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SPECIAL GROUP ON THE MODERNIZATION OF THE ROME CONVENTION OF 1952 (SG-MR)

(Montreal, 10 – 14 January 2005)

INFORMATION PAPER

(Presented by the London Market Insurance Brokers Committee (LMBC))

INSURANCE CONSIDERATIONS

1. Current War, Terrorism and other perils cover provided by aviation insurers

- (a) Currently all operator (and service provider) aviation liability insurance policies are subject to War, Hijacking and Other Perils Exclusion Clause AVN48B (Appendix 1) or equivalent clauses.
- (b) All paragraphs other than b of AVN48B are normally written back into policy coverage for passenger and third party liabilities by the Extended Coverage Endorsement (Aviation Liabilities) AVN52E (Appendix 2).
- (c) Paragraph (b) is an absolute exclusion that cannot be written back for passenger and third party liabilities. This exclusion originated in cold war times before nuclear terrorism was contemplated. Nuclear perils represent unquantifiable and potentially ruinous accumulation of losses and are therefore deemed uninsurable by aviation insurers.
- (d) As can be seen, all coverage under AVN52E can be cancelled on either 48 hours or 7 days notice by Underwriters depending on the circumstances and automatic termination without notice of all or parts of coverage can also occur. These are long standing provisions that have existed for decades to allow aviation insurers to minimise their exposure to financial ruin where necessary.

2. Impending War, Terrorism and other Perils cover to be provided by aviation insurers.

- (a) It is intended by aviation insurers that AVN48C will replace AVN48B at the earliest opportunity on policy renewals. However, if necessary AVN48C can be introduced by insurers on 7 days notice at anytime.
- (b) The main changes introduced by AVN48C is the revision of Paragraph b to read as follows:
 - (i) Any hostile detonation of any device employing atomic or nuclear fission and/or fusion or other like reaction,
 - (ii) Any hostile use of radioactive contamination or matter,
 - (iii) Any hostile use of an electromagnetic pulse,
 - (iv) Any use of chemical or biological materials that are poisonous or pathogenic arising from war, invasion, acts of foreign enemies, hostilities (whether war be declared or not), civil war, rebellion, revolution, insurrection, martial law, military or usurped power or attempts at usurpation of power, or use of such materials for political or terrorist purposes and whether the loss or damage resulting therefrom is accidental or intentional.

The introduction of AVN48C will result in further absolute exclusions that cannot be written back into the policy coverage for passenger and third party liabilities. It should be noted that the aviation insurance market is the only property and casualty market that has delayed introducing these exclusions, all other markets introduced by the end 2003.

- (c) **The Special Group needs to consider whether operators and their service providers should be deemed not liable under the Convention for state targeted acts of terrorism that are completely uninsurable. Terrorists attacks using weapons of mass destruction mentioned in 1 (c) and 2 (b) above are first and foremost national security issues.**

3. Limits of Liability

- (a) Historically and for the purposes of maximum flexibility, operators purchase insurance for their passenger, passenger baggage, cargo and third party bodily injury and property damage liabilities in one Combined Single Limit applicable to each occurrence, each aircraft.
- (b) For example, it is preferable to have a Combined Single Limit of US\$1b for all liabilities rather than be confined to a Passenger Limit of US\$500m and a Third Party Limit of US\$500m. A Combined Single Limit ensures that the full amount of Limit is always available and can be used to maximum effect for each different loss the operator incurs.
- (c) Following 9/11, the aviation market qualified the Combined Single Limit so that third party liabilities resulting from the write back by AVN52E were subject to a sub-limit of US\$50m any one occurrence and in the annual aggregate. Passenger, baggage and cargo liabilities under AVN52E remained on an each occurrence, each aircraft basis for the full Combined Single Limit as these risks remain quantifiable. This is still the case today, although it is possible to increase the third party liability sub-limit to US\$150m aggregate.

- (d) Immediately following 9/11, a limited Excess AVN52E Market was urgently created to provide up to an additional US\$950m aggregate of third party bodily injury and property damage cover for those operators not covered by government guarantees.
 - (e) Today, the Excess AVN52E Market provides operators with additional third party cover up to the amount of each operators Combined Single Limit or higher limit if available but subject to a maximum total limit of US\$1billion aggregate in most cases. A small number of policies have been made available to major operators providing total limits of US\$1billion each occurrence/US\$2billion aggregate. A very small number of operators have purchased cover in excess of these limits.
 - (f) The limited capacity available in the Excess AVN52E Market means that it has a near monopoly on business and the cost of coverage remains high as a result.
 - (g) The amount of Combined Single Limit and Excess AVN52E Liability that operators decide to purchase each year depends on many issues including corporate governance, types of aircraft operated, leasing and code share obligations, routes flown, likely passenger compensation, regulatory requirements and availability and cost of insurance. The amounts purchased vary considerable across the industry world-wide but the fact remains that other than for 9/11 the levels of insurance purchased by individual operators have been generally adequate to cover their all their insured passenger and third party liabilities to date.
 - (h) Incidents of bodily injury and property damage on the ground caused by aircraft in flight have been very remote and therefore a detailed study needs to be undertaken by States when considering what Limits of Liability should be established under the Convention. For the Convention to be supported by the industry States must avoid adding considerable and unnecessary insurance cost burdens as the industry is already paying record levels of insurance premiums as a result of 9/11. The Limit of Liability and Overall Cap must be at reasonable levels and dovetail with the levels of Combined Single Limits currently purchased across the industry to avoid disputes when settling combined passenger and third party claims.
 - (i) The major threat to the survival of the industry are further terrorist attacks similar to 9/11 or with weapons of mass destruction, and where insurance is either not available or is very limited and subject to withdrawal.
 - (j) **A separate convention limiting or removing operators and service providers liability for state targeted acts of terrorism should be the priority of ICAO to safeguard the future of the industry.**
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APPENDIX 1

WAR, HI-JACKING AND OTHER PERILS EXCLUSION CLAUSE (AVIATION)

This Policy does not cover claims caused by

- (a) War, invasion, acts of foreign enemies, hostilities (whether war be declared or not), civil war, rebellion, revolution, insurrection, martial law, military or usurped power or attempts at usurpation of power.
- (b) Any hostile detonation of any weapon of war employing atomic or nuclear fission and/or fusion or other like reaction or radioactive force or matter.
- (c) Strikes, riots, civil commotions or labour disturbances.
- (d) Any act of one or more persons, whether or not agents of a sovereign Power, for political or terrorist purposes and whether the loss or damage resulting therefrom is accidental or intentional.
- (e) Any malicious act or act of sabotage.
- (f) Confiscation, nationalisation, seizure, restraint, detention, appropriation, requisition for title or use by or under the order of any Government (whether civil military or de facto) or public or local authority.
- (g) Hi-jacking or any unlawful seizure or wrongful exercise of control of the Aircraft or crew in Flight (including any attempt at such seizure or control) made by any person or persons on board the Aircraft acting without the consent of the Insured.

Furthermore this Policy does not cover claims arising whilst the Aircraft is outside the control of the Insured by reason of any of the above perils. The Aircraft shall be deemed to have been restored to the control of the Insured on the safe return of the Aircraft to the Insured at an airfield not excluded by the geographical limits of this Policy, and entirely suitable for the operation of the Aircraft (such safe return shall require that the Aircraft be parked with engines shut down and under no duress).

1.10.96
AVN 48B

APPENDIX 2

EXTENDED COVERAGE ENDORSEMENT (AVIATION LIABILITIES)

1. WHEREAS the Policy of which this Endorsement forms part includes the War, Hi-Jacking and Other Perils Exclusion Clause (Clause AVN 48B), IN CONSIDERATION of an Additional Premium of, it is hereby understood and agreed that with effect from, all sub-paragraphs other than of Clause AVN 48B forming part of this Policy are deleted SUBJECT TO all terms and conditions of this Endorsement.

2. EXCLUSION applicable only to any cover extended in respect of the deletion of sub-paragraph (a) of Clause AVN 48B.

Cover shall not include liability for damage to any form of property on the ground situated outside Canada and the United States of America unless caused by or arising out of the use of aircraft.

3. LIMITATION OF LIABILITY

The limit of Insurers' liability in respect of the coverage provided by this Endorsement shall be

_____ or the applicable policy limit whichever the lesser any one Occurrence and in the annual aggregate (the "sub-limit"). This sub-limit shall apply within the full Policy limit and not in addition thereto.

To the extent coverage is afforded to an Insured under the Policy, this sub-limit shall not apply to such Insured's liability:

- (a) to the passengers (and for their baggage and personal effects) of any aircraft operator to whom the Policy affords cover for liability to its passengers arising out of its operation of aircraft;
- (b) for cargo and mail while it is on board the aircraft of any aircraft operator to whom the Policy affords cover for liability for such cargo and mail arising out of its operation of aircraft.

4. AUTOMATIC TERMINATION

To the extent provided below, cover extended by this Endorsement shall TERMINATE AUTOMATICALLY in the following circumstances:

- (i) **All cover**
- upon the outbreak of war (whether there be a declaration of war or not) between any two or more of the following States, namely, France, the People's Republic of China, the Russian Federation, the United Kingdom, the United States of America
- (ii) **Any cover extended in respect of the deletion of sub-paragraph (a) of Clause AVN 48B**
- upon the hostile detonation of any weapon of war employing atomic or nuclear fission and/or fusion or other like reaction or radioactive force or matter wheresoever or whensoever such detonation may occur and whether or not the Insured Aircraft may be involved

- (iii) **All cover in respect of any of the Insured Aircraft requisitioned for either title or use**
- upon such requisition

PROVIDED THAT if an Insured Aircraft is in the air when (i), (ii) or (iii) occurs, then the cover provided by this Endorsement (unless otherwise cancelled, terminated or suspended) shall continue in respect of such an Aircraft until completion of its first landing thereafter and any passengers have disembarked.

5. REVIEW AND CANCELLATION

- (a) **Review of Premium and/or Geographical Limits (7 days)**

Insurers may give notice to review premium and/or geographical limits - such notice to become effective on the expiry of seven days from 23.59 hours GMT on the day on which notice is given.

- (b) **Limited Cancellation (48 hours)**

Following a hostile detonation as specified in 4 (ii) above, Insurers may give notice of cancellation of one or more parts of the cover provided by paragraph 1 of this Endorsement by reference to sub-paragraphs (c), (d), (e), (f) and/ or (g) of Clause AVN 48B - such notice to become effective on the expiry of forty-eight hours from 23.59 hours GMT on the day on which notice is given.

- (c) **Cancellation (7 days)**

The cover provided by this Endorsement may be cancelled by either Insurers or the Insured giving notice to become effective on the expiry of seven days from 23.59 hours GMT on the day on which such notice is given.

- (d) **Notices**

All notices referred to herein shall be in writing.

AVN 52E 12.12.01

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