

Aviation Liability

in Switzerland

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APPLICABLE TREATIES

Major air law treaties

To which major air law treaties related to carrier liability for passenger injury or death is your state a party?

Switzerland is a party to:

- Montreal Convention (1999, effective in Switzerland on 5 September 2005);
- Montreal Protocol No. 4 (1975, effective in Switzerland on 14 June 1998);
- Montreal Protocol Nos. 1–2 (1975, effective in Switzerland on 15 February 1996);
- Guadalajara Supplementary Convention (1961, effective in Switzerland on 1 May 1964);
- Hague Protocol (1955, effective in Switzerland on 1 August 1963); and
- Warsaw Convention (1929, effective in Switzerland on 7 August 1934).

All of these treaties are directly part of Swiss law. They are self-executing and create private rights of action in the Swiss courts. There is no need for any implementing legislation.

The most pertinent treaty is the Montreal Convention, which now has 137 signatories. Where applicable, the Montreal Convention supersedes and replaces the Warsaw Convention including the Hague Protocol, the Guadalajara Supplementary Convention and the Montreal Protocols.

INTERNATIONAL CARRIAGE – LIABILITY FOR PASSENGER INJURY OR DEATH

Montreal Convention and Warsaw Convention

Do the courts in your state interpret the similar provisions of the Montreal Convention and the Warsaw Convention in the same way?

Most articles of the Montreal Convention essentially mirror the corresponding Warsaw Convention article. Although the Swiss courts have yet to confirm this approach, the drafters of the Montreal Convention clearly intended that the body of jurisprudence interpreting and applying the Warsaw Convention would remain valid when interpreting and applying comparable rules of the Montreal Convention.

Do the courts in your state consider the Montreal Convention and Warsaw Convention to provide the sole basis for air carrier liability for passenger injury or death?

It is generally accepted in Switzerland that where the Montreal Convention or the Warsaw Convention applies, the carrier is either liable according to the terms of the Montreal Convention or of the Warsaw Convention, or the carrier is not liable at all. Swiss courts have ruled several times that the liability provisions of the Warsaw Convention are exclusive and pre-empt all national laws. In a cargo case (*Finnair v Winterthur Schweizerische Versicherungsgesellschaft*), the Swiss Federal Supreme Court held that both the consignor and the consignee have a right to bring an action according to the terms of the Warsaw Convention, and that resort to more restrictive national legislation is barred. Only those issues not covered by international conventions, such as the litigation procedure, must be determined by reference to national laws.

Definition of 'carrier'

In your state, who is considered to be a 'carrier' under the Montreal and Warsaw Conventions?

The party that undertakes to perform the transportation in accordance with the contract is referred to as the 'carrier'. The Guadalajara Supplementary Convention introduced a distinction between the 'contractual carrier' and the 'actual carrier'. The Montreal Convention provides that both the contractual and the actual carrier will be liable under the Convention, the former for the whole of the carriage contemplated under the contract, the latter solely for the carriage it performs. The term 'carrier' may include agents of the carrier, including ground handling companies if they carry out essential flight services in furtherance of the contract of carriage of an international flight.

Carrier liability condition

How do the courts in your state interpret the conditions for air carrier liability – 'accident', 'bodily injury', 'in the course of any of the operations of embarking or disembarking' – for passenger injury or death in article 17(1) of the Montreal Convention and article 17 of the Warsaw Convention?

The Swiss courts require proof that the claimant has suffered damage because of an accident on board the aircraft, or during embarking or disembarking, which caused the death or bodily injury of a passenger. The exact meaning of the terms 'accident', 'bodily injury' (including its relationship to mental injury) and 'in the course of any of the operations of embarking or disembarking' have yet to be clarified by the Swiss courts. In doing so, it is likely that the Swiss courts will look to comparative case law for guidance and inspiration.

No negligence defence

How do the courts in your state interpret and apply the 'no negligence' defence in article 21 of the Montreal Convention, and the 'all reasonable measures' defence in article 20 and the 'wilful misconduct' standard of article 25 of the Warsaw Convention?

The 'wilful misconduct' test plays a significant role under the Warsaw Convention, because it enables the claimant to break the liability limits. It has been used in Swiss litigations with varying degrees of success. The Swiss courts held that the test of whether the conduct attributable to the carrier amounts to wilful misconduct is a subjective test. This requires a finding that the carrier or its employees or agents acted improperly despite being aware of the damage that would likely result from its misconduct. The 'all reasonable measures' and 'no negligence' defences have hardly been invoked in the Swiss courts.

Advance payment for injury or death

Does your state require that advance payment be made to injured passengers or the family members of deceased passengers following an aircraft accident?

European Union law imposes an obligation on Community air carriers including Swiss air carriers to make advance payments. While Switzerland is not a member of the EU, it has adopted most of the EU's aviation laws through the EU-Switzerland Air Transport Agreement (1999, effective 1 June 2002), including Regulation (EC) No. 2027/97 on air carrier liability in the event of accidents, as amended by Regulation (EC) No. 889/2002. A Community air carrier is

defined as an air transport undertaking with an operating licence granted by an EU member state or Switzerland. The regulation requires advance payments to meet the victims' immediate economic needs after an accident. In the event of death, the advance payments cannot be less than 16,000 special drawing rights (approximately €20,000) per passenger.

Deciding jurisdiction

How do the courts of your state interpret each of the jurisdictions set forth in article 33 of the Montreal Convention and article 28 of the Warsaw Convention?

Under the Warsaw Convention, Swiss courts are competent to hear and decide lawsuits at:

- the carrier's domicile;
- the carrier's principal place of business;
- the place of business through which the carriage contract was made; and
- the place of the destination.

The Montreal Convention provides for jurisdiction in all four of these places, but adds a fifth jurisdictional option. Accordingly, Swiss courts are competent to hear and decide actions for damages resulting from injury or death if the passenger had his or her principal and permanent residence in Switzerland at the time of the accident. This is only an option if the carrier operates services for the carriage of passengers to or from Switzerland, either on its own aircraft, or another carrier's aircraft pursuant to a commercial agreement.

Swiss courts do not dismiss any proceedings based on forum non conveniens (an abstention doctrine that seeks to ascertain whether there would be a more appropriate forum for the claims brought forward).

Period of limitation

How do the courts of your state interpret and apply the two-year period of limitations in article 35 of the Montreal Convention and article 29 of the Warsaw Convention?

An action for damages must be brought before the competent court within a period of two years, counted from the date of arrival at the destination, or from the date on which the aircraft ought to have arrived, or from the date on which the carriage stopped. Once the two years have passed, the claimant's rights are extinguished regardless of whether this would result in the claimant being left without any remedy. Exceptional facts, such as a carrier or its insurer acting in bad faith or concealing information, may warrant an extension of the period of two years.

Liability of carriage

How do the courts of your state address the liability of carriage performed by a person other than the contracting carrier under the Montreal and Warsaw Conventions?

Under the Montreal Convention, an action for damages can be brought against the actual carrier or the contracting carrier. If an action is brought against the contractual carrier only, that carrier may have recourse to the actual carrier. The position is the same under the Warsaw Convention, as amended by the Guadalajara Convention.

DOMESTIC CARRIAGE – LIABILITY FOR PASSENGER INJURY OR DEATH

Governing laws

What laws in your state govern the liability of an air carrier for passenger injury or death occurring during domestic carriage?

Regulation (EC) No. 2027/97 extends the scope of the liability provisions of the Montreal Convention for passenger injury or death to domestic carriage by Community air carriers including Swiss air carriers. The Swiss Air Transport Ordinance governs those flights not covered by EU Regulation (EC) No. 2027/97. The ordinance mirrors the Montreal liability regime, except for jurisdiction. In particular, the ordinance does not provide for jurisdiction at the place of the passenger's residence.

Nature of carrier liability

What is the nature of, and what are the conditions for, an air carrier's liability?

The liability of air carriers under the Air Transport Ordinance, as well as under Regulation (EC) No. 2027/97, is a liability for breach of contract. Liability of the carrier for passenger injury or death is premised upon there being an accident on board the aircraft or in the course of embarking or disembarking. The carrier is strictly liable for the first 128,821 special drawing rights (approximately €155,000). Above that amount, the carrier can defend itself against a claim by proving that it was not negligent or otherwise at fault.

Liability limits

Is there any limit of a carrier's liability for personal injury or death?

There is no limit on recoverable damages for passenger injury or death under the Air Transport Ordinance or Regulation (EC) No. 2027/97.

Main defences

What are the main defences available to the air carrier?

The air carrier is not liable for damages exceeding for each passenger 128,821 special drawing rights if the carrier proves that:

- such damage was not due to the negligence or other wrongful act or omission of the carrier or its servants or agents; or
- such damage was solely due to the negligence or other wrongful act of a third party.

Damages

Is the air carrier's liability for damages joint and several?

Depending on the circumstances, the air carrier may be jointly and severally liable together with a third party, such as the manufacturer of a defective product.

Rule for apportioning fault

What rule do the courts in your state apply to apportioning fault when the injury or death was caused in whole or in part by the person claiming compensation or the person from whom the right is derived?

Swiss courts may reduce the damages that can be awarded based on contributory negligence.

Statute of limitations

What is the time within which an action against an air carrier for injury or death must be filed?

Any action for damages for injury or death must be brought within two years from the date of arrival at the destination, or from the date the aircraft ought to have arrived or from the date that the transportation stopped.

THIRD-PARTY ACTIONS

Seeking recovery

What are the applicable procedures to seek recovery from another party for contribution or indemnity?

The air carrier (or its insurer) may bring a separate action against another party to recover contribution for the damages assessed as against the carrier. The existence and extent of the right of recourse is primarily determined by the applicable local law. The Swiss Code of Obligations states that compensation must be provided:

- in the first instance, by the person who is liable in tort;
- in the second instance, by the person who is liable based on contract; and
- in the third instance, by the person who is liable only as a matter of law.

In a landmark judgment dated 7 May 2018, the Swiss Federal Supreme Court abandoned its long-standing practice of restricting recourse actions. According to traditional Swiss case law, insurers were entitled to take recourse against third parties in breach of contract only if such third parties acted with wilful misconduct or gross negligence. The traditional case law was based on the often criticised 1954 Gini/Durlemann decision. According to the new landmark judgment, insurers may bring recourse actions without needing to show that third parties in breach of contract acted with wilful misconduct or gross negligence. It is therefore likely that insurers – including aviation insurers – will in the future bring more recourse actions.

Time limits

What time limits apply?

Under Swiss law, a general statutory limitation period of 10 years applies. Shorter time limits may apply, depending on the circumstances.

LIABILITY FOR GROUND DAMAGE

Applicable laws

What laws apply to the liability of the air carrier for injury or damage caused to persons on the ground by an aircraft accident?

The Swiss Aviation Act provides for a strict liability of the aircraft operator for surface damage caused by the aircraft to persons on the ground. Switzerland has not ratified the 1952 Rome Convention on damage caused by foreign aircraft to third parties on the surface.

Nature and conditions of liability

What is the nature of, and what are the conditions for, an air carrier's liability for ground damage?

Where, owing to the operation of an aircraft in flight, a person on the ground is killed, suffers bodily injury or health impairment, or where surface property is damaged, the Aviation Act obliges the aircraft operator to compensate the victim, regardless of the operator's fault.

Where surface damage results from a mid-air collision between two aircraft, the Aviation Act provides that the operators of the two aircraft are jointly and severally liable for all resulting damage to persons and property on the ground, again regardless of the operators' fault.

Liability limits

Is there any limit of carriers' liability for ground damage?

In principle, the operator's liability for ground damage is unlimited.

Main defences

What are the main defences available to the air carrier in a claim for damage caused on the ground?

If the aircraft was used without the operator's permission by a third party, that third party will be liable. For damage on the ground caused by a person on board who is not a crew member, the operator's liability is limited to the minimum insurance to be taken. The same liability limitation may apply by analogy in the event of a terrorist attack of a person who is not on board the aircraft. Other than that, the Aviation Act does not provide for an exclusion or reduction of the operator's liability if a third party or an act of God caused the accident.

LIABILITY FOR UNRULY PASSENGERS AND TERRORIST EVENTS

Applicable laws

What laws apply to the liability of the air carrier for injury or death caused by an unruly passenger or a terrorist event?

Injury or death caused by an unruly passenger or a terrorist event may constitute an 'accident' within the meaning of the Montreal and Warsaw liability regimes. Depending on the circumstances, the Montreal Convention, the Warsaw

Convention, Regulation (EC) No. 2027/97 or the Air Transport Ordinance apply to the liability of the air carrier.

If an unruly passenger or a terrorist event in an aircraft in flight results in injury or death on the ground, the Aviation Act obliges the aircraft's operator to compensate such victims.

Nature and conditions of liability

What is the nature of, and what are the conditions for, an air carrier's liability for injury or death caused by an unruly passenger or a terrorist event?

Depending on the circumstances, the Montreal Convention, the Warsaw Convention, Regulation (EC) No. 2027/97 or the Air Transport Ordinance apply. The liability of air carriers under these regimes is a liability for breach of contract. Liability of the carrier for passenger injury or death is premised upon there being an accident on board the aircraft or in the course of embarking or disembarking. Injury or death caused by an unruly passenger or a terrorist event may constitute an 'accident' within the meaning of the Montreal Convention, the Warsaw Convention, Regulation (EC) No. 2027/97 or the Air Transport Ordinance.

The Aviation Act obliges the aircraft's operator to compensate ground victims, if an unruly passenger or a terrorist event results in injury or death on the ground. The Aviation Act provides for a strict liability, regardless of the operator's fault.

Liability limits

Is there any limit of liability for injury or death caused by an unruly passenger or a terrorist event?

In principle, there is no liability limit.

Main defences

What are the main defences available to the air carrier in a claim for injury or death caused by an unruly passenger or a terrorist event?

Under the current version of the Montreal Convention, the carrier is strictly liable for the first 128,821 special drawing rights (approximately €155,000). The liability limits under the Warsaw regime vary widely, depending on the version of the Convention that applies in a specific case. Under Regulation (EC) No. 2027/97, as amended by Regulation (EU) No. 889/2002, the carrier is strictly liable for the first 100,000 special drawing rights (approximately €120,000). Under the Air Transport Ordinance, the carrier is strictly liable for the first 113,100 special drawing rights (approximately €136,000). Above these amounts, the carrier can defend itself against a claim by proving that it was not negligent or otherwise at fault for injury or death caused by an unruly passenger or a terrorist event.

Under the Aviation Act, the operator's liability for ground damage is unlimited. However, if the aircraft was used without the operator's permission by a third party, that third party will be liable. For damage on the ground caused by a person on board who is not a crew member, the operator's liability is limited to the minimum insurance to be taken. The same liability limitation may apply by analogy in the event of a terrorist attack by a person who is not on board the aircraft.

LIABILITY FOR HARM CAUSED BY DRONES

Applicable legislation

Summarise the laws or regulations related to the liability for injuries or damage caused by drones.

Where, owing to the operation of an aircraft in flight, a person on the ground is killed, suffers bodily injury or health impairment, or where surface property is damaged, the Aviation Act obliges the aircraft operator to compensate the victim. The Aviation Act applies to both manned and unmanned aircraft or drones. The aircraft operator is obliged to compensate the victim, regardless of the operator's fault. The operator's liability is unlimited. On that basis, the drone operator is strictly liable for all surface damage caused by the drone.

While the Aviation Act does not address compensation claims for damage caused to the colliding aircraft, or to the persons or goods onboard such aircraft, such claims may be based on general tort law. The Code of Obligations provides that whoever unlawfully causes damage to another individual, whether wilfully or negligently, is liable to damages. A drone operator may be exposed to unlimited liability towards the owner of the colliding aircraft, its crew and passengers, as well as cargo shippers. To establish liability of the drone operator, a claimant must show that:

- he or she has suffered damage;
- the drone operator's act that caused the damage was unlawful;
- there is a link of proximate causation between the wrongful act and the damage; and
- the drone operator was at fault (ie, the drone operator acted wilfully or negligently).

CONSUMER PROTECTION AND PASSENGER RIGHTS

Applicable legislation

Summarise aviation-related consumer-protection laws or regulations related to passengers with reduced mobility, flight delays and overbooking, tarmac delay and other relevant areas.

Based on the EU-Switzerland Air Transport Agreement, Switzerland has adopted Regulation (EC) No. 261/2004 on passenger rights, which provides for compensation and assistance for passengers that are denied boarding or experience cancellation or long delays of their flight. If a flight is cancelled, or if passengers are denied boarding, passengers are entitled to receive assistance and, depending on the circumstances, compensation as follows:

- €250 for flights with a distance of up to 1,500 kilometres;
- €400 for flights with a distance of between 1,500 and 3,500 kilometres; and
- €600 for flights with a distance of more than 3,500 kilometres.

Regulation (EC) No. 261/2004 applies to flights between Switzerland and the EU. Whether it also applies to flights between Switzerland and countries outside the EU is unclear.

The European Court of Justice ruled in *Sturgeon* and other cases that passengers whose flights are delayed by at least three hours are entitled to standardised financial compensation, notwithstanding the fact that the wording of Regulation (EC) No. 261/2004 provides no such remedy. A Swiss first instance court held in February 2016 that *Sturgeon* is not a precedent that the Swiss courts have to follow.

Again based on the EU-Switzerland Air Transport Agreement, Switzerland has also adopted Regulation (EC) No. 1107/2006, which gives specific rights to disabled persons and persons with reduced mobility when travelling by air.

LIABILITY OF GOVERNMENT ENTITIES PROVIDING SERVICES TO CARRIERS

Relevant laws

What laws apply to the liability of the government entities that provide services to the air carrier?

Air traffic control services are provided by Skyguide Swiss Air Navigation Services, which is commissioned by the Swiss government to manage and monitor both civil and military aircraft. Skyguide's liability may arise under the Swiss Act on the Liability of the Confederation. According to this Act, all claims must be addressed exclusively against Skyguide; there can be no direct action against either the Swiss government or individual employees. Only in the event that Skyguide is unable to meet the financial amounts, the Swiss government steps in to remedy any remaining amounts.

Airport authorities may be liable under the same Act on the Liability of the Confederation.

Nature and conditions of liability

What is the nature of, and what are the conditions for, the government's liability?

The Act on the Liability of the Confederation provides for unlimited and strict liability of public agents, such as Skyguide or airport authorities, regardless of any fault. The action or omission of the public agent must be unlawful, which is the case if an accident resulted in bodily injury or death. If the public agent is accused of an omission, the violation of a duty of care is also necessary to establish liability.

Liability limits

Are there any limitations to seeking recovery from the government entity?

Not applicable.

CRIMINAL PROCEEDINGS

Responsibility for accidents

Can an air carrier be criminally responsible for an aviation accident?

Swiss criminal law is primarily focused on the responsibility of individuals. After an aviation accident, criminal proceedings may be brought against the pilots of the aircraft, the managers of the air carrier, or the air traffic controllers. Nonetheless, under the emerging concept of corporate criminal liability, an air carrier may also face criminal charges. A corporation is criminally responsible if a criminal offence was committed within the corporation and in furtherance of its activities, and if such act cannot be attributed to a specific individual due to the deficient organisation of the corporation.

Effect of proceedings

What is the effect of criminal proceedings against the air carrier on a civil action by the passenger or their representatives?

While Swiss law emphasises the independence between parallel criminal and civil proceedings, evidence obtained in the criminal proceedings may be used in the civil lawsuit.

Compensation

Can claims for compensation by passengers or their representatives be made against the air carrier through the criminal proceedings?

Civil lawsuits can be brought and adjudicated by the criminal courts as part of the criminal proceedings. The criminal courts may, however, refer complex civil suits to the civil courts. If passengers or their representatives bring claims for compensation against the air carrier through criminal proceedings, the criminal courts will likely refer such claims to the civil courts.

EFFECT OF CARRIER'S CONDITIONS OF CARRIAGE AND TARIFFS

Liability

What is the legal effect of a carrier's conditions of carriage or tariffs on the carrier's liability?

The liability regimes of the Montreal Convention, the Warsaw Convention, EU Regulation No. 2027/97 and the Air Transport Ordinance are mandatory and cannot be contracted out by way of the carrier's conditions of carriage or tariffs.

DAMAGES

Damage recovery

What damages are recoverable for the personal injury of a passenger?

Compensatory damages are recoverable. The injured passenger is entitled to that sum of money, which will put the passenger in the same position as he or she would have been in if he or she had not sustained the injury.

Moral damages for pain and suffering may be available to the injured passenger as well, but Swiss courts do not award punitive damages.

Payments from social security institutions may be available. An accident insurer may pay for medical costs and daily allowances in the event of loss of income if the accident caused permanent incapacity to work. There may be additional payments of an invalidity insurance or a pension fund. To the extent that such payments are intended to cover the damages sustained by the passenger, they reduce the amount of compensatory damages recoverable from the air carrier or its insurer.

What damages are recoverable for the death of a passenger?

Compensatory damages, including funeral costs, and loss of income and support, as well as moral damages for pain and suffering are available to the next of kin of the deceased passenger. Payments from social security institutions may be available and will have to be taken into account when determining the amount of compensatory damages. Punitive damages are not available.

ACCIDENT INVESTIGATION AND FAMILY ASSISTANCE

Investigatory authority

Who is responsible in your state for investigating aviation accidents?

The Swiss Transportation Safety Investigation Board (STSB), which is part of the Federal Department of Environment, Transport, Energy and Communications, is responsible for investigating aviation accidents. The purpose of the investigation is the prevention of future aircraft accidents and therefore the improvement of aviation safety.

Disclosure restrictions

Set forth any restrictions on the disclosure and use of accident reports, flight data recorder information or cockpit voice recordings in litigation.

While the accident investigation reports of the STSB are not intended to clarify questions of blame or liability, those reports are in practice frequently used as prime evidence in civil litigation and criminal prosecution. The use of flight data recorder information and of cockpit voice recordings is less common.

Relevant post-accident assistance laws

Does your state have any laws or regulations addressing the provision of assistance to passengers and their family after an aviation accident?

Not applicable.

INSURANCE REQUIREMENTS

Mandatory requirements

Are there mandatory insurance requirements for air carriers?

Based on the EU-Switzerland Air Transport Agreement, Switzerland has adopted EU Regulation No. 785/2004, which establishes minimum insurance requirements for air carriers and aircraft operators. The minimum insurance coverage for liability with respect to passengers is 250,000 special drawing rights (approximately €300,000) per passenger (subject to exceptions for non-commercial operations by aircraft with a maximum take-off mass of 2,700kg or less). In respect of liability to third parties, the minimum insurance cover varies according to the maximum take-off weight of the aircraft concerned.

LITIGATION PROCEDURE

Court structure

Provide a brief overview of the court structure as it relates to civil aviation liability claims and appeals.

Normally, the parties first try to reach an out-of-court settlement. If that is not possible, the claimant may bring an action in the ordinary civil courts. The organisation of the judiciary differs from canton to canton. In larger cantons, there are several courts of first instance. In smaller cantons, there is normally just one. All cantons have established a high court, which serves primarily as an appellate court. In the four cantons of Aargau, Berne, St Gallen and Zurich

commercial courts are competent to adjudicate commercial disputes, for instance between insurers. The Federal Supreme Court is the supreme court of the Swiss Confederation and decides on appeal on issues of federal or constitutional law. Among other things, the Federal Supreme Court may hear appeals in civil aviation liability cases.

Allowable discovery

What is the nature and extent of allowable discovery/disclosure?

Broad discovery or disclosure proceedings as known in common law jurisdictions do not exist in Switzerland. The scope of document production in Swiss litigation is rather limited. Nonetheless, the court may order a litigant or a third party to produce specific documents, either on a precautionary basis before ordinary proceedings are pending, or at an advanced stage of the proceedings when the court takes evidence.

Evidence

Does the law of your state provide for any rules regarding preservation and spoliation of evidence?

A litigant may seek a court order to the effect that evidence must be preserved. Spoliation of evidence may amount to the crime of suppression of documents under the Swiss Criminal Code.

Recoverability of fees and costs

Are attorneys' fees and litigation costs recoverable?

Generally, attorneys' fees and court costs must be paid by the losing party. If none of the parties is deemed to have entirely prevailed on the merits of the dispute, the costs are allocated in accordance with the outcome of the case. Both attorneys' fees and court costs are determined according to tariffs, whereby each canton has its own rate scale. Therefore, attorneys' fees and court costs differ among the cantons. As a practical matter, successful litigations will often only be compensated partially. In case of a settlement, the attorneys' fees and court costs are normally charged to the parties according to the terms of the settlement agreement.

JUDGMENTS AND SETTLEMENT

Pre- and post-judgment interest

Does your state impose pre-judgment or post-judgment interest? What is the rate and how is it calculated?

Normally, interest of 5 per cent must be paid for the time between the date when the damage occurred until the date of payment.

Settlements

Is court approval required for settlements?

Court approval is not required for settlements.

What is the effect of a settlement on the right to seek contribution or indemnity from another person or entity? Can it still be pursued?

That depends on the specific terms and conditions of the settlement agreement.

Are there any financial sanctions, laws or regulations in your state that must be considered before an air carrier or its insurer may pay a judgment or settlement?

Before such payment is made, the current sanction lists of the Swiss government should be consulted.

UPDATE AND TRENDS

Key developments of the past year

What were the key cases, decisions, judgments and policy and legislative developments of the past year?

Air traffic controller and pilot organisations have criticised recent air traffic controller convictions handed down by Swiss criminal courts for operational incidents that resulted in neither injury nor damage. Critics have asserted that criminal prosecutions in the aviation sector tend to do more harm than good and that the sole purpose of safety investigations following aviation incidents is to determine what went wrong in order to use this information to prevent similar incidents happening in future. Most incidents involve some sort of human error and criminal prosecutions seek to determine who is responsible and punish them accordingly. However, this is contrary to the aims of safety investigations, including learning from past mistakes. There is widespread concern that criminalisation leads to a loss of cooperation from individuals who could provide critical insight into an incident.

On 29 October 2019 the Supreme Court upheld an appeal against the conviction of an air traffic controller who had cleared two aircraft in quick succession to take off from two crossing runways at Zurich airport. The decision is welcome news, but many questions pertaining to the criminalisation of operational incidents remain open.

Coronavirus

What emergency legislation, relief programmes and other initiatives specific to your practice area has your state implemented to address the pandemic? Have any existing government programmes, laws or regulations been amended to address these concerns? What best practices are advisable for clients?

The Swiss Federal Council issued the Ordinance on Measures to Combat the Coronavirus (the covid-19 Ordinance) on 13 March 2020. The covid-19 Ordinance has been amended several times to respond to new developments and challenges posed by the pandemic.

Among other things, the covid-19 Ordinance provides for measures to restrict the entry of persons from high-risk countries and regions. A list of high-risk countries and regions is published in an annex to the ordinance. The list is frequently updated.

Most countries outside of the Schengen area are currently on the list of high-risk countries.

As of 15 September 2020, Swiss, European Union and European Free Trade Association nationals can enter Switzerland

from any country in the world. However, if the country or region they are travelling from is on the high-risk list, such nationals are required to go into quarantine for 10 days.

For most other third-country citizens travelling directly from a high-risk country or region, it is currently not possible to enter Switzerland.

The country of departure, not the stopover country, determines whether travellers may enter Switzerland. For example, it is currently not possible for third-country nationals to fly to Switzerland from the USA via Toronto (the USA is considered a high-risk country, while Canada is not). This provision aims to prevent people circumventing the entry requirements by travelling in transit via countries not on the high-risk list.

Travellers should be aware that the epidemiological situation can change quickly. If the travel destination is classified as a country or region with an increased risk of infection, travellers will be required to go into quarantine following their return to Switzerland – this will apply irrespective of how the country or region in question was classified prior to departure.

In some cases, the contact details of travellers will be collected upon their arrival in Switzerland. The collection of contact details affects all airline passengers from countries with an increased risk of infection. There are two reasons for the collection of contact details: on the one hand, this assists traceability in the event that there were infectious passengers on board; on the other, the contact details are used by the authorities to monitor compliance with mandatory quarantine through spot checks.