

**2019 PROTOCOL 3 ON THE EXPANSION OF FIFTH FREEDOM
TRAFFIC RIGHTS BETWEEN CONTRACTING PARTIES
(AIR TRANSPORT AGREEMENT BETWEEN THE GOVERNMENTS
OF THE MEMBER STATES OF THE ASSOCIATION OF SOUTHEAST
ASIAN NATIONS AND THE GOVERNMENT OF THE PEOPLE'S
REPUBLIC OF CHINA)**

Signed on 15 November 2019 in Ha Noi, Viet Nam

The Governments of Brunei Darussalam, the Kingdom of Cambodia, the Republic of Indonesia, the Lao People's Democratic Republic, Malaysia, the Republic of the Union of Myanmar, the Republic of the Philippines, the Republic of Singapore, the Kingdom of Thailand and the Socialist Republic of Viet Nam, Member States of the Association of Southeast Asian Nations ("ASEAN") (hereinafter referred to collectively as "ASEAN Member States" and individually as "ASEAN Member State") and the Government of the People's Republic of China ("China"), hereinafter referred to collectively as "Contracting Parties" or individually as "Contracting Party";

RECALLING the Air Transport Agreement between the Governments of the Member States of the Association of Southeast Asian Nations and the Government of the People's Republic of China signed on 13 January 2011 (hereinafter referred to as the "Agreement");

RECOGNISING that Annex III of the Agreement provides for the conclusion of Implementing Protocols of the Agreement;

DESIRING to remove restrictions on air services with a view to achieving full liberalisation between and beyond ASEAN and China, Protocol 2 on Fifth Freedom Traffic Rights between Contracting Parties signed on 19 November 2014 (hereinafter referred to as "Protocol 2") is hereby expanded to include additional points,

HAVE AGREED AS FOLLOWS:

**ARTICLE 1
ROUTING, FREQUENCIES AND TRAFFIC RIGHTS**

1. Each ASEAN Member State shall be entitled to:
 - (a) full fifth freedom traffic rights on any number of frequencies of passenger and/or cargo services with any aircraft type, from one of the 18 named points in ASEAN, which is a point in the ASEAN Member State designating the airline(s), via any of the 18 named points in ASEAN, to any of the 36 named points in China, and beyond to any of the 18 named points in ASEAN and vice versa; and
 - (b) fifth freedom traffic rights for up to 14 weekly passenger and/or cargo services with any aircraft type from one of the 10 named points in ASEAN, which is a point in the ASEAN Member State designating the airline(s), via any points outside China and ASEAN to any of the 10 named points in China, and beyond to any points outside China and ASEAN, and vice versa.

2. China shall be entitled to:
- (a) full fifth freedom traffic rights on any number of frequencies of passenger and/or cargo services with any aircraft type from any of the 36 named points in China, via any of the 18 named points in ASEAN, to any of the 18 named points in ASEAN, and beyond to any of the 18 named points in ASEAN, and vice versa; and
 - (b) in relation to each ASEAN Member State fifth freedom traffic rights for up to 14 weekly passenger and/or cargo services with any aircraft type from any of the 10 named points in China, via any points outside China and ASEAN, to any of the 10 named points in ASEAN, which is a point in that ASEAN Member State, and beyond to any points outside China and ASEAN, and vice versa.
3. For the purposes of this Article:
- (a) “18 named points in ASEAN” means, Bandar Seri Begawan, Preah Sihanouk, Siem Reap, Mataram, Medan, Luang Prabang, Savannakhet, Kota Kinabalu, Penang, Nay Pyi Taw and any other one point in Myanmar except Yangon, Davao and any other one point in Philippines except Manila, Singapore, Chiang Mai, Rayong, Quang Ninh and any other one point in Viet Nam except Ha Noi and Ho Chi Minh City;
 - (b) “36 named points in China” means Changchun, Changsha, Chengdu, Chongqing, Dalian, Fuzhou, Guilin, Guiyang, Haikou, Harbin, Hohhot, Kashgar, Kunming, Lanzhou, Lhasa, Sanya, Shenyang, Nanning, Ningbo, Urumqi, Wuhan, Xi’an, Xiamen, Xining, Xishuangbanna, Yanji, Yinchuan, Zhengzhou, Hefei, Shijiazhuang, Nanchang, Taiyuan, Jinan, Tianjin, Shantou, and Jinjiang;
 - (c) “10 named points in China” means Changsha, Chengdu, Chongqing, Guilin, Kunming, Nanning, Urumqi, Xi’an, Xiamen or Fuzhou, Zhengzhou; and
 - (d) “10 named points in ASEAN” means, Bandar Seri Begawan, Preah Sihanouk, Mataram, Luang Prabang, Kota Kinabalu, any other one point in Myanmar except Yangon, any other one point in the Philippines except Manila, Singapore, Chiang Mai, any other one point in Viet Nam except Ha Noi and Ho Chi Minh City.
4. (a) Each Contracting Party shall at least one month prior to the exercise of the traffic rights by the designated airline(s) of the Contracting Party to the point(s) which are subject of the written notification, give written notice to the Secretary-General of ASEAN (hereinafter referred to as the “Depositary”) of its nomination of:
- (i) the one point in each of Myanmar, Philippines and Viet Nam as referred to in paragraph 3(a) and/or 3(d); and/or
 - (ii) either Xiamen or Fuzhou as referred to in paragraph 3(c).
- The Depositary shall promptly inform each Contracting Party of such written notification.
- (b) Each Contracting Party may revise its nomination of any of the one points in Myanmar, Philippines or Viet Nam, or of Xiamen or Fuzhou. Any such revision shall be made in accordance with the procedure under paragraph 4(a).

**ARTICLE 2
FINAL PROVISIONS**

1. This Protocol shall be deposited with the Depository, who shall promptly furnish a certified copy thereof to each Contracting Party.
2. Each Contracting Party shall complete its relevant internal legal procedures necessary for the entry into force of this Protocol and shall, after the completion of its internal legal procedures, deposit instrument of ratification, approval or acceptance with or give written notification to the Depository, who shall promptly inform each Contracting Party of such deposit or notification.
3. This Protocol shall enter into force on the date of deposit with or notification to the Depository pursuant to paragraph 2 from:
 - (a) China; and
 - (b) at least two ASEAN Member States,and shall enter into force only among the Contracting Parties that have deposited instrument of ratification, approval or acceptance with or given their written notifications to the Depository.
4. For a Contracting Party depositing instrument of ratification, approval or acceptance or giving its written notification after the date of entry into force of this Protocol pursuant to paragraph 3, this Protocol shall enter into force for that Contracting Party on the date of its deposit of instrument of ratification, approval or acceptance or given written notification.
5. The rights and obligations among the Contracting Parties for which this Protocol has entered into force pursuant to paragraphs 3 and 4 shall supersede their rights and obligations as are provided for in the Protocol 2.
6. This Protocol shall, upon the deposit of instrument of ratification, approval, and acceptance with, or notification, to the Depository by all Contracting Parties, replace the Protocol 2.
7. Any amendment to the provisions of this Protocol shall be effected by the consent of all Contracting Parties, as provided for under Article 22 (Amendment and Modification) of the Agreement.

IN WITNESS WHEREOF, the undersigned, being duly authorised to sign by their respective Governments, have signed this Protocol.

DONE at Ha Noi, Viet Nam, this Fifteenth of November, in the Year Two Thousand and Nineteen, in duplicate in the Chinese and English languages, both texts being equally authentic. In the event of divergence of interpretation, the English text shall prevail.