

ABSTRACT

Bilateral air transport agreements (bilaterals) in which two governments agreed to exchange traffic rights on a reciprocal basis routinely contain a traditional clause which specifically identifies beneficiaries in terms of “nationality” that “each Contracting Party reserves the rights to withhold, revoke or suspend, or impose such conditions as it may deem necessary with respect to the operating permission of the designated airlines, in any case where it is not satisfied that substantial ownership and effective control of designated airlines are vested in nationals of the other Contracting Party”, that is, they recognize the nationalities of owners and controllers as a genuine link for determining nationality of airlines. To ensure compliance with the nationality provision in bilaterals, most national civil aviation acts contain Articles which translate such provision into a national requirement.

However, while an air transport industry has been growing progressively together with a wave of a concept of “globalization” which has played an important role in air industry, the traditional provision in bilaterals and national requirement have become an obstacle to achieve the globalization. Consequently, international organizations as well as like-minded States require other States to relax or remove the ownership and control restrictions in negotiating agreements or arrangements relating to exchange traffic rights and also in national requirement. The International Civil Aviation Organization (ICAO) proposed that the traditional provision in bilaterals should be replaced with “a principal place of business and effective regulatory control” criteria.

In this thesis, I had examined some foreign countries’ law and policy of substantial ownership and effective control of airlines required for their designated airlines and in determining nationality of designated airlines of other Contracting Party. I have also found that such countries have a similar problem, an interpretation of the ownership and control requirements because of complexity of a structure of shareholders and beneficiaries as well as an effective control power of board of directors. Moreover, I have found that such countries contain a specific act applied to airline businesses. These acts also include a part of an issue of air operating licence which requires the ownership and control restrictions.

On the contrary, Thai law has no specific law concerning airlines business operation. Announcement No. 58 of the National Executive Council dated January 26, 1972 which is an only primary law provided for airlines business operation doesn't contain any inclusive criteria. Therefore, this has resulted in difficulties in various aspects. These include the requirements in determining nationality of airlines can be changed easily. Furthermore, it is inconvenient to seek provisions to be applied when airlines are in compliance to the national requirements. Also, a power of authorities to consider and determine the nationality is uncertain. As a result of the foresaid examples and for the purpose of developing this unique business, I propose to provide a specific law relating to airline business operation including one part of an issue of air operating licence for airlines proposing international air service. The nationality requirements are also included in this part.