



VIETNAM RATIFIES THE MONTRÉAL CONVENTION 1999

Ratification of the Convention for the Unification of Certain Rules for International Carriage by Air, Montréal, 28 May 1999 (MC99) should lead to greater consistency and clarity in the claims handling process (particularly in relation to calculating compensation which, under MC99, uses the SDR as opposed to the Poincaré Franc) and will support the industries' e-freight initiatives. It also marks another significant milestone in the success story of Vietnamese aviation.

On 27 September 2018, Vietnam deposited its instrument of accession to MC99 at the International Civil Aviation Organisation (ICAO). It will enter into force in Vietnam on 26 November 2018.

This will be seen as a positive step by airlines and the International Air Transport Association (IATA), which have lobbied for global ratification and adoption of MC99 to bring an end to the patchwork of liability regimes that continue to exist around the world.

What does this mean for carriers?

Vietnam was a party to the previous air carriage conventions, namely the Warsaw Convention 1929 (WC29) and subsequent Protocol to Amend the Warsaw Convention of 1929, The Hague, 28 September 1955 (HP55).

MC99 modernises these dated Conventions. In particular, it will assist carriers in the following areas:

- **E-freight:** Article 4 of MC99 allows the use of electronic documents as record of carriage in air cargo (under WC29/HP55 a paper air waybill must accompany the shipment for carriers to avail themselves of the limits of liability). Carriers will, therefore, have legal certainty to utilise electronic air waybills (eAWB) on routes to/from Vietnam. This will allow the removal of paper-based processes and enhanced accuracy, efficiency and productivity.
- **Greater certainty with regards cargo limits:** Under the previous conventions (WC29 /HP55), limits are calculated by reference to Poincaré Francs (a "dead" currency) and this has led to inconsistency, depending on the state in which a claim is brought. These limits were also breakable. MC99 implements an unbreakable limit of 19 Special Drawing Rights (SDRs) per kilogram (approximately US\$27 per kg) for claims relating to destruction, loss, damage or delay for cargo.

- **Passenger claims handling:** Streamlined administrative procedures relating to handling of airline liability claims for death, injury or delay to passengers, or delay, loss or damage to baggage. MC99 also removes the limit on the sum available to passengers in death and injury claims.

Onwards and upwards for Vietnam

The ratification of MC99 will support the continued growth of Vietnam's aviation sector and resulted from significant lobbying by IATA and national flag carrier, Vietnam Airlines.

IATA figures suggest that an additional US\$600 billion in bilateral trade has been opened up to the use of eAWBs as a result of states ratifying MC99 in the period since 2013, with Vietnam representing US\$106 billion of this trade.

Vietnam also has one of the fastest-growing aviation markets globally, with the average sector growth rate of 17.4% being far higher than the 7.9% growth in Asia Pacific as a whole.

Civil Aviation Administration of Vietnam (CAAV) figures also state that the annual passenger growth rate averaged 16% between 2010 and 2017, while cargo growth averaged 14% in the same period.

In January 2015, the ASEAN Open Skies Policy was implemented, allowing airlines to fly freely throughout the ASEAN member states in a unified air transport market¹. Other factors driving aviation passenger and cargo growth in Vietnam are:

- The entering into of several Free Trade Agreements (FTAs).
- Its growing tourism industry: 19% growth rate for domestic passengers and 29% for foreign passengers in 2017.
- The emergence of several low-cost carriers.

- The investment of large sums of money in airport construction and upgrades, aircraft fleet expansion, air traffic service enhancements, aircraft maintenance, overhaul capacity and service development.

MC99: Where next?

Vietnam is the 134th party to MC99 (there are 192 ICAO member states). There has been much activity in relation to the global uptake in recent years with Philippines (2015), Thailand (2017), Indonesia (2017) and Russia (2017) all having ratified MC99.

Ghana, Niger and Tunisia also became parties to MC99 in 2018.

Nepal² and Sri Lanka have also recently passed enabling legislation and should be depositing instruments of ratification with ICAO before the end of the year. Only a small number of states with sizeable international aviation markets are still to ratify MC99; the two most significant being Bangladesh and Algeria.

For more information on the implications of MC99's ratification in Vietnam, please contact the authors of this briefing:



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1 <http://www.hfw.com/ASEAN-liberalisation-open-skies-achieves-full-ratification-May-2016>

2 <http://www.hfw.com/The-Montreal-Convention-1999-in-Nepal-September-2018>

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