

No. 26370

**AUSTRIA
and
INDONESIA**

**Agreement on scheduled air transport (with annex). Signed
at Vienna on 19 March 1987**

Authentic text: English.

Registered by Austria on 5 January 1989.

**AUTRICHE
et
INDONÉSIE**

**Accord relatif aux transports aériens réguliers (avec annexe).
Signé à Vienne le 19 mars 1987**

Texte authentique : anglais.

Enregistré par l'Autriche le 5 janvier 1989.

AIR TRANSPORT AGREEMENT¹ BETWEEN THE AUSTRIAN FEDERAL GOVERNMENT AND THE GOVERNMENT OF THE REPUBLIC OF INDONESIA ON SCHEDULED AIR TRANSPORT

The Austrian Federal Government and the Government of the Republic of Indonesia,

Hereinafter called in this Agreement the Contracting Parties,

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

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

Have agreed as follows:

Article 1. DEFINITIONS

For the purpose of this 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 Annex or Convention under Articles 90 and 94 thereof insofar as these have become effective for both Contracting Parties.

b) The term “aeronautical authorities” means, in the case of the Austrian Federal Government, the Federal Ministry of Transport and, in the case of the Government of the Republic of Indonesia, the Minister of Communications and any person or body authorized to perform functions at present exercised by the said Minister or similar functions.

c) The term « designated airline” means an airline which has been designated and authorized in accordance with Article 3 of the present Agreement.

d) The term “territories of the Contracting Parties” means the territory of the Republic of Indonesia and the territory of the Republic of Austria. The term “Indonesia” comprises the territory of the Republic of Indonesia including the territorial sea as well as part of the continental shelf and adjacent seas over which the Republic of Indonesia has sovereignty or sovereign rights in accordance with the provisions of the United Nations Convention on the Law of the Sea, 1982.³

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.

¹ Came into force on 1 October 1987, i.e., the first day of the second month following the date on which the Contracting Parties had notified each other (on 19 March and 7 August 1987) of the completion of their required constitutional procedures, in accordance with article 17.

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.

³ Not entered into force at the date of registration of the Agreement published herein. For the text of the Convention as adopted by the Conference, see Documents of the United Nations Conference on the Law of the Sea, A/CONF.62/122 and Corr.1 to 11 or United Nations publication, Sales No. E.83.V.5.

f) The term “capacity” means, specified types of aircraft, frequency of services, number of seats and/or cargo capacity by volume or weight that may be made available.

Article 2. TRAFFIC RIGHTS

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 appropriate Section of the Annex thereto (hereinafter called “the agreed services” and “the specified routes”).

2. The airline of each Contracting Party shall enjoy following privileges:

- a) To fly without landing across the territory of the other Contracting Party;
- b) To make stops in the territory of the other Contracting Party for non-traffic purposes; and
- c) While operating an agreed service on a specified route, subject to the provisions of the present Agreement, to make stops in the territory of the other Contracting Party at the points specified for that route in the Annex to the present Agreement for the purpose of putting down and taking on international traffic in passenger, cargo and mail.

3. Nothing in paragraph (2) of this Article shall be deemed to confer on the airline of one Contracting Party the privilege of taking up, in the territory of the other Contracting Party, passengers, cargo or mail carried with or without remuneration or hire and destined for another point in the territory of that other Contracting Party.

4. Notwithstanding the provisions of paragraphs (1) and (2) of this Article, the operation of agreed services in areas of hostilities or military occupation, or in areas affected thereby, shall, in accordance with Article 9 of the Convention, be subject to the approval of the competent military authorities.

Article 3. NECESSARY AUTHORIZATIONS

1. Each Contracting Party shall have the right to designate in writing to the other Contracting Party one airline for the purpose of operating the agreed services on the specified routes.

2. On receipt of such designation, the other Contracting Party shall, subject to the provision of paragraphs (4) and (5) of this Article, without delay grant to the designated airline the appropriate operating authorizations.

3. Each Contracting Party shall have the right, by written notification to the other Contracting Party, to withdraw the designation of any such airline and to designate another one.

4. 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.

5. Each Contracting Party shall have the right to refuse to grant the operating authorization referred to in paragraph (2) of this Article, or to impose such conditions as it may deem necessary on the exercise by a designated airline of the rights specified in Article 2 of the present Agreement, in any case where the said

Contracting Party is not satisfied that substantial ownership and effective control of that airline are vested in the Contracting Party designating the airline or in its nationals.

6. When an airline has been so designated and authorized, it may at any time begin to operate the agreed services, provided that a tariff established in accordance with the provisions of Article 9 of the present Agreement is in force and an agreement in accordance with the provisions of Article 5 of the present Agreement has been reached in respect of that service.

Article 4. SUSPENSION AND REVOCATION

1. Each Contracting Party shall have the right to revoke the operating authorization or to suspend the exercise of the rights specified in Article 2 of the present Agreement by the airline designated by the other Contracting Party, or to impose such conditions as it may deem necessary on the exercises of these rights:

- a) 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 such Contracting Party, or
- b) In the case of failure by that airline to comply with the laws or regulations of the Contracting Party granting these rights, or
- c) In case the airline otherwise fails to operate in accordance with the conditions prescribed under the present Agreement.

2. Unless immediate revocation, suspension or imposition of the conditions mentioned in paragraph (1) of this Article is essential to prevent further infringements of laws or regulations, such right shall be exercised only after consultations with the other Contracting Party. In such a case consultations shall begin within a period of sixty (60) days from the date of request made by either Contracting Party for consultations.

Article 5. CAPACITY REGULATIONS

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

2. In operating the services, the airline of each Contracting Party shall take into account the interest of the airline 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 route.

3. The capacity to be provided, the frequency of services to be operated and the nature of air services, that is, transiting through or terminating in the territory of the other Contracting Party, including the eventual exercise of fifth freedom traffic rights, shall be agreed upon between the aeronautical authorities in accordance with the principles laid down in this Article.

4. Any increase in the capacity to be provided or frequency of services to be operated by the designated airline of either Contracting Party shall be agreed upon between the aeronautical authorities of both Contracting Parties, on the basis of the estimated requirements of the traffic between the territories of the two Parties and any other traffic to be jointly agreed and determined.

5. The designated airlines shall submit the schedules for approval to the aeronautical authorities of both Contracting Parties at least thirty (30) days before the proposed date of their introduction. In special cases, this time limit may be reduced subject to the consent of the said authorities.

6. Pending such agreement or settlement the capacity and frequency entitlements already in force shall prevail.

Article 6. RECOGNITION OF CERTIFICATES AND LICENCES

Certificates of airworthiness, certificates of competency and licences 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 agreed services. Each Contracting Party reserves the right, however, to refuse to recognize, for the purpose of flight above its own territory, certificates of competency and licences granted to its own nationals or rendered valid by another State.

Article 7. EXEMPTION FROM CUSTOMS AND OTHER DUTIES

1. Aircraft operated on international services by the airline designated by each Contracting Party, as well as their regular equipment, supplies of fuel and lubricants and the 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, providing such equipment and supplies shall remain on board the aircraft up to such time as they are re-exported.

2. There shall also be exempt from the same duties and taxes with the exception of charges corresponding to the service performed:

- a) Aircraft stores taken on board in the territory of either Contracting Party, within limits fixed by the authorities of said Contracting Party, and for use on board the aircraft engaged on a specified route of the other Contracting Party;
- b) Spare parts entered into the territory of either Contracting Party for the maintenance or repair of aircraft used on a specified route by the designated airline of the other Contracting Party;
- c) Fuel and lubricants destined to supply aircraft operated on a specified route by the designated airline of the other Contracting Party, even when these supplies are to be used on the part of the journey performed over the territory of the Contracting Party in which they are taken on board;
- d) Baggage and cargo in direct transit.

3. The normal board equipment, as well as the materials and supplies retained on board the aircraft operated by the designated airline of one Contracting Party may be unloaded in the territory of the other Contracting Party only with the approval of the customs authorities of such a territory. In such a case, they may be placed under the supervision of the said authorities until they are re-exported or otherwise disposed of in accordance with customs regulations.

Article 8. DIRECT TRANSIT TRAFFIC

Subject to the laws and regulations of each Contracting Party, passengers, baggage and cargo in transit across the territory of either Contracting Party shall, in [principle], not be subject to control.

Article 9. TRANSPORT TARIFFS

1. The tariffs to be charged by the airline of one Contracting Party for the carriage to or from the territory of the other Contracting Party shall be established at reasonable levels, due regard being paid to all relevant factors including cost of operation, reasonable profit and characteristics of service (such as standards of speed and accommodation).

2. The tariffs referred to in paragraph (1) of this Article shall be agreed upon by the designated airlines of both Contracting Parties.

3. Agreements according to paragraph (2) above may, if possible, be reached through the rate-fixing machinery of the International Air-Transport Association.

4. The tariffs so agreed shall be submitted for the approval of the aeronautical authorities of the Contracting Parties at least sixty (60) days before the proposed date of their introduction; in special cases this time limit may be reduced, subject to the consent of the said authorities.

5. If the designated airlines cannot agree on any of these tariffs, or if for some other reason a tariff cannot be fixed in accordance with paragraph (2) of this Article, or if during the first thirty (30) days of the sixty (60) days' period referred to in paragraph (4) of this Article, the aeronautical authorities of one Contracting Party give the aeronautical authorities of the other Contracting Party notice of its dissatisfaction with any tariff agreed upon in accordance with the provisions of paragraph (2) of this Article, the aeronautical authorities of the Contracting Parties shall endeavour to agree upon the tariffs.

6. If the aeronautical authorities cannot agree on the approval of any tariff submitted to them under paragraph (4) above or on the determination of any tariff under paragraph (5) the Contracting Parties shall endeavour to agree upon the tariffs.

7. No tariff shall come into force if the aeronautical authorities of either Contracting Party have not approved it.

8. 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 10. TRANSFER OF NET REVENUES

1. Each Contracting Party grants to the designated airline of the other Contracting Party the right of free transfer at any time it is requested, of the excess of receipts over expenditure, earned on its territory in connection with the carriage of passengers, baggage, mail and freight by the designated airline of the other Contracting Party, in any free convertible currency at the prevailing rate of exchange.

2. Where a special payment agreement exists between the Contracting Parties, transfers shall be effected in accordance with the provisions of that Agreement.

Article 11. REPRESENTATION, TICKETING AND SALES PROMOTION

Subject to the laws and regulations of the other Contracting Party, the designated airline of each Contracting Party shall have an equal opportunity

- a) To employ the technical and commercial personnel for the performance of the agreed services on the specified routes and to establish and operate offices in the territory of the other Contracting Party,
- b) To issue all kinds of documents of carriage and to advertise and promote sales in the territory of the other Contracting Party.

Article 12. CONSULTATIONS AND MODIFICATIONS

1. In a spirit of close co-operation, the aeronautical authorities of the Contracting Parties shall consult each other from time to time with a view to ensuring the implementation of, and satisfactory compliance with, the provisions of the present Agreement and the Annex thereto.

2. If either of the Contracting Parties considers it desirable to modify any provisions of the present Agreement, it may request consultation with the other Contracting Party. Such consultation, (which may be prepared by discussion between the aeronautical authorities) shall begin within a period of sixty (60) days of the date of request, unless both Contracting Parties agree to an extension of this period. Modifications so agreed upon 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. Modifications to the Annex shall be agreed upon between the appropriate authorities of the Contracting Parties and shall come into force sixty (60) days after the date of an exchange of diplomatic notes.

Article 13. SETTLEMENTS OF DISPUTES

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 negotiations.

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 (60) 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 Organization may be requested by either Contracting Party to appoint an arbitrator or arbitrators as the case requires. In any 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 decisions 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 Con-

tracting Party in default or to the designated airline of the Contracting Party or to the designated airline in default.

5. Each Contracting Party shall bear the expenses and remuneration necessary for its arbitrator and the fee for the third arbitrator and the expenses necessary for this one, as well as those due to the activity of the arbitration shall be equally shared by the Contracting Parties.

Article 14. EXCHANGE OF STATISTICAL DATA

The aeronautical authority of either Contracting Party shall supply to the aeronautical authority of the other Contracting Party upon their request such periodics 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 Contracting Parties.

Article 15. TERMINATION

Either Contracting Party may at any time give written notice through diplomatic channels to the other Contracting Party of its decision to terminate the present Agreement; such notice shall be simultaneously communicated to the International Civil Aviation Organization. In such case the Agreement shall terminate twelve (12) 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 (14) days after the receipt of the notice by the International Civil Aviation Organization.

Article 16. REGISTRATION

This Agreement and all amendments thereto shall be registered with the International Civil Aviation Organization.

Article 17. ENTRY INTO FORCE

This Agreement shall enter into force on the first day of the second month following the date of which the Contracting Parties have notified each other in an exchange of diplomatic notes that the requirements for its entry into force under their respective constitutional procedures have been fulfilled.

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

DONE at Vienna this 19th day of March one thousand nine hundred and eighty-seven in the English language.

For the Federal Government of the Republic
of Austria:

DR. ERICH BINDER

For the Government of the Republic of Indonesia:

ARTATI SUDIRDJO

ANNEX

SECTION I

1. Routes to be served by the designated airline of the Republic of Indonesia in both directions:

<i>Points of departure</i>	<i>Intermediate points</i>	<i>Points of destination</i>	<i>Points beyond</i>
Points in Indonesia	2 points in Southeast Asia 2 points in the Asian Subcontinent Dubai or Abu Dhabi and Cairo	Vienna	2 points in Europe

2. Routes to be served by the designated airline of the Republic of Austria in both directions:

<i>Points of departure</i>	<i>Intermediate points</i>	<i>Points of destination</i>	<i>Points beyond</i>
Points in Austria	2 points in the Gulf area 2 points in the Asian Subcontinent 2 points in Southeast Asia	Jakarta	2 points in the area Australia/New Zealand

SECTION II

The designated airline of either Contracting Party may, on any or all flights, omit calling at any of the above points, provided that the agreed services on this route start and terminate in the territory of that Contracting Party.