

ANNEX

SECTION I

The airline designated by the Government of Mauritius shall be entitled to operate air services in both directions on the route specified in this section and to land for traffic purposes in the territory of India at the point therein specified.

Mauritius, via three intermediate points, Colombo to Bombay and if desired to points beyond to be agreed.

SECTION II

The airline designated by the Government of India shall be entitled to operate air services in both directions on the route specified in this section and to land for traffic purposes in the territory of Mauritius at the point therein specified.

India via Colombo, three other intermediate points to Mauritius and if desired to points beyond to be agreed.

¹United Nations, *Treaty Series*, vol. 84, p. 389.

SECTION III

Points on any of the specified routes may, at the option of the designated airline, be omitted on any or all flights.
