



The Bottom Line

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AIRFREIGHT LIMITS OF LIABILITY INCREASE UNDER THE MONTREAL CONVENTION

Summary

On December 28, 2019, the limitation of liability for cargo lost or damaged during international air transportation between countries that are signatories to the Montreal Convention increased from 19 Special Drawing Rights (SDRs) per kilogram to 22 SDRs per kilogram, based on the weight of the package lost or damaged.

Background

The Montreal Convention (formerly known as the Warsaw Convention) is a treaty with more than 90 countries subscribing to it. The Convention, signed in 1999 (MC99) established airline liability in the case of delay, damage or loss of baggage and cargo. It unified all the different international treaty regimes covering airline liability that had developed haphazardly since 1929. MC99 is designed to be a single, universal treaty to govern airline liability around the world. Special Drawing Rights (SDRs) are supplementary foreign exchange reserve assets defined and maintained by the International Monetary Fund (IMF). SDRs are units of account for the IMF, and not a currency per se. They instead represent a claim to currency held by IMF member countries for which they may be exchanged. SDRs were created in 1969 to supplement a shortfall of preferred foreign exchange reserve assets, namely gold and U.S. dollars. One SDR was initially defined as US \$1, equal to 0.888671 grams of gold. Today, the value one SDR is calculated by adding five major currencies (the U.S. dollar, Euro, Japanese yen, pound sterling, and Chinese renminbi), converted to U.S. dollars and prorated to represent that currency's percentage of the SDR. After the collapse of the gold system in the early 1970s, the SDR has taken on a less important role. Acting as the unit of account for the IMF has been its primary purpose since 1972. The SDR comes to prominence when the U.S. dollar is weak or otherwise unsuitable to be a foreign exchanged reserve asset. Liability of air carriers for cargo lost or damaged during transit has been limited since the dawn of commercial air transportation. The original Warsaw Convention [iii] limited liability to 250 French gold Francs per kilogram. The Montreal Protocol to the Warsaw Convention [iv] set the limitation at 17 SDRs per kilogram. On December 30, 2009, the limitation was increased to 19 SDRs per kilogram. Now, as of December 28,

2019, the limitation under the current Convention will be 22 SDRs per kilogram. The carrier is liable for loss or damage to the cargo if the loss or damage took place during the carriage by air. Carrier defenses to liability are: (1) inherent defect, quality or vice of that cargo; (2) defective packing of that cargo performed by a person other than the carrier or its servants or agents; (3) an act of war or an armed conflict; and/or (4) an act of public authority carried out in connection with the entry, exit or transit of the cargo.

Current Status

The Convention requires that the established limitation of liability be reviewed in five year intervals, taking into account the rate of inflation. A review will also take place any time one-third of the parties request a review and the rate of inflation has exceeded 30% since the previous revision. The International Civil Aviation Organization (ICAO) bases its decision to increase the liability limit on a consumer price inflation index; if such index demonstrates an inflation increase by a factor in excess of 13% over the last time the limits were increased, the ICAO will recommend a corresponding adjustment to its Member States. In April 2019, the ICAO Council determined the inflation threshold had been triggered by a factor of 13.9% and proposed an increase from 19 SDRs per kilo to 22 SDRs per kilo.

Impact

This adjustment in SDR will potentially expose air transport providers, like ICAT, to a 14% increase in exposure to cargo claims, and a similar increase in recoveries for shippers who experience a loss. Because SDRs are essentially an average of several international currencies, which undergo fluctuation as economies rise and fall, this year's adjustment results in an exposure or recovery similar (in adjusted value) to what it was in 2009—the last time the SDR rate was adjusted. The value of an SDR is approximately \$1.38 U.S. Dollars (USD), resulting in a new limitation of liability of approximately \$30 USD per kilogram, up from about \$26 USD per kilogram.

RESOURCES:

[The Montreal Convention 1999 \(IATA.org\)](#)

[Liability Limits Under Montreal Convention to be Increased \(ACN\)](#)