

National Interest Analysis [2017] ATNIA 23

with attachment on consultation

**Agreement between the Government of Australia and the Government of the Republic
of Mauritius relating to Air Services**

(Port Louis, 4 February 2016)

[2016] ATNIF 27

NATIONAL INTEREST ANALYSIS: CATEGORY 2 TREATY

SUMMARY PAGE

Agreement between the Government of Australia and the Government of the Republic of Mauritius relating to Air Services

(Port Louis, 4 February 2016)

[2017] ATNIA 23

[2017] ATNIF 27

Nature and timing of treaty action

1. The proposed treaty action is to bring into force the *Agreement between the Government of Australia and the Government of the Republic of Mauritius relating to Air Services*, done at Port Louis on 4 February 2016 (the proposed Agreement).
2. Pursuant to its **Article 20** (Entry into Force), the proposed Agreement will enter into force when the Parties have notified each in writing that their respective requirements for the entry into force of the proposed Agreement have been satisfied. The Australian Government will provide its notification to the Government of the Republic of Mauritius (Mauritius) as soon as practicable following receipt of the Joint Standing Committee on Treaties' (JSCOT) report.
3. The proposed Agreement will replace the existing treaty governing air services between Australia and Mauritius – the *Agreement between the Government of Australia and the Government of the Republic of Mauritius relating to Air Services*, done at Port Louis on 31 March 1995 ([1995] ATS 17) – with an updated text that provides a modern and binding legal framework to create opportunities for the airlines of Australia and Mauritius to develop international air services between the two countries.
4. The text of the proposed Agreement also presently forms an Attachment to a Memorandum of Understanding (MOU), signed by Australia and Mauritius in Canberra in October 2007. In accordance with established Australian and international practice, the MOU applies the provisions of the proposed Agreement on an administrative, non-legally binding basis until the proposed Agreement enters into force. This means that the provisions of the proposed Agreement are observed by the aeronautical authorities of Australia and Mauritius pending its entry into force so as to allow airlines to operate in accordance with the proposed Agreement as soon as possible.

Overview and national interest summary

5. The key objective of the proposed Agreement is to provide a binding legal framework to support the operation of air services between Australia and Mauritius. The proposed Agreement will facilitate trade and tourism between the two countries and will provide greater opportunities for airlines to develop expanded air travel options for consumers.

Reasons for Australia to take the treaty action

6. The proposed Agreement grants access for Australian airlines to the Mauritius aviation market and allows for the operation of air services between the two countries. The Parties considered it was timely to review and update the existing treaty in force, to create a modern framework for air services between the two countries. The proposed Agreement will enable carriers of Australia and Mauritius to provide services between any point in Australia and any point in Mauritius, based on capacity levels decided from time to time between the aeronautical authorities of both Parties.

7. Australian travellers and Australian businesses, particularly in the tourism and export industries, could potentially benefit from the proposed Agreement through the opening of increased commercial opportunities.

Obligations

8. Australia and Mauritius are both Parties to the *Convention on International Civil Aviation*, done at Chicago on 7 December 1944 ('the Chicago Convention')¹. The proposed Agreement was made in accordance with and pursuant to the Chicago Convention, which entered into force for Australia and generally on 4 April 1947.

9. The proposed Agreement is based on Australia's model air services agreement text and obliges Australia and Mauritius to allow the 'designated airlines' of each country to operate scheduled air services carrying passengers, cargo and mail between the two countries on specified routes in accordance with the provisions of the proposed Agreement. To facilitate these services, the proposed Agreement also includes reciprocal provisions on a range of aviation-related matters such as safety, security, competition laws, customs regulation and the commercial aspects of airline operations, including the ability to establish offices in the territory of each Party and to sell fares to the public.

10. **Article 2** (Designation, Authorisation and Revocation) of the proposed Agreement allows each Party to designate any number of airlines to operate the agreed services and to withdraw or alter those designations (Article 2(1)). On receipt of such a designation, and an application from a designated airline for operating authorisation, the other Party must grant the appropriate authorisations provided that the airline being designated complies with the conditions for incorporation and principal place of business set out in the proposed Agreement, holds the necessary operating permits and meets the conditions the Party normally applies to the operation of international air transport (Article 2(2)). It is also a condition of granting an authorisation to a designated airline, that the Party designating the airline complies with the safety and aviation security provisions of the proposed Agreement. In the event of any non-compliance with the terms of Article 2(2), or if the airline otherwise fails to operate in accordance with the conditions set out in the proposed Agreement, the other Party may withhold, revoke, suspend or limit that airline's authorisations (Article 2(4)).

11. Under **Article 3** (Grant of Rights) of the proposed Agreement, each Party grants the airlines of the other Party the right to fly across its territory without landing and to make stops in its territory for non-traffic purposes (such as refuelling). **Article 3** also provides the right

¹ [1957] ATS 5

for designated airlines to operate on the routes specified in **Annex 1** for the purpose of taking on board and discharging passengers, cargo and mail (Article 3(1)(c)). **Article 3** also precludes designated airlines from carrying purely domestic traffic (cabotage) within the territory of the other Party (Article 3(2)).

12. **Article 4** (Application of Laws) of the proposed Agreement confirms that each Party's domestic laws and regulations relating to the operation and navigation of aircraft apply to the airlines of the other Party when they are entering, within or leaving the territory of the first Party. Each Party's laws and regulations relating to the admission and departure of passengers, crew, baggage, cargo and mail, and aircraft (for example, immigration, aviation security, customs and quarantine) must be complied with in the territory of that Party. This Article prevents either Party giving preference to any airline – including its own airlines – in applying any such laws (Article 4(3)). It also provides that passengers, baggage and cargo in direct transit may be subject to aviation security, narcotics control and immigration checks (Article 4(4)). Baggage and cargo in direct transit shall be exempt from customs duties and other similar taxes.

13. Under **Article 5** (Safety), each Party is required to recognise certificates of airworthiness, certificates of competency and licences issued or rendered valid by the other Party, provided the standards under which such documents were issued conform to the standards established by the International Civil Aviation Organization (ICAO). Each Party can, however, refuse to recognise certificates and licences held by its own nationals or airlines that have been issued by the other Party. **Article 5** also provides that each Party may request consultations with the other Party at any time concerning the safety standards maintained by the other Party. If required, the other Party shall be informed of the corrective action required to be undertaken to conform to the standards pursuant to the Chicago Convention. The other Party shall then take appropriate corrective action (Article 5(5)). **Article 5** also provides that each Party may, in its territory, arrange ramp inspections of aircraft of the other Party to verify the validity of the relevant aircraft documents, the licensing of its crew and to ensure that the aircraft equipment and the condition of the aircraft conform to the standards established at the time pursuant to the Chicago Convention (Article 5(7)). Each Party can take immediate action essential to ensure the safety of an airline, including varying or suspending operating authorisation, if it considers such action to be necessary (Article 5(10)).

14. Under **Article 6** (Aviation Security), both Parties are required to protect the security of civil aviation against acts of unlawful interference and, in particular, to act in conformity with multilateral conventions relating to aviation security. Each Party shall provide to the other Party upon request all necessary assistance to prevent unlawful acts against civil aircraft and threats to the security of civil aviation. Each Party shall require that operators of aircraft registered or having principal place of business or permanent residence in their territory, and airport operators in their territory, act in conformity with aviation security provisions established by ICAO. Each Party must advise the other Party of any differences between its national regulations and the standards established by ICAO, and either Party may request consultations at any time to discuss any differences (Article 6(3)). A Party may require the designated airlines of the other Party to observe the first Party's aviation security provisions for entry into, departure from or while within the territory of that Party. Parties shall ensure adequate measures are applied to protect aircraft and to inspect passengers, crew, carry-on items, baggage, cargo and aircraft stores, prior to and during boarding or loading (Article 6(4)). Each Party shall give positive consideration to any request from the other Party for reasonable special security measures to meet a particular threat. The Parties shall assist each

other in the event of an incident or threat of an incident (Article 6(5)). Each aeronautical authority may request, on sixty days' notice, to conduct a security assessment in the other Party's territory (Article 6(6)). Such assessments are to be conducted in accordance with arrangements agreed between the aeronautical authorities without delay.

15. **Article 7** (User Charges) requires each Party to use its best efforts to encourage their charging bodies that user charges imposed on the airlines for the use of airport, airport environment, air navigation, and aviation security facilities and services, are reasonable, non-discriminatory and equitably apportioned. Reasonable charges reflect, but do not exceed, the full costs to the competent charging authorities of providing the facilities and services. For charges to be non-discriminatory, they should be levied on foreign airlines at a rate no higher than the rate imposed on a Party's own airlines operating similar services. The Article also contains provisions addressing the exchange of information and consultations between charging bodies and airlines in relation to user charges imposed on airlines using affected services and facilities.

16. **Article 8** (Statistics) provides that the aeronautical authorities of one Party may require a designated airline of the other Party to provide statistics related to the traffic carried on services performed under the proposed Agreement.

17. **Article 9** (Customs Duties and Other Charges) lists the equipment and stores used in the operation of the agreed services that the Parties are required, in accordance with international practice, to exempt from import restrictions, customs duties, excise taxes and similar fees and charges. Article 9(4) also provides that the customs laws of each Party are to be observed in relation to the supervision, re-exportation and/or disposal of equipment and supplies.

18. **Article 10** (Tariffs) provides that each Party shall allow each airline to determine its own airfares (tariffs).

19. Under **Article 11** (Capacity), both Parties are obliged to ensure that the designated airlines of each Party receive fair and equal opportunity to operate services in accordance with the proposed Agreement (Article 11(1)). The passenger and cargo capacity which may be provided by the designated airlines of each Party will be determined by the aeronautical authorities of the Parties before the commencement of such services, and from time to time thereafter (Article 11(2)). That capacity was mutually decided in a non-legally binding MOU with Mauritius signed on 25 October 2007. These capacity arrangements are intended to remain in effect once the proposed Agreement enters into force.

20. **Article 12** (Commercial Opportunities) provides a framework for airlines of one Party to conduct business in the territory of the other Party. The framework includes provisions allowing designated airlines to establish offices, bring in and employ staff, sell air transport services to the public, perform ground handling and use the services and personnel of any organisation, company or airline operating in the territory of the other Party, to conduct its business. Each Party shall permit airlines of the other Party to freely convert and move currency (Article 12(3)). The Article allows airlines to utilise leased aircraft to conduct their services, provided they meet the applicable operating and safety standards and requirements of the Parties (Article 12(7)). Designated airlines may also enter into code share arrangements with any other appropriately authorised airline (Article 12(5)). Each Party is also required to provide the airlines of the other Party with access to airports and the allocation of slots

(aircraft movements at an airport) on a non-discriminatory basis and in accordance with local laws and regulations (Article 12(8-10)).

21. **Article 13** (Intermodal Services) permits the designated airlines of each Party to use, in connection with the operation of the agreed services, any surface transport (for example, road or rail transport) within the territories of each Party or third countries, making it possible for airlines to provide intermodal connections for both passenger (Article 13(1)) and cargo (Article 13(2)) transport.

22. **Article 14** (Competition) confirms that each Party's competition laws apply to the operation of airlines within their respective jurisdictions. Either Party may request consultations with the other Party in the event of alleged discrimination or unfair practices in the territory of either Party.

23. Under **Article 15** (Consultations), either Party may request consultations with the other Party at any time on the implementation, interpretation, application or amendment of the proposed Agreement.

24. **Article 17** (Settlement of Disputes) provides a process for dispute resolution on matters, other than those relating to tariffs (i.e. airfares) or the application of domestic competition laws, which cannot be settled by consultation, negotiation or mediation (in accordance with **Annex 2**). If the Parties fail to resolve any dispute by negotiation, consultation or mediation, there is provision for compulsory settlement through submission of the dispute to arbitration by either Party (Article 17(1)). A three-person arbitral tribunal (Article 17(2)) shall make a decision on the dispute, which is final and binding upon both Parties (Article 17(6)) and the expenses of the arbitration are shared equally between the Parties (Article 17(7)). Failure to comply with the award is grounds for one Party to suspend or revoke the rights granted under the proposed Agreement to the other Party, or its designated airlines, for the duration of the non-compliance (Article 17(8)).

25. Once the proposed Agreement and any subsequent amendment enters into force, it will be registered with ICAO, under **Article 19** (Registration with ICAO).

26. **Annex 1** to the proposed Agreement contains a **Route Schedule** which specifies the routes that may be operated by designated airlines, as well as operational provisions.

27. **Annex 2** contains a non-binding option for mediation, as an alternative to undertaking dispute resolution procedures. The mediation process is without prejudice to the continuing use of the mechanism for consultation, the subsequent use of arbitration or termination under **Article 18**.

Implementation

28. Australia's obligations under the proposed Agreement will be implemented through existing legislation, including the *Air Navigation Act 1920* (Cth) and the *Civil Aviation Act 1988* (Cth). The *International Air Services Commission Act 1992* (Cth) provides for the allocation of capacity to Australian airlines. No amendments to these Acts or any other legislation are required for the implementation of the proposed Agreement.

29. The proposed Agreement provides the Civil Aviation Safety Authority with the scope and ability to enforce ICAO safety standards, as well as applying Australia's regulatory framework for issuing relevant regulatory approvals, such as a Foreign Aircraft Air Operators Certificate, for a Mauritian airline wishing to operate to Australia.

Costs

30. Implementation of the proposed Agreement is not expected to result in any direct financial costs to the Australian Government. Similarly, implementation of the Agreement will have no financial implications for any State or Territory Governments.

Regulation Impact Statement

31. The Office of Best Practice Regulation has advised the Department of Infrastructure and Regional Development that a Regulation Impact Statement is not required for bilateral international air services agreements.

Future treaty action

32. **Article 16** (Amendment of Agreement) provides that the proposed Agreement may be amended by agreement in writing between the Parties. Any amendment to the proposed Agreement shall enter into force when the two Parties notify each other in writing that they have completed their domestic procedures for entry into force of the amendment. Article 16(3) provides that the proposed Agreement will be deemed to be amended as far as is necessary to comply with any multilateral agreement relating to air transportation entering into force for both Parties.

33. Any amendment to the proposed Agreement will be subject to Australia's domestic treaty-making requirements, including tabling in Parliament and consideration by JSCOT.

Withdrawal or denunciation

34. **Article 18** (Termination) provides for termination of the proposed Agreement. Either Party may give notice in writing at any time to the other Party of its decision to terminate the proposed Agreement and must simultaneously lodge a notice of termination with the International Civil Aviation Organization. The proposed Agreement shall terminate one year after the date of receipt of the notice of termination by the other Party, unless the notice is withdrawn by mutual decision of the Parties before the end of the termination period.

35. Any future termination of the proposed Agreement by Australia will be subject to Australia's domestic treaty-making requirements, including tabling in Parliament and consideration by JSCOT.

Contact details

Aviation Industry Policy Branch
Aviation and Airports Business Division
Department of Infrastructure and Regional Development

ATTACHMENT ON CONSULTATION

Agreement between the Government of Australia and the Government of the Republic of Mauritius relating to Air Services

(Port Louis, 4 February 2016)

[2017] ATNIF 27

CONSULTATION

36. It is the practice ahead of negotiation of an air services agreement for the Department of Infrastructure and Regional Development to consult government and non-government bodies that may have an interest in the outcome of the negotiations and to take into account their views in developing a negotiating position.

37. Prior to the negotiation of the proposed Agreement, extensive consultations were held with industry and State and Territory government agencies, including during the bi-annual Standing Committee on Treaties meetings. The following stakeholders were advised by letter and/or email of the proposal to negotiate an agreement between Australia and Mauritius and invited to comment on issues of importance to them (agency names are given as at the time of consultation):

State Government agencies

- ACT Chief Minister's Department
- Australian Local Government Association;
- NT Department of Planning and Infrastructure;
- NSW Ministry of Transport;
- Queensland Department of State Development;
- Queensland Transport;
- South Australian Government Department for Transport, Energy and Infrastructure;
- Victorian Government Department of Innovation, Industry and Regional Development;
- WA Department of Transport
- Tourism New South Wales;
- Tourism Queensland;
- Tourism Tasmania;
- Tourism Victoria; and
- Tourism Western Australia

Industry

- Adelaide Airport Limited;
- Air Freight Council of Queensland Limited;
- Australian Airports Association;
- Australian Federation of International Forwarders ;
- Australian Federation of Travel Agents;
- Australian and International Pilots Association;

- Australian Tourism Export Council;
- Aviation Australia;
- Board of Airline Representatives of Australia;
- Brisbane Airport Corporation Proprietary Limited;
- Broome International Airport Holdings;
- Cairns Airport Proprietary Limited;
- Canberra Airport;
- Chamber of Commerce Northern Territory;
- DHL;
- Essendon Airport;
- Flinders Ports;
- Gold Coast Airport Limited;
- Global Aviation Services;
- Hobart International Airport;
- Launceston Airport;
- Linfox;
- Melbourne Airport;
- Moorabbin Airport;
- National Jet Systems Proprietary Limited;
- National Tourism Alliance;
- Newcastle Airport Limited;
- Northern Territory Airports Proprietary Limited;
- Perth Airport;
- Qantas Airways Limited;
- Queensland Airports Limited;
- Queensland Tourism Industry Corporation;
- Regional Aviation Association of Australia;
- Sydney Airport Corporation Limited;
- Tasmanian Chamber of Commerce and Industry;
- Tourism and Transport Forum;
- Tourism Top End;
- Tourism Tropical North Queensland;
- Townsville Airport;
- Townsville Enterprises;
- Virgin Blue; and
- Westralia Airports Corporation Proprietary Limited

38. Comments were received from Qantas, Perth Airport, the Queensland Government and the South Australian Government.

39. Stakeholders who provided comments supported the negotiation of a new air services agreement with Mauritius with a view to opening market access for designated airlines of both countries.

40. State and Territory Governments were consulted via the mechanism of the biannual Commonwealth-State/Territory Standing Committee on Treaties.