

AVIATION LAW ALERT

**GUIDANCE ON THE APPLICATION OF
LIABILITY REGIMES TO CLAIMS****Limits of Liability**

The limits of liability for baggage or cargo loss, delay or damage and for passenger delay under the various Convention regimes are as follows:

LIMITS OF LIABILITY

Subject	Warsaw Convention	Warsaw Convention Amended By Hague Protocol	Warsaw Convention Amended by Montreal Protocol 4	Montreal Convention
Passenger Delay	125,000 francs (US \$8,300)	250,000 francs (US \$16,600)	250,000 francs (US \$16,600)	4150 SDRs (US \$6140 Approx.)
Baggage loss, delay or damage for checked baggage	250 francs per kilogram (US \$20.00 per kilogram) (US \$9.07 per pound)	250 francs per kilogram (US \$20.00 per kilogram) (US \$9.07 per pound)	250 francs per kilogram (US \$20.00 per kilogram) (US \$9.07 per pound)	1000 SDRs per passenger (US \$1480 approx.)
Unchecked (carry on) baggage The passenger must prove the carrier's negligence	5000 francs per passenger (US \$400.11)	5000 francs per passenger (US \$400.11)	250 francs per kilogram (US \$20.00 per kilogram) (US \$9.07 per pound)	1000 SDRs per passenger (US \$1480 approx.)
Cargo loss, delay or damage	250 francs per kilogram (US \$20.00 per kilogram) (US \$9.07 per pound)	250 francs per kilogram (US \$20.00 per kilogram) (US\$9.07 per pound)	17 SDR per kilogram (US \$25.16 approx. per kilogram)	17 SDR per kilogram (US \$25.16 per kilogram)

The guidance also applies to claims of personal injury and death.

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Currency Exchange

The SDR limit must be converted into the currency of the Country in which the claim is brought. For example, if a claim is brought in the U.S. against Lufthansa, the German airline, the conversion to be used is SDRs to U.S. Dollar. If the same claim were brought in Germany, the conversion would be SDRs to Deutschmarks.

If the claim were brought in the U.S., the claim should be paid in dollars. If it is brought in Germany, the claim should be paid in Deutsch marks.

Principal Differences of Liability Among the Regimes

One of the differences among these regimes relates to the failure of the carrier to provide certain information on the air waybill or baggage check, such as the weight and number of packages. Under the Warsaw regime, such a failure may result in the loss or waiver by the carrier of its limit of liability. There are a few conflicting decisions in the United States on the issue whether the failure to provide certain information in the case of baggage will necessarily result in the loss of baggage limits of liability.

Under the Montreal Convention, the limit is unbreakable. Under both Warsaw and Montreal regimes, the carrier can avoid liability completely if he can prove that there was negligence on the part of the passenger in the case of baggage, or on the part of the shipper in the case of cargo. Also, with respect to both regimes, in the case of delay of baggage, cargo or the passenger, if the carrier can prove that it took all necessary measures to avoid the delay, the carrier will be exonerated.

Determining the Applicable Regime

To determine which regime applies, you must examine the ticket of the claimant or the record of his itinerary in the case of an electronic ticket. In the case of cargo, you need to examine the carrier air waybill. The transportation must provide for one-way transportation between two countries which are parties to the Montreal Convention or the Warsaw Convention (whether amended or not amended by the Hague Protocol or Montreal Protocol 4), or provide for round trip transportation from one of these Convention countries with a stopping point in another country.

The Montreal Convention went into effect on November 4, 2003. The countries which ratified the Montreal Convention (as of August 2006) are in Column D. This Column D list will need to be amended from time to time because more countries are expected to ratify the Montreal Convention. Column A lists most of the countries of the world which have ratified the Warsaw Convention, but not the 1955 Hague Protocol or Montreal Protocol 4. Column B lists most of the countries which ratified the Hague Protocol amending the Warsaw Convention. Column C lists most of the countries which ratified Montreal Protocol 4 amending the Warsaw Convention. For a full list of countries which ratified the Warsaw Convention or the Warsaw Convention amended by the Hague Protocol or amended by Montreal Protocol 4, see www.icao.int/icao/en/leb.

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COLUMN A Warsaw Convention Countries	COLUMN B Warsaw Convention Amended by Hague	COLUMN C Warsaw Convention Amended by Montreal Protocol 4	COLUMN D Montreal Convention	COLUMN D (Con't.) Montreal Convention
Armenia	Algeria	Argentina	Albania (NC)	Luxembourg (WH)
Bolivia	Bahamas	Australia	Austria (WH)	Macedonia (NC)
				Madagascar (WH)
	Bangladesh	Azerbaijan	Bahrain (MP4)	Maldives (WH)
				Malaysia (WH)
				Mali ()
Honduras	Congo	Chile	Barbados (WC)	Malta (WC)
Indonesia	Costa Rica	Costa Rica	Belgium (MP4)	Mexico (WH)
			Belize (NC)	Monaco (WH)
Myanmar			Benin (WH)	Mongolia (WC)
			Bosnia & Herzegovina (NC) ¹	
Suriname	Fiji	Ethiopia	Botswana (WC)	Namibia (NC)
	India	Ghana	Brazil (MP4)	Netherlands (MP4)
Uganda	Iran	Guatemala	Bulgaria (WH)	New Zealand (MP4)
	Iraq	Guinea	Cameroon (WH)	Nigeria (WH)
	Libya	Honduras	Canada (MP4)	Norway (MP4)
				Oman (MP4)
				Pakistan (WH)
		Israel	Cape Verdi (WH)	Panama (WH)
	Morocco	Mauritius	China (WH)	Paraguay (WH)
		Nauru	Colombia (MP4)	Peru (WH)
			Cook Islands (NC)	
			Cote d' Ivoire (WH)	
			Croatia (MP4)	
	Papua New Guinea	Niger	Cuba (WH)	Poland (WH)
	Philippines	Oman	Cyprus (MP4)	Portugal (MP4)
		Serbia and Montenegro	Czech Rep. (WH)	

¹ Bosnia & Herzegovina were separated from Yugoslavia. It is unclear whether they accepted Yugoslavia's accession as a Warsaw/Hague State.

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COLUMN A Warsaw Convention Countries	COLUMN B Warsaw Convention Amended by Hague	COLUMN C Warsaw Convention Amended by Montreal Protocol 4	COLUMN D Montreal Convention	COLUMN D (Con't.) Montreal Convention
	Russian Federation		Denmark (MP4)	Qatar (WH)
				Republic of Korea (WH)
				Romania (WH)
			Dominican Republic (WH)	
	South Africa	Togo	Ecuador (MP4)	Saint Vincent and the Grenadines (WH)
	Sri Lanka	Turkey	Egypt (MP4)	Saudi Arabia (WH)
				Singapore (MP4)
			El Salvador (WH)	
	Trinidad & Tobago	Uzbekistan	Estonia (MP4)	Slovakia (WH)
	Tunisia		Finland (MP4)	Slovenia (MP4)
				South Africa (WH)
	Ukraine		France (WH)	Spain (MP4)
	Venezuela		Gambia (NC)	Sweden (MP4)
	Viet Nam		Germany (WH)	Switzerland (MP4)
	Yemen		Greece (MP4)	Syrian Arab Republic (WH)
	Zambia		Hungary (MP4)	Tonga (WH)
			Iceland (MP4)	United Arab Emirates (MP4)
			Ireland (MP4)	Tanzania (NC)
			Italy (MP4)	United States (MP4)
			Japan (MP4)	United Kingdom (MP4)
			Jordan (MP4)	Vanuatu (WH)
			Kenya (MP4)	Uruguay (WC)
			Kuwait (MP4)	European
			Latvia (WH)	Community (NC)
			Lebanon (MP4)	
			Lithuania (WH)	

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For the purpose of determining which regime applies to a particular claim, the countries in columns A, B, C and D will be labeled respectively: (A), (B), (C) and (D) countries. There are only a few countries which are not parties to any of these Conventions, for example, Thailand. Such countries will be identified as a (E) countries.

If, on the ticket, the origination of the transportation is Ethiopia (a (C) country) to the United States (a (D) country) with the destination Ethiopia (a (C) country) (that is, a roundtrip ticket), the routing will be charted as: (C) to (D) to (C) and the regime which will govern the transportation will be the Warsaw Convention as amended by Montreal Protocol 4. Thus, (C) to (D) to (C) = Warsaw Convention as amended by Montreal Protocol 4.

Column D also includes information indicating the most recent version of the Warsaw Convention ratified by that country before it ratified the Montreal Convention.

WC = Warsaw Convention

WH = Warsaw Convention as amended by Hague

MP4 = Warsaw Convention as amended by Montreal Protocol 4

NC = No convention (meaning that the party never ratified any version of the Warsaw Convention or the Montreal Convention)

This information is necessary to determine which regime applies when there is travel between a Montreal Convention country (a “D” country) and a non-Montreal Convention country (an “A”, “B”, or “C” country).

Under the various Warsaw Conventions, when a country ratified a later version of the convention, it automatically ratified the previous versions. Because the Montreal Convention is a new treaty, a country could ratify it without ever ratifying any version of the Warsaw Convention. This complicates matters because for a convention to apply, both parties must have ratified the same Convention. Therefore, to determine which Convention applies when transportation is one-way (namely, origin and destination points are in different countries) between a D country and an A, B or C country, you must determine which was the most recent treaty that both countries had ratified.

For example, if cargo is transported on a flight from France (a “D” country) to India (a “B” country), you must determine which treaty was the one that both parties had ratified. Because it is in Column B, we know that India is a Hague country, and on the chart next to France, the letters “WH” tell us that the Warsaw Convention as amended by the Hague was the most recent version of the Warsaw Convention which France was a party to, before it ratified the Montreal Convention. Therefore, the Warsaw Convention as amended by the Hague applies.

To take another example, if cargo is shipped from India, a “B” country, to Namibia, a “D” country, no convention will apply because Namibia (described above as NC) never ratified any version of the Warsaw Convention. Therefore, the two countries have never been party to the same convention, and no convention applies.

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The following guide tracks the various possibilities of international travel:

- (A) to (B) to (A) = Warsaw Convention (unamended)
- (A) to (C) to (A) = Warsaw Convention (unamended)
- (A) to (D) to (A) = Warsaw Convention (unamended)
- (A) to (E) to (A) = Warsaw Convention (unamended)
- (A) to (A) (one way) = Warsaw Convention (unamended)
- (A) to (B) (one way) = Warsaw Convention (unamended)
- (A) to (C) (one way) = Warsaw Convention (unamended)
- (A) to (D) (one way) = Warsaw Convention (unamended)*
- (A) to (E) = no convention applies
- (B) to (A) to (B) = Warsaw Convention , as amended by Hague
- (B) to (C) to (B) = Warsaw Convention, as amended by Hague
- (B) to (D) to (B) = Warsaw Convention, as amended by Hague
- (B) to (E) to (B) = Warsaw Convention, as amended by Hague
- (B) to (A) (one way) = Warsaw Convention (unamended)
- (B) to (B) = Warsaw Convention, as amended by Hague
- (B) to (C) (one way) = Warsaw Convention, as amended by Hague
- (B) to (D) (one way) = Warsaw Convention, as amended by Hague*
- (B) to (E) (one way) = No convention applies
- (C) to (A) to (C) = Warsaw Convention, as amended by MP4
- (C) to (B) to (C) = Warsaw Convention, as amended by MP4
- (C) to (D) to (C) = Warsaw Convention, as amended by MP4
- (C) to (E) to (C) = Warsaw Convention, as amended by MP4

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(C) to (A) (one way) = Warsaw Convention (unamended)

(C) to (B) (one way) = Warsaw Convention, as amended by Hague

(C) to (C) (one way) = Warsaw Convention, as amended by the MP4

(C) to (D) (one way) = Multiple possibilities.

Depends on which is the most recent version of the Warsaw Convention ratified by the D country (if any).

(C) to (E) (one way) = No convention applies

(D) to (A) to (D) = Montreal Convention

(D) to (B) to (D) = Montreal Convention

(D) to (C) to (D) = Montreal Convention

(D) to (E) to (D) = Montreal Convention

(D) to (A) (one way) = Warsaw Convention, unamended*

(D) to (B) (one way) = Warsaw Convention, as amended by Hague*

(D) to (C) (one way) = Multiple possibilities.

Depends on which is the most recent version of the Warsaw Convention ratified by the D country (if any).

(D) to (D) (one way) = Montreal Convention

(D) to (E) (one way) = No convention applies

(E) to (E) (one way) = No convention applies

*In the case of A to D, D to A, B to D and D to B, it is possible that no Convention will apply. For A to D, and D to A, only six (6) countries (Albania, Belize, Gambia, Macedonia, Namibia and Tanzania) have ratified the Montreal Convention without ratifying some version of the Warsaw Convention. In the case of one way travel involving those countries, no Convention will apply. In the case of B to D, and D to B, only 4 additional countries (Barbados, Botswana, Malta and Mongolia) have ratified the Montreal Convention without previously ratifying the Warsaw Convention as amended by Hague (these countries ratified the unamended Warsaw Convention only). In such cases, the unamended Warsaw Convention would apply.

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Also, the following points should be kept in mind:

1. With respect to transportation within a single country listed in Column A, B, C or D (with no stopping point in another country), none of the Conventions govern. The claim is governed by local law.
2. Any number of additional stopping places between the point of origin and the point of destination on the ticket does not affect the applicability of the Regime.
3. Even though the ticketing points to a particular regime, the claimant may not be able to recover under a particular Convention, if he seeks recovery in a country which has not ratified it. For example, in transportation (D) to (A) to (D), if the claimant sues in A, Country A, not having ratified the Montreal Convention, may not recognize its applicability. However, airline customer relations officials will usually want to apply the correct regime, when a claim is presented.

If you have any questions, you can e-mail me or contact me by telephone or telefax.

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