



28 February 2020
Ref : Chans advice/227

To: Transport Industry Operators

Montreal Convention

We mentioned in our Chans advice/225 that the limit of liability under the Montreal Convention for carriage of cargoes was increased from 19 SDR/kg to 22 SDR/kg of the gross weight of the cargoes effective on 28 December 2019. We have recently received some forwarders' request asking us to talk about the major terms in the Montreal Convention. We in this issue would like to introduce the Montreal Convention's major provisions as follows:

Montreal Convention ("MC")

- Convention for Unification of Certain Rules for International Carriage by Air done at Montreal on 28 May 1999

Application

- international carriage of persons, baggage or cargo performed by aircraft

Air Waybill

- an air waybill shall be delivered in respect of the carriage of cargo
- air waybill shall include:
 - ▶ places of departure and destination
 - ▶ weight of consignment
- air waybill shall be made out in three original parts
 - ▶ first part shall be marked "for the carrier" and signed by consignor
 - ▶ second part shall be marked "for the consignee" and signed by consignor and carrier
 - ▶ third part shall be signed by carrier who shall hand it to consignor
- non-compliance with documentary requirements regarding air waybill shall not affect existence or validity of contract of carriage, which shall still be subject to MC including those rules relating to limitation of liability
- consignor is responsible for correctness of particulars and statements relating to cargo and shall indemnify carrier against all damage suffered by carrier due to irregularly, incorrectness or incompleteness of particulars and statements furnished by consignor

Consignor's cargo disposition right

- prior to cargo arrival at place of destination, consignor has right to dispose of cargo by
 - ▶ withdrawing cargo at airport of departure or destination, or
 - ▶ stopping it in course of journey on any landing, or
 - ▶ calling for cargo to be delivered to a new consignee, or
 - ▶ requiring cargo to be returned to airport of departure
- consignor must not exercise its right of disposition in such a way as to prejudice carrier or other consignors and must reimburse any expenses
- if carrier carries out consignor's cargo disposition instructions without requiring production of part of air waybill delivered to consignor, carrier will be liable for any damage caused to any person who is lawfully in possession of that part of air waybill

Consignee's cargo disposition right

- on arrival of cargo at place of destination, consignee is entitled to require carrier to deliver cargo to consignee
- carrier has duty to give notice to consignee as soon as cargo arrives

Resumption of consignor's cargo disposition right

- if consignee declines to accept cargo or cannot be communicated with, consignor resumes its right of disposition

Carrier's liability and defences

- carrier is liable for destruction or loss of, or damage to, cargo if the event took place during carriage by air
- carriage by air comprises period when cargo is charge of carrier
- carriage by air does not extend to any carriage by land, sea or inland waterway outside an airport
- carrier is not liable for cargo destruction, loss or damage resulting from
 - ▶ inherent defect, quality or vice of cargo
 - ▶ defective cargo packing
 - ▶ war or armed conflict
 - ▶ public authority's act relating to entry, exit or transit of cargo
- carrier is liable for cargo delay unless carrier proves that it and its servants and agents took all measures that could reasonably be required to avoid delay or that it was impossible for it or them to take such measures

Carrier's liability limitation

- carrier's liability for cargo destruction, loss, damage or delay is limited to 22 Special Drawing Rights ("SDR") per Kilogram unless consignor has made, at time when cargo was handed over to carrier, a special declaration of interest in delivery at destination and has paid a special supplementary sum
- carrier's liability limitation shall be based on total weight of packages of cargo destructed, lost, damaged or delayed
- however, when destruction, loss, damage or delay of a part of cargo affects value of other packages covered by same air waybill, total weight of such packages shall also be taken into consideration in determining limit of liability

Invalidity of contract terms

- any contract terms tending to relieve carrier of liability or to fix a lower limit than that of MC shall be null and void

Freedom to contract

- nothing in MC shall prevent carrier from laying down contract terms which do not conflict with Convention

Basis of claims

- any action for damages however founded, whether under MC or in contract or in tort or otherwise, can only be brought subject to conditions and such limits of liability as set out in Convention
- punitive, exemplary or any other non-compensatory damages shall not be recoverable

Servants and agents

- servant or agent of carrier shall be entitled to conditions and limits of liability which carrier itself is entitled to invoke under MC

Timely notice of complaints

- receipt of cargo by consignee without complaint is prima facie evidence that cargo has been delivered in good condition
- in case of cargo damage, consignee must complain to carrier within 14 days from date of cargo receipt
- in case of cargo delay, complaint must be made within 21 days from date when cargo has been placed at consignee's disposal
- every complaint must be made in writing and given or dispatched within times aforesaid
- if no complaint is made timely as aforesaid, no action shall lie against carrier, save in case of fraud on carrier's part

Jurisdiction

- an action for damages must be brought, at option of Plaintiff, in one of States Parties, either before court of domicile of carrier or of its principal place of business, or where it has a place of business through which contract has been made or before court at place of destination

Suit time limit

- right to damages shall be extinguished if an action is not brought within a period of two years, from date of arrival at destination, or from date on which aircraft ought to have arrived, or from date on which carriage stopped

Combined Carriage

- MC applies only to carriage by air in case of combined carriage partly by air and partly by any other mode of carriage
- nothing in Convention shall prevent parties from inserting in document of air carriage conditions relating to other modes of carriage

Please feel free to contact us if you have any questions about the Montreal Convention.

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