LEGAL COMMITTEE – 33RD SESSION

(Montréal, 21 April – 2 May 2008)

Agenda Item 3: Compensation for damage caused by aircraft to third parties arising from acts of unlawful interference or from general risks

DRAFT CONVENTION ON COMPENSATION FOR DAMAGE CAUSED BY AIRCRAFT TO THIRD PARTIES, IN CASE OF UNLAWFUL INTERFERENCE

WORK OF THE SUPPLEMENTARY COMPENSATION MECHANISM (SCM) TASK FORCE

(Presented by the Supplementary Compensation Mechanism Task Force)

1. Following the example of the negotiations on the Cape Town Convention, the Supplementary Compensation Mechanism Task Force was created at the fifth meeting of the SG-MR[1]. The Task Force was set up to develop drafts of the documents making up the secondary regulatory level under the Convention. The work of the Task Force has been carried out informally, its membership is open-ended and it decided its own Terms of Reference.

2. The Task Force has developed draft documents in relation to three items listed in the Terms of Reference. The three draft documents are:

– Draft Rules of Procedure of the Conference of Parties of the Supplementary Compensation Mechanism (**Appendix A**);

– Draft Regulations of the Supplementary Compensation Mechanism (**Appendix B**); and

– Draft Guidelines on Investment (**Appendix C**).

3. The drafts have not been finalized and are 'working drafts' that will need to be considered further in the light of discussions at and decisions taken by the Legal Committee.

4. The secondary regulatory level will have to be agreed at the first Conference of the Parties following entry into force of the Convention. As was the case with the Cape Town Convention, it can be anticipated that a preparatory commission would be established to facilitate entry into force of the Convention and what needs to be in place at that point in time. Such preparatory commission would finalize the draft documents making up the second regulatory level.

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[1] See paragraphs 1.111 to 1.113 of the Report on the Fifth Meeting of the Special Group.

APPENDIX A

RULES OF PROCEDURE FOR THE ASSEMBLY OF THE INTERNATIONAL COMPENSATION FUND ESTABLISHED UNDER THE X FUND CONVENTION FOR DAMAGE CAUSED BY AIRCRAFT ON THE SURFACE AS A RESULT OF ACTS OF UNLAWFUL INTERFERENCE

Article 1

The Assembly shall hold regular and extraordinary sessions. The Director shall inform Members of the opening date of each regular session at least 60 days in advance and of each extraordinary session at least 30 days in advance.

Extraordinary sessions shall be held in the following cases:

– if called for by at least one fifth of the total number of Member States;

– if an aircraft has caused damage falling within the scope of this Convention, and the damages are likely to exceed the applicable limit of liability according to Article 4 of the Convention by more than 50 percent of the available funds of the Supplementary Compensation Mechanism; or

– if the Director has exercised the authority according to Article 12, paragraph 1 d) of the convention X.

Article 2

The Assembly shall hold its sessions in [Montreal (Canada)] unless it decides otherwise on any particular occasion. If, between sessions, the Director, with the Chairman's approval, or any Member State proposes that the next session be held elsewhere, an affirmative decision to that effect may be taken by a majority of votes cast by Members States giving their approval in writing (including by telefax or electronic mail) to the Director. Such majority approval should be communicated to Members at least 45 days before the commencement of that session.

Article 3

A majority of the States Parties is required to constitute a quorum for the meetings of the Conference of Parties.

Article 4

Each Member shall designate a representative, and may also designate alternates and such advisers and experts as may be required.

Article 5

Each Member State shall transmit to the Director the credentials of its representative, together with the names of any alternates or other members of its delegation not later than the opening day of the session of the Assembly. The credentials shall be issued by the Head of State or by the Head of Government or by the Minister for Foreign Affairs or by an appropriate authority as determined by the Government and communicated to the Director. A Credentials Committee shall be appointed at the beginning of each session of the Assembly. It shall consist of three Members who shall be appointed by the Assembly on the proposal of the Chairman. The Credentials Committee shall examine the credentials of delegations of Member States and report without delay.

Article 6

The Director shall invite the following intergovernmental organizations to arrange to be represented by observers at all Assembly sessions:

a) the United Nations;

b) the International Civil Aviation Organization;

c) any other specialized United Nations agency whose interests and those of the Fund are of common concern; and

d) any other intergovernmental organization whose participation in its sessions the Assembly has decided to authorize.

Article 7

Observer status may, on the proposal of the Director, be granted by the Assembly to an international non-governmental organization, at its request, if:

a) the objectives of the organization are in harmony with those of the Fund;

b) the organization has activities in the fields related to those of the Fund; and

c) the organization is able to make a useful contribution to the work of the Fund, particularly by providing relevant information, specialized advice or expertise, by helping to procure the services of experts or consultants, by otherwise furnishing technical assistance or by making research facilities available.

Article 8

Observers may participate without vote in the deliberations of the Assembly. They shall have access to non-confidential documents and to such other documents as the Director, with the approval of the Chairman, may decide.

Article 9

Observers from international non-governmental organizations may not be present at Assembly discussions reviewing insurance claims files.

Article 10

Observer status may be granted to an international non-governmental organization for a period not exceeding three years.

Article 11

The Assembly will review every three years the list of international non-governmental organizations having observer status in order to determine whether the continuance of observer status for any particular organization is justified. At any time, the Assembly may decide to withdraw observer status from any such organization if any conflict of interests arises or is likely to arise between the respective activities of the Fund and those of the organization concerned.

Article 12

The Assembly shall at the first meeting of each regular session elect a Chairman, a first Vice-Chairman and a second Vice-Chairman from among the representatives of its Member States. At the opening of each regular session of the Assembly, the representative of the delegation from which the Chairman of the previous session was elected shall preside until the Assembly has elected a Chairman for the session. The Assembly shall elect the Chairmen of the subsidiary bodies established under Article 27 of the present Rules.

Article 13

The provisional agenda for each session of the Assembly shall be established by the Director and submitted for the approval of the Chairman before its circulation. The first item on the provisional agenda for each session shall be the adoption of the agenda.

Article 14

If the Chairman is unable to carry out his or her duties, the first Vice-Chairman, and in his absence, the second Vice-Chairman, shall act as Chairman.

Article 15

A Chairman or Vice-Chairman acting as Chairman shall not vote but may appoint another member of his or her delegation to act as the representative of his or her Government.

Article 16

All decisions of the Assembly shall be taken by a simple majority of the votes cast.

However, the qualified majority of two thirds of the votes cast is required for matters pertaining to the following decisions:

a) the determination of its own rules of procedure and, at each meeting, the election of its officers;

b) the establishment of the regulations of the Supplementary Compensation Mechanism and the Guidelines for Compensation;

c) the appointment of the Director and the determination of the terms of his or her employment and, to the extent this is not delegated to the Director, the terms of employment for the other employees of the Supplementary Compensation Mechanism;

d) the delegation to the Director, in addition to powers given in Article 12, of the powers and the authority necessary or desirable for the discharge of the duties of the Supplementary Compensation Mechanism and the revocation or the modification of such delegations of authority at any time;

e) the decision to apply Article 20 and set the maximum amount of such assistance and the further conditions for it, if necessary; and

f) the establishment of any body necessary to assist it in its functions, including if appropriate, the establishment of an Executive Committee consisting of representatives of States Parties, and the definition of the powers of such body.

Article 17

[Only the votes of Members present and voting shall be taken into account in the calculation of votes. The phrase “Members present and voting” means Members present and casting an affirmative or negative vote. Members who abstain from voting or who cast an invalid vote shall be considered as not voting.]

Article 18

If a vote is equally divided, a second vote shall be taken during the same session. If this vote also is equally divided, the proposal shall be regarded as rejected.

Article 19

The Assembly shall normally vote by a show of hands. However, any Member State may request a roll-call which shall be taken in the alphabetical order of the names of the Member States in English, beginning with the Member State whose name is drawn by lot by the Chairman. The vote of each Member participating in the vote shall be inserted in the Record of Decisions of the session.

Article 20

The vote on the appointment of the Director shall be decided by secret ballot.

The election of the Chairman, the Vice-Chairmen and the Chairmen of the subsidiary bodies established under Article 27 of the present Rules shall also be decided by secret ballot, unless the Assembly decides otherwise.

Article 21

In a secret ballot two scrutineers shall, on the proposal of the Chairman, be appointed by the Assembly from the Members present and shall proceed to scrutinize the votes cast. All invalid votes cast shall be reported to the Assembly.

Article 22

Parts of a proposal or amendment thereto shall be voted on separately if the Chairman, with the consent of the proposer, so decides, or if any Member State so requests and the proposer raises no objection.

Article 23

Those parts of a proposal which have been approved shall then be put to the vote as a whole; if all the operative parts of a proposal or amendment have been rejected, the proposal or amendment shall be considered to be rejected as a whole.

Article 24

When a proposal or an amendment has been adopted, it may not be reconsidered at the same session of the Assembly unless the Assembly, by a majority of the Members present and voting, decides in favour of reconsideration.

Article 25

The official and working languages of the Fund are [English, French and Spanish]. Speeches at the Assembly and its subsidiary bodies established under Article 27 of the present Rules shall be made in one of the official languages and will be interpreted into the other official languages. Another language may be used if the speaker provides interpretation into one of the official languages.

Article 26

The Assembly may establish such temporary or permanent subsidiary bodies as it considers necessary. Such subsidiary bodies shall follow the present Rules of Procedure so far as they are applicable, unless the Assembly decides otherwise.

Article 27

All reports of the Assembly and its subsidiary bodies and all supporting documents to agenda items of the Assembly and its subsidiary bodies shall be issued in the [three] official languages.

Article 28

The Chairman shall declare the opening and the closing of the session of the Assembly and he or she shall determine the hours and dates of meetings and may adjourn meetings. The Chairman shall direct the discussion and ensure observance of these Rules, accord the right to speak, put questions to the vote and announce decisions resulting from the voting.

Article 29

Proposals and amendments shall be introduced in writing and handed to the Director who shall circulate copies to delegations. No text shall be put to the vote unless copies of it have been circulated not later than the day preceding the session, unless the Assembly decides otherwise.

Article 30

The time to be allowed to each speaker may, on the proposal of the Chairman, be limited.

Article 31

The Chairman may suspend a meeting, adjourn a meeting, adjourn the debate on the question under discussion, or close the debate on the question under discussion.

Article 32

In the event of any conflict between any provision of these Rules and any provision of the X Fund Convention, that Convention shall prevail.

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APPENDIX B

SCM - Draft Regulations

Editorial Note:

This document was prepared by reference to an earlier draft of the *Convention on Compensation for Damage caused by Aircraft to Third Parties in case of Unlawful Interference*. Since its preparation the draft Convention has been revised, but these draft Regulations have not.

The following points should therefore be noted:

- The working assumption underpinning these draft Regulations is that payments due are calculated by reference to traffic in the preceding year, with the possibility of adjusting the amount due in subsequent invoices. Subsequently, there has been support for a more efficient and speedy collection mechanism, which would not rely on annual invoices, but on monthly payment.

- References to Articles in the draft Convention have been updated where possible. However, it should be noted that the reference to Article 14 in Regulations 6.5.2 and 6.6 does not equate to the current reference for the earlier text at Article 13*bis* (2).

- In Regulation 4 reference is made to "other persons" from whom payment may be due. This reflected the fact that at one stage the draft Convention provided for contributions to be made by entities other than air carriers. This is no longer the case.

1. **Definitions – tbc**

1.1 The "Convention" means the [Convention on Compensation for Damage caused by Aircraft to Third Parties in case of Unlawful Interference 20XX].

1.2 "Member State" means a State for which the Convention is in force.

1.3 [ ] have the same meaning as in Article 1 of the Convention.

1.4 "Conference of Parties" means the body referred to in Article 9 of the Convention.

1.5 "Director" means the Director referred to in Article 9 of the Convention.

1.6 "Claim" means any application for compensation for damage made to or against the Fund.

1.7 "Claimant" means any person making a claim.

1.8 "SDR" means the Special Drawing Right as defined by the International Monetary Fund.

2. **Conversion of SDRs**

2.1 Where an amount is expressed in SDRs in these Internal Regulations, such an amount shall be converted into [**Currency**] in accordance with the method of valuation applied by the International Monetary Fund in effect for its operations and transactions at the date applicable under these Internal Regulations.

3. **Collection of information**

3.1 Not later than [**31 January**] in each year Each Member State shall forward to the Director reports on commercial flights. The reports shall specify the names and addresses of all persons who, in the preceding calendar year, operated flights [**or provided other aviation services**] in respect of which contributions are due under the Convention. In relation to such flights the reports shall provide details of the number of passengers and amount of cargo on such flights.

3.2 Where the Convention enters in to force in a State during a year that State shall forward reports on such flights as have taken place since entry into force in that State.

3.3 The Director shall, not later than [**31 October**] of each year, invite Member States to submit the reports referred to in Regulations 3.1 and 3.2.

3.4 The Director shall provide Member States with a list of the States in respect of which the Convention was in force on 1 January of that year, with an indication of the date on which the Convention entered into force for any State during the course of the previous year. The Director shall also notify Member States of the date on which the Convention ceased to be in force for any State during the course of that year.

3.5 Where amendments are made to the information reported in accordance with Regulations 3.1 or 3.2 the Director shall recalculate the contributions due from the contributors whose information has been amended. If invoices have already been sent to the contributors concerned, corrected invoices shall be issued. Where the contributions have been paid on the basis of the original invoices, any differences between the contributions paid or invoiced and the recalculated contributions shall be taken into account in preparing the invoices for the persons concerned for the next year in respect of which annual contributions are due.

4. **Collection of contributions**

4.1 The amount of a contribution shall be determined annually and shall be payable annually in [**Currency**].

4.2 Contributions shall be payable in [**Currency**]. However, the Director may require a contributor to pay his or her contribution or a portion thereof in the national currency of the Member State in which the contributor is licensed. In the latter case, conversion from [**Currency**] to the currency in which payment is to be made shall be at the mid-market rate of exchange applied by the [**Bank**] on the first day of the month of the invoice.

4.3 In respect of any State for which the Convention is not in force for the whole of a particular calendar year, the annual contribution to be paid to the Supplementary Compensation Mechanism by each operator [**or other person**] in that State for that year, in accordance with Article [**12**] of the Convention, shall be calculated pro rata for that part of the calendar year for which the Convention is in force for that State.

4.4 The Director shall issue to every person liable to pay contributions under the Convention an invoice in respect of the sums for which he or she is liable. A copy of each invoice shall also be sent to the State in which the operator [**or other person**] is licensed [**or established**]. An invoice shall state:

a) the amount of the contribution due for that year calculated by reference to the most recent report submitted by or in respect of that contributor;
b) the amount of any credit due to or additional contributions required from that contributor;
c) the currency in which payment shall be made;
d) the data on the basis of which the amount of contribution has been calculated;
e) the date by which payment is due;
f) the bank account to which payment shall be made;
g) that interest is payable in respect of overdue annual contributions; and
h) any other relevant information.

4.5 If the payment due is less than [**X**], the amount shall be waived and no invoice shall be issued in respect of the person in question.

4.6 Payment of contributions shall be due on [**1 April**] of each year unless the Conference of Parties decides otherwise.

4.7 If a contributor is in arrears with payment of his contribution, the Director shall notify the State by which the contributor is licensed or within which the contributor is established and request advice on the action to be taken to ensure that the obligations of that contributor are fulfilled.

4.8 Interest shall be charged on unpaid annual contributions from the date on which payment is due at an annual rate which for each period of twelve months from 1 April shall be 2% higher than the lowest [**choose reference point**] clearing bank base rate prevailing on 1 April.

4.9 Any bank charges which arise in connection with the payment of contributions or of interest on overdue contributions shall be borne by the contributor.

5. **Claims**

5.1 A claim presented to the Supplementary Compensation Mechanism shall be made in writing and contain the following particulars:

a) the name and address of the claimant and of any representative;
b) the date, place and specific details of the event, including, where possible, the identity of the aircraft involved;
c) the type of damage sustained; and
d) the amount of the compensation claimed.

5.2 The Director shall request any claimant to provide such further information and such documents as he or she deems necessary to determine the admissibility of the claim.

5.3 The Director may periodically publish a Claims Manual containing information on claims presentation.

6. **Payment of compensation**

General Fund

6.1 There shall be established a General Fund from the following sources:

6.1.1 contributions paid pursuant to Article [**12**] of the Convention (including interest on unpaid contributions)

6.1.2 any monies borrowed pursuant to Article [**18(4)**] of the Convention;

6.1.3 [reimbursement, with interest, of any advances made under Regulation [6.3.2] to a Compensation Fund for advance payments made by the Supplementary Compensation Mechanism;]

6.1.4 income received from the investment of monies in the General Fund, transfers from Compensation Funds according to Regulation 10.6 and other miscellaneous income;

6.1.5 [reimbursement with interest of any transfers made under Regulation [6.3.3] to a Compensation Fund for payment of claims;]

6.1.6 any amount recovered by the Supplementary Compensation Mechanism by way of recourse to be credited to the General Fund.

6.2 A working capital shall be maintained at such a level as the Conference of Parties may decide from time to time.

6.3 The monies in the General Fund shall be used:

6.3.1 to meet the costs and expenses of the administration of the Supplementary Compensation Mechanism and any other expenditure which may be authorised by the Conference of Parties;

6.3.2 to fund advance payments pursuant to Article [**16**] of the Convention;

6.3.3 to transfer money to a Compensation Fund.

Compensation Fund

6.4 There shall be established a separate Compensation Fund for each event giving rise to compensation claims under Articles [**19 and 26**] of the Convention.

6.5 Each Compensation Fund shall consist of funds received from the following sources:

6.5.1 transfers from the General Fund;

6.5.2 Additional contributions levied under [**Article 14**] of the Convention (including interest on unpaid contributions) for the satisfaction of payments in respect of a particular event and any monies borrowed in connection with such payments;

6.5.3 income received from the investment of monies in the Compensation Fund;

6.5.4 any amount recovered by the Supplementary Compensation Mechanism by way of recourse to be credited to that Compensation Fund.

6.6 Additional contributions made pursuant to [**Article 14**] of the Convention shall be separately credited to the individual contributors.

6.7 The monies in a Compensation Fund shall be used for the payment of compensation or otherwise be applied in accordance with Regulations 10.5 and 10.6.

6.8 Any loans taken pursuant to Regulation 6.10, any advances made from the General Fund for provisional payments under Regulation 6.3.2, and any transfers from the General Fund under Regulation 6.3.3 shall be credited to the relevant Compensation Fund.

6.9 A Compensation Fund shall be closed when, in the light of the assessment made under Regulation 10.4 the balance on that Fund has been repaid to contributors or transferred to the General Fund, as the case may be.

Loans

6.10 Where the contributions determined by the Conference of Parties do not in fact produce sufficient and timely funds for the payments to be made by the Supplementary Compensation Mechanism for the satisfaction of claims, advance payments or other expenses incurred in the operation of the Supplementary Compensation Mechanism, the Director may make arrangements for obtaining short-term credit facilities or loans meeting the cash-flow requirements of the Supplementary Compensation Mechanism. If the Director is unable to arrange the required credit facilities or loans on terms which he or she feels are reasonable, he or she shall refer the matter to the Conference of Parties.

Settlement of Claims

6.11 The Director shall promptly take all appropriate and necessary measures for dealing with claims.

6.12 The Director shall promptly satisfy any claims for compensation under Article [**19**] of the Convention which have been established by judgement against the Supplementary Compensation Mechanism enforceable under Article [**32**] of the Convention.

6.13 Where the Director is satisfied that the Supplementary Compensation Mechanism is liable under the Convention to pay compensation for damage, he or she may, without the prior approval of the Conference of Parties, make final settlement of any claim, if he or she estimates that the total cost to the Supplementary Compensation Mechanism of satisfying all claims arising out of the relevant event is not likely to exceed [**X million SDRs**]. The Director may in any case make final settlement of claims from individuals and small businesses up to an aggregate amount of [**Y million SDRs**] in respect of any one event. The relevant date for conversion shall be the date of the incident in question.

6.14 The Conference of Parties may authorise the Director to settle claims in respect of a particular event beyond the limit established in Regulation 6.13.

6.15 As a condition for making a final settlement of any claim under Regulations 6.13 or 6.14, the Director shall obtain a full and final release from the claimant in favour of the Supplementary Compensation Mechanism in respect of the claims in question.

6.16 Subject to Regulation 6.13, where a claim has been submitted to the Supplementary Compensation Mechanism and agreement has been reached between the Supplementary Compensation Mechanism and the claimant as to the value of the majority of items of the claim, but further investigation is considered necessary with respect to the remaining items, the Director may make payment in respect of the agreed items. Regulation 6.15 applies correspondingly.

6.17 [Where the Director is satisfied in respect of an event that the Supplementary Compensation Mechanism will be liable under the Convention to pay compensation to victims of damage arising from an event, the Director may make provisional payments to such victims. Provisional payments, which shall be at the discretion of the Director and in accordance with the Guidelines for Compensation, may be made if this is necessary in the Director's view to mitigate undue financial hardship to them. The Director shall endeavour to ensure that no person receiving such payment receives more than 80% of the amount which he or she is likely to receive from the Supplementary Compensation Mechanism in the event of claims being abated pro rata. Total payments under this paragraph shall not exceed [**Z million SDRs**] in respect of any one incident. The relevant date for conversion shall be the date of the event in question.]

6.18 Where, in respect of a particular event, the Director considers the level of provisional payments permitted under Regulation 6.17 is insufficient to mitigate undue financial hardships to victims, the Director may bring the matter to the attention of the Conference of Parties. The Conference of Parties may decide, in respect of such incident, that provisional payments may be made beyond the limit of [**Z million SDRs**] laid down in that Regulation].

6.19 As a condition of making a provisional payment in respect of a claim, the Director shall obtain from the claimant concerned a transfer to the Supplementary Compensation Mechanism of any right that such a claimant may enjoy under the Convention against the operator up to the amount of the provisional payment to be made by the Supplementary Compensation Mechanism to that claimant.

6.20 Where a person who is in arrears in respect of any payment due to the Supplementary Compensation Mechanism is entitled to receive payment from the Supplementary Compensation Mechanism for the satisfaction of a claim, the Director shall, unless this is not permitted under the applicable national law, deduct the amount of the arrears from the amount of the payment to be made to such person by the Supplementary Compensation Mechanism.

6.21 The Director may authorise another officer or other officers to make final or partial settlement of claims or to make provisional payments. Such authority shall:

a) in respect of the Deputy Director and the Head of the Claims Department, be limited to approvals not exceeding [**currency**] for a particular claim; and

b) in respect of other officers:

i) be given only in respect of claims arising out of a specific event and only to an officer who is responsible for dealing with claims arising out of that event; and
ii) be limited to approvals not exceeding [**currency**] for a particular claim.

6.22 The conditions and extent of such delegation shall be laid down in Administrative Instructions issued by the Director.

6.23 Any settlements made under Regulation 6.21 shall be reported to the Director.

7. **Denial of compensation**

7.1 A Member State shall be considered as having failed to comply with its obligations in respect of reports on commercial flights as set out in Regulation 3 and compensation in respect of claims arising from a particular event in that State shall therefore be denied temporarily under[1] the Convention, if for a given year prior to the occurrence of that event:

i) the Director has neither been notified by that State that no person is liable to contribute to the Supplementary Compensation Mechanism in respect of that State nor received any reports for that year;
ii) the Director has not received all reports or has received incomplete reports in respect of that State; or
iii) there are deficiencies in respect of one or more reports which would prevent the Supplementary Compensation Mechanism from issuing invoices in respect of those contributors.

7.2 When the Director becomes aware that an event might give rise to payment of compensation by the Supplementary Compensation Mechanism, in addition to the normal procedures for checking whether reports have been submitted in respect of the affected State, the Director shall promptly assess the situation as regards the reports in respect of that State for all years prior to the occurrence of the event.

7.3 If a Member State has not, in the Director's view, fulfilled its obligation in relation to the submission of reports or if there is uncertainty as to whether its obligation has been complied with, the Director shall notify the State in question, by registered letter to its diplomatic representative accredited to the Government of the [**State where SCM has its seat]**, inviting the State to take the necessary steps to resolve the issues set out in the notification. If the State in question does not have such a diplomatic representative, the notification shall be sent to the Minister of Foreign Affairs of that State by courier.

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[1] Article [possibly Art 17 (4)]:

No compensation shall be paid by the Supplementary Compensation Mechanism in respect of damage caused by an event in the territory of a Contracting State until the obligation to provide information under [paragraph (2)] has been complied with for all years prior to the event.

7.4 If the situation has not been resolved to the Director's satisfaction within a period of three months from the notification referred to in Regulation 7.3, the Director shall notify that State accordingly and refer the matter to the Conference of Parties for its consideration at a session to be held within three months of the date of this second notification.

7.5 At the session referred to in Regulation 7.4 the Conference of Parties will decide whether or not the State has fulfilled its obligation in relation to the submission of reports. In the event that the Conference of Parties decides that the State has failed to comply with its obligations, the Director shall notify the State in writing of the decision, drawing the State's attention to the provision of Article [Y[2]] of the Convention, under which compensation will be permanently denied if the State has not complied with its obligations in relation to the submission of reports within one year of this notification.

7.6 If, six months after the date of the Director's notification of the Conference of Parties' decision, the State has still not fulfilled its obligation in relation to the submission of reports, the Director shall remind the State in writing of the need to fulfil these obligations in order to avoid compensation being permanently denied after the one year period has expired.

7.7 If, nine months after the date of the Director's notification of the Conference of Parties' decision, the State has still not fulfilled its obligation in relation to the submission of reports, the Director shall remind the State again in writing of the need to fulfil these obligations in order to avoid compensation being permanently denied after the one-year period has expired.

7.8 If, after the expiry of the one-year period referred to in Regulation 7.5, the State has not, in the Director's view, fulfilled its obligation in relation to the submission of reports, the Director shall refer the matter to the Conference of Parties to decide, at a session to be held within three months after the expiry of that period, whether compensation should be permanently denied in respect of that State under Article [**Y**] of the Convention.

7.9 In the event that the Conference of Parties were to decide that compensation should be denied permanently, the Director shall decide whether the Supplementary Compensation Mechanism should pro-rate compensation payments in order to ensure that Article [**23**] of the Convention will be respected.

8. Intervention in legal proceedings

8.1 Where the Director considers that the Supplementary Compensation Mechanism may be liable to meet claims arising out of a particular event, he or she shall arrange to have the Supplementary Compensation Mechanism intervene as a party in any legal proceedings against the operator, if the Director considers that such intervention is consistent with Article [**25**] of the Convention and is required to safeguard the interests of the Mechanism. If the Director is satisfied that the interests of the Supplementary Compensation Mechanism and those of the operator are not in conflict, the Director may arrange for the Mechanism to join the operator in any legal proceedings.

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[2] Article [possibly Art 17 (5)]:

Where compensation has been denied temporarily in accordance with [paragraph (4)] compensation shall be denied permanently in respect of an event if the obligation to provide information to the Director has not been complied with within one year after the Director has notified the Contracting State.

8.2 Where the Supplementary Compensation Mechanism has joined the operator, the Supplementary Compensation Mechanism may share the costs incurred in such proceedings or procedures on a basis agreed between the Director and the operator, unless a court decides otherwise. In case of dispute, the Director may agree with the other parties concerned to submit to arbitration the question of how the costs should be shared.

9. Providing assistance to States

9.1 At the request of a Member State the Director shall, to the extent that he or she deems it practicable and reasonable, endeavour to assist that State in obtaining the materials, equipment, services or personnel required for preventing or mitigating damage if the Director is satisfied that the Supplementary Compensation Mechanism may be called upon to pay compensation under the Convention in respect of damage arising from the event in question.

9.2 The Director shall, as appropriate, assist such a Member State to identify specialist organisations and to enlist their services for these purposes.

[Extension of Credit Facilities in Respect of Preventive Measures

9.3 On the application of a Member State in which damage has occurred as a result of an event, the Director may, if he or she estimates that the Supplementary Compensation Mechanism will be called upon to pay compensation under the Convention in respect of that event, provide that State with reasonable credit facilities to enable it to initiate or continue with the taking of adequate preventive measures.

9.4 Subject to conditions specified by the Conference of Parties regarding, inter alia, the data and supporting justifications to be provided by a State requesting credit facilities, the Director shall determine whether in the light of all the circumstances of the case the provision of credit facilities by the Supplementary Compensation Mechanism in respect of a particular incident is justified.

9.5 An application for credit facilities under this Regulation shall include:

a) full particulars of the event;

b) the nature and extent of the damage which has occurred, including preventive measure already taken; and

c) the preventive measures envisaged as well as the estimated cost thereof.

9.6 Particulars in respect of preventive measures taken or envisaged shall be presented in a manner which will enable the Director to determine the measures which can be taken with personnel, material and equipment available locally and which measures should, in the interest of speed and efficiency, involve personnel, material or equipment to be procured from elsewhere.

9.7 Credit facilities provided by the Supplementary Compensation Mechanism to a State may be given in the form of:

a) a guarantee by the Supplementary Compensation Mechanism in respect of an advance to that State from a specified person, whose principal place of business is outside such a State; or

b) a guarantee by the Supplementary Compensation Mechanism to make payment of the cost of preventive measures in respect of which the State concerned has entered into a contract with a specified person whose principal place of business is outside such a State.

9.8 Credit facilities provided by the Supplementary Compensation Mechanism with respect to any one event may not exceed [**X million SDRs**]. The relevant date for conversion shall be the date of the event in question.

9.9 All expenses incurred by the Supplementary Compensation Mechanism as a consequence of providing credit facilities to a State shall be reimbursable to the Supplementary Compensation Mechanism by such a State. The Director shall, in consultation with the State concerned, stipulate the manner in and the time within which such reimbursement shall be made.]

10. **Financial provisions**

The Financial Period

10.1 The financial period of the Supplementary Compensation Mechanism shall be the calendar year.

Accounts and Budget

10.2 The accounts of the Supplementary Compensation Mechanism and its annual budget shall be established in [**currency**].

10.3 Subject to Regulation 10.4, the accounts of the Supplementary Compensation Mechanism shall be completed and closed at the end of each calendar year. Any surplus funds including interest from operations in a given year shall be carried forward to the next calendar year.

10.4 Contributions paid to the Supplementary Compensation Mechanism under Article [**12**] of the Convention, including any interest thereon, shall be used to pay compensation for damage caused by one or more events. [If such contributions are not paid out in compensation in respect of an event during the year when they were due, they shall be reserved in the accounts of the Supplementary Compensation Mechanism from year to year for this purpose.]

10.5 After the period set out in Article [**34**] of the Convention for bringing actions in respect of a particular event has lapsed and all claims and expenses arising out of that event have been settled, the Conference of Parties shall assess the situation. If there remains a substantial amount which has been reserved in accordance with Regulation 10.4 or paid in accordance with Regulation [**6.5.2**], the Conference of Parties shall decide whether such amount shall be reimbursed pro rata to the persons who made contributions with respect to that event. The same shall apply if, after the settlement of all claims known to the Supplementary Compensation Mechanism, the Conference of Parties is satisfied that no more claims in respect of that event will be made against the Supplementary Compensation Mechanism and no more expenses will have to be met.

10.6 If, in the assessment referred to in Regulation 10.5, the Conference of Parties considers the amount remaining not to be substantial, this amount shall be transferred to the General Fund referred to in Regulation 6.1.

10.7 In respect of each event giving rise to claims against the Supplementary Compensation Mechanism, the Director shall maintain a running record of all expenses incurred by the Supplementary Compensation Mechanism.

The Budget

10.8 The budget shall be established in [**currency**].

10.9 The budget estimates prepared by the Director shall consist of a statement of income and expenditure for the financial period to which they relate and shall contain appropriations for administrative expenses and estimates of expenditure for claims.

10.10 The budget estimates shall include such information as may be required by the Conference of Parties and such further information as the Director may deem necessary.

10.11 The Director shall submit budget estimates at least 45 days prior to the session of the Conference of Parties at which they are to be considered for adoption.

10.12 If for unforeseen reasons additional contributions are required, the Director may submit supplementary estimates to the Conference of Parties and request an amendment of the budget.

Appropriations

10.13 The appropriations adopted by the Conference of Parties shall constitute an authorisation to the Director to incur obligations and make payments for the purposes for which the appropriations were adopted and up to the amounts so voted.

10.14 The Director may exceed an appropriation in respect of any single category of expenditure by 5%.

10.15 Transfers within categories of the budget may be made without limitation. Transfers between categories in the budget may be made up to 10%, calculated by reference to the value of the category to which the transfer is made.

10.16 Appropriations for expenditure shall remain available for [**24 months**] following the end of the financial period to which they relate, to the extent that they are required to discharge the outstanding legal obligations of that period.

10.17 Payments for claims under Article [**19**] of the Convention and advance payments under Article [**20**] may be made to the extent authorised under these Regulations.

11. Management of Monies

11.1 The Director shall be responsible for the management of all monies accruing to the Supplementary Compensation Mechanism. One or more officers of the Supplementary Compensation Mechanism (other than the Director) shall be appointed to administer all banking accounts operated by the Supplementary Compensation Mechanism, maintaining a proper cash account in which all receipts and payments shall be recorded in chronological order. Such officers shall not have powers to incur liabilities, or to authorise the payment or collection of monies except to the extent authorised by the Director.

11.2 The Director may authorise officers to act as signatories on behalf of the Supplementary Compensation Mechanism in giving payment instructions. The Supplementary Compensation Mechanism's bankers shall be empowered to accept payment instructions on behalf of the Supplementary Compensation Mechanism when signed as follows:

a) for any sum up to [**X currency**], by any two officers from category A or B; and

b) for any sum in excess of [**x currency**], by one officer from category A plus one officer from category A or B.

11.3 For the purposes of this Regulation, the categories are as follows:

Category A [Director, Deputy Director, Legal Counsel and Head of the Claims Department]

Category B [Head of the Finance and Administration Department, Head of External Relations and Conference Department and Finance Manager]

11.4 Further conditions in respect of the delegation of authority under this Regulation shall be laid down by the Director in Administrative Instructions.

Investment of Assets

11.5 With a view to securing the assets of the Supplementary Compensation Mechanism, the Director may invest any funds which are not required for the short-term operation of the Supplementary Compensation Mechanism. In making any investments, all necessary steps shall be taken to ensure the maintenance of sufficient liquid funds for the operation of the Supplementary Compensation Mechanism, to avoid undue currency risks and generally obtain a reasonable return on the investments of the Supplementary Compensation Mechanism.

11.6 The Director shall submit to each regular session of the Conference of Parties particulars of the current investments of the Supplementary Compensation Mechanism and of any changes which have taken place since his or her previous report.

11.7 The assets of the Supplementary Compensation Mechanism shall be held and invested by the Director in accordance with Regulation 11.5 and the following principles:

a) the Director considers it appropriate, in the currencies required to meet claims arising out of a specific event which have been settled or are likely to be settled in the near future;
b) the assets shall be placed on term deposit or by purchase of Certificates of Deposit with banks or building societies enjoying a high reputation and standing in the financial community; the term of these investments shall not exceed one year;
c) the maximum investment in any bank or building society of the Supplementary Compensation Mechanism's assets shall not normally exceed [**25**]% of these assets or [**X currency**], whichever is the higher;
d) the maximum investment in any bank or building society by the Supplementary Compensation Mechanism shall not normally exceed [**X currency**]; and
e) any exceptions to the normal limit in Regulations 11.7 (c) and (d), shall be reported to the Conference of Parties at its next regular session.

These principles shall be reviewed from time to time.

11.8 Instructions relating to the Supplementary Compensation Mechanism's investments, as well as instructions relating to the transfer of funds from one financial institution to another for the credit of the Supplementary Compensation Mechanism's deposit accounts, shall be given by the Director. The Director may authorise another officer or officers to act on his or her behalf. Instructions shall be given:

a) in writing, signed jointly by two authorised officers; or

b) orally by one authorised officer followed by written confirmation signed jointly by two authorised officers.

11.9 For purposes of investment, all monies in the General Fund, Compensation Funds and any special accounts may be merged. Any resulting income shall accrue to the respective fund or account pro rata.

Internal Control

11.10 The Director shall:

a) give such detailed directions as are necessary to ensure effective financial administration and the exercise of economy;
b) cause all payments to be made on the basis of supporting vouchers and other documents which ensure that the services or goods have been received except where normal commercial practice requires payment to be made in advance;
c) designate the officers who may receive monies, incur obligations, purchase goods and make payments on behalf of the Supplementary Compensation Mechanism; and
d) maintain an internal financial control which shall provide for an effective current examination and/or review of financial transactions in order to ensure:

i) the regularity of the receipt, custody and disposal of all monies and other financial resources of the Supplementary Compensation Mechanism;
ii) the conformity of obligations and expenditures with the appropriations or other financial provisions voted by the Conference of Parties;
iii) the economic use of the resources of the Supplementary Compensation Mechanism; and
iv) conformity with the Convention and these Regulations.

11.11 Except to the extent provided for in Financial Regulation 11.10 (c), no obligations shall be incurred without the prior authorisation of the Director.

11.12 The cost of all property acquired other than real property will be immediately charged as an expense. Records will be kept of all real property, non-expendable and expendable supplies and equipment acquired by the Supplementary Compensation Mechanism. An inventory will be established at the end of each financial period of all assets, supplies and materials in hand, exceeding [**x currency**] per item, indicating the cost and the year of acquisition, and a copy of the inventory will be furnished to the External Auditor.

11.13 In respect of matters other than claims for compensation, the Director may make payments or waive a right to recovery, even if there is no legal obligation for the Supplementary Compensation Mechanism to do so, provided that, in the Director's view, this is appropriate in order to safeguard the Fund's financial or other interests. The Audit Body and the External Auditor should be provided with a statement on such payments or waivers. Any payment or waiver exceeding [**x currency**] requires the prior approval by the Chairman of the Conference of Parties and information on such payment or waiver shall be reported to the Conference of Parties together with the financial statements.

11.14 The Director may, after full investigation, authorise the writing off of losses of cash and deletion from inventory of stores and other assets, provided that a statement thereon shall be submitted to the External Auditor with the accounts.

11.15 The Director shall, in connection with submitting the financial statements to the External Auditor, inform the External Auditor whether he or she is aware of any reported cases of fraud, presumptive fraud or money laundering during the financial year in question.

The Accounts

11.16 The Supplementary Compensation Mechanism shall maintain such books of accounts and prepare such financial statements as are necessary for each financial period in accordance with the Supplementary Compensation Mechanism's Financial Regulations and stated accounting policies and in compliance with United Nations accounting standards, where appropriate.

11.17 The books of accounts, which shall be maintained on a double entry basis, shall record:

a) the receipts and payments of all funds;
b) the income and expenditure of all funds;
c) the assets and liabilities of the Supplementary Compensation Mechanism; and
d) the status of appropriations, including:
    i) the original budget appropriations;
    ii) the appropriations as modified by any transfers; and
    iii) the amounts charged against those appropriations.

11.18 The financial statements to be prepared and submitted to the Conference of Parties by the Director in accordance with Article [**11(1)(a)**] of the Convention, and on which the External Auditor will report in accordance with Regulation 11.37, shall comprise:

a) i) a statement of appropriations and obligations incurred;
    ii) Income and Expenditure Accounts for all funds;
    iii) a Balance Sheet; and
    iv) a Cash Flow Statement; and

b) such notes as may be necessary for a better understanding of the financial statements, including a statement of significant accounting policies and details of contingent liabilities, i.e. of all known or likely claims against the Supplementary Compensation Mechanism and of claims related expenditures estimated for the next financial year.

11.19 The accounts of the Supplementary Compensation Mechanism shall be kept in [**currency**]. Foreign currency bought for [**currency**] and invested shall be translated into [**currency**] at the financial year end at the rate of exchange at the last banking day of the year as published in the [**XXX**].

11.20 The books of accounts and financial statements for the financial period shall be submitted by the Director to the External Auditor by 30 April following the end of that financial period.

Audit Body

11.21 The Supplementary Compensation Mechanism whose members are appointed by the Conference of Parties. The Audit Body shall report to the Conference of Parties in accordance with the mandate set out in Annex I to these Regulations.

External Audit

11.22 An External Auditor, who shall be the Auditor-General (or officer holding the equivalent title) of a Member State, shall be appointed in the manner and for the period decided by the Conference of Parties.

11.23 The audit shall be conducted in conformity with International Standards on Auditing (ISAs) as issued by the International Auditing and Assurance Standards Board (IAASB) and, subject to any special directions of the Conference of Parties, in accordance with Financial Regulations 11.33 to 11.42.

11.24 The External Auditor may make observations with respect to the efficiency of the financial procedures, the accounting system, the internal financial controls and, in general, the administration and management of the Supplementary Compensation Mechanism.

11.25 The External Auditor shall be completely independent and solely responsible for the conduct of the audit.

11.26 The External Auditor shall discuss with the Audit Body the nature and scope of each forthcoming audit and shall normally be represented at the meetings of that Body.

11.27 The Conference of Parties may request the External Auditor to perform certain specific examinations and issue separate reports on the results.

11.28 The Director shall provide the External Auditor with the facilities he or she may require in the performance of the audit.

11.29 For the purpose of making a local or special examination or of effecting economies of audit cost, the External Auditor may engage the services of any national Auditor-General (or equivalent title) or commercial public auditors of known repute or any other person or firm who, in the opinion of the External Auditor, is technically qualified.

11.30 The External Auditor shall issue a report on the audit of the financial statements and relevant schedules, which shall include such information as he or she deems necessary in regard to matters referred to in Regulation 11.24.

11.31 The External Auditor shall transmit his or her Report to the Chairman of the Conference of Parties not later than 30 June following the end of the accounting year to which the financial statements relate. This Report shall be communicated by the Director to the members of the Conference of Parties and to the members of the Audit Body as soon as possible thereafter.

11.32 The External Auditor shall be invited to be present at the meeting of the Conference of Parties at which his or her Reports are to be discussed.

11.33 The External Auditor shall perform such audit of the accounts of the Supplementary Compensation Mechanism as he or she deems necessary in order to be satisfied:

a) that the financial statements are in accordance with the books and records of the Supplementary Compensation Mechanism;
b) that the financial transactions reflected in the statements have been in accordance with the rules and regulations, the budgetary provisions and other applicable directives;
c) that the securities and monies on deposit and on hand have been verified by certificates received direct from the Supplementary Compensation Mechanism's depositaries or by actual count;
d) that all material weaknesses in the accounting and internal control systems identified during the audit have been reported; and
e) that procedures satisfactory to the External Auditor have been applied to the recording of all assets, liabilities, surpluses and deficits in accordance with the Financial Regulations, stated accounting policies and United Nations accounting standards where appropriate.

11.34 The External Auditor shall for the purpose of his or her Reports be the sole judge as to the acceptance in whole or in part of certifications and representations by the Director and may proceed to such detailed examination and verification as he or she chooses of all financial records including those relating to supplies and equipment.

11.35 The External Auditor and his or her staff shall have free access at all convenient times to all books, records and other documentation which are, in the opinion of the External Auditor, necessary for the performance of the audit. Information classified as privileged and which the Director agrees is required by the External Auditor for the purposes of the audit, and information classified confidential shall be made available on application. The External Auditor and his or her staff shall respect the privileged and confidential nature of any information so classified which has been made available and shall not make use of it except in direct connection with the performance of the audit. The External Auditor may draw the attention of the Conference of Parties to any denial of information classified as privileged which in his or her opinion was required for the purpose of the audit.

11.36 The External Auditor shall have no power to disallow items in the accounts but shall draw to the attention of the Director for appropriate action any transaction concerning which he or she entertains doubt as to legality or propriety. Audit objections to these or any other transactions arising during the examination of the accounts shall be immediately communicated to the Director.

11.37 The External Auditor shall express and sign an opinion on the financial statements which states whether:

a) the financial statements present fairly the financial position as at the end of the period and the results of its operations for the period then ended;
b) the financial statements were prepared in accordance with the stated accounting principles;
c) the accounting principles were applied on a basis consistent with that of the preceding financial period; and
d) transactions were in accordance with the Financial Regulations and legislative authority.

11.38 The report of the External Auditor to the Conference of Parties on the financial operations of the period should mention:

a) the type and scope of the examination;

b) matters affecting the completeness and accuracy of the accounts, including where appropriate:

i) information necessary to the proper interpretation of the accounts;
ii) any amounts which ought to have been received but which have not been brought to account;
iii) any amounts for which a legal or contingent obligation exists and which have not been recorded or reflected in the financial statements;
iv) expenditures not properly substantiated; and
v) whether proper books of accounts have been kept. Where in the presentation Statement there are deviations of material nature from the generally accepted accounting principles applied on a consistent basis, these should be disclosed;

c) other matters which should be brought to the notice of the Conference of Parties, such as:

i) cases of fraud, presumptive fraud or money laundering;
ii) wasteful or improper expenditure of the Supplementary Compensation Mechanism's money or other assets (notwithstanding that the accounting for the transaction may be correct);
iii) expenditure likely to commit the Supplementary Compensation Mechanism to further outlay on a large scale;
iv) any defect in the general system or detailed regulations governing the control of receipts and disbursements or of supplies and equipment;
v) expenditure not in accordance with the intention of the Conference of Parties after making allowance for duly authorised transfers within the budget;
vi) expenditure in excess of appropriations as amended by duly authorised transfers within the budget; and
vii) expenditure not in conformity with the authority which governs it; and

d) the accuracy or otherwise of the supplies and equipment records as determined by stocktaking and examination of the records.

In addition, the Reports may contain reference to:

e) transactions accounted for in a previous year concerning which further information has been obtained or transactions in a later year concerning which it seems desirable that the Conference of Parties should have early knowledge.

11.39 The External Auditor may make such observations with respect to his or her findings resulting from the audit and such comments on the Director's financial report as he or she deems appropriate to the Conference of Parties or to the Director.

11.40 Whenever the External Auditor's scope of audit is restricted, or he or she is unable to obtain sufficient evidence, the External Auditor shall refer to the matter in his or her Report, making clear the reasons for his or her comments and the effect on the financial position and the financial transactions as recorded.

11.41 In no case shall the External Auditor include criticism in his or her Report without first affording the Director an adequate opportunity of explanation on the matter under observation.

11.42 The External Auditor is not required to mention any matter referred to in the foregoing which, in his or her opinion, is insignificant in all respects.

Decisions Involving Expenditures

11.43 No decision shall be taken by any organ of the Supplementary Compensation Mechanism involving expenditure unless it has before it a report from the Director on the administrative and financial implications of the proposal.

11.44 Where, in the opinion of the Director, such proposed expenditure cannot be made from the existing appropriations, it shall not be incurred until the Conference of Parties has made the necessary appropriations.

12. Administrative matters

Right to Direct Correspondence

12.1 The Director and other members of the Secretariat acting under the Director's instructions may correspond or otherwise communicate directly with any person in the performance of their functions.

Designation of Competent Authority

12.2 Any Member State may designate an authority to act on behalf of that State with regard to a particular aspect of the Supplementary Compensation Mechanism's activities. Any Member State having made such designation shall notify the Director of that designation.

Delegation of authority in the absence of the Director

12.3 The Director may authorise [the Deputy Director, the Legal Counsel or the Head of the Claims Department] to act on his or her behalf in the fulfilment of the functions set out in the Convention, and to be the legal representative of the Supplementary Compensation Mechanism. The conditions and extent of such delegation shall be laid down in Administrative Instructions issued by the Director. Delegation made in accordance with this Regulation overrides any limitation of the authority of the above-mentioned officers contained elsewhere in these Regulations or in the Financial Regulations.

12.4 The Director may authorise other officers to make commitments on behalf of the Supplementary Compensation Mechanism in connection with the procurement of goods and services. The conditions and extent of such delegation, which shall not exceed [**currency**], shall be laid down in Administrative Instructions issued by the Director.

13. **Amendments**

13.1 These Internal Regulations may be amended by the Conference of Parties.

13.2 Any amendment adopted in accordance with Regulation 13.1 shall enter into force one month after its adoption, unless the Conference of Parties decides, in a particular case, that it shall enter into force at an earlier or later date.

13.3 Amendments adopted in accordance with Regulation 13.1 shall be communicated by the Director to all Member States.

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APPENDIX C

SPECIAL COMPENSATION MECHANISM

Statement of Investment Policies and Procedures

Draft proposal on the policies and procedures for the investment of funds accumulated under the terms of the Convention on Compensation For Damage Caused By Aircraft to Third Parties in the Case of Unlawful Interference

THE SPECIAL COMPENSATION MECHANISM FUND (“The Fund”)

Statement of Investment Policies and Procedures (“SIP&P”)

Section I

Purpose and Philosophy

General

The purposes of this Statement are:

i) to set investment guidelines and direction for the SPECIAL COMPENSATION MECHANISM FUND (“the Fund”) that are consistent with the investment policies and objectives for the Fund established by the Conference of Parties (COP); and

ii) to set forth investment performance objectives and other criteria to be used by COP in its review and evaluation of the investment results of the Fund’s assets.

The Fund was established effective (date) to create a fund to compensate for damage to third parties as defined in the Convention on Compensation for Damage Caused by an Aircraft to Third Parties in the Event of Unlawful Interference (Convention). Such payments for the fund would be made once other payments contemplated by the Convention have been exhausted. The COP has been established by the Convention with the authority and responsibility to oversee the Fund.

The COP will establish the COP Investment Committee which will have investment oversight responsibility, with a focus on fund investments and investment administration. For the purposes of good governance the Director of the SCM serves as Secretariat to the COP Investment Committee.

This SIP&P has been adopted by COP after evaluating the financial needs of the Fund and establishing the investment risk tolerance of the COP. The SIP&P may be changed or modified at any time by COP. The SIP&P will be reviewed at least bi-annually.

Section II

Investment Policies

Nature of Fund Liabilities

The Fund established by the Convention, is the accumulation of monies resulting from charges to international airline passengers and shippers by imposed by State Parties and held by the SCM for the purpose of providing compensation, that is in excess of the insurance requirements in the Convention, to third parties who suffer losses as a result of events described in the Convention.

Given the nature of the Fund, a well-diversified and prudent growth orientation is useful in supplementing the funds collected from international airline passengers and shippers. Therefore, the Fund should provide adequate real returns within acceptable parameters for risk, as established by the COP.

Investment Policies

1. The basic goal underlying the establishment of the Fund's investment policies is to ensure that the Fund, along with expected future contributions, will be invested in a prudent manner to be sufficient to meet the obligations of the Fund as those obligations arise.

2. The investment of the Fund's assets will be carried out by one or more external professional fund managers including any mutual or pooled fund operated by such managers, appointed by the COP Investment Committee from time to time.

3. Each investment manager will, in a manner consistent with the investment policies, guidelines and objectives contained herein **and within the investment manager agreement** exercise full investment discretion, except where specifically restricted, in the investment of the assets of the Fund allocated to the investment manager. The investment manager will exercise the same level of care, skill, prudence and diligence that a qualified investment professional in similar circumstances would exercise.

4. The COP Investment Committee will meet at least four times per year to review the performance of investment managers, and the investment results of the Fund as a whole. The COP Investment Committee shall modify the investment policy or strategy from time to time as it considers prudent in the circumstances then prevailing.

5. The COP Investment Committee will provide a report to the COP on the performance of the Fund and significant Investment Committee actions at each COP meeting.

6. The voting of securities held by the Fund will generally be delegated to the investment manager as set out in Section IV General Restrictions, but may be directed by COP, which will only have one consideration in such decision and that will be the best long-term financial interest in the Fund itself.

7. The Conflict of Interest policy is set out in Section IV.

Section III

Investment Objectives and Strategy

Investment Objective.

The objective is that the Fund will achieve a real rate of return in excess of [4.5%] per annum for the 15 year period ending ___________.

The asset mix, both short and long term, is to be established by the COP Investment Committee. The investment policy supporting the asset mix will be reviewed annually and following the distribution of funds as a result of an event as defined in the Convention.

Diversification

Investment risk is controlled by diversification among different asset classes and within asset classes that are set out in this Policy.

Asset Mix Strategy

The COP Investment Committee shall establish an asset mix strategy of investing in a diversified portfolio and a disciplined, efficient rebalancing strategy.

In addition, value added will be achieved from a well-designed investment structure comprising of active and passive managers. The active managers will be selected on the basis of qualitative and quantitative evidence of ability and expectation of outperforming passive management. The COP's philosophy, beliefs and operating principles are detailed in Appendix A.

For clarity, the objective is to be fully invested in the permitted securities of the individual investment portfolios, where practical.

Rebalancing Strategy

An orderly and disciplined rebalancing strategy is necessary to return the portfolio to its approved asset mix. Therefore, threshold rebalancing based on a 3% interval around the targeted asset mix is appropriate. On a quarterly basis those asset classes outside the range will be rebalanced within the long-term asset mix range whenever an asset class moves outside the asset mix range as shown in the following table:

[Example below for illustrative purposes only. The COP Investment Committee is to establish its own parameters based on its own requirements

	* Rebalance if the market value of the asset class:		
Asset Class	Falls below	Asset mix	Rises above
Equity —Europe	27%	30%	33%
—North America	14.5%	17.5%	20.5%
—International	14.5%	17.5%	20.5%
Total Equity	61%	65%	69%
Bonds	27%	30%	33%
Real Estate	4%	5%	6%

The COP Investment Committee also recognises that the benefit of rebalancing can be dissipated by transaction costs. Therefore decisions to rebalance must take transaction costs into account.

Further, the COP Investment Committee wishes to establish the method of allocation of those asset classes outside the range. Rebalancing will occur in the following sequence, with the purpose of minimising the deviation from the long-term asset mix position.

1. Allocate to asset class.

2. For total equity, allocate to the appropriate equity sub-class.

3. Allocate within the equity sub-classes (Europe, North America, international), considering the then current (modified) long-term asset mix.

4. Allocate to managers within an asset class or sub-class where the above conditions apply.

Should one or more equity sub-classes be outside the range while total equity remains within the range, rebalance is only within total equity.

Tactical Asset Allocation

The Fund will be rebalanced to the mix adopted by COP Investment Committee in accordance with the rebalancing strategy and no material asset shifts shall be made away from the policy mix.

Section IV

Investment Procedures

Asset Classes Eligible for Investment (to be established by the COP Investment Committee and approved by the COP)

The COP Investment Committee will adopt an efficient investment structure designed to diversify the Fund and add value in the long term. The appointment of external fund managers provides the best means to achieve its objectives. The following asset classes are permissible assets for the implementation of the strategy:

1. Publicly traded common or preferred equity shares, installment receipts and warrants, non-real estate income trusts and limited liability partnerships.

2. Convertible debentures.

3. Bonds, debentures, mortgages, notes or other debt instruments of governments, government agencies or of corporations.

4. Securities, whether debt or equity, of private companies, but only with written approval of the COP Investment Committee.

5. Real estate pooled funds, real estate investment trusts or real estate corporations.

6. Guaranteed Investment Certificates or equivalents of insurance companies, trust companies, banks or other eligible issuers, or funds which invest primarily in such instruments.

7. Term deposits or similar instruments of trust companies, banks or credit unions.

8. Cash, or money market securities issued by government or corporations.

9. Publicly traded mutual or pooled funds which may invest in any or all of the above instruments or assets.

Quantitative And Qualitative Guidelines

It is expected that the investments will be diversified. All investments are expected to conform to the guidelines presented herein. Due consideration will be given to the liquidity requirements of the Fund. Investment managers must adhere to the diversification, quality and quantitative guidelines set forth in this SIP&P, but these may be amended upon written approval of the COP Investment Committee. In addition to the industry and economic sector limitations indicated in the investment manager agreement, investment managers are expected to exercise prudence and follow their internal policy norms as set from time to time.

Further, in addition to any other restrictions imposed by the local regulatory authority and included in the specific mandates of each investment manager agreement, the following quantitative and qualitative guidelines must be met:

Equity Guidelines

Equity guidelines include common and preferred shares, non-real estate income trusts and limited liability partnerships:

1. Investment in any one corporation or 2 or more affiliated corporations may not exceed 10% of the book value of the total Fund and 15% of the market value of the funds under management by manager and asset class. When the policy range is exceeded, the investments are to be rebalanced to 15% within the following quarter.

2. Writing of covered options on equity shares held is permitted subject to an appropriate risk control policy approved in writing by COP Investment Committee.

3. No more than 10% of the voting shares of any one corporation may be held.

4. Investment in emerging market equity securities, including equity participation units, is permitted for international equity investment manager portfolios, to a maximum of 15% of market value.

5. Investment in small cap equity pool funds is permitted for Canadian equity fund managers with the written approval of COP Investment Committee, to a maximum of 15% of the market value of the funds invested by the manager.

6. Investment in late stage private placements within Canadian small cap equity pool funds is permitted for Canadian equity fund managers with the written approval of COP Investment Committee, to a maximum of 10% of the market value of the small cap equity pool fund(s).

7. Investment Futures/Participation Units of the S&P/TSX Index, Standard & Poor's Depository Receipts (SPDRs), World Equity Benchmarks (WEBs), Global Depository Receipts (GDRs) and American Depository Receipts (ADRs) are permitted investments. Other participation unit funds are permitted only with the written approval of COP Investment Committee.

8. Synthetic equity pool funds are permitted to gain exposure to a portion of U.S. and/or international equity while abiding by the long-term asset mix policy and where approved by COP. Requirements include compliance with OSFI Guidelines—Derivatives Best Practices (May 12, 1997), as amended, and are to include that futures contracts are traded on a recognized exchange, that no leverage is provided, and that adequate risk management policies are in place.

Bond Guidelines

1. The minimum quality standard for individual bonds and debentures in the Fund will be the equivalent rating of the Dominion Bond Rating Service (BBB), Moody's Investor Services (Baa) or Standard and Poor's Rating Group (BBB). The most conservative available rating is to be used for this purpose.

2. No more than 5% of the bond portfolio market value may be held in "B++" (BBB) issues at the time of purchase.

3. No more than 1% of the bond portfolio market value may be held in a single "B++" (BBB) issuer.

4. Private placements should be rated "A" or better by the above mentioned agencies, and are not to constitute more than 15% of the bond portfolio market value.

5. Corporate issues, including corporate bonds and debentures, but not including convertible debentures, may not exceed 15% of the market value of the bond portfolio, or the corporate weighting in the appropriate benchmark index if the funds are invested passively to track the performance of the index. Convertible debentures are to be classified as equity shares.

6. Investment in bond and debenture issues of any one corporation may not exceed 5% of the bond portfolio market value.

Where the COP Investment Committee has approved investment in a passive bond index pool fund, maximum weighting of any security in the pool shall be the greater of the above and the weight of the security in the index, except with the written approval of COP.

Short-Term Investment Guidelines

The Guidelines for the bond and money market investments and deposits having a term to maturity of twelve months or less are:

1. Holdings of such assets will be sufficient to meet the liquidity requirements of The Fund as these exist from time to time.

2. Rating may not be less than R-1mid or better for DBRS or P-1 for Moody at the time of acquisition.

3. Deposits with banks, trust companies and other financial institutions shall be limited to 10% of the book value of the Fund.

4. No more than 3% of the book value of the Fund may be held on deposit with any single bank, trust company or other financial institution.

5. Stock index futures/participation units may be utilized as a substitute for cash.

Within short-term investments there is no limit on investments in short-term bonds or equivalent money market certificates, where these are unconditionally guaranteed by governments.

Derivative Instruments

Except with the written approval of COP Investment Committee, no derivative instruments will be held.

General Restrictions

Under the overall direction of the COP Investment Committee, the assets of the Fund shall be invested at all times in a prudently diversified manner subject to the following:

- The aggregate amount of the Fund that may be invested in the securities of or loaned to any one person or partnership or association shall be limited as per the Equity Guideline set out previously on investment in a single or affiliated corporation. This restriction does not apply to investments in government bonds and short-term securities.

- All proxies shall be voted by the investment manager who is responsible to exercise all rights or to instruct the custodian to exercise such rights as are acquired through the purchase of securities by the Fund. The only relevant consideration in such voting decisions is the best long-term financial interest of the Fund itself. COP Investment Committee shall obtain a quarterly report from the investment manager(s), where applicable, affirming compliance with The Fund's proxy voting policy.

- The investment manager will provide written notification to the

- COP Investment Committee if it holds more than 15% of the total outstanding voting securities or bonds and debentures of a single issuer on behalf of all its clients.

- If at any time an investment or group of investments within this Fund does not conform with the limitations provided herein, the investment manager shall immediately inform COP Investment Committee in writing of the nature, extent and the impact of non-compliance and correct the situation in accordance with the terms of the investment manager agreement, unless otherwise directed by COP Investment Committee.

- Securities that do not trade regularly will be valued by the Fund's custodian and/or investment manager based on available information from outside sources. In the absence of any meaningful market determination, such securities will be held at a value not in excess of book value.

- Related party transactions are prohibited unless not material to The Fund, materiality to be determined on a case by case basis by the COP Investment Committee, noting its Conflict of Interest Guidelines in the following Section.

  - The following related party transactions are exempted:

    1. Transactions necessary for operation of The Fund, such as management and administration services provided by the COP Investment Committee.

    2. Purchases at terms and conditions at least as favourable for The Fund as otherwise available.

Conflict of Interest Guidelines

Individuals Governed by Guidelines

These guidelines apply to:

- any person appointed to represent their State Party on the COP;

- members of the COP Investment Committee;

- the Director and Staff of the Special Compensation Mechanism;

- the Fund's investment manager(s);
- the Fund's investment consultant(s);
- the actuary for The Fund; and
- any agent of any of the above retained to provide services to The Fund.

Conflict of Interest

Any person listed in the previous Section must disclose any direct or indirect association or material interest or involvement in aspects related to their role with regard to the Fund investments that would result in any actual or perceived conflict of interest. Such actual or perceived conflicts of interest may arise if such person may materially benefit from knowledge of, participation in, or by virtue of, a Fund investment or investment decision.

Procedure on Disclosure of Conflict of Interest

Any persons listed above shall disclose the nature and extent of their actual or perceived conflict of interest to the COP Investment Committee and to the Director of the SCM within 14 days of becoming aware of the actual or perceived conflict. Disclosure should also be made at the first Committee meeting at which the matter giving rise to the actual or perceived conflict in issue is discussed.

Such disclosure shall be made whether the person's actual or perceived conflict of interest arises before or after the transaction giving rise to the conflict of interest has been completed by the Fund.

Unless the person discusses the actual or perceived conflict of interest at a Committee meeting, the disclosure shall be made, in writing to the Chair of the COP Investment Committee. The Chair shall immediately advise all Committee members in writing of the conflict. As soon as the actual or perceived conflict is disclosed, the Chair of the COP Investment Committee shall, through a meeting of the COP Investment Committee or by taking other appropriate steps, decide upon a suitable course of action to resolve the conflict. Except in unusual circumstances, abstention from any decision or discussion on the topic in question will be deemed to be a suitable course of action.

In case the actual or perceived conflict of interest involves the Chair of the COP Investment Committee, the Chair shall immediately advise all other Committee members of the conflict in writing or at a Committee meeting, as the case may be.

The other Committee members shall then designate an acting Chair for the purposes of any matter coming the Committee involving the conflict of interest (including the resolution of such conflict) and the same procedures relating to the resolution of the conflict shall apply.

Any person having an actual or perceived conflict of interest will thereafter abstain from the deliberations and decision making with respect to the matter giving rise to such conflict, unless otherwise determined permissible by the COP.

The failure of a person to comply with the procedures described in this section shall not itself invalidate any decision, contract or other matter pertaining to fund investments.

Code of Conduct and Ethics

The COP shall satisfy itself that an appropriate policy regarding codes of conduct and ethics exist and is followed by the COP Investment Committee and the Fund's investment managers. As a minimum, the

Code of Conduct and Ethics established by the CFA Institute shall be expected to apply to such investment managers.

Section V

Appointment and Duties of Agents and Management Involved in the Investment Process

Investment Managers

The investment managers for the Fund shall be appointed by COP Investment Committee following a due-diligence process that will include a selection from a short list of qualified candidates developed with the assistance of our investment consultant(s). The Director of the SCM shall interview the potential candidates and recommend to COP Investment Committee the appropriate managers. Approval by the COP Investment Committee is based on a simple majority vote. The investment managers shall be appointed for a one-year term and the appointment of each manager shall be reviewed and reconfirmed annually. The COP Investment Committee, however, may dismiss any manager for any reason at any time. The reasons for such dismissal may include, but are not limited to, the following:

- failure to adhere to this SIP&P;
- changes in personnel, firm structure, investment philosophy, style or approach that might adversely affect the potential risk or return of the Fund;
- failure of the investment manager to meet the risk / return expectations agreed to with the COP Investment Committee or regular under performance; and
- changes in the investment structure of the Fund which would no longer necessitate the use of the investment manager's services.

The investment managers will:

- manage The Fund's assets and asset mix within the constraints imposed by this SIP&P and their **investment manager agreement**;
- review, at least annually, their investment performance with the COP Investment Committee and provide their expectations of future returns on the various asset classes utilised;
- provide the COP Investment Committee with a quarterly portfolio investment report including, at a minimum, commentary/market appraisal, the rates of return earned for the portfolio(s) managed and a listing of actual portfolio holdings at the end of the quarter;
- provide monthly reconciliations;
- promptly report on any deviations from the SIP&P but no later than quarterly, through a compliance report set out in Appendix B which monitors compliance with the SIP&P and the I nvestment manager agreement; and
- notify the COP Investment Committee, in writing, of any significant changes in their personnel, organisation structure or ownership, procedures, business plan, philosophy or style.

Investment Consultant

COP Investment Committee may appoint investment consultants who serve at the pleasure of the COP Investment Committee.

Investment consultants, in addition to assisting in the initial due diligence search for fund managers, may at the request of the COP Investment Committee:

- Participate in the annual review of the SIP&P;
- With the assistance of The Fund actuary, prepare any necessary statistical information for COP Investment Committee in order to review the SIP&P; and
- Assist the COP investment Committee in reviewing and analysing fund managers' performances.

The COP Investment Committee

The COP Investment Committee has responsibility for the effective management and operation of the Fund's investment program in compliance with the SIP&P, including the following:

- Oversight/due diligence of the Fund;
- Governance/policy reviews;
- SIP&P ;
- Investment manager agreements including negotiation;
- Investment consulting agreements including negotiation; and
- Financial controllership of The Fund.

Section VI

Providing Information To the COP

The COP Investment Committee will provide an Annual Report to the COP. This report must include detailed financial information on the performance of the Fund and the various fund managers appointed by the Investment Committee, information on governance policies and adherence to the SIP&P as well as an audited financial statement.

Attachment A

INVESTMENT PHILOSOPHY, BELIEFS AND OPERATING PRINCIPLES

INVESTMENT PHILOSOPHY

Investment policies will be designed along a "prudent person portfolio approach" that will minimise the risk reductions in the Funds asset base. Given the nature of the possible liabilities, this implies that significant changes will only be contemplated if there is a fundamental change in the risk tolerance of the Fund or market fundamentals.

INVESTMENT BELIEFS

1. Equities outperform fixed income securities, in the long-term. Further, risk is best managed at the total Fund level with an overweight to equities vs. fixed income. Cash holdings in the Fund should be minimised to the extent practicable.

2. In more efficient markets, it is less likely that active management will add long-term value (on a risk-adjusted basis, net of fees) compared to passive management.

3. Market timing, including both shifts in asset class weights and style/capitalization bets relative to the market, do not add long-term value (on a risk adjusted basis, net of fees).

4. Complex structures and diversification within an asset class (e.g., total equity) or to specific managers within an asset class can only be justified by significant added long-term value, after recognition of both direct and indirect costs.

5. Diversification by asset class and managers reduces risk and hence, the use of specialist managers is appropriate. Unless significant value added or risk reduction is expected by the addition of another manager, the number of managers should be kept to a minimum.

6. Expense management can add to long-term value. Accordingly, higher investment management fees will only be accepted where the expected reward is significantly greater than the additional expense.

7. Notwithstanding the investment beliefs specified above, changing economic conditions may warrant a review of investment strategy for the mid-term.

OPERATING PRINCIPLES

The COP Investment Committee will develop operating principles which reflect the risk appetite of the COP. Approval by the COP is required before these principles are put into place.

Attachment B

Sample Fund Manager Compliance Certificate

Quarter ending ___________________________

	Compliance		
	Yes	**No**	**Note**
SIP&P Compliance Issues			
In accordance with Statement of Investment Policies and Procedures ("SIP&P")—General compliance. For greater certainty see following	❍	❍	
In accordance at a minimum with CFA Institute —Code of Ethics and Standards of Professional Conduct —Global Investment Performance Standards for performance information	❍	❍	
Ongoing governance reviews, no significant shortfalls determined	❍	❍	
Continuing internal controls review, no lessening of scope	❍	❍	
No conflict of interest or situation to be reported	❍	❍	
Proxy voting as per SIP&P	❍	❍	
Reconciled accounting statements with custodian statements—monthly	❍	❍	
Notification to client of change in ownership, professional personnel, firm structure, investment philosophy, style, approach that might adversely affect the potential risk or return of the Fund	❍	❍	
Notification to client if it holds more than 15% of the total outstanding voting securities or bonds and debentures of a single issuer on behalf of all its clients,	❍	❍	
Not subject to undisclosed current regulatory/securities investigation (civil or criminal). Results of any investigations and administrative reviews have been disclosed, as available.	❍	❍	
Investment Manager Agreement Compliance Issues			
In accordance with investment manager agreement—General compliance. For greater certainty see following	❍	❍	
Proper licensing and registration under Securities Act(s)	❍	❍	
Continuing internal controls review	❍	❍	

	Compliance Yes	No	Note
Met risk or return expectations agreed to with the COP Investment Committee	❍	❍	
Maintenance and confidentiality of records	❍	❍	
Errors and omissions insurance coverage	❍	❍	
United Nations Suppression of Terrorism			
No investments in/with listed persons/organizations	❍	❍	
If there are listed persons/organizations, procedure on disclosure described in the Regulations has been followed.	❍	❍	

Items not in compliance

- Description: ____________________
____
____
- Reason: ____________________
____
- Recommended actions: ____________________
____
____

Certification

I certify that I am authorised on behalf of the Company to attest to the above, that I have been provided all necessary information to complete this certification, and that there are no other significant risks or matters worthy of consideration for disclosure that affect the operation of the Company and its management of this portfolio.

I certify that Fund investments were in accordance with the SIP&P, the fund manager agreement, and applicable legislation throughout the quarter ending ________________________.

____

Signed Position

____

Company Date

Attachment C

Risk

Risk Tolerance

The COP Investment Committee will develop and present for COP approval a statement of risk tolerance which will guide the COP Investment Committee and fund managers. The approved riosk tolerance statement will form a part of the SIP&P.

— END —