

**No. 30622**

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**SPAIN  
and  
MALAYSIA**

**Air Transport Agreement (with annex). Signed at Kuala Lumpur on 23 March 1993**

*Authentic texts: Spanish, Malay and English.*

*Registered by Spain on 1 January 1994.*

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**ESPAGNE  
et  
MALAISIE**

**Accord relatif aux transports aériens (avec annexe). Signé à Kuala Lumpur le 23 mars 1993**

*Textes authentiques : espagnol, malais et anglais.*

*Enregistré par l'Espagne le 1<sup>er</sup> janvier 1994.*

## AIR TRANSPORT AGREEMENT<sup>1</sup> BETWEEN THE GOVERNMENT OF SPAIN AND THE GOVERNMENT OF MALAYSIA

The Government of Spain and The Government of Malaysia,

Being Parties to the Convention on International Civil Aviation opened for signature at Chicago on the seventh day of December, 1944;<sup>2</sup> and

Desiring to promote the development of air transport between their respective territories and to continue to the fullest extent the international cooperation in this field;

Have agreed as follows:

### ARTICLE 1

#### DEFINITIONS

For the purpose of the interpretation and application of this Agreement, except as otherwise provided herein:

- a) 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 the Convention under Articles 90 and 94 thereof

<sup>1</sup> Came into force provisionally on 23 March 1993, the date of signature, and definitively on 14 June 1993, as soon as the Contracting Parties notified each other (on 10 May and 14 June 1993) of the completion of their respective constitutional requirements, in accordance with article 20 (1).

<sup>2</sup> 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.

so far as those Annexes and amendments have become effective for or have been ratified by both Contracting Parties;

- b) the term "Aeronautical Authorities" means in the case of Spain, the Minister of Public Works and Transport, (Director General of Civil Aviation) and in the case of Malaysia, the Minister of Transport or, in both cases, any person or body duly authorised to perform any function exercised by the said Authorities;
- c) the term "designated airline" means an airline that each Contracting Party has designated to operate the agreed services on the specified routes as established in the Annex to this Agreement and in accordance with Article 3 of this Agreement;
- d) the terms "territory", "international air service" and "stop for non traffic purposes" have the meanings specified in Article 2 and 96 of the Convention;
- e) the term "Agreement" means this Agreement, its Annex and any amendments thereto;
- f) The term "Annex" means the Route Schedule to this Agreement and the provisions related thereto or as amended in accordance with the provisions of Article 17 of this Agreement. The "Annex" shall

form an integral part of this Agreement and all references to the Agreement shall include references to the Annex except where otherwise provided;

- g) the term "specified routes" means the routes established or to be established in the Annex to this Agreement;
- h) the term "agreed services" means the international air services which can be operated, according to the provisions of this Agreement, on the specified routes;
- i) the term "tariff" means the prices established for the carriage of passengers, baggage and freight (except mail) including any significant additional benefit granted or provided together with the said transport as well as the commission to be paid in connection with the sale of tickets and with the corresponding transactions for the carriage of goods. It also includes the conditions governing the application of the transport price or the payment of commission;
- j) The term "capacity" means, in relation to an aircraft, the availability of seats and/or cargo of the said aircraft and, in relation to the agreed services, it means the capacity of the aircraft/s

used on the said services, multiplied by the number of frequencies operated by the said aircraft during each season on one route or on a section of a route.

## ARTICLE 2 OPERATING 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.
2. The airlines designated by each Contracting Party shall enjoy, while operating an agreed service on a specified route, the following rights:
  - 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;
  - c) to make stops in the said territory at points specified in the Route Schedule in the Annex to this Agreement for the purpose of taking on or putting down, in international traffic, passengers, cargo and mail, jointly or separately, in accordance with the provisions of the Annex to this Agreement, to or from the

territory of the other Contracting Party or to or from the territory of another State;

- d) nothing in this Agreement shall be deemed to confer on the designated airlines of one Contracting Party rights of cabotage 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 one or more airlines for the purpose of operating the agreed services on the specified routes and substitute another airline for the previously designated one.
2. On receipt of such designation, the other Contracting Party shall, subject to the provisions of paragraphs 3 and 4 of this Article, without delay grant to the designated airlines the appropriate operating authorizations.
3. The Aeronautical Authorities of one Contracting Party may require the airlines designated by the other Contracting Party to satisfy them that it is qualified to fulfill 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.

4. 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 be deemed necessary on the exercise by a designated airline of the rights specified in Article 2 of this Agreement in any case when 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.
5. When an airline has been so designated and authorised, it may begin at any time to operate the agreed services, provided that a tariff established in accordance with the provisions of Article 7 of this Agreement is in force in respect of those services.

#### ARTICLE 4 REVOCATION

1. 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 given to an airline designated by the other Contracting

Party, or to impose such conditions as it may deem necessary for the exercise 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 the nationals of such Contracting Party, or
  - b) in the case of failure by that airline to comply with the laws and regulations of the Contracting Party granting these rights, or
  - c) in any case in which that airline otherwise fails to operate the agreed services in accordance with the conditions prescribed under this Agreement.
2. Unless immediate revocation, suspension or imposition of the conditions mentioned in paragraph (1) of this Article are essential to prevent further infringement of laws or regulations, such rights shall be exercised only after consultation with the other Contracting Party.

## ARTICLE 5

### EXEMPTIONS

1. Aircraft operated in international air services by the designated airlines of either Contracting Party, as well as their regular equipment, supplies of fuels and

lubricants, and aircraft stores (including food, beverages, and tobacco) which are on board such aircraft shall be exempt from all customs duties and other duties or taxes on arriving in the territory of the other Contracting Party, provided that such equipment and supplies remain on board the aircraft up to such time as they are re-exported.

2. The following 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 the limits fixed by the authorities of the said Contracting Party, and for use on board the aircraft engaged in an international air service over the territory of the other Contracting Party;
- b) spare parts, brought into the territory of either Contracting Party for the maintenance or repair of aircraft used on international air services by the designated airlines of the other Contracting Party, and
- c) fuels and lubricants destined to supply aircraft operated on international air services by the designated airlines of the

other Contracting Party, even when these 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.

Items referred to in sub-paragraphs a), b) and c) above may be required to be kept under Customs supervision or control.

3. Regular airborne equipment, as well as materials and supplies 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.
4. Unless otherwise required for security reasons, passengers in transit across the territory of either Contracting Party shall be subject to no more than a very simplified control. Baggage and cargo in direct transit shall be exempt from customs duties and other similar taxes levied on imports.

**ARTICLE 6****AIRPORT CHARGES**

Each of the Contracting Parties shall impose or allow to be imposed any such fair and reasonable charges or fees for the use of public airports, facilities and navigational aids under its control, provided that the said fees may not exceed the fees imposed on its own national aircraft used on similar international services for the use of the said airport and services.

**ARTICLE 7****TARIFFS**

1. The tariffs to be charged by the designated airlines 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, users' requirements, reasonable profit and the tariffs of other airlines.
2. The tariffs referred to in paragraph (1) of this Article, shall, if possible, be agreed by the designated airlines of both Contracting Parties, after consultation with the other airlines operating over the whole or part of the route, and such agreement shall, whenever possible, be reached by the use of procedures of the

International Air Transport Association for the working out of tariffs.

3. The tariffs so agreed shall be submitted for the approval of the Aeronautical Authorities of both Contracting Parties at least forty five (45) days before the proposed date of their introduction. In special cases, this period may be reduced, subject to the agreement of the said Authorities.
4. The Aeronautical Authorities of the Contracting Party to which a tariff is submitted for approval shall communicate their decision to the designated airlines at least thirty (30) days before the proposed date of application. In the event of the period for submission being reduced, as provided in paragraph (3), the Aeronautical Authorities may agree that the period within which any decision must be notified shall be less than thirty (30) days. No tariff shall be deemed to have been approved unless explicitly so notified.
5. If a tariff cannot be agreed in accordance with the provisions of paragraph (2) of this Article, or if, during the period applicable in accordance with paragraph (4) of this Article, one Aeronautical Authority gives notice of its disapproval of any tariff agreed in accordance with the provisions of paragraph (2), the Aeronautical Authorities of the two Contracting

Parties shall endeavour to determine the tariff by mutual agreement.

6. If the Aeronautical Authorities cannot agree on any tariff submitted to them in accordance with paragraph (3) of this Article, or on the determination of any tariff as specified in paragraph (5) of this Article, the dispute shall be settled in accordance with the provisions of Article 18 of this Agreement.
7. A tariff established in accordance with the provisions of this Article shall remain in force until a new tariff has been established. However, a tariff may be prolonged after its original date of expiry for a period not exceeding twelve (12) months.

## ARTICLE 8

### TECHNICAL AND COMMERCIAL ACTIVITIES

1. The designated airlines of each Contracting Party shall be allowed, on the basis of reciprocity, to maintain in the territory of the other Contracting Party, their representatives and commercial, operational and technical staff as required in connection with the operation of the agreed services.
2. The request for staff may, at the option of the designated airlines of each Contracting Party, be satisfied either by their own personnel or by using the

- services of any other organisation, company or airline operating in the territory of the other Contracting Party, and authorised to perform such services in the territory of that Contracting Party.
3. The representatives and staff shall be subject to the laws and regulations in force of the other Contracting Party, and, consistent with such laws and regulations, each Contracting Party shall, on the basis of reciprocity and with the minimum of delay, grant the necessary employment authorisations, visitor visas or other similar documents to the representatives and staff referred to in paragraph (1) of this Article.
  4. Should special circumstances require the entry or permanence of staff on an emergency and temporary basis, the permits, visas and documents required by the laws and regulations of each Contracting party shall be issued promptly so as not to delay the entry of such personnel into the State concerned.
  5. The designated airlines of each Contracting Party may provide their own ground handling services in the territory of the other Contracting Party or have them provided by any authorised agent. Should the laws and regulations or national policies in force in any of the Contracting Parties provide otherwise, the services referred to shall be provided by the designated airlines

in their respective territories or by their national authorised agents.

#### ARTICLE 9

##### LAWS AND REGULATIONS

1. The laws and regulations of each Contracting Party controlling the admission to or departure from its own territory of aircraft engaged in international air services or related to the operation of aircraft while within its territory, shall be applied to the aircraft of the designated airlines of the other Contracting Party.
2. The laws and regulations controlling the entry, stay and departure of passengers, crew, baggage, mail and cargo, over the territory of each Contracting Party, and also the regulations related to the requirements of entry and departure from the country, immigration, customs and sanitary rules, shall be applied, in such territory, to the operations of the designated airlines of the other Contracting Party.

#### ARTICLE 10

##### PROHIBITED AREAS

For military reasons and public security, each Contracting Party shall have the right to restrain or forbid the flights of the aircraft belonging to the airlines

designated by the other Contracting Party above certain zones of its territory provided that such restrictions and prohibitions are applied equally to the aircraft of the airlines designated by the first Contracting Party and the airlines of other States which operate on international scheduled air services.

## ARTICLE 11

### CERTIFICATES AND LICENCES

1. Certificates of airworthiness, certificates of competence 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 on the specified routes in the Annex to this Agreement, provided that the requirements under which such certificates and licences were issued or rendered valid are equal to or above the minimum standards which may be established pursuant to the International Civil Aviation Convention.
2. Each Contracting Party reserves the right, however, to refuse to recognize the validity of the certificates of competence and the licences granted to its own nationals by the other Contracting Party, for the purpose of overflying its own territory.

## ARTICLE 12

## SECURITY

1. Consistent with their rights and obligations under international law, the Contracting Parties reaffirm that their obligation to each other to protect the security of civil aviation against acts of unlawful interference forms an integral part of this Agreement. Without limiting the generality of their rights and obligations under international law, the Contracting Parties shall in particular act in conformity with the provisions of the Convention on Offences and Certain Other Acts Committed on Board Aircraft, signed at Tokyo on 14 September 1963,<sup>1</sup> the Convention for the Suppression of Unlawful Seizure of Aircraft, signed at the Hague on 16 December 1970,<sup>2</sup> and the Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation, signed at Montreal on 23 September 1971.<sup>3</sup>
  
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 such aircraft, their passengers and crew, airports and air navigation facilities, and any other threat to the security of civil aviation.

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<sup>1</sup> United Nations, *Treaty Series*, vol. 704, p. 219.

<sup>2</sup> *Ibid.*, vol. 860, p. 105.

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

3. The Parties shall, in their mutual relations, 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 to the extent that such security provisions are applicable to the Parties. They shall require that operators of aircraft of their registry or operators of aircraft 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.
4. Each Contracting Party agrees that such operators of aircraft may be required to observe the aviation security provisions required by the other Contracting Party for entry into, departure from or while within the territory of that Contracting Party. Each Contracting Party shall ensure that adequate measures are effectively applied within its territory to protect the aircraft and to inspect passengers, crew, carry-on items, baggage, cargo and aircraft stores prior to and during boarding or loading. Each Contracting Party shall also give sympathetic consideration to any request from the other Contracting Party for reasonable special security measures to meet a particular threat.

5. When an incident or threat of an incident of unlawful seizure of civil aircraft or other unlawful acts against the safety of such aircraft, their passengers and crew, airports or air navigation facilities occurs, the Contracting Parties shall assist each other by facilitating communications and other appropriate measures intended to terminate rapidly and safely such incident or threat thereof.

### ARTICLE 13

#### TRANSFER OF EXCESS OF RECEIPTS

1. On a reciprocity and non discriminatory basis with respect to any other airline operating in international traffic, the airlines designated by the Contracting Parties shall be free to sell air transport services in the territories of both Contracting Parties, either directly or through an agent, and in any currency in accordance with the laws in force in each Contracting Party.
2. The airlines of each Contracting Party shall be free to transfer from the territory of sale to their home territory the excess, in the territory of sale, of receipts over expenditure. Included in such net transfer shall be revenues from sales, made directly or through an agent of air transport services, and ancillary or supplementary services, and normal

commercial interest earned on such revenues while on deposit awaiting transfer.

3. Such remittances shall be made without prejudice to any fiscal obligations in force in the territory of either Contracting Party.
4. The airlines designated by the Contracting Parties shall be granted the appropriate authorization to make such remittances at the earliest possible date in freely convertible currencies at the official rate of exchange in force at the time of approval.

#### ARTICLE 14

##### CAPACITY

1. There shall be fair and equal opportunity for the designated airlines of the Contracting Parties to operate the agreed services on the specified routes.
2. The agreed services on any of the routes specified in the Annex to this Agreement shall have as their primary objective the provision of capacity adequate for transportation of traffic originating in or destined for the territory of the Contracting Party which has designated the airlines.
3. In operating the agreed services, the designated airlines of each Contracting Party shall take into account the interest of the designated 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.

4. The right of the airlines designated by one Contracting Party to embark or disembark in the territory of the other Contracting Party international traffic originating in or destined for a third country according to the provisions of Article 2 (c) of this Agreement and its Annex, shall be complementary and shall be exercised in accordance with the general principles of orderly development of international air traffic, accepted by both Contracting Parties and in such conditions that the capacity shall be adapted to:

- a) the traffic requirements between the country of origin and the countries of destination of such traffic;
- b) the requirements for an economic operation of the route;
- c) the traffic requirements of the area through which the designated airlines pass.

#### ARTICLE 15

#### STATISTICS

The Aeronautical Authorities of either Contracting Party shall supply to the Aeronautical Authorities of the other

Contracting Party, at their request, the information and statistics related to the traffic carried by the airline designated by one Contracting Party on the agreed services to or from the territory of the other Contracting Party in the same form as they have been prepared and submitted by the designated airlines to their national Aeronautical Authorities. Any additional statistical data related to traffic which the Aeronautical Authorities of one Contracting Party may request from the Aeronautical Authorities of the other Contracting Party shall be subject to discussions between the Aeronautical Authorities of both Contracting Parties, at the request of either party.

#### ARTICLE 16

##### CONSULTATIONS

In a spirit of close cooperation, 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 this Agreement.

#### ARTICLE 17

##### MODIFICATIONS

1. If either Contracting Party considers it desirable to modify any of the provisions of this Agreement, it may request consultation with the other Contracting Party.

Such consultation may be conducted by discussion or correspondence and shall begin within a period of sixty (60) days from the date of request. Any modification to the Agreement except the Annex shall come into force when they have been confirmed by an exchange of diplomatic notes.

2. Modifications to the Annex to this Agreement may be made by direct agreement between the competent Aeronautical Authorities of the Contracting Parties and confirmed by diplomatic notes.
3. This Agreement shall be modified so as to conform with any Multilateral Agreement which may become binding on both Contracting Parties.

#### ARTICLE 18

##### SETTLEMENT OF DISPUTES

1. If any dispute arises between the Contracting Parties relating to the interpretation or application of this Agreement, the Contracting Parties shall, in the first place, endeavour to settle it by direct negotiation.
2. If the Contracting Parties fail to reach a settlement by negotiation 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 a third to be appointed by the two so nominated. Each Contracting Party 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 on the dispute. The third arbitrator shall be appointed within a further period of sixty (60) days from the designation of the second arbitrator. This third arbitrator shall be a national of another State, shall act as the President of the Arbitral Tribunal and shall determine the venue where the Arbitration shall be held. If either of the Contracting Parties fails to nominate an arbitrator within the period specified, or if the third arbitrator has not been nominated 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 the President of the Arbitral Tribunal.

3. Any decision given under paragraph (2) of this Article shall be binding on the Contracting Parties.

**ARTICLE 19****REGISTRATION**

This Agreement, including any amendments thereto, shall be registered with the International Civil Aviation Organisation.

**ARTICLE 20****ENTRY INTO FORCE AND TERMINATION**

1. This Agreement shall apply provisionally as from the date of signature and definitely enter into force as soon as both Contracting Parties give written notification to each other by exchange of diplomatic notes that their respective constitutional requirements for definite entry into force have been fulfilled.
2. Either Contracting Party may at any time give notice to the other Contracting Party of its decision to terminate this Agreement. Such notice shall be simultaneously communicated 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 of termination is withdrawn by mutual agreement before the expiry of this period. In the absence of acknowledgement of receipt by the other Contracting Party, the notice shall be deemed to have been received

fourteen (14) days after the receipt of the notice by the International Civil Aviation Organisation.

3. In witness whereof, the undersigned, being duly authorised thereto by their respective Governments, have signed this Agreement.
4. Done in duplicate at Kuala Lumpur, this 23rd day of March 1993, in the Spanish, Malay and English languages, the three texts being equally authentic. In case of any inconsistency the English text shall prevail.

For the Government  
of Spain:



MANUEL ALABART  
Ambassador of Spain

For the Government  
of Malaysia:



WAN AWANG BIN WAN YAACOB  
Secretary-General  
Ministerio de Transportes

**ANNEX**

To the Air Transport Agreement between the Government of Spain and the Government of Malaysia.

**ROUTE SCHEDULE**

1. Routes which may be operated in both directions by the airlines designated by the Government of Spain:  
Points in Spain - Intermediate Points -  
Kuala Lumpur - Beyond Points vv.
2. Routes which may be operated in both directions by the airlines designated by the Government of Malaysia:  
Points in Malaysia - Intermediate Points -  
Madrid - Beyond Points in Europe and Africa vv.
3. Intermediate and beyond points in the Route Schedule 1 and 2 above can be selected by the airlines designated by each Contracting Party. However the exercise of 5th freedom traffic rights shall be subject to previous agreement between the respective Aeronautical Authorities.
4. Notwithstanding the provisions of paragraph 3 above, the designated airlines of Spain shall have the right to operate from Kuala Lumpur to one of the beyond points in the Route Schedule to be freely chosen by the said airlines with 5th freedom traffic rights. The point referred to could be replaced by another beyond point at any time.

5. The designated airlines may omit one or more points on the routes indicated in this Annex, in whole or part of its services, provided that the departure point on the route is located in the territory of the Contracting Party which has designated such airlines.
  6. In the operation of the agreed services on the specified routes, the capacity to be provided by the airlines designated by each Contracting Party shall be determined by mutual agreement between the respective Aeronautical Authorities.
  7. The airlines designated by either Contracting Party shall submit for approval of the Aeronautical Authorities of the other Contracting Party, the frequencies and time-tables for the operations of the agreed air services, at least thirty (30) days prior to the start of the said operations.
  8. The airlines designated by each Contracting Party may operate all cargo flights with full traffic rights within the Route Schedule and without restrictions on capacity.
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