



Passenger liability plan awaits support

New compulsory passenger insurance scheme will update 1974 Athens Convention, writes James Brewer

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BACKING from only 10 countries will be needed to make a start on a new passenger liability regime that pushes up limits fivefold, governments of maritime nations have decided.

The 2002 protocol to the Athens Convention Relating to the Carriage of Passengers and their Luggage by Sea 1974 will enter into force 12 months after gaining the required acceptances.

For the first time in an IMO convention, a regional economic integration organisation will be able to sign the protocol. Such groupings will have the same rights and obligations as a state party to the agreement.

Confirmation of a drive to make compulsory insurance for passengers on ships international law has come in an official statement following the diplomatic conference at the London headquarters of the International Maritime Organisation.

IMO secretary general William O'Neil said that the 2002 protocol would provide a much-needed update to the convention, and he urged governments to ratify as soon as possible.

According to the IMO, the slow rate of acceptance of the 1974 convention — it has been ratified by 28 states — has been largely attributed to the low level of the limits of liability set there and in the 1990 protocol, which raised the limits but never entered into force.

Mr O'Neil said: "For some time now it has been recognised that the limits of liability in the 1974 convention are no longer adequate to meet the needs of the international community. The 1990 protocol, in the eyes of many states, suffered from the same defect.

"It goes without saying, however, that compensation, in adequate measure, must be provided for loss of human life and physical injury for all passengers travelling by sea.

"As with all IMO conventions, the aim of the organisation has been to create an internationally accepted regime so that the shipping industry does not become subject to a variety of individual national schemes. I am hopeful that with these new elements, this protocol will be widely accepted and quickly brought into force."

The conference was attended by more than 70 states, many of which held differing views on what constituted adequate compensation. Some delegations proposed even higher limits.

Based on principles in regimes dealing with environmental pollution, the protocol introduces mechanisms to help passengers get compensation. These include replacing the fault-based liability system with a strict liability system for shipping-related incidents, backed by a requirement that the carrier take out compulsory insurance to cover potential claims. A maximum limit is set empowering, but not obliging, national courts to compensate for death, injury or damage.

An opt-out clause enables states to retain or introduce higher limits of liability, or unlimited liability, for carriers subject to their jurisdiction.

Carriers would be forced to maintain insurance or other financial security, such as a bank guarantee, to cover the limits for strict liability in respect of death or personal injury to passengers.

Limit of the compulsory insurance would be at least SDR250,000 (about \$325,000) per passenger. Ships would be issued with a certificate attesting that insurance or other financial security was in force.

Liability of the carrier for death or personal injury is limited to SDR250,000 per passenger. This compares with a SDR46,666 limit of liability set in 1974.

Exemption from liability is granted where the carrier proves that the incident resulted from an act of war, hostilities, civil war, insurrection or a natural phenomenon of an exceptional, inevitable and irresistible character; or was wholly caused by an act or omission with intent to cause the incident by a third party.

The carrier is further liable, up to a limit of SDR400,000 per passenger, unless the carrier proves that the incident that caused the loss occurred without the fault or neglect of the carrier.

For the loss suffered as a result of death or personal injury not caused by a shipping incident, the carrier is liable if the incident that caused the loss was due to the fault or neglect of the carrier. The burden of proving fault or neglect lies with the claimant.

Liability of the carrier for the loss of or damage to cabin luggage is limited to SDR2,250 per passenger, and for vehicles including all luggage carried in or on the vehicle, to SDR12,700.

Liability for the loss of or damage to other luggage is limited to SDR3,375.

The carrier and the passenger may agree that the liability of the carrier shall be subject to a deductible of up to SDR330 in the case of damage to a vehicle and SDR149 per passenger for other luggage.

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