

Thailand's New Air Carriage Act

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A new law on air carriage came into effect in Thailand on May 14, 2015. The law, called the International Air Carriage Act (Air Carriage Act), covers air carrier liability for accidents, delays, and cargo losses. Until now, Thailand did not have any specific legislation governing air carriage liability, although claims could be brought under the general provisions of the Civil and Commercial Code.

The more detailed provisions contained within the Air Carriage Act therefore provide a welcome degree of certainty for air carriers and passengers alike. The Act is also generally consistent with the Montreal Convention 1999, the international airline liability treaty, of which Thailand is not a member. The Air Carriage Act brings Thailand closer to international standards, and may signal a new willingness by the Thai government to ratify the Montreal Convention.

Liability for Bodily Injury or Death

Under the new law, an air carrier is liable for a passenger's death or injury when the accident occurred either on board the aircraft or during embarkation or disembarkation. The liability level is determined, in part, by a plaintiff's contributory negligence. The Air Carriage Act, like the Montreal Convention, does not define what it means to be "on board," or "embarking" or "disembarking." Interpretation of these terms will be left to the individual courts. Since Thailand has a civil law system, each case will be interpreted differently.

The Air Carriage Act sets statutory limitations to liability, including liability for bodily injury or death. The carrier is liable for damages of up to 113,000 special drawing rights (SDR) per passenger (about THB 5.29 million or USD 158,725). Plaintiffs cannot bring claims for losses over this amount, unless the damage resulted from an intentional act or a negligent act when knowing that damage may occur.

Under the law, advance payments can be requested by passengers entitled to claim compensation to meet "immediate economic needs." The law further states that advance payments should not be construed as admissions of liability. The payments can also be offset against any subsequent damages paid by the air carrier.

Liability for Checked Baggage and Delays

The air carrier is also liable for damage arising from the destruction or loss of checked baggage. Liability attaches only if the event that caused the destruction occurred on board the aircraft or if the carrier controls the checked baggage. The Air Carriage Act does not define these terms, so they will be interpreted differently by the national courts. The air carrier is automatically liable for damage to or loss of unchecked baggage when the damage is due to the carrier's agents.

International Air Carriage Act Key Provisions:

- ✓ Air carrier liability for accidents, flight delays, baggage, and cargo losses
- ✓ Liability is limited to statutory amounts
- ✓ Applies to international and domestic air carriage

The carrier's liability for baggage losses is limited to SDR 131 (about THB 6,127 or USD 183) for each passenger. Similar to the exception to the liability limits for bodily injury or death, plaintiffs cannot recover more than SDR 131 unless the loss resulted from an intentional act or negligent act when knowing that damage may occur.

An air carrier is also liable for damage caused by flight delays. To escape liability, the carrier must prove that it took measures to avoid the damage. The carrier's liability for damage to passengers caused by delays is limited to SDR 4,694 (about THB 220,000 or USD 6,506). For baggage-related damages caused by delays, the carrier's liability is limited to SDR 131 SDR (about THB 6,127 or USD 183) per passenger.

Importantly, air carriers cannot "contract out" of liability. Under the Air Carriage Act, any contractual clause seeking to remove a carrier's liability or limit liability to an amount lower than the maximum limits is void. The law also specifically states that the voided clause does not render the entire agreement void.

Liability for Cargo Losses

The Air Carriage Act contains provisions governing liability for air cargo. A carrier is liable for damages caused by the loss or damage to cargo when the event causing the damage took place during the carriage by air. The carrier is also liable for damage to cargo that resulted from delays, unless the carrier can prove that it "took all measures" to avoid the damage. A carrier's liability for damage to cargo for destruction, loss, damage, or delay is limited to SDR 19 per kilogram (about THB 892 or USD 26). The carrier is also prohibited from exonerating or limiting itself from liability.

Jurisdiction

The Air Carriage Act applies equally to domestic carriage and international carriage. All cases brought in relation to domestic carriage by air must be brought before the Central Intellectual Property and International Trade Court in Bangkok. But strangely, the Air Carriage Act does not mention jurisdiction for cases involving international carriage. This deviates from the Montreal Convention, which has specific provisions on jurisdiction. Moreover, the Air Carriage Act makes no mention of handling disputes by arbitration—another difference with the Montreal Convention. Issues involving jurisdiction over cases related to international carriage will therefore be decided by the individual court.

The implementation of international standards with respect to air carrier liability promises a higher level of protection to passengers, who will no longer have to prove any breach of contract or wrongful act by the carrier to be entitled to compensation. Carriers and their insurers meanwhile will benefit from greater predictability and will be protected from inflated or frivolous claims, allowing them to better manage operational risk. The new legislation is therefore a welcome development that should serve to enhance the reputation of the aviation industry in Thailand.

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This summary is designed to provide general information only and is not offered as specific advice on any particular matter.

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