

National Interest Analysis [2019] ATNIA 4

with attachment on consultation

**Agreement between the Government of Australia
and the Government of the Kingdom of Thailand relating to Air Services**

(Bangkok, 3 August 2017)

[2019] ATNIF 4

NATIONAL INTEREST ANALYSIS: CATEGORY 2 TREATY

SUMMARY PAGE

Agreement between the Government of Australia and the Government of the Kingdom of Thailand relating to Air Services

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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 Kingdom of Thailand relating to Air Services*, done at Bangkok on 3 August 2017 (the proposed Agreement).
2. Pursuant to **Article 21** (Entry into Force), the proposed Agreement will enter into force on the date of the last written notification made through diplomatic channels that each Contracting Party (Party) has completed its respective requirements for the entry into force of the proposed Agreement. The Australian Government will provide its notification to the Government of the Kingdom of Thailand (Thailand) as soon as practicable after consideration of the proposed Agreement by the Joint Standing Committee on Treaties (JSCOT).
3. The proposed Agreement will replace the existing treaty governing air services between Australia and Thailand – the *Agreement between the Government of the Commonwealth of Australia and the Government of the Kingdom of Thailand relating to Air Services*¹, done at Bangkok on 26 February 1960 – with an updated text that provides a modern binding legal framework to create opportunities for the airlines of Australia and Thailand to develop international air services between the two countries.

Overview and national interest summary

4. The key objective of the proposed Agreement is to provide a binding legal framework to support the operation of air services between Australia and Thailand. 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.

¹ [1960] ATS 4

Reasons for Australia to take the treaty action

5. The proposed Agreement grants access for Australian airlines to the Thailand aviation market and allows for the establishment of air services between the two countries. The proposed Agreement will enable carriers of Australia and Thailand to provide services between any point in Australia and any point in Thailand, based on capacity levels decided from time to time between the aeronautical authorities of the Parties.
6. Australian travellers and Australian businesses, particularly in the tourism and export industries, will potentially benefit from the proposed Agreement through the opening of increased commercial opportunities.

Obligations

7. Australia and Thailand are both Parties to the *Convention on International Civil Aviation*, done at Chicago on 7 December 1944 (the Chicago Convention)². 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.
8. The proposed Agreement is based on Australia's model air services agreement and obliges Australia and Thailand to allow the 'designated airlines' of each country to operate scheduled air services carrying passengers, baggage, 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.
9. **Article 2** (Designation, Authorisation and Revocation) allows each Party to designate any number of airlines to conduct international air transportation in accordance with the proposed Agreement. Either Party may refuse authorisation of an airline's operations or impose conditions as necessary if the airline fails to meet, or operate in accordance with, the conditions prescribed in the proposed Agreement, including with respect to the airline's incorporation, principal place of business, ownership and control, or if the airline fails to hold the necessary operating permits or meet the conditions the Party normally applies to the operation of international air transport.
10. Under **Article 3** (Grant of Rights), 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). This Article also provides the right for designated airlines to operate on the routes specified in the Annex to the proposed Agreement and to make stops in the Parties' territories for the purpose of taking on board and discharging passengers, cargo and mail. In addition, this Article expressly states that it does not authorise airlines of one Party to carry purely domestic traffic (cabotage) within the territory of the other Party.

² [1957] ATS 5

11. **Article 4** (Application of Laws) requires that a Party's airlines comply with the other Party's laws, regulations and rules relating to the operation and navigation of aircraft when they are entering, within or leaving the territory of that Party. Each Party's laws, regulations and rules relating to entry and exit of passengers, crew, cargo and aircraft (for example, regulations and rules on immigration, aviation security, customs and quarantine measures) apply when entering, within or leaving the territory of that Party. In applying their laws, the Parties are prevented from giving preference to their own or any other airline. This Article also provides that passengers, baggage and cargo in direct transit may be subject to aviation security, narcotics control and immigration checks. Baggage and cargo in direct transit shall be exempt from customs duties and other similar taxes. This Article also states that the competition laws of each Party, as amended from time to time, shall apply to the operation of the airlines within the jurisdiction of the respective Party.
12. Under **Article 5** (Recognition of Certificates) each Party is required to recognise certificates of airworthiness, competency and licences issued or rendered valid by the other Party, provided they are still in force and the requirements under which such documents were issued conform to the standards established by the International Civil Aviation Organization (ICAO).
13. Under **Article 6** (Safety), each Party may request consultations at any time concerning safety standards adopted by the other Party. Following such consultations, if one Party finds that the other does not effectively maintain and administer safety standards that are at least equal to the minimum standards established pursuant to the Chicago Convention, that Party shall notify the other of the corrective action required to be undertaken to conform with those minimum standards. The other Party shall then take appropriate corrective action. Each Party may, in its territory, arrange inspections of aircraft of the other Party to verify the validity of the relevant aircraft documents and those of its crew and ensure that the condition of the aircraft and its equipment conform to ICAO standards. Each Party can also take immediate action essential to ensure the safety of an airline operation if it considers such action to be necessary.
14. Under **Article 7** (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 upon request provide the other Party 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 their 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. Parties shall ensure adequate measures are applied to protecting aircraft and inspecting passengers, crew, carry-on items, baggage, cargo and aircraft stores prior to and during boarding or loading. 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. Each Party's aeronautical authority may request, on sixty days' notice, to conduct a security assessment in the other Party's territory. Such assessments are to be conducted in accordance with arrangements agreed between the aeronautical authorities without delay.

15. **Article 8** (User Charges) requires that charges imposed by the competent charging authorities of each Party on the airlines of the other Party are just, reasonable, not unjustly discriminatory, equitably apportioned, and not higher than those imposed on national airlines operating on scheduled international services. This Article requires that user charges may reflect, but not exceed, the full cost to the competent charging authorities or bodies of providing appropriate and not excessive airport, airport environmental, air navigation and aviation security facilities and services at the airport or within the airport system. This Article also requires each Party to make its best efforts to ensure the exchange of information and consultations between charging authorities or bodies and airlines in relation to user charges imposed on airlines, and to ensure reasonable notice of any proposal for changes in user charges.
16. **Article 9** (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. The aeronautical authorities of each Party may determine the nature of the statistics required to be provided, and those requirements shall be applied on a non-discriminatory basis.
17. **Article 10** (Customs Duties and Other Charges) lists the equipment and stores used in the operation of the agreed services that the Parties are required to exempt from import restrictions, customs duties, excise taxes and similar fees and charges. This Article also provides for the customs regulations of each Party to be observed in relation to the supervision, re-exportation and/or disposal of equipment and supplies.
18. **Article 11** (Tariffs) provides that each Party must allow each airline to determine its own airfares. This Article also provides that if either aeronautical authority is dissatisfied with a tariff proposed or in effect for an airline of the other Party, either aeronautical authority may request to settle the matter through consultations.
19. Under **Article 12** (Capacity), both Parties are obliged to ensure that the designated airlines of each Party enjoy fair and equal opportunities to operate services in accordance with the proposed Agreement. 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. That capacity was mutually decided in a non-legally binding Memorandum of Understanding with Thailand signed on 7 November 2012.
20. **Article 13** (Commercial Opportunities) provides a framework for airlines of one Party to conduct business in the territory of the other Party. There are provisions for airlines to establish offices, sell and market air transport to the public, use the services and personnel of any organisation, convert and remit currency, and introduce their own staff for these purposes. This Article also provides airlines with such commercial entitlements as the right to enter into cooperative marketing arrangements, operate with leased aircraft and crew, perform their own ground-handling or contract with a ground-handling agent of their choice, and to receive equal and non-discriminatory access to airports and slots (aircraft movements at an airport).
21. **Article 14** (Approval of Schedules) requires designated airlines to submit flight timetables for approval within the timeframes required by each Party. This Article also requires one Party's designated airlines to seek approval from the other Party's

aeronautical authorities for supplementary flights operating outside of the approved timetable.

22. **Article 15** (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.
23. Under **Article 16** (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 18** (Settlement of Disputes) provides a process for dispute resolution on matters relating to the proposed Agreement's interpretation or application. If the Parties fail to resolve any dispute by negotiation then, at the request of either Party, the dispute will be submitted to arbitration. A three-person arbitral tribunal shall make a decision on the dispute, which is binding upon both Parties.
25. Once the proposed Agreement and any subsequent amendment enters into force, it will be registered with ICAO, under **Article 20** (Registration with ICAO).
26. The **Annex** of the proposed Agreement contains a **Route Schedule** which specifies the routes that may be operated by designated airlines, as well as operational provisions.

Implementation

27. The proposed Agreement will be implemented through existing legislation, including the *Air Navigation Act 1920* and the *Civil Aviation Act 1988*. The *International Air Services Commission Act 1992* 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.

Costs

28. No direct financial costs to the Australian Government are anticipated in the implementation of the proposed Agreement. There are no financial implications for State or Territory Governments.

Regulation Impact Statement

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

Future treaty action

30. **Article 17** (Amendment of Agreement) provides that the proposed Agreement may be amended or revised by agreement in writing between the Parties. Any amendment or revision to the proposed Agreement, including the Annex, shall enter into force when the Parties have notified each other in writing that they have completed their domestic

procedures for entry into force of the amendment or revision. This Article also provides that the proposed Agreement will be deemed to be amended so far as is necessary to comply with any multilateral air transportation convention that may come into force for both Parties.

31. Any amendment to the proposed Agreement would be subject to Australia's domestic treaty-making process, including consideration by JSCOT.

Withdrawal or denunciation

32. **Article 19** (Termination) provides for termination of the proposed Agreement. Either Party may give notice in writing through diplomatic channels at any time to the other Party of its intention to terminate the proposed Agreement and must also simultaneously communicate this to ICAO. 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.
33. Termination of the proposed Agreement by Australia would be subject to Australia's domestic treaty-making process, including consideration by JSCOT.

Contact details

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

ATTACHMENT ON CONSULTATION

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CONSULTATION

34. It is the practice ahead of negotiations of an air services agreement for the Department of Infrastructure, Regional Development and Cities 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 for the Minister's approval.
35. Prior to the negotiation of the proposed Agreement, extensive consultations were held with industry and State and Territory Government agencies. The following stakeholders were advised by letter and/or email of the proposal to negotiate an agreement between Australia and Thailand and invited to comment on issues of importance to them (agency names are given as at the time of consultation):

State Government Agencies

- NSW Department of Premier and Cabinet
- NSW Transport and Infrastructure
- South Australian Government Department for Transport, Energy and Infrastructure
- South Australian Government Department of Trade and Economic Development
- Victorian Government Department of Innovation, Industry and Regional Development
- Victorian Government Department of Transport
- Tourism New South Wales
- Tourism NT
- Tourism Queensland
- Tourism Tasmania
- Tourism Victoria
- Tourism Western Australia

Industry

- Adelaide Airport Limited
- Australia Papua New Guinea Business Council
- Australian Airports Association
- Australian Capital Tourism
- Australian Council of Trade Unions
- Australian Tourism Export Council
- Aviation Australia

- Board of Airline Representatives of Australia
 - Brisbane Airport Corporation Ltd
 - Cairns Airport Pty Ltd
 - Canberra Airport
 - Chamber of Commerce Northern Territory
 - Melbourne Airport
 - Newcastle Airport Ltd
 - Northern Territory Airports Pty Ltd
 - Qantas Airways Ltd
 - Queensland Airports Ltd
 - South Australia Freight Council
 - Sydney Airport Corporation Ltd
 - Tasmanian Freight Logistics Council
 - Tourism and Transport Forum
 - Tourism Tropical North Queensland
 - Transport Workers' Union of Australia
 - Virgin Australia
 - Westralia Airports Corporation Pty Ltd
36. Comments were received from Qantas, Virgin Australia, Darwin Airport, Perth Airport, and South Australia's Department for Transport, Energy and Infrastructure.
37. Stakeholders who provided comments supported the negotiation of a new air services agreement with Thailand to open market access for airlines in both countries.
38. The proposed Agreement was also included in the schedule of treaties provided to the Commonwealth-State-Territory Standing Committee on Treaties.