

Flight Insurance: National and International Regulatory Experience

Roman Viktorovich Seryshev¹; Anna Evgenievna Gorokhova²; Umalt Umarovich Abdulkadyrov³

¹Financial University under the Government of the Russian Federation, Moscow, Russia.

²Moscow Polytechnic University, Moscow, Russia.

³Chechen State University, Grozny, Russia.

Abstract

The article considers the legal regulation and the specifics of aviation insurance in Russia. Currently, the use of air transport is growing all over the world, including Russia. Accordingly, the likelihood of risks that threaten the property, health and life of aircraft owners, users of air transport services and third parties increases. The study aims at examining the legal regulation of aviation insurance, revealing its issues and searching for their solutions. It dwells on both general and special insurance legislation and its principles. The authors of the article analyze the basic insurance laws concerning the regulation of relations arising from flight insurance. They disclose the essence of compulsory civil liability insurance of aircraft owners that consists in the fact that the object of this insurance is exclusively compensation for property damage, while health, life and moral damages are not reimbursed. The authors highlight the specifics of the aviation insurance system. They describe the issues of flight insurance and the international experience of their solution. Certain aspects of international insurance regulation are compared with the Russian insurance legislation.

Key-words: Air Transport, Risks, Insurance, Air Carrier, Aircraft Liability.

1. Introduction

The modern world does not stand still and is constantly evolving. An upward trend in the use of transport directly depends on the well-being of people. Between 2010 and 2014, passenger air traffic reached 93.2 million people due to the restored welfare of the Russian population after the crisis of 2008-2009. The devaluation of the Russian ruble in 2015, which contributed to a decrease in the well-being of the population, decreased this indicator to 92.1 million passengers [1]. However, the use of transport has certain risks that threaten the property, life and health of people. In this regard, it

is necessary to protect the passenger from adverse consequences of the trip and protect the carrier from unforeseen but significant expenses.

In terms of the number of passengers carried, air transport today occupies a leading place. According to information provided by the International Air Transport Association, 2017 was marked by a record number of passengers transported around the world, amounting to more than 4 billion people. "In 2017, the frequency of passenger flights almost doubled compared to 2000: if the average citizen in 2000 flew once every 43 months, then in 2017 this began to happen on average once every 22 months, the flights themselves became more accessible than ever". "Today, air transport allows people to quickly move to the place of work, study, or simply go on exciting journeys of any distance" [2]. However, the situation that has arisen with the arrival of the COVID-19 pandemic can lead to a serious reduction in air passenger traffic, presumably by 60-70% [3].

To compete with foreign companies, Russian civil aviation also demonstrates positive dynamics and increases air traffic by 10% each year. According to the Federal Air Transport Agency, the Russian airlines carried 116.197 million people at the end of 2018, which was 10.6% more than in 2017 (105.053 million people). The total passenger turnover amounted to 286.931 billion passengers/km and increased by 10.6% [4] but dropped by 46% in 2020 due to the pandemic [5]. Air mobility of the Russian population is lower than in the European countries. The main reason is the excessive wear and tear of the air fleet, which negatively affects flight safety, available capacity and efficiency of the existing fleet. Passenger air traffic is still risky, which is facilitated by the high wear and tear of passenger air transport in Russia. Thus, all the Russian-made aircraft, whose share is about 25%, is more than 30 years old [6].

According to the statistics of the Interstate Aviation Committee (IAC), the Russian Federation had 178 accidents and 772 victims in the sphere of commercial and general aviation between 2010 and 2018 [7]. Of course, it is impossible to completely overcome the consequences of these disasters. However, the world has developed effective economic and legal mechanisms to minimize them, among which flight insurance plays a special role.

The Russian system of aviation insurance cannot accumulate enough resources required to compensate for the damage arising from transport accidents, in particular, to make compensation payments to victims of such disasters and their heirs [8]. The Russian insurers have no experience in aviation risk reinsurance so they often reinsure themselves in the Western market, while it would be useful to establish a reliable system of reinsurance and accumulation of the necessary insurance resources in Russia. Currently, the Russian insurance companies transfer about 50% of the collected insurance premiums abroad, sharing a part of their risks with their foreign colleagues. Therefore, the

Russian insurers work as intermediaries, earning not on insurance but the difference between insurance rates paid by airlines. We believe that air transport needs not only to improve the quality of aircraft and upgrade its technologies but also to reorganize its insurance system from the legal viewpoint.

The foregoing conditions a significant interest in the issues of aviation insurance. At the same time, scholars are attracted by prospects for the development of the flight insurance market (A.A. Idrisova) [8], business models of certain insurance companies (A.A. Butov) [9], methods of assessing the insured property and determining the amount of damage (O.I. Lakhtarina) [10]. The legal aspects of this direction in insurance have been considered to a lesser extent, even though they are vital for the effective functioning of the insurance mechanism. Thus, this study aims at analyzing the existing problems and improving the legal framework for aviation insurance in Russia.

Research hypothesis. The most urgent direction of improving the Russian legislation on aviation liability insurance is to harmonize the Russian norms establishing the limits of insured liability and insurance rules with international standards.

2. Methods

The study utilized the statistical method, deduction method and comparative-legal method. The normative base was laid by the Russian, foreign and international legal acts governing the rules for flight insurance, statistical data and the related Internet sources. The theoretical base consisted of scientific articles on aviation insurance written by different authors.

3. Results

Aviation insurance is insurance against all the risks associated with the operation of aviation and space technology [11]. Nowadays there is no clear classification of its types. Aviation insurance is often complex and can cover several insurance objects under one policy [12, 27].

The types of insurance related to the ownership and operation of aircraft can be divided into two main groups. The first group includes types of insurance that are voluntary. This is the insurance of aircraft and their components in case of death, damage or missing as a result of an accident during the operation of the aircraft, as well as business risks of airlines. Due to the downtime of air transport in connection with the COVID-19 pandemic, the abolition of many insurance types or a reduction in insurance premiums are being actively discussed [13]. In general, these types of insurance do not

have any features that distinguish them from those typical of other vehicles. The second group includes aviation liability insurance conditioned by the specifics of air transport, therefore it should be carefully considered.

Being a relatively new branch of Russian insurance legislation, carrier civil liability insurance is enshrined in the norms of the Air Code of the Russian Federation (VK RF) of March 19, 1997 N 60-FZ [14] and Federal Law of the Russian Federation of June 14, 2012 No. 67-FZ "About obligatory civil liability insurance of carrier for damnification of life, to health, property of passengers and about the procedure for compensation of such harm done in case of public conveyances by the subway" [15].

The VK RF establishes five types of air insurance, four of which relate to the liability of the aircraft owner, carrier, operator to the passenger, third party, and consignee (consignor) for the harm caused to their life, health, and property (Articles 131, 133, 134, 135 VK RF).

The procedure and conditions for the above types of compulsory (imputed) insurance are regulated by the aforementioned norms rather vaguely. In particular, the minimum amount of the operator's liability insurance for damage caused during the performance of aviation work is not defined in the norms of the RF VK. The legislator also did not consider it necessary to fix the list of insured events; upon occurrence, the passenger's right to receive insurance payments arises. The biggest problem in this insurance sector is related to the normatively established procedure for determining the maximum amount of insurance payment, which in many cases is insufficient for fair compensation for harm.

According to Article 117 of the Air Code of the Russian Federation, the carrier shall pay 2 million rubles in case of the death of a passenger and 25 thousand rubles for the burial; up to 2 million rubles for causing harm to health (depending on the severity of the harm); up to 23 thousand rubles for the damage caused to the passenger's property. If the passenger is still alive, the company is obliged to compensate for the damage caused to the health of the aircraft passenger in the amount based on the nature and severity of the damage to health. Although this type of insurance (aircraft liability insurance) is also ambiguous. Different scenarios are possible. In the first case, an aircraft belonging to some Russian company on a domestic flight does not cross the Russian border. In this regard, Article 117 and Article 133 of the Air Code of the Russian Federation applicable. In case of the death of a passenger, the amount of insurance is 2 million and 25 thousand rubles, including property-related payments and the judicial prospect of compensation for moral damage, where the amount remains at the discretion of the court depending on the severity of physical and mental damage.

Outside the Russian Federation airspace, the situation with aircraft liability insurance is different and is governed by international law.

4. Discussion

To solve the issues of aircraft liability insurance, it seems appropriate to consider the practice of regulating this area in other legal systems.

Therefore, the concept of joint management has been developed in international practice. This concept provides for a special procedure for interaction between government agencies, the public, and business communities, aimed at jointly solving problems that are intractable within the framework of only government bodies. With such cooperation, there is a fair determination of insurance rates and the amount of insurance payments. Thus, the determination of the cost of insurance services for passengers is a kind of consensus, in the achievement of which the passengers themselves, airport managers, navigation companies, leasing companies, fuel suppliers, representatives of ground and support services, and insurance companies participate [16].

In the United States, each airline shall have insurance coverage that meets statutory requirements for interstate and direct international air travel. The minimum insured amount for aircraft third-party liability is \$300,000 per person and one insurable event, and the total sum is \$20 million for the entire aircraft for each insurable event. If an aircraft has no more than 60 seats or its maximum payload is not more than 18,000 pounds, the minimum insurable amount will be \$20,000 for the entire aircraft for each insurable event [17]. In addition, any carrier performing passenger transportation is obliged to provide insurance coverage for passengers of at least \$300,000 per passenger and, in total, not less than the product of \$300,000 by 75% of the number of passenger seats installed in the aircraft. Each insurance certificate or contract should state that it cannot be replaced, canceled, revoked or modified in any way to lower the minimum limits set out in the law [18]. In the United States, there is no federal requirement for all air carriers to have insurance coverage for the risks associated with their activities. Some states set such requirements independently [19].

Modern Europe has four main documents regulating the issues of aircraft liability insurance:

- The 1999 Montreal Convention [20];
- Council Regulation (EC) No 2027/97 of 9 October 1997 on air carrier liability in the event of accidents as amended by Regulation (EC) No 889/2002 of the European Parliament and of the Council of 13 May 2002 [21];

- Regulation (EC) No 785/2004 of the European Parliament and of the Council of 21 April 2004 on insurance requirements for air carriers and aircraft operators [22];
- Regulation (EC) No 1008/2008 of the European Parliament and the Council on common rules for the operation of air services in the Community [23, 26].

The aircraft third-party liability system operates in the European Union as follows. Article 50 of the Montreal Convention stipulates that carriers shall have adequate insurance for their liability. At the same time, the Member State to which the carrier operates flights reserves the right to require the carrier to provide evidence of adequate liability insurance. The Montreal Convention also sets the limits of liability to passengers in the amount of 250,000 SDR (special drawing rights are a currency unit of the International Monetary Fund, whose rate is based on the exchange rate of a basket of currencies. At the rate of the Central Bank of the Russian Federation, it is equal to 20 million rubles). Baggage liability: 1,000 SDR per passenger. Cargo liability: 17 SDR per kilogram of cargo. Council Regulation (EC) No 2027/97 of 9 October 1997 on air carrier liability in the event of accidents states that "if a passenger is killed or injured, the air carrier shall without delay, and in any event not later than 15 days after the establishment of the identity of the natural person entitled to compensation, make such advance payments as may be required to meet immediate economic needs on a basis proportional to the damage suffered. In the event of death, this payment shall be not less than €17,424. The air carrier is responsible for the loss, shortage or damage to baggage in an amount not exceeding €1,231.66. Such liability, regardless of the fault of the carrier, arises for non-preservation of checked baggage accepted for carriage, in the absence of defects identified before registration. The fault of the carrier is a prerequisite for the occurrence of his responsibility only for the loss or damage of unchecked baggage. "Establishing the minimum requirements for insurance of air carriers and aircraft operators in relation to passengers, baggage, cargo, and third parties, Regulation No. 785/2004 clearly defines who is the air carrier and who is the operator of the aircraft and also clearly discloses the concepts of flight, passenger, third party... Thus, in relation to passengers and unchecked baggage, the term "flight" means the period of transportation of passengers by aircraft, including their embarkation and disembarkation. A passenger is defined as any person participating in a flight with the knowledge of the air carrier or aircraft operator, other than members of the flight crew and crew of flight attendants, who are performing their duties on the flight. A third party in such insurance is any legal entity or individual who is not classified by the said regulations as passengers and crew members performing the flight. The list of risks subject to insurance requires the inclusion of the following types of insured events: military action, terrorism, hijacking, acts of sabotage, unlawful seizure of an aircraft, riots, and unrest. The minimum amount of insurance coverage for

passengers is set at SDR 250,000 per passenger. Below the indicated amount, but not less than SDR 100,000 per 1 passenger, insurance coverage can be set in the states governed by the said regulation, only in relation to non-commercial operations of aircraft with a maximum take-off mass (MTOM) of not more than 2,700 kg. The minimum insurance coverage for damage or loss of baggage on commercial flights should be SDR 1,000 per passenger. The minimum insurance coverage for a third party in the event of an insured event involving any aircraft depends on the MTOM (from 500 to 500,000 kg) and ranges from 0.75 to 700 million SDR. "If it is impossible for the air carrier or aircraft operator to provide the specified insurance coverage in relation to harm to third parties in the event of insured events in connection with military and terrorism risks, such an air carrier or aircraft operator is obliged to insure these risks on an aggregate basis".

Let us consider a case when the Russian plane crosses the border of the Russian Federation (which means it is an international flight). In this case, the Montreal Convention ratified by the Russian Federation in 2017 is in effect, which established certain rules regarding the liability of an air carrier in the international air carriage of passengers, baggage and cargo. Under the Montreal Convention, liability limits for compensation can be more than 20 million rubles, excluding payments for luggage. Thus, there is a double standard for insurance and compensation for damage to the life and health of air passengers. Airplanes performing only domestic flights over Russia are insured at one price, while aircrafts performing international flights are insured at a higher rate [24, 25].

The prices for air tickets in Russia are quite consistent with international ones, and sometimes even higher. At the same time, the amount of compensation is dozens of times lower than the rates adopted in Europe and the United States.

The table below demonstrates differences in the established limits of insurance coverage in Russia, the USA and the EU countries (in rubles).

Country	Air carrier liability for damage to the life and health of passengers		Air carrier liability towards third parties		Air carrier liability for loss and damage to baggage	
	Lower limit	Upper limit	Lower limit	Upper limit	Lower limit	Upper limit
Russia	-	2 mil	24,260 per 1 kg of operational takeoff weight	-	-	600 per 1 kg
USA	22.5 mil	-	22.5 mil	-	1,500 per 1 kg	210,000 per passenger
EU	27.25 mil	-	82.725 mil	7,630 mil	1,873 per 1 kg	109,000 per passenger

Thus, the Russian legislation in the field of aviation insurance requires significant changes and additions, as well as its development and implementation.

5. Conclusion

The need for improvement is seen primarily in the expansion of the air carrier's liability limits established in Russian legislation to the level of liability limits defined in international legislation and bringing the procedure for insuring the liability in accordance with international limits and insurance rules established by the Montreal Convention. Thus, fair amounts of compensation for damage to property, life, and health of passengers and third parties should be established. The list of insured events, in respect of which the carrier's civil liability insurance obligation has been established, should also be expanded and more clearly enshrined in the norms of Russian legislation. Thus, the hypothesis of the study seems to be proven.

References

- The bulletin on the current trends in the Russian economy. A consumer's demand for air transport. <https://ac.gov.ru/files/publication/a/10587.pdf>
- Airlines have carried a record number of passengers over the globe. *Russian newspaper* RG.RU. <https://rg.ru/2018/09/09/aviakompanii-po-vsemu-miru-perevezli-rekordnoe-chislo-passazhirov.html>
- S&P: the global passenger traffic will drop by 60-70% in 2020.* <https://www.kommersant.ru/doc/4451111>
- The Russian Federal Air Transport Agency informed about a decrease in air transport by 46% in 2020. <https://rg.ru/2021/01/28/rosaviaciia-soobshchila-o-snizhenii-passazhirskih-aviaperevozok-v-2020-godu-na-46.html>
- Bludov, A., Fomin, A. The Russian air transport. 2019. *Vzlyot magazine*, 1, 2/2021. <http://www.take-off.ru/zhurnal-vzlet-2021-god/1-2-2021-193-194>
- Aircraft downtimes: how it influences security. <https://www.gazeta.ru/business/2020/10/08/13312135.shtml>
- The Russian air disasters since 2010. <https://tass.ru/info/6405351>
- Idrisova, A.A., Khokhlova, N.V. The state and challenge of developing the aviation insurance market in the Russian Federation. *Economics and management of innovative technologies*, 2014. 10(37), 20-28.
- Butov, A.A., Galimov, L.A. The system of adopting managerial decisions by an insurance company for assessing claims reserves (occurred but not reported) in the terminals of medical insurance organizations. *Basic research* 2016. 10-2. 265-269.
- Lakhtarina, O.I. The use of the accident rate for calculating insurance tariffs for small aircrafts. *University newspaper*. 2.11. 17, 161-163.

Yashina, M.L., Khokhlova, N.V. The current state of aviation insurance in Russia. *Bulletin of the Samara Scientific Center of the Russian Academy of Sciences*. 2014. Vol. 16. 6-2. P. 640-643.

All about insurance. *Aviation insurance in Russia*. <http://rksu.com/>

The transport domain in the context of COVID-19. <https://ach.gov.ru/upload/pdf/Covid-19-transport.pdf>

The Air Code of the Russian Federation. <https://docs.cntd.ru/document/9040995>

Federal Law of the Russian Federation of June 14, 2012 No. 67-FZ "About obligatory civil liability insurance of carrier for damnification of life, to health, property of passengers and about procedure for compensation of such harm done in case of public conveyances by the subway" (as amended on December 18, 2018). <https://docs.cntd.ru/document/902352282>

Ismiyarto, I., Putranti, H.R.D. Oligopoly and business competition behavior: A review of collaborative governance in pricing of aviation business. *International Journal of Scientific and Technology Research*, 8(10), 2019, 3523-3526.

The Central Bank of Russia report "*The current state of insurance market in the Russian Federation in the insurance enjoyed by law*".

https://www.cbr.ru/Content/Document/File/118732/report_insurance_20210219.pdf

Electronic Code of Federal Regulations. https://www.ecfr.gov/cgi-bin/retrieveECFR?gp=&SID=e51ebfe9c4cdcbb3b4c119ab7ccf23c7&mc=true&n=pt14.4.205&r=PART&ty=HTML#se14.4.205_12

Sanger, L. *Mandatory aviation insurance. A domestic and international perspective*. https://www.slackdavis.com/wp-content/uploads/2018/09/mandatory_aviation_insurance08.pdf

The Convention for the Unification of Certain Rules Relating to International Carriage by Air (ratified by Federal Law of the Russian Federation of April 3, 2017 No. 52-FZ)]. <https://docs.cntd.ru/document/901784390>

Council Regulation (EC) No 2027/97 of 9 October 1997 on air carrier liability in the event of accidents as amended by Regulation (EC) No 889/2002 of the European Parliament and of the Council of 13 May 2002]. <http://docs.pravo.ru/document/view/22279766>

Regulation (EC) No 785/2004 of the European Parliament and of the Council of 21 April 2004 on insurance requirements for air carriers and aircraft operators.

<http://www.consultant.ru/cons/cgi/online.cgi?req=doc&base=INT&n=56984#01296818048179433>

Regulation (EC) No 1008/2008 of the European Parliament and of the Council on common rules for the operation of air services in the Community (Recast).

<http://www.consultant.ru/cons/cgi/online.cgi?req=doc&base=INT&n=27022#06893489586613628>

Ignatova, Ya.S. Compulsory liability insurance: international experience, comparative analysis, implementation problems in Russia. *Transport newspaper* 4/2012.

Papstov, A.G., Avarskii, N.D., Kolonchin, K.V., Bogachev, A.I., Seregin, S.N., Gasanova, K.N. 2020. Insurance as a Component of the Marketing Mechanism to Develop Aquaculture. *Amazonia Investiga*, 9(26): P. 498-510.

Alieva, S.A., Isayeva, E.G.I., Sutaeva, A.R. 2020. Behavior strategies in traumatic situation. *Laplace Em Revista*, 6(C): P. 307-313.

Wagner, M.N.L., Makushkin, S.A., Goncharov, V.V., Maksimova, D.D., Sekerin, V.D., Gorokhova, A.E. 2020. Regulation of the tourism industry to attract foreign investments at risk of force majeure events. *Laplace Em Revista*, 6(C): P. 299-306.