

No. 22331

FRANCE
and
MALAYSIA

Agreement for air services between and beyond their respective territories (with schedule of routes). Signed at Kuala Lumpur on 22 May 1967

Exchange of notes constituting an agreement modifying the schedule of routes of the above-mentioned Agreement. Kuala Lumpur, 4 March and 13 July 1981

Authentic texts of the Agreement: French, Malay and English.

Authentic texts of the Exchange of notes: French and English.

Registered by France on 30 August 1983.

FRANCE
et
MALAISIE

Accord relatif aux transports aériens entre leurs territoires respectifs et au-delà (avec tableau des routes). Signé à Kuala Lumpur le 22 mai 1967

Échange de notes constituant un accord modifiant le tableau des routes de l'Accord susmentionné. Kuala Lumpur, 4 mars et 13 juillet 1981

Textes authentiques de l'Accord : français, malais et anglais.

Textes authentiques de l'Échange de notes : français et anglais.

Enregistrés par la France le 30 août 1983.

AGREEMENT¹ BETWEEN THE GOVERNMENT OF THE REPUBLIC OF FRANCE AND THE GOVERNMENT OF MALAYSIA FOR AIR SERVICES BETWEEN AND BEYOND THEIR RESPECTIVE TERRITORIES

The Government of the Republic of France and the Government of Malaysia being parties to the Convention on International Aviation, and

Desiring to conclude an Agreement for the purpose of establishing air services between and beyond their respective territories,

Have agreed as follows:

Article 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, 1944,² 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” means, in the case of the Republic of France, the Secrétaire Général à l’Aviation Civile and any person or body authorised to perform any functions at present exercised by the said Secrétaire Général or similar functions; and, in the case of Malaysia, means the Minister of Transport and any person or body authorised to perform any functions at present exercised by the said Minister or similar functions;

(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 routes specified in such notification;

(d) The term “change of gauge” means the operation of an air service by a designated airline in such a way that one section of the route is flown by aircraft different in capacity from those used on another section;

(e) The term “territory” in relation to a State means the land areas and territorial waters adjacent thereto under the sovereignty, suzerainty, protection or trusteeship of that State; and

(f) The terms “air service”, “international air service”, “airline” and “stop for non-traffic purpose” have the meanings respectively assigned to them in Article 96 of the Convention.

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 routes specified in the Schedule of Routes thereto (hereinafter called “the agreed services” and “the specified routes”).

¹ Came into force on 22 May 1967 by signature, 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, pp. 209 and 217; vol. 418, p. 161; vol. 514, p. 209; vol. 740, p. 21; vol. 893, p. 117; vol. 958, p. 217; vol. 1008, p. 213, and vol. 1175, p. 297.

(2) Subject to the provisions of the present Agreement, 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 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 mail.

(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 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 routes.

(2) On receipt of the designation, the other Contracting Party shall, subject to the provisions of paragraphs (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 provisions of the Convention in 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 7 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. Fuel, lubricating 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 or airlines and intended solely for use by or in the aircraft of those airlines 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 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. This treatment 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 5. (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 service, 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 6. 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 5 of the present Agreement shall govern all arrangements made with regard to change of gauge.

Article 7. (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 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) When tariffs 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 8. Each Contracting Party grants to the designated airlines of the other Contracting Party the right to transfer to their head offices in Malaysian dollars or French francs at the official rates of exchange all surplus earnings whatever the currency in which they were earned.

Article 9. 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.

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 this present 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, 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 diplomatic channels requesting arbitration of the dispute and the third arbitrator shall be appointed within a further period of sixty 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 Organisation may be requested by either Contracting Party to appoint an arbitrator or arbitrators as the case requires. In such case, 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 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 12. (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 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) In the event of the conclusion of any general multilateral convention concerning air transport by which both Contracting Parties become bound, the present Agreement shall be amended [so] as to conform with the provisions of such convention.

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 Notes in accordance with Article 12 shall be registered with the International Civil Aviation Organisation.

Article 15. 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 22nd day of May 1967 in duplicate in the French, Malay and English languages. Three copies being equally authentic.

For the Government
of the Republic of France:

[Signed]¹

Ambassador of the Republic of France

For the Government
of Malaysia:

[Signed]²

Minister of Transport

SCHEDULE OF ROUTES

French Route

From points in France through one or several points in Europe, in the Near and Middle East – Karachi – Colombo – Rangoon – Bangkok – Phnom Penh – Saigon – Kuala Lumpur – Singapore – Djakarta or Bali – Sydney – Auckland to the French territories of the Pacific.

Malaysian Route

Nil.

NOTES

(1) The nature and the extent of traffic rights to be exercised by the designated airline of the Republic of France will be defined later.

(2) One or several points shown in the Schedule of Routes may be omitted by the company or companies designated by the Government of the French Republic provided that the point of departure is situated in French territory.

¹ Signed by Pierre Anthonioz.

² Signed by Tansri Sardon.

ÉCHANGE DE NOTES CONSTITUANT UN ACCORD¹ ENTRE LE GOUVERNEMENT DE LA RÉPUBLIQUE FRANÇAISE ET LE GOUVERNEMENT DE LA MALAISIE MODIFIANT LE TABLEAU DES ROUTES DE L'ACCORD DU 22 MAI 1967 RELATIF AUX TRANSPORTS AÉRIENS ENTRE LEURS TERRITOIRES RESPECTIFS ET AU-DELÀ²

EXCHANGE OF NOTES CONSTITUTING AN AGREEMENT¹ BETWEEN THE GOVERNMENT OF THE FRENCH REPUBLIC AND THE GOVERNMENT OF MALAYSIA MODIFYING THE SCHEDULE OF ROUTES OF THE AGREEMENT OF 22 MAY 1967 FOR AIR SERVICES BETWEEN AND BEYOND THEIR RESPECTIVE TERRITORIES²

I

AMBASSADE DE FRANCE
KUALA LUMPUR

N° 26/11

L'Ambassade de France présente ses compliments au Ministère des Affaires Étrangères et a l'honneur de lui exposer ce qui suit :

Au cours des consultations entre les autorités aéronautiques françaises et malaisiennes qui ont eu lieu à Paris du 25 au 27 novembre 1980, en application de l'Accord entre le Gouvernement de la République Française et le Gouvernement de Malaisie relatif aux transports aériens signé à Kuala Lumpur le 22 mai 1967², les délégations française et malaisienne sont convenues de ce qui suit :

« I. *Tableau des routes*

Le tableau des routes de l'Accord sera révisé comme prévu dans l'annexe B. Ce nouveau tableau des routes remplacera l'actuel et entrera en vigueur par échange de notes diplomatiques.

ANNEXE B

Tableau des routes

Route française

De points en France via un ou plusieurs points en Europe, au Proche et au Moyen-Orient, Karachi, Colombo, Rangoon, Bangkok, Phnom-Penh, Saigon, Kuala Lumpur, Singapour, Jakarta ou Bali, Sydney, Auckland vers les Territoires français du Pacifique et *v. v.*

¹ Entré en vigueur le 13 juillet 1981 par l'échange des dites notes.

² Voir p. 74 du présent volume.

¹ Came into force on 13 July 1981 by the exchange of the said notes.

² See p. 89 of this volume.

Route malaisienne

De points en Malaisie via Bangkok, un point en Inde, Colombo, Karachi, points [au] Proche et au Moyen-Orient, le Caire, points en Europe, Paris, points en Europe et Londres et *v. v.*

NOTES

1) La nature et l'étendue des droits de trafic à exercer par les entreprises de transport aérien désignées françaises et malaisiennes seront définies ultérieurement.

2) Un ou plusieurs points figurant au tableau des routes pourront être omis par l'une ou l'autre des entreprises de transport aérien désignées à condition que le point de départ soit situé dans leur propre territoire. »

L'Ambassade de France a l'honneur de faire savoir au Ministère des Affaires Etrangères malaisien que les dispositions qui précèdent rencontrent le plein accord du Gouvernement français.

S'il en est de même de la part du Gouvernement malaisien, l'Ambassade de France a l'honneur de proposer au Ministère des Affaires Etrangères malaisien que la présente note et la réponse à celle-ci du Ministère des Affaires Etrangères malaisien constituent l'Echange de notes prévu par le paragraphe 2 de l'article 12 de l'Accord entre le Gouvernement de la République Française et le Gouvernement de Malaisie relatif aux transports aériens, signé à Kuala Lumpur le 22 mai 1967, pour prendre effet à la date de ce jour.

L'Ambassade de France saisit cette occasion pour renouveler au Ministère des Affaires Etrangères les assurances de sa très haute considération.

Kuala Lumpur, le 4 mars 1981

Ministère des Affaires Etrangères
Kuala Lumpur

[TRANSLATION — TRADUCTION]

EMBASSY OF FRANCE
KUALA LUMPUR

No. 26/11

The Embassy of France presents its compliments to the Ministry of Foreign Affairs and has the honour to present the following:

[See note II]

The Embassy of France takes this opportunity, etc.

Kuala Lumpur, 4 March 1981

Ministry of Foreign Affairs
Kuala Lumpur

II

AI 62/81

The Ministry of Foreign Affairs presents its compliments to the French Embassy [and] has the honour to refer [to] the latter's note No. 26/11 and subsequently amended by note No. 87/11 to read as follows:

“During the consultations which took place in Paris from 25th to 27th of November 1980 between the French and the Malaysian aeronautical Authorities, in accordance with the Agreement on Air Services between the Government of the French Republic and the Government of Malaysia signed in Kuala Lumpur on May 22nd 1967, the French and the Malaysian delegations have agreed on the following:

1. *The route schedule*

The route schedule to the Air Agreement will be revised as provided in Annex B. The revised schedule will replace the present one and will come into effect following an exchange of diplomatic notes.

ANNEX B

The route schedule

French route

From points in France through one or several points in Europe, in the Near and Middle East, Karachi, Colombo, Rangoon, Bangkok, Phnom-Penh, Saigon, Kuala Lumpur, Singapore, Djarkata or Bali, Sydney, Auckland to the French Territories of the Pacific and vice versa.

Malaysian route

From points in Malaysia through Bangkok, a point in India, Colombo, Karachi, points in the Near and Middle East, Cairo, points in Europe, Paris, points in Europe and London and vice versa.

NOTES

(1) The nature and the extent of traffic rights to be exercised by the designated airlines of both the Republic of France and Malaysia will be defined later.

(2) One or several points shown in the schedule of routes may be omitted by either designated airline provided that the point of departure is situated in its own territory.

The French Embassy has the honour to inform the Ministry of Foreign Affairs that the above-mentioned dispositions meet with the full approval of the French Government.

Should the Malaysian Government agree on the above, the French Embassy has the honour to propose to the Malaysian Ministry of Foreign Affairs that the present note, together with its answer by the Ministry of Foreign Affairs, constitute the Exchange of Notes provided by paragraph 2 of Article 12 in the Agreement signed between the French Government and the Government of Malaysia on Air Transport in Kuala Lumpur on May 22nd 1967, be effective as from today's date.”

The Ministry has the honour to confirm the acceptance by the Government of Malaysia of the above-mentioned dispositions and that the French Embassy's

note No. 26/11 and the Ministry's reply will constitute the Exchange of Notes provided for by paragraph 2 of Article 12 in the Agreement signed between the French Government and the Government of Malaysia on Air Transport in Kuala Lumpur on May 22nd 1967 and shall enter into force with effect from the date of this note.

The Ministry of Foreign Affairs avails itself of this opportunity to renew to the French Embassy the assurances of its highest consideration.

Kuala Lumpur, 13th July, 1981

[TRADUCTION — TRANSLATION]

AI 62/81

Le Ministère des affaires étrangères présente ses compliments à l'Ambassade de France et a l'honneur de se référer à la note n° 26/11 de celle-ci ultérieurement amendée par la note n° 87/11 pour lire ce qui suit :

[Voir note I]

Le Ministère confirme que le Gouvernement de la Malaisie accepte les dispositions ci-dessus; la note n° 26/11 de l'Ambassade de France et la réponse du Ministère constitueront l'échange de notes prévu au paragraphe 2 de l'article 12 de l'Accord relatif aux transports aériens signé à Kuala Lumpur le 22 mai 1967 entre le Gouvernement français et le Gouvernement de la Malaisie et les dispositions de cet échange de notes entreront en vigueur avec effet à la date de la présente note.

Le Ministère saisit cette occasion, etc.

Kuala Lumpur, le 13 juillet 1981