



Information Article

Air Carrier (Airline) Liability - in the event of Air Accidents causing Death or Injury

WARSAW CONVENTION

- The Convention for the Unification of Certain Rules Relating to International Transportation by Air usually referred to as the Warsaw Convention (convention) is an international convention which regulates liability for international carriage of persons, luggage, or goods performed by aircraft for reward.
- The convention was originally signed in 1929 in Warsaw. It was amended in 1955 at the Hague and in 1975 in Montreal.

MONTREAL CONVENTION

- Montreal Convention Convention for the Unification of certain rules for international carriage by air
- Signed 28 May 1999
- Location Montreal , Canada
- Effective 4 November 2003
- Parties 108 (107 states + EU)^[1]
- Depositary - International Civil Aviation Organization

137 states total had ratified as at 2024



BestPractice

Etcetera





Relevance

- ✓ Compliance with Montreal Convention 1999 (as updated)
- ✓ Compliance with any other related legislation (and / or similar - not necessarily in any form of a legal / quasi-legal etc. basis) as applicable - whether international (e.g. Warsaw Convention [System]), national, regional, tribal etc.
- ✓ Even if accident circumstances dictate that Montreal Convention / other appropriate legislation etc. does **not** apply - many air carriers may still be '*expected*' to follow the requirements of the Montreal Convention (or similar e.g. Warsaw Convention / System) nonetheless - as a matter of 'best practice'

Note - whilst the subject of air carrier (airline) liability obviously extends beyond death and injury - this information article only (the one you are reading now) covers the latter areas i.e. it does **not** cover e.g. cargo, baggage, delay, loss and similar liabilities





Introduction

Various international laws etc. provide for a world-wide system of standards and rules re air travel. Included amongst the latter are common rules regarding minimum liability limits for the air carriage of passengers, cargo and luggage - in the event of death, injury, damage, delay, loss etc.

Such laws were first agreed and introduced worldwide in 1929 ([Warsaw Convention](#) - as amended). Over the intervening period there have been a number of changes to / and reviews of said Warsaw Convention, including increases in associated (monetary) liability limits. Said changes together with the original Convention are collectively known as the '**Warsaw System**'

However, with the passing of time such monetary liability limits have gradually become 'devalued' in comparison with the present-day situation. Furthermore, the Warsaw System has (arguably) now become somewhat fragmented and confusing in its application

The [Montreal Convention](#) of 1999 subsequently made significant improvements (but has **not** replaced) to the Warsaw System i.e. the two systems are currently (as at 2024) running side by side (as will be seen in more detail later herein)

Whilst maintaining **some** of the more important 'core' provisions of the Warsaw System, the main aim of the Montreal Convention was to provide a significant degree of uniformity / predictability for establishing airline (air carrier) liability in the case of **death, injury, delay** etc. to passengers - and also e.g. in case of delay, damage or loss of baggage, cargo etc.

The convention effectively aimed to modernise and unify all of the different, international treaty regimes covering airline liability - which had developed somewhat haphazardly under the Warsaw System, since its inception. Amongst other things, the Montreal Convention provides for:

- **Unlimited liability in principle** in the event of death or injury of air passengers
- **Advanced financial payments** to meet the immediate economic needs of entitled persons
- The possibility of **bringing law suits before courts in a passenger's principal place of residence**
- The clarification of rules on respective liabilities of **contractual** carriers vs **actual** carriers (e.g. as typically applies in codeshare, alliance and equivalent flight operations)
- The obligation for air carriers to **maintain adequate insurance**

Under the Montreal Convention the monetary liability limits are set in units of [Special Drawing Rights \(SDR\)](#) - relating to a mix of currency values established by the International Monetary Fund (IMF)

The [current value of an SDR in most world currencies can be found here](#). Said monetary liability limits are typically reviewed every 5 years





Example: Air Travel on European Union Air Carriers / Airlines

The **European Union** (EU) is an excellent example of the **Montreal Convention** being adopted and used by a formal grouping of countries - in this case the 27 (as at 2024) countries of the EU

So as to improve the 'liability regime' in the event of death of / injury to passengers of EU airlines, member states originally introduced legislation in 1997 (i.e. prior to introduction of the Montreal Convention) which ensured that the same liability limits were in place in all EU member states. This legislation (EU Regulation 2027/1997) did not, however, provide for damage, delay or loss of luggage - which still relied on the Warsaw System

[EU Regulation 889/2002](#) amended the above (1997) EU Regulation to effectively **bring all EU states into line with the Montreal Convention**. It also harmonised liability limits and legal defences in respect of European carriers, irrespective of whether an accident happens on an internal, intra-EU or international flight

Under Regulation 889 / 2002, an EU air carrier / airline must be insured up to a level which is adequate to ensure that all persons entitled to compensation receive the full amount to which they are entitled. Each passenger must also be provided with a written indication (notice) of the applicable liability limits for the appropriate flight, in respect of:

- Death or injury (unlimited liability)
- Luggage which is destroyed, lost or damaged
- Damage, loss etc. occasioned by delay etc.

There is no financial limit on the liability of an EU airline for damages sustained by a passenger in the event of death or injury. However, for associated damages up to 128,821 SDRs, the airline cannot * contest claims for compensation. Above that amount, the airline can defend itself against such a claim by proving (if applicable) that it was not negligent or otherwise at fault

* Note - This (EU Regulation 889 / 2002) wording was **NOT strictly CORRECT** in terms of what the Montreal Convention required here at the time. For the correct version see the British Airways example ('Disclaimer') shown near the bottom of the **next** page. Some other EU wording errors are also highlighted in said British Airways example. (Note: As at 2024 and later, this latter situation might have changed. Interested readers should check accordingly)

If a passenger is killed or injured, the air carrier must make an **advance** payment, to cover immediate economic needs, within 15 days from the identification of the person entitled to receive such payment

In the event of death, this advance payment shall not be less than the equivalent of 16,000 SDRs (again, the interested reader should check to see if the latter figure is still current)

Such advance payment does not constitute recognition of liability and may be offset against any subsequent sums that **are / have been** paid e.g. compensation payments

Any court action to claim damages must be taken **within 2 years** from the date the aircraft arrived or should have arrived at its destination airport





Example: Air Travel - Non-EU Air Carriers / Airlines

Due to the complex nature of the liability laws governing air travel today - associated liability limits in place in various countries around the world can and do vary. In countries that have * ratified the Montreal Convention, the liability limits are typically the same as / similar to those for EU air carriers (as updated with the passing of time) shown on the previous page

* Around 137 countries (around 67% of the world's total) had ratified the **Montreal Convention / System** as at early 2024. Most other countries continue to use one or other versions of the 'relatively inferior' (compared to Montreal Convention) **Warsaw Convention / System**

Thus a 'patchwork' of liability regimes continues to exist around the world - resulting in potential unfairness, confusion, complexity etc. e.g. in determining which regime covers a particular passenger (and / or cargo and baggage) itinerary. Claims handling and litigation from accidents or incidents are thus still unnecessarily complicated (and potentially expensive) in such circumstances

Recognising the significant benefits that the Montreal Convention offers, the 39th Assembly (October 2016) of the UN's International Civil Aviation Organization (ICAO) adopted Resolution A39-9. The latter urged all UN member states (countries) that had not already done so - to ratify the (**Montreal**) convention as soon as possible. The airline trade body (IATA) is / was supporting this Resolution and also working with governments etc. to promote the benefits of the Montreal Convention's ratification

Air passengers are strongly advised to take out adequate travel insurance in advance of their flights (such insurance is typically **not** adversely impacted upon by the impacts of the Warsaw System, the Montreal Convention etc.) **They are also advised to check** (in advance of travel) **the specific liability limits governing the transporting airline(s)**

However, whether or not an 'entitled person' would be entitled to any such **advance payment** in the event of an associated injury or death, and how much, **typically depends on the law(s) of the specific country / countries concerned**

Example Only

British Airways - Notice of Liability Limitations (as at March 2015) (Selected Extract Only)

Disclaimer:

This is a notice required by European Community Regulation (EC) No. 889/2002

This **notice** cannot be used as a basis for a claim for compensation, nor to interpret the provisions of the Regulation or the Montreal Convention. It does not form part of the contract between the carrier(s) and you. No representation is made by the carrier(s) as to the accuracy of the contents of this notice





When reading this notice British Airways advises you to note the information shown in the three bullet points immediately below:

- This EU required notice is **inaccurate** in stating that 'for damages up to 128,821 SDRs the air carrier cannot contest claims for compensation'

Under the Regulation and the Montreal Convention the correct position is as follows:

..... for damages up to 128,821 SDRs in respect of death or bodily injury, caused by an accident on board the aircraft or during embarking or disembarking, **the carrier cannot exclude or limit its liability excepting where there is contributory negligence**.....

- Also the limit of the air carrier's liability for baggage delays, destruction, loss or damage to baggage is xxxx SDRs in total
- The statement that "if the name or code of an air carrier is indicated on the ticket, that carrier is the contracting carrier", **does not apply in all cases**

Notice - Air Carrier Liability for Passengers and their Baggage

This information notice summarises the liability rules applied by Community air carriers as required by Community (EU) legislation and the Montreal Convention (UK and this British Airways were part of the EU when this was written in 2015)

Compensation in the Case of Death or Injury

There are no financial limits to the liability for passenger injury or death

For damages up to 128,821 SDRs the air carrier **cannot** contest claims for compensation. Above that amount, the air carrier can defend itself against a claim by proving that it was not negligent or otherwise at fault

Advance Payments

If a passenger is killed or injured, the air carrier must make an advanced payment to cover immediate economic needs, within 15 days (from the identification of the person entitled to compensation). In the event of death, this advance payment shall not be less than 16,000 SDRs

Liability of Contract and Actual Carriers

If the air carrier actually performing the flight is **not the same** as the contracting air carrier, the passenger has the right to address a complaint or to make a claim for damages against either. If the name or code of an air carrier is indicated on the ticket, that air carrier is the contracting air carrier

Time Limit for Action

Any action in court to claim damages must be brought within two years from the actual date of arrival of the aircraft, or from the date on which the aircraft ought to have arrived





Example Only

EMIRATES airline

CONDITIONS OF CARRIAGE FOR PASSENGERS AND BAGGAGE (*Selected Extracts Only Shown*)

(Note: See also: <https://www.emirates.com/us/english/before-you-fly/travel/rules-and-notice/>)

Published: 28th Dec 2019

ARTICLE 15 - LIABILITY FOR DAMAGE

15.1 Our liability will be determined by applicable law and these 'Conditions of Carriage'. Where **other** airlines are involved in your journey, their liability will be governed by applicable law and, unless these / our 'Conditions of Carriage' state otherwise, **their own** 'conditions of carriage'

'Applicable law' typically comprises the Warsaw Convention and / or the Montreal Convention and / or laws etc. which apply in individual countries. The Warsaw Convention and the Montreal Convention apply to international carriage as defined in those Conventions. Provisions concerning our liability are set out in Articles 15.2 to 15.6

15.2 Scope of Liability

We will only be liable for Damage occurring during carriage performed by us or in relation to which we have a legal liability to you. Where we issue a ticket for carriage by **another** airline or we check-in your baggage for carriage by **another** airline, we only so do as an **agent** for that airline

15.3 General Limitations

15.3.1 Wherever the Warsaw Convention and / or Montreal Convention apply to your carriage - our liability will be subject to the rules and limitations of the applicable Convention.

15.3.2 We will be wholly or partly exonerated from liability to you for damage - if we can prove that same was caused or contributed to by **your** negligence or other wrongful act or omission.

15.3.3 We **may** be wholly or partly exonerated from liability to you for damage if we prove that same did not result from our negligence **or** that it resulted from the negligence of a third party **or** that we took certain measures to avoid said damage **or** that it was impossible to take such measures.

15.3.4 We will not be liable for any damage arising from our compliance with applicable local law or government rules and regulations or from your failure to comply with same - except as may be provided by the Warsaw Convention or the Montreal Convention.

15.3.5 Except where we state otherwise in these Conditions of Carriage, we will be liable to you only for any compensatory damages you are entitled to recover for proven losses and costs - under the Warsaw Convention and / or the Montreal Convention and / or local laws which may apply.





15.3.6 Your contract of carriage with us (including these Conditions of Carriage and all applicable exclusions and limits of liability) applies for the benefit of our Authorised Agents, servants, employees and representatives - to the same extent as they apply to us. Accordingly, the total amount recoverable from us and our Authorised Agents, servants, employees and representatives will not be more than our own liability - if any

15.3.7 Nothing in these Conditions of Carriage:

15.3.7a. Gives up or waives any exclusion or limitation of our liability available under the Warsaw System and / or the Montreal Convention and / or other applicable local law - unless otherwise expressly stated in writing by us.....or

15.3.7b. Prevents us from excluding or limiting our liability under the Warsaw Convention and / or the Montreal Convention as applicable - or under any other laws which apply or gives up any defence available to us thereunder - against any public social security body or any person liable to pay (or who has paid) compensation for the death, wounding or other bodily injury of a Passenger

15.4 Death or Injury of Passengers

Our liability for damage sustained by you in the event of death, wounding or other bodily injury caused by an accident is subject to the rules and limitations of applicable law as well as the following **supplementary** rules:

15.4.1 Our liability for proven damages will not be subject to any financial limit - be it defined by law, the Warsaw System or otherwise;

15.4.2 For any proven damages up to the National Currency Equivalent of **100,000 SDRs** (or, where the Montreal Convention is applicable, the National Currency Equivalent of **128,821 SDRs**), any defence based on proof that we and our agents have taken all necessary measures to avoid the damage, or that it was impossible for such measures to have been taken, will not apply to us

15.4.3 We agree to make advance payments to you or your heirs subject to the following terms and conditions:

15.4.3a - the person receiving payment is a natural person (that is to say, a person in the ordinary sense of the word as opposed to artificial persons or corporations);

15.4.3b - you are (or the person receiving payment is) entitled to compensation under applicable laws;

15.4.3c - payments will be made only in respect of immediate economic needs;

15.4.3d - the amount of a payment will be proportional to the economic hardship being suffered as a result of the death, wounding or bodily injury - save that, in the case of death, it will not be less than the National Currency Equivalent of **15,000 SDRs per Passenger**. (Note: 2024 update - this latter amount is likely to have increased as at 2024 e.g. possibly to 16,000 SDRs - possibly more?)





15.4.3e - payment will not be made later than 15 Days after the identity of the person entitled to compensation has been established under applicable laws;

15.4.3f - no person will be entitled to receive a payment if he or she or the passenger to whom the payment relates - caused or contributed to the Damage to which the payment relates, by his or her negligence;

15.4.3g - all payments will be made subject to the condition that they will be returned to us on proof that the recipient has not complied with or satisfied Article 15.4.3(b) or he / or she / or the Passenger to whom the payment relates, caused or contributed to the Damage to which the payment relates;

15.4.3h - payments will be off-set against any subsequent sums payable in respect of our liability under applicable laws;

15.4.3i - except for payment of the minimum sum specified in Article 15.4.3(d) in respect of death, a payment will not exceed the maximum damages for which we may be liable to pay the recipient;

15.4.3j - the making of a payment will not constitute recognition or admission of liability by us;

15.4.3k - no payment will be made unless the person receiving payment gives us a signed receipt which also acknowledges the applicability of Articles 15.4.3(g), (h) and (j) - and

15.4.3l - save to the extent in conflict with any applicable law, and subject to payment of the minimum sum specified in Article 15.4.3(d) in the case of death, our decision in relation to the payment amount will be final

15.7 Advice to International Passengers on Limitation of Liability

Where your journey involves an ultimate destination or stop in a country other than the country of origin, you are advised that the Warsaw System or the Montreal Convention may be applicable to your entire journey, including any section entirely within the country of origin or destination.

Where the Montreal Convention **is** applicable, the airline is liable for proven damages for death or personal injury - and certain defences to liability specified by that Convention will be inapplicable for damages not exceeding the National Currency Equivalent of **128,821 SDRs**.

Where the Montreal Convention is **not** applicable, the conditions of carriage of many airlines (including Emirates, as specified in Article 15.4 above) provide that the liability for death or bodily injury **will not** be subject to any financial limit defined by the Warsaw System and that, in respect of such damage up to a maximum of the National Currency Equivalent of **100,000 SDRs**, any defence to liability based on proof that they have taken all necessary measures will not apply

Where no such provisions are included in the airline's conditions of carriage, note that:





(i) For such Passengers on a journey *to, from or with an agreed stopping place in the U.S.A.* - the Warsaw System and *special contracts* of carriage embodied in applicable tariffs, provide that the liability of certain airlines, being parties to such special contracts - for death of or personal injury to Passengers - is limited in most cases to proven damages not to exceed **US\$75,000** per Passenger, and that this liability up to such limit will **not** depend on negligence on the part of the airline

(ii) For such Passengers travelling by an airline **not** a party to such special contracts **or** on a journey to which the **Warsaw System applies** - and which is not to / from or having an agreed stopping place in the U.S.A. - the liability of the airline for death or personal injury to Passengers is limited in most cases to **US\$10,000** or **US\$20,000**

(iii) Some countries impose higher limits than those stated herein [as per 15.7 (i) and (ii) above]

The names of airlines or parties to such special contracts of the type mentioned in 15.7 (i) above, are available at all ticket offices of such airlines and may be examined on request.

Additional protection can usually be obtained by purchasing insurance from a private company. Such insurance is not affected by any limitation of the airline's liability under the Warsaw Convention or the Montreal Convention or such special contracts of carriage of the type mentioned in 15.7 (i) above. For further information, please consult your airline or insurance company representatives.

Note: The limit of liability of **US\$75,000** specified in 15.7 (i) above is inclusive of legal fees and costs except that, in case of a claim brought in a state where a provision is made for separate award of legal fees and costs, the limit will be the sum of **US\$58,000** exclusive of legal fees and costs.

16.3 Time Limit for All Actions for Damages

'You' will have no right to compensation for any damages if an action is not brought within 2 years of the date of your arrival at the place of destination - or the date on which the aircraft was scheduled to arrive - or the date on which the carriage ceased / stopped





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MONTREAL CONVENTION 1999 (relevant extracts)

Convention for the Unification of Certain Rules for International Carriage by Air - Montreal, 28 May 1999 (became effective Nov 2003)

The Montreal Convention (formally known as the 'Convention for the Unification of Certain Rules for International Carriage by Air') is a treaty adopted by a diplomatic meeting of ICAO member states in 1999. It amended important provisions of the previous Warsaw Convention's / System's regime concerning compensation for victims of air disasters

The Convention re-established urgently needed uniformity and predictability of rules re the international carriage (by air) of passengers, baggage and cargo etc.

Whilst maintaining the core provisions which have fairly successfully served the international air transport community for several decades (i.e. under previous Warsaw Convention / System regime), the new convention achieves the very necessary / required modernisation in a number of key areas. For example, it protects passengers by introducing a two-tier liability system that eliminates the previous requirement of proving wilful neglect by the air carrier to obtain more than US\$75,000 in damages

As well as other advantages of the Montreal Convention, it is expected to reduce protracted litigation. Appropriate extracts are shown starting just below:

Montreal Convention - Chapter III - Liability of Carrier and & Extent of Compensation for Damage

Article 17 - Death and injury of passengers + damage to baggage

1. The carrier is liable for damage sustained in case of death or bodily injury of a passenger upon condition only that the accident which caused the death or injury took place on board the aircraft or in the course of any of the operations of embarking or disembarking
2. Not included in this information article as it refers to baggage
3. Not included in this information article as it refers to baggage
4. Not included in this information article as it refers to baggage

Article 21 - Compensation in case of death or injury of passengers

For damages arising under paragraph 1 of Article 17 **not exceeding 128,821** Special Drawing Rights (SDR) for each passenger, the carrier shall **not be able to exclude or limit its liability**





However, the carrier shall **not** be liable for damages arising under paragraph 1 of Article 17 - to the extent that they exceed (for each passenger involved) **128,821** SDR - if it (the carrier) proves that such damage was **not** due to its negligence **OR** was attributable solely to the negligence of a third party. This defence is not available where damages of **less** than 128,821.00 SDR are sought

Article 28 - Advance payments

In the case of aircraft accidents resulting in death or injury of passengers, the carrier shall, **if required by its national law**, make ***** advance payments without delay - to a natural person or persons who are entitled to claim compensation in order to meet their immediate economic needs. Such advance payments shall not constitute a recognition of liability and may be offset against any amounts subsequently paid as damages by the carrier

***** Note that the amount of the advanced payment is not specified in the Montreal Convention but, as an example only, one airline includes the following in its 'conditions of service':

*'.....If a passenger is killed or injured, the air carrier must make an advance payment, to cover immediate economic needs, within 15 days from the identification of the person entitled to eventual compensation. In the event of death, this advance payment shall not be less than **16,000** SDRs.....'*

When Traveling Abroad - the Montreal Convention Likely Applies

Forbes - 2023

<https://www.forbes.com/advisor/credit-cards/travel-rewards/montreal-convention-international-travel-and-trip-delays/>

With some exceptions, the Montreal Convention applies when passengers travel on an airline reservation which includes travel between two countries which have ratified the associated treaty. If travel is entirely domestic, then the Montreal Convention does **not** apply. This is also the case if one of the countries involved has **not** signed either the Montreal Convention or the Warsaw Convention.

Both countries must be parties to at least one of the two Conventions, with at least one being part of the Montreal Convention for it to apply e.g. travel from Los Angeles to Tokyo would be covered by the Montreal Convention, as travel is international between two treaty countries. However, travel from Los Angeles to New York City is not covered. If travel is entirely domestic, then **local law** applies. In the United States, the Department of Transportation rules govern domestic travel.

Domestic connections with an international destination are covered if the connecting flight is on the same ticket as the international flight. If you travel from Los Angeles to Frankfurt via New York City, and your luggage is damaged on the first domestic flight, the Montreal Convention applies. But, if your domestic and international flights are on separate tickets, then your domestic flight is not covered.

Considering the wide adoption of the Montreal Convention, these scenarios apply to almost all international air travel. Rare exceptions e.g. travel between two countries not part of any convention - may complicate matters





Finally

Lastly, there is also some additional (useful) information re all of the above - which can be found at the end of the below link:

<https://hshlawyers.com/blog/what-canadian-airline-travelers-need-to-know-about-the-montreal-convention/>

