

LEGAL COMMITTEE – 33RD SESSION

(Montréal, 21 April – 2 May 2008)

PROPOSED TEXT BY FRIENDS OF CHAIR GROUP 1 FOR REVISED ARTICLE 7 ON INSURANCE

(Presented by Canada, Japan, Sweden (Chair), Singapore, IATA and LMBC)

Article 7 — Insurance

1. Having regard to Articles ~~4 and 19, paragraph 3~~, States Parties shall require their operators to maintain adequate insurance or guarantee covering their liability under this Convention. If such insurance or guarantee is not available to an operator on a per event basis, the operator may satisfy this obligation by insuring on an aggregate basis. States Parties shall not require their operators to maintain such insurance or guarantee to the extent that they are covered by a decision made pursuant to Article 11, paragraph 1(d) or Article 19, paragraph 3.

2. An operator may be required by the State Party ~~in or~~ into which it operates to furnish evidence that it maintains adequate insurance or guarantee. In doing so, the State Party shall apply the same criteria to operators of other States Parties as it applies to its own operators. Proof that an operator is covered by a decision made pursuant to Article 11, paragraph 1(d) or Article 19, paragraph 3 shall be sufficient evidence for the purpose of this paragraph.

NOTE

The SCM Regulations are expected to mandate the SCM Director to issue a certificate to each of the relevant operators covered by a decision made by the COP pursuant to Article 19, paragraph 3.

FOR REFERENCE**Article 4 — Limit of Operator's Liability**

The liability of the operator shall not exceed for each aircraft and event:

- a) 750 000 Special Drawing Rights for aircraft having a maximum mass of 500 kilogrammes or less;
- b) 1 500 000 Special Drawing Rights for aircraft having a maximum mass of more than 500 kilogrammes but not exceeding 1 000 kilogrammes;
- c) 3 000 000 Special Drawing Rights for aircraft having a maximum mass of more than 1 000 kilogrammes but not exceeding 2 700 kilogrammes;
- d) 7 000 000 Special Drawing Rights for aircraft having a maximum mass of more than 2 700 kilogrammes but not exceeding 6 000 kilogrammes;
- e) 18 000 000 Special Drawing Rights for aircraft having a maximum mass of more than 6 000 kilogrammes but not exceeding 12 000 kilogrammes;
- f) 80 000 000 Special Drawing Rights for aircraft having a maximum mass of more than 12 000 kilogrammes but not exceeding 25 000 kilogrammes;
- g) 150 000 000 Special Drawing Rights for aircraft having a maximum mass of more than 25 000 kilogrammes but not exceeding 50 000 kilogrammes;
- h) 300 000 000 Special Drawing Rights for aircraft having a maximum mass of more than 50 000 kilogrammes but not exceeding 200 000 kilogrammes;
- i) 500 000 000 Special Drawing Rights for aircraft having a maximum mass of more than 200 000 kilogrammes but not exceeding 500 000 kilogrammes;
- j) 700 000 000 Special Drawing Rights for aircraft having a maximum mass of more than 500 000 kilogrammes.]

Article 11 — The Secretariat and the Director

1. The Supplementary Compensation Mechanism shall have a secretariat led by a Director. The Director shall hire personnel, supervise the secretariat and direct the day-to-day activities of the Supplementary Compensation Mechanism. In addition, the Director:

- a) shall report to the Conference of Parties on the functioning of the Supplementary Compensation Mechanism and present its accounts and a budget;
- b) shall collect all contributions payable under this Convention, administer and invest the funds of the Supplementary Compensation Mechanism in accordance with the Guidelines on Investment, maintain accounts for the funds, and assist in the auditing of the accounts and the funds in accordance with Article 18;

- c) shall handle claims for compensation in accordance with the Guidelines for Compensation, and prepare a report for the Conference of Parties on how each has been handled;
- d) may, where appropriate, decide to temporarily take action under Articles 19, paragraph 3, and 20 until the next meeting of the Conference of Parties; and
- e) shall decide any other matter delegated by the Conference of Parties.

2. The Director and the other personnel of the Secretariat shall not seek or receive instructions in regards to the discharge of their responsibilities from any authority external to the Supplementary Compensation Mechanism. Each State Party undertakes to fully respect the international character of the responsibilities of the personnel and not seek to influence any of its nationals in the discharge of their responsibilities.

Article 19 — Compensation

1. The Supplementary Compensation Mechanism shall, under the same conditions as are applicable to the liability of the operator, provide compensation to persons suffering damage in the territory of a State Party, regardless of the State in which the operator had its principal place of business, or if it had no such place of business, its permanent residence. Compensation shall only be paid to the extent that the total amount of damages exceeds the limits according Article 4. Where the operator has its principal place of business, or if it has no such place of business, its permanent residence, in the State Party where the damage occurs, compensation shall only be provided if that State Party has made a declaration according to Article 2, paragraph 2.

2. The maximum amount of compensation available from the Supplementary Compensation Mechanism shall be [3 000 000 000] Special Drawing Rights for each event. Financial support given according to paragraph 3 and distribution of amounts recovered according to Article 25, paragraph 2, shall be in addition to the maximum amount for compensation.

3. If insurance in respect of the damage covered by the Convention is wholly or partially unavailable with respect to amounts of coverage or the risks covered, or is only available at a cost incompatible with the continued operation of air transport, the Conference of Parties may decide that the Supplementary Compensation Mechanism shall in respect of future events causing damage compensable under this Convention, provide financial support to operators for the payment of damages for which they are liable according to Articles 3 and 4. The Conference of Parties may decide on a fee, the payment of which, for the period covered, shall be a condition for access to the protection given by such decision.

**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

Article 7

Insurance in respect of liability for third parties

1. In respect of liability for third parties, the minimum insurance cover per accident, for each and every aircraft, shall be:

[*table*]

If at any time insurance cover for damage to third parties due to risks of war or terrorism is not available to any air carrier or aircraft operator on a per-accident basis, such air carrier or aircraft operator may satisfy its obligation to insure such risks by insuring on an aggregate basis. The Commission shall closely monitor the application of this provision in order to ensure that such aggregate is at least equivalent to the relevant amount set out in the table.

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