

No. 17877

**NETHERLANDS
and
KUWAIT**

**Agreement relating to air services (with schedule). Signed at
Kuwait on 7 January 1973**

Authentic texts: English, Arabic and Dutch.

Registered by the International Civil Aviation Organization on 2 July 1979.

**PAYS-BAS
et
KOWEÏT**

**Accord relatif aux services aériens (avec tableau). Signé à
Koweït le 7 janvier 1973**

Textes authentiques : anglais, arabe et néerlandais.

*Enregistré par l'Organisation de l'aviation civile internationale le 2 juillet
1979.*

AGREEMENT¹ BETWEEN THE KINGDOM OF THE NETHERLANDS AND THE STATE OF KUWAIT RELATING TO AIR SERVICES

The Government of the Kingdom of the Netherlands and the Government of the State of Kuwait, hereinafter described as the Contracting Parties,

Desiring to foster the development of air services between the Kingdom of the Netherlands and the State of Kuwait and to promote in the greatest measure international co-operation in this field;

Desiring to apply to these services the principles and provisions of the Convention on International Civil Aviation opened for signature at Chicago on the seventh day of December 1944,² have agreed as follows:

Article 1. For the purpose of the present Agreement, unless the text otherwise requires:

a) “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;

b) The term “aeronautical authorities” shall mean in the case of the State of Kuwait, the Director General of Civil Aviation; in the case of the Kingdom of the Netherlands, the Director General of Civil Aviation, or in both cases any other person or agency authorized to perform the functions exercised by the said authorities;

c) The term “designated airline” shall mean an airline that one Contracting Party has designated in writing to the other Contracting Party in accordance with article 3 of the present Agreement as being an airline which is to operate the agreed air services on the routes specified in accordance with paragraph 1 of article 2 of the present Agreement;

d) The terms “territory”, “air service”, “international air service” and “stop for non-traffic purposes” shall, for the purpose of the present Agreement, have the meaning laid down in articles 2 and 96 of the Convention;

e) “Schedule” means the Schedule to this Agreement or as amended in accordance with the provisions of paragraph 3 of article 12 of this Agreement. The Schedule forms an integral part of this Agreement and all references to the Agreement shall include reference to the Schedule except where otherwise provided.

Article 2. 1. Each Contracting Party grants to the other Contracting Party the rights specified in the present Agreement to enable its designated airline to establish and operate international air services on the routes specified in the Schedule thereto (hereinafter called “agreed services” and “specified routes” respectively).

2. Subject to the provisions of the present Agreement, the designated airline of each Contracting Party shall enjoy, while operating an agreed service on a specified route, the following privileges:

¹ Came into force on 18 November 1976, the date when the Contracting Parties notified each other by an exchange of diplomatic notes of the completion of their constitutional procedures, in accordance with article 17 (1).

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; vol. 893, p. 117; vol. 958, p. 217, and vol. 1008, p. 213.

- 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 point or points specified for that route in the Schedule for the purpose of discharging and of taking on international traffic in passengers, mail and cargo.

Article 3. 1. The agreed air services on the routes specified in accordance with paragraph 1 of article 2 of the present Agreement may be started at any time, provided:

- a) The Contracting Party to whom the rights specified in paragraph 2 of article 2 have been granted, has designated an airline in writing, and
- b) The Contracting Party granting these rights has authorized the designated airline to initiate the air services.

2. The Contracting Party granting these rights shall, subject to provisions of paragraphs 3 and 4 of this article, give without undue delay the said authorization to operate the agreed air services, provided that a tariff in respect of the agreed services shall have been established in accordance with the provisions of article 10 of the present Agreement.

3. The airline designated by either Contracting Party may be required to satisfy the other Contracting Party that it is qualified to fulfil the conditions prescribed by the laws and regulations normally and reasonably applied by this Contracting Party to the operation of international air services in conformity with the provisions of the Convention.

4. Each Contracting Party may withhold the exercise of the privileges provided for in article 2 of the present Agreement from an airline designated by the other Contracting Party if such airline is not able to prove upon request that substantial ownership and effective control of such airline are vested in the Contracting Party designating the airline or in its nationals or Corporations.

Article 4. 1. Each Contracting Party shall have the right to suspend the exercise by the designated airline of the privileges specified in article 2 of the present Agreement or to impose such conditions as it may deem necessary on the exercise by that airline of those privileges 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 considered necessary to prevent further infringement of laws or regulations or is in the interest of aviation safety, this right shall be exercised only after consultation with the other Contracting Party.

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

Article 5. The charges imposed in the territory of either Contracting Party for the use of airports and other aviation facilities on the aircraft of a designated airline of the other Contracting Party shall not be higher than those imposed on aircraft of a national airline engaged in similar international air services.

Article 6. 1. Aircraft operated on international services by the designated airline 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 custom 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 each Contracting Party by or on behalf of the 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 those 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 those materials be placed under their supervision up to such time as they are re-exported or otherwise disposed of in accordance with customs regulations.

Article 7. Passengers in transit across the territory of either Contracting Party shall be subject to no more than a very simplified control. Baggage in direct transit shall be exempt from customs duties and other similar taxes.

Article 8. 1. There shall be fair and equal opportunity for the designated airline of each Contracting Party to operate air services on any route specified in accordance with paragraph 1 of article 2 of the present Agreement.

2. In the operation of agreed air services on the routes specified in accordance with paragraph 1 of article 2 of the present Agreement, the designated airline of either Contracting Party shall take into account the interests of the designated airline of the other Contracting Party so as not to affect unduly the air services which the latter airline operates over the whole routes or parts thereof.

3. The agreed services provided by a designated airline shall retain as their primary objective the provision at a reasonable load factor of capacity adequate to current and reasonably anticipated requirements for the carriage of passengers, mail and cargo, originating from or destined for the territory of the Contracting Party designating the airline. The right of the designated airline of either Contracting Party to embark or to disembark at the point in the territory of the other Contracting Party international traffic destined for or coming from third countries shall be in accordance with the principles that such traffic will be of a supplementary character and capacity shall be related to:

- a) Traffic demands between the territory of the Contracting Party designating the airline and the points on the specified routes;
- b) Traffic requirements of the areas 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 9. 1. The designated airlines shall communicate to the aeronautical authorities of the Contracting Parties not later than thirty days prior to the initiation of air services on the routes specified in accordance with paragraph 1 of article 2 of the present Agreement, the type of service, the types of aircraft to be used and the flight schedules. This shall likewise apply to later changes.

2. The aeronautical authorities of either Contracting Party shall furnish to the aeronautical authorities of the other Contracting Party at their request such periodic or other statistical data as may be reasonably required for the purpose of reviewing the capacity provided by the designated airline of the first Contracting Party on the routes specified in accordance with paragraph 1 of article 2 of the present Agreement. Such data shall include all information required to determine the amount of traffic carried.

Article 10. 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 on the various routes (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 shall, if possible, be agreed in respect of each of the specified routes between the designated airlines concerned in consultation when necessary with other airlines operating over the whole or part of that route, 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 and shall be submitted to those authorities at least 30 days prior to the proposed date of introduction of these tariffs.

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 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 matter shall be referred to the Contracting Parties for settlement in accordance with the provisions of article 13 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. Nevertheless a tariff shall not be prolonged by virtue of this paragraph for more than 12 months after the date on which it otherwise would have expired.

Article 11. Either Contracting Party undertakes to grant the other Contracting Party free transfer, at the official rate of exchange, of the excess of receipts over expenditure achieved on its territory in connection with the carriage of passengers, baggage, mail shipments and freight by the designated airline of the other Contracting Party. Whenever the payments system between the Contracting Parties is governed by a special agreement, that special agreement shall apply.

Article 12. 1. Exchange of views shall take place as needed between the aeronautical authorities of the Contracting Parties in order to achieve close coopera-

tion and agreement in all matters pertaining to the application of the present Agreement.

2. Each Contracting Party may at any time request consultations with the other Contracting Party for the purpose of amending the present Agreement. Such consultations shall begin within a period of 60 days from the date of receipt of such request. Any amendments to the present Agreement agreed to as a result of such consultations shall be approved by each Contracting Party in accordance with its constitutional procedures and shall enter into force on the date of exchange of diplomatic notes indicating such approval.

3. If the amendment relates only to the Schedule, the consultation shall be between the aeronautical authorities of both Contracting Parties. When these authorities agree on a new or revised Schedule, the agreed amendments shall come into force as soon as they have been confirmed by an exchange of diplomatic notes.

Article 13. 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 within 60 days a settlement by negotiations they shall refer the dispute for decision to an arbitration tribunal. The arbitration tribunal shall be composed as follows:

- a) Each Contracting Party shall nominate an arbitrator; if one Contracting Party fails to nominate its arbitrator, such arbitrator shall be nominated by the President of the Council of the International Civil Aviation Organization at the request of the other Contracting Party.
- b) The third arbitrator, who shall be a national of a third State and who shall preside the arbitral tribunal, shall be nominated either
 - i) By agreement between the two arbitrators nominated in accordance with sub-paragraph 2 a) of this article; or
 - ii) If within 60 days these two arbitrators do not so agree, by appointment of the President of the Council of the International Civil Aviation Organization by the request of either Contracting Party.

3. The arbitral tribunal shall reach its decisions by a majority of votes. Such decisions shall be binding on both Contracting Parties. Each Contracting Party shall bear the cost of its own member as well as of its representation in the arbitral proceedings; the cost of the Chairman and any other costs shall be borne in equal parts by the Contracting Parties. In all other respects, the arbitral tribunal shall determine its own procedure.

Article 14. In the event of a general multilateral air transport convention or agreement accepted by the Contracting Parties entering into force, the provisions of such convention or agreement shall prevail. Any discussions with a view to determining the extent to which the present Agreement is terminated, superseded, amended or supplemented by the provisions of the multilateral convention or agreement shall take place in accordance with paragraph 2 of article 12 of the present Agreement.

Article 15. Either Contracting Party may at any time notify the other of its decision to terminate the present Agreement. A copy of the notice shall be sent simultaneously to the International Civil Aviation Organization. If such notice is given, the present Agreement shall terminate twelve months 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 expiry of the 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 16. The present Agreement, the Schedule and any amendment thereto shall be registered with the International Civil Aviation Organization.

Article 17. 1. 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 the exchange of diplomatic notes confirming such approval.

2. As regards the Kingdom of the Netherlands, the present Agreement shall be applicable to the Kingdom in Europe only.

IN WITNESS WHEREOF, the undersigned, being authorized by their respective Governments, have signed at Kuwait this seventh day of January 1973 the present Agreement, in two originals, each in English, Arabic and Netherlands languages, the three texts being equally authentic. The English text shall prevail in the event of any disagreement as to the meaning or interpretation of any clause in the present Agreement.

For the Kingdom of the Netherlands:

[Signed]

D. M. SCHORER
Chargé d'affaires, a.i.

For the State of Kuwait

[Signed]

ABDULLAH AHMAD AL-SAMHAN
Director-General of Civil Aviation

SCHEDULE

I. *Routes to be operated by the designated airline of the Kingdom of the Netherlands*

Points in Netherlands—any two intermediate points in Europe including Turkey—Kuwait—points situated beyond Pakistan and India.

II. *Routes to be operated by the designated airline of the State of Kuwait*

Kuwait—any three intermediate points of which two are situated in Europe—Amsterdam—and points beyond.

NOTES

a) Under the above-mentioned route descriptions, different services may be operated simultaneously via different intermediate points.

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