

Limits to Liability under Montreal 1999 in the UAE

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The applicability of international treaties depends on the ratification status of the particular convention in wherever the places of departure and arrival are located.

In the United Arab Emirates, domestic carriage by air of passengers, baggage and cargo is governed by the provisions of Federal Law No 18 of 1993 (the Commercial Transactions Law), providing for the rules of Air Carriage. It is established by precedent that the application of the aforementioned provisions is generally limited to domestic carriage by air and does not apply to international carriage by air.

The UAE is a party to a number of international conventions and protocols relating to international carriage by air, most notably The Warsaw Convention of 12 October 1929, as amended by The Hague Protocol of 28 September 1955 and The Montreal Protocol No.4, and The Montreal Convention of 28 May 1999.

With limited exception, where points of departure and arrival are located within the European Union ("EU"), the Montreal Convention will apply to carriage by air of passengers, baggage and cargo. Considering the popularity of the EU as a destination for travellers from the UAE, it may be useful for passengers to be better acquainted with the Montreal Convention and the rights it affords them.

This article gives a brief overview of the Montreal Convention and provides a summary of applicable liability limits in respect of death or injury; baggage that is destroyed, lost or damaged; and damage occasioned by delay.

An Overview

The Montreal Convention, formally known as the Convention for the Unification of Certain Rules for International Carriage by Air, is a 1999 convention negotiated and adopted by the International Civil Aviation Organization (ICAO) member states in Montreal, Canada ("MC99"). The Convention was created with the intention of replacing the arguably out-dated and complex Warsaw Convention of 1929 (as amended) and providing an exclusive and uniform framework for liability in the international air carriage of passengers.

113 parties including the United Arab Emirates have ratified the Montreal Convention as of date. MC99 has become domestic law by ratification in the UAE by virtue of Federal Decree No. 13 of 2000, which was published in the Official Gazette on 31st January 2000.

Articles 17-19 of the MC99 impose strict liability on airlines in three cases:

- accidental death or bodily injury of a passenger while on board, embarking, or disembarking the aircraft
- damage to cargo; and
- damage resulting from delay of passengers, baggage, or cargo.

Under MC99 the liability limits are set in Special Drawing Rights (SDR), which are a mix of currency values established by the International Monetary Fund (IMF). The current value of one SDR in US dollars is

approximately \$1.41 (revised daily). The ICAO reviews the liability limits every five years.

Death or injury to passengers

MC99 does not impose a limitation on the amount that can be recovered in the case of bodily injury or death, but when damages are sought in excess of approximately USD 160,000 (113,100 SDR), MC99 permits the airline to prove that the damage was not due to its negligence or that it was solely due to the negligence of another party. For damages up to approximately USD 160,000 (113,000 SDR), the airline cannot challenge a claim for compensation.

In the event of death or injury, the airline must make an advance payment to cover immediate economic needs within fifteen days. An advance payment does not constitute recognition of liability and may be offset against any subsequent sums that are paid.

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

Lost or damaged baggage

An airline is liable if baggage is lost, destroyed or damaged. If the baggage in question was checked-in, the airline is liable even if it is not at fault, unless the baggage is defective. An airline's liability is subject to proof of fault in respect to unchecked baggage.

The airline is liable for damages up to approximately USD 1,600 (1,131 SDR). A passenger benefits from a higher limit of liability by making a special declaration before checking in his or her baggage, and by paying a supplementary fee to the airline.

A passenger must complain in writing to the airline within seven days if the baggage was damaged or destroyed.

In the event a passenger's baggage did not arrive within 21 days from when it was supposed to arrive, it will be considered lost. In this case, the passenger must make a written complaint about his or her lost baggage as soon as possible after it has been missing for 21 days.

Delayed passengers and baggage

In the event of delay, an airline is liable to pay for damages up to approximately USD 6,600 (4,694 SDR). If baggage is delayed, the airline is liable to pay for damages up to approximately USD 1,600 (1,131 SDR). However, an airline is not liable for damages where it took all reasonable measures to avoid such a delay, or if it was impossible for the airline to take such measures.

This summary is intended for guidance purposes only and must not be used as a basis for a claim for compensation, or as basis to interpret the provisions of the Montreal Convention of 1999 or national law. The Transport, Insurance Department regularly advises on airline liability and personal and cargo claims. For further information, please contact Yazan Saoudi (y.saoudi@tamimi.com) or Bushra Abutayeh (b.abutayeh@tamimi.com).