

The Hamburg Rules and Its Impact on Marine Insurance Introduction

The United Nations Convention on the Carriage of Goods by Sea, 1978 — widely known as the Hamburg Rules — was established to modernize the legal framework governing sea carriage of goods. It sought to redress what many considered an imbalance in the earlier Hague and Hague-Visby Rules, which favored carriers over shippers. Although only a limited number of countries have ratified the Hamburg Rules, they remain highly relevant for marine insurers, carriers, and cargo interests due to their more stringent standards of liability and wider scope of responsibility.



Key Features of the Hamburg Rules

1. Broader Period of Responsibility

The carrier's responsibility under the Hamburg Rules covers the entire period during which it is in charge of the goods — from the time of receipt at the port of loading until delivery at the port of discharge. This replaces the older “tackle-to-tackle” period under the Hague and Hague-Visby regimes.

2. Presumed Carrier Liability

Under the Hamburg framework, the carrier is presumed liable for loss, damage, or delay unless it proves that all reasonable measures were taken to avoid the event and its consequences. This marks a significant shift in the burden of proof, as carriers now must demonstrate diligence rather than shippers proving negligence.

3. Liability for Delay

For the first time in an international carriage convention, delay itself constitutes a ground for liability. Compensation for delay is capped at 2.5 times the freight payable for the delayed goods. If the delay exceeds 60 days beyond a reasonable delivery time, the goods may be deemed lost.



Umut CAN

Technical Group Manager
+90 850 420 81 36 (Ext.1101)
umut.can@turkpandi.com

After graduating from Istanbul Technical University with a degree in Mathematical Engineering, following his high school education at Istanbul Erkek Lisesi, Umut Can began his career in cargo and marine risks insurance at Anadolu Sigorta in 2005. He later gained extensive experience as an insurance and reinsurance broker at Aon and Omni. In 2014, Umut joined Türk P&I Insurance as one of its first employees and the company's first underwriter during its establishment phase. Throughout his career, he has regularly authored articles on insurance-related topics for various industry publications. Currently serving as Technical Group Manager, Umut oversees the company's underwriting principles and pricing structures, manages multiple technical teams including underwriting and reinsurance, leads the development of new insurance products, and structures and administers treaty reinsurance agreements.



TURKP&I

4. Higher Monetary Limits

The Hamburg Rules increase the limits of liability to 835 Special Drawing Rights (SDR) per package or 2.5 SDR per kilogram of gross weight, whichever is higher. The right to limit may be lost if the carrier acts with intent to cause damage or recklessly with knowledge that damage would probably result.

5. Elimination of Certain Defenses

The familiar “nautical fault” defense available under the Hague and Hague-Visby Rules has been removed. Carriers can no longer avoid liability for errors in navigation or management of the ship.

6. Non-Derogation and Uniform Application

Any clause in a bill of lading or contract that attempts to reduce a carrier’s liability below the Hamburg standard is void. The Convention also sets a two-year time limit for bringing claims and allows for broader jurisdictional options for claimants.

Comparison with Earlier Regimes

Compared with the Hague and Hague-Visby Rules, the Hamburg Rules represent a fundamental realignment of responsibilities and protections in maritime transport.

Under the older conventions, a carrier’s responsibility was limited to the “tackle-to-tackle” period — from loading to unloading — whereas the Hamburg Rules extend this to the entire time the goods are in the carrier’s charge, effectively covering the full “port-to-port” period.

The basis of liability has shifted from a fault-based approach, which allowed numerous carrier defenses, to a system of presumed liability where the carrier must prove that it exercised due care.

Unlike its predecessors, the Hamburg framework expressly recognizes liability for delay, with compensation capped at 2.5 times the freight due for the delayed goods. Monetary limits have been raised as well, from 666.67 SDR per package or 2 SDR per kilogram under Hague-Visby to 835 SDR per package or 2.5 SDR per kilogram under Hamburg.



The time bar for claims has been extended from one year to two years, providing cargo interests a longer window to pursue recovery. Importantly, the Hamburg Rules abolish the “nautical fault” defense and prohibit contractual clauses that reduce or eliminate the carrier’s obligations — a marked shift toward protecting shippers and consignees.

Implications for Marine Insurers

1. Higher Liability Exposure

Carriers and their liability insurers face greater exposure due to the shift from fault-based to presumed liability and the higher financial limits. Insurers must review policy wordings, premium adequacy, and reinsurance protections accordingly.

2. Introduction of Delay Risk

Since delay is now a recognized ground for compensation, insurers must determine whether and how delay is covered under existing cargo or liability policies. Endorsements or exclusions should be clearly defined to avoid disputes.

3. Documentation and Claims Handling

The reversed burden of proof places more emphasis on operational records. Carriers should maintain detailed evidence of cargo handling, maintenance, and voyage conditions. Claims handlers must ensure timely notice of loss within 15 days and be aware of the two-year limitation period.

4. Coordination Between Cargo and Liability Insurers

Overlap between cargo insurance and carrier’s liability insurance may occur more frequently. Clear subrogation and recovery procedures are essential to prevent double indemnity.

5. Jurisdictional Complexity

Given the coexistence of Hague, Hague-Visby, Hamburg, and even Rotterdam regimes, careful attention must be paid to the contractual choice of law and jurisdiction to avoid unexpected exposures in Hamburg-adopting states.



TURKP&I

Guidance for Policyholders and Stakeholders

- Clarify the applicable convention in all contracts of carriage and insurance policies.
- Review coverage terms to confirm whether delay and extended liability are insured.
- Maintain strong documentation of stowage, cargo condition, and voyage details to defend claims effectively.
- Observe time limits for notice and legal action under the Hamburg Rules.
- Coordinate subrogation between cargo and liability insurers to streamline recovery.
- Monitor developments in treaty ratifications and adoption of newer conventions like the Rotterdam Rules.

Conclusion

The Hamburg Rules signify a decisive shift toward greater accountability in maritime carriage, with broader protection for cargo interests and more stringent obligations on carriers. For marine insurers, they introduce new dimensions of risk — particularly concerning delay and elevated liability limits — that must be reflected in underwriting, policy wording, and claims management.

Even in jurisdictions that have not ratified the Convention, understanding its principles is essential, as trade involving Hamburg states or Hamburg-based contracts can trigger its application.



TURKP&I