

**AGREEMENT BETWEEN
THE GOVERNMENT OF THE PEOPLE'S REPUBLIC
OF CHINA AND THE GOVERNMENT OF MALAYSIA
RELATING TO CIVIL AIR TRANSPORT**

The Government of the People's Republic of China 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;

Desiring to facilitate friendly contacts between their two peoples, and develop mutual relations between the two countries in the field of civil aviation;

Have agreed on the establishment and operation of scheduled air services between their respective territories 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 the People's Republic of China, the Civil Aviation Administration of China, and in the case of Malaysia, the Minister of Transport, or in both cases any other person or agency authorised to perform the functions presently exercised by the said authorities;

(b) the term "airline" means any air transport enterprise offering or operating international air services;

(c) the term "designated airline" means an airline which has been designated and authorized in accordance with Article 3 of this Agreement;

(d) the term "air service" means any scheduled air service performed by aircraft for the public transport of passengers, baggage, cargo or mail;

(e) the term "international air service" means an air service which passes through the air space over the territory of more than one State;

(f) the term "stop for non-traffic purposes" means a landing for any purpose other than taking on or discharging passengers, baggage, cargo or mail;

(g) the term “capacity” means:

(1) in relation to an aircraft, the payload of that aircraft available on a route or section of a route;

(2) in relation to a specified air service, the capacity of the aircraft used on such service multiplied by the frequency operated by such aircraft over a given period on a route or section of a route;

(h) the term “tariff” means the prices to be paid for the carriage of passengers, baggage and freight 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;

(i) the term “Schedule” means the Route Schedule annexed to this Agreement or as amended in accordance with the provision of Article 18 of this Agreement. The Schedule forms an integral part of this Agreement and all references to the Agreement shall include references to the Schedule except where otherwise provided.

Article 2

Grant of Rights

(1) Each Contracting Party shall grant to the other Contracting Party the rights specified in this Agreement to enable its designated airline to establish and operate international air services on the route(s) specified in the Schedule (hereinafter called “the agreed services” and “the specified route(s)” respectively).

(2) Subject to the provisions of this Agreement, the designated airline of each Contracting Party shall enjoy while operating an agreed service on a specified route, the following privileges:

(a) to fly without landing across the territory of the other Contracting Party along the air routes prescribed by the aeronautical authorities of the other Contracting Party;

(b) to make stops for non-traffic purposes in the said territory, at points to be agreed upon between the aeronautical authorities of both Contracting Parties; and

(c) to make stops at the point(s) on the route(s) specified in the Schedule for the purpose of taking on board and discharging international traffic in passengers, baggage, cargo or mail.

(3) Nothing in paragraph (2) of this Article shall be deemed to confer on the designated airline of one Contracting Party the privilege 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.

(4) The right of the designated airline of either Contracting Party to embark or to disembark at the point in the territory of the other Contracting Party international traffic destined for or coming from third countries shall be agreed upon between the aeronautical authorities of the two Contracting Parties.

Article 3

Designation and Authorization

(1) Each Contracting Party shall have the right to designate in writing to the other Contracting party an airline for the purpose of operating the agreed services on the route specified in the Schedule.

(2) The substantial ownership and effective control of the airline designated by each Contracting Party shall remain vested in such Contracting Party or its nationals.

(3) The aeronautical authorities of the other Contracting Party may require the airline designated by the first 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 air services.

(4) Each Contracting Party shall have the right to refuse to accept the designation of an airline and withhold or revoke the grant to an airline of the privileges specified in paragraph (2) of Article 2 of this Agreement or to impose such conditions as it may deem necessary on the exercise by an airline of these privileges in any case where it is not satisfied that the provisions for paragraph (2) of this Article have been complied with.

(5) On receipt of such designation, the other Contracting Party shall, subject to the provisions of paragraphs (2) and (3) of this Article, grant without unreasonable delay to the airline so designated the appropriate operating authorization.

(6) When an airline has been so designated and authorised in accordance with the provisions of paragraphs (1) and (5) of this Article, it shall commence its operations of the agreed services at a date to be agreed upon between the aeronautical authorities of both Contracting Parties, provided that the capacity level and tariff agreed and established in accordance with the provisions of Articles 10 and 12 of this Agreement are in force in respect of that service.

Article 4

Revocation and Suspension of operating Authorisation

(1) Each Contracting Party shall have the right to revoke or suspend the operating authorisation already granted to the designated airline of the other Contracting Party, or to impose such conditions as it may deem necessary on the exercise by the said designated airline of the

rights specified in Article 2 of this Agreement, in any of the following cases:

(a) where it is not satisfied that the substantial ownership and effective control of that airline are vested in the Contracting Party designating the airline or its nationals, or

(b) where that airline fails to comply with the laws and regulations of the Contracting Party granting these rights, or

(c) where that airline otherwise fails to operate in accordance with the conditions prescribed under this Agreement.

(2) Unless immediate revocation, suspension of rights or imposition of conditions mentioned in paragraph (1) of this Article is essential to prevent further infringements of laws and regulations, such right shall be exercised only after consultation with the other Contracting Party.

Article 5

Provision of Technical Services and Rate of Charges

(1) Each Contracting Party shall designate in its territory regular airport(s) and alternate airports to be used by the designated airline of the other Contracting Party for the operation of the agreed services, and shall provide that airline with such communication, navigational, meteorological and other auxiliary services in its territory as are required for the operation of the agreed services. Arrangements relating to the above shall be agreed between the aeronautical authorities of both Contracting Parties.

(2) The designated airline of each Contracting Party shall be charged for the use of airports, facilities and technical services of the other Contracting Party at fair and reasonable rates. Such rates shall not be higher than those paid by airlines of other States engaged in international air services for the use of similar facilities and services.

Article 6

Customs and Exemption of Duties and Taxes

(1) Aircraft operated on international air services by the designated airline of one Contracting Party, as well as their regular equipment, spare parts, supplies of fuels, oils (including hydraulic fluids), lubricants and aircraft stores (including food, beverages and tobacco) on board such aircraft shall be exempt from all customs duties, inspection fees and other duties or taxes on arriving in the territory of the other Contracting Party, provided such equipment and supplies remain on board the aircraft up to such time as they are re-exported.

(2) Supplies of fuels, oils (including hydraulic fluids), lubricants, spare parts, regular equipment and aircraft stores introduced into the territory of each Contracting Party by or on

behalf of the designated airline of the other Contracting Party or taken on board the aircraft operated by such designated airline and intended solely for use in the operation of international air services shall be exempt from all duties and charges, including customs duties and inspection fees imposed in the territory of the first Contracting Party even when those 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. The materials referred to above may be required to be kept under customs supervision or control.

(3) The regular airborne equipment, spare parts, aircraft stores, and supplies of fuels, oils (including hydraulic fluids), and lubricants 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 that Contracting Party, who may require that those materials be placed under their supervision and control up to such time as they are re-exported or otherwise disposed of in accordance with customs regulations.

Article 7

Representation and Personnel

(1) For the operation of the agreed services on the specified route, the designated airline of each Contracting Party shall have the right, on reciprocal basis, to set up representation at the point of call on the specified route within the territory of the other Contracting Party. The staff of the representation referred to in this paragraph shall be subject to the laws and regulations in force in the country where such representation is located.

(2) The staff members of the representation of the designated airline of each Contracting Party in the territory of the other Contracting Party shall be nationals of either Contracting Party, unless otherwise agreed. The number of such staff shall be determined on reciprocal basis between the aeronautical authorities of both Contracting Parties.

(3) Each Contracting Party shall to the maximum extent practicable ensure the safety of the representation and its staff members of the designated airline of the other Contracting Party, and safeguard the aircraft, stores, and other properties of the said airline in its territory for use in the operation of the agreed services.

(4) Each Contracting Party shall extend assistance and facilities to the representation and its staff members of the designated airline of the other Contracting Party necessary for the efficient operation of the agreed services.

(5) The crew members of the designated airline of either Contracting Party on flights into and out of the territory of the other Contracting Party shall be nationals of the Party designating such airline. If a designated airline of either Contracting Party desires to employ crew members of any other nationality on flights into and out of the territory of the other Contracting Party, prior approval shall be obtained from that other Contracting Party.

Article 8
Transfer of Airline Earnings

(1) Each Contracting Party shall grant to the designated airline of the other Contracting Party the right to transfer, the excess of receipt over expenditure earned in its territory in connection with the carriage of passengers, baggage, cargo and mail by the said designated airline in any freely convertible currencies. The procedure for such remittance shall be in accordance with the foreign exchange regulations of the Contracting Party in which the revenue accrued. Whenever the payment system between the Contracting Parties is governed by a special agreement, that agreement shall apply.

(2) Each Contracting Party shall facilitate the transfers of such airline earnings into the other Contracting Party. Each Contracting Party shall endeavour to assist that these transfers shall be executed without delay.

Article 9
Entry and Departure Regulations

(1) The laws and regulations of one Contracting Party governing entry into and departure from its territory of aircraft engaged in international air navigation of such aircraft over that territory shall apply to the designated airline of the other Contracting Party.

(2) The laws and regulations of one Contracting Party governing entry into, stay in, transit through and departure from its territory of passengers, crew, cargo and mail, such as formalities regarding entry, exit, emigration and immigration, passports as well as customs and sanitary measures shall apply to passengers, crew, cargo and mail carried by the aircraft of the designated airline of the other Contracting Party while within the said territory.

(3) Passengers in direct transit across the territory of either Contracting Party not leaving the area of the airport reserved for such purpose shall be subject to a very simplified form of control. Baggage and cargo, if in direct transit, shall be exempt from customs duties, inspection fees and other duties and charges.

Article 10
Capacity Provisions

(1) There shall be a fair and reasonable opportunity for the designated airlines of the Contracting Parties in operating the agreed services on the specified routes.

(2) In the operation of the agreed services, the designated airline of each Contracting Party shall take into account the interests of the designated airline of the other Contracting Party so as not to affect unduly the air services which the latter airline provides over the whole route or parts

thereof.

(3) Matters relating to capacity to be provided by the designated airlines for the operation of the agreed services shall be agreed upon between the aeronautical authorities of both Contracting Parties.

(4) The agreed services provided by a designated airline shall retain as their primary objective the provision at a reasonable load factor, of capacity adequate to the requirements for the carriage of passengers, cargo and mail, originating from or destined for the territory of the Contracting Party designating the airline. The right of the designated airline of either Contracting Party to embark or to disembark at the point in the territory of the other Contracting Party international traffic destined for or coming from third countries shall be of a supplementary nature.

(5) Provision for the carriage of passengers, cargo and mail both taken up and put down at points on the 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 operation.

Article 11 **Provision of Statistics**

The aeronautical authorities of either Contracting Party shall furnish to the aeronautical authorities of the other Contracting Party, at their request, statistical data as may be reasonably required for the purpose of reviewing the capacity provided by the designated airline of the first Contracting Party on the specified route. Such data shall include all information required to determine the amount of traffic carried by that designated airline on the agreed services.

Article 12 **Establishment of Tariffs**

(1) The tariffs on any agreed services shall be established at reasonable levels, due regard being paid to all relevant factors including cost of operation, reasonable profit, characteristics of service (such as standards of speed and accommodation) and the tariffs of other airlines for any part of the specified route. These tariffs shall be fixed in accordance with the following provisions of this Article.

(2) The tariffs referred to in paragraph (1) of this Article together with the rates of agency

commission used in conjunction with them shall be agreed upon between the designated airlines of both Contracting Parties, in consultation, when necessary and possible, with other airlines operating over the whole or part of that route. The tariffs so agreed shall be subject to the approval of the aeronautical authorities of both Contracting Parties and shall be submitted to their respective aeronautical authorities at least 60 days prior to the proposed date of introduction of these tariffs. This period can be reduced in certain cases upon agreement between the said authorities.

(3) If the designated airlines cannot agree on any of these tariffs, the aeronautical authorities of the Contracting Parties shall try to determine the tariffs by agreement between themselves.

(4) If the aeronautical authorities cannot agree on the approval of any tariff submitted to them under paragraph (2) of this Article or on the determination of any tariff under paragraph (3), the matter shall be referred to the Contracting Parties for settlement in accordance with the provisions of Article 17 of this Agreement.

(5) Pending determination of a new tariff in accordance with the provisions of this Article, the tariffs already in force shall prevail. Nevertheless, a tariff shall not be prolonged by virtue of this paragraph for more than 12 months after the date on which it otherwise would have expired.

Article 13

Documents

(1) The aircraft of the designated airline of either Contracting Party operating on the specified route shall bear its nationality and registration marks and carry on board the following certificates and documents:

- (a) certificate of registration;
- (b) certificate of airworthiness;
- (c) journey log sheet;
- (d) aircraft radio station licence;
- (e) licences or certificates for each member of the crew;
- (f) list of crew members;
- (g) list of passengers giving the places of departure and destination;
- (h) manifest of cargo and mail; and
- (i) general declaration.

Each Contracting Party shall recognize as valid the certificates and licences mentioned above issued or rendered valid by the other Contracting Party.

(2) The designated airline of either Contracting Party can operate the agreed services on the

specified route(s) with aircraft leased from a third country, provided that prior notice and relevant information regarding the leased aircraft shall be furnished to the aeronautical authorities of the other Contracting Party 30 days before the commencement of proposed operation. However, consultations shall be conducted between the Contracting Parties at the request of either Contracting Party on problems which may arise in connection with aircraft having nationality of a third country.

Article 14 **Search and Rescue**

In case the aircraft of the designated airline of one Contracting Party is in distress or meets with an accident in the territory of the other Contracting Party, the other Contracting Party shall:

- a) inform without delay the first Contracting Party of the accident;
- b) immediately start search and rescue operations;
- c) provide all security measures for the aircraft and its contents;
- d) render assistance to the passengers and crew;
- e) carry out investigation into the accident;
- f) permit the representatives of the first Contracting Party access to the aircraft and participate in the investigation as observers;
- g) give clearance to the aircraft and its contents as soon as they are no longer necessary for the investigation; and
- h) communicate in writing to the first Contracting Party its conclusions and the final report concerning the investigation.

Article 15 **Aviation Security**

(1) Each Contracting Party shall take all necessary precautions in its territory and in accordance with its national laws and regulations to prevent unlawful acts against civil aircraft of the other Contracting Party, their crew, passengers, baggage, cargo and mail.

(2) Each Contracting Party shall in the case of an unlawful act against a civil aircraft of the other Contracting Party committed in its territory immediately inform the other Contracting Party and take all measures which it considers necessary against that unlawful act and for the security of the aircraft and its passengers, crew, baggage, cargo and mail.

(3) Unless the circumstances do not permit, there shall be coordination between the Contracting Parties before taking the measures mentioned in paragraph (2).

Article 16
Consultations

(1) The Contracting Parties shall ensure the correct implementation of, and satisfactory compliance with, the provisions of this Agreement in a spirit of close cooperation and mutual support. To this end, the aeronautical authorities of the Contracting Parties shall consult each other from time to time.

(2) Either Contracting Party may request consultation with the other Contracting Party, which may be either verbal or in writing, and which shall begin within a period of 60 days from the date of receipt of the request, unless both Contracting Parties jointly determine an extension of this period.

Article 17
Settlement of Disputes

(1) Any dispute arising between the Contracting Parties relating to the interpretation or application of this Agreement, shall be settled by direct negotiations in a spirit of friendly cooperation and mutual understanding between the aeronautical authorities of the Contracting Parties.

(2) If the aeronautical authorities of the Contracting Parties fail to reach a settlement by negotiation under the provision of paragraph (1) of this Article, the dispute shall be settled through diplomatic channels.

Article 18
Amendment

If either of the Contracting Parties considers it desirable to amend any provision of this Agreement including the Schedule, it may request consultation with the other Contracting Party. Such consultation, which may be through discussions or by correspondence between the aeronautical authorities of both Contracting Parties shall begin within a period of 60 days from the date of receipt of the request. Any amendments so negotiated shall not come into force until they have been confirmed by way of an exchange of notes through the diplomatic channels.

Article 19
Termination

Either Contracting Party may at any time notify the other Contracting Party of its decision to terminate this Agreement. If such notice is given, this Agreement shall terminate twelve months after the date of receipt by the other Contracting Party of the notice to terminate, unless the notice

under reference is withdrawn before the expiry of that period. Notice shall be deemed to have been received 14 days after the date of the notice, or at the date of handling the notice to the diplomatic mission of the other Contracting Party in the territory of the first Contracting Party.

Article 20

Titles

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

Article 21

Entry Into Force

This agreement shall come into force on the date of exchange of diplomatic notes confirming that the Contracting Parties have completed their respective legal and constitutional procedures.

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

Done this 31st day of March 1989 at Beijing in duplicate in the Chinese, Bahasa Malaysia and English languages, the texts being equally authentic.

FOR THE GOVERNMENT OF THE
PEOPLE'S REPUBLIC OF CHINA

FOR THE GOVERNMENT OF
MALAYSIA

SCHEDULE

Routes

a) The route of the agreed services to be operated by the designated airline of the Government of Malaysia shall be as follows:

Points in Malaysia—Beijing and vice versa.

b) The route of the agreed services to be operated by the designated airline of the Government of the People's Republic of China shall be as follows:

Points in the People's Republic of China—Kuala Lumpur and vice versa.