No. 14418

THAILAND
and
NETHERLANDS

Agreement for air services between and beyond their respective territories (with route schedule). Signed at Bangkok on 29 April 1971

Exchange of notes constituting an agreement amending the route schedule annexed to the above-mentioned Agreement. Bangkok, 31 October and 13 November 1974

Authentic texts: English.

Registered by the International Civil Aviation Organization on 14 November 1975.

THAÏLANDE
et
PAYS-BAS

Accord relatif aux services aériens entre leurs territoires respectifs et au-delà (avec tableau des routes). Signé à Bangkok le 29 avril 1971

Échange de notes constituant un accord modifiant le tableau des routes annexé à l'Accord susmentionné. Bangkok, 31 octobre et 13 novembre 1974

Textes authentiques : anglais.

Enregistrés par l'Organisation de l'aviation civile internationale le 14 novembre 1975.

AGREEMENT[1] BETWEEN THE GOVERNMENT OF THE KINGDOM OF THAILAND AND THE GOVERNMENT OF THE KINGDOM OF THE NETHERLANDS FOR AIR SERVICES BETWEEN AND BEYOND THEIR RESPECTIVE TERRITORIES

The Government of the Kingdom of Thailand and the Government of the Kingdom of the Netherlands,

Being parties to the Convention on International Civil Aviation opened for signature at Chicago on the seventh day of December, 1944,[2] and

Desiring to conclude an agreement, supplementary to the said Convention, for the purpose of establishing air services between and beyond their respective territories,

Have agreed as follows:

Article 1. (1) For the purpose of the present 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 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 the Kingdom of Thailand, the Minister of Communications and any person or body authorised to perform any functions on civil aviation exercised by the said Minister or similar functions, and, in the case of the Kingdom of the Netherlands, the Minister of Transport and Waterways and any person or body authorised to perform any functions on civil aviation exercised by the said Minister or similar function;

(*c*) The term "designated airline" means an airline which one Contracting Party shall have designated, by written notification to the other Contracting Party, in accordance with Article 3 of the present Agreement, for the operation of air services on the route specified in such notification;

(*d*) The term "territory" in relation to a State means the land areas and territorial waters adjacent thereto under the sovereignty, 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 "Schedule" means the Route Schedule to the present Agreement or as amended in accordance with the provisions of Article 12 of the present Agreement.

(2) The Schedule forms an integral part of the present Agreement and all references to the Agreement shall include reference to the Schedule except where otherwise provided.

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[1] Came into force on 29 April 1971, the date of the exchange of the diplomatic notes by which the Contracting Parties confirmed its approval in compliance with their constitutional procedures, in accordance with article 15.

[2] United Nations, *Treaty Series*, vol. 15, p. 295. For the texts of the Protocols amending this Convention, see vol. 320, p. 209 and 217; vol. 418, p. 161; vol. 514, p. 209; vol. 740, p. 21; vol. 893, p. 117, and vol. 958, p. 217.

Article 2. (1) 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 Schedule (hereinafter called "the agreed services" and "the specified route").

(2) Subject to the provisions of the present Agreement, the airlines 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 territory of the other Contracting Party;

(*b*) to make stops in the said territory for non-traffic purposes; and

(*c*) to make stops in the said territory at the points specified for that route in the schedule to the present Agreement for the purpose of putting down and taking on international traffic in passengers, cargo and/or mail coming from or destined for other points so specified.

(3) Nothing in paragraph (2) of this article shall be deemed to confer on the airlines of one Contracting Party the privilege of taking up, in the territory of the other Contracting Party, passengers, cargo and/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 or more airlines for the purpose of operating the agreed services on the specified route.

(2) On receipt of the designation, the other Contracting Party shall, subject to the provisions of paragraph (3) and (4) of this Article, without delay grant to the airline or airlines designated the appropriate operating authorisation.

(3) The aeronautical authorities of one Contracting Party may require an 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 by them in conformity with the provisons of the Convention to the operation of international commercial air services.

(4) Each Contracting Party shall have the right to refuse to accept the designation of an airline and to withhold or revoke the grant to an airline of the privileges specified in paragraph (2) of Article 2 of the present Agreement or to impose such conditions as it may deem necessary on the exercise by an airline of those privileges in any case where it is not satisfied that substantial ownership and effective control of that airline are vested in the Contracting Party designating the airline or in nationals of the Contracting Party designating the airline.

(5) At any time after the provisions of paragraphs (1) and (2) of this Article have been complied with, an airline so designated and authorised, may begin to operate the agreed services, provided that a service shall not be operated unless a tariff established in accordance with the provisions of Article 8 of the present Agreement is in force in respect of that service.

(6) Each Contracting Party shall have the right to suspend the exercise by an airline of the privileges specified in paragraph (2) of Article 2 of the present Agreement or to impose such conditions as it may deem necessary on the exercise by an airline of those privileges 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, unless immediate suspension or imposition of conditions is essential to prevent further infringements of laws or regulations, this right shall be exercised only after consultation with the other Contracting Party.

Article 4. Certificates of airworthiness, certificates of competency and licenses issued or rendered valid by one Contracting Party and still in force, shall be recognized as valid by the other Contracting Party for the purpose of operating the route and services provided for in this Agreement, provided that the requirements under which such certificates or licenses were issued or rendered valid are equal to or above the minimum standards which may be established pursuant to the Convention on International Civil Aviation.

Article 5. (1) Fuel, lubrication oils, spare parts, regular aircraft equipment and aircraft stores introduced into the territory of one Contracting Party, or taken on board aircraft in that territory, by or on behalf of the other Contracting Party or its designated airline and intended solely for use by or in the aircraft of that airline shall be accorded the following treatment by the first Contracting Party in respect of customs duties, inspection fees and other similar national or local duties and charges:

(*a*) in the case of fuel and lubricating oils remaining on board aircraft at the last airport of call before departure from the said territory, exemption; and

(*b*) in the case of fuel and lubricating oils not included under (*a*) and spare parts, regular aircraft equipment and aircraft stores, treatment not less favourable than that accorded to similar supplies introduced into the said territory, or taken on board aircraft in that territory, and intended solely for use by or in the aircraft of a national airline of the first Contracting Party, or of the most favoured foreign airline, engaged in international air services.

(2) The treatment specified in paragraph (1) of this Article shall be in addition to and without prejudice to that which each Contracting Party is under obligation to accord under Article 24 of the Convention.

Article 6. (1) The designated airline of each Contracting Party shall have fair and equal opportunity to carry on the agreed services traffic embarked in the territory of one Contracting Party and disembarked in the territory of the other Contracting Party or vice versa and shall regard as being of supplementary character traffic embarked or disembarked in the territory of the other Contracting Party to and from points en route. The designated airline of each Contracting Party in providing capacity for the carriage of traffic embarked in the territory of the other Contracting Party and disembarked at points on the specified route or vice versa shall take into consideration the primary interest of the designated airline of the other Contracting Party in such traffic so as not to affect unduly that interest of the latter airline.

(2) The agreed services provided by the designated airline of each Contracting Party shall be closely related to the requirements of the public for transportation on the specified route, and each shall have as its primary objective the provision of capacity adequate to meet the demands to carry passengers, cargo and mail embarked or disembarked in the territory of the Contracting Party which has designated the airline.

(3) Provision for the carriage of passengers, cargo and mail embarked in the territory of the other Contracting Party and disembarked at points in third countries on the specified route or vice versa shall be made in accordance with the general principle that capacity shall be related to:

(*a*) the requirements of traffic embarked or disembarked in the territory of the Contracting Party which has designated the airline;

(*b*) the requirements of traffic of the area through which the airline passes, after taking account of other air services established by airlines of the States situated in the area; and

(*c*) the requirements of economical through airline operation.

(4) The capacity, namely frequency and type of aircraft, to be provided at the outset as well as the question of traffic rights shall be agreed between both Contracting Parties before the agreed services are inaugurated. Thereafter, the capacity to be provided and the question of traffic rights shall be discussed from time to time between the aeronautical authorities of the Contracting Parties and any changes or modifications agreed upon shall be confirmed by an Exchange of Notes.

(5) As long in advance as practicable, but not less than thirty days, before the introduction of an agreed service or any modification thereof, or within thirty days after receipt of a request from the aeronautical authorities the designated airline of one Contracting Party shall provide to the aeronautical authorities of the other Contracting Party information regarding the nature of service, time-tables, types of aircraft including the capacity provided on the specified route and any further information as may be required to satisfy the aeronautical authorities of the other Contracting Party that the requirements of this Agreement are being duly observed.

Article 7. There shall be a fair and equal opportunity for the designated airlines of both Contracting Parties to operate the agreed services on their respective routes.

The designated airlines of the two Contracting Parties shall enjoy the same facilities existing under the currency regulations of each Contracting Party in selling air transportation. Each Contracting Party shall grant to the designated airline of the other Contracting Party the right of free transfer of the excess of receipts over expenditure earned by that airline in the territory of the first Contracting Party in connection with the carriage of passengers, mail and cargo. Such transfer shall be at the official rate of exchange, where such a rate exists or otherwise at a rate equivalent to that at which the receipts were earned.

The designated airline of each Contracting Party shall have the rights to establish and operate branch offices with staff of its own as well as to appoint any general sales agent and ground handling agent in the territory of the other Contracting Party.

In the event that laws or regulations issued by one Contracting Party prevent the designated airlines of the other Contracting Party from enjoying any of the rights as stated above, the designated airlines of the first Contracting Party shall in reciprocity not enjoy such rights.

Article 8. (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, and such agreement shall, where possible, be guided by such decisions as are applicable under the traffic conference procedure 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 11 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 11 of the present Agreement.

(6) The tariffs established in accordance with the provisions of this Article shall remain in force until new tariffs have been established in accordance with the provisions of this Article.

Article 9. The aeronautical authorities of each 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 airline or airlines of the first Contracting Party. Such statements shall include all information required to determine the amount of traffic carried by the airline on the agreed service.

Article 10. 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.

Article 11. (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, they may agree to refer the dispute for decision to some person or body, or 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 notice through the diplomatic channel requesting arbitration of the dispute, and the third arbitrator shall be appointed within a further period of thirty 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. Where the President possesses the nationality of one of the two Contracting Parties or is otherwise prevented from carrying out this function, his deputy in office shall make the necessary appointments. The third arbitrator shall be a national of a third State and shall act as president of the arbitral body.

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

(4) If and so long as either Contracting Party or the 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 in default as the case may be.

Article 12. (1) If either of the Contracting Parties considers it desirable to modify any provision of the present Agreement it shall request consultation with the other Contracting Party. Such consultation, which may be conducted between the aeronautical authorities, shall begin within a period of sixty days as from the date of the request. Any modifications so agreed shall come into force when confirmed by an exchange of diplomatic notes.

(2) The present Agreement shall be amended so as to conform with any general multilateral convention which may become binding on both Contracting Parties.

Article 13. 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 14. The present Agreement and any exchange of diplomatic notes relative thereto shall be registered with the International Civil Aviation Organisation.

Article 15. The present Agreement shall be approved by each Contracting Party in compliance with its constitutional procedure and shall enter into force on the day of exchange of diplomatic notes confirming such approval.

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

DONE at Bangkok on this 29th day of April, B.E. 2514 (1971) in two originals.

For the Government
of the Kingdom
of Thailand:

[*Signed*]

Police Major-General
SANGA KITTIKACHORN
Deputy Minister of Foreign Affairs

For the Government
of the Kingdom
of the Netherlands:

[*Signed*]

WADIM THORN LEESON
Ambassador of the Netherlands

SCHEDULE

SECTION 1

Route to be operated in both directions by the airline or airlines designated by the Government of the Kingdom of Thailand:

Bangkok - New Delhi - Karachi - Kabul - Tashkent - Moscow - Teheran - Cairo - Beirut - Istanbul - Athens - Rome - Zurich - Frankfurt - Amsterdam - London - New York.

The designated airline or airlines of the Kingdom of Thailand may, on any or all flights omit calling at any of the above points, provided that the agreed services on this route begin at Bangkok.

SECTION 2

Route to be operated in both directions by the airline or airlines designated by the Government of the Kingdom of the Netherlands:

Amsterdam - Frankfurt - Munich - Zurich - Rome - Athens - Cairo - Beirut - Kuwait - Teheran - Abadan - Karachi - New Delhi - Calcutta - Bangkok - Manila - Tokyo.

The designated airline or airlines of the Kingdom of the Netherlands may, on any or all flights omit calling at any of the above points, provided that the agreed services on this route begin at Amsterdam.

EXCHANGE OF NOTES CONSTITUTING AN AGREEMENT[1] BETWEEN THE GOVERNMENT OF THE KINGDOM OF THAILAND AND THE GOVERNMENT OF THE KINGDOM OF THE NETHERLANDS AMENDING THE ROUTE SCHEDULE ANNEXED TO THE AGREEMENT OF 29 APRIL 1971[2] FOR AIR SERVICES BETWEEN AND BEYOND THEIR RESPECTIVE TERRITORIES

I

MINISTRY OF FOREIGN AFFAIRS
SARANROM PALACE

Bangkok, 31st October, B.E. 2517 (1974)

No. 0502/48354

Excellency,

I have the honour to refer to the discussions held in Bangkok from the 26th–28th March 1974 between the Thai and the Netherlands Delegations for the purpose of amending the Route Schedule of the Agreement between the Government of the Kingdom of Thailand and the Government of the Kingdom of the Netherlands for air services between and beyond their respective territories, signed at Bangkok on the 29th April 1971.[2]

As a result of these discussions the two Delegations have agreed to amend the Route Schedule to the said Agreement to read as follows:

a. the Netherlands route:

"Amsterdam - Frankfurt - Dusseldorf or Munich - Zurich - Vienna - Rome - Athens - Cairo - Beirut - Kuwait - Bahrein - Dubai - Teheran - Abadan - Karachi - New Delhi - Calcutta - Bangkok - Manila - Tokyo", and

b. the Thai route:

"Bangkok - New Delhi - Karachi - Kabul - Tashkent - Moscow - Teheran - Dubai - Cairo - Beirut or Tel Aviv - Istanbul - Athens - Rome -Vienna - Zurich - Frankfurt - Copenhagen - Amsterdam - London - New York".

I have the honour to confirm that the present Note is the understanding of the Government of Thailand and Your Excellency's Note in reply shall be regarded as constituting an Agreement between the two Governments on this subject which shall enter into force on the date of Your Excellency's Note in reply.

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

CHARUN P. ISARANGKUN

[1] Came into force on 13 November 1974, the date of the note in reply, in accordance with the provisions of the said notes.

[2] See p. 332 of this volume.

II

Bangkok, 13th November, 1974

No. 4273

Excellency,

[*See note I*]

I have the honour to confirm that Your Excellency's note of 31st October, 1974, no. 0502/48354, is the understanding of the Government of Thailand, and that my answer in the present note will be regarded as constituting an Agreement between the Government of the Kingdom of the Netherlands and the Government of the Kingdom of Thailand on this subject, entering into force on this day.

Please accept, Excellency, the renewed assurances of my highest consideration.

F. VAN DONGEN
Ambassador of the Netherlands

His Excellency Charun P. Isarangkun Na Ayuthaya
Minister of Foreign Affairs
Bangkok