



Aviation Claims Process Briefing

# What happens when... there is a major airline accident?

An insurer's perspective on how the aviation insurance claims process typically works in the event of a major airline accident



# About AGCS

Allianz Global Corporate & Specialty (AGCS) is a leading global corporate insurance carrier and a key business unit of Allianz Group. We provide risk consultancy, Property-Casualty insurance solutions and alternative risk transfer for a wide spectrum of commercial, corporate and specialty risks across nine dedicated lines of business and six regional hubs.

Our customers are as diverse as business can be, ranging from Fortune Global 500 companies to small businesses. Among them are not only the world's largest consumer brands, tech companies and the global aviation and shipping industry, but also satellite operators or Hollywood film productions. They all look to AGCS for smart solutions and global programs to their largest and most complex risks in a dynamic, multinational business environment and trust us to deliver an outstanding claims experience.

Worldwide, AGCS operates with its own teams in more than 30 countries and through the Allianz Group network and partners in over 200 countries and territories, employing around 4,250 people. As one of the largest Property- Casualty units of Allianz Group, we are backed by strong and stable financial ratings. In 2021, AGCS generated a total of €9.5 billion gross premium globally.

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\*DISCLAIMER: In the event of a major airline accident, this document has been prepared to communicate with the media and other stakeholders about how an accident is investigated and how the hull and liability claims process in general may unfold, understanding that no two events are the same but their general investigation is similar. It is intended to be a high level, generic document to explain the airlines claims process.

## How is an airline insured in the event of a major accident?

There are two primary components:

- a. Liability coverage for settlement with injured passengers or the families of deceased passengers or third party victims (on the ground), first aid, remaining passenger repatriation
- b. Hull coverage to compensate the airline company for physical loss of, or damage to, their property/aircraft, including wreckage removal.

## What is the airlines claims process?

Each airline accident is unique, but a certain sequence to the way claims are handled can be seen in the steps that follow.

## How does airline insurance typically work?

Unlike traditional property and casualty insurance, aviation insurance is more specialized. Airlines are usually insured on a subscription or co-insurance basis (i.e. the risk is spread between a number of different insurers with each taking “a line” or percentage and with one or even more than one carrier taking a lead share of the total risk, thereby limiting the exposure for the individual companies). When there is a loss, the claim is handled by the lead insurer(s). Some countries have a statutory requirement that insurance policies – such as for an airline – should be issued by a local insurer. Typically, the local insurer passes the risk on to the international aviation market in the form of reinsurance. Most primary and reinsurance policies are placed by specialist or wholesale brokers. Airline insurance policies usually cover the whole fleet and are typically concluded for a period of one year. It is estimated that around 50% of all aviation insurance globally is underwritten in London.<sup>1</sup>

In airline insurance, when **hull** insurance is referred to it indicates “property” damages to the aircraft; **liability** insurance on the other hand, refers to “casualty” for passengers and third party bodily injury and property damage. Insurance contracts typically exclude war and terrorism. However, an airline may decide to buy specific coverage for war and terrorism.

The sum insured for an aircraft varies greatly depending on type, age, and technical equipment but the value of the aircraft will be spelled out in the policy contract, having been agreed to by the insurer and the insured.

<sup>1</sup> 57%, London Market Group and Boston Consulting Group – London Matters: The Competitive Position of the London Insurance Market



# 1. Accident report and investigation

The lead insurer is notified of the accident by the airline company or the broker. The lead insurer then conducts an investigation of the circumstances of the accident using surveyors and lawyers. Hull claims usually require specialist aviation surveyors, while liability claims generally require legal representation.

## What about the independent accident investigations by government agencies?

- The country or state in which an airline accident occurs is responsible for conducting an independent accident investigation to determine the accident circumstances, possible causes of the accident and, if appropriate, to issue safety recommendations.\*
- Interested parties, including the airline and manufacturers, for example, might be asked to participate in this investigation, which remains confidential until a report is published by government authorities.
- The report does not establish the liability of the parties, but aims to improve the safety of civil aviation.

\* For example, in the US the investigating agency is the National Transportation Safety Board (NTSB). In the UK it is the Air Accidents Investigation Branch (AAIB). In France it is the Bureau d'Enquêtes et d'Analyses pour la sécurité de l'aviation civile (BEA).



## 2. Coverage analysis

The airline's insurance contract covers it in respect of "all risks" to which the aircraft may be exposed, except those that are specifically excluded. Insurers check that all contractual conditions apply and that no exclusions are applicable in this case.

Passenger liability insurance covers the airline against legal liability towards passengers. Insurers will compensate passengers if the airline is required by law to indemnify the victims.

As an example, insurers will check that:

- the accident happened during the contract period
- the damaged aircraft was insured on the contract
- the airline complied with geographical conditions or exclusions.

### What about an accident due to terrorism or an "act of war"?

Investigation of the facts may lead the insurers to conclude that an accident was caused by an "act of war" (invasion, insurrection, rebellion) or a hijacking. If this is the case, then the airline will not be covered under the hull risk policy. Instead, the airline will have to notify its claim to the war risk insurers. As to liability, based on standard market practice this would be "written back" to and covered by the "all risk" insurer.



## 3. Indemnification process

### Hull

- In case of damage to an aircraft, the insurers have to pay the airline for the repair of the aircraft
- Where the aircraft is a total loss (aircraft destroyed beyond economical repair), the insurers will pay an amount outlined in the insurance contract.

### Liability of carrier and indemnification process of the passengers

The mechanism of passengers compensation is regulated by the following legal instruments that outline fair compensation for the victims or their families:

- **International conventions (see page 7)**
- Regional regulations (e.g. European Union)
- National law.

### What about the value of an aircraft?

The sum insured for an aircraft varies greatly depending on type, age, and technical equipment but the value of the aircraft is specified in the policy contract, having been agreed to by the insurer and the airline. For example, according to Airbus<sup>2</sup>, the average 2016 list price of a new A320 was approximately \$98m. For older models, the insured value could be much lower.

## What are the international conventions and what are the differences between them?

### Warsaw Convention (1929)\*

- Enforced 1933; ratified by 152 countries (some African states, Taiwan and Thailand, still have not signed)
- Established rules to unify international carriage by air
- **Balances** the protection of the victims/ passengers' interest and the airline's by limiting the latter's liability
- The airline carrier is deemed liable for death or bodily injury caused by an "accident" during the course of carriage by air and is subject to a relatively low financial limit of SDR 100,000<sup>3</sup>
- The limit of liability can only be breached (no limit) if it can be demonstrated that the passenger's death had been caused either by a willful act or omission of the airline carrier or by reckless acts or omissions, akin to gross negligence
- Typically difficult for willful or reckless conduct to be proven by plaintiff
- The financial limit was perceived to be increasingly inadequate.

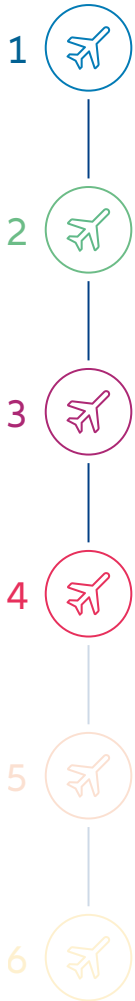
### Montreal Convention (1999)\*

- Enforced 2003; ratified by more than 130 countries, including EU states, the UK, US, Canada, Japan, China, Australia, Brazil, India
- Many Middle East, North African and South East Asia states have not signed
- Maintains principle of strict liability under the Warsaw Convention, but has largely removed any financial limit
- For claims up to the sum of SDR 128,821<sup>3</sup>, the airline carrier does not have any defense<sup>4</sup>, subject to the claimant proving his or her actual loss
- For claims exceeding SDR 128,821, the airline carrier can be exonerated if it proves that the loss was due to the sole negligence of a third party.

\* Both the Warsaw and Montreal Conventions remain in force and the convention that is applicable in any particular passenger's case will be determined by his or her individual contract of carriage, which specifies the place of departure and destination. **It is therefore possible for passengers to be on the same aircraft but be subject to different legal regimes.**

<sup>3</sup> Special Drawing Rights (SDR) is an international reserve asset created by the International Monetary Fund (IMF) to supplement the existing official reserves of member countries and serves as the unit of account of the IMF and some other international organizations. Its value is based on a basket of key international currencies. At time of writing, US\$1 = SDR 0.731.

<sup>4</sup> Other than the one referred to in Article 20 of the Montreal Convention.

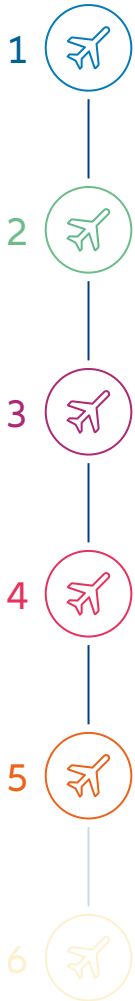


## 4. Indemnification process to the passengers (interim compensation)

Initial payment is often provided to victims' families as a first advance payment for financial relief in a situation of distress. This is not a final payment and does not have to be paid back later in any circumstance.

- Based on specific regulations, payment of interim compensation can be made to spouse or parents of the victims
- Once the interim payments have been made, the process of paying final compensation then commences.





## 5. Indemnification process to the passengers (final compensation)

Indemnification of passengers may take time: the family of the victims may not want to discuss compensation at all as they are still in the grieving process. Typically, the next-of-kin, through their attorneys, file claims against the airline and may wish to gather all relevant information before they are inclined to discuss compensation or settlement. There may also be a criminal process undertaken in parallel with the official aircraft investigation that might cause families to delay settlement discussions.

### Jurisdictions

The international conventions specify jurisdictions where passenger claims and proceedings directly against the airline can be brought:

- Airline carrier's home country
- Country where the flight was to land
- Country where the ticket was purchased, provided the airline has an office in the country
- Country of final destination
- Passenger's country of residence (only in cases where the Montreal Convention applies), provided the carrier also operates there.

### Assessment of indemnification levels

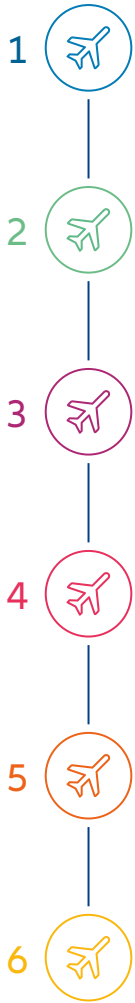
The international conventions do not provide rules as to the calculation of damages but state that it will be a matter for the law of the court where the case is brought to decide. Usually, the following factors are considered:

- Type of damages (for example, economic damages and non-economic damages such as pain and suffering). The calculation of the indemnity may also factor in the victim's salary, age, life expectancy, etc., all of which differ from one victim to another, and the application of these factors may also differ from one national law to another
- The next of kin entitled to be indemnified.

The court in charge of the claim should apply the national law (in principle, but there are numerous exceptions). If the plaintiffs and airline/insurers do not agree, then the amount of indemnification can be decided by a court decision. The US is a preferred jurisdiction for many plaintiff lawyers because US lawyers believe that the jury system may result in damage awards significantly higher than those awarded in other jurisdictions.

### Limitations of actions

Both international conventions stipulate that victims' families have two years after the date of the accident (or the date the aircraft was supposed to arrive at destination – in case of disappearance) to claim against the airline carrier. Absent a filing of a lawsuit within the period of two years, no liability action can be brought against the airline nor the insurers.



## 6. Closure of claim

From the insurer's standpoint, typically the case would be considered closed when the hull and passenger indemnity phases have been concluded, as long as that may require. Settlement of physical damage claims can be rapid, as they are based on the insured value of the aircraft. Liability claims are assessed and indemnified on a different basis, so can take longer.

### Further information

Allianz Global Corporate & Specialty is the Allianz Group's dedicated carrier for corporate and specialty insurance business. It underwrites aviation and aerospace risks of all types, from general aviation to major airlines and manufacturers, for which it provides cover both for physical damages (hull) and for liabilities. In 2015 Allianz celebrated 100 years of underwriting aviation risks.

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