



Air Transport Agreement
between
the Government of the Federal Republic of Germany
and
the Government of His Majesty
The Sultan and Yang Di-Pertuan of Brunei Darussalam

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The Government of the Federal Republic of Germany
and
The Government of His Majesty
The Sultan and Yang Di-Pertuan of Brunei Darussalam,

Being Parties to the Convention on International Civil
Aviation opened for signature at Chicago on 7 December 1944,

Desiring to conclude an agreement concerning the establishment
and operation of air services between and beyond their
territories,

Have agreed as follows:

Article 1
Definitions

(1) For the purposes of this Agreement, unless the text
otherwise requires:

- (a) the term "the Convention" means the Convention on
International Civil Aviation, opened for signature at
Chicago on 7 December 1944, and includes any Annex adopted
under Article 90 of that Convention and any amendment of
the Annexes or Convention under Article 90 and 94 thereof
in 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
the Federal Republic of Germany, the Federal Ministry of
Transport; in the case of Brunei Darussalam, the Minister
of Communications; or in both cases any other person or
agency authorized to perform the functions incumbent upon
the said authorities;

(c) the term "designated airline" means any airline that either Contracting Party has designated in writing to the other Contracting Party in accordance with Article 3 of this Agreement as being an airline which is to operate international air services on the routes specified in conformity with Article 2 (2) of this Agreement.

(2) The terms "territory", "air service", "international air service" and "stop for non-traffic purposes" have, for the purposes of this Agreement, the meaning laid down in Articles 2 and 96 of the Convention on International Civil Aviation as amended at present or in future.

(3) The term "tariff" means the price to be charged for the international carriage (i. e., carriage between points in the territories of two or more States) of passengers, baggage or cargo (excluding mail) and comprises:

- (a) any through tariff or amount to be charged for international carriage marketed and sold as such, including through tariffs constructed using other tariffs or add-ons for carriage over international sectors or domestic sectors forming part of the international sector;
- (b) the commission to be paid on the sales of tickets for the carriage of passengers and their baggage, or on the corresponding transactions for the carriage of cargo;
- (c) the conditions that govern the applicability of the tariff or the price for carriage, or the payment of commission.

It also includes:

- (d) any significant benefits provided in association with the carriage;

- (e) any tariff for carriage on a domestic sector which is sold as an adjunct to international carriage, which is not available for purely domestic travel and which is not made available on equal terms to all international carriers and users of their services.

Article 2
Grant of Traffic Rights

(1) Each Contracting Party shall grant to the other Contracting Party for the purpose of operating international air services by designated airlines the right:

- (a) to fly across its territory without landing;
- (b) to land in its territory for non-traffic purposes and
- (c) to land in its territory at the points named on the routes specified in accordance with paragraph 2 below in order to take on or discharge passengers, baggage, cargo and mail on a commercial basis.

(2) The routes over which the designated airlines of the Contracting Parties will be authorized to operate international air services shall be specified in a Route Schedule by an exchange of notes.

(3) Nothing in paragraph 1 above shall be deemed to confer on any designated airline of either Contracting Party the right to take on in the territory of the other Contracting Party passengers, baggage, cargo and mail carried for remuneration or hire and destined for another point within the territory of that other Contracting Party (cabotage).

Article 3

Designation and Operating Authorization

(1) The international air services on the routes specified in accordance with Article 2 (2) of this Agreement may be started at any time, provided that

(a) the Contracting Party to whom the rights specified in Article 2 (1) of this Agreement are granted has designated one or several airlines in writing, and

(b) the Contracting Party granting these rights has authorized the designated airline or airlines to initiate the air services.

(2) The Contracting Party granting these rights shall, subject to the provisions of paragraphs 3 and 4 below as well as Article 9 of this Agreement, give without delay the said authorization to operate the international air service.

(3) Either Contracting Party may require any airline designated by the other Contracting Party to furnish proof that it is qualified to meet the requirements prescribed under the laws and regulations of the first Contracting Party governing the operation of international air traffic.

(4) Either Contracting Party may withhold the exercise of the rights granted under Article 2 of this Agreement from any airline designated by the other Contracting Party, if such airline is not able to prove upon request that the majority ownership and effective control of such airline are vested in nationals or corporations of the other Contracting Party or in that Party itself. In view of the legal obligations of the Federal Republic of Germany to the European Community, however, the other Contracting Party is only entitled to do so, if an airline designated by the Federal Republic of Germany is not able to prove upon request that the majority

ownership of such airline is vested in a member state of the European Community or in nationals or corporations of such member states, and that effective control is vested in such state or its nationals or corporations.

(5) Either Contracting Party shall have the right to replace, by written communication to the other Contracting Party and subject to the provisions of paragraphs 1 to 4 above, an airline it has designated by another airline. The newly designated airline shall have the same rights and be subject to the same obligations as the airline which it replaces.

Article 4

Revocation or Limitation of Operating Authorization

Either Contracting Party may revoke, or limit by the imposition of conditions, the authorization granted in accordance with Article 3 (2) of this Agreement in the event of failure by a designated airline to comply with the laws and regulations of the Contracting Party granting the rights or to comply with the provisions of this Agreement or to fulfil the obligations arising therefrom. Such revocation or limitation shall be preceded by consultation as provided for in Article 15 of this Agreement, unless an immediate suspension of operations or imposition of conditions is necessary to avoid further infringements of laws or regulations.

Article 5

Non-discrimination in respect of Charges

The charges levied in the territory of either Contracting Party for the use of airports and other aviation facilities by the aircraft of any designated airline of the other Contracting Party shall not be higher than those levied on

aircraft of a national airline engaged in similar international air services.

Article 6

Exemption from Customs Duties and other Charges

(1) Aircraft operated by any designated airline of either Contracting Party and entering, departing again from, or flying across the territory of the other Contracting Party, as well as fuel, lubricants, spare parts, regular equipment and aircraft stores on board such aircraft, shall be exempt from customs duties and other charges levied on the occasion of importation, exportation or transit of goods. This shall also apply to goods on board the aircraft consumed during the flight across the territory of the latter Contracting Party.

(2) Fuel, lubricants, spare parts, regular equipment and aircraft stores temporarily imported into the territory of either Contracting Party, there to be immediately or after storage installed in or otherwise taken on board the aircraft of a designated airline of the other Contracting Party, or to be otherwise exported again from the territory of the former Contracting Party, shall be exempt from the customs duties and other charges mentioned in paragraph 1 above. Advertising materials and transport documents of any designated airline of one Contracting Party shall, on the occasion of importation into the territory of the other Contracting Party, likewise be exempt from the customs duties and other charges mentioned in paragraph 1 above.

(3) Fuel and lubricants taken on board the aircraft of any designated airline of either Contracting Party in the territory of the other Contracting Party and used in international air services shall be exempt from the customs duties and other charges mentioned in paragraph 1 above, as well as from any other special consumption charges.

(4) Either Contracting Party may keep the goods mentioned in paragraphs 1 to 3 above under customs supervision.

(5) Where no customs duties or other charges are levied on goods mentioned in paragraphs 1 to 3 above, such goods shall not be subject to any economic prohibitions or restrictions on importation, exportation or transit that may otherwise be applicable.

(6) Each Contracting Party shall, on a reciprocal basis, grant relief from turnover tax or similar indirect taxes on goods and services supplied to any airline designated by the other Contracting Party and used for the purposes of its business. The tax relief may take the form of an exemption or a refund.

Article 7

Transfer of Earnings

Each Contracting Party shall grant to any airline designated by the other Contracting Party the right to remit to its head office at any time, in any way, freely and without restrictions, in any freely convertible currency and at the official rate of exchange, the revenue realized through the sale of air transport services in the territory of the other Contracting Party.

Article 8

Principles Governing the Operation of Agreed Services

(1) There shall be fair and equal opportunity for any designated airline of each Contracting Party to operate air services on the routes specified in accordance with Article 2 (2) of this Agreement.

(2) In the operation of international air services on the routes specified in accordance with Article 2 (2) of this Agreement, any designated airline of either Contracting Party shall take account of the interests of any designated airline of the other Contracting Party so as not to affect unduly the air services which the latter airline operates over the same routes or parts thereof.

(3) The international air services on the routes specified in accordance with Article 2 (2) of this Agreement shall have as their primary objective the provision of capacity commensurate with the foreseeable traffic demand to and from the territory of the Contracting Party designating the airlines. The right of such airlines to carry traffic between points of a route specified in accordance with Article 2 (2) of this Agreement which are located in the territory of the other Contracting Party and points in third countries shall be exercised, in the interests of an orderly development of international air transport, in such a way that capacity is related to:

- (a) the traffic demand to and from the territory of the Contracting Party designating the airlines;
- (b) the traffic demand existing in the areas through which the air services pass, taking account of local and regional air services;
- (c) the requirements of an economical operation of through traffic routes.

(4) To ensure fair and equal treatment of any designated airline, the frequency of services, the types of aircraft to be used with regard to capacity, as well as the flight schedules shall be subject to approval by the aeronautical authorities of the Contracting Parties.

(5) The aeronautical authorities of the Contracting Parties should, if necessary, endeavour to reach a satisfactory arrangement regarding transport capacity and frequencies.

Article 9

Communication of Operating Information and Statistics

(1) Each designated airline shall communicate to the aeronautical authorities of the Contracting Parties at least one month prior to the initiation of air services on the routes specified in accordance with Article 2 (2) of this Agreement and before the start of each following flight plan period the type of service, the types of aircraft to be used and the flight schedules. Short-term changes are to be notified immediately.

(2) The aeronautical authorities of either Contracting Party shall furnish to the aeronautical authorities of the other Contracting Party at their request such periodic or other statistical data of the designated airlines as may be reasonably required for the purpose of reviewing the capacity provided by any designated airline of the first Contracting Party on the routes specified in accordance with Article 2 (2) of this Agreement. Such data shall include all information required to determine the amount of traffic carried and the origins and destinations of such traffic.

Article 10

Tariffs

(1) The tariffs to be charged by a designated airline for passengers on the routes specified in accordance with Article 2 (2) of this Agreement shall be subject to approval by the aeronautical authorities of the Contracting Party in whose

territory the point of departure of the journey (according to the information in the transport documents) is situated.

(2) In their tariffs, the designated airlines shall take into account the cost of operation, a reasonable profit, the prevailing conditions of competition and of the market as well as the interests of transport users. The competent aeronautical authorities may refuse to approve a tariff only, if it does not comply with these criteria.

(3) The tariffs shall be submitted by the designated airlines to the aeronautical authorities for approval at least one month prior to the envisaged date of their introduction.

(4) If the aeronautical authorities of either Contracting Party do not consent to a tariff submitted for their approval, they shall inform the airline concerned within twenty-one days after the date of submission of the tariff. In such case, this tariff shall not be applied. The tariff applied up to that time which was to be replaced by the new tariff shall continue to be applied.

Article 11

Commercial Activities

(1) Each Contracting Party shall, on a reciprocal basis, grant to any designated airline of the other Contracting Party the right to maintain in its territory such offices and administrative, commercial and technical personnel as are needed by the designated airline.

(2) The establishment of the offices and the employment of the personnel referred to in paragraph 1 above shall be subject to the laws and regulations of the Contracting Party concerned, such as the laws and regulations relating to the admission of foreigners and their stay in the territory of the Contracting

Party concerned. The personnel employed in the offices according to paragraph 1 above shall upon request be granted a work permit.

(3) Each Contracting Party shall, on a reciprocal basis, grant to any designated airline of the other Contracting Party the right of self-handling of passengers, baggage, cargo and mail for the designated or other airlines of the other Contracting Party. This right does not include air-side ground handling services (aircraft ground handling), which remain the prerogative of the airport operators.

(4) Each Contracting Party shall grant to any designated airline of the other Contracting Party the right to sell its transport services on its own transport documents directly in its own sales offices and through its agents in the territory of the other Contracting Party to any customer in any currency.

Article 12 Aviation Security

(1) Consistent with their rights and obligations under international law, the Contracting Parties reaffirm their obligation to each other to protect the security of civil aviation against acts of unlawful interference. 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, the Convention for the Suppression of Unlawful Seizure of Aircraft, signed at The Hague on 16 December 1970, the Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation, signed at Montreal on 23 September 1971, and the Protocol for the Suppression of Unlawful Acts of Violence at Airports Serving

International Civil Aviation, Supplementary to the Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation, Done at Montreal on 23 September 1971, signed at Montreal on 24 February 1988.

(2) The Contracting Parties shall provide upon request all necessary assistance to each other to prevent acts of unlawful seizure of civil aircraft and other acts of unlawful interference 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) When an incident or threat of an incident of unlawful seizure of civil aircraft or other acts of unlawful interference against the safety of such aircraft, their passengers and crew, airports or air navigation facilities occurs, the Contracting Parties shall, in mutual consultation, assist each other by facilitating communications and other appropriate measures intended to terminate as rapidly as commensurate with minimum risk to life such incident or threat thereof.

(4) Each Contracting Party shall take measures, as it may find practicable, to ensure that an aircraft subjected to an act of unlawful seizure or other acts of unlawful interference which is on the ground in its territory is detained on the ground unless its departure is necessitated by the overriding duty to protect the lives of its crew and passengers. Wherever practicable, such measures shall be taken on the basis of mutual consultations.

(5) The Contracting Parties shall, in their mutual relations, act in conformity with the aviation security provisions established by the International Civil Aviation Organization and designated as Annexes to the Convention to the extent that such security provisions are applicable to the Contracting 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.

(6) Each Contracting Party agrees that such operators of aircraft may be required to observe the aviation security provisions referred to in paragraph 5 above required by the other Contracting Party for entry into, departure from, or while within, the territory of that other Contracting Party. Each Contracting Party shall ensure that measures are effectively applied within its territory to protect the aircraft and to screen passengers, crew and carry-on items and to carry out appropriate security checks on baggage, cargo and aircraft stores prior to and during boarding or loading. Each Contracting Party shall look favourably on any request from the other Contracting Party for reasonable special security measures to meet a particular threat.

(7) Should a Contracting Party depart from the aviation security provisions of this Article, the aeronautical authorities of the other Contracting Party may request immediate consultations with the aeronautical authorities of the former Contracting Party. Failure to reach a satisfactory agreement within one month of the date of such request shall constitute grounds for withholding, revoking, limiting or imposing conditions on the operating authorization of an airline or airlines of the former Contracting Party. If required by a serious emergency, either Contracting Party may take interim action prior to the expiry of the month.

Article 13

Immigration and Control of Travel Documents

(1) Upon the request of either Contracting Party the other Contracting Party shall permit the airlines which exercise air

traffic rights in both countries to take measures to ensure that only passengers with the travel documents required for entry into or transit through the requesting State are carried.

(2) Either Contracting Party shall accept for examination a person being returned from his point of disembarkation after having been found inadmissible if this person previously stayed in its territory before embarkation, other than in direct transit. A Contracting Party shall not return such a person to the country where he was earlier found to be inadmissible.

(3) This provision is not intended to prevent public authorities from further examining a returned inadmissible person to determine his eventual acceptability in the State or make arrangements for his transfer, removal or deportation to a State of which he is a national or where he is otherwise acceptable. Where a person who has been found to be inadmissible has lost or destroyed his travel documents, a Contracting Party shall accept instead a document attesting to the circumstances of embarkation and arrival issued by the public authorities of the Contracting Party where the person was found to be inadmissible.

Article 14

Exchange of Views

Exchanges of views shall take place as needed between the aeronautical authorities of the Contracting Parties in order to achieve close cooperation and agreement in all matters pertaining to the application of this Agreement.

Article 15
Consultations

Consultations may be requested at any time by either Contracting Party for the purpose of discussing amendments to this Agreement or to the Route Schedule or questions relating to interpretation. The same applies to discussions concerning the application of this Agreement if either Contracting Party considers that an exchange of views within the meaning of Article 14 of this Agreement has not produced any satisfactory results. Such consultations shall begin within two months of the date of receipt by the other Contracting Party of any such request.

Article 16
Settlement of Disputes

(1) Where any disagreement concerning the interpretation or application of this Agreement cannot be settled in accordance with Article 15 of this Agreement, it shall be submitted to an arbitral tribunal at the request of either Contracting Party.

(2) Such arbitral tribunal shall be constituted ad hoc as follows: each Contracting Party shall appoint one member, and these two members shall agree upon a national of a third State as their chairman to be appointed by the Governments of the Contracting Parties. Such members shall be appointed within two months, and such chairman within three months, of the date on which either Contracting Party has informed the other Contracting Party of its intention to submit the disagreement to an arbitral tribunal.

(3) If the periods specified in paragraph 2 above have not been observed, either Contracting Party may, in the absence of any other relevant arrangement, invite the President of the Council of the International Civil Aviation Organization to

make the necessary appointments. If the President is a national of either Contracting Party or if he is otherwise prevented from discharging this function, the Vice-president deputizing for him should make the necessary appointments.

(4) The arbitral tribunal shall reach its decisions by a majority of votes. Such decisions shall be binding on the Contracting Parties. Each Contracting Party shall bear the cost of its own member as well as of its representation in the arbitral proceedings; the cost of the chairman and any other costs shall be borne in equal parts by the Contracting Parties. In all other respects, the arbitral tribunal shall determine its own procedure.

Article 17

Multilateral Conventions

In the event of a general multilateral air transport convention accepted by the Contracting Parties entering into force, the provisions of such convention shall prevail. Any discussions with a view to determining the extent to which this Agreement is terminated, superseded, amended or supplemented by the provisions of the multilateral convention shall take place in accordance with Article 15 of this Agreement.

Article 18

Registration with the International Civil Aviation Organization

This Agreement, any amendments to it and any exchange of notes under Article 2 (2) of this Agreement shall be communicated by both Contracting Parties to the International Civil Aviation Organization for registration.

Article 19

Entry into Force, Duration

(1) This Agreement shall enter into force one month from the date on which the two Governments have notified each other that the constitutional requirements for the entry into force of this Agreement have been fulfilled.

(2) This Agreement shall be concluded for an unlimited period.

Article 20

Termination

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 Organization. In such case this Agreement shall terminate twelve months after the date of receipt of the notice by the other Contracting Party, unless the notice to terminate is withdrawn by agreement before the expiry of this period. In the absence of acknowledgment of receipt by the other Contracting Party, notice shall be deemed to have been received fourteen days after the receipt of the notice by the International Civil Aviation Organization.

Done at Bonn on 7 September 1993
in duplicate in the German, Malay and English languages, all
three texts being authentic. In case of divergent
interpretations of the German and Malay texts, the English
text shall prevail.

For the Government of the
Federal Republic of Germany

Heinrich D. Koch
Wilhelm Meister

For the Government of
His Majesty The Sultan
and Yang Di-Pertuan of
Brunei Darussalam

