

No. 32469

**BRAZIL
and
THAILAND**

**Air Services Agreement (with annex). Signed at Brasília on
21 March 1991**

Authentic texts: Portuguese, Thai and English.

Registered by Brazil on 31 January 1996.

**BRÉSIL
et
THAÏLANDE**

**Accord relatif aux services aériens (avec annexe). Signé à
Brasília le 21 mars 1991**

Textes authentiques : portugais, thaï et anglais.

Enregistré par le Brésil le 31 janvier 1996.

AIR SERVICES AGREEMENT¹ BETWEEN THE GOVERNMENT OF THE FEDERATIVE REPUBLIC OF BRAZIL AND THE GOVERN- MENT OF THE KINGDOM OF THAILAND

The Government of the Federative Republic of Brazil

and

The Government of the Kingdom of Thailand
(hereinafter referred to as the "Contracting Parties"),

Considering that the Federative Republic of Brazil and the Kingdom of Thailand are parties to the Convention on International Civil Aviation opened for signature at Chicago on the seventh day of December, 1944,² and

Desiring to conclude an agreement, supplementary to the said Convention, for the purpose of establishing air services between and beyond their respective territories,

Have agreed as follows:

ARTICLE 1

Definitions

1. For the purpose of the present Agreement, unless the context otherwise requires:

- a) "The Convention" means the Convention on International Civil Aviation opened for signature at Chicago on the seventh day of December, 1944, and includes any annex adopted under Article 90 of that Convention and any amendment of the annexes or Convention under Articles 90

¹ Came into force on 28 March 1994, the date specified in an exchange of notes by which the Contracting Parties informed each other that all necessary internal procedures had been completed, in accordance with article 22.

² United Nations, *Treaty Series*, vol. 15, p. 295. For the texts of the Protocols amending this Convention, see vol. 320, pp. 209 and 217; vol. 418, p. 161; vol. 514, p. 209; vol. 740, p. 21; vol. 893, p. 117; vol. 958, p. 217; vol. 1008, p. 213, and vol. 1175, p. 297.

and 94 thereof so far as those annexes and amendments are applicable for both Contracting Parties;

- b) "Aeronautical authorities" means, in the case of the Federative Republic of Brazil, the Minister of Aeronautics and, in the case of the Kingdom of Thailand, the Minister of Transport and Communications, or, in both cases, any person or body, authorized to exercise the functions presently assigned to the said authorities;
- c) "Designated airline" means an airline which one Contracting Party has designated, in accordance with Article 6 of the present Agreement, for operation of the agreed air services;
- d) "Tariff" means one or more of the following:
 - I) the fare charged by an airline for the carriage of passengers and their baggage on scheduled air services and the charges and conditions for services ancillary to such carriage;
 - II) the rate charged by an airline for the carriage of cargo (excluding mail) on scheduled air services;
 - III) the conditions governing the availability or applicability of any such fare or rate including any benefits attaching to it; and
 - IV) the rate of commission paid by an airline to an agent in respect of tickets sold or airway bills completed by that agent for carriage on scheduled air services;
- e) "User charge" means a charge made to airlines for the provision of airport, air navigation or aviation security facilities and services;
- f) "Agreed services" means scheduled air services on the routes specified in the Annex to this Agreement for the transport of passengers, cargo and mail, separately or in combination;

- g) "Specified Route" means the route specified in the Annex to this Agreement;
- h) "Agreement" means this Agreement, the Annex attached thereto, and any amendments to the Agreement or to the Annex;
- i) "Territory", "Air service", "International Air Service", "Airline" and "Stop for non-traffic purposes" have the meaning respectively assigned to them in Articles 2 and 96 of the Convention.

ARTICLE 2

Grant of Rights

1. Each Contracting Party grants to the other Contracting Party the rights specified in the present Agreement for the purpose of operating air services on the routes specified in the schedules of the Annex. Such services and routes are hereinafter called "agreed services" and "specified routes" respectively.

2. Subject to the provisions of the present Agreement the airline designated by each Contracting Party shall enjoy, while operating international air services:

- a) the right to fly without landing across the territory of the other Contracting Party;
- b) the right to make stops in the said territory for non-traffic purposes;
- c) the right to embark and disembark in the said territory at the points specified in the Annex of the present Agreement passengers, baggage, cargo and mail destined for or coming from points in the territory of the other Contracting Party;
- d) the right to embark and disembark in the territory of third countries at the points specified in the Annex of the present Agreement passengers, baggage, cargo and mail

destined for or coming from points in the territory of the other Contracting Party, specified in the Annex of the present Agreement.

3. Nothing in paragraph 2 of this Article shall be deemed to confer on the designated airline of one Contracting Party the privilege of embarking, in the territory of the other Contracting Party, passengers, baggage, cargo and mail carried for remuneration or hire and destined for another point in the territory of that Contracting Party.

4. If because of armed conflict, natural calamities, political disturbances or disruptive developments, the designated airline of one Contracting Party is unable to operate a service on its normal routing, the other Contracting Party shall use its best efforts to facilitate the continued operation of such service through appropriate rearrangements of such routes.

ARTICLE 3

Exercise of Rights

1. The designated airline of each Contracting Party shall have fair and equal opportunity to carry on the agreed services traffic embarked in the territory of one Contracting Party and disembarked in the territory of the other Contracting Party or vice versa and shall regard as being of supplementary character traffic embarked or disembarked in the territory of the other Contracting Party to and from points en route. The designated airline of each Contracting Party in providing capacity for the carriage of traffic embarked in the territory of the other Contracting Party and disembarked at points on the specified routes or vice versa shall take into consideration the primary interest of the designated airline of the other Contracting Party in such traffic so as not to affect unduly that interest of the latter airline.

2. The agreed services provided by the designated airline of each Contracting Party shall be closely related to the requirements of the public for transportation on the specified routes, and each shall have as its primary objective the provision of capacity adequate to meet the demands to carry passengers, cargo and mail embarked or

disembarked in the territory of the Contracting Party which has designated the airline.

3. Provision for the carriage of passenger, cargo and mail embarked in the territory of the other Contracting Party and disembarked at points in third countries on the specified routes or vice versa shall be made in accordance with the general principle that capacity shall be related to:

a) the requirements of traffic embarked or disembarked in the territory of the Contracting Party which has designated the airline;

b) the requirements of traffic of the area through which the airline passes, after taking account of other air services established by airlines of the States situated in the area; and

c) the requirements of economical through airline operation.

4. The capacity to be provided at the outset shall be agreed between both Contracting Parties before the agreed services are inaugurated. Thereafter, the capacity to be provided shall be discussed from time to time between the aeronautical authorities of the Contracting Parties and any change in capacity agreed upon shall be confirmed by an Exchange of Notes.

ARTICLE 4

Application of Laws and 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 or flights 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, sojourn in, and departure from its territory of passengers, crew, baggage, cargo or mail, such as formalities regarding entry, exit, emigration and immigration, as well as customs and sanitary measures shall apply to passengers, crew, baggage, cargo or mail carried by the aircraft of the designated airline of the other Contracting Party while they are within the said territory.

3. Neither Contracting Party may grant any preference to its own airline with regard to the designated airline of the other Contracting Party in the application of the laws and regulations provided for in this Article.

ARTICLE 5

Aviation Security

1. Consistent with their rights and obligations under international law, the Contracting Parties reaffirm that their obligation to each other to protect the security of civil aviation against acts of unlawful interference forms an integral part of this Agreement. 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 1963,¹ the Convention for the Suppression of Unlawful Seizure of Aircraft, signed at the Hague on 16 December 1970² and the Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation, signed at Montreal on 23 September 1971.³

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 unlawful acts 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. The Contracting Parties shall, in their mutual relations, act in conformity with the aviation security provisions established by

¹ United Nations, *Treaty Series*, vol. 704, p. 219.

² *Ibid.*, vol. 860, p. 105.

³ *Ibid.*, vol. 974, p. 177 and vol. 1217, p. 404 (corrigendum to volume 974).

the International Civil Aviation Organization and designated as annexes to the Convention on International Civil Aviation 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.

4. Each Contracting Party agrees that such operators of aircraft, may be required to observe the aviation security provisions referred to in paragraph 3 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 adequate measures are effectively applied within its territory to protect the aircraft and to inspect passengers, crew, carry-on items, baggage, cargo and aircraft stores prior to and during boarding or loading. Each Contracting Party shall also give sympathetic consideration to any request from the other Contracting Party for reasonable special security measures to meet a particular threat.

5. When an incident or threat of an incident of unlawful seizure of civil aircraft or other unlawful acts against the safety of such aircraft, their passengers and crew, airports or air navigation facilities occurs, the Contracting Parties shall assist each other by facilitating communications and other appropriate measures intended to terminate rapidly and safely such incident or threat thereof.

ARTICLE 6

Designation and Operating Authorization

1. Each Contracting Party shall have the right to designate one airline for the purpose of operating the agreed services. Such designation shall be effected by virtue of a written notification between the aeronautical authorities of both Contracting Parties through diplomatic channel.

2. The aeronautical authorities which have received the notification of designation shall, subject to the provisions of paragraphs 3 and 4 of this Article, grant without delay to the

designated airline of the other Contracting Party the necessary operating authorization.

3. The aeronautical authorities of one Contracting Party may require the airline designated by the other Contracting Party to prove that it is qualified to fulfil the conditions prescribed under the laws and regulations normally applied to the operation of international air services by the said authorities in conformity with the provisions of the Convention.

4. Each Contracting Party shall have the right to refuse to accept the designation of an airline and to refuse to grant the operating authorization referred to in paragraphs 1 and 2 of this Article, or to impose such conditions as it may deem necessary for the exercise of the rights specified in Article 2 of the present Agreement, whenever the said Contracting Party has no proof that a preponderant part of the ownership and effective control of that airline are vested in the Contracting Party designating the airline or in its nationals.

5. Having received the operating authorization, provided for under paragraph 2 of this Article, the designated airline may at any time operate the agreed services, provided that tariffs established in accordance with the provisions of Article 14 of the present Agreement are in force.

ARTICLE 7

Revocation and Suspension of Operating Authorization

1. Each Contracting Party shall have the right to revoke an operating authorization or to suspend the exercise of the rights specified in Article 2 of the present Agreement by the designated airline of the other Contracting Party or to impose such conditions as it may deem necessary on the exercise of such rights, if:

- a) the said airline cannot prove that a preponderant part of its ownership and effective control are vested in the Contracting Party designating the airline or in its nationals, or

- b) the said airline fails to comply with or has infringed the laws or regulations of the Contracting Party granting these rights, or
- c) the said airline fails to operate the agreed services in accordance with the conditions prescribed under the present Agreement.

2. Such a right shall be exercised only after consultation with the other Contracting Party, unless immediate revocation, suspension or imposition of the conditions provided for under paragraph 1 of this Article is essential to prevent further infringements of laws and regulations.

ARTICLE 8

Recognition of Certificates and Licences

1. Certificates of airworthiness, certificates of competency and licences issued or rendered valid by one of the Contracting Parties shall, during the period of their validity, be recognized as valid by the other Contracting Party, provided that the requirements under which such certificates or licences were issued or rendered valid are equal to or above the minimum standards which may be established pursuant to the Convention.

2. Each Contracting Party reserves the right, however, to refuse to recognize as valid, for the purpose of flights over its own territory, certificates of competency and licences granted to or rendered valid for its own nationals by the other Contracting Party or by any other State.

ARTICLE 9

Exemption of Duties and Taxes

1. Each Contracting Party shall on a basis of reciprocity exempt the designated airline of the other Contracting Party to the fullest extent possible under its national law from import restriction, customs duties, excise taxes, inspection fees and other national duties, and charges on aircraft, fuel, lubricating oils, consumable technical supplies, spare parts including engines, regular aircraft equipment, aircraft stores including liquor, tobacco and

other products destined for sale to passengers in limited quantities during the flight and other items intended for use or used solely in connection with the operation or servicing of aircraft of the designated airline of such other Contracting Party operating the agreed services, as well as printed ticket stock, airway bills, any printed material which bears the insignia of the company printed thereon and usual publicity material distributed without charge by the designated airline.

2. The exemptions granted by this Article shall apply to the items referred to in paragraph 1 of this Article:

- a) introduced into the territory of one Contracting Party by or on behalf of the designated airline of the other Contracting Party;
- b) retained on board aircraft of the designated airline of one Contracting Party upon arriving in or leaving the territory of the other Contracting Party;
- c) taken on board aircraft of the designated airline of one Contracting Party in the territory of the other Contracting party and intended for use in operating the agreed services;

whether or not such items are used or consumed wholly within the territory of the Contracting Party granting the exemption, provided such items are not alienated and/or sold in the territory of the said Contracting Party.

3. The regular airborne equipment, as well as the materials and supplies normally retained on board the aircraft of the designated airline 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 territory. In such case, they may be placed under the supervision of the said authorities up to such time as they are re-exported or otherwise disposed of in accordance with customs regulations.

ARTICLE 10

Direct Transit

Passengers, baggage and cargo in direct transit across the territory of one Contracting Party and not leaving the area of the

airport reserved for such purpose shall at the utmost be subject to a very simplified control. Baggage and cargo in direct transit shall be exempt from duties and taxes, customs duties included.

ARTICLE 11

Airport and Facility Charges

1. The charges imposed in the territory of one Contracting Party on the aircraft of the designated airline of the other Contracting Party for the use of airports and other aviation facilities shall not be higher than those imposed on aircraft of a national airline of the first Contracting Party engaged in similar international air services.

2. Each Contracting Party shall encourage consultations between its competent charging authorities and the designated airlines using the services and facilities, and where practicable, through the airlines' representative organizations.

3. Neither of the Contracting Parties shall give preference to its own or any other airline over an airline engaged in similar international air services of the other Contracting Party in the application of its customs, immigration, quarantine and similar regulations or in the use of airports, airways, air traffic services and associated facilities under its control.

ARTICLE 12

Commercial Activities

1. The designated airline of one Contracting Party may, in accordance with the laws and regulations of the other Contracting Party relating to entry, residence and employment, bring in and maintain in the territory of the other Contracting Party managerial, sales, technical, operational and other specialist staff required for the operation of the agreed services.

2. For the commercial activities the principle of reciprocity shall apply. The competent authorities of each Contracting Party will take all necessary steps to ensure that the representations of the airline designated by the other Contracting Party may exercise its activities in an orderly manner.

3. In particular, each Contracting Party grants to the designated airline of the other Contracting Party the right to engage in the sale of air transportation in its territory directly and, at the airline's discretion, through its agents. Each airline shall have the right to sell such transportation, and any person shall be free to purchase such transportation in the currency of that territory or, subject to the national laws and regulations, in freely convertible currencies of other countries.

ARTICLE 13

Conversion and Transfer of Revenues

Each Contracting Party shall grant to the designated airline of the other Contracting Party the right of free transfer of the excess of receipts over expenditure earned by that airline in the territory of the first Contracting Party in connection with the carriage of passengers, baggage, mail and cargo. Such transfer shall be at the official rate of exchange, where such a rate exists or otherwise at a rate equivalent to that at which the receipts were earned. If such transfers are regulated by a special agreement between the Contracting Parties, this special agreement shall apply.

ARTICLE 14

Tariffs

1. The tariffs for carriage on agreed services to and from the territory of the other Contracting Party shall be established at reasonable levels, due regard being paid to all relevant factors including the interest of users, cost of operation, reasonable profit, characteristics of services, and, where it is deemed suitable, the tariffs of other airlines operating over all or part of the same route.

2. The tariffs referred to in paragraph 1 of this Article shall be agreed upon, if possible, between the designated airlines of the Contracting Parties; such agreement shall be reached, whenever possible, through the international tariff coordination mechanism of the International Air Transport Association. Unless otherwise determined in the application of paragraph 4 of this Article, each designated airline shall be responsible only to its aeronautical

authorities for the justification and reasonableness of the tariffs so agreed.

3. The tariffs so agreed shall be submitted for approval to the aeronautical authorities of the Contracting Parties at least sixty (60) days before the proposed date of their introduction. In special cases, this time limit may be reduced, subject to the agreement of said authorities. Upon receipt of the submission of the tariffs, the aeronautical authorities shall consider such tariffs without undue delay, notifying the decision at least 15 days before it comes into effect. No tariff shall come into force if the aeronautical authorities of either Contracting Party is dissatisfied with it. The aeronautical authorities may notify the other aeronautical authorities of an extension of the proposed date of tariff introduction.

4. If a tariff cannot be established in accordance with the provisions of paragraph 2 of this Article, or, if during the period applicable in accordance with paragraph 3 of this Article a notice of dissatisfaction has been given, the aeronautical authorities of the Contracting Parties shall endeavour to determine the tariff by agreement between themselves. Consultations between the aeronautical authorities will be held in accordance with Article 16 of this Agreement.

5. If the aeronautical authorities cannot agree on any tariff submitted to them under paragraph 3 of this Article or on the determination of any tariff under paragraph 4 of this Article the dispute shall be settled in accordance with the provisions of Article 17 of this Agreement.

6. a) No tariff shall come into force if the aeronautical authorities of either Contracting Party are dissatisfied with it except under the provisions of paragraph 3 of Article 17 of this Agreement.

b) When tariffs have been established in accordance with the provisions of this Article, those tariffs shall remain in force until new tariffs have been established in accordance with the provisions of this Article or Article 17 of this Agreement.

7. If the aeronautical authorities of one of the Contracting Parties become dissatisfied with an established tariff, they shall so

notify the aeronautical authorities of the other Contracting Party and the designated airlines shall attempt, where required, to reach an agreement. If within the period of ninety (90) days from the day of receipt of such notification, a new tariff cannot be established in accordance with the provisions of paragraphs 2 and 3 of this Article, the procedures as set out in paragraphs 4 and 5 of this Article shall apply.

8. The aeronautical authorities of both Contracting Parties shall endeavour to ensure that:

- a) the tariffs charged and collected conform to the tariffs accepted by both aeronautical authorities, and
- b) no airline rebates portion of such tariffs by any means.

ARTICLE 15

Provision of Statistics

The aeronautical authorities of both Contracting Parties shall supply each other, on request, with periodic statistics or other similar information relating to the traffic carried on the agreed services.

ARTICLE 16

Consultations

1. In a spirit of close co-operation, the aeronautical authorities of the Contracting Parties shall consult each other from time to time with a view to ensuring the implementation of, and satisfactory compliance with, the provisions of this Agreement and of its Annex or to discussing any problem related thereto.

2. Such consultations shall begin within a period of sixty (60) days of the date of receipt of such a request, unless otherwise agreed by the Contracting Parties.

ARTICLE 17

Settlement of Disputes

1. If any dispute arises between the Contracting Parties relating to the interpretation or application of the present

Agreement, the Contracting Parties shall in the first place endeavour to settle it by negotiation between themselves.

2. If the Contracting parties fail to reach a settlement by negotiation, they may agree to refer the dispute for decision to some person or body, or the dispute may at the request of either Contracting Party be submitted for decision to a tribunal of three arbitrators, one to be nominated by each Contracting Party and the third to be appointed by the two so nominated. Each of the Contracting Parties shall nominate an arbitrator within a period of sixty (60) days from the date of receipt by either Contracting Party from the other of a notice through the diplomatic channel requesting arbitration of the dispute, and the third arbitrator shall be appointed within a further period of thirty (30) days. If either of the Contracting Parties fails to nominate an arbitrator within the period specified, or if the third arbitrator is not appointed within the specified period, the President of the Council of the International Civil Aviation Organization may be requested by either Contracting Party to appoint an arbitrator or arbitrators as the case requires. Where the President possesses the nationality of one of the two Contracting Parties or is otherwise prevented from carrying out this function, his deputy in office shall make the necessary appointments. The third arbitrator shall be a national of a third State and shall act as president of the arbitral body.

3. The Contracting Parties undertake to comply with any decision given under paragraph 2 of this Article.

4. The expenses of the tribunal shall be shared equally between the Contracting Parties.

ARTICLE 18

Modifications

1. If either of the Contracting Parties considers it desirable to modify any provision of the present Agreement, such modification, if agreed between the Contracting Parties, shall come into force when confirmed by an Exchange of Diplomatic Notes.

2. Modifications to the Annex of the present Agreement may be agreed directly between the aeronautical authorities of the

Contracting Parties. They shall be applied provisionally from the date they have been agreed upon and enter into force when confirmed by an Exchange of Diplomatic Notes.

ARTICLE 19

Multilateral Convention

If a general multilateral air convention comes into force in respect of both Contracting Parties, the provisions of such convention shall prevail. Consultations in accordance with Article 16 of this Agreement may be held with a view to determining the extent to which this Agreement is affected by the provisions of the multilateral convention.

ARTICLE 20

Termination

1. Each Contracting Party may at any time give notice in writing through diplomatic channel to the other Contracting Party of its decision to terminate the present Agreement. Such notice shall simultaneously be communicated to the International Civil Aviation Organization.

2. The Agreement shall terminate at the end of a time-table period during which twelve months after the date of receipt of the notice will have elapsed, unless the notice is withdrawn by mutual agreement before the expiry of this period.

3. In default of acknowledgement of receipt by the other Contracting Party, the notice shall be deemed to have been received fourteen (14) days after the date on which the International Civil Aviation Organization will have received communication thereof.

ARTICLE 21

Registration with ICAU

This Agreement and any amendment thereto shall be registered with the International Civil Aviation Organization.

ARTICLE 22

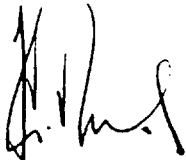
Entry into Force

The competent authorities of the Federative Republic of Brazil and of the Kingdom of Thailand will permit operations in accordance with the terms of the Agreement upon signature. The Agreement will enter into force on a date to be determined in an exchange of diplomatic notes indicating that all necessary internal procedures have been completed by both Contracting Parties.

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

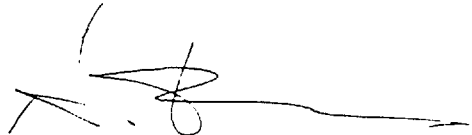
Done in Brasilia, this 21 day of March 1991, in three languages, Portuguese, Thai and English, each of which shall be of equal authenticity. In case different interpretation should arise, the English text shall prevail.

For the Government
of the Federative Republic
of Brazil:



FRANCISCO REZEK

For the Government
of the Kingdom of Thailand:



ANURAK THANANAN

A N N E X

Route Schedules

Route Schedule I

- Route on which air services may be operated by the designated airline of the Kingdom of Thailand, in both directions:

Points in Thailand - three intermediate points - two points in Brazil - three points beyond in South America.

Route Schedule II

- Route on which air services may be operated by the designated airline of the Federative Republic of Brazil, in both directions:

Points in Brazil - three intermediate points - two points in Thailand - three points beyond in Asia.

N O T E

1. Points on any of the specified routes may, at the option of the designated airlines, be omitted on any or all flights, provided that the agreed services on the route begin at a point(s) in the territory of the Contracting Party which has designated the airline.

2. The designated airline of each Contracting Party may select the above intermediate points, points in the territory of the Contracting Parties and points beyond on its specified route at its own choice and may change its selection in the next IATA timetable period.

3. As long in advance as practicable, but not less than thirty (30) days, before the introduction of an agreed service or any modification thereof, or within thirty (30) days after receipt of a request from the aeronautical authorities, the designated airline of one Contracting Party shall provide to the aeronautical authorities of the other Contracting Party information regarding the nature of service, time-tables, types of aircraft including the capacity provided on each of the specified routes and any further information as may be required to satisfy the aeronautical authorities of the other Contracting Party that the requirements of this Agreement are being duly observed.
