



THAILAND ADOPTS NEW INTERNATIONAL CARRIAGE BY AIR ACT

From 14 May 2015 the International Carriage by Air Act B.E. 2558 (the Act) comes into force in Thailand. The significance of this legislative development cannot be underestimated.

The Act will end the application of the Thai Civil and Commercial Code (the Thai CCC) to both aviation cargo and passenger claims. Whether this is a stepping stone to Thailand becoming a fully fledged state party to the Montreal Convention 1999 (MC99) remains to be seen.

The Act will apply to domestic and international carriage by air. It mirrors the provisions of MC99 with a couple of exceptions (such as the arbitration and jurisdiction provisions). Because of these exceptions we understand that further draft legislation is already in the pipeline to amend the Act so that it is fully in line with MC99 in advance of Thailand's ratification of this convention in the future. The provisions of the Act will not affect claims already litigating in the Thai Courts.

What does this development mean for your business?

Potentially more upsides than downsides.

- Application of MC99 liability limits to cargo and passenger claims, which should encourage claims to be resolved in accordance with more internationally recognised 'norms'.
- A two year limitation period (as opposed to a one year limitation period under the Thai CCC) will bring the limitation period in line with that contained in all the international aviation conventions.
- An end to the uncertainty as to whether a shipper/carrier can rely on contractual limits of liability.
- Exclusivity on the basis that Section 54 contains a clause which states "*An action for damages in relation to carriage of the passenger, baggage and cargo, regardless of the cause of action under this Act...shall be brought, subject to conditions and limit of liability provided in this Act*".



- It should stop the need for claimants to sue multiple defendants (based on Section 618 of the Thai CCC), and the approach adopted to date of settling claims on a percentage commercial basis to dispose of them.
- Potentially quicker resolution of cargo claims because of the application of (unbreakable) liability limits.

Anything to do?

Carriers, airport authorities and ground handlers should be aware of the Act (and their rights/defences thereunder) when handling/defending cargo, passenger and property damage related aviation claims in Thailand, and to ensure claims are pursued in the correct court.

Review any existing claims in Thailand where proceedings have not yet been commenced.

Conclusion

For carriers familiar with handling claims under MC99 (and/or other versions of the Conventions) the Act should provide a more standardised approach to claims handling in Thailand than was previously the case. Further legislative changes are expected so defendants should ensure they continue to follow all changes at a local level and/or speak to their legal advisors.

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