

Airline Operators' Insurance Requirements in the UAE: Is the minimum adequate?

Angelique Watkins

a.watkins@tamimi.com

From January 2011, the requirements also extended to those flying over UAE territory. The liabilities of aircraft operators in the UAE under the Commercial Transactions Law, Number 18 of 1993, are similar to (but not identical to) those encompassed in the Montreal Convention for the Unification of Certain Rules for International Carriage ("Convention"). Those countries that are signatory to the Convention are obliged under Article 50 to ensure that air carriers are adequately insured to cover the liabilities under the Convention. In the UAE, Article 7(6) of the Civil Aviation Act, Number 20 of 1991 also provides a requirement for aircraft operating in or over UAE airspace to hold adequate insurance in respect of ground injury.

But does the GCAA's IB minimum insurance requirements, truly satisfy the requirements stipulated by the Convention or even provide for sufficient cover in cases where local UAE law is applied? In some aspects it does, in others, it falls short.

The IB sets forth minimum insurance requirements for an aircraft in respect of liability to third parties, injury, death, loss or damage to baggage and cargo. The IB also places an obligation upon the Operators and the Insurers to advise the GCAA of circumstances that may affect the insurance cover or its validity. Under the IB, liability to third parties is based upon an aircraft's Maximum Take Off Mass (or weight) ("MTOM") with a minimum insurance requirement range of 750,000 SDRs per accident for an aircraft under 500 kilograms MTOM, to 700,000,000 per accident for an aircraft over 500,000 kilograms MTOM. This requirement is for both those aircraft operating in the UAE and those flying over UAE territory. Liability for passengers, baggage and cargo, is limited to those landing in and taking off from the UAE. In respect of passengers the minimum insurance coverage is set at 250,000 SDRs per passenger for commercial operations and 100,000 SDRs per passenger for non-commercial operations by an aircraft with an MTOM of under 2,700 kilograms. Cover for liability in respect of baggage claims is set at 1,000 SDRs, and for cargo, it is set at 17 SDRs.

Unfortunately there has not been an updated IB regarding minimum insurance coverage since the increase of the Convention limits of liability that were determined in 2009 and came into force in 2010. Article 24 of the Convention provides that the limits of liability are to be reviewed by the International Civil Aviation Organisation ("ICAO") at five-year intervals by reference to an inflation factor which corresponds to the accumulated rate of inflation since the date of entry into force of the Convention.

For death and bodily injury under the Convention, the original limit of liability was set at 100,000 SDRs per person; this was increased in 2010 to 113,100 SDRs per person. Damage caused by delay of passengers, was originally limited to 4,150 SDRs and have been increased to 4,694 SDRs. Loss, damage or delay to passengers' baggage was originally limited to 1,000 SDRs per person and is now 1,131. Loss, damage or delay to cargo, was originally limited to 17 SDRs per kilogram and is currently 19 SDRs per kilogram.

In most cases the IB set minimum insurance requirements of 250,000 SDRs per passenger will cover the increased limit imposed by the ICAO and the limits contained in the UAE Civil Transactions Law, however for lost, damaged or delayed baggage and cargo the minimum amounts stipulated in the IB fall short. Furthermore, the Convention and the UAE law also specify that an airline may set higher limits of liability, or do away with the limit of liability entirely. Therefore in circumstances where an airline has not

stipulated that it would enforce the maximum limits of liability as stipulated in the Montreal Convention or in the UAE Civil Transactions Law (or been silent upon their application), but has rather stated that liability is not limited or is fixed at a higher rate, this may lead to a situation whereby an airline who has complied with the bare minimum of cover required, is found liable for an amount that exceeds the limits of liability set out in the Convention and the UAE law and therefore, is liable for a claim that exceeds their insurance coverage.

Aircraft operators need to ensure that if they have waived the limit of liability stipulated in either or both the Convention and the UAE law, that it has sufficient insurance in place to cover possible claims. Furthermore, in cases where the Convention does not apply, UAE law and limits may be applied and this, in the case of compensation for lost, damaged or delayed luggage or cargo, is calculated at a maximum rate of 150 Dirhams per kilogram (unless a declaration of a higher value is provided) which equates to approximately 26 SDRs per kilogram, significantly higher than that imposed by the Convention and higher than the liabilities anticipated in the IB.

Operators who fail to meet at least the minimum insurance requirements as stipulated in the IB may find themselves subject to the sanctions outlined in the UAE Civil Aviation Law 20 of 1991, in brief, this may be suspension or revocation of licenses, airworthiness certificates, authorizations and permits, bans and even jail for up to one year and a fine of up to 50,000 Dirhams.

Irrespective of the limits outlined in the IB, Operators should assess their own situations and likely exposure to claims that may exceed the minimum insurance requirements. Aside from bearing in mind the revised limits of liability under the Convention and obtaining insurance that adequately covers these limits, they should look at their exposure in other countries, such as EU countries where EC Regulation 785 of 2004 provides for compulsory insurance of air carriers and operators in for their liabilities in respect to passengers, baggage, cargo and third parties on the ground. Furthermore, a close assessment of an Operator/Carrier's terms and conditions of carriage and air waybills should be made to determine if the Convention and UAE limits are being relied upon, or whether an increased limit of liability has been incorporated into the contractual documents. If higher limits of liability have been agreed, this should be reflected and covered in the insurance arrangements.