

## **ADDITIONAL QUESTIONS AND ANSWERS ON THE ESTABLISHMENT OF A GLOBAL SCHEME IN THE FIELD OF AVIATION WAR RISK INSURANCE**

*Note.* – This document is intended to provide additional information on the proposal of the Special Group on Aviation War Risk Insurance (SGWI) for the establishment of an international mechanism (see SGWI/2 Report) through questions and answers.

### **1. What is the exact scope of coverage of the scheme set out in Article 4.1 of the Draft Participation Agreement?**

With respect to the scope of coverage, the proposed global scheme is intended to return all aviation entities to the position prior to 11 September 2001 by providing write-back coverage to all the perils previously insured under Clause AVN 52C, i.e. all the perils excluded by paragraphs (a) and (c) to (g) of the War Hijacking & Other Perils Exclusion Clause AVN 48B. This reinstatement will be on an excess basis following the applicable primary policy (definition of “Aviation War Risk Cover” in Article 1, as well as Article 4.1 of the Draft Participation Agreement in Attachment B to the State letter LE 4/64-02/55 refers). The liability arising out of bodily injury and property damage to third parties (other than injury to aircraft passengers unless permitted under Article 4.3 of the Draft Participation Agreement) caused by the following perils is therefore covered:

- (a) war, invasion, acts of foreign enemies, hostilities (whether war has been declared or not), civil war, rebellion, revolution, insurrection, martial law, military law, military or usurped power or attempts at usurpation of power; or
- (b) strikes, riots, civil commotions or labour disturbances; or
- (c) an act of one or more persons (whether or not as agent of a sovereign power) for political or terrorist purposes (whether the resulting loss or damage is accidental or intentional); or
- (d) a malicious act or act of sabotage; or
- (e) hijacking or an unlawful seizure or wrongful exercise of control of the aircraft or crew in flight (including an attempt at such seizure or control) made by any person acting without the consent of the insured; or
- (f) confiscation, nationalization, seizure, restraint, detention, appropriation, requisition or use by or under the order of a government (civil, military or *de facto*) or public or local authority.

With regard to the background discussions concerning this matter, see paragraph 2.17 of the Report of the Special Group on Aviation War Risk Insurance, Second Meeting, Montreal, 28-30 January 2002 (SGWI/2 Report), which is accessible on the ICAO public website, at [www.icao.int](http://www.icao.int) (see List of Meetings).

**2. What is the nature of the guarantee which participating States will provide?**

With respect to the nature of guarantee provided by the participating States, it should be noted that such guarantees provided by participating States through signature of the Participation Agreement will be the basis to request participating States to act as lenders of last resort. No payment would be required from States upon joining. The States could be called upon to provide funds to the Insurance Entity in accordance with their guarantees only in the unlikely case that the Insurance Entity's accumulated reserve funds collected from the insured parties are insufficient to cover any claim in respect of insured risks of any insured party. Furthermore, it should be stressed that the repayment of such funds are to be made by the Insurance Entity on a priority basis from future premium collections. In this regard, reference should be made to Articles 6.1, 6.2, 7.1, 7.2, and 7.3 of the Draft Participation Agreement set out in Attachment B, as well as Questions and Answers Nos. 9 and 12 set out in Attachment E to the said State letter.

**3. What is an estimated participating State's maximum financial exposure? Is this based on the liability limit of U.S. \$1.5 billion or U.S. \$15 billion?**

A participating State's maximum financial exposure is the amount of its ICAO contribution percentage share applied to the U.S.\$ 15 billion total cap of the global scheme based on 100% participation; so, each State's cap remains constant whatever the total States' participation in the global scheme will be. Therefore, for example, the maximum financial exposure of a State with a 0.06% ICAO contribution rate is U.S.\$ 9 million. This is a last resort guarantee. This rate is also used for assessments of any individual claim settlement. It should be noted that a State's claim settlement share will be calculated by grossing up the total contribution percentage to 100%. For example, if the total participation in the scheme is 51%, then each State's contribution percentage would be grossed up by a multiple of 1.96; thus a State with a 0.06% ICAO contribution percentage rate would have a potential claim settlement share of 0.1176%, or U.S.\$ 1.76 million on a loss of U.S.\$ 1.5 billion, its residual cap being then decreased from U.S.\$ 9 million to U.S.\$ 7.24 million. Please refer to Questions and Answers Nos. 10 and 11 set out in Attachment E to the said State letter.

**4. What would happen to the accumulated funds in the global scheme upon winding up? Would it be returned to the individual participating States' Governments in total?**

Under the proposed global scheme, the Insurance Entity shall be responsible for taking steps, in consultation with the Council of ICAO, relating to the winding up of operations, including as regards the distribution of the accumulated capital/premiums in the event that the Insurance Entity ceases to operate in accordance with a decision by the Board. Please refer to paragraph 16.2 of the draft Participation Agreement set out in Attachment B to the said State letter.

Although the exact distribution of the accumulated capital/premiums will be determined through the aforementioned steps, it should nevertheless be noted that, in principle, participating States and contributing airlines would be expected to share in the distribution of the accumulated capital/premiums, as referred to in paragraph 5.5 of Appendix 1 of the SGWI/2 Report. With respect to the distribution among the participating States, it should also be noted that participating States will receive a share of the surplus funds prorated to the share of their guarantees, in recognition of the risk they agreed to bear, as referred to in No. 12 of Questions and Answers set out in Attachment E to the said State letter.

**5. What is the justification to require participating States to waive their sovereign immunity as set out in Article 17 of the Draft Participation Agreement?**

With regard to the waiver of sovereign immunity set out in Article 17 of the Draft Participation Agreement, it should be noted that this is necessary to render the States' guarantees enforceable and henceforth enable the Insurance Entity to obtain the necessary funds from the private market for its initial capitalization. In this connection, it should be mentioned that the waiver of sovereign immunity set out in the said Article of the Draft Participation Agreement is limited to the subject of the States' guarantees for purposes of enforceability. This should be less costly to participating States than the provision of an irrevocable letter of credit for the amount of specific respective caps. It should also be mentioned that the present *ad hoc* States' guarantees could serve as a precedent in this regard. Reference should be made to paragraph 2.4.2 of C-WP/11794 set out in Attachment C to the said State letter.

**6. Are there alternative ways to meet concerns regarding the financial capacity of developing States to participate in the global scheme?**

It should be taken into account that the global scheme by itself demonstrates solidarity. Firstly, by sharing the risks, the exposure of individual States is significantly reduced. Secondly, the ICAO contribution rate of each Contracting State is determined by the capacity of a Contracting State to pay, as measured by national income, taking into consideration national income per head of population, and a Contracting State's interest and importance in civil aviation. (Paragraphs 1. a) 1. and 2. of Assembly Resolution A21-33 refer.)

**7. Suppose a sufficient number of expressions of intent from Contracting States to participate, i.e. the sum of whose ICAO contribution rates in accordance with Assembly Resolution A33-26 amounts to at least 51%, have been received, what then is the time path before the scheme is actually up and running? What remains to be done?**

Reference should be made to C-WP/11974 and related C-DEC 166/4, particularly paragraphs c) to e), as well as Questions and Answers Nos. 6 and 17, set out in Attachments C, D and E to the said State letter. First, the entity should be established, as a non-profit entity in accordance with the legal requirements governing insurance entities. The initial capital is to be secured through the private market. Contacts to that effect have already been made. Second, the Participation Agreement will have to be finalized with the assistance of the informal group of experts. Third, the President of the Council would seek firm and formal commitment of States to participate through signature of the final Participation Agreement.

Thereafter, the global scheme itself will become operational when States representing 51% of ICAO contribution rates will have effectively signed the Participation Agreement with the entity. In this latter respect, it is difficult to make estimates of timing, but it should be considered that several States were able to grant early approval of present *ad hoc* guarantees.