

AN ANALYSIS OF THE UNLAWFUL INTERFERENCE COMPENSATION (UIC) CONVENTION

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OUTLINE

- ▶ Objectives of the UIC Convention
- ▶ Analysis of the main features of the scheme introduced by the Convention for purposes of achieving the above-mentioned objectives:
 - **First tier:** Channelling of liability through the operator; Strict liability of the operator; Mandatory insurance.
 - **Second tier:** Payment of additional compensation by the International Civil Aviation Compensation Fund
 - **Third tier:** Payment of additional compensation by the operator on the basis of fault
- ▶ General comments on other provisions of the UIC Convention

OBJECTIVES OF THE UIC CONVENTION

- ▶ Main objectives of UIC are twofold – see third paragraph of the *Preamble* namely:
 - Protection of the interests of third-party victims and the need for equitable compensation
 - Protection of the aviation industry from the consequences of damage caused by unlawful interference with aircraft
- ▶ The question is whether in its present form the UIC Convention is capable of achieving these two objectives in a fair and efficient manner, considering the interests of all stakeholders.

ANALYSIS OF THE MAIN FEATURES OF THE UIC CONVENTION – FIRST TIER

- ▶ **Channelling** of *all* third-party claims for compensation through the operator in the first tier – *i.e.*, up to a maximum of 700 million SDRs *per event* (calibrated according to the maximum certificated take-off mass (MTOM) of the aircraft in question).
 - The operator is the only entity that is liable to pay compensation for damage that occurs from unlawful interference, regardless of the underlying cause.

ANALYSIS OF THE MAIN FEATURES OF THE UIC CONVENTION – FIRST TIER

- ▶ **Strict liability of the operator** for all claims in the first tier.
 - In exchange for not having to prove the fault of the operator, third-party victims can only claim against the operator damages not exceeding 700 million SDRs *per event*.
 - By capping the liability of the operator at 700 million SDRs per event, the UIC Convention anticipates that the extent of third-party damages in civil aviation will thereby become automatically insurable on the commercial insurance markets.

ANALYSIS OF THE MAIN FEATURES OF THE UIC CONVENTION – SECOND TIER

- ▶ Second tier of liability involves payment of additional compensation of up to 3 billion SDRs by the International Civil Aviation Compensation Fund (The International Fund).
 - The International Fund will be financed by mandatory contributions levied against departing passengers, cargo shippers and general aviation operators.
 - The International Fund may drop down and pay compensation in the first tier in circumstances where operators cannot obtain commercial insurance to cover their liability in the first tier – *Drop Down Mechanism* (Arts. 11(1)(e) and 18(3))

ANALYSIS OF MAIN FEATURES OF THE UIC THE CONVENTION – THIRD TIER

- ▶ Where the total amount of damages exceeds 3.7 billion SDRs (*i.e.*, the aggregate amount payable under the first 2 tiers), **claims for additional compensation may be made against the operator.**
 - There is no strict liability in the third tier – the operator shall be liable to pay additional compensation upon proof of fault by the claimant.
 - Certain defences are open to the operator.

GENERAL COMMENTS ON OTHER PROVISIONS OF THE UIC CONVENTION

- ▶ The scope of an “event” as defined in Art. 1 (b) is substantially restricted by the introduction of the requirement of “direct consequence” in Art. 3(2):
 - Requirement that the damage must be a direct consequence of the event creates avenues for litigation.
- ▶ The priority of compensation provisions unduly prejudices victims who through no choice of theirs suffer property or other damage as a result of an act of unlawful interference.

**THANK YOU FOR NOT
ASKING QUESTIONS!!!**