

## 3.4.1 Passenger Protection

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## Passenger Protection in ASEAN

### ► Why enhancing passenger protection in ASEAN?



### ➤ B.2. Consumer Protection

- Consumer protection is an integral part of a modern, efficient, effective and fair market place. Consumers will demand the right of access to: adequate information to enable them to make informed choices, effective redress, and products and services that meet standard and safety requirements.
- Increased cross-border trade, use of e-Commerce and other new trading methods resulting from globalisation and technological advancement require governments to find innovative ways of protecting and promoting the interests of consumers. **This will require comprehensive and well functioning national and regional consumer protection systems enforced through effective legislation, redress mechanisms and public awareness.**



- **Strategic measures** include the following:
- i. Establish a common ASEAN consumer protection framework through higher levels of consumer protection legislation, improve enforcement and monitoring of consumer protection legislation, and make available redress mechanisms, including alternative dispute resolution mechanisms;
- ii. Promote a higher level of consumer empowerment and knowledge by addressing consumer concerns as well as enhancing consumer knowledge and advocacy;
- iii. Build higher consumer confidence and cross-border commercial transactions by strengthening product safety enforcement, stronger participation of consumer representatives, and promotion of sustainable consumption;



## ASEAN Economic Community Blueprint 2025

- iv. Encourage consumer-related matters in ASEAN policies through impact assessment of consumer protection policies and development of knowledge-based policies; and
- v. Promote consumer protection measures in products and services sectors such as finance, e-Commerce, air transport, energy, and telecommunications.



## Passenger Protection in ASEAN

- Why EU international cooperation in enhancing passenger protection in ASEAN?



## ARISE + CIVIL AVIATION PROJECT

- Activity 3.4: Enhancing national capabilities for passenger protection
- Growth of air transport may give rise to increasing dissatisfaction in terms of the quality of service provided by airlines. The experience of the EU showed a need to put certain legislation in place to ensure a level playing field in terms of the quality of service to be expected by airlines.
- The ARISE + Civil Aviation Project will seek to leverage the EU's experience in this field for the benefit and development of ASAM.



## Passenger Protection in ASEAN

- How best to enhance passenger protection in ASEAN?



## MONTREAL CONVENTION PREAMBLE:

- Montreal Convention 1999:
- THE STATES PARTIES TO THIS CONVENTION
- RECOGNIZING the significant contribution of the Convention for the Unification of Certain Rules Relating to International Carriage by Air signed in Warsaw on 12 October 1929, hereinafter referred to as the “Warsaw Convention”, and other related instruments to the harmonization of private international air law;



## MONTREAL CONVENTION PREAMBLE:

- RECOGNIZING the need to **modernize** and **consolidate** <sup>MC10</sup> the Warsaw Convention and related instruments;
- RECOGNIZING the importance of ensuring protection of the interests of consumers in international carriage by air and the need for **equitable** compensation based on the principle of restitution;



## MONTREAL CONVENTION PREAMBLE:

- REAFFIRMING the desirability of an orderly development of international air transport operations and the smooth flow of passengers, baggage and cargo in accordance with the principles and objectives of the Convention on International Civil Aviation, done at Chicago on 7 December 1944;
- CONVINCED that collective State action for further harmonization and codification of certain rules governing international carriage by air through a new Convention is the most adequate means of achieving an equitable balance of interests;
- HAVE AGREED AS FOLLOWS:



## MONTREAL CONVENTION - STATUS

- MC 99 – 15 years after entry into force:
  - 14 parties as of November 2018
  - 4 out of 10 ASEAN States are not parties yet:
    - Brunei Darussalam
    - Cambodia (signed but not ratified)
    - Lao PDR
    - Myanmar



## MONTREAL CONVENTION - SUMMARY

- MC 99 of 1999, entered into force in 2003
- Governs airline liability for passengers, baggage and cargo on international flights, in cases of:
  - Death, injury or delay to passengers
  - Delay, loss or damage to baggage
  - Delay, loss or damage to cargo



# MONTREAL CONVENTION - SUMMARY

MC99	Warsaw Conv. 1929	Hague Protocol 1955	Addtl. Protocols	Montreal Conv. 1999
Death or Injury	USD 12 000	USD 24 000	USD 25 000	USD 170 000
Baggage	USD 20/kg	USD 20/kg	USD 25/kg	USD 1 600
Cargo	USD 20/kg	USD 20/kg	USD 25/kg	USD 27/kg
Electronic air waybills?	No	No	No	Yes





MC2

## MC99: Death or bodily injury

- Sensible and fair rules for death and injury – makes available full compensation:
  - 1<sup>st</sup> tier recovery threshold (approx. USD 170 000) for death/injury arising from an accident
    - Carrier is absolutely liable up to this amount (passengers do not have to prove fault, just quantum)
  - 2<sup>nd</sup> tier: Unlimited liability, but carrier defences applicable regarding lack of negligence

### Slide 15

**MC1** Made some changes in the content of this slide, to render it more accurate.  
M. Chatzipanagiotis, 29/10/2018

**MC2** I have modified the titles of the slides on MC99. I have removed "BENEFITS for passengers", because some States may worry about the impact of the increased liability limits on their national air carriers. I think we should underline that the MC99 has struck a fine balance of interests, despite the provisions more favourable to passengers in cases of death or bodily injury. There are other provisions in MC99 that compensate therefor, especially the rules on cargo liability.  
M. Chatzipanagiotis, 29/10/2018



## MC99: Death or bodily injury

- However, no compensation for purely psychiatric injury
- Such injury recoverable only if related to bodily injury



## MC99: Additional benefits for Passengers

- Consumer friendly – can claim in five jurisdictions:
  1. Domicile of carrier
  2. Carrier's principal place of business
  3. Carrier's place of business where contract made
  4. Place of destination
  5. Passenger's place of principal/permanent residence, but ONLY for death/injury claims and IF the carrier offers flights to that place.
- Immediate assistance payments for death or bodily injury



## MC99: Loss, destruction, delay of baggage

- Carrier liable up to 1600 USD per passenger for loss/ destruction/ delay of baggage
- Passenger can declare a higher value of baggage, before flight, and receive compensation up to that value.
- No distinction as to liability limit between registered and hand luggage.
- However, for hand luggage carrier liable only if passenger proves negligence.
- Unlimited liability of the carrier in all cases, if passenger proves that the carrier acted recklessly and with knowledge that damage would probably occur.



## MC99: Review of liability limits and obligatory insurance

- Indexed limits/thresholds:
  - All limits to be revised under review clause
  - Review every 5 years if global inflation exceeds 5%
  - New limits applicable to all MS, without ratification.
  - Ensures MC 99 remains a modern and relevant regime
- Obligatory insurance of liability of air carriers.

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### Slide 19

#### MC4

I added information on revision of limits. I deleted references to EU instruments, so that we reduce the possibilities of confusion among seminar participants.

I have also added information on obligatory insurance, which plays a crucial role in practice (in practice settlements, payments etc. are conducted by the insurers, not the airlines).

M. Chatzipanagiotis, 29/10/2018



## MC99: Benefits for cargo

- Permits substitution of air waybills by other means preserving a record of carriage
- eAWB delivers improved shipment times, customs compliance, security and competitiveness of air cargo versus other modes
- Unbreakable limits for cargo – USD 27/kg
- Possibility to submit cargo claims to arbitration.



The Montreal Convention covers international carriages among the 134 countries who ratified the accord. This includes

- flights between State Parties
- round trips, i.e. flights whose place of departure and final destination, as indicated on the ticket, are within a single State Party, but include a planned stopover in another country, even if this third party has not ratified MC 99.



## Examples of applicability

- Flight EU-Thailand (both MC 99 State Parties): covered by Montreal Convention
- Round trip Indonesia (a MC99 State Party) to Brunei (not a MC 99 State Party): covered by Montreal Convention
- One-way flight Indonesia – Brunei: not covered by Montreal Convention (Brunei not a MC99 State Party)
- Domestic flight in Indonesia without stopover: not covered by Montreal Convention (domestic flight)



## MONTREAL CONVENTION - Applicability

Flight Itinerary	Planned Stopover	Applicability of Montreal Convention?
From State Party to State Party	Irrelevant	Yes
Within a single State Party	No	No
Within a single State Party	Yes, in another State Party	Yes
Within a single State Party	Yes, not in a State Party	Yes

MC7



## MONTREAL CONVENTION - Applicability

- Applies to both the contractual carrier and the actual carrier.
- Contractual carrier: the person mentioned in the contract (e.g. the carrier that issued the ticket or the tour operator who offers the flight as part of a package)
- Actual carrier: the carrier performs actually the flight.
- 2-year limitation period.
- CAUTION: Exclusivity of the application of the MC99 (if the liability requirements are not fulfilled, then no recovery possible)



MC7

I have added information, especially the distinction between contracting and actual carrier, which is of paramount importance under Reg. 261/2004.  
M. Chatzipanagiotis, 28/10/2018

MC8



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## ICAO Core principles on consumer protection

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## ICAO GUIDANCE MATERIAL – Core Principles

- **National and regional consumer protection regimes should:**
  - Reflect the principle of proportionality
  - Allow for the consideration of the impact of massive disruptions
  - Be consistent with the international treaty regimes on air carrier liability (Warsaw Convention 1929; Montréal Convention 1999)



### **Raising Awareness on Air Passengers Rights:**

- Efforts should be made to increase awareness of passengers to help them make informed choices. Air passengers should benefit from:
  - Accessible information on their rights
  - Clear guidance on legal or other protection applicable in their specific situation, including assistance expected, e.g. case of service disruption
  - Consumer education about passengers consumer rights and the available avenues for recourse in cases of disputes



### **Before Travel:**

- Passengers should have access to clear and transparent information on the air transport product sought, including:
  - Total price, including the applicable air fare, taxes, charges, surcharges and fees
  - General conditions applying to the fare
  - Identity of the airline actually operating the flight and advice on any change occurring after the purchase as soon as possible



### During Travel:

- Passengers should be kept regularly informed throughout their journey on any special circumstances affecting their flight, particularly in the event of service disruption
- Passengers should receive due attention in cases of service disruption including rerouting, refund, care and/or other compensation
- Persons with disabilities should, without derogating from aviation safety, have access to air transport in a non-discriminatory manner and to appropriate assistance.



- Mechanisms should be planned in advance by all concerned stakeholders to ensure that passengers receive adequate attention and assistance in cases of massive disruptions
- Massive disruptions include situations resulting from circumstances:
  - Outside the operator's control
  - Of a magnitude that they result in multiple cancellations and/or delays; Leading to considerable number of passengers stranded at airport



### After Travel:

- Efficient complaint handling procedures should be available
- Passengers should be clearly informed about such procedures

MC9



## Conclusions

- MC99 consolidated and modernized Warsaw System
- Significant improvement of passenger protection regarding death and bodily injury.
- More fair rules on baggage liability.
- Simplification of claims settlement procedures.
- Account taken to modern economic needs.
- Fair balance of interests.
- Ratification of MC99 implies increased reliability of national airlines.



## Conclusions

- Signing and ratification of MC99 highly recommended by both ICAO and IATA.
- State parties to MC 99 must ensure that related State laws and regulations are consistent with MC 99
- ICAO's Core Principles on air passenger protection should be adhered to by all ICAO Contracting States



## Open questions (without claim for completeness)

- Which are the difficulties States experience in signing and ratifying the Montreal Convention?
- Have all State parties to MC 99 promulgated State laws and regulations consistent with MC 99?
- Have procedures been adopted by CAAs of State parties to MC 99 which allow ready monitoring and follow-up of processing of claims/complaints for compensation by carriers?



## Open questions (without claim for completeness)

- Has a unit been created and staffed within the CAAs which allows competent monitoring and follow-up of processing of claims/complaints for compensation by carriers?
- Are passengers informed of rights/processes as per ICAO Core Principles?
- Are appropriate statistics of claims/rulings being kept in CAAs?
- Is training available in States on passenger protection regulations, procedures etc.?



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Thank you for your attention!

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