



**HFW**

**AEROSPACE**

# **ALAANZ 2024 CONFERENCE**

**INTERNATIONAL LEGAL UPDATES – APAC ROUND-UP**

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# HFW AERO – KEY CONTACTS FOR AVIATION DISPUTES

OUR GLOBAL AEROSPACE TEAM

#1 – Recognised leaders in liability, litigation and dispute resolution. We have more than 100 airline clients worldwide.



\*CAR (Costa, Albino & Rocha Sociedade de Advogados) is a Brazilian based law firm in a strategic cooperation arrangement with HFW



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1. ROUND-UP OF RECENT AIR LAW CASES OF INTEREST IN ASIA
  2. LEGISLATIVE DEVELOPMENTS (INDONESIA AND CAMBODIA)
  3. ESG LITIGATION – GLOBAL OVERVIEW
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## KOREA MENTAL DAMAGES IN CASE OF FLIGHT DELAY

### CASES:

- 1) SUPREME COURT OF KOREA JUDGMENT DELIVERED ON 26 OCTOBER 2023, CASE NO. 2021 DA 259510
- 2) SUPREME COURT OF KOREA JUDGMENT DELIVERED ON 26 OCTOBER 2023, CASE NO. 2022 DA 25476

### **ISSUE:** *whether emotional and mental damages in case of delay in flight are compensable?*

- Two group of passengers filed lawsuit against airlines for delay (about 19 hours and about 9 to 22 hours respectively), seeking compensation of damages including emotional and mental damages
  - Airlines argued that emotional and mental damages should not be included in the scope of damage that are compensable under the Montreal Convention
  - Supreme Court found that emotional and mental damages not recoverable in accordance with MC99
  - HOWEVER, found that MC99 does not prevent the application of domestic law in the areas not covered by MC99 and Korean law shall apply in addition to the MC99
  - Under Korean law, **emotional and mental damages are compensable in case of flight delays**
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**CASE:** Zhao, Xie, Xie Xin'an and others v. Qatar Airways Group Q.C.S.C. ((2020) Jing 03 Min Zhong No.5683)

**ISSUE:** *reversal of the burden of proof for airline when establishing “accident”*

- A 29-year-old male passenger travelling alone Shanghai to Doha was discovered unresponsive. CPR administered, but declared DOA at Doha. Estimated that he had probably been dead for 90 minutes before he was found. The post-mortem revealed no abnormalities, intoxicating substances, or indications of physical injury. Cause of death was stated as “**acute failure of the heart and respiratory system due to natural causes.**”
  - Judgment for claimants at first instance was confirmed on appeal
  - The Court required the carrier to prove the **absence of an accident**
  - Breaks the burden of proof principle set by Chinese law and standard in most jurisdictions worldwide that “he who alleges must prove”.
  - The judgment on appeal stated that the airline was “unable to prove death by the passenger’s own health within the scope of normal flight activities”.
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INDIA

## 2-YEAR LIMITATION PERIOD UPHeld

**CASE:** **M/S Bhagwandas B. Ramchandani v British Airways, Supreme Court of India, [2022] 11 SCR 539.**

**ISSUE:** *claims subject to the Conventions would be extinguished if they were brought outside the two-year period, notwithstanding any domestic legislation.*

- In **January 2010**, consignor's shipment of fruit and vegetables carried by BA from Mumbai to Canada was destroyed due to a delay resulting from bad weather in London.
  - Further shipment in **June 2010** was also destroyed due to packaging issues. The consignor lodged claims for damages with the carrier.
  - On 15 September 2012, the consignor instituted proceedings in Mumbai to recover damages (i.e. more than 2 years after the damage to both shipments)
  - Consignor argued (successfully at first instance) to overcome the effect of the extinguishment provision in the Convention by relying on local Limitation Act.
  - Supreme Court of India held, first, that the provisions of the Limitation Act only applied where the limitation was a bar to the action as opposed to an extinguishment of the underlying right/cause of action.
  - MC99 was a complete/exclusive code and expressly excludes the domestic Limitation Act.
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**CASE: Decision of Central Intellectual Property and International Trade Court of Thailand (IP&IT Court)**

**ISSUE:** *how cargo is defined may be determined by local legislation*

- buyer in Thailand – sued the defendant air carrier in the IP&IT Court for damages arising from the death of livestock (goats) transported from South Africa to Suvarnabhumi Airport, Thailand
  - Court determined that the Goats were cargo
  - Thai court held that because MC99 does not define “cargo”, the definition needs to be taken from Thai law
  - Key issue in this case was the exploration of the local domestic Thai law due to the fact that MC99 does not contain a definition of “cargo”
  - As such, whenever the domestic law is to be applied to determine its meaning, the meaning of “cargo” may vary by jurisdiction.
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## INDONESIA AND CAMBODIA LEGISLATIVE DEVELOPMENTS

### **INCREASE OF PM77 LIMITS GAINING TRACTION (INDONESIA)**

- Much discussion in Indonesia as to the potential increase in the value of compensation for the heirs or victims of domestic aircraft accidents.
- Academics pushing for an increase and a study into feasibility of the figure of 1.25 Billion Rupiah mentioned in the PM 77/2011
- No official statement from the government

### **ADOPTION OF MC99 CLOSE (CAMBODIA)**

- MC99 signed by Cambodia on 28 May 1999 but never formerly implemented
  - Remains one of the very few jurisdictions yet to ratify MC99
  - The National Assembly of Cambodia made a landmark decision by approving the Law on the Establishment of the Secretariat of State for Civil Aviation
  - Creates the Secretariat of State for Civil Aviation (SSCA)
  - Mandate will likely be to fully implement MC99 – watch this space!
  - Coincides with the inauguration of the new Siem Reap-Angkor International Airport in October 2023 projected to accommodate 7 – 10 million passengers per year
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## ESG LITIGATION GLOBAL UPDATES – COMING FOR APAC?

### AUSTRIA

- Austrian Federal Ministry of Social Affairs, the Austrian Association for Consumer Information (“VKI”) initiated legal proceedings against Austrian Airlines AG pertaining to the airline’s promotion of its purportedly carbon dioxide-neutral flights: *“FLY CO2-NEUTRAL TO THE BIENNALE? NO ART FOR US! 100% SAF”* and *“TOGETHER WITH VIENNA AIRPORT AND VENICE AIRPORT, WE BRING YOU TO THE BIENNALE ARTE IN VENICE WITH SUSTAINABLE AVIATION FUEL (SAF).”*
- The Court classified the airline’s promotional activities as misleading commercial practices.

### NETHERLANDS

- KLM launched its “Fly Responsibly” campaign in December 2021, focused on the interplay between aviation and sustainability
- Campaign featured 19 statements/advertisement of how the airline was reducing its environmental impact, including a billboard advertisement at Schiphol Airport with a young child on a swing, looking towards a clear sky. Other adverts contained imagery of futuristic aircraft and green leaves.
- Successful claims made by environment groups with Amsterdam District Court finding against the airline. 15 of the 19 statements found to be misleading and gave, in the Courts’ view, an incorrect impression that flying with KLM is, or is becoming, sustainable.

### ENGLAND & WALES

- UK Advertising Standards Authority (“ASA”) have stated that they are looking closely at advertisements which makes misleading claims related to climate change and the environment.
  - In April 2023, the ASA published a decision which criticized Etihad for making “unsubstantiated” claims of “sustainable aviation.” The advertisements in question stated that Etihad is “taking a louder, bolder approach to sustainable aviation” and referenced cutting back on single-use plastics and using more efficient aircraft.
  - The ASA held that these initiatives were insufficient to meet the general public’s understanding of a claim of sustainable aviation.
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