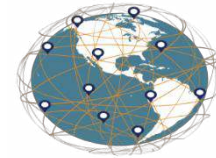


Bird & Bird & Legal and contractual issues
regarding the air transportation of
pharma products

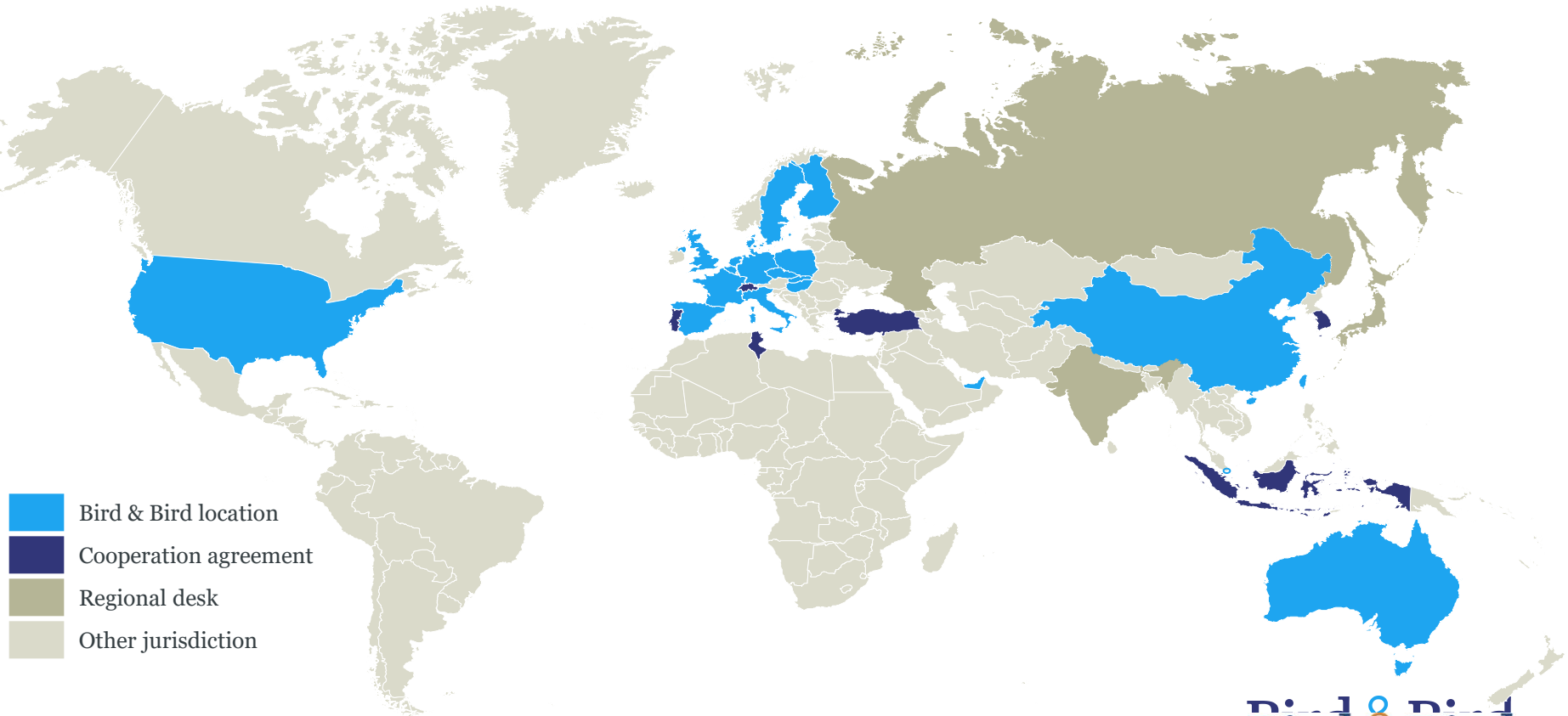
About Bird & Bird





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Bird & Bird - International Reach



-  Bird & Bird location
-  Cooperation agreement
-  Regional desk
-  Other jurisdiction

Bird & Bird & Aviation

We act for many leading aviation businesses, including airlines (ranging from small point to point operators to some of the largest network carriers in the world), lessors, financiers, aircraft manufacturers, ground handlers, MROs, freight forwarders, insurers, airports, tour operators and industry associations.

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- Chambers UK, 2019

"They are very supportive, client-oriented and have good knowledge of the aviation market."

- Chambers UK, 2018

Basic international rules and T&C's



Basic international rules - Warsaw Convention

Convention for the Unification of certain rules relating to international carriage by air

- Signed in 1929 countries and provided the first set of rules for the industry of international commercial aviation
- Ratified by 152 states
- Regulates liability for international carriage of persons, luggage or **goods** performed by aircraft for reward
- Amended in 1955 and 1975 – known collectively as the Warsaw system
- Further clarified by the Montreal convention in 1999 which updated the Warsaw system

Basic international rules - Montreal Convention I

Convention for the Unification of certain rules relating to international carriage by air

The provisions of the convention include:

- The modernisation of transport documents (electronic airway bills and tickets)
- The clarification of rules on the respective liability of the contractual carrier and the actual carrier
- The obligation for air carriers to maintain adequate insurance
- Under the Montreal Convention the liability limitations cannot be breached
- Liability is limited to 19 SDR per kilogram (approx. EUR 23)

Basic international rules - Montreal Convention II

Convention for the Unification of certain rules relating to international carriage by air

Main rule: Liability is limited, cf. Art. 22(3)

Exception: Special declaration of interest, cf. Art. 22(3)

- Consignor makes special declaration of consignor's interest in delivery at destination
- Consignor pays supplementary sum

=> Carrier liable to pay the declared sum (unless it proved that the declared sum is greater than consignor's actual interest in delivery at destination)

Temperature and pharma products

Leading air cargo carrier #1 (T&C)

Article 5(2)(c) Packaging and labelling of the cargo

"Temperature-sensitive cargo – including but not limited to **pharmaceuticals** – must be packaged in accordance with the special characteristics of the cargo and in a way that guarantees adequate protection against heat, which could potentially damage the cargo. This includes sending the cargo in sufficient transport containers (e.g. cool containers) – where appropriate for an additional fee – and in sufficient means of transportation."

Article 5(4) Cargo Admitted only under Specific Conditions

"Consignments specified in the applicable regulations of the carrier – e.g. in particular without limitation live animals, perishables, temperature-sensitive cargo such as pharmaceuticals are accepted only at the conditions provided for therein."

Article 12(2)(g) Exclusion of liability

"Consignments exposed to deterioration or decay due to change of ... **temperature** ... are taken on by the carrier to the exclusion of any liability for loss or damage caused by deterioration or decay."

Liability per kilogram

Leading air cargo carrier #1

Article 13(2) Limitation of Liability in Respect of Total Amounts

"Unless otherwise provided for to the advantage of claimant by the applicable Convention or by law, the following shall apply: The carrier is liable for destroyed, lost, damaged or delayed cargo only up to an amount of **19 Special Drawing Rights (SDR) per kilogram.**"

Temperature and pharma products

Leading air cargo carrier #2 (T&C)

Article 3.4.2

"Cargo of a sensitive or perishable nature which is liable to deteriorate or perish due to changes in ... **temperature** ..., will be accepted provided that the Shipper, ... recognise that, save to the extent provided for by Article 11, **Carrier will not be responsible for, or liable to any person for, any loss, damage or deterioration due to the perishing or spoiling of any Cargo**"

Article 11.2.7

"Cargo or Shipments suffering to deterioration or decay due to change of climate, temperature, altitude or for any other usual circumstance or due to the duration of the agreed Carriage time are taken on by the Carrier to the **exclusion of any liability for loss or damage caused by deterioration or decay;**"

Liability per kilogram

Leading air cargo carrier #2

Article 11.5

"Unless Shipper has made a special declaration of value or interest for Carriage and has paid the supplementary sum applicable, **liability of Carrier shall not exceed 19 Special Drawing Rights per kilogram of Cargo lost, damaged or delayed.** If the Shipper has made, at the time when the Cargo was handed over, a special declaration of value or interest in delivery at destination and has paid the requested surcharge, it is agreed that any liability shall in no event exceed such declared value for Carriage stated on the face of the Air Waybill or included in the Shipment Record. All claims shall be subject to proof of value."

Temperature and pharma products

Leading air cargo carrier # 3 (T&C)

Article 11.13

"Unless otherwise provided for by the APPLICABLE CONVENTION or any other applicable law to the benefit of the SHIPPER or CONSIGNEE, the following shall apply:

- a) SHIPMENTS exposed to deterioration or decay due to change ... **temperature** ... are taken on by the CARRIER to the **exclusion of any liability** for loss or damage caused by deterioration or decay."

Liability per kilogram

Leading air cargo carrier #3

Article 11.8

Liability of CARRIER shall not exceed the APPLICABLE CONVENTION limit or, if no convention applies, **19 special drawing rights, per kilogram** of CARGO destroyed, lost, damaged or delayed. If, with the agreement of the CARRIER, the SHIPPER has made a special declaration of value for CARRIAGE and has paid the supplementary sum applicable, it is agreed that the aggregate liability of the CARRIER shall in no event exceed such declared value for CARRIAGE stated on the face of the AIR WAYBILL or included in the SHIPMENT RECORD. All claims shall be subject to proof of value.

Temperature and pharma products

Leading air cargo carrier #4

Article XIX Liability of [the Carrier]

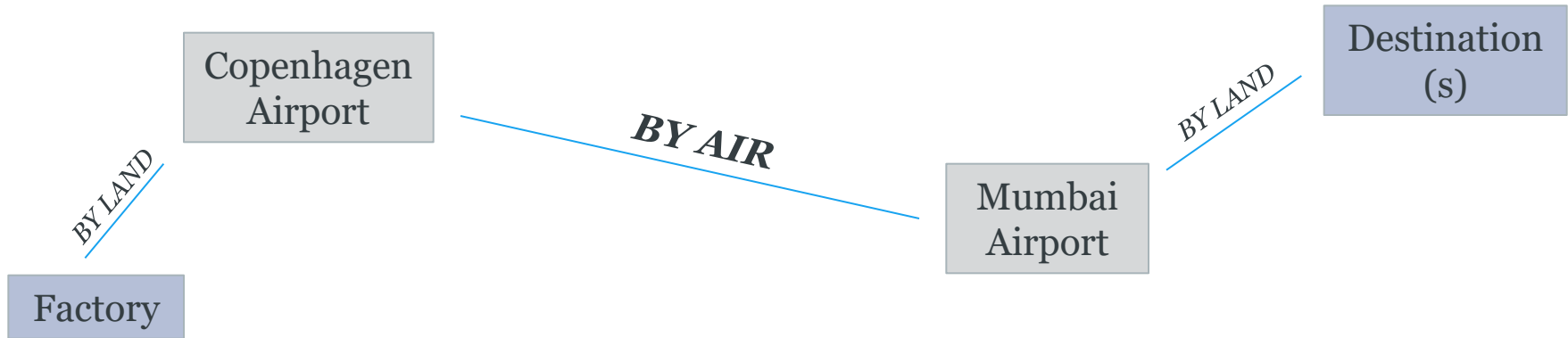
"B: [the Carrier] will not be liable for misdelivery, incomplete or otherwise inadequate delivery ..., nondelivery, missed pickup, delay, loss or damage or in respect of any fines, penalties or other expenses, unless caused by [the Carrier's] sole negligence and [the Carrier's] liability shall be limited in any event pursuant to Section XXIV (Limitations of Liability)..."

"C: ... [the Carrier] shall not be liable for any loss or damage, misdelivery, incomplete or otherwise inadequate delivery (including, but not limited to, failure to follow shipper or consignee instructions or failure to collect or properly deliver a payment instrument), non-delivery, missed pickup, penalties, expenses, or delay, caused in whole or in part by:

- ... The nature of the shipment, defect, or inherent vice of the product, including but not limited to loss or damage to perishable or **temperature sensitive items**, to the extent the loss or damage results from exposure to heat or cold or the perishable nature of the product;"

The concept of "Damage"

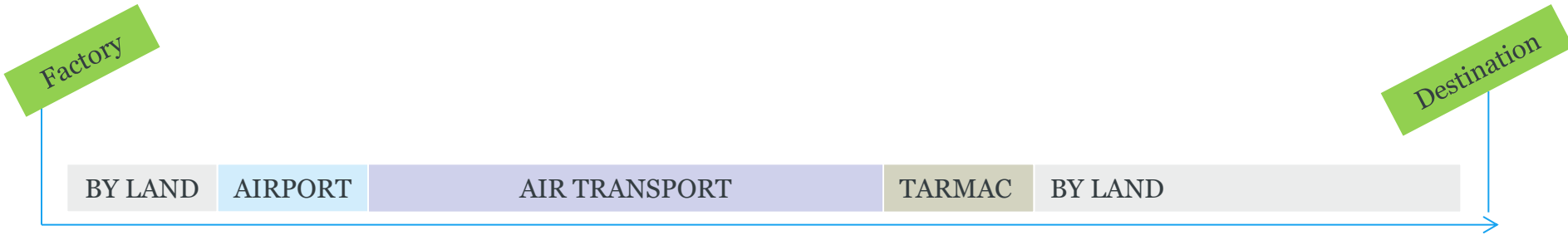
What is "damage"?



Multi-modal transport

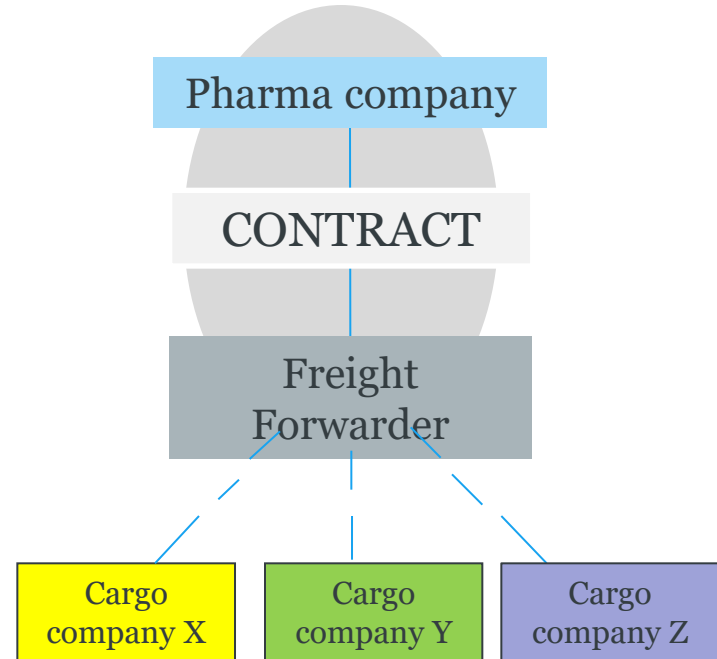
Liability issues

- **Definition:** Transportation of good by several modes of transport under a single contract



Compliance & Code of Conduct

- **International sanctions**
 - Medicines are generally exempted from sanction regimes
- **Bribery**
 - US Foreign Corrupt Practices Act (FCPA)
 - UK Bribery Act 2010
- **Code of Conduct**



Thank you & Bird & Bird

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