

Cmd. 28 OF 1967

MALAYSIA

PRESENTED TO THE DEWAN RA'AYAT BY COMMAND OF
HIS MAJESTY THE YANG DI-PERTUAN AGONG
ORDERED BY THE DEWAN RA'AYAT TO LIE UPON THE TABLE—
10TH AUGUST, 1967

AGREEMENT

between the

GOVERNMENT OF INDIA

and the

GOVERNMENT OF MALAYASIA

relating to

AIR SERVICES



AGREEMENT BETWEEN THE GOVERNMENT OF INDIA AND THE GOVERNMENT OF MALAYSIA RELATING TO AIR SERVICES

The Government of India and the Government of Malaysia,

Being parties to the Convention on International Civil Aviation (hereinafter referred to as the Convention) opened for signature at Chicago on the 7th December, 1944.

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

Have Agreed as follows:

ARTICLE I

For the purpose of this Agreement, unless the context otherwise requires—

- (a) the term “aeronautical authorities” means, in the case of India, the Director General of Civil Aviation, and in the case of Malaysia, the Minister of Transport or any person or body authorised to perform the functions exercised by the said Director-General or by the said Minister or similar functions;
- (b) the term “designated airline” means an airline which one Contracting Party has designated in writing to the other Contracting Party, in accordance with Article III of this Agreement;
- (c) the terms “territory”, “air-services”, “international air services”, “airline” and “stop for non-traffic purposes” have the meanings respectively assigned to them in Articles 2 and 96 of the Convention.

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ARTICLE II

Each Contracting Party grants to the other Contracting Party the rights specified in this Agreement for the purpose of establishing air services (hereinafter called “the agreed services”) on the route specified in the Annex hereto (hereinafter called “the specified routes”).

(2) Subject to the provisions of this Agreement, the airline 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 territory of the other Contracting Party for non-traffic purposes; and
- (c) to make stops in the territory of the other Contracting Party at the points specified for that route in the Annex to this Agreement, for the purpose of putting down or taking on international traffic in passengers, cargo and mail, originating in or destined for the territory of the first Contracting Party or of a third country.

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(3) Nothing in paragraph (2) of this Article shall be deemed to confer on the airline of one Contracting Party the privilege of taking on, in the territory of the other Contracting Party, passengers, cargo or mail destined for another point in the territory of that other Contracting Party.

(4) The laws, regulations and instructions of one Contracting Party, relating to entry into or departure from its territory, of aircraft or air services operated in international air navigation or to the operation of such aircraft or air services while within its territory shall apply to aircraft and agreed services of the designated airline of the other Contracting Party.

ARTICLE III

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 the designation, the Contracting Party shall, through its own aeronautical authorities and subject to the provisions of paragraphs (3) and (4) of this Article, without delay grant to the designated airline the appropriate operating authorisation.

(3) The aeronautical authorities of one Contracting Party may require the 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 to the operation of international commercial air services.

(4) Each Contracting Party shall have the right to refuse to accept the designation of an airline or to withhold the grant to an airline of the rights specified in paragraph (2) of Article II of this Agreement or to impose such conditions as it may deem necessary on the exercise by an airline of those rights in any case where it is not satisfied that substantial ownership and effective control of that airline are vested in the other Contracting Party or its nationals. For the purpose of this paragraph, the expression "substantial ownership and effective control" means that in any case where the designated airline operates its services under this Agreement by entering into any agreement with the airline of any other country or the Government or nationals of any other country, the Contracting Party designating the airline or its nationals of any other country, the Contracting Party designating the airline or its nationals shall not be deemed to have substantial ownership and effective control of the designated airline, unless the Contracting Party or its nationals, in addition to the ownership of a substantial part of the assets of the designated airline, have also:

- (i) effective control in the management of the designated airline; and
- (ii) ownership and effective control of a substantial part of the fleet of aircraft and equipment used in the operation of the services.

(5) The airline so designated and authorised may begin to operate the agreed services at any time provided that the provisions of Articles X and XIII have been complied with.

ARTICLE IV

Each Contracting Party reserves the right to itself to revoke the operating authorisation or impose such appropriate conditions as it may deem necessary in case of failure by a designated airline of the other Party to comply with the laws and regulations of the former Party, or in case, in the judgment of the former Party, there is a failure to fulfil the conditions under which the rights are granted in accordance with this Agreement. This shall also apply if the provisions of paragraph (4) of Article III are not complied with. Such action shall be taken only after consultation between the Contracting Parties in accordance with Article XV of this Agreement unless an immediate suspension of operations or imposition of conditions is necessary to avoid further infringements of laws, regulations or provisions of this Agreement.

(2) Each Contracting Party shall have the right by written communication to the other Contracting Party to replace its designated airline by another designated airline subject to the provisions of this Agreement. The newly designated airline shall have the same rights and be subject to the same obligations as the airline which it replaces.

ARTICLE V

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

ARTICLE VI

Supplies of fuel, lubricating oils, spare parts, regular aircraft equipment and aircraft stores introduced into or taken on board aircraft of the designated airline of one Contracting Party in the territory of the other Contracting Party and intended solely for use by or in such aircraft and remaining on board on departure from the last airport of call in that territory shall be accorded, with respect to customs duty, inspection fees or similar charges, treatment not less favourable than that granted by the second Contracting Party to the national airlines operating scheduled international air services or to the airlines of the most favoured nation.

Provided that neither Contracting Party shall be obliged to grant to the designated airlines of the other Contracting Party exemption or remission of customs duty, inspection fees or similar charges unless such other Contracting Party grants exemption or remission of such charges to the designated airlines of the first Contracting Party.

ARTICLE VII

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.

ARTICLE VIII

In the operation by the designated airlines of either Contracting Party of the agreed services, the interests of the designated airline of the other Party shall be taken into consideration so as not to affect unduly the services which the latter provides on all or part of the same route.

ARTICLE IX

The capacity to be provided, the frequency of services, to be operated and the nature of an air service, that is, transiting through or terminating in the territory of the other Contracting Party shall be agreed between the designated airlines in accordance with the principles laid down in Articles VII and VIII and the provisions of this Article. Such agreement shall be subject to the approval of the aeronautical authorities of the two Contracting Parties.

(2) 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, in the first instance, between the designated airlines and shall be subject to the approval of the aeronautical authorities on the basis of the estimated requirements of traffic to be jointly agreed and determined.

(3) If the designated airlines of the Contracting Parties fail to agree on any matter on which their agreement is required under the provisions of this Article, the aeronautical authorities of the Contracting Parties shall endeavour to reach agreement thereon.

(4) The capacity to be provided, the frequency of services to be operated and the nature of an air service, that is, transiting through or terminating in the territory of the other Contracting Party as agreed to in accordance with the provisions of this Article shall be specified in an exchange of letters between the aeronautical authorities of the Contracting Parties.

ARTICLE X

Each Contracting Party shall cause its designated airline to communicate to the aeronautical authorities of the other Contracting Party, as long in advance as practicable, prior to the inauguration of the agreed services, the type of service, the type of aircraft to be used, the flight schedules, tariff schedules, and all other relevant information concerning the operation of the agreed services including such information as may be required to satisfy the aeronautical authorities that the requirements of this Agreement are being duly observed. The requirements of this Article shall likewise apply to any changes concerning the agreed services.

ARTICLE XI

The aeronautical authorities of either Contracting Party shall furnish to the aeronautical authorities of the other Contracting Party statistics relating to the traffic carried during each month on their air services to or from or through the territory of the other Contracting Party showing the countries of origin and destination and the points of embarkation and disembarkation of such traffic. Such statistics shall be furnished as early as possible.

ARTICLE XII

Each Contracting Party grants to the designated airline of the other Contracting Party the right to transfer to their head offices in Malaysian Dollars or another sterling area currency freely transferable to sterling at the official rates of exchange all surplus earnings whatever the currency in which they were earned.