

No. 30247

**IRELAND
and
MALAYSIA**

**Agreement on air transport (with annex). Signed at Shannon
on 17 February 1992**

Authentic texts: English and Malay.

Registered by Ireland on 7 September 1993.

**IRLANDE
et
MALAISIE**

**Accord relatif au transport aérien (avec annexe). Signé à
Shannon le 17 février 1992**

Textes authentiques : anglais et malais.

Enregistré par l'Irlande le 7 septembre 1993.

AGREEMENT¹ BETWEEN THE GOVERNMENT OF IRELAND AND THE GOVERNMENT OF MALAYSIA ON AIR TRANSPORT

The Government of Ireland and the Government of Malaysia,
hereinafter referred to as 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 promote their mutual relations in the field of
civil aviation and 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

Definitions

1. For the purpose of this Agreement

- (a) the term "aeronautical authorities" means, in the case of Ireland, the Minister for Tourism, Transport and Communications and, in the case of Malaysia, the Minister of Transport or, in both cases, any person or body authorised to perform any functions being the responsibility of the said authorities;
- (b) the term "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 of

¹ Came into force on 17 February 1992 by signature, in accordance with article 20.

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.

the Convention under Articles 90 and 94 thereof insofar as those Annexes and amendments have been adopted by both Contracting Parties;

- (c) the term "designated airline" means an airline which has been designated and authorised in accordance with the provisions of Article 3 of this Agreement;
 - (d) the term "tariffs" means the prices to be paid for the carriage of passengers, baggage and cargo and the conditions under which those prices apply, including prices and conditions for agency and other auxiliary services but excluding remuneration or conditions for the carriage of mail;
 - (e) the terms "territory", "air service", "international air service", "airline", and "stop for non-traffic purposes" have the meaning respectively assigned to them in Articles 2 and 96 of the Convention.
2. The Annex to this Agreement shall form an integral part of the Agreement and any reference to the Agreement shall be understood to include the Annex, except where otherwise provided for.

ARTICLE 2

Grant of Traffic Rights

1. Each Contracting Party grants to the other Contracting Party the rights specified in this Agreement for the purpose of establishing scheduled international air services on the routes specified in the Annex hereto. Such services and routes are hereinafter called the "agreed services" and the "specified routes" respectively.
2. The airline or airlines designated by each Contracting Party shall enjoy the following rights, subject to the relevant provisions of this Agreement:

- (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) in the territory of the other Contracting Party, while operating an agreed service on a specified route, the right to embark and disembark international traffic in passengers, cargo and mail, separately or in combination.
3. Airlines of each Contracting Party not designated under Article 3 of this Agreement shall enjoy the rights specified in paragraphs 2(a) and (b) of this Article.
 4. Nothing in this Agreement shall be deemed to confer on the designated airline or airlines of one Contracting Party the right of taking on board, in the territory of the other Contracting Party, passengers, cargo and mail carried for hire or reward and destined for another point in the territory of the other Contracting Party.

ARTICLE 3

Designation of Airlines

1. Each Contracting Party shall have the right to designate in writing to the other Contracting Party an airline or airlines for the purpose of operating the agreed services on the specified routes. On receipt of such designation, the aeronautical authorities of the other Contracting Party shall, subject to the provisions of paragraphs (2) and (3) of this Article, without delay grant to the designated airline or airlines the appropriate operating authorisations.
2. The aeronautical authorities of either Contracting Party may require an airline or airlines designated by the other Contracting Party to satisfy them that it is qualified to fulfil, while operating the agreed services,

the conditions prescribed under the laws and regulations normally and reasonably applied to the operation of international air services by such authorities in conformity with the provisions of the Convention.

3. Each Contracting Party shall have the right to refuse to accept the designation of an airline or airlines from the other Contracting Party or to withhold or revoke the grant to such an airline or airlines of the rights specified in Article 2 of this Agreement or to impose such conditions as it may deem necessary on the exercise by the designated airline or airlines of those rights, in any case where it is not satisfied that the airline or airlines in question have their central administration and principal place of business in the territory of the other Contracting Party, that the majority of their shares are owned by nationals or by the Government of that other Contracting Party and are effectively controlled by such nationals or Government.
4. The designated airline or airlines, when so authorised, may commence at any time to operate the agreed services in whole or in part, provided that the airline complies with the applicable provisions of this Agreement and that tariffs, established in accordance with the provisions of Article 6 of this Agreement, are in force in respect of such services.
5. Each Contracting Party shall have the right to revoke an operating authorisation or to suspend the exercise of the rights specified in Article 2 of this Agreement by the airline or airlines designated by the other Contracting Party or to impose such conditions as it may deem necessary on the exercise of these rights:
 - (a) in the case of failure by such airline or airlines to comply with the laws or regulations of the Contracting Party which has granted these rights, or

(b) if the airline or airlines otherwise fail(s) to operate in accordance with the conditions prescribed under this Agreement and the Annex hereto.

6. Unless immediate revocation, suspension or imposition of the conditions mentioned in paragraph (5) of this Article is essential to prevent infringements of the laws or regulations referred to in paragraph (5) of this Article, such right shall be exercised only after consultation with the other Contracting Party, in accordance with Article 14 of this Agreement.

ARTICLE 4

Capacity

1. No restriction shall be imposed by the aeronautical authorities of either Contracting Party on the frequency, capacity or type of aircraft proposed to be operated on the agreed routes by the designated airline or airlines of the other Contracting Party.
2. The agreed services operated by the designated airline or airlines of each Contracting Party 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 or airlines.
3. Each Contracting Party will, however, retain the right to require consultations with the other Contracting Party in the event that it considers that the interests of its own airline or airlines on a particular route or routes are being seriously damaged as a result of the capacity being mounted by the airline or airlines of the other Contracting Party. In the event of the Parties failing to resolve the matter, it shall be settled in accordance with the provisions of Article 15.

4. Provision for the carriage of passengers, cargo and mail both taken up and put down at points on 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 operations.

ARTICLE 5

Provision of Statistics

1. The aeronautical authorities of one Contracting Party shall supply to the aeronautical authorities of the other Contracting Party, at their request, periodic or other statements of statistics.
2. Such statements shall include all information required to determine the amount of traffic carried by that airline or airlines on the agreed services and the origin and destination of such traffic.

ARTICLE 6

Tariffs

1. The aeronautical authorities of both Contracting Parties shall apply the following provisions for the approval of tariffs to be charged by the designated airline or airlines of either Contracting Party for operating the agreed services.

- (i) The tariffs to be charged by the designated airline or airlines of one Contracting Party for 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 the tariffs of other airlines.
 - (ii) The tariffs shall be submitted for approval of the aeronautical authorities of both Contracting Parties at least ninety days before the proposed date of their introduction. In special cases, this period may be reduced, subject to the agreement of the said authorities.
 - (iii) If one aeronautical authority gives the other aeronautical authority notice of its disapproval of any tariff, the aeronautical authorities of the two Contracting Parties shall endeavour to determine the tariff by mutual agreement and if necessary after consultation with the aeronautical authorities of any other State whose advice they consider useful.
 - (iv) If the aeronautical authorities cannot agree on any tariff submitted to them under paragraph 1(ii) of this Article, or on the determination of any tariff under paragraph 1(iii), the dispute shall be settled in accordance with the provisions of Article 15.
2. A tariff established in accordance with the provisions of this Article shall remain in force until a new tariff has been established.

ARTICLE 7

Application of Laws and Regulations

1. The laws and regulations of a Contracting Party governing entry into and departure from its territory of aircraft engaged in international air transport or the operation and navigation of such aircraft while within its territory shall apply to aircraft of the designated airline or airlines of the other Contracting Party.

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

ARTICLE 8

Investigation of Accidents

1. In the case of a forced landing or accident of an aircraft of either Contracting Party within the territory of the other Contracting Party, the aeronautical authorities of the Contracting Party in whose territory the forced landing or accident takes place shall immediately notify the aeronautical authorities of the other Contracting Party thereof, take immediate steps to assist the crew and the passengers, provide for the safety of the aircraft and mail, baggage and cargo on board and take necessary measures for an inquiry into the particulars and circumstances of the forced landing or accident.
2. The aeronautical authorities of the Contracting Party conducting the inquiry into the particulars and circumstances of the forced landing or accident shall inform the aeronautical authorities of the other Contracting Party of the holding of the inquiry and the aeronautical authorities of the other Contracting Party shall be granted full facilities to be represented at the inquiry. The aeronautical authorities of the Contracting Party conducting the inquiry shall send to the aeronautical authorities of the other Contracting Party the report of the inquiry as soon as it is available.

ARTICLE 9

Aviation Security

1. In accordance with their rights and obligations under international law, the Contracting Parties reaffirm that their

obligation to protect, in their mutual relationship, the security of civil aviation against acts of unlawful interference forms an integral part of this Agreement.

2. The Contracting Parties shall provide upon request all necessary assistance to each other to prevent acts of unlawful seizure of aircraft and other unlawful acts against the safety of passengers, crew, aircraft, airports and air navigation facilities and any other threat to aviation security.
3. The Contracting Parties shall act in full conformity with the provisions of the Convention on Offences and Certain Other Acts Committed on Board Aircraft, signed at Tokyo on 14 September 1963,¹ the Convention for the Suppression of Unlawful Seizure of Aircraft, signed at The Hague on 16 December 1970² and the Convention for the Suppression of Unlawful Acts Against the Safety of Civil Aviation, signed at Montreal on 23 September 1971³ and any other convention relating to the security of civil aviation to which both Contracting Parties are party.
4. The Contracting Parties, in their mutual relations, shall act in conformity with the aviation security provisions established by the International Civil Aviation Organisation and designated as Annexes to the Convention on International Civil Aviation signed at Chicago on 7 December 1944, to the extent that such security provisions are applied by the Contracting Parties; they shall require that operators of aircraft of their registry or operators who have their principal place of business or permanent residence in their territory and the operators of airports in their territory act in conformity with such aviation security provisions. Each Contracting Party shall advise the other of its intention to notify any difference to the standards of the Convention on International Civil Aviation.

¹ United Nations, *Treaty Series*, vol. 704, p. 219.

² *Ibid.*, vol. 860, p. 105.

³ *Ibid.*, vol. 974, p. 177, and vol. 1217, p. 404 (corrigendum to vol. 974).

5. Each Contracting Party agrees to observe the security provisions required by the other Contracting Party for entry into the territory of that other Contracting Party and to take adequate measures to protect aircraft and to inspect passengers, crew, their carry-on items as well as cargo and aircraft stores prior to and during boarding or loading. Each Contracting Party shall also give positive consideration to any request from the other Contracting Party for special security measures to meet a particular threat.
6. When an incident or threat of an incident of unlawful seizure of aircraft or other unlawful acts against the safety of passengers, crew, aircraft, airports and air navigation facilities occurs, the Contracting Parties shall assist each other by facilitating communications and such other appropriate measures as may be agreed and which are intended to terminate rapidly and safely such incident or threat thereof.
7. When a Contracting Party has reasonable grounds to believe that the other Contracting Party has departed from the aviation security provisions of this Article, the aeronautical authorities of that Contracting Party may request immediate consultations with the aeronautical authorities of the other Contracting Party. Failure to reach a satisfactory agreement within 15 days from the date of such request will constitute grounds to withhold, revoke, limit or impose conditions on the operating authorisation or technical permission of an airline or airlines of the other Contracting Party. When required by an emergency, a Contracting Party may take interim action prior to the expiry of 15 days.

ARTICLE 10

Airport Fees and Charges

Fees and charges imposed in the territory of either Contracting Party for the use of airports and other aviation facilities by the aircraft of the designated airline or airlines of the other Contracting Party shall not be higher than those imposed on aircraft of any airline of the first Contracting Party engaged in similar international air services.

ARTICLE 11Customs Charges and Procedures

1. Aircraft operated on international air services by the designated airline or airlines of either Contracting Party, as well as the fuel, lubricants, spare parts, equipment and aircraft stores (including food, alcoholic and non-alcoholic drinks and tobacco) on board such aircraft on arriving in the territory of the other Contracting Party shall be exempt from all customs duties, inspection fees and other charges and taxes, provided such equipment and supplies remain on board the aircraft up to such time as they are re-exported.
2. Fuel, lubricants, spare parts, equipment and aircraft stores (including food, alcoholic and non-alcoholic drinks and tobacco) delivered or which are to be delivered by the designated airline or airlines of either Contracting Party to the territory of the other Contracting Party exclusively for its operational needs shall be exempt from all customs duties, inspection fees and other charges and taxes on their arrival, departure and while within the territory of that other Contracting Party.
3. The following shall also be exempt from such customs duties, fees, charges and taxes, with the exception of charges related to services performed:
 - (a) aircraft stores (including food, alcoholic and non-alcoholic drinks and tobacco) taken on board aircraft in the territory of either Contracting Party for use on board aircraft used in the operation of international air services by the designated airline or airlines of the other Contracting Party;
 - (b) spare parts and equipment entered into the territory of either Contracting Party for the maintenance or repair of aircraft used in the operation of international air services by the designated airline or airlines of the other Contracting Party;

- (c) fuel and lubricants destined for use in the operation of international air services by the designated airline or airlines 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.
4. Supplies referred to in paragraphs (1) to (3) of this Article may be required to be kept under customs supervision or control.
 5. The regular airborne equipment as well as the materials and supplies 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 such territory. In such case, they may be placed under the supervision of the said authorities up to such time as they are re-exported or otherwise disposed of in accordance with customs regulations.
 6. Passengers, baggage, cargo and mail in direct transit across the territory of either Contracting Party and not leaving the area of the airport reserved for such purpose shall, except in respect of security measures against violence, air piracy, and smuggling of controlled drugs, be subject to no more than a simplified control. Baggage and cargo in direct transit shall be exempt from customs duties and other similar taxes.

ARTICLE 12

Airline Representation, Ticketing and Sales Promotion

1. The designated airline or airlines of each Contracting Party shall have the same opportunity as that afforded to the airline or airlines of the other Contracting Party in the territory of the other Contracting Party to employ, subject to the laws and regulations of the other Contracting Party, the technical and commercial personnel required 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.

2. The designated airline or airlines of each Contracting Party shall have the right to issue all kinds of documents of carriage and to advertise and promote sales in the territory of the other Contracting Party.

ARTICLE 13

Transfer of Funds

1. All the accounts between the designated airline or airlines shall be done in convertible currency.
2. Each Contracting Party shall grant to the airline or airlines designated by the other Contracting Party permission to transfer without any restriction to the Head Office of the said airline, in accordance with the rules and regulations existing with regard to currency exchange control, the excess of receipts over expenditure earned in the territory of the first Contracting Party.

ARTICLE 14

Consultations

1. In a spirit of close co-operation, the aeronautical authorities of both Contracting Parties shall consult with each other from time to time with a view to ensuring the implementation of, and satisfactory compliance with, the provisions of this Agreement.
2. The aeronautical authorities of either Contracting Party may request consultations, through discussions or correspondence, which shall commence within a period of sixty (60) days from the date of receipt of the request, unless otherwise agreed by both aeronautical authorities.

ARTICLE 15

Settlement of Disputes

1. Any dispute relating to the interpretation or application of this Agreement or the Annex hereto shall be settled by direct

negotiations between the Contracting Parties. Such negotiations shall commence as soon as practicable but in any event not later than sixty (60) days from the date of receipt of a request for such negotiations, unless otherwise agreed by the Contracting Parties.

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

ARTICLE 16
Modification

1. If either of the Contracting Parties considers it desirable to modify any provision of this Agreement, including the Annex hereto, it may request consultations between the Contracting Parties in relation to the proposed modification. Such consultations shall commence within a period of sixty (60) days of the date of receipt of the request. Any modification so

agreed shall come into force when it has been confirmed in writing by the Contracting Parties through the diplomatic channel.

2. A modification to the Annex may be made by direct agreement between the aeronautical authorities of both Contracting Parties and shall enter into force when it has been confirmed by exchange of diplomatic notes through the diplomatic channel.

ARTICLE 17

Registration with ICAO

This Agreement and all amendments thereto shall be registered with the Council of the International Civil Aviation Organisation.

ARTICLE 18

Applicability of Multilateral Agreements or Conventions

1. This Agreement, including its Annex, shall be amended by an exchange of diplomatic notes between the Contracting Parties in order to adapt it, where necessary, to any Multilateral Agreement or Convention to which both Contracting Parties are party.
2. If any provision of the Agreement conflicts with an obligation which either Contracting Party may have towards a third Party, both Contracting Parties shall enter into consultations, in accordance with Article 15, to amend the Agreement in order to resolve any such conflict as soon as possible.

ARTICLE 19

Notice of Termination of Agreement

1. Either Contracting Party may at any time give notice in writing to the other Contracting Party of its decision to terminate this Agreement. Such notice shall be sent simultaneously to the

International Civil Aviation Organisation. 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.

2. 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 Organisation.

ARTICLE 20

Entry into Force

This agreement shall enter into force on the date of its signature.

Done at Shannon this 17th day of February, 1992 in duplicate, in the English and Malay languages, both texts being equally authentic. In the case of any inconsistency between the two texts, the English text shall prevail.

Máire Geoghegan-Quinn¹

For the Government
of Ireland

Lim Guan Eng²

For the Government
of Malaysia

¹ Maire Geoghegan Quinn.

² Data Seri Dr. Ling Liong Sik.

ANNEX

1. Routes to be operated by the designated airline or airlines of Ireland:

<u>Points of Departure</u>	<u>Intermediate Points:</u>	<u>Points in Malaysia</u>	<u>Points Beyond:</u>
Any point(s) in Ireland	Any intermediate point(s).	Any point(s) in Malaysia	Any point(s) beyond.

2. Routes to be operated by the designated airline or airlines of Malaysia:

<u>Points of Departure</u>	<u>Intermediate Points:</u>	<u>Points in Ireland</u>	<u>Points Beyond:</u>
Any point(s) in Malaysia	Any intermediate point(s).	Any point(s) in Ireland	Any point(s) beyond.

- Notes:
- (i) Any of the points on the specified routes in this Annex may, at the option of the designated airline or airlines of either Contracting Party be omitted on any or all flights, provided that these flights originate in the territory of the Contracting Party designating the airline.
 - (ii) The designated airline or airlines of either Contracting Party shall have the right to terminate its services in the territory of the other Contracting Party.
 - (iii) Either Contracting Party may require that fifth freedom rights at intermediate point(s) or point(s) beyond on the agreed routes be exercised only where such rights are available to the airlines of both Contracting Parties.
 - (iv) The rights to points beyond specified in respect of the designated airline or airlines of Malaysia shall be exercised at Shannon.