

No. 13212

**BELGIUM
and
MALAYSIA**

Agreement for air services between and beyond their respective territories (with schedule). Signed at Kuala Lumpur on 26 February 1974

Authentic texts: Dutch, French, Malay and English.

Registered by Belgium on 1 April 1974.

**BELGIQUE
et
MALAISIE**

Accord relatif aux services aériens entre leurs territoires respectifs et au-delà (avec tableau). Signé à Kuala Lumpur le 26 février 1974

Texte authentiques : néerlandais, français, malais et anglais.

Enregistré par le Belgique le 1^{er} avril 1974.

AGREEMENT¹ BETWEEN THE GOVERNMENT OF THE KINGDOM OF BELGIUM AND THE GOVERNMENT OF MALAYSIA FOR AIR SERVICES BETWEEN AND BEYOND THEIR RESPECTIVE TERRITORIES

The Government of the Kingdom of Belgium and the Government of Malaysia, Being Parties to the 1944 Chicago Convention on International Civil Aviation² (hereinafter called "the Convention" 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),

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. RIGHTS TO ESTABLISH AIR SERVICES ON SPECIFIED ROUTES

Each Contracting Party shall grant to the other Contracting Party the right to establish air services within the meaning of article 96 (a) of the Convention (hereinafter called "the agreed services") on the routes specified in the appropriate section of the Routes Schedules (hereinafter called the "specified routes").

Article II. RIGHT AND CONDITIONS FOR THE DESIGNATION OF AIRLINES

1. Each Contracting Party shall have the right to designate by written notification to the other Contracting Party one or more airlines, within the meaning of article 96 (c) of the Convention, for the purpose of operating the agreed services on the specified routes.

2. Subject to the provisions of paragraphs 4 and 5 of this article the other Contracting Party shall on receipt of the designation, grant to the airlines designated the appropriate authorisation to operate without delay.

3. At any time after the conditions in paragraphs 1 and 2 of this article have been complied with the airline so designated and authorised may commence the operation of the agreed services, provided that any service shall not be operated unless a tariff established in accordance with article X of this Agreement is in force in respect of that service.

4. Notwithstanding the provisions of paragraphs 1 and 2 of this article the aeronautical authorities of one Contracting Party which in the case of the Kingdom of Belgium means the Minister of Communications (Civil Aviation Administration) or any person or body authorised to perform any of the functions at present exercised by the said Minister, or similar functions, and in the case of Malaysia means the Minister of Communications or any person or body authorised to perform any of the functions at present exercised by the said Minister, or similar functions, may require an airline designated by the other Contracting Party to satisfy such

¹ Came into force on 26 February 1974 by signature, in accordance with article XVII.

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; vol. 740, p. 21 and vol. 893, p. 117.

authorities that it is qualified to fulfill the conditions prescribed under the laws and regulations normally and reasonably applied by the said authorities to the operation of international commercial air services in conformity with the provisions of the Convention.

5. Nothing in the provisions of paragraphs 1 and 2 of this Article shall be construed as a bar to the right of each Contracting Party to refuse to accept the airline designated by the other Contracting Party.

Article III. GRANT, WITHHOLDING OF, SUSPENSION, REVOCATION AND IMPOSITION OF CONDITIONS ON THE GRANT OF PRIVILEGES TO THE DESIGNATED AIRLINES

1. The airline designated by each Contracting Party shall enjoy, while operating an agreed service on a specified route, the following privileges:

- (a) to fly without landing across the other Contracting Party's territory, which for the purpose of the present Agreement means in relation to a State the land areas and territorial waters adjacent thereto, under the sovereignty, suzerainty, protection or trusteeship of that State;
- (b) to make stops in the said territory for non-traffic purposes within the meaning of article 96 (d) of the Convention; and
- (c) to make stops in the said territory at the points specified for that route and the Schedule to the present Agreement for the purpose of putting down and taking on international traffic in passengers, cargo and mail.

2. Nothing in paragraph 1 of this article shall be deemed to confer on the airline of one Contracting Party the privileges 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 the other Contracting Party.

3. Notwithstanding the provisions of paragraph 1 of this article each Contracting Party shall have the right to withhold or revoke the grant to the designated airline of the other Contracting Party of the privileges specified therein or to impose such conditions as it may deem necessary on the exercise by the airline of those privileges in any case where it is not satisfied that the substantial ownership and effective control of that airline are vested in the Contracting Party or in nationals of the Contracting Party designating the airline.

4. Each Contracting Party shall also have the right to suspend or to impose such conditions as it may deem necessary on the exercise by the designated airline of the privileges set out in paragraph 1, in any case where the 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 such rights shall be exercised only after consultation with the other Contracting Party, unless immediate suspension or imposition of necessary conditions is essential to prevent further infringement of the laws or regulations of the party granting those privileges, in which case such consultation may be dispensed with.

Article IV. EXEMPTION AND FAVOURABLE TREATMENT OF AIRCRAFT SPARE PARTS EQUIPMENT AND FUELS ETC. FROM CUSTOMS DUTIES, INSPECTION FEES AND OTHER LOCAL DUTIES AND CHARGES

1. Aircraft operated on international services by the designated airlines of either Contracting Party, as well as their regular equipment, spare parts, supplies of fuels and lubricants, and aircraft stores (including food, beverages and tobacco) on

board such aircraft shall be exempt from all customs duties, inspection fees and other duties or taxes on arriving in the territory of the other Contracting Party, provided such equipment and supplies remain on board the aircraft up to such time as they are re-exported.

2. Supplies of fuels, lubricants, spare parts, regular equipment and aircraft stores introduced into the territory of one Contracting Party by or on behalf of a designated airline of the other Contracting Party, or taken on board the aircraft operated by such designated airline and intended solely for use in the operation of international services, shall be exempt from all national duties and charges, including customs duties and inspection fees imposed in the territory of the first Contracting Party, even when these supplies are to be used on the parts of the journey performed over the territory of the Contracting Party in which they are taken on board. The materials referred to above may be required to be kept under customs supervision or control.

3. The regular airborne equipment, spare parts, aircraft stores and supplies of fuels and lubricants retained on board the aircraft of either Contracting Party may be unloaded in the territory of the other Contracting Party only with the approval of the customs authorities of that Party, who may require that these materials be placed under their supervision up to such time as they are re-exported or otherwise disposed of in accordance with customs regulations.

4. Fuel, lubricating oils, spare parts, regular aircraft equipment and aircraft stores, taken on board aircraft of one Contracting Party in the territory of the other Contracting Party and used solely on flights between two points in the territory of the latter Contracting Party, shall be accorded treatment not less favourable than that accorded to national airlines or to the most favoured airline operating such flights in respect of customs duties, inspection fees and other similar national or local duties and charges.

Article V. SIMPLIFIED CONTROL AND EXEMPTION OF PASSENGERS, BAGGAGE AND CARGO FROM CUSTOMS DUTIES AND SIMILAR TAXES

Passengers, baggage and cargo in direct transit across the territory of one Contracting Party and not leaving the area of the airport reserved for such purpose shall only be subject to a very simplified control. Baggage and cargo in direct transit shall be exempt from customs duties and other similar taxes.

Article VI. APPLICATION OF LAWS AND REGULATIONS GOVERNING ENTRY AND DEPARTURE OF AIRCRAFT

1. The laws and regulations of one Contracting Party governing entry into and departure from its territory of aircraft, engaged in international air navigation, or flights of such aircraft over that territory, shall apply to the designated airline of the other Contracting Party.

2. The laws and regulations of one Contracting Party, governing entry into, sojourn in, and departure from its territory of passengers, crew, cargo or mail, such as formalities regarding entry, exit, emigration and immigration, as well as customs and sanitary measures, shall apply to passengers, crew, cargo or mail carried by the aircraft of the designated airline of the other Contracting Party while they are within the said territory.

3. Each Contracting Party undertakes not to grant any preferences to its own airlines with regard to the designated airline of the other Contracting Party in the application of the laws and regulations provided for by the present article.

4. When utilising the airports and other facilities offered by one Contracting Party, the designated airline of the other Contracting Party shall not have to pay fees higher than those which have to be paid by national aircraft operating on scheduled international services.

Article VII. RECOGNITION AND NON-RECOGNITION OF THE VALIDITY OF CERTIFICATE OF AIRWORTHINESS AND COMPETENCY AND LICENCES

1. Certificates of airworthiness, certificates of competency and licences issued or rendered valid by one of the Contracting Parties shall, during the period of their validity, be recognised as valid by the other Contracting Party.

2. Each Contracting Party reserves its rights, however, not to recognise as valid, for the purpose of flights over its own territory, certificates of competency and licences granted to its own nationals or rendered valid for them by the other Contracting Party or by any other State.

Article VIII. FAIR AND EQUAL OPPORTUNITY TO OPERATE

1. There shall be fair and equal opportunity for the 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 airlines of each Contracting Party shall take into account the interests of the airlines 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 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 carry the 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 IX. RIGHTS AND CONDITIONS TO MAKE A CHANGE OF GAUGE

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 connexion 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 VIII of the present Agreement shall govern all arrangements made with regard to change of gauge.

Article X. TARIFF OF AGREED SERVICES

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. 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, 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 other 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 cannot agree on the approval of any tariff submitted to them under paragraph 2 of this article or on the determination of any tariff under paragraph 3, the dispute shall be settled in accordance with the provisions of article XIII 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 XIII of the present Agreement.

6. When tariff 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 XI. RIGHT TO TRANSFER SURPLUS EARNINGS

Each Contracting Party grants to the designated airlines of the other Contracting Party the right to transfer to their head offices in Malaysian dollars, sterling or Belgian Francs at the prevailing rate of exchange in the official market at the time of remittance all surplus earnings whatever the currency in which they were earned.

Article XII. SUPPLY OF PERIODIC STATEMENT OF STATISTICS

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 XIII. SETTLEMENT OF DISPUTE BY NEGOTIATION AND ARBITRATION
AND EFFECT OF NON-COMPLIANCE WITH DECISION OF ARBITRATION*

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:

- (a) they may agree to refer the dispute for decision to an arbitral tribunal appointed by agreement between them or to some other person or body; or
- (b) if they do not agree or if, having agreed to refer the dispute to an arbitral tribunal, they cannot reach agreement as to its composition, either Contracting Party may submit the dispute for decision to any tribunal competent to decide it which may hereafter be established within the International Civil Aviation Organisation or, if there is no such tribunal, to the Council of the said Organisation.

3. The Contracting Parties undertake to comply with any decision under paragraph 2 of this article.

4. If and so long as either Contracting Party or a designated airline of either Contracting Party fails to comply with a decision given under paragraph 2 of this article, the other Contracting Party may limit, withhold or revoke any rights or privileges which it has granted by virtue of the present Agreement to the Contracting Party in default or to the designated airline or airlines of that Contracting Party or to the designated airline in default.

*Article XIV. CONSULTATION BETWEEN AERONAUTICAL AUTHORITIES TO ENSURE
CLOSE COLLABORATION IN THE FULFILMENT AND/OR MODIFICATION OF THE
AGREEMENT*

1. 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.

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 XV. PROCEDURE FOR TERMINATION OF THE AGREEMENT

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

Article XVI. REGISTRATION OF THE AGREEMENT
AND EXCHANGE OF NOTES

The present Agreement and any Exchange of Notes in accordance with article XIV paragraph 2 shall be registered with the International Civil Aviation Organisation.

Article XVII. DATE OF ENFORCEMENT

The present Agreement shall come into force on the date of signature.

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

DONE at Kuala Lumpur this 26th day of February 1974 in eight originals, two each in the French, Flemish, Malay and English languages, all the eight texts being equally authentic. In case of any divergence of interpretation, the English text shall prevail.

For the Government
of the Kingdom of Belgium:
[Signed]¹

For the Government
of Malaysia:
[Signed]²

SCHEDULE

SECTION I

*Routes to be operated by the designated airline or airlines
of the Kingdom of Belgium*

<i>Points of departure</i>	<i>Intermediate points</i>	<i>Point in Malaysia</i>	<i>Points beyond</i>
Points in Belgium	Points in Europe, Egypt, the Near and Middle East including Iran Pakistan Afghanistan New Delhi Bombay, Calcutta Rangoon, Colombo Bangkok	Kuala Lumpur	Singapore Djakarta Darwin Melbourne Sydney Wellington Noumea Tahiti

¹ Signed by baron de Vleeschouwer.

² Signed by tuan Syed Mahadzhan bin Syed Hussein.

SECTION II

*Routes to be operated by the designated airline or airlines
of Malaysia*

<i>Points of departure</i>	<i>Intermediate points</i>	<i>Points in Belgium</i>	<i>Points beyond</i>
Points in Malaysia	Colombo Bombay New Delhi Karachi Teheran Bahrain Cairo Beirut Athens Zurich Rome Frankfurt	Brussels	London

NOTES:

(i) Any or some of the points on the specified routes in the Schedule above may, at the option of the designated airline or airlines of either Contracting Party, be omitted on any or all flights.

(ii) The designated airline or airlines of either Contracting Party shall have the right to terminate its services in the territory of the other Contracting Party.
