

29 December 2006  
Ref : Chans advice/72

To: Transport Industry Operators

## **Montreal Convention 28/5/1999**

The Montreal Convention means the Convention for the Unification of Certain Rules for International Carriage by Air done at Montreal on 28/5/1999. More than 60 countries have ratified the Montreal Convention ("MC"). On 15/12/2006, Hong Kong put the MC into force as the law under the Carriage by Air (Amendment) Ordinance 2005.

The MC applies to the international carriage of persons, baggage or cargo by air between two States Parties e.g. Hong Kong and the USA. At the same time, Hong Kong still applies the Amended Warsaw Convention ("AWC") to those international air carriages with countries which have adopted the AWC but not the MC.

In this issue of Chans advice, we try to highlight those differences (between the MC and the AWC) in which air carriers may be interested as far as carriage of cargoes is concerned.

### No more Article 8(c) notice

Article 8(c) of the AWC requires that the air waybill shall contain a notice to the consignor to the effect that if the carriage involves an ultimate destination or stop in a country other than the country of departure, the Warsaw Convention may be applicable and that the Convention governs and in most cases limits the liability of carriers in respect of loss of or damage to cargo. Article 9 of the AWC stipulates that if the air waybill does not include the notice required by Article 8(c), the carrier shall not be entitled to limit its liability to 250 gold francs per kilogramme as provided in Article 22(2).

There is no such notice requirement under the MC. This should be good to carriers as they do not have to worry the loss of liability limitation resulting from forgetting to print a particular notice in the air waybills.

### Cargo loss or damage

According to the MC, Article 18(1) states that the carrier is liable for damage sustained in the event of the destruction or loss of, or damage to, cargo upon condition only that the event which caused the damage so sustained took place during the carriage by air. Article 18(2) provides the following four defences to the carrier:

- (a) inherent defect, quality or vice of that cargo;
- (b) defective packing of that cargo performed by a person other than the carrier or its servants or agents;
- (c) an act of war or an armed conflict; and/or
- (d) an act of public authority carried out in connection with the entry, exit or transit of the cargo.

In the AWC, Article 18(1) requires the carrier to be liable for damage sustained in the event of the destruction or loss of, or of damage to any cargo if the occurrence took place during the carriage by air. However, Article 20 gives a wider defence to the carrier by saying that the

carrier is not liable if it proves that it and its servants or agents have taken all necessary measures to avoid the damage or that it was impossible to take such measures.

It is clear carriers have to assume more liability with little defence for cargo loss or damage under the MC.

### Liability limitation

Article 22(3) of the MC limits the liability of the carrier in the case of cargo destruction, loss, damage or delay to 17 Special Drawing Rights (“SDR”) per kilogramme. This is about US\$25.5/kg.

In the AWC, the carrier’s liability for cargo loss, damage or delay is limited to 250 gold francs (a currency unit consisting of 65.5 milligrammes of gold of millesimal fineness 900) per kilogramme. This is about US\$24/kg.

The liability limitation of the two Conventions are of no big difference. However, for the daily calculation of the liability limitation amount, it should be easier to get the exchange rate of the SDR than the gold franc. For gold franc, one has to apply to Monetary Authority for the exchange rate. However, for a quick calculation, one can visit the website of the International Monetary Fund to get the everyday exchange rate of the SDR. Accordingly, the MC should be better in terms of its easier calculation of the liability limitation amount.

### Deliberate or reckless conducts

According to Article 25 of the AWC, the carrier cannot limit its liability to 250 gold francs/kg for the cargo loss, damage or delay if such resulted from an act or omission of the carrier, its servants or agents, (i) done with intent to cause the loss, damage or delay; or (ii) recklessly and with knowledge that the loss, damage or delay would probably result.

However, in the MC, there is no such similar provision disallowing carriers to limit liability to 17 SDR/kg. It seems unfair to cargo owners that carriers can still limit their liability for the cargo loss, damage or delay even such resulted from deliberate or reckless conducts of carriers, their servants or agents.

From the above analysis, we think carriers would like and welcome the MC. The carrier may want to incorporate the MC into its air waybill contract for those shipments the MC or AWC are not compulsorily applicable. Please feel free to contact us if you have any questions on the MC or air waybills.

Simon Chan  
Director  
E-mail: [simonchan@sun-mobility.com](mailto:simonchan@sun-mobility.com)

Richard Chan  
Director  
E-mail: [richardchan@sun-mobility.com](mailto:richardchan@sun-mobility.com)

10/F., United Centre, Admiralty, Hong Kong. Tel: 2299 5566 Fax: 2866 7096  
E-mail: [gm@sun-mobility.com](mailto:gm@sun-mobility.com) Website: [www.sun-mobility.com](http://www.sun-mobility.com)  
CIB A MEMBER OF THE HONG KONG CONFEDERATION OF INSURANCE BROKERS

---

Multi-modal transportation involves far more complicated liability regime than port-to-port or airport-to-airport carriage. Pure international sea or air transport often affords better protection by international conventions. Conversely, multi-modal transport entails a variety of operational risk elements on top when the cargo is in- transit warehouse and during overland delivery. Fortunately, these risks are controllable but not without deliberate efforts. Sun-Mobility is the popular risk managers of many multi-modal operators providing professional assistance in liability insurance, contract advice, claims handling, and as a matter of fact risk consultant for their staff around-the-clock.