

1974年關於海上載運旅客及其行李之雅典公約 2002年議定書

2002年11月1日訂於倫敦，2014年4月23日生效

Protocol of 2002 to the Athens Convention relating to the Carriage of Passengers and their Luggage by Sea (PAL), 1974

Signed at London, November 1, 2002 ; Entry into force 23 April 2014

Athen 2002

The States Parties to this Protocol,

CONSIDERING that it is desirable to revise the Athens Convention relating to the Carriage of Passengers and their Luggage by Sea, done at Athens on 13 December 1974, to provide for enhanced compensation, to introduce strict liability, to establish a simplified procedure for updating the limitation amounts, and to ensure compulsory insurance for the benefit of passengers,

RECALLING that the 1976 Protocol to the Convention introduces the Special Drawing Right as the Unit of Account in place of the gold franc,

HAVING NOTED that the 1990 Protocol to the Convention, which provides for enhanced compensation and a simplified procedure for updating the limitation amounts, has not entered into force,

HAVE AGREED as follows:

Article 1

For the purposes of this Protocol:

1. "Convention" means the text of the Athens Convention relating to the Carriage of Passengers and their Luggage by Sea, 1974.
2. "Organization" means the International Maritime Organization.
3. "Secretary-General" means the Secretary-General of the Organization.

Article 2

Article 1, paragraph 1 of the Convention is replaced by the following text:

- 1
(a) "carrier" means a person by or on behalf of whom a

本議定書各締約國，

慮及希望修正1974年12月13日在雅典制定之海上旅客及其行李運送雅典公約，以規定更高的賠償額、引入嚴格責任、建立更新限額之簡化程序及確保旅客利益之強制保險，

瞭解本公約1976年修正議定書引進特別提款權取代金法郎，

注意到本公約尚未生效實施之1990年修正議定書中有關更高賠償額及更新限額之簡化程序之規定

茲協議如下：

第1條

於本公約：

1. 「公約」係指1974年海上旅客及其行李運送雅典公約。
2. 「本組織」係指國際海事組織。
3. 「秘書長」係指本組織秘書長。

第2條

下列文字取代本公約第1條第1項：

1.
(a) 「運送人」係指由或以其名義訂

contract of carriage has been concluded, whether the carriage is actually performed by that person or by a performing carrier;

- (b) "performing carrier" means a person other than the carrier, being the owner, charterer or operator of a ship, who actually performs the whole or a part of the carriage; and
- (c) "carrier who actually performs the whole or a part of the carriage" means the performing carrier, or, in so far as the carrier actually performs the carriage, the carrier.

Article 3

- 1 Article 1, paragraph 10 of the Convention is replaced by the following:
10 .Organization. means the International Maritime Organization.
- 2 The following text is added as Article 1, paragraph 11, of the Convention:
11 "Secretary-General" means the Secretary-General of the Organization.

Article 4

Article 3 of the Convention is replaced by the following text:

Article 3 Liability of the carrier

1. For the loss suffered as a result of the death of or personal injury to a passenger caused by a shipping incident, the carrier shall be liable to the extent that such loss in respect of that passenger on each distinct occasion does not exceed 250,000 units of account, unless the carrier proves that the incident:
 - (a) resulted from an act of war, hostilities, civil war, insurrection or a natural phenomenon of an exceptional, inevitable and irresistible character; or
 - (b) was wholly caused by an act or omission done with the intent to cause the incident by a third party.If and to the extent that the loss exceeds the above limit, the carrier shall be further liable unless the carrier proves that the incident which caused the loss occurred without the fault or neglect of the carrier.
2. For the loss suffered as a result of the death of or personal injury to a passenger not caused by a shipping incident, the carrier shall be liable if the incident which caused the loss was due to the fault or neglect of the carrier. The burden of proving fault or neglect shall lie with the claimant.
3. For the loss suffered as a result of the loss of or damage to cabin luggage, the carrier shall be liable if the incident which caused the loss was due to the fault or neglect of the carrier. The fault or neglect of the carrier shall be presumed for loss caused by a shipping incident.

立運送契約之人，而不論該運送是否實際由其履行或由履約運送人履行；

- (b) 「履約運送人」係指運送人以外，實際履行全部或部分運送之任一船舶之所有人、租傭船人或營運人；及
- (c) 「實際履行全部或部分運送之運送人」係指履約運送人，或實際履行運送範圍內之運送人。

第 3 條

1. 下列文字取代本公約第 1 條第 10 項：
10. 「本組織」係指國際海事組織。
2. 下列文字新增為本公約第 1 條第 11 項：
11. 「秘書長」係指本組織秘書長。

第 4 條

下列文字取代本公約第 3 條：

第3條 運送人責任

1. 船運事故所致旅客傷亡所遭受之損害，除運送人能證明意外為下列原因所致者外，運送人應負責每位旅客每一事故不超過 250,000 記帳單位之損失：
 - (a) 因戰爭、敵對行為、內戰、叛亂或具異常、不可避免且不可抗拒本質之自然現象；或
 - (b) 完全由意圖造成該事故之第三人之作為或不作為。損失超過前述限額之部分，除運送人能證明其對於損失事故之發生無任何過失或疏失者外，仍應負責之。
2. 非船運事故所致旅客傷亡所遭受之損害，如該損失係運送人之過失或疏失所致，運送人應負責之。過失或疏失之舉證責任由求償人負擔。
3. 有關自帶行李毀損滅失所遭受之損害，如該損失係運送人之過失或疏失所致，運送人應負責之。運送人之過失或疏失應推定該損失為船運事故所致。

4. For the loss suffered as a result of the loss of or damage to luggage other than cabin luggage, the carrier shall be liable unless the carrier proves that the incident which caused the loss occurred without the fault or neglect of the carrier.
5. For the purposes of this Article:
 - (a) shipping incident. means shipwreck, capsizing, collision or stranding of the ship, explosion or fire in the ship, or defect in the ship;
 - (b) fault or neglect of the carrier. includes the fault or neglect of the servants of the carrier, acting within the scope of their employment;
 - (c) defect in the ship. means any malfunction, failure or non-compliance with applicable safety regulations in respect of any part of the ship or its equipment when used for the escape, evacuation, embarkation and disembarkation of passengers; or when used for the propulsion, steering, safe navigation, mooring, anchoring, arriving at or leaving berth or anchorage, or damage control after flooding; or when used for the launching of life saving appliances; and
 - (d) loss shall not include punitive or exemplary damages.
6. The liability of the carrier under this Article only relates to loss arising from incidents that occurred in the course of the carriage. The burden of proving that the incident which caused the loss occurred in the course of the carriage, and the extent of the loss, shall lie with the claimant.
7. Nothing in this Convention shall prejudice any right of recourse of the carrier against any third party, or the defence of contributory negligence under Article 6 of this Convention. Nothing in this Article shall prejudice any right of limitation under Articles 7 or 8 of this Convention.
8. Presumptions of fault or neglect of a party or the allocation of the burden of proof to a party shall not prevent evidence in favour of that party from being considered.

Article 5

The following text is added as Article 4bis of the Convention:

Article 4bis Compulsory insurance

1. When passengers are carried on board a ship registered in a State Party that is licensed to carry more than twelve passengers, and this Convention applies, any carrier who actually performs the whole or a part of the carriage shall maintain insurance or other financial security, such as the guarantee of a bank or similar financial institution, to cover liability under this Convention in respect of the death of and personal injury to passengers. The limit of the compulsory insurance or other financial security shall not be less than 250,000 units of account per passenger on each distinct occasion.
2. A certificate attesting that insurance or other financial security

4. 有關自帶行李以外行李毀損滅失所遭受之損害，除運送人能證明其對於損失事故之發生無任何過失或疏失者外，仍應負責之。
5. 為本條文目的：
 - (a) 船運事故係指沈船、翻覆、船舶碰撞或擱淺、爆炸或船上失火，或船舶瑕疵；
 - (b) 運送人過失或疏失包括運送人之受雇人於其受雇範圍內之過失或疏失；
 - (c) 船舶瑕疵係指用於旅客逃生、疏散、上船及下船等與安全規定有關之船舶任何部分或其設備；或用於推進、操舵、安全航行、繫纜、下錨、停靠或離開碼頭或錨區、淹水損害控制或用於置放人命安全設施等功能喪失、失效或不符規定；
 - (d) 損害不包括懲罰性損害賠償。
6. 本條有關運送人之責任僅限於運送過程中所生事故所致之損害。運送過程事故損害及損害範圍，由求償人舉證。
7. 本公約規定不應損及運送人得向任何第三人為追償或本公約第 6 條與有過失抗辯之權利。本條文不應損及本公約第 7 條及第 8 條責任限制規定之任何權利。
8. 任一方疏失或過失之推定及舉證責任之分配不應對有利於該方當事人所提出之證據造成任何妨礙。

第 5 條

下列文字增列為本公約第 4 條之一：

第4條之一 強制保險

1. 旅客所搭載之船舶係於任一締約國內註冊且發證得載運十二名以上旅客者，實際履行全部或部分運送之任何運送人即應為投保或提供其他財務擔保，例如銀行或類似財務機構之擔保，以保障其於本公約下有關旅客傷亡之責任。強制保險或其他財務擔保之限額不應低於每一旅客每一事故 250,000 特別提款權。
2. 締約國有關機關於確定第 1 項要求

is in force in accordance with the provisions of this Convention shall be issued to each ship after the appropriate authority of a State Party has determined that the requirements of paragraph 1 have been complied with. With respect to a ship registered in a State Party, such certificate shall be issued or certified by the appropriate authority of the State of the ship's registry; with respect to a ship not registered in a State Party it may be issued or certified by the appropriate authority of any State Party. This certificate shall be in the form of the model set out in the annex to this Convention and shall contain the following particulars:

- (a) name of ship, distinctive number or letters and port of registry;
- (b) name and principal place of business of the carrier who actually performs the whole or a part of the carriage;
- (c) IMO ship identification number;
- (d) type and duration of security;
- (e) name and principal place of business of insurer or other person providing financial security and, where appropriate, place of business where the insurance or other financial security is established; and
- (f) period of validity of the certificate, which shall not be longer than the period of validity of the insurance or other financial security.

3.

(a) A State Party may authorize an institution or an Organization recognised by it to issue the certificate. Such institution or organization shall inform that State of the issue of each certificate. In all cases, the State Party shall fully guarantee the completeness and accuracy of the certificate so issued, and shall undertake to ensure the necessary arrangements to satisfy this obligation.

- (b) A State Party shall notify the Secretary-General of:
- (i) the specific responsibilities and conditions of the authority delegated to an institution or organization recognised by it;
 - (ii) the withdrawal of such authority; and
 - (iii) the date from which such authority or withdrawal of such authority takes effect.

An authority delegated shall not take effect prior to three months from the date from which notification to that effect was given to the Secretary-General.

(c) The institution or organization authorized to issue certificates in accordance with this paragraph shall, as a minimum, be authorized to withdraw these certificates if the conditions under which they have been issued are not complied with. In all cases the institution or organization shall report such withdrawal to the State on whose behalf the certificate was issued.

4. The certificate shall be in the official language or languages of the issuing State. If the language used is not English, French or Spanish, the text shall include a translation into one of these languages, and, where the State so decides, the official

已經符合者，應簽發船舶已依本公約規定而為有效之保險或其他財務擔保證書以資證明。對於在締約國登記之船舶，應由船舶登記國有關機關頒發或簽發該證明；對於不在締約國登記之船舶，則可由任一締約國之有關機關頒發或簽發該證書。該證書應採用附件一所列範本格式並記載下列事項：

- (a) 船名、船舶編號或符號及船籍港；
- (b) 實際履行全部或部分運送之運送人之姓名及其主營業所所在地；
- (c) 國際海事組織船舶識別號碼；
- (d) 擔保類型及期間；
- (e) 保險人或其他提供擔保人之姓名及其主營業所所在地，及於適當時，記載訂立保險或提供擔保之營業所在地。
- (f) 證書之有效期間，該期間不得超過保險或其他擔保之有效期間。

3.

(a) 締約國得授權任一協會或該協會所承認之組織簽發第 2 項所規定之證明。任一證書簽發時，該協會或組織應通知該國。於所有情況下，締約國應完全擔保所簽發證書之合格性及正確性，並應採行滿足本義務之必要安排。

- (b) 締約國應通知秘書長下列事項
- (i) 給予該協會或該協會所承認之組織授權之特別義務或條件；
 - (ii) 授權之撤銷，及
 - (iii) 授權及撤銷授權生效之日期。

任何授權不應於通知秘書長之日起三個月內生效。

(c) 依本項規定獲授權簽發證書協會或組織，至少應被授權去撤銷那些未能維持其簽發條件之證書。於任何情況下，協會或組織應將撤銷情事報告其所代理簽發之國家。

4. 證書應以簽發國官方之一種或多種文字為之。如非以英文、法文或西文為之，證書正文應包含有英文、法文或西文之譯文，此時該國

- language of the State may be omitted.
5. The certificate shall be carried on board the ship, and a copy shall be deposited with the authorities who keep the record of the ship's registry or, if the ship is not registered in a State Party, with the authority of the State issuing or certifying the certificate.
 6. An insurance or other financial security shall not satisfy the requirements of this Article if it can cease, for reasons other than the expiry of the period of validity of the insurance or security specified in the certificate, before three months have elapsed from the date on which notice of its termination is given to the authorities referred to in paragraph 5, unless the certificate has been surrendered to these authorities or a new certificate has been issued within the said period. The foregoing provisions shall similarly apply to any modification which results in the insurance or other financial security no longer satisfying the requirements of this Article.
 7. The State of the ship's registry shall, subject to the provisions of this Article, determine the conditions of issue and validity of the certificate.
 8. Nothing in this Convention shall be construed as preventing a State Party from relying on information obtained from other States or the Organization or other international organizations relating to the financial standing of providers of insurance or other financial security for the purposes of this Convention. In such cases, the State Party relying on such information is not relieved of its responsibility as a State issuing the certificate.
 9. Certificates issued or certified under the authority of a State Party shall be accepted by other States Parties for the purposes of this Convention and shall be regarded by other States Parties as having the same force as certificates issued or certified by them, even if issued or certified in respect of a ship not registered in a State Party. A State Party may at any time request consultation with the issuing or certifying State should it believe that the insurer or guarantor named in the insurance certificate is not financially capable of meeting the obligations imposed by this Convention.
 10. Any claim for compensation covered by insurance or other financial security pursuant to this Article may be brought directly against the insurer or other person providing financial security. In such case, the amount set out in paragraph 1 applies as the limit of liability of the insurer or other person providing financial security, even if the carrier or the performing carrier is not entitled to limitation of liability. The defendant may further invoke the defences (other than the bankruptcy or winding up) which the carrier referred to in paragraph 1 would have been entitled to invoke in accordance with this Convention. Furthermore, the defendant may invoke the defence that the damage resulted from the wilful misconduct of the assured, but the defendant shall not invoke any other defence which the defendant might have been entitled to invoke in proceedings brought by the assured against the defendant. The defendant shall in any event have the right to require the carrier and the performing carrier to be
- 官方語文可省略。
5. 證書應備置於船舶上，並應將副本存放於船舶登記國之主管機關，或如非在締約國登記者，則交存簽發或發證國之主管機關。
 6. 保險或其他財務擔保未能滿足本條要求，而須以本條第 2 項簽發之保險或擔保證書所載有效期間屆滿以外之理由而終止者，除該證明已經繳還給主管機關或新證書已於該期間內簽發，否則應於效力終止日三個月以前通知本條第 5 項所述及之主管機關。保險或其他財務擔保之任何變更以致不能符合本條規定者，本項規定亦適用之。
 7. 船舶登記國應依本條規定自行決定證書之簽發條件及其有效期間。
 8. 本公約任何規定均不應解為有阻礙任一締約國得主張從其他締約國或國際海事組織或其他國際組織有關本公約保險或財務擔保提供人財務標準所獲取之資料。於此情況下，主張該資料之締約國不應解除其身為證書簽發國之責任。
 9. 經任一締約國授權簽發或證明之證書，基於本公約之目的，其他締約國應予以接受，並應視為與各該政府所簽發或簽證之證書具有同等效力。任一締約國如認為證書上之保險人或擔保人在財務上無法履行本公約所規定之義務時，得於任何期間請求與發證國諮商。
 10. 本條保險或其他財務擔保所涵蓋之任何損害賠償，得直接向保險人或財務擔保人請求之。於此情況下，既使運送人或履約運送人無權主張責任限制，保險人或提供財務擔保之人仍得以同等於依第 1 項規定之數額限制其責任。被告可主張第 1 項運送人依本公約可得主張之抗辯(破產或結束業務除外)。此外，被告亦得以損害係由被保險人之故意不當行為所致為抗辯，但對於被保險人對其提起的訴訟程序中，被告可得提出之其他抗辯，被告在此不得主張之。被告於訴訟程序進行中有權要求運送人及履約運送人參加訴訟。