

## AGREED MINUTES

1. A delegation representing the Government of Malaysia and a delegation representing jointly the Governments of the Kingdoms of Norway, Denmark and Sweden met in Oslo on 27 – 28 September 2011 to discuss amendments to the initialled Air Services Agreements (ASAs) from 1997, with the additional article on aviation safety of 2002.

Lists of the delegations are attached as Appendix I and II.

The discussions were held in a very friendly and cordial atmosphere.

2. The Scandinavian delegation referred to its legal obligations with respect to European Community law and European Economic Area (EEA) law and specifically to Regulation EC 847/2004 and the obligation to align the Air Services Agreements with the relevant European Union (EU) and EEA legislation as a matter of urgency.

3. The delegations agreed to amend the ASAs initialled in 1997, having in mind that an article on aviation safety had been added by correspondence in 2002. The amendments are listed in Appendix III, and concern the following:

- In Article 1 (b), the aeronautical authority of Denmark shall be amended and read as *the Danish Transport Authority*, and the aeronautical authority of Sweden shall be amended and read as *the Swedish Transport Agency*
- The reference in Article 1 paragraph (f) has been renumbered to Article 18 due to the addition of the Article 15 on Aviation Safety
- Article 1 shall be supplemented with a new paragraph (i)
- Articles 3 and 4 shall be replaced by new articles respectively
- Article 6 shall be supplemented with a new paragraph 5
- Article 11 shall be replaced by a new article
- Article 15 shall be supplemented with a new paragraph 8

The Malaysian delegation informed that it was not in the position to initial the amendments due to Malaysian national law.

4. Both delegations took note that the ASAs initialled in 1997 must be read together with the Memorandum of Understanding (MoU) regarding the construction of and cooperation within Scandinavian Airlines System.

5. The ASAs initialled in 1997 together with the amendments as listed in Appendix III and the MoU initialled in 1997 may be subject to further internal consultations between the relevant authorities, to constitutional requirements, as well as to laws and regulations of the respective countries and approval by the appropriate authorities.

6. The delegations further confirmed that they will give immediate practical effect to the ASAs, the amendments as listed in Appendix III and the MoU to the extent possible under national law, pending the entry into force of the abovementioned agreements and the MoU. They also agreed on the need to have the agreements signed as soon as possible.

Done in Oslo on 28 September 2011.

For the Malaysian delegation

  
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Mr. Mohamad Radzuan Mazlan

For the Scandinavian  
delegation

  
\_\_\_\_\_  
Mr. Øyvind Ek

**THE MALAYSIAN DELEGATION**

Mr. Mohamad Radzuan Mazlan      Head of Delegation  
Principal Assistant Secretary  
Ministry of Transport,  
**Malaysia**

Ms. Elina Roslim                      Assistant Secretary  
Ministry of Transport,  
**Malaysia**

## THE SCANDINAVIAN DELEGATION

Mr. Øyvind Ek	Head of Delegation Deputy Director General Ministry of Transport and Communications, <b>Norway</b>
Mr. Pierre Chauvin	Senior Adviser Ministry of Transport and Communications, <b>Norway</b>
Ms. Ellen Krag	Adviser Ministry of Transport and Communications, <b>Norway</b>
Mr. Anders Stoltenberg Slettvoll	Adviser Civil Aviation Authority, <b>Norway</b>
Mr. Andreas Højgaard Kavalaris	Head of Section Danish Transport Authority, <b>Denmark</b>
Mr. Lars Österberg	Director Ministry of Enterprise, Energy and Communications, <b>Sweden</b>
Mr. Anders Gradin	Senior Adviser Swedish Transport Agency, <b>Sweden</b>
Ms. Charlotte Thorell	Legal Adviser Swedish Transport Agency, <b>Sweden</b>

AMENDMENTS TO THE TEXT OF THE AIR SERVICES AGREEMENT  
BETWEEN MALAYSIA AND THE KINGDOM OF *DENMARK/NORWAY/  
SWEDEN* INITIALLED IN OSLO ON 25 NOVEMBER 1997, WITH THE  
ADDITIONAL ARTICLE ON AVIATION SAFETY OF 2002.

*I Article 1 shall be amended as follows:*

- *Paragraph (b) shall be amended to read as follows in the Danish/Swedish Air Services Agreement:*
- (b) "aeronautical authorities" means, in the case of the Kingdom of [Denmark/Sweden], [*the Danish Transport Agency/the Swedish Transport Agency*]; and in the case of Malaysia, the Minister of Transport; or in either case any person or body authorized to perform any particular function to which this Agreement relates;
- *Paragraph (f) shall be amended to read as follows:*
- (f) "Annex" means any Annex to this Agreement or as amended in accordance with the provisions of paragraph 2 of Article 18 of this Agreement. The Annexes form an integral part of this Agreement and all references to the Agreement include the Annexes unless otherwise stated;

- *Article 1 shall be supplemented with a new paragraph (i) as follows:*
  - (i) "EEA Member States", means Member States of the European Community and the Member States of the European Free Trade Association that also are Contracting Parties to the Agreement on the European Economic Area;

*II Articles 3 and 4 shall be amended to read as follows:*

### **Article 3**

#### **Designation and Authorization 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 air services on the routes specified in the Annexes and to withdraw or alter such designations.

2. On receipt of such designation by [*Denmark/Norway/Sweden*], Malaysia shall grant the appropriate authorization and permissions with minimum procedural delay, provided that:

(a) the air carrier is established in the Kingdom of [*Denmark/Norway/ Sweden*] under the Treaty establishing the European Community and in accordance with the Agreement on the European Economic Area and has a valid Operating Licence consistent with European Community law and/or with national law adopted in conformity with the Agreement on the European Economic Area;

(b) effective regulatory control of the air carrier is exercised and maintained by the EEA Member State responsible for issuing its Air Operator's Certificate and the relevant aeronautical authority is clearly identified in the designation; and

- (c) the air carrier is owned and shall continue to be owned directly or through majority ownership by EEA Member States or by Switzerland and/or nationals of such states, and shall at all times be effectively controlled by such states and/or such nationals.
  - d) The designated airline is qualified to meet other conditions prescribed under the laws and regulations normally applied to the operation of international air transport services by the Contracting Party receiving the designation.
3. On receipt of such designation by Malaysia, the Kingdom of [*Denmark/Norway/Sweden*] shall grant the appropriate authorization and permissions with minimum procedural delay, provided that:
- (a) the air carrier is established in Malaysia; and
  - (b) Malaysia has and maintains effective regulatory control of the air carrier and is responsible for issuing its Air Operator's Certificate.
  - c) The designated airline is qualified to meet other conditions prescribed under the laws and regulations normally applied to the operation of international air transport services by the Contracting Party receiving the designation.

4. When an airline has been so designated and authorized, it may begin to operate air services on the routes specified in the Annexes provided that the airline complies with all applicable provisions of this Agreement.

#### Article 4

#### Revocation of Authorization, Suspension of Traffic Rights, and Imposition of Conditions

1. Malaysia may refuse, revoke, suspend or limit the authorization or permissions of an air carrier designated by [*Denmark/Norway/Sweden*] where:

- (a) the air carrier is not established in the territory of [*Denmark/Norway/ Sweden*] under the Treaty establishing the European Community or in accordance with the Agreement on the European Economic Area, or does not have a valid Operating Licence consistent with European Community law and/or with national law adopted in conformity with the Agreement on the European Economic Area; or
- (b) effective regulatory control of the air carrier is not exercised or not maintained by the EEA Member State responsible for issuing its Air Operator's Certificate, or the relevant aeronautical authority is not clearly identified in the designation; or

- (c) the air carrier is not owned and effectively controlled directly or through majority ownership by EEA Member States or by Switzerland and/or nationals of such states.
- (d) Malaysia demonstrates that, by exercising traffic rights under this Agreement on a route that includes a point in a European Community Member State or an EEA Member State, the air carrier would be circumventing restrictions on traffic rights imposed by a bilateral agreement between Malaysia and that other State; or
- (e) the air carrier holds an Air Operator's Certificate issued by an EEA Member States and there is no bilateral air services agreement between Malaysia and that State, and traffic rights to that State have been denied to the air carrier designated by Malaysia.
- f) In the event of failure by such designated airline to meet other conditions prescribed under the laws and regulations normally applied to the operation of the international air transport services by the Contracting Party receiving the designation.

In exercising its right under this paragraph, Malaysia shall not discriminate between EEA air carriers on the grounds of nationality.

2. The Kingdom of [*Denmark/Norway/Sweden*] may refuse, revoke, suspend or limit the authorization or permissions of an air carrier designated by Malaysia where:

- (a) the air carrier is not established in Malaysia; or
- (b) effective regulatory control of the air carrier is not exercised or not maintained by Malaysia, or Malaysia is not responsible for issuing its Air Operator's Certificate.
- (c) In the event of failure by such designated airline to meet other conditions prescribed under the laws and regulations normally applied to the operation of the international air transport services by the Contracting Party receiving the designation.

*III Article 6 shall be amended to add the following paragraph:*

## **Article 6**

### **Customs Duties**

5. Notwithstanding any other provision to the contrary, nothing in this Article shall prevent a Contracting Party from imposing on a non-discriminatory basis taxes, levies, duties, fees or charges on fuel supplied in its territory for use in an aircraft of a designated air carrier of the other Contracting Party that operates between a point in the territory of the first mentioned Contracting Party and another point in the territory of that Contracting Party or, as far as designated air carriers of Malaysia are concerned, their operations between points within the area covered by the Agreement on the European Economic Area.

IV *Article 11 on Tariffs shall be replaced by the following paragraph:*

## **Article 11**

### **Tariffs**

1. Tariffs for international air transport operated pursuant to this Agreement shall not be required to be filed with the aeronautical authorities of either Contracting Party.
  
2. Each Contracting Party shall allow prices for air transportation to be established by each designated airline based upon commercial considerations in the market place. Without limiting the application of general competition and consumer law which may be applicable in the territory of a Contracting Party, intervention by the Contracting Parties may be initiated to:
  - a) prevent unreasonably discriminatory tariffs or practices;
  
  - b) protect consumers from tariffs that are unreasonably high or unreasonably restrictive due either to the abuse of a dominant position or to concerted practices among air carriers; and
  
  - c) protect airlines from tariffs that are artificially low because of direct or indirect governmental subsidy or support.

*V Article 15 on Aviation Safety shall be amended to add the following paragraph:*

### **Article 15**

#### **Aviation Safety**

8. Where *Denmark/Norway/Sweden* has designated an air carrier whose regulatory control is exercised and maintained by an EEA Member State, the rights of Malaysia under the safety provisions of this Agreement shall apply equally in respect of the adoption, exercise or maintenance of safety standards by that other EEA Member State and in respect of the operating authorisation of that air carrier.