

## **CONVENTION ON DAMAGE CAUSED BY FOREIGN AIRCRAFT TO THIRD PARTIES ON THE SURFACE**

Note: The Agreement entered into force, February 4, 1958. It has been submitted to the Senate for concurrence.

Reference: This Agreement is also published in 310 UNTS, p. 181.

THE STATES SIGNATORY to this Convention

MOVED by a desire to ensure adequate compensation for persons who suffer damage caused on the surface by foreign aircraft, while limiting in a reasonable manner the extent of the liabilities incurred for such damage in order not to hinder the development of international civil air transport, and also

CONVINCED of the need for unifying to the greatest extent possible, through an international convention, the rules applying in the various countries of the world to the liabilities incurred for such damage,

HAVE APPOINTED to such effect the undersigned Plenipotentiaries who, duly authorised, HAVE AGREED AS FOLLOWS:

### **CHAPTER I**

#### **PRINCIPLES OF LIABILITY**

##### **ARTICLE 1**

1. Any person who suffers damage on the surface shall, upon proof only that the damage was caused by an aircraft in flight or by any person or thing falling therefrom, be entitled to compensation as provided by the Convention. Nevertheless there shall be no right to compensation if the damage is not a direct Consequence of the incident giving rise thereto, or if the damage results from the mere fact of passage of the aircraft through the airspace in conformity with existing air traffic regulations.

2. For the purpose of the Convention, an aircraft is considered to be in flight from the moment when power is applied for the purpose of actual take-off until the moment when the landing run ends. In the case of an aircraft lighter than air, the expression « in flight » relates to the period from the moment when it becomes detached from the surface until it becomes again attached thereto.

##### **ARTICLE 2**

1. The liability for compensation contemplated by Article I of this Convention shall attach to the operator of the aircraft.

2. (a) For the purposes of this Convention the term « operators » shall mean the person who was making use of the aircraft at the time the damage was caused, provided that if control of the navigation of the aircraft was retained by the person from whom the right to make use of the aircraft was derived, whether directly or indirectly that person shall be considered the operator.

(b) A person shall be considered to be making use of an aircraft when he is using it personally or when his servants or agents are using the aircraft in the course of their employment, whether or not within the scope of their authority.

3. The registered owner of the aircraft shall be presumed to be the operator and shall be liable as such unless, in the proceedings for the determination of his liability, he proves that some other person was the operator and, in so far as legal procedures permit, take appropriate measures to make that other person a party in the proceedings.

### **ARTICLE 3**

If the person who was the operator at the time the damage was caused had not the exclusive right to use the aircraft for a period of more than fourteen days, dating from the moment when the right to use commenced, the person from whom such right was derived shall be liable jointly and severally with the operator, each of them being bound under the provisions and within the limits of liability of this Convention.

### **ARTICLE 4**

If a person makes use of an aircraft without the consent of the person entitled to its navigational control, the latter, unless he proves that he has exercised due care to prevent such use, shall be jointly and severally liable with the unlawful user for damage giving a right to compensation under Article 1, each of them being bound under the provisions and within the limits of liability of this Convention.

## **PARTIES ON SURFACE**

### **ARTICLE 5**

Any person who would otherwise be liable under the provisions of this Convention shall not be liable if the damage is the direct consequence of armed conflict or civil disturbance, or if such person has been deprived of the use of the aircraft by act of public authority.

### **ARTICLE 6**

1. Any person who would otherwise be liable under the provisions of this Convention shall not be liable for damage if he proves that the damage was caused solely through the negligence or other wrongful act or omission of the person who suffers the damage or of the latter's servants or agents. If the person liable proves that the damage was contributed to by the negligence or other wrongful act or omission of the person who suffers damage, or of his servants or agents, the compensation shall be reduced to the extent to which such negligence or wrongful act or omission contributed to the damage. Nevertheless there shall be no such exoneration or reduction if, in the case of the negligence or other wrongful act or omission of a servant or agent, the person who suffers the damage proves that his servant or agent was acting outside the scope of his authority.

2. When an action is brought by one person to recover damages arising from the death or injury of another person, the negligence or other wrongful act or omission of such other person, or of his servants or agents, shall also have the effect provided in the preceding paragraph.

## **ARTICLE 7**

When two or more aircrafts have collided or interfered with each other in flight and damage for which a right to compensation as contemplated in Article I results, or when two or more aircraft have jointly caused such damage, each of the aircraft concerned shall be considered to have caused the damage and the operator of each aircraft shall be liable, each of them being bound under the provisions and within the limits of liability of this Convention.

## **ARTICLE 8**

The persons referred to in paragraph 3 of Article 2 and in Articles 3 and 4 shall be entitled to all defences which are available to an operator under the provisions of this Convention.

## **ARTICLE 9**

Neither the operator, the owner, any person liable under Article 3 or Article 4, nor their respective servants or agents, shall be liable for damage on the surface caused by an aircraft in flight or any person or thing falling therefrom otherwise than as expressly provided in this Convention. This rule shall not apply to any such person who is guilty of a deliberate act or omission done with intent to cause damage.

## **ARTICLE 10**

Nothing in this Convention shall prejudice the question whether a person liable for damage in accordance with its provisions has a right of recourse against any other person.

## **CHAPTER II**

### **EXTENT OF LIABILITY**

## **ARTICLE 11**

1. Subject to the provisions of Article 12, the liability for damage giving a right to compensation under Article 1, for each aircraft and incident, in respect of a persons liable under this Convention, shall not exceed:

- (a) 500,000 francs for aircraft weighing 1000 kilogrammes or less;
- {b) 500,000 francs plus 400 francs per kilogramme over 1,000 kilogrammes for aircraft weighing more than 1000 but not exceeding 6000 kilogrammes;
- (c) 2,500,000 francs plus 250 francs per kilogramme over 6,000 kilogrammes for aircraft weighing more than 6,000 but not exceeding 20,000 kilogrammes;
- (d) 6,000,000 francs plus 150 francs per kilogramme over 20,000 kilogrammes for aircraft weighing more than 20,000 but not exceeding 50,000 kilogrammes;
- (e) 10,500,000 francs plus 100 francs per kilogramme over 50,000 kilogrammes for aircraft weighing more than 50,000 kilogrammes.

2. The liability in respect of loss of life or personal injury shall not exceed 500,000 francs per person killed or injured.

3. « Weight » means the maximum weight of the aircraft authorized by the certificate of airworthiness for take-off, excluding the effect of lifting gas when used.

4. The sums mentioned in francs in this Article refer to a currency unit consisting of 651/2 milligrammes of gold of millesimal fineness 900. These sums may be covered into national currencies in round figures. Conversion of the sums into national currencies other than gold shall, in case of judicial proceedings, be made according to the gold value of such currencies at the date of the judgment, or, in cases covered by Article 14, at the date of the allocation.

## **ARTICLE 12**

1. If the person who suffers damage proves that it was caused by a deliberate act or omission of the operator, his servants or agents, done with intent to cause damage, the liability of the operator shall be unlimited; provided that in the case of such act or omission of such servant or agent, it is also proved that he was acting in the course of his employment and within the scope of his authority.

2. If a person wrongfully takes and makes use of an aircraft without the consent of the person entitled to use it, his liability shall be unlimited.

## **ARTICLE 13**

1. Whenever, under the provisions of Article 3 or Article 4, two or more persons are liable for damage, or a registered owner who was not the operator is made liable as such as provided in paragraph 3 of Article 2, the persons who suffer damage shall not be entitled to total compensation greater than the highest indemnity which may be awarded under the provisions of this Convention against any one of the persons liable.

2. When the provisions of Article 7 are applicable, the person who suffers the damage shall be entitled to be compensated up to the aggregate of the limits applicable with respect to each of the aircraft involved, but no operator shall be liable for a sum in excess of the limit applicable to his aircraft unless his liability is unlimited under the terms of Article 12.

## **ARTICLE 14**

If the total amount of the claims established exceeds the limit of liability applicable under the provisions of this Convention, the following rules shall apply, taking into account the provisions of paragraph 2 of Article 11.

(a) If the claims are exclusively in respect of loss of life or personal injury or exclusively in respect of damage to property, such claims shall be reduced in proportion to their respective amounts.

(b) If the claims are both in respect of loss of life or personal injury and in respect of damage to property, one half of the total sum distributable shall be appropriated preferentially to meet claims in respect of loss of life and personal injury and, if insufficient, shall be distributed proportionately between the claims concerned. The remainder of the total sum distributable shall be distributed proportionately among the claims in

respect of damage to property and the portion not already covered of the claims in respect of loss of life and personal injury.

### **CHAPTER III**

#### **SECURITY FOR OPERATOR'S LIABILITY**

##### **ARTICLE 15**

1. Any Contracting State may require that the operator of an aircraft registered in another Contracting State shall be insured in respect of his liability for damage sustained in his territory for which a right to compensation exists under Article 1 by means of insurance up to the limits applicable according to the provisions of Article 11.
2. (a) The insurance shall be accepted as satisfactory if it conforms to the provisions of this Convention and has been effected by an insurer authorized to effect such insurance under the laws of the State where the aircraft is registered or of the State where the insurer has his residence or principal place of business, and whose financial responsibility has been verified by either of those States.  
  
(b) If insurance has been required by any State under paragraph 1 of this Article, and a final judgment in that State is not satisfied by payment in the currency of that State, any Contracting State may refuse to accept the insurer as financially responsible until such payment, if demanded, has been made.
3. Notwithstanding the last preceding paragraph the State overflown may refuse to accept as satisfactory insurance effected by an insurer who is not authorized for that purpose in a Contracting State.
4. Instead of insurance, any of the following securities shall be deemed satisfactory if the security conforms to Article 17 :
  - (a) a cash deposit in a depository maintained by the Contracting State where the aircraft is registered or with a bank authorized to act as a depository by that State ;
  - (b) a guarantee given by a bank authorized to do so by the Contracting State where the aircraft is registered, and whose financial responsibility has been verified by that State;
  - (c) a guarantee given by the Contracting State where the aircraft is registered, if that State undertakes that it will not claim immunity from suit in respect of that guarantee.
5. Subject to paragraph 6 of this Article, the State overflown may also require that the aircraft shall carry a certificate issued by the insurer certifying that insurance has been effected in accordance with the provisions of this Convention, and specifying the person or persons, whose liability is secured thereby, together with a certificate or endorsement issued by the appropriate authority in the State where the aircraft is registered or in the State where the insurer has his residence or principal place of business certifying the financial responsibility of the insurer. If other security is furnished in accordance with the provisions of paragraph 4 of this