

Agreement

between the Government of Hong Kong
and the Government of Malaysia

concerning Air Services

Kuala Lumpur, 4 March 1991

**AGREEMENT BETWEEN THE GOVERNMENT OF HONG KONG
AND THE GOVERNMENT OF MALAYSIA
CONCERNING AIR SERVICES**

The Government of Hong Kong and the Government of Malaysia,

Desiring to conclude an Agreement for the purpose of providing the framework for air services between Hong Kong and Malaysia,

Have agreed as follows:

ARTICLE 1

Definitions

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

- (a) the term “aeronautical authorities” means in the case of Hong Kong, the Director of Civil Aviation, and in the case of Malaysia, the Minister of Transport, or, in both cases, any person or body authorised to perform any functions at present exercisable by the above-mentioned authorities or similar functions;
- (b) the term “designated airline” means an airline which has been designated and authorised in accordance with Article 4 of this Agreement;
- (c) the term “area” in relation to Hong Kong includes Hong Kong Island, Kowloon and the New Territories and in relation to Malaysia has the meaning assigned to “territory” in Article 2 of the Convention on International Civil Aviation, opened for signature at Chicago on 7 December 1944;
- (d) 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 said Convention;
- (e) the term “this Agreement” includes the Annex hereto and any amendments to it or to this Agreement.

ARTICLE 2

**Provisions of the Chicago Convention Applicable to
International Air Services**

In implementing this Agreement, the Contracting Parties shall act in conformity with the provisions of the Convention on International Civil Aviation, opened for signature at Chicago on 7 December 1944,

including the Annexes and any amendments to the Convention or to its Annexes which apply to both Contracting Parties, insofar as these provisions are applicable to international air services.

ARTICLE 3

Grant of Rights

- (1) Each Contracting Party grants to the other Contracting Party the following rights in respect of its international air services:
 - (a) the right to fly across its area without landing;
 - (b) the right to make stops in its area for non-traffic purposes.
- (2) Each Contracting Party grants to the other Contracting Party the rights hereinafter specified in this Agreement for the purpose of operating international air services on the routes specified in the appropriate Section of the Annex to this Agreement. Such services and routes are hereinafter called “the agreed services” and “the specified routes” respectively. While operating an agreed service on a specified route the designated airlines of each Contracting Party shall enjoy in addition to the rights specified in paragraph (1) of this Article the right to make stops in the area of the other Contracting Party at points determined for that route in accordance with the Annex to this Agreement for the purpose of taking on board and discharging passengers and cargo, including mail, separately or in combination.
- (3) Nothing in paragraph (2) of this Article shall be deemed to confer on the designated airlines of one Contracting Party the right to take on board, at one point in the area of the other Contracting Party, passengers and cargo, including mail, carried for hire or reward and destined for another point in the area of the other Contracting Party.
- (4) If because of armed conflict, political disturbances or developments, or special and unusual circumstances, a designated airline of one Contracting Party is unable to operate a service on its normal routeing, the other Contracting Party shall use its best efforts to facilitate the continued operation of such service through appropriate temporary rearrangements of routes.

ARTICLE 4

Designation of and Authorisation 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 to withdraw or alter such designations.
- (2) On receipt of such a designation the other Contracting Party shall, subject to the provisions of paragraphs (3) and (4) of this Article, without delay grant to the airline or airlines designated the appropriate operating authorisations.

- (3) (a) The Government of Hong Kong shall have the right to refuse to grant the operating authorisations 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 3(2) of this Agreement, in any case where it is not satisfied that substantial ownership and effective control of that airline are vested in the Government of Malaysia or its nationals.
- (b) The Government of Malaysia shall have the right to refuse to grant the operating authorisations 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 3(2) of this Agreement, in any case where it is not satisfied that that airline is incorporated and has its principal place of business in Hong Kong.
- (4) The aeronautical authorities of one Contracting Party may require an airline designated by the other Contracting Party to satisfy them that it is qualified to fulfil the conditions prescribed under the laws and regulations normally and reasonably applied to the operation of international air services by such authorities.
- (5) When an airline has been so designated and authorised it may begin to operate the agreed services, provided that the airline complies with the applicable provisions of this Agreement.

ARTICLE 5

Revocation or Suspension of Operating Authorisation

- (1) Each Contracting Party shall have the right to revoke or suspend an operating authorisation for the exercise of the rights specified in Article 3(2) of this Agreement by an airline designated by the other Contracting Party, or to impose such conditions as it may deem necessary on the exercise of those rights:
 - (a) (i) in the case of the Government of Hong Kong, in any case where it is not satisfied that substantial ownership and effective control of that airline are vested in the Government of Malaysia or its nationals;
 - (ii) in the case of the Government of Malaysia, in any case where it is not satisfied that that airline is incorporated and has its principal place of business in Hong Kong; or
 - (b) in the case of failure by that airline to comply with the laws or regulations of the Contracting Party granting those rights; or
 - (c) if that airline otherwise fails to operate in accordance with the conditions prescribed under this Agreement.
- (2) Unless immediate revocation or suspension of the operating authorisation mentioned in paragraph (1) of this Article or imposition of the conditions therein is essential to prevent further infringements of laws or regulations, such right shall be exercised only after consultation with the other Contracting Party.

ARTICLE 6

Principles Governing Operation of Agreed Services

- (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) In operating the agreed services the designated airlines of each Contracting Party shall take into account the interests of the designated airlines of the other Contracting Party so as not to affect unduly the services which the latter provide on the whole or part of the same routes.
- (3) The agreed services provided by the designated airlines of the Contracting Parties shall bear a close relationship to the requirements of the public for transportation on the specified routes and shall have as their primary objective the provision at a reasonable load factor of capacity adequate to meet the current and reasonably anticipated requirements for the carriage of passengers and cargo, including mail, originating in or destined for the area of the Contracting Party which has designated the airline. Provision for the carriage of passengers and cargo, including mail, both taken on board and discharged at points on the specified routes other than points in the area of the Contracting Party which designated the airline shall be made in accordance with the general principles that capacity shall be related to:
 - (a) traffic requirements to and from the area of the Contracting Party which has designated the airline;
 - (b) traffic requirements of the region through which the agreed service passes, taking account of other air services established by airlines of the States comprising that region; and
 - (c) the requirements of through airline operation.
- (4) The capacity to be provided on the specified routes shall be such as is from time to time jointly determined by the Contracting Parties.

ARTICLE 7

Tariffs

- (1) The term “tariff” means one or more of the following:
 - (a) the fare charged by an airline for the carriage of passengers and their baggage on scheduled air services and the charges and conditions for services ancillary to such carriage;
 - (b) the rate charged by an airline for the carriage of cargo (excluding mail) on scheduled air services;
 - (c) the conditions governing the availability or applicability of any such fare or rate including any benefits attaching to it; and

- (d) the rate of commission paid by an airline to an agent in respect of tickets sold or air waybills completed by that agent for carriage on scheduled air services.
- (2) The tariffs to be charged by the designated airlines of the Contracting Parties for carriage between Hong Kong and Malaysia shall be those approved by the aeronautical authorities of both Contracting Parties and shall be established at reasonable levels, due regard being had to all relevant factors, including the cost of operating the agreed services, the interests of users, reasonable profit and the tariffs of other airlines operating over the whole or part of the same route.
- (3) The tariffs referred to in paragraph (2) of this Article may be agreed by the designated airlines of the Contracting Parties seeking approval of the tariffs, which may consult other airlines operating over the whole or part of the same route, before proposing such tariffs. However, a designated airline shall not be precluded from proposing, nor the aeronautical authorities of the Contracting Parties from approving, any tariff, if that airline shall have failed to obtain the agreement of the other designated airlines to such tariff, or because no other designated airline is operating on the same route. References in this and the preceding paragraph to “the same route” are to the route operated, not the specified route.
- (4) Any proposed tariff for carriage between Hong Kong and Malaysia shall be filed with the aeronautical authorities of the Contracting Parties by the designated airline or airlines seeking its approval in such form as the aeronautical authorities may separately require to disclose the particulars referred to in paragraph (1) of this Article. It shall be filed not less than 60 days (or such shorter period as the aeronautical authorities of the Contracting Parties may agree) before the proposed effective date. The proposed tariff shall be treated as having been filed with the aeronautical authorities of a Contracting Party on the date on which it is received by those aeronautical authorities.
- (5) Provided it has been filed in accordance with paragraph (4) of this Article, any proposed tariff may be approved by the aeronautical authorities of a Contracting Party at any time but shall be deemed to have been disapproved by the aeronautical authorities of that Contracting Party unless, within 30 days after the date of filing, the aeronautical authorities of one Contracting Party have served on the designated airline or airlines of the other Contracting Party written notice of approval of the proposed tariff.
- (6) If a tariff has not been approved in accordance with the provisions of paragraph (5) of this Article, the aeronautical authorities of the Contracting Parties may jointly determine the tariff. For this purpose, one Contracting Party may request consultations between the aeronautical authorities of the Contracting Parties in accordance with Article 14 of this Agreement.
- (7) If a tariff has not been approved by the aeronautical authorities of a Contracting Party in accordance with paragraph (5) of this Article, and if the aeronautical authorities of the Contracting Parties have been unable jointly to determine the tariff in accordance with paragraph (6) of this Article, the dispute may be settled in accordance with the provisions of Article 15 of this Agreement.
- (8) Subject to paragraph (9) of this Article, a tariff established in accordance with the provisions of this Article shall remain valid until a replacement tariff has been established.
- (9) Except with the agreement of the aeronautical authorities of both Contracting Parties, and for such

period as they may agree, the validity of a tariff shall not be prolonged by virtue of paragraph (8) of this Article:

- (a) where a tariff has a terminal date, for more than 12 months after that date;
 - (b) where a tariff has no terminal date, for more than 12 months after the date on which a replacement tariff is filed with the aeronautical authorities of the Contracting Parties by a designated airline of a Contracting Party.
- (10) (a) The tariffs to be charged by the designated airlines of Hong Kong for carriage between Malaysia and another State shall be subject to approval by the aeronautical authorities of Malaysia and, where appropriate, of the other State. The tariffs to be charged by the designated airlines of Malaysia for carriage between Hong Kong and a State other than Malaysia shall be subject to approval by the aeronautical authorities of Hong Kong and, where appropriate, of the other State.
- (b) Any proposed tariff for such carriage shall be filed by the designated airline of one Contracting Party seeking approval of such tariff with the aeronautical authorities of the other Contracting Party. It shall be filed in such form as those aeronautical authorities may require to disclose the particulars referred to in paragraph (1) of this Article and not less than 90 days (or such shorter period as they may decide) prior to the proposed effective date. The proposed tariff shall be treated as having been filed on the date on which it is received by those aeronautical authorities.
 - (c) Such tariff may be approved at any time by the aeronautical authorities of the Contracting Party with whom it has been filed but shall be deemed to have been disapproved by them unless, within 30 days after the date of filing, they have served on the designated airline seeking approval of such tariff written notice of approval.
 - (d) The aeronautical authorities of a Contracting Party may withdraw approval of any such tariff approved by them on giving 90 days' notice to the designated airline charging such tariff. That airline shall cease to charge such tariff at the end of that period.
- (11) Notwithstanding the provisions of paragraphs (5) and (10)(c) of this Article, the aeronautical authorities of a Contracting Party shall approve any proposed tariff filed with them by a designated airline which corresponds (e.g. in price level, conditions and date of expiry but not necessarily the routeing being used) to the tariff charged by an airline of that Contracting Party for comparable services between the same points or is more restrictive or higher than that tariff.

ARTICLE 8

Customs Duties

- (1) Aircraft operated in international air services by the designated airlines of one Contracting Party, their regular equipment, fuel, lubricants, consumable technical supplies, spare parts including engines, and aircraft stores (including but not limited to such items as food, beverages and tobacco) which are on board such aircraft shall be exempted by the other Contracting Party on the basis of reciprocity

from all customs duties, excise taxes and similar fees and charges not based on the cost of services provided on arrival, provided such regular equipment and such other items remain on board the aircraft.

- (2) Regular equipment, fuel, lubricants, consumable technical supplies, spare parts including engines, aircraft stores (including but not limited to such items as food, beverages and tobacco), introduced into the area of the other Contracting Party by or on behalf of that designated airline or taken on board the aircraft operated by that designated airline, shall be exempted by the other Contracting Party on the basis of reciprocity from all customs duties, excise taxes and similar fees and charges not based on the cost of services provided on arrival, even when such regular equipment and such other items are to be used on any part of a journey performed over the area of the other Contracting Party.
- (3) The regular equipment and the other items referred to in paragraphs (1) and (2) of this Article may be required to be kept under the supervision or control of the customs authorities of the other Contracting Party.
- (4) The regular equipment and the other items referred to in paragraph (1) of this Article may be unloaded in the area of the other Contracting Party with the approval of the customs authorities of that other Contracting Party. In these circumstances, such regular equipment and such items shall enjoy, on the basis of reciprocity, the exemptions provided for by paragraph (1) of this Article until they are re-exported or otherwise disposed of in accordance with customs regulations. The customs authorities of that other Contracting Party may however require that such regular equipment and such items be placed under their supervision up to such time.
- (5) The exemptions provided for by this Article shall also be available in situations where a designated airline of one Contracting Party has entered into arrangements with another airline or airlines for the loan or transfer in the area of the other Contracting Party of the regular equipment and the other items referred to in paragraphs (1) and (2) of this Article, provided that that other airline or airlines similarly enjoy such exemptions from that other Contracting Party.
- (6) Baggage and cargo in direct transit across the area of a Contracting Party shall be exempt from customs duties, excise taxes and similar fees and charges not based on the cost of services provided on arrival.

ARTICLE 9

Aviation Security

- (1) Each Contracting Party reaffirms that its obligation to the other Contracting Party to protect the security of civil aviation against unlawful interference forms an integral part of this Agreement. Each Contracting Party shall in particular act in conformity with the aviation security provisions of the Convention on Offences and Certain Other Acts Committed on Board Aircraft, signed at Tokyo on 14 September 1963, the Convention for the Suppression of Unlawful Seizure of Aircraft, signed at The Hague on 16 December 1970 and the Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation, signed at Montreal on 23 September 1971.

- (2) Each Contracting Party shall be provided at its request with all necessary assistance by the other Contracting Party to prevent acts of unlawful seizure of civil 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.
- (3) The Contracting Parties shall, in their mutual relations, act in conformity with the applicable aviation security provisions established by the International Civil Aviation Organization and designated as Annexes to the Convention on International Civil Aviation, opened for signature at Chicago on 7 December 1944. Each Contracting Party shall require that operators of aircraft of its registry or operators of aircraft having their principal place of business or permanent residence in its area, and the operators of airports in its area, 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 referred to in paragraph (3) of this Article required by the other Contracting Party for entry into, departure from, or while within the area of that other Contracting Party. Each Contracting Party shall ensure that adequate measures are effectively applied within its area 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, each Contracting Party shall assist the other Contracting Party by facilitating communications and other appropriate measures intended to terminate rapidly and safely such incident or threat thereof.

ARTICLE 10

Provision of Statistics

The aeronautical authorities of each Contracting Party shall, on request, provide such periodic or other statements of statistics as may be reasonably required for the purpose of reviewing the capacity provided on the agreed services by the designated airlines of that Contracting Party to the aeronautical authorities of the other Contracting Party. Such statements shall include all information required to determine the amount of traffic carried by those airlines on the agreed services and the origins and destinations of such traffic.

ARTICLE 11

Conversion and Remittance of Revenue

- (1) Subject only to any foreign currency regulations which may be imposed by Malaysia with uniform application the designated airlines of Hong Kong shall have the right to convert and remit to Hong Kong from Malaysia on demand local revenues in excess of sums locally disbursed.

- (2) The designated airlines of Malaysia shall have the right to convert and remit to Malaysia from Hong Kong on demand local revenues in excess of sums locally disbursed.
- (3) The conversion and remittance of such revenues shall be permitted without restriction at the rate of exchange applicable to current transactions which is in effect at the time such revenues are presented for conversion and remittance, and shall not be subject to any charges except those normally made by banks for carrying out such conversion and remittance.

ARTICLE 12

Airline Representation and Sales

- (1) The designated airlines of each Contracting Party shall have the right, in accordance with the laws and regulations of the other Contracting Party relating to entry, residence and employment, to bring into and maintain in the area of that other Contracting Party those of their own managerial, technical, operational and other specialist staff who are required for the provision of air transportation.
- (2) The designated airlines of each Contracting Party shall have the right to engage in the sale of air transportation in the area of the other Contracting Party, either directly or through agents. The designated airlines of each Contracting Party shall have the right to sell, and any person shall be free to purchase, such transportation in local currency or in any freely convertible other currency.

ARTICLE 13

User Charges

- (1) The term “user charge” means a charge made to airlines by the competent authorities or permitted by them to be made for the provision of airport property or facilities or of air navigation facilities, including related services and facilities, for aircraft, their crews, passengers and cargo.
- (2) A Contracting Party shall not impose or permit to be imposed on the designated airlines of the other Contracting Party user charges higher than those imposed on its own airlines operating similar international air services.
- (3) Each Contracting Party shall encourage consultation on user charges between its competent charging authorities and airlines using the services and facilities provided by those charging authorities, where practicable through those airlines’ representative organisations.

ARTICLE 14

Consultation

One Contracting Party may at any time request consultations on the implementation, interpretation, application or amendment of this Agreement. Such consultations, which may be between the aeronautical

authorities of the Contracting Parties, shall begin within 60 days from the date the other Contracting Party receives such request in writing, unless otherwise agreed by the Contracting Parties.

ARTICLE 15

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 try to settle it by negotiation.
- (2) If the Contracting Parties fail to reach a settlement of the dispute by negotiation, it may be referred by them to such person or body as they may agree on or, at the request of a Contracting Party, shall be submitted for decision to a tribunal of three arbitrators which shall be constituted in the following manner:
 - (a) within 30 days after receipt of a request for arbitration, each Contracting Party shall appoint one arbitrator. A national of a State which can be regarded as neutral in relation to the dispute, who shall act as President of the tribunal, shall be appointed as the third arbitrator by agreement between the two arbitrators, within 60 days of the appointment of the second;
 - (b) if within the time limits specified above any appointment has not been made, a Contracting Party may request the President of the Council of the International Civil Aviation Organization to make the necessary appointment within 30 days. If the President considers that he is a national of a State which cannot be regarded as neutral in relation to the dispute, the most senior Vice-President who is not disqualified on that ground shall make the appointment.
- (3) Except as hereinafter provided in this Article or as otherwise agreed by the Contracting Parties, the tribunal shall determine the limits of its jurisdiction and establish its own procedure. At the direction of the tribunal, or at the request of a Contracting Party, a conference to determine the precise issues to be arbitrated and the specific procedures to be followed shall be held not later than 30 days after the tribunal is fully constituted.
- (4) Except as otherwise agreed by the Contracting Parties or prescribed by the tribunal, each Contracting Party shall submit a memorandum within 45 days after the tribunal is fully constituted. Replies shall be due 60 days later. The tribunal shall hold a hearing at the request of a Contracting Party, or at its discretion, within 30 days after replies are due.
- (5) The tribunal shall attempt to give a written decision within 30 days after completion of the hearing or, if no hearing is held, after the date both replies are submitted. The decision shall be taken by a majority vote.
- (6) A Contracting Party may submit a request for clarification of the decision within 15 days after it is received and such clarification shall be issued within 15 days of such request.
- (7) The decision of the tribunal shall be binding on the Contracting Parties.
- (8) Each Contracting Party shall bear the costs of the arbitrator appointed by it. The other costs of the

tribunal shall be shared equally by the Contracting Parties including any expenses incurred by the President or Vice-President of the Council of the International Civil Aviation Organization in implementing the procedures in paragraph (2)(b) of this Article.

ARTICLE 16

Amendment

Any amendments to this Agreement agreed by the Contracting Parties shall enter into force when confirmed in writing by the Contracting Parties.

ARTICLE 17

Termination

One Contracting Party may at any time give notice in writing to the other Contracting Party of its decision to terminate this Agreement. This Agreement shall terminate at midnight (at the place of receipt of the notice) immediately before the first anniversary of the date of receipt of such notice by that other Contracting Party, unless such notice is withdrawn by agreement before the end of this period.

ARTICLE 18

Registration with the International Civil Aviation Organization

This Agreement and any amendment thereto shall be registered with the International Civil Aviation Organization.

ARTICLE 19

Titles

Titles are inserted in this Agreement at the head of each article for the purpose of reference and convenience and in no way define, limit or describe the scope or intent of this Agreement.

ARTICLE 20

Entry into Force

This Agreement shall enter into force on the date of signature.

In witness whereof, the undersigned, being duly authorised by their respective Governments, have signed this Agreement.

Done, in duplicate, at Kuala Lumpur this 4th day of March 1991 in the English and Malay languages, both texts being equally authoritative.

For the Government of
Hong Kong:

ANSON CHAN

For the Government of
Malaysia:

DATO' SYED SIDI IDID BIN
SYED ABDULLAH IDID

ANNEX**ROUTE SCHEDULE***Section 1*

Routes to be operated by the designated airline or airlines of Hong Kong:

Hong Kong – intermediate points – points in Malaysia – points beyond.

Notes:

1. The points to be served on the routes specified above are to be jointly determined by the Contracting Parties.
2. The designated airline or airlines of Hong Kong may on any or all flights omit calling at any points on the routes specified above, and may serve intermediate points in any order, points in Malaysia in any order and points beyond in any order, provided that the agreed services on these routes begin at Hong Kong.
3. No traffic may be taken on board at an intermediate point or at a point beyond and discharged at points in Malaysia or vice versa, except as may from time to time be jointly determined by the Contracting Parties.
4. No point in the mainland of China may be served as an intermediate point or a point beyond.

Section 2

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

Points in Malaysia – intermediate points – Hong Kong – points beyond.

Notes:

1. The points to be served on the routes specified above are to be jointly determined by the Contracting Parties.
2. The designated airline or airlines of Malaysia may on any or all flights omit calling at any points on the routes specified above, and may serve points in Malaysia in any order, intermediate points in any order and points beyond in any order, provided that the agreed services on these routes begin at points in Malaysia.
3. No traffic may be taken on board at an intermediate point or at a point beyond and discharged at Hong Kong or vice versa, except as may from time to time be jointly determined by the Contracting Parties.
4. No point in the mainland of China may be served as an intermediate point or a point beyond.