



## **A UNIVERSAL LIABILITY REGIME FOR INTERNATIONAL CARRIAGE BY AIR – MONTREAL CONVENTION 1999**

The Montreal Convention 1999 (“MC99”) establishes a modern compensatory regime in respect of passengers who suffer death or injury caused by an accident during international carriage by air. It also provides a simplified liability regime for baggage and air cargo where it also facilitates the use of electronic documents of carriage in place of paper. It was designed to replace the Warsaw Convention system that had developed haphazardly since 1929 with a single, modern and universal liability regime.

### **The Issue**

MC99 entered in to force in 2003 and now has 119 Parties. This is equivalent to almost 60% of all International Civil Aviation Organization (ICAO) States. There are 73 States that have yet to ratify MC99 including a number of fast growing aviation markets, including Bangladesh, Indonesia, Sri Lanka, Russia, Thailand and Vietnam. The result is that the patchwork of different liability regimes that MC99 was designed to replace continues to exist around the world. This causes complexity in claims handling and means that in many cases, passengers do not have the enhanced protections that MC99 provides (see below). Likewise, airlines and shippers are unable to enjoy the significant benefits that MC99 offers them (also described below).

Recognizing the need for a universal liability regime and the many benefits that MC99 provides to all stakeholders, the 38<sup>th</sup> ICAO Assembly passed Resolution A38-20 in October 2013. This urges those States that have not yet done so to ratify MC99 as soon as possible.

### **IATA’s Position**

IATA believes that a global industry needs a single, universal liability regime governing international carriage of passengers, baggage and cargo by air. IATA supports ICAO’s call for all remaining countries that have not yet done so to ratify MC99 as soon as possible. MC99 offers the following benefits:

#### *i. For Passengers*

- Under MC99 claims are subject to a much more generous compensation in the case of death or injury. MC99 abolished the arbitrary limits that existed under the Warsaw Convention system and established a two-tier strict liability regime. Claims in excess of the MC99 liability limits may succeed unless the carrier can show that it was not guilty of negligence in causing death or injury. Thus, the possibility of uncompensated losses in a major aircraft accident case is significantly reduced.
- MC99 also includes a number of other consumer friendly provisions such as advance compensation payments and a wider choice of jurisdictions in which to bring claims.
- Liability limits are reviewed by ICAO every five (5) years, ensuring MC99 remains modern and relevant.

#### *ii. Air Cargo*

- In the carriage of air cargo involving countries that have not ratified MC99 but continue to be subject to the Warsaw Convention 1929 (WC29) and Hague Protocol 1955 (HP55) regimes, physical paper records are required in order for the carrier to rely on the liability limits set out in the Convention. This means that paper documents



of carriage such as the air waybill must accompany the shipment throughout its journey.

- MC99 permits the use of electronic air waybills (e-AWBs) and other documents of carriage, without impacting the carrier's ability to rely on the liability limits set out in the Convention. Thus, MC99 is a pre-requisite for paperless air cargo initiatives such as e-freight. Eliminating paper from the air cargo supply chain will deliver cost savings and environmental benefits while also improving accuracy, shipment times and security.
- MC99 also offers unbreakable liability limits for cargo carriers. Thus, carriers enjoy predictability in respect of their potential liability making it easier to obtain insurance, avoid protracted litigation and simplify claims handling. Shippers can organize specific insurance for any high value, low weight items.

### Key Facts and Figures

- The 38<sup>th</sup> ICAO Assembly passed Resolution A38-20 urging states to ratify MC99 as soon as possible. A copy of the Assembly Resolution can be found here: <http://www.icao.int/Meetings/a38/Pages/resolutions.aspx>
- Several key aviation markets remain outside the MC99 regime. These include: Bangladesh, Indonesia, Russia, Sri Lanka, Thailand and Vietnam.
- A list of States Parties to MC99 can be found at: [http://www.icao.int/secretariat/legal/List%20of%20Parties/Mtl99\\_EN.pdf](http://www.icao.int/secretariat/legal/List%20of%20Parties/Mtl99_EN.pdf)
- MC99 liability limits are expressed in Special Drawing Rights (SDR). The value of the SDR is determined by the value of a basket of currencies important to the world's trading and financial systems.
- Under MC99 carrier liability is limited to:
  - SDR 113,100 for death or injury of passengers. To defend claims in excess of that amount, the carrier must show that the damage was not due to the negligence/wrongful act of the carrier or solely due to the negligence/wrongful act of another person.
  - SDR 19 per kilogram for destruction, loss or damage of cargo.
- One of the key benefits of MC99 is that it facilitates paperless air cargo. This brings efficiency, quality, security, cost and environmental benefits. For more information on how IATA is working with industry partners to remove paper for the air cargo supply chain visit <http://www.iata.org/e-freight>